

SESSION OF 2020

**CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE BILL NO. 2246**

As Agreed to May 21, 2020

**Brief\***

HB 2246 would amend and enact new law pertaining to the oversight, regulation, programming, and authority of various state agencies. Among the agencies and programs addressed by the bill are:

- The Commissioner of Insurance and Kansas Insurance Department (amendments and new supplemental law, including appointment of the Securities Commissioner);
- Kansas Department of Health and Environment (The Healthcare Access Improvement Program);
- The University of Kansas Medical Center (Cancer Center Research Account); and
- Wichita State University (bonding authority).

The bill would also make technical changes.

***Commissioner of Insurance and Kansas Insurance  
Department Regulation***

The bill would make several amendments to and enact new law supplemental to the Insurance Code and would amend law governing the appointment of the Securities

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Commissioner by the Commissioner of Insurance (Commissioner). Among these changes, the bill would:

- Create law and amend law to allow a reciprocal to convert to a Kansas mutual insurance company in accordance with terms of a conversion plan filed with and approved by the Commissioner;
- Amend provisions governing excess lines coverage and taxation to change a requirement that the Commissioner collect double the amount of tax as a penalty from any licensee or individual who fails, refuses, or neglects to transmit the required affidavit or statement for surplus line insurance or fails to pay the imposed tax for surplus line insurance;
- Amend the effective date specified for the risk-based capital (RBC) instructions promulgated by the National Association of Insurance Commissioners (NAIC) for property and casualty companies and for life insurance companies;
- Amend provisions of the Long-term Care (LTC) Insurance Act to modify a definition to allow regulation of LCT policies providing coverage for less than 12 months; and
- Amend law governing the Office of the Securities Commissioner and the appointment and removal authority assigned to the Commissioner of Insurance.

### *Reciprocals and Conversion to Mutual Insurance Companies*

The bill would create law and amend law in the Insurance Code to allow a reciprocal to convert to a Kansas mutual insurance company in accordance with terms of a conversion plan filed with and approved by the Commissioner. A reciprocal, as defined in KSA 40-1623, is an aggregation of subscribers under a common name.

The bill would permit the Commissioner to establish reasonable requirements and procedures for the submission and approval of a conversion plan. The bill would outline those items that must be included in the conversion plan:

- A provision for converting the existing subscriber interests in the reciprocal into policyholder interests in the resulting mutual insurance company, so that each policyholder's interest in the mutual insurance company is fairly proportionate to such subscriber's interest in the reciprocal;
- A provision amending the existing subscriber's agreement to articles of incorporation that comply with provisions in the Insurance Code governing the authority for formation, votes of members, and charter filing requirements for mutual insurance companies;
- A proposed copy of the articles of incorporation;
- Proof of the approval or adoption of the conversion plan by not less than two-thirds of the subscriber interests entitled to vote;
- A transition plan for the change of governance of the reciprocal from an attorney-in-fact to a board of directors and officers that is governed by Kansas law applicable to mutual insurance companies; and

- Any other information required by the Commissioner.

The bill would provide the Commissioner shall approve the conversion plan if the Commissioner finds that the proposed conversion will not:

- Be detrimental to the interests of the reciprocal's subscribers;
- Be detrimental to the interests of the state of Kansas; and
- Render the insurer incapable of fulfilling its contractual obligations.

Upon the approval of a conversion plan, the Commissioner would be required to issue a new or amended certificate of authority, which would be deemed the final act of conversion; at such time, the reciprocal concurrently would become a mutual insurance company.

Mutual insurance companies created under the provisions of this bill would be required to comply with all statutes in the Insurance Code, including Articles 12 and 40, that are applicable to mutual insurance companies.

The bill would amend law, which currently allows a mutual insurance company opting to convert to a reciprocal to request a hearing, within 15 days of the Commissioner's approval or denial of the conversion plan, under the Kansas Administrative Procedure Act. The bill would grant this same ability to a reciprocal seeking to convert to a mutual insurance company.

Finally, the law created in the bill would be made supplemental to Article 16 in Chapter 40 (Insurance Code), which governs reciprocals or interinsurance contracts.

### *Excess Lines Coverage*

The bill would amend provisions in the Insurance Code governing excess lines coverage and taxation to change a requirement that the Commissioner collect double the amount of tax as a penalty from any licensee or individual who fails, refuses, or neglects to transmit the required affidavit or statement for surplus line insurance or fails to pay the imposed tax for surplus line insurance. The bill would assign the Commissioner permissive authority to collect the penalty up to double the amount of the tax.

### *Risk-based Capital (RBC) Instructions*

The bill would amend the effective date specified in the Insurance Code for the RBC instructions promulgated by the NAIC for property and casualty companies and for life insurance companies. The instructions currently specified became effective December 31, 2018. The bill would update the effective date on the RBC instructions to December 31, 2019.

### *Long-term Care Insurance Act—Duration of Policies*

The bill would amend provisions of the LTC Insurance Act to modify the definition of “long-term care insurance” and to allow the Kansas Insurance Department (Department) to regulate LTC policies that provide coverage for less than 12 months. Current law requires LTC policies to have a duration of at least 12 consecutive months.

### *Appointment and Removal of the Securities Commissioner*

The bill would amend law governing the Office of the Securities Commissioner and the appointment and removal authority assigned to the Commissioner of Insurance.

Under current law, the Insurance Commissioner is permitted to remove the Securities Commissioner for official misconduct. The bill would remove this authority and would instead require the Securities Commissioner to serve at the pleasure of the Insurance Commissioