

SESSION OF 2019

**SECOND CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2209**

As Agreed to April 4, 2019

Brief*

HB 2209 would create and amend law pertaining to insurance.

The bill would create new law and make several amendments to the Insurance Code to:

- Establish the Unclaimed Life Insurance Benefits Act;
- Amend the unfair trade practices law relating to the refusal to insure or limiting of life insurance coverage to certain individuals;
- Amend license and renewal application fees and establish an annual report fee in the Third Party Administrators (TPA) Act;
- Amend several health insurance provisions related to the regulation of association health plans (AHPs) and small employer plans and designate certain statutes as the Small Employer Health Insurance Availability Act; and
- Exempt an entity providing certain non-insurance healthcare benefits coverage from the jurisdiction of the Commissioner of Insurance (Commissioner).

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

The bill would also permit the Kansas Board of Regents (KBOR) to purchase cybersecurity insurance.

Effective Dates

Provisions pertaining to cybersecurity insurance and expansion of AHPs would become effective upon publication in the *Kansas Register*. Provisions pertaining to the Unclaimed Life Insurance Benefits Act, unfair trade practices relating to the refusal to insure or limiting of life insurance coverage to certain individuals, TPAs and fees, and exempting certain non-insurance healthcare benefits from the jurisdiction of the Commissioner would become effective on July 1, 2019.

Unclaimed Life Insurance Benefits Act [New Sections 1-3]

The bill would establish the Unclaimed Life Insurance Benefits Act.

Definitions [New Section 2]

The bill would establish definitions for the following terms under the Unclaimed Life Insurance Benefits Act:

- “Contract” to mean an annuity contract. The term “contract” shall not include an annuity used to fund an employment-based retirement plan or program where the insurer does not perform the record keeping services, or the insurer is not committed by terms of the annuity contract to pay death benefits to the beneficiaries of specific plan participants;
- “Death Master File” to mean the U.S. Social Security Administration’s (SSA) Death Master File

(DMF) or any other database or service that is at least as comprehensive as the SSA's DMF for determining that a person has reportedly died;

- “Death Master File match” to mean a search of the DMF that results in a match of the Social Security number (SSN) or the name and date of birth of an insured, annuity owner, or retained asset account holder;
- “Knowledge of death” to mean receipt of an original or valid copy of a certified death certificate, or a DMF match validated by the insurer in accordance with the bill;
- “Policy” to mean any policy or certificate of life insurance that provides a death benefit. The term “policy” shall not include:
 - Any policy or certificate of life insurance that provides a death benefit under an employee benefit plan subject to the Employee Retirement Income Security Act of 1974 (ERISA) [29 USC Section 1002] or under any federal employee benefit program;
 - Any policy or certificate of life insurance used to fund a preneed funeral contract or prearrangement;
 - Any policy or certificate of credit life or accidental death insurance; or
 - Any policy issued to a group master policyholder for which the insurer does not provide record keeping services;
- “Record keeping services” to mean those circumstances under which the insurer has agreed with a group policy or contract customer to be responsible for obtaining, maintaining, and administering in its own or its agents’ systems information about each individual insured under an

insured's group insurance contract, or a line of coverage thereunder, at least the following information: SSN or name and date of birth, beneficiary designation information, coverage eligibility, benefit amount, and premium payment status; and

- “Retained asset account” to mean any mechanism whereby the settlement of proceeds payable under a policy or contract is accomplished by the insurer or an entity acting on behalf of the insurer depositing the proceeds into an account with check or draft writing privileges, where those proceeds are retained by the insurer or its agent, pursuant to a supplementary contract not involving annuity benefits other than death benefits.

Requirements of Insurers; Prohibitions; Unclaimed Property; Unfair or Deceptive Acts [New Section 3]

Comparison of policies and accounts against a DMF.

The bill would require an insurer to compare its insureds' in-force policies, contracts, and retained asset accounts against a DMF, on at least a semi-annual basis, by using the full DMF once and then using the DMF update files for future comparisons to identify potential matches of its insureds.

Confirmation of death and location of beneficiary or beneficiaries within 90 days. The bill would require the insurer, for those potential matches identified as a result of the DMF match, within 90 days of the match:

- Complete a good faith effort documented by the insurer to confirm the death of the insured or retained asset account holder against other available records and information; and
- Determine whether benefits are due in accordance with the applicable policy or contract and, if

benefits are due, use good faith efforts documented by the insurer to locate the beneficiary or beneficiaries and provide the appropriate claim forms or instructions to the beneficiary or beneficiaries to make a claim, including the need to provide an official death certificate, if applicable under the policy contract.

