

Journal of the House

FORTIETH DAY

HALL OF THE HOUSE OF REPRESENTATIVES,
TOPEKA, KS, Thursday, March 14, 2019, 11:00 a.m.

The House met pursuant to adjournment with Speaker pro tem Finch in the chair.

The roll was called with 119 members present.

Rep. Horn was excused on verified illness.

Reps. Dierks, Donohoe, Hodge and Pittman were excused on excused absence by the Speaker.

Prayer by Chaplain Brubaker,

Gracious God,
we give thanks for the blessings You
give us on a daily basis.
As these leaders continue their work
please continue to give them
clarity and compassion
transparency and toughness;
discernment and diligence;
enthusiasm and empathy;
focus and fairness;
respect and resiliency.
Above all, give them a spirit of collaboration
in the toughest of decisions.
In Your Name I pray, Amen.

The Pledge of Allegiance was led by Rep. Bishop.

INTRODUCTION OF GUESTS

There being no objection, the following remarks of Rep. Thimesch are spread upon the Journal:

I want to welcome the senior government class of 2019 from Fairfield High School to the Capitol. They are here to shadow legislators in the House and Senate today.

Members of the House of Representatives and their students are:

- Representative Tory Marie Arnberger – Felicity Nienke
- Representative Renee Erickson – Jaetyn Conrads
- Representative Charlotte Esau – Vanessa Schoenecker

- Representative Cheryl Helmer – Hannah Richardson
- Representative Susan Humphries – Chinarah Hill
- Representative Brenda Landwehr – Verence Sanchez
- Representative Mark Schreiber – Alvaro Gomez
- Representative Joe Seiwert – Haden Nickell
- Representative Jack Thimesch – Gauge Belvin
- Representative Jene Vickrey – Zach Love
- Representative Ponka-We Victors -Victoria Lobban
- Representative Kathy Wolfe Moore – Destiny Canady
- Representative Kellie Warren – Angele Nigon

I want to thank their instructor, Jody Lubbers for making this happen each year, as well as the parents who chaperoned.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to committees as indicated:

- Federal and State Affairs: **HB 2397**.
- Taxation: **HB 2398, HB 2399**.

COMMUNICATIONS FROM STATE OFFICERS

From Vicki Schmidt, Commissioner of Insurance, Kansas Insurance Department; pursuant to K.S.A. 44-566a(h), FY 2018 Annual Report of the Kansas Workers Compensations Fund.

The complete report is kept on file and open for inspection in the office of the Chief Clerk.

MESSAGES FROM THE SENATE

- Announcing passage of **SB 70, SB 99, SB 155, SB 173**.
- Announcing passage of **HB 2174**.

INTRODUCTION OF SENATE BILLS AND CONCURRENT RESOLUTIONS

The following Senate bills were thereupon introduced and read by title:

- SB 70, SB 99, SB 155, SB 173**.

CONSENT CALENDAR

No objection was made to **SB 61** appearing on the Consent Calendar for the first day.

REPORTS OF STANDING COMMITTEES

- Committee on **Children and Seniors** recommends **HB 2361** be passed.
- Committee on **Financial Institutions and Pensions** recommends **SB 82** be passed.
- Committee on **Financial Institutions and Pensions** recommends **SB 15**, as amended by Senate Committee, be amended on page 4, in line 43, by striking "65-158" and inserting "65-128"; and the bill be passed as amended.
- Committee on **Health and Human Services** recommends **SB 193**, as amended by Senate Committee, be passed and, because the committee is of the opinion that the bill is of a noncontroversial nature, be placed on the consent calendar.

Committee on **Health and Human Services** recommends **HB 2066** be amended by adoption of the amendments recommended by the House Committee on Health and Human Services as reported in the Journal of the House on February 26, 2019, and the bill, as printed with amendments by House Committee, be passed as amended.

Committee on **Health and Human Services** recommends **HB 2082** be amended by adoption of the amendments recommended by the House Committee on Health and Human Services as reported in the Journal of the House on February 26, 2019, and the bill, as printed with amendments by House Committee, be passed as amended.

Committee on **Health and Human Services** recommends **HB 2307** be amended by adoption of the amendments recommended by the House Committee on Health and Human Services as reported in the Journal of the House on February 26, 2019, and the bill, as printed with amendments by House Committee, be passed as amended.

Committee on **Insurance** recommends **HB 2041** be passed.

