

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 356**

As Agreed to April 2, 2024.

Brief*

SB 356 would amend the Utilization Review Organization Act and the Electronic Notice and Document Act. The bill would amend provisions pertaining to certain financial reporting requirements on group-funded liability and group-funded workers compensation pools, and would also remove certain notification requirements. The bill would also amend existing law to establish a tiered-fee structure for financial examinations of insurance companies and societies based on the gross premiums received by such entities.

The bill would also amend the effective date specified in the Insurance Code for the risk-based capital (RBC) instructions. Further, the bill would permit title insurance agents to deposit escrow, settlement, and closing funds for real estate closings, including closings involving refinances of existing mortgage loans, that exceed \$2,500 to be in the form of a real-time or instant payment.

The bill would also make technical amendments.

Utilization Review Organization Act (New Sections 1–2)

The bill would amend the Utilization Review Organization Act to require utilization review entities to implement and maintain a prior authorization application programming interface (API), pursuant to federal law in effect on January 1, 2028, to streamline the electronic prior authorization process. This provision would be effective on January 1, 2028.

The bill would require each utilization review entity certified under the Utilization Review Organization Act to implement and maintain a prior authorization API in accordance with 45 CFR § 156.223(b), as in effect on January 1, 2028. This section would not apply to a prior authorization request for the coverage of drugs as defined in federal law.

This section would be part of and supplemental to the Utilization Review Organization Act and would become effective on January 1, 2028.

[*Note:* The Centers for Medicare and Medicaid Services (CMS) issued a proposed rule with a January 1, 2026, implementation date for API enhancement or development. CMS considered

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public comments on the proposed rule regarding the need for additional time for implementation and changed the compliance date in its final rule to January 1, 2027. The compliance date for the final rule applies to Medicare Advantage organizations and state Medicaid and Children's Health Insurance Program (CHIP) Fee for Service programs (by January 1, 2027), Medicaid managed care plans and CHIP managed care entities (beginning with the first rating period that begins on or after January 1, 2027), and qualified health plans in the federally facilitated exchanges (by the first plan year beginning on or after January 1, 2017).]

Group-funded Liability Pools; Submission of Financial Statement (Section 3)

The bill would amend provisions pertaining to certain financial reporting requirements on group-funded liability pools.

Under current law, group-funded liability pools must submit a certified, independent financial statement within 150 days after the end of the fiscal year whenever the Commissioner of Insurance (Commissioner) deems it necessary to examine the affairs and financial condition of any pool. The bill would increase the time limit specified to 180 days.

Tiered-fee Structure for Financial Examinations of Insurance Companies and Societies (Section 4)

The bill would amend existing law to establish a tiered-fee structure for financial examinations of insurance companies and societies based on the gross premiums received by such entities. The bill would also establish that certain examination costs be "average and reasonable."

"Average and Reasonable" Fees

- The bill would require the following examination costs be "average and reasonable":
- Full compensation for examiners' services, on a per diem basis;
- Outside consulting and data processing fees necessary to perform any examination; and
- Purchase, maintenance, and enhancement of examination equipment and computer software.

The bill would specify expenses for traveling and subsistence incurred by examiners in the performance of their services be "reasonably" necessary.

The bill would require the amount paid to perform any market regulation examination, including examination of a company or society's subsidiaries, and the *pro rata* amount to fund the purchase of examination equipment and computer software be "reasonable" and not exceed the existing statutory collective total cap of \$25,000.

“Average and reasonable” would mean the amount or fees that are in line with fees assessed by other people in the area where the examination occurred who have rendered similar services.

Tiered-fee Structure

The bill would amend the amounts paid for examination costs to create a tiered-fee structure. The examination costs would include:

- Compensation, expenses, and the employer’s share of the Federal Insurance Contributions Act taxes;
- The employer’s contribution to the Kansas Public Employees Retirement System;
- The self-insurance assessment for the Workers Compensation Act;
- The employer’s cost of the state health care benefits program;
- A *pro rata* amount determined by the Commissioner to provide vacation and sick leave for the examiner;
- All average and reasonable outside consulting and data processing fees necessary to perform any examination; and
- An average and reasonable *pro rata* amount determined by the Commissioner to fund the purchase, maintenance, and enhancement of examination equipment and computer software.