Confirmation of death for group life insurance policy or certificate. The bill would require insurers, for group life insurance, to confirm the possible death of an insured when the insurers maintain at least the SSN or name and date of birth, beneficiary designation information, coverage eligibility, benefit amount, and premium payment status of those covered under a policy or certificate.

Implementation of procedures. The bill would require insurers to implement procedures to account for common nicknames, initials used in lieu of a first or middle name, use of a middle name, compound first and middle names, and interchanged first and middle names; compound last names, maiden or married names, and hyphens, blank spaces, or apostrophes in last names; transposition of the month and date portions of the date of birth; and incomplete SSNs.

Disclosure of personal information. The bill would authorize an insurer to disclose minimum, necessary personal information about the insured or beneficiary to a person who the insurer reasonably believes may be able to assist the insurer locate the beneficiary or a person otherwise entitled to payment of the claims proceeds, as permitted by law.

Prohibition on charging fees. The bill would prohibit an insurer or its service provider from charging any beneficiary or other authorized representative for any fees or costs associated with a DMF search or verification of a DMF match under the bill.

Application of the Unclaimed Property Act; notification to State Treasurer. The bill would require the benefits from a policy, contract, or a retained asset account, plus any applicable accrued contractual interest, to first be payable to the designated beneficiaries or owners. The bill would state, in the event the beneficiaries or owners cannot be found, these benefits and interest would revert to the State as unclaimed property pursuant to the Uniform Unclaimed Property Act, KSA 58-3936 (this provision of law provides general rules for taking custody of intangible unclaimed property). The bill would specify interest payable on life insurance proceeds under KSA 40-447 would not be payable as unclaimed property.

The bill would require an insurer to notify the State Treasurer upon the expiration of the statutory time period for those benefits to revert to the State that a policy or contract beneficiary or retained asset account holder has not submitted a claim with the insurer, and the insurer has been unable, after good faith efforts, documented by the insurer, to contact the retained asset account holder, beneficiary, or beneficiaries. The insurer would be required, upon such notice, to immediately submit the unclaimed policy or contract benefits or unclaimed retained asset accounts, plus any applicable accrued interest, to the State Treasurer.

Unfair or deceptive acts (comparison against a DMF). The bill would state the failure to meet any requirement of this section with such frequency as to constitute a general business practice would be considered an unfair or deceptive act or practice under the unfair trade practices law (KSA 40-2404) and subject to the penalties contained under the unfair trade practices law (KSA 40-2401 *et seq.*). The bill would also specify the bill should not be construed to create or imply a private cause of action for a violation of this section (provisions pertaining to comparison against a DMF).

***Unfair Trade Practices Law—Life Insurance Coverage
[Section 4]***

The bill would amend a provision in the unfair trade practices law to add the refusal to insure or limiting of life insurance coverage to an individual, solely because of that individual's status as a living organ donor, to the list of unfair methods of competition and unfair or deceptive acts or practices in the business of insurance.

The bill would specify this "unfair discrimination" to mean "refusing to insure, or refusing to continue to insure, or limiting the amount, extent or kind of coverage available for life insurance to an individual, or charging the individual a different rate for the same coverage, solely because of such individual's status as a living organ donor."

The bill would further provide, with respect to all other conditions, living organ donors shall be subject to the same standards of sound actuarial principles or actual or reasonably anticipated experience as persons who are not organ donors.

Third Party Administrators and Fees [Sections 5-7]

The bill would amend license and renewal application fees and establish an annual report fee in the TPA Act.

The bill would amend the initial license application fee for home state and non-resident TPAs from "as provided for by rules and regulations" to the specified amount of \$400 and require an annual report fee of \$100 for both home state and non-resident TPAs. The bill would establish a \$200 renewal application fee for each non-resident administrator renewal application.

[*Note:* A TPA is any person who directly or indirectly underwrites, collects charges or premium from, or adjusts or settles claims on residents of this state in connection with life,

annuity, or health insurance coverage offered or provided by a payor.]

