

SESSION OF 2019

SUPPLEMENTAL NOTE ON SENATE BILL NO. 67

As Amended by House Committee of the Whole

Brief*

SB 67, as amended, would establish the Unclaimed Life Insurance Benefits Act (Act) and would amend the unfair trade practices law relating to the refusal to insure or limiting of life insurance coverage to certain individuals. The description of specific bill provisions follows.

Unclaimed Life Insurance Benefits Act

Definitions [New Section 2]

The bill would establish definitions for the following terms under the Act:

- “Contract” means 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” means 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;

*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>

- “Death Master File match” means a search of the DMF that results in a match of the Social Security number or the name and date of birth of an insured, annuity owner, or retained asset account holder;
- “Knowledge of death” means 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” means 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” means 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: Social Security number or name and date of birth, beneficiary designation information,

coverage eligibility, benefit amount, and premium payment status; and

- “Retained asset account” means 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 Social Security number 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 Social Security numbers.

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.

The bill would also make technical updates.

Background

The bill, as amended, contains provisions of SB 67 and HB 2041.

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).

According to the fiscal note prepared by the Division of the Budget, the Kansas Insurance 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, as introduced, would have no fiscal effect.