The bill would specify the amount paid for the above costs; outside consulting and data processing fees necessary to perform any financial examination at any one company or society, including examination of the company’s or society’s subsidiaries, or any combination; and the *pro rata* amount to fund the purchase of examination equipment and computer software could not collectively total more than the following amounts:

- \$50,000 for any insurance company or society that has less than \$5.0 million in gross premiums, both direct and assumed, in the preceding calendar year;
- \$75,000 for any insurance company or society that has at least \$5.0 million but less than \$25.0 million in gross premiums, both direct and assumed, in the preceding calendar year;
- \$100,000 for any insurance company or society that has at least \$25.0 million but less than \$50.0 million in gross premiums, both direct and assumed, in the preceding calendar year;
- \$125,000 for any insurance company or society that has at least \$50.0 million but less than \$100.0 million in gross premiums, both direct and assumed, in the preceding calendar year;

- \$175,000 for any insurance company or society that has at least \$100.0 million but less than \$250.0 million in gross premiums, both direct and assumed, in the preceding calendar year;
- \$250,000 for any insurance company or society that has at least \$250.0 million but less than \$500.0 million in gross premiums, both direct and assumed, in the preceding calendar year; or
- The actual total costs paid in connection with the examination for any insurance company or society that has at least \$500.0 million in gross premiums, both direct and assumed, in the preceding calendar year.

[*Note:* Current law provides the amount paid may not collectively total more than \$50,000 for any insurance company or society that has less than \$200.0 million or more in gross premiums, both direct and assumed, in the preceding calendar year or not more than \$500,000 for any insurance company or society that has \$200.0 million or more in gross premiums, both direct and assumed, in the previous calendar year.]

Risk-based Capital Instructions; Effective Date Change (Section 5)

The bill would amend the effective date specified in the Insurance Code for the RBC instructions promulgated by the National Association of Insurance Commissioners for property and casualty companies and for life insurance companies. The instructions currently specified became effective on December 31, 2022. The bill would update the effective date of the RBC instructions to December 31, 2023.

Real-time or Instant Payment Deposit of Real Estate Closing Funds (Section 6)

The bill would permit title insurance agents to deposit escrow, settlement, and closing funds for real estate closings, including closings involving refinances of existing mortgage loans, that exceed \$2,500 to be in the form of a real-time or instant payment through the FedNow service operated by the federal reserve banks or The Clearing House payment company's Real-Time Payments (RTP) system.

Electronic Notice and Document Act (Sections 7–9)

The bill would amend the Electronic Notice and Document Act to allow a plan sponsor of a health benefit plan (HBP) to authorize electronic delivery of plan documents and identification cards for insured individuals covered by an HBP. The bill would add and clarify definitions in the Electronic Notice and Document Act. The bill would also repeal a current statute pertaining to the consent required to send electronic notices and documents and the exceptions to such requirements.

Definitions (Section 8)

The bill would define the following:

- “Health benefit plan covered person” (HBPCP) would mean a policyholder, subscriber, enrollee, or other individual participating in an HBP;
- “Insured” would mean an individual who is covered by an insurance policy, including an HBP;
- “Plan sponsor” would mean the:
 - Employer in the case of an employee benefit plan established or maintained by a single employer;
 - Employee organization in the case of a plan established or maintained by an employee organization; or
 - Association, committee, joint board of trustees, or similar group of representatives of the parties who establish or maintain the plan in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations.

The bill would clarify that the term “party” does not include an HBPCP.

[*Note:* Current law defines “party” as any recipient of a notice or document required as part of an insurance transaction, including, but not limited to, an applicant, an insured, a policyholder, or an annuity contract holder.]

Consent to Electronic Delivery of Health Benefit Plan Communications (Section 9)

The bill would allow the HBP sponsor, on behalf of HBPCPs, to provide consent to the electronic delivery of all communications related to the plan that are required by the Electronic Notice and Document Act and any health insurance identification cards. Before providing consent on behalf of an HBPCP, the bill would require a plan sponsor to confirm that the HBPCP routinely (at least once every 24 hours during the work week) uses electronic communications during the normal course of such covered person’s employment.

Before the electronic delivery of any plan communications or health insurance identification cards, the HBP would be required to:

- Provide the HBPCP with an opportunity to opt out of electronic delivery and to select U.S. mail as the preferred method of delivery; and
- Document satisfaction of all applicable statutory requirements regarding electronic delivery, consent, withdrawal of consent, and accessibility.