Expansion of AHPs; Exemption from Jurisdiction of the Commissioner [Sections 8-17]

The bill would amend several health insurance provisions in the Insurance Code related to the regulation of AHPs and small employer plans. The bill would amend the Insurance Code to exempt an entity providing certain non-insurance healthcare benefits coverage from the jurisdiction of the Commissioner. The bill would also designate certain statutes as the Small Employer Health Insurance Availability Act.

Group Insurance Policies—Fully-insured AHPs and Plan Membership [Section 8]

The bill would remove a membership limitation placed on AHPs that requires the association have at least 25 members, employees, or employees of members to be offered group accident and health insurance coverage.

Designation of the Small Employer Health Insurance Availability Act; Stated Purpose and Intent; Definitions [Sections 9-10]

The bill would designate KSA 40-2209b through 40-2209j and 40-2209m through 40-2209o as the Small Employer Health Insurance Availability Act. The bill would state the purpose and intent of the Small Employer Health Insurance Availability Act is to “promote the availability of health insurance coverage to small employers regardless of their health status or claims experience, to prevent abusive rating practices, to require disclosure of rating practices to purchasers, to establish rules regarding renewability of coverage, to establish limitations on the use of pre-existing

condition exclusions, to provide for development of 'basic' and 'standard' health benefit plans to be offered to all small employers, to provide for establishment of a reinsurance program, and to improve the overall fairness and efficiency of the small group health insurance market.”

The bill would modify the definition of “small employer” to remove “association” for entities eligible for group sickness and accident insurance and separately require, when determining the number of eligible employees, employees participating in an AHP be counted in the aggregate at the association level.

The bill would also create two definitions:

- “Association health plan” or “AHP” to mean a coverage for the payment of expenses described in KSA 2018 Supp. 40-2222 offered by a qualified trade, merchant, retail or professional association or business league that complies with the provisions of KSA 2018 Supp. 40-2222a and 40-2222b; and
- “Qualified trade, merchant, retail or professional association or business league” to mean any *bona fide* trade merchant, retail or professional association or business league that:
 - Has been in existence for at least five calendar years;
 - Is composed of five or more employers; and
 - Is incorporated in Kansas, has a principal office located in Kansas, or has a principal office within a metropolitan area that has boundaries within Kansas.

*AHPs—Exemption from Regulation under the Small
Employer Health Insurance Availability Act [Section 11]*

The bill would exempt certain AHPs from regulation under the Small Employer Health Insurance Availability Act.

*Exemptions from the Commissioner's Jurisdiction;
Computation of Premium Tax [Sections 12-17]*

Exemption from Commissioner's jurisdiction. The bill would amend provisions pertaining to authorized multiple employer welfare arrangements (MEWAs) exempted from the jurisdiction of the Commissioner. The bill would amend the exemption previously authorized for a professional association of dentists to remove a specified date and instead provide for the association through an established trust. The bill would also amend an exemption granted to any other qualified trade, merchant, retail, or professional association or business league to remove a requirement the entity be incorporated in Kansas and instead specify such entity provides coverage for the payment of expenses described to or for the members of the association, their employees, and dependents.

The bill would remove the definition assigned to a qualified trade, merchant, retail, or professional association or business and also eliminate two requirements placed on these entities: the entity be in existence for at least five years and be composed of five or more employers. [*Note:* A definition for these entities and the associated requirements deleted in this section would be established in the bill under KSA 2018 Supp. 40-2209d.]

Exemption from Commissioner's jurisdiction—KFB. The bill would exempt a nonprofit agricultural membership organization incorporated in Kansas on June 23, 1931 (the Kansas Farm Bureau [KFB]), or an affiliate thereof, that provides healthcare benefit coverage for the payment of

expenses to or for the members of the organization and their dependents from the jurisdiction of the Commissioner.

The bill would specify the healthcare benefit coverage provided by the nonprofit agricultural membership organization would not be considered insurance, notwithstanding any provision of law to the contrary. The bill would permit the risk under such coverage to be reinsured by a company authorized to conduct reinsurance in Kansas.

The bill would require providers of this healthcare benefit coverage to file a signed, certified actuarial statement of plan reserves annually with the Commissioner.