Committee on **Insurance** recommends **HB 2054**, be amended by the adoption of the amendments recommended by the House Committee on Insurance as reported in the Journal of the House on February 26, 2019, and the bill, as printed with amendments by House Committee, be passed as amended.

Committee on **Insurance** recommends **SB 28** be amended on page 1, by striking all in lines 6 through 36;

On page 2, by striking all in lines 1 through 28; following line 28, by inserting:

"Section 1. K.S.A. 2018 Supp. 40-2,118 is hereby amended to read as follows: 40-2,118. (a) For purposes of this act a "fraudulent insurance act" means an act committed by any person who, knowingly and with intent to defraud, presents, causes to be presented or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, broker or any agent thereof, any written, electronic, electronic impulse, facsimile, magnetic, oral, or telephonic communication or statement as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for personal or commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which such person knows to contain materially false information concerning any fact material thereto; or conceals, for the purpose of misleading, information concerning any fact material thereto.

(b) An insurer that has knowledge or a good faith belief that a fraudulent insurance act is being or has been committed shall provide to the commissioner, on a form prescribed by the commissioner, any and all information and such additional information relating to such fraudulent insurance act as the commissioner may require.

(c) Any other person ~~that~~ who has knowledge or a good faith belief that a fraudulent insurance act is being or has been committed may provide to the commissioner, on a form prescribed by the commissioner, any and all information and such additional information relating to such fraudulent insurance act as the commissioner may request.

(d) (1) Each insurer shall have antifraud initiatives reasonably calculated to detect fraudulent insurance acts. Antifraud initiatives may include fraud investigators, who may be insurer employees or independent contractors and an antifraud plan submitted to the commissioner no later than July 1, 2007. Each insurer that submits an antifraud plan shall notify the commissioner of any material change in the information contained in the

antifraud plan within 30 days after such change occurs. Such insurer shall submit to the commissioner in writing the amended antifraud plan.

The requirement for submitting any antifraud plan, or any amendment thereof, to the commissioner shall expire on the date specified in subsection (d)(2) unless the legislature reviews and reenacts the provisions of subsection (d)(2) prior to such date.

(2) Any antifraud plan, or any amendment thereof, submitted to the commissioner for informational purposes only shall be confidential and not be a public record and shall not be subject to discovery or subpoena in a civil action unless following an in camera review, the court determines that the antifraud plan is relevant and otherwise admissible under the rules of evidence set forth in article 4 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto. The provisions of this paragraph shall expire on July 1, 2021, unless the legislature reviews and reenacts this provision prior to July 1, 2021.

(e) Except as otherwise specifically provided in K.S.A. 2018 Supp. 21-5812(a), and amendments thereto, and K.S.A. 44-5,125, and amendments thereto, a fraudulent insurance act shall constitute a severity level 6, nonperson felony if the amount involved is \$25,000 or more; a severity level 7, nonperson felony if the amount involved is at least \$5,000 but less than \$25,000; a severity level 8, nonperson felony if the amount involved is at least \$1,000 but less than \$5,000; and a class C nonperson misdemeanor if the amount involved is less than \$1,000. Any combination of fraudulent acts as defined in subsection (a) which occur in a period of six consecutive months which involves \$25,000 or more shall have a presumptive sentence of imprisonment regardless of its location on the sentencing grid block.

(f) In addition to any other penalty, a person who violates this statute shall be ordered to make restitution to the insurer or any other person or entity for any financial loss sustained as a result of such violation. An insurer shall not be required to provide coverage or pay any claim involving a fraudulent insurance act.

(g) For the purposes of this section:

(1) "Amount involved" means the greater of: (A) The actual pecuniary harm resulting from the fraudulent insurance act; (B) the pecuniary harm that was intended to result from the fraudulent insurance act; or (C) the intended pecuniary harm that would have been impossible or unlikely to occur, such as in a government sting operation or a fraud in which the claim for payment or other benefit pursuant to an insurance policy exceeded the allowed value. The aggregate dollar amount of the fraudulent claims submitted to the insurance company shall constitute prima facie evidence of the amount of intended loss and is sufficient to establish the aggregate amount involved in the fraudulent insurance act, if not rebutted; and

(2) "pecuniary harm" means harm that is monetary or that otherwise is readily measurable in money, and does not include emotional distress, harm to reputation or other non-economic harm.

