SESSION OF 2008

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 560

As Amended by House Committee of the Whole

Brief*

SB 560, as amended, would enact the Property/Casualty Flex-Rating Regulatory Improvement Act, an act pertaining to personal line insurance; would prohibit an insurer from retaining certain claim information; and would prohibit the use of a credit score by insurers when underwriting or rating risks. The bill also would repeal the Kansas Insurance Score Act.

Property/Casualty Flex-Rating Improvement Act

Rate filings made by an insurer under this Act that provide for an overall statewide rate increase of no more than 12 percent or decrease in any amount, in the aggregate for all coverages, would be effective upon filing. No more than one rate filing could be made by an insurer pursuant to the process outlined in the bill, unless the combination of the filing and all other filings made by the insurer within the previous twelve months does not result in an overall statewide increase or decrease outside the flex band created under the Act. The 12 percent limitation would not apply on an individual insured basis.

Filings submitted under the Act shall be deemed to comply with state law unless the Insurance Commissioner determines the filing is inadequate or unfairly discriminatory; if the filing is determined as such, the Commissioner is required to issue a written order specifying in detail what provisions of the Insurance Code were violated and the reasons the filing was deemed inadequate or unfairly discriminatory. The Act would

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*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at http://www.kslegislature.org define "unfairly discriminatory" to include as a rate for a risk that is classified in whole or in part on the basis of race, color, creed or national origin and also would ascribe the meaning to the term defined in KSA 40-953, a statute governing excessive, inadequate, and unfairly discriminatory rates. The bill also would require the disclosure of a rate change or notice of renewal to the insured.

Additionally, if the Commissioner issues an order more than 30 days after the rate filing was received, the effect of the order could be prospective only and not affect any contract issued or made before the effective date of the order.

Claims Information, Prohibited Use

The bill also would address the filing of claims for damage under a personal insurance policy. If, after the damage amount has been determined, the insured (policyholder) elects not to be reimbursed by the insurer for the damage, the insurer would be prohibited from retaining the claim information in its records of the insured.

"Personal insurance," under this provision only, would mean private passenger automobile, homeowners, motorcycle, mobile homeowners and non-commercial dwelling fire insurance policies and boat, personal watercraft, snowmobile and recreational vehicle policies.

Credit Scoring; Repeal of 2003 Kansas Insurance Score Act

The bill would prohibit all insurers authorized to do business in Kansas from using an insurance or credit score to underwrite or rate risk for any Kansas insureds.

An "insurance or credit score" would be defined to mean a number or rating that is derived from an algorithm, computer application, model, or other process that is based, in whole or in part, on credit information for the purposes of predicting the future insurance loss exposure of an individual applicant or insured.

The bill also would establish definitions for the terms "consumer reporting agency," "credit information," and "credit report."

Background

The bill was introduced at the request The State Farm Insurance Companies, Inc., whose representative indicated that it is to the benefit of the consumer to create a highly competitive insurance market placing maximum reliance on competitive forces to assure reasonable rates and quality service and noted that the Insurance Department still would have the tools necessary to make sure the marketplace is working in a fair and nondiscriminatory manner. A representative of the National Association of Mutual Insurance Companies (NAMIC) and member of an interim study committee discussed below stated that the enactment of the flex-rating model would benefit consumers by encouraging more insurers to enter the market and passage of the bill would send a strong message to Congress that states can improve and modernize the state system of insurance regulation. The Insurance Department testified in support of the bill and offered amendments to the rating band, a limitation on rate increases on individual policies, and a modification to the definition of the term "unfairly discriminatory." Other proponents of the bill included the American Insurance Association, the Farmers Alliance, Farmers Insurance Group, Kansas Association of Insurance Agents, Kansas Insurance Associations, and the Property Casualty Insurers Association of America. There were no opponents at the time of the Committee hearing.

The Senate Committee on Financial Institutions and Insurance amended the bill to clarify that the term "unfairly discriminatory" would include the rate or risk classification on the basis of race, color, creed, or national origin.

The Senate Committee of the Whole amended the bill to revise the rating band for a rate filing and to clarify the term "unfairly discriminatory." The original bill specified a rate filing under the Act could increase or decrease no more than 12 percent. The Committee of the Whole amendment would instead allow that the rate could increase no more than 12 percent and could decrease in any amount. The bill also was amended to further define the term "unfairly discriminatory" to have the meaning ascribed to the term in the Insurance Code.

The House Committee of the Whole amendment inserted a provision to specify that claims information for a claim that had been filed for damages (personal lines of insurance) but was not reimbursed at the policyholder's choice could not be retained by the insurance company. The House Committee of the Whole amendment also repealed the Kansas Insurance Score Act and inserted definitions for certain terms related to the use of credit information. By action of the House Committee of the Whole, the bill (as amended by the House Committee of the Whole), was re-referred to the House Committee on Insurance and Financial Institutions.

A report issued by the 2007 Interim Kansas Insurance Department Fee Modernization and Rating Laws Task Force indicated the Task Force's support for the adoption of the NCOIL Flex-Rating Regulatory Model Improvement Act (proposed in 2008 SB 560). The task force members noted the solid regulatory environment in Kansas and the timing for adoption of this model with a soft market and competitive rates. The Task Force noted that it also had considered another regulatory model, as proposed in 2007 SB 274, and that issues regarding prior approval and competitive rating will require further consideration.

The fiscal note prepared by the Division of the Budget on the introduced version of the bill states the Kansas Insurance Department indicates the agency could implement the bill's provisions within its current budget. No fiscal note is available for the provisions inserted by the House Committee of the Whole.