Computation of premium tax. The bill would also amend law providing for the payment of an annual premium tax by self-insured AHPs exempted from the jurisdiction of the Commissioner to provide a computation method for the premium tax applicable to the location of such association. [Note: Under current law, an exempted AHP is subject to a 1.0 percent annual tax on its annual Kansas gross premium and must be incorporated in Kansas.] The bill would update “association” to “person or entity” in the statute and provide, for persons or entities having a principal office within a metropolitan area that has boundaries in Kansas and associations having their principal office located within the borders of Kansas and offering policies to non-residents of Kansas, the tax owed shall be based upon the gross premium collected during the preceding year relating to health benefit plans issued to members that have a principal place of business in Kansas.

[Note: For the purposes of conforming amendments to KSA 40-2222, 40-2222a, and 40-2222b, previously contained in two separate bills, relevant statutes appear in the Conference Committee report for HB 2209 twice.]

Cybersecurity Insurance [Section 18]

The bill would amend law pertaining to the Committee on Surety Bonds and Insurance to permit KBOR to purchase cybersecurity insurance as KBOR deems necessary to protect student records, labor information, and other statutorily protected data KBOR maintains, independent of the Committee on Surety Bonds and Insurance, and without complying with the purchasing procedures of the Department of Administration.

The term “cybersecurity insurance” would include, but not be limited to, first-party coverage against losses such as data destruction, denial of service attacks, theft, hacking, and liability coverage guaranteeing compensation for damages from errors, such as the failure to safeguard data.

Technical and Grammatical Updates

The bill would also make several technical updates and grammatical changes.

Conference Committee Action

The second Conference Committee agreed to HB 2209, as amended by the Senate Committee on Financial Institutions and Insurance, and further agreed to add provisions pertaining to:

- The Unclaimed Life Insurance Benefits Act and unfair trade practices law relating to the refusal to insure or limiting of life insurance coverage to certain individuals (SB 67, as amended by the House Committee of the Whole);
- License and renewal application fees and establishing an annual report fee in the TPA Act (SB 228, as recommended by the Senate

Committee on Financial Institutions and Insurance);

- Regulation of AHPs and small employer plans and designating certain statutes as the Small Employer Health Insurance Availability Act (HB 2054, as amended by the House Committee on Insurance); and
- Exempt an entity providing certain non-insurance healthcare benefits coverage from the jurisdiction of the Commissioner (SB 32, as amended by the Senate Committee on Financial Institutions and Insurance).

The second Conference Committee further agreed to update the effective dates for such provisions. [Note: Among the updates were provisions applicable to AHPs, which would have been effective on and after April 1, 2019, and upon publication in the *Kansas Register*.]

Background

The Conference Committee Report includes the provisions of HB 2209, SB 67, SB 228, HB 2054, and SB 32.

HB 2209 (Cybersecurity Insurance)

HB 2209 was introduced by the House Committee on Insurance at the request of its chairperson, Representative Vickrey, on behalf of KBOR. In the House Committee on Insurance and Senate Committee on Financial Institutions and Insurance hearings, the President and Chief Executive Officer of KBOR provided proponent testimony, noting institutions of higher education possess a wide array of personal information on students, including health center data and financial information. The representative stated current law prohibits KBOR from purchasing cybersecurity insurance.

[*Note:* KSA 2018 Supp. 75-4101, which would be amended by the bill, states “...no state agency shall purchase any insurance of any kind or nature or any surety bonds upon state officers or employees, except as provided in this act,” which effectively prohibits KBOR from purchasing cybersecurity insurance.] The representative noted KBOR seeks to participate in the collaborative purchase of this type of insurance with the state universities to maximum purchasing power or to access the product available to the State as a member of the Midwestern Higher Education Compact. The representative also noted the universities and KBOR consider cybersecurity insurance to be important for addressing risks. No neutral or opponent testimony was provided.

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

According to the fiscal note prepared by the Division of the Budget, KBOR indicates enactment of HB 2209, as introduced, would have no fiscal effect on its operations.

SB 67 (Unclaimed Life Insurance Benefits Act)

SB 67 was introduced by the Senate Committee on Financial Institutions and Insurance at the request of the American Council of Life Insurers (ACLI). In the Senate Committee on Financial Institutions and Insurance and House Committee on Insurance hearings, a representative of ACLI spoke in favor of the bill, noting 99.0 percent of valid life insurance claims are paid, and the bill would add consumer protection by helping to find persons who might otherwise be unaware they are beneficiaries to a life insurance policy. The representative also noted 29 states have enacted law similar to the bill, which is a National Council of Insurance Legislators model law. No neutral or opponent testimony was provided.

