

SESSION OF 2014

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2099

As Amended by Senate Committee on Financial
Institutions and Insurance

Brief*

HB 2099, as amended, would make several amendments to the Insurance Code relating to security deposits required to be deposited with a financial institution deemed acceptable to the Insurance Commissioner; the effective date specified for the risk-based capital (RBC) instructions promulgated by the National Association of Insurance Commissioners (NAIC) for property and casualty insurance companies, as well as for life insurance companies; investments of insurance companies and the allowance of certain types of equity investments; the purchase event cancellation and rain insurance coverage by the State Fair Board; and the return of unused premium payments made in the event of a notice of denial of auto insurance coverage.

***Security Deposits; Exclusion of Real Estate and
Mortgages (Section 1)***

Specifically, the bill would amend a provision in the Insurance Code pertaining to security deposits to exclude real estate and mortgages from assets required to be deposited with the Insurance Commissioner and require the submission of an authorized signature form prior to the acceptance of any deposit.

Under current law, all cash, securities, real estate deeds and mortgages, or other assets deposited with the

*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>

Commissioner are required to be deposited with a financial institution acceptable to the Commissioner. With enactment of the bill, real estate and mortgages would be excluded from this requirement.

The bill also would require an authorized signature form to be submitted to the Commissioner prior to acceptance of any deposit. The signature on this form would be required to be the original handwritten name of each signee and could not be a copy, facsimile, electronic or digital signature.

Risk-based Capital Instructions; Effective Date (Section 2)

The bill would amend the effective date specified in current law for the risk-based capital (RBC) instructions promulgated by the National Association of Insurance Commissioners (NAIC) for property and casualty insurance companies, as well as for life insurance companies. The instructions currently specified are effective on December 31, 2012. The bill would update the effective date on the RBC instructions to December 31, 2013.

Investments by Insurance Companies; Investment Types (Sections 3-10)

The bill would update statutes applying to investments of insurance companies to allow certain types of equity investments. The bill would further specify that insurance companies are prohibited from investing more than 5.0 percent of the outstanding equity interests of any one business entity and from investing an amount of more than 2.0 percent of the investing company's assets in any one business.

Definitions

In its updates to the investment statutes, the bill would replace the term “corporation” with “business entity” and provide that a “business entity” would include a sole proprietorship, corporation, limited liability company, association, partnership, joint stock company, joint venture, mutual fund, trust, joint tenancy or other similar form of business organization, whether organized for profit or not-for-profit.

The bill also would replace the term “common stock” with “equity interest” which would include, among other things, common stock; trust certificates; ownership interest in minerals, oil or gas; or the rights, limited partnership interest, and member interests in limited liability companies.

Investment Provisions

Under current law, investments are subject to a requirement that includes being listed on an exchange and a limitation on the amount of these investments of the lesser of 15.0 percent of the company’s admitted assets or its combined capital and surplus. The bill would instead allow up to 7.5 percent of the overall 15.0 percent of admitted assets to be invested in equity interests without being subject to other requirements.

The bill would expand the permissible investments that could be used as collateral in securing a loan. Specifically, the bill would replace the term “securities” with “asset” in a provision that includes an 80.0 percent loan-to-value requirement. (KSA 40-2a14, KSA 40-2b12)

The bill would delete a limitation on the investment of insurance companies in asset-backed securities that had restricted an investing company’s aggregate investment to 20.0 percent of the admitted assets of the company. Under continuing law, asset-backed securities must, at the time of

acquisition, be designated as a “1” or “2” by the National Association of Insurance Commissioners and the investment in any one issue cannot exceed 2.0 percent of the admitted assets of the investing insurance company. (KSA 40-2a28; KSA 40-2b29)

The bill also would remove the application of the leeway clause (KSA 40-2a16; KSA 40-2b13) to investments in certain instruments. Under current law, an insurance company would be prohibited from putting certain assets (*i.e.*, lower grade debt instruments) in leeway.

The bill also would make technical amendments to update the use of terms and references to investment laws.

Event Cancellation and Rain Insurance Coverage—State Fair Board (Sections 11-13)

The bill would authorize the State Fair Board to purchase event cancellation and rain insurance coverage in amounts deemed appropriate by the Board for the period of the annual State Fair and during the remainder of the year. The bill would further specify that insurance purchased pursuant to provisions of the bill would not be required to be acquired through the Committee on Surety Bonds and Insurance and its procedures for insurance contracts and coverage.

Return of Unused Premium Payments (Section 14)

The bill would amend a provision in the Kansas Automobile Injury Reparations Act pertaining to providing proof of auto insurance to clarify when the return of unused premium payments could be made in the event of a notice of denial of coverage. The bill would specify that the refund could be made to an applicant or agent either:

- Accompanying the notice of the denial of coverage; or
- Separately returning the refund in not more than ten days from the date of the notice.

Background

HB 2099, as amended by House Committee, related to an update in existing law in Chapters 39 and 40 of the *Kansas Statutes Annotated* by correcting invalid and obsolete statutory references regarding penalty provisions and state agency names corresponding to changes in agency duties made per 2012 Executive Reorganization Order No. 41 (ERO No. 41). In 2013, the provisions of the bill were enacted in the conference committee report for HB 2107 (Sections 8-11).