Provisions Included in Electronic Notice and Document Act (Section 9)

The bill would make the provisions in New Section 2 of SB 553, as passed by the Senate, part of the Electronic Notice and Document Act.

*Requirements for Electronic Delivery, Consent, and Withdrawal of Consent and Accessibility
(Section 9)*

The bill would amend law regarding the requirements for authorized electronic delivery, storage, and presentation of notices or other required documents in an insurance transaction or that serve as evidence of insurance coverage to a party. The bill would extend certain provisions to apply the following conditions for electronic delivery to both a party and an HBPCP:

- If provisions in the Electronic Notice and Document Act or applicable law expressly require verification or acknowledgment of receipt of a notice or document be provided to a party or an HBPCP, electronic delivery could be used only if the delivery method used provides verification or acknowledgment of receipt;
- The legal effectiveness, validity, or enforceability of any contract or policy of insurance executed by a party or an HBPCP could not be denied solely because of the failure to obtain electronic consent or confirmation of consent as required under New Section 1 of SB 553, as passed by the Senate;
- A withdrawal of consent by a party or HBPCP would not affect the legal effectiveness, validity, or enforceability of a notice or document delivered by electronic means to the party or HBPCP before the withdrawal of consent is effective. A withdrawal of consent by a party or HBPCP would be effective within a reasonable period of time after receipt of the withdrawal by the insurer; and
- If after consent to electronic delivery is given by the party, a change in the hardware or software requirements needed to access or retain a notice or document delivered electronically creates a material risk that the party would be unable to access or retain a subsequent notice or document to which the consent applies, the party or HBPCP could elect to treat an insurer's failure to provide the following statements as a withdrawal of consent:
 - The revised hardware or software requirements for access to and retention of a notice or document delivered electronically; and
 - The right of the party to withdraw consent without the imposition of any undisclosed fee, condition, or consequence.

This section of the bill would not apply to a notice or document delivered electronically by an insurer before the effective date of the Electronic Notice and Document Act to a party or HBPCP who, before that date, had consented to receive a notice or document in an electronic form otherwise allowed by law.

Group-funded Workers Compensation Pools (Sections 10–11)

Submission of Financial Statement (10)

The bill would amend provisions pertaining to certain financial reporting requirements on group-funded workers compensation pools and would also remove a notification requirement relating to termination or cancellation of a member in a group-funded workers compensation pool.

Under current law, group-funded workers compensation pools must submit a certified, independent financial statement within 150 days after the end of the fiscal year whenever the Commissioner deems it necessary to examine the affairs and financial condition of any pool. The bill would increase the time limit specified to 180 days.

Changes in Notice of Cancellation or Termination (Section 11)

The bill would also remove a requirement on group-funded workers compensation pools to provide notice to the Commissioner of a cancellation or termination of an individual member. Pool members would be required to maintain coverage for 30 days or until the canceled or terminating member has procured workers compensation and employer's liability coverage.

Repealed Statutes (Section 12)

In addition to the statutes amended, the bill would repeal KSA 40-5802, which contains the consent requirements for electronic delivery of notices and documents and the exceptions to such requirements.

Conference Committee Action

The Conference Committee agreed to the House amendments to SB 356 (further modified by the Conference Committee to restore the effective date to upon publication in the statute book) and agreed to add the following provisions:

- HB 2663, as passed by the Senate, regarding the deposit of real estate closing funds through real-time or instant payment;
- SB 338, as passed by the Senate, regarding the submission of certified audited financial statements by group-funded liability and group-funded workers compensation pools;
- SB 339, as passed by the Senate, amending the effective date for risk-based capital (RBC) instructions; and
- SB 553, as passed by the Senate, regarding amendments to the Utilization Review Organization Act and the Electronic Notice Document Act.

The Conference Committee further agreed to restore the effective date of all bills to be upon publication in the statute book.

Background

The Conference Committee report contains provisions of SB 356, HB 2663, SB 338, SB 339, SB 356, and SB 553. The background information on these bills follows.

SB 356 (Tiered-fee Structure for Financial Examinations of Insurance Companies and Societies)

The bill was introduced in the Senate Committee on Financial Institutions and Insurance at the request of a representative of the Kansas Insurance Department (Department).