The House Committee of the Whole amended the bill to include provisions relating to unfair methods of competition or deceptive acts or practices in the business of insurance, which adds limiting or refusal of life insurance coverage to certain individuals (HB 2041, as recommended by the House Committee on Insurance). [Note: The Conference Committee retained this amendment.]

According to the fiscal note prepared by the Division of the Budget, the Kansas Insurance Department (Department) indicates enactment of SB 67, as introduced, could result in additional costs related to enforcement actions on life insurers that violate provisions of the bill. However, the fiscal effect cannot be estimated because the number of additional enforcement actions that would result from enactment of the bill is unknown. Any fiscal effect associated with enactment of SB 67, as introduced, is not reflected in *The FY 2020 Governor's Budget Report*.

HB 2041 (Unfair Trade Practice Law Amendment)

HB 2041 was introduced by the House Committee on Insurance at the request of the National Kidney Foundation (NKF). In the House Committee hearing, persons who were either a living donor or recipient of kidneys appeared in support of the bill. These individuals also appeared as NKF representatives. Another NKF representative provided statistical information and responded to questions. The proponents spoke to their personal experiences and the rigorous evaluation process required of living donors. Proponents indicated the removal of barriers, such as discrimination of organ donors when they try to obtain or change their life insurance coverage, is a critical component of expanding organ donation. Written-only testimony was submitted by the chairperson of the Kansas Kidney Coalition and the Vice President of Government Relations for NKF. No neutral or opponent testimony was provided.

The bill was passed by the House Committee on February 6, 2019, but was withdrawn from the House Calendar and referred to the House Committee on Appropriations on February 27, 2019. The bill was then withdrawn from the House Committee on Appropriations and rereferred to the House Committee on Insurance on March 6, 2019. The House Committee again recommended the bill be passed on March 13, 2019.

According to the fiscal note prepared by the Division of Budget, enactment of HB 2041 would have no fiscal effect.

SB 228 (Third Party Administrators and Fees)

SB 228 was introduced by the Senate Committee on Ways and Means and referred to the Senate Committee on Financial Institutions and Insurance. In the Senate Committee on Financial Institutions and Insurance hearing, a representative of the Department provided proponent testimony. The representative provided information on the history of TPA licensure and noted the bill would update and provide clarity to the changes made by 2017 SB 22, which established new licensure classification and financial reporting requirements and created the TPA Act. The representative stated non-resident TPAs are required to hold a license in a state with a substantially similar law as Kansas and the average application fee for those TPAs is approximately \$430. He stated the Department believes the fee structure proposed in the bill would cover the increased costs to the Department associated with additional oversight and such fees are in line with the average fee structure of other states with similar laws.

According to the fiscal note prepared by the Division of the Budget on SB 228, the Department indicates enactment of the bill would generate approximately \$99,500 in revenue to the Insurance Department Service Regulation Fund from fees beginning in FY 2020 based on the expected number of new home state and non-resident applications, renewal of

home state and non-resident applications, and annual report filing fees. The Department indicates it cannot estimate the expenditures associated with the additional oversight and analysis that would be required by enactment of the bill. However, the Department states the revenues generated from the bill are likely sufficient to cover any additional costs. Any fiscal effect associated with enactment of SB 228 is not reflected in *The FY 2020 Governor's Budget Report*.

HB 2054 (Expansion of AHPs)

HB 2054, as amended by the House Committee on Insurance, contains provisions of HB 2054 and modified provisions of HB 2055, HB 2056, and HB 2058. [Note: The Conference Committee retained these amendments.]

The House Committee did not adopt the language contained in other legislation pertaining to the regulation of AHPs: HB 2057 (specifying the conditions under which a small employer carrier may establish certain classes of business) and HB 2059 (exempting certain AHPs from requirements pertaining to small employer health plans), so current law would be retained on those topics.

HB 2054, as amended, was passed by the House Committee on February 25, 2019, but was withdrawn from the House Calendar and referred to the House Committee on Appropriations on February 27, 2019. The bill was then withdrawn from the House Committee on Appropriations and rereferred to the House Committee on Insurance on March 6, 2019. The House Committee voted to amend the bill with those amendments previously recommended by the House Committee and pass the bill, as amended, on March 13, 2019. [Note: The Conference Committee retained these amendments.]