(h) This act shall apply to all insurance applications, ratings, claims and other benefits made pursuant to any insurance policy.";

Also on page 2, in line 29, by striking "40-2c01 is" and inserting "40-2,118 and 40-2,118a are";

On page 1, in the title, in line 1, by striking all after "to"; in line 2, by striking all before the semicolon and inserting "fraudulent insurance acts; amount involved"; also in line 2, by striking "40-2c01" and inserting "40-2,118"; in line 3, after "section" by

inserting "; also repealing K.S.A. 2018 Supp. 40-2,118a"; and the bill be passed as amended.

Committee on **Insurance** recommends **SB 66** be amended on page 1, following line 6, by inserting:

"Section 1. K.S.A. 2018 Supp. 40-2c01 is hereby amended to read as follows: 40-2c01. As used in this act:

(a) "Adjusted RBC report" means an RBC report which has been adjusted by the commissioner in accordance with K.S.A. 40-2c04, and amendments thereto.

(b) "Corrective order" means an order issued by the commissioner specifying corrective actions which the commissioner has determined are required to address an RBC level event.

(c) "Domestic insurer" means any insurance company or risk retention group which is licensed and organized in this state.

(d) "Foreign insurer" means any insurance company or risk retention group not domiciled in this state which is licensed or registered to do business in this state pursuant to article 41 of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, or K.S.A. 40-209, and amendments thereto.

(e) "NAIC" means the national association of insurance commissioners.

(f) "Life and health insurer" means any insurance company licensed under article 4 or 5 of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, or a licensed property and casualty insurer writing only accident and health insurance.

(g) "Property and casualty insurer" means any insurance company licensed under articles 9, 10, 11, 12, 12a, 15 or 16 of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, but shall not include monoline mortgage guaranty insurers, financial guaranty insurers and title insurers.

(h) "Negative trend" means, with respect to a life and health insurer, a negative trend over a period of time, as determined in accordance with the "trend test calculation" included in the RBC instructions defined in subsection (j).

(i) "RBC" means risk-based capital.

(j) "RBC instructions" means the risk-based capital instructions promulgated by the NAIC, which are in effect on December 31, ~~2017~~ 2018, or any later version promulgated by the NAIC as may be adopted by the commissioner under K.S.A. 2018 Supp. 40-2c29, and amendments thereto.

(k) "RBC level" means an insurer's company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC where:

(1) "Company action level RBC" means, with respect to any insurer, the product of 2.0 and its authorized control level RBC;

(2) "regulatory action level RBC" means the product of 1.5 and its authorized control level RBC;

(3) "authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions; and

(4) "mandatory control level RBC" means the product of 0.70 and the authorized control level RBC.

(l) "RBC plan" means a comprehensive financial plan containing the elements specified in K.S.A. 40-2c06, and amendments thereto. If the commissioner rejects the RBC plan, and it is revised by the insurer, with or without the commissioner's recommendation, the plan shall be called the "revised RBC plan."

(m) "RBC report" means the report required by K.S.A. 40-2c02, and amendments thereto.

(n) "Total adjusted capital" means the sum of:

- (1) An insurer's capital and surplus or surplus only if a mutual insurer; and
- (2) such other items, if any, as the RBC instructions may provide.

(o) "Commissioner" means the commissioner of insurance.";

On page 4, in line 27, after "Supp." by inserting "40-2c01 and"; also in line 27, by striking "is" and inserting "are";

And by renumbering sections accordingly;

On page 1, in the title, in line 1, by striking "insurance holding companies" and inserting "the version of risk-based capital instructions in effect"; in line 3, after "Supp." by inserting "40-2c01 and"; in line 4, by striking "section" and inserting "sections"; and the bill be passed as amended.

Committee on **Local Government** recommends **HB 2188** be passed and, because the committee is of the opinion that the bill is of a noncontroversial nature, be placed on the consent calendar.

COMMITTEE ASSIGNMENT CHANGES

Speaker pro tem Finch announced the appointment of Rep. Woodard to replace Rep. Hodge on Committee on Elections on March 14, 2019.

Also, the appointment of Rep. Bishop to replace Rep. Horn on Committee on Agriculture on March 14, 2019.

Also, the appointment of Rep. Parker to replace Rep. Pittman on Committee on Transportation on March 14, 2019.

On motion of Rep. Hawkins, the House adjourned until 8:30 a.m., on Friday, March 15, 2019.

JENNY HAUGH, JULIA WERNER, *Journal Clerks.*

SUSAN W. KANNARR, *Chief Clerk.*