[*Note:* A companion bill, HB 2533, was introduced in the House. On February 23, 2024, the bill was stricken from the calendar pursuant to House Rule 1507.]

Senate Committee on Financial Institutions and Insurance

In the Senate Committee hearing, **proponent** testimony was provided by representatives of the Department and the Kansas Association of Property and Casualty Insurance Companies (KAPCIC). The Department representative stated the new, seven-tiered financial examination fee schedule correlates with an insurer's annual gross premium written. The fee schedule was developed in collaboration with the industry to provide regulatory certainty to insurers by creating an overall cap for both Department expenses and contractual services. The actual internal costs incurred by the Department in conducting the required financial examinations are invoiced to the insurers, but the amount paid by insurers related to the use of a contracted examiner cannot exceed the current statutory cap, leaving any contractual services that exceed the statutory cap to be paid by the Department. It was also noted Kansas is the only state with a cap on financial examination fees.

The KAPCIC representative stated the current cap only applies to work outsourced by the Department, but there is no cap on Department-incurred charges or on the combined Department and outsourced charges. The single cap on charges, regardless of the entity that does the work, would provide Kansas domiciled companies with the ability to budget for the costs of the financial examinations. The representative stated support for the multiple cap levels in the bill, noting that although the caps are increased, they are more reflective of total exam costs.

No other testimony was provided.

House Committee on Insurance

In the House Committee hearing, **proponent** testimony was provided by representatives of the Department and KAPCIC, who stated the bill would create more consistent expectations for the cost of financial examinations.

No other testimony was provided.

The House Committee amended the bill to define the term "average and reasonable" and to add "average and" before "reasonable" regarding per diem compensation for examiner services; outside consulting and processing fees; and the purchase, maintenance, and enhancement of examination equipment and computer software. [*Note:* The Conference Committee retained these amendments.] The House Committee also amended the bill to change its effective date to be upon publication in the *Kansas Register*. [*Note:* The Conference Committee did not retain this amendment.]

HB 2663 (Real-time or Instant Payment Deposit of Real Estate Closing Funds)

The bill was introduced by the House Committee on Insurance at the request of a representative of the Kansas Land Title Association.

House Committee on Insurance

In the House Committee hearing, **proponent** testimony was provided by a representative of the Kansas Land Title Association. The proponent indicated the bill would modify Kansas law by adding two safe, secure, and fast real-time payment options for individuals attempting to execute real estate transactions. The proponent further explained these payment options would guarantee funds received for closing or escrow are “good funds,” or those that would be irrevocable and available in the closing account.

Written-only proponent testimony was provided by representatives of the Kansas Bar Association and Kansas Association of Realtors.

No other testimony was provided.

Senate Committee on Financial Institutions and Insurance

In the Senate Committee hearing, **proponent** testimony was provided by a representative of Kansas Land Title Association, who stated that the bill would provide for real-time payment on real estate closings, which can sometimes be delayed by the timing of wire transfers. The conferee stated the bill would not alter access to any currently available payment methods but would simply add another payment option.

Written-only proponent testimony was provided by representatives of Kansas Association of Realtors and the Kansas Bar Association.

No other testimony was provided.

The Senate Committee amended the bill to change the effective date to be upon publication in the *Kansas Register*. [Note: The Conference Committee did not retain this amendment.]

SB 338 (Group-funded Liability and Group-funded Workers Compensation Pools; Submission of Financial Statements)

The bill was introduced by the Senate Committee on Financial Institutions and Insurance at the request of the Department.

[Note: A companion bill, HB 2532, was introduced in the House.]

Senate Committee on Financial Institutions and Insurance

In the Senate Committee hearing, a representative of the Department provided **proponent** testimony, stating the Department submitted the bill after discussion with the pools regarding the difficulty in finding an auditor to complete the audit with the time frame specified in current law. The representative noted the notification requirement placed on group-funded workers compensation pools is no longer necessary.

No other testimony was provided.

House Committee on Insurance

In the House Committee hearing, a representative of the Department provided **proponent** testimony, stating the bill would help ensure the pools can remain in statutory compliance with reporting requirements.

No other testimony was provided.

The House Committee amended the bill's effective date to be upon publication in the *Kansas Register*. [Note: The Conference Committee did not retain this amendment.]

SB 339 (Risk-based Capital Instructions; Effective Date Change)

The bill was introduced by the Senate Committee on Financial Institutions and Insurance at the request of the Department.