Package of AHP Bills (House Bills 2054-2059)

On October 12, 2017, the President issued Executive Order (EO) 13813 (“Promoting Healthcare Choice and Competition Across the United States”), which, among other things, encourages expanded access to AHPs. The EO required, within 60 days of its issuance, the Secretary of Labor to consider the proposal of regulations or revised guidance to expand access to health coverage by “allowing more employers to form AHPs” (the EO encouraged promotion of AHP formation on the basis of common geography or industry).

The Final Rule, issued by the U.S. Department of Labor and published on June 21, 2018, allows employers to form AHPs (termed “small business health plans”) on the basis of geography or industry [*i.e.*, the plan could serve employees in a city, county, state, or multi-state metro area, or certain businesses in a selected trade or industry nationwide] and allow sole proprietors to join these plans. Among the Rule’s provisions, AHPs may not charge higher premiums or deny coverage to people because of pre-existing conditions, or cancel coverage because an employee becomes ill. [*Note:* The Final Rule does not affect AHPs in place prior to its issuance.] Although the Final Rule became effective on August 20, 2018, rollout dates vary for plans, with fully-insured plans permitted to offer coverage beginning September 1, 2018.

Six bills (House Bills 2054-2059) related to AHPs were introduced by the House Committee at the request of its chairperson, Representative Vickrey. [*Note:* The Senate Committee on Financial Institutions and Insurance heard companion bills, Senate Bills 29-31, 33-34, 36. Further information on the Senate’s consideration of these bills is contained in the supplemental note for Senate Sub. for HB 2143.] Prior to the hearings on these six bills in the respective House and Senate Committees, an Assistant Revisor of the Office of Revisor of Statutes provided an explanation of the federal Final Rule and requirements for states’ conformity.

Background information on HB 2054, HB 2055, HB 2056, and HB 2058 is provided below.

HB 2054 (providing for fully-insured AHPs). In the House Committee hearing, representatives of Blue Cross and Blue Shield of Kansas, Inc. (BCBSKS), the Kansas Chamber of Commerce, the Kansas Dental Association (KDA), Opportunity Solutions Project, and the Wichita Regional Chamber of Commerce provided proponent testimony, generally stating the bill would align Kansas' small group health insurance laws with the new federal Final Rule. The representatives noted AHPs cannot deny employer groups or their employees coverage based upon their pre-existing health conditions and cannot inflate rates on one person or a single small business based on pre-existing health conditions. Written-only proponent testimony was provided by representatives of the Greater Topeka Chamber of Commerce, the Kansas Restaurant and Hospitality Association (KRHA), and a representative of White Exploration, Inc. on behalf of the Kansas Independent Oil and Gas Association (KIOGA).

A representative of the Department provided neutral testimony, noting the differences between fully-insured AHPs, self-funded AHPs in existence, and new self-funded AHPs permitted under the Final Rule. The representative stated, under current Kansas law, the Commissioner does not have regulatory authority over self-funded AHPs. Written-only neutral testimony was provided by a representative of the Kansas Association of Insurance Agents (KAIA).

A representative of the National Multiple Sclerosis Society provided opponent testimony, noting concern about the potential impact of AHPs on the individual market, especially for individuals with serious and chronic conditions. Written-only opponent testimony was provided by representatives of the American Cancer Society Cancer Action Network (ACS CAN) and the Leukemia and Lymphoma Society (LLS).

The House Committee amended HB 2054 by modifying the language of HB 2055, HB 2056, and HB 2058, and inserting that modified language into HB 2054. [Note: The Conference Committee retained these amendments.]

HB 2055 (making certain self-funded AHPs subject to the Jurisdiction of the Commissioner). In the House Committee hearing, representatives of the KDA, Opportunity Solutions Project, and the Wichita Regional Chamber of Commerce were present but provided written-only proponent testimony. The KDA representative requested an amendment to delete reference to a “trust established November 1, 1985” related to the self-funded Voluntary Employee Benefit Association, which is no longer in existence. [Note: The House Committee amended the exemption previously authorized for a professional association of dentists to remove a specified date and instead provide for the association through an established trust.]

Written-only proponent testimony was provided by a representative of the Greater Topeka Chamber of Commerce.