In 2014, the Senate Committee on Financial Institutions and Insurance amendments deleted the contents of HB 2099, as amended by House Committee, and inserted provisions relating to security deposits (SB 267, as recommended by Senate Committee); risk-based capital instructions (SB 268, as recommended by Senate Committee); investments of insurance companies (SB 306, as amended by Senate Committee, with further technical amendments); the purchase of certain insurance coverage by the State Fair Board (SB 315, as recommended by Senate Committee); and the return of unused premium payments made in the event of a notice of denial of coverage (SB 321, as recommended by Senate Committee).

SB 267 Background

The bill was introduced at the request of the Kansas Insurance Department, whose representative indicated that placing real estate in deposit requires the property be deeded or assigned to the Commissioner and the costs paid by the insurance company. The representative stated the practice is

outdated and the Department has not held real estate or mortgage deeds for more than 15 years. In terms of signature requirements, it was noted the policy of the Department will be to recognize electronic or digital signatures for any subsequent deposits, withdrawals, or exchanges. There was no opponent testimony at the Senate Committee hearing.

The Senate Committee recommended the bill be placed on the Consent Calendar.

The fiscal note prepared by the Division of the Budget states the Kansas Insurance Department indicates enactment of the the bill would have no fiscal effect.

SB 268 Background

Risk-based capital is a method of measuring the minimum amount of capital appropriate for an insurer to support its overall business operations, taking into consideration the company's size and risk profile.

The bill was introduced at the request of the Kansas Insurance Department, whose representative indicated that a legislative oversight process for updating the annual RBC instructions was established in 2009. This process allows the Department to update the requirements by rules and regulations, unless one of two triggers has been met. The Department projects a likely 2.5 percent change in the adjusted capital of most domestic insurers based on the application of the RBC instructions. Because this trigger (KSA 2013 Supp. 40-2c29) has been met, legislative approval of the new instructions is necessary. The representative stated the Department does not believe the new instructions will adversely affect any domestic insurance companies. (Similar legislation was enacted by the 2010, 2011, 2012, and 2013 Legislatures.) There was no opponent testimony at the Senate Committee hearing.

The Senate Committee recommended the bill be placed on the Consent Calendar.

The fiscal note prepared by the Division of the Budget states the Kansas Insurance Department indicates enactment of the bill would have no fiscal effect.

SB 306 Background

The bill was introduced at the joint request of the Security Benefit Life Insurance Company (investments, life insurance companies) and the Kansas Insurance Department (investments, other than life insurers). A representative of the Security Benefit Life Insurance Company testified in support of the bill at the Senate Committee hearing. The representative indicated the bill would modernize certain investment statutes applicable to domestic insurance companies, provide added flexibility in managing an insurer's assets, and help Kansas insurers serve their customers and compete more effectively with insurers from other states. A representative of the American Council on Life Insurers indicated the bill would promote uniformity and modernization in state insurance company investment laws. Written only testimony in support of the bill was submitted by a representative of the Kansas Insurance Department. There was no neutral or opponent testimony.

The Senate Financial Institutions and Insurance Committee amendments are technical in nature.

The fiscal note prepared by the Division of the Budget states that, according to the Kansas Insurance Department, enactment of the bill would have no fiscal effect on the Department.

SB 315 Background

Appearing at the hearing of the Senate Committee on Financial Institutions and Insurance, the General Manager of the State Fair testified that current law does not allow state agencies to purchase insurance of any kind unless provided by legislation. As the State Fair already has this authority for the purchase of burglary and robbery insurance (KSA 2-224), the bill would streamline the process and better facilitate the purchase of rain and event cancellation insurance. The General Manager indicated the purchase would be funded from the State Fair Fee Fund and would utilize the purchasing process required by the Division of Procurement and Contracts. The co-owner of the Kansas Wine and Beer Garden suggested this streamlining could allow the State Fair Board and staff to book high profile acts in a more efficient manner. Proponent testimony also was provided by a representative of the Kansas Department of Agriculture. No neutral or opponent testimony was offered.

The fiscal note prepared by the Division of the Budget states the State Fair Board estimates expenditures of \$6,000 from the State Fair Fee Fund for insurance coverage for FY 2015. The Board states that without insurance coverage, revenues could be affected should a Grandstand event be canceled. Further, the Board indicates it could be liable for paying the performer while refunding tickets already purchased. Any fiscal effect associated with the bill is not reflected in *The FY 2015 Governor's Budget Report*.

SB 321 Background

The bill was introduced at the request of Farmers Insurance, whose representative testified that Kansas' adverse underwriting statute (KSA 2013 Supp. 40-2,112) was amended last year to allow insurance companies to refund unused premiums up to ten days after a notice of decision to decline a policy is issued. The statute that would be amended by the bill contains language identical to language of KSA

2013 Supp. 40-2,112, but was not amended last year. The representative stated this bill would eliminate the conflict between the two statutes by reflecting the changes made to the adverse underwriting statute last year. There was no neutral or opposition testimony to the bill.

According to the fiscal note prepared by the Division of the Budget, the bill would have no fiscal effect, as the bill would clarify the timing of refunds to policyholders by insurance companies.