[Note: A companion bill, HB 2531, was introduced in the House.]

Senate Committee on Financial Institutions and Insurance

In the Senate Committee hearing, a representative of the Department provided **proponent** testimony, stating the goal of the RBC law is to ensure each Kansas domestic insurance company has the required amount of capital needed to support its overall business operations in consideration of its size and risk profile. The representative also noted amendments to the effective date have been made each year since 2009.

[Note: In 2009, a legislative oversight process for updating the annual RBC instructions was established. This process allows the Department to update the requirements by rules and regulations unless one of the two statutory triggers has been met.]

No other testimony was provided.

House Committee on Insurance

In the House Committee hearing, **proponent** testimony was provided by a representative of the Department, who stated the bill updates the version of the RBC instructions that companies are required to utilize as they calculate and report RBC.

The House Committee amended the bill to change enactment of the bill to be upon publication in the *Kansas Register*. [Note: The Conference Committee did not retain this amendment.]

SB 553 (Utilization Review Organization Act; Electronic Notice and Document Act)

The bill was introduced by the Senate Committee on Federal and State Affairs at the request of Senator Longbine.

Senate Committee on Financial Institutions and Insurance

In the Senate Committee hearing, **proponent** testimony was provided by a representative of Kansas Employers for Affordable Healthcare, who stated the bill could benefit employers who take advantage of the electronic communication option and has the potential to lower administrative overhead, streamline communications, and allow insured members to use a format with which they are comfortable.

Written-only proponent testimony was provided by representatives of Blue Cross Blue Shield of Kansas, Inc., and the Kansas Chamber.

Neutral testimony was provided by a representative of the Kansas Hospital Association, who proposed two amendments that would allow for the acceptance and response to prior authorization requests through a secure electronic transmission.

No other testimony was provided.

The Senate Committee amended the bill to add provisions to the Utilization Review Organization Act requiring utilization review entities to implement and maintain a prior authorization API by January 1, 2028. [Note: The Conference Committee retained this amendment.]

Fiscal Information

Fiscal information for provisions of the bill, as amended by Conference Committee action, appears below.

SB 356 (Tiered-fee Structure for Financial Examinations of Insurance Companies and Societies)

According to the fiscal note prepared by the Division of the Budget on SB 356, as introduced, the Department indicates the bill would increase its expenditures by a total of \$305,000 from its Insurance Department Service Regulation Fee Fund over four years, because each insurance company is examined every four years. Therefore, the average increase in expenditures per year would be \$76,250. This is because the Department would pay any amount above the cap defined in the bill when an insurance company's cost for the examination is more than the cap on gross premiums. The estimate is based on past exam costs, including amounts paid by the companies to contractors, the amount the Department paid on behalf of the

companies, and the amount paid by the companies to contractors. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2025 Governor's Budget Report*.

HB 2663 (Real-time or Instant Payment Deposit of Real Estate Closing Funds)

According to the fiscal note prepared by the Division of the Budget on HB 2663, as introduced, the Kansas Department of Insurance, Office of the State Bank Commissioner, and Department of Credit Unions all indicate enactment of the bill would have no fiscal effect on agency operating expenditures.

SB 338 (Group-funded Liability and Group-funded Workers Compensation Pools; Submission of Financial Statements)

According to the fiscal note prepared by the Division of the Budget on SB 338, as introduced, the Department states that enactment of the bill would not have a fiscal effect on agency operations.

SB 339 (Risk-based Capital Instructions; Effective Date Change)

According to the fiscal note prepared by the Division of the Budget on SB 339, as introduced, the Department indicates enactment of the bill would have no fiscal effect.

SB 553 (Utilization Review Organization Act; Electronic Notice and Document Act)

According to the fiscal note prepared by the Division of the Budget on SB 553, as introduced, the Department of Administration and the Department indicate enactment of the bill would not have a fiscal effect on the operations of either agency.

Insurance; group-funded liability pools; group-funded workers' compensation pools; reporting; health insurance; Electronic Notice and Document Act; health benefit plan; electronic delivery; Utilization Review Organization Act; prior authorization application programming interface; Kansas Insurance Department; financial and market regulation examinations; tiered fee structure; risk-based capital; NAIC; title insurance; closing funds; real-time payment; instant payment; good funds

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