A representative of the KFB provided neutral testimony and requested consideration of an amendment to allow KFB to develop member health care benefit coverage, specifically and solely for KFB members in Kansas. [Note: The subject of this amendment is contained in 2019 SB 32, which the Senate passed on February 20, 2019. The House Committee did not amend 2019 HB 2054 to include the KFB’s proposed amendment.] A representative of the Department was present but provided written-only neutral testimony. Written-only neutral testimony was also provided by a representative of the KAIA.

Representatives of ACS CAN, LeadingAge Kansas, and the LLS provided written-only opponent testimony. The written-only testimony provided by the representative of LeadingAge Kansas generally noted concern the bill would outlaw LeadingAge’s self-funded MEWA.

The House Committee modified the language of HB 2055 to amend the exemption previously authorized for a professional association of dentists, to remove a specified date and instead provide for the association through an established trust; update language related to “a qualified trade, merchant, retail, or professional association or business league” to remove the requirement that the entity be incorporated in Kansas, specify coverage for the payment of expenses for members of the association, their employees, and dependents, and amend the definition of the term to incorporate the definition contained in KSA 2018 Supp. 40-2209d; and provide a computation method for the premium tax applicable to the location of an association. [Note: The Conference Committee retained these amendments.]

HB 2056 (exempting health plans issued to associations of small employers from certain statutory provisions governing small employer health plans). In the House Committee hearing, representatives of BCBSKS, the Kansas Chamber of Commerce, the KRHA, and the Petroleum Marketers and Convenience Store Association of Kansas provided proponent testimony, noting the bill would amend Kansas’ small group health insurance laws to allow Kansas to take advantage of the new federal Final Rule, which would allow Kansas-based associations the ability to offer high quality and affordable fully-insured AHPs to their members in accordance with federal law. Written-only proponent testimony was provided by representatives of White Exploration, Inc., offered on behalf of KIOGA; the Manhattan, Emporia, Topeka, and Lawrence Chambers of Commerce; Opportunity Solutions Project; The Chamber of Lawrence, Kansas; White Exploration, Inc.; the Wichita Independent Business Association; and the Wichita Regional Chamber of Commerce.

Written-only neutral testimony was provided by representatives of the Department and KAIA. [Note: This written-only testimony was submitted on all the AHP-related bills.]

Written-only opponent testimony was provided by a representative of ACS CAN.

The House Committee amended the language of HB 2056 to remove a provision in KSA 40-2209e related to health care benefits covering employees of a small employer specific to aggregation and the number of employees. [Note: The Conference Committee retained this amendment. This language is clarified in the amendment to the definition of “small employer” in KSA 2018 Supp. 40-2209d, contained in HB 2058. HB 2056, as introduced, would have removed only a portion of this language relating to a policy issued to an association of small employers.]

HB 2058 (updating definitions related to small employer health plans and AHPs). In the House Committee hearing, representatives of BCBSKS; the KRHA; Opportunity Solutions Project; White Exploration, Inc., on behalf of KIOGA; and Wichita Regional Chamber of Commerce provided written-only proponent testimony.

Representatives of the Department and KAIA provided written-only neutral testimony.

A representative of ACS CAN provided written-only opponent testimony.

The House Committee modified the language of HB 2058 to update the definition of “small employer” to specify the employees participating in an AHP shall be counted in the aggregate and clarifying the determination of the number of eligible employees, include and update a definition of “association health plan” or “AHP,” and include a definition of “qualified trade, merchant, retail or professional association or business league” in KSA 2018 Supp. 40-2209d. [Note: The Conference Committee retained this amendment.]

Fiscal Information (HB 2054, HB 2055, HB 2056, HB 2058)

According to the fiscal notes prepared by the Division of the Budget on HB 2054, HB 2056, and HB 2058, as introduced, enactment of these bills would have no fiscal effect.

The Department indicates enactment of HB 2055, as introduced, may result in entities converting fully-insured health plans to new AHPs. This likely would result in a decline in premium tax collections because the carriers of fully-insured plans pay a premium tax of 2.0 percent or 5.77 percent, whereas the carriers of AHPs pay a 1.0 percent premium tax. However, the fiscal effect cannot be estimated as the number of entities that would convert fully-insured health plans to AHPs is unknown. Any fiscal effect associated with enactment of HB 2055, as introduced, is not reflected in *The FY 2020 Governor's Budget Report*.

SB 32 (Exempting Certain Non-insurance Healthcare Benefits Coverage from Commissioner's Jurisdiction)

SB 32 was introduced by the Senate Committee on Financial Institutions and Insurance at the request of the KFB.

In the Senate Committee hearings on January 29 and 30, 2019, representatives of the KFB and the Kansas Corn Growers Association and three Kansas farmers spoke in favor of the bill. The proponents generally stated the bill would offer more affordable healthcare options to members of the KFB. Written-only proponent testimony was provided by a representative of the Wichita Regional Chamber of Commerce.

Representatives of BCBSKS, Medica, and the National Multiple Sclerosis Society testified in opposition of the bill. The opponents generally stated the bill would exempt the KFB from federal and state requirements, specifically citing coverage for pre-existing medical conditions and other

protections under the law, including guaranteed issue; prompt payment of claims; and health insurance benefit and provider mandates, including essential health benefits. Written-only opponent testimony was provided by representatives of the ACS CAN and the LLS.

Neutral testimony was provided by a representative of the Department, who provided information on self-funded AHPs. [*Note:* Under current law, all entities exempted from the Commissioner's jurisdiction in KSA 2018 Supp. 40-2222 are self-funded AHPs who generally offer benefits coverage through a self-insured plan.] Written-only neutral testimony was provided by a representative of the KAIA.

The Senate Committee amended the bill to specify the healthcare benefit coverage described in the bill would not be considered insurance; permit reinsurance for such coverage; and require the submission of a signed, certified actuarial statement of plan reserves annually with the Commissioner. The Senate Committee amendment modifies an amendment submitted by the KFB during the Senate Committee hearing. [*Note:* The Conference Committee retained these amendments.]

In the House Committee on Insurance hearing on March 6, 2019, representatives of the KFB and five Kansas farmers spoke in favor of the bill. The proponents generally stated the bill would offer more affordable healthcare options to members of the KFB. Written-only proponent testimony was provided by representatives of the Kansas Corn Growers Association, KFB, Kansas Soybean Association, and Western Kansas Rural Economic Development Alliance, and eleven Kansas farmers.

Representatives of ACS CAN, American Academy of Pediatrics—Kansas Chapter, American Heart Association, BCBSKS, LLS, McInnes Group Medica, and the National Multiple Sclerosis Society, and a Susan G. Komen volunteer testified in opposition of the bill. The opponents generally stated the bill would exempt the KFB from federal and state

requirements, specifically citing coverage for pre-existing medical conditions and other protections under the law, including guaranteed issue; prompt payment of claims; and health insurance benefit and provider mandates, including essential health benefits. Written-only opponent testimony was provided by representatives of the American Lung Association, America's Health Insurance Plans, the Arthritis Foundation, Ascension Via Christi Health, Kansas Farmers Union, Oral Health Kansas, and the University of Kansas Cancer Center.

Written-only neutral testimony was provided by a representative of the Kansas Association of Professional Insurance Agents.

On March 13, 2019, the House Committee amended the bill to remove language specifying the KFB plan would not be insurance and replaced the language with requirements on coverage for the payment of expenses by the KFB, and included definitions for "working owner," "principal business," and "production agriculture." The House Committee then tabled the bill.

On March 18, 2019, the House Committee received additional information on SB 32. The bill was not removed from the table and no further action was taken on SB 32 by the House Committee.

According to the fiscal note prepared by the Division of the Budget, the Department indicates SB 32, as introduced, could result in a decrease in premium taxes collected by the State (insurance premium tax revenue) if individuals switch from a fully-insured plan to a self-funded plan offered by the KFB because carriers of fully-insured plans pay a 2.0 percent premium tax (accident and health insurance companies) or a 5.77 percent privilege fee (health maintenance organizations) and carriers of self-insured plans pay a 1.0 percent premium tax. The Department indicates enactment of the bill could result in a net increase in premium taxes collected by the State if enrollment in the health insurance plan includes

mostly individuals who were previously uninsured. However, the fiscal effect cannot be estimated as the type of plan that KFB intends to offer and the individuals that would comprise the membership of the plan are unknown. Any fiscal effect associated with enactment of SB 32, as introduced, is not reflected in *The FY 2020 Governor's Budget Report*.

insurance; cybersecurity insurance; life insurance; unfair trade practices; expansion of association health plans; exemption from jurisdiction of the Commissioner of Insurance; third party administrators and fees

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