

SESSION OF 2011

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2074

As Recommended by House Committee on
Insurance

Brief*

HB 2074 would amend a rate filing provision for certain lines of property and casualty insurance in the Insurance Code to exempt trade secrets and copyrighted material in an insurance filing or any supporting documentation for the filing from disclosure in open record requests.

“Trade secret” is assigned its meaning from the Kansas Uniform Trade Secrets Act:

- “Trade secret” means information, including a formula, pattern, compilation, program, device, method, technique, or process that:
 - (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and
 - (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Under current law, an insurance rate filing and any supporting information submitted to the Insurance Commissioner by an insurance company, is open to public inspection and access.

*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>

Background

Attorney General Opinion 2010-17 concluded that “[i]n light of the clear mandate of KSA 2009 Supp. 40-955 [statute amended by the bill] and the absence of a specific disclosure exception, the Kansas Insurance Department cannot refuse to provide copies of rate filings on the basis that the filings may contain trade secrets.”

The bill was introduced at the request of the Kansas Insurance Department whose representative indicated that the amendment is the result of the 2010 Attorney General's opinion; the documents in question are part of material required to be filed with the Department by insurers when they seek to modify their property and casualty forms and rates. Such documents could include bureau manuals, underwriting models, data developed specifically by zip code or territory, and other insurer developed proprietary data. A representative of the State Farm Insurance Companies appeared in support of the bill and indicated that the bill will codify what has been a long-standing practice to allow these records to retain their status as a trade secret or copyrighted material. Other proponents of the the bill present at the Committee hearing were the American Insurance Association and the National Council on Compensation Insurance (NCCI). The National Association of Mutual Insurance Companies (NAMIC) submitted written testimony in support of the bill. There were no opponents to the bill at the time of the House Committee hearing.

The House Committee on Insurance recommended the bill be placed on the Consent Calendar.

The fiscal note prepared by the Division of the Budget states that the Kansas Insurance Department indicates that passage of the the bill would have no fiscal effect on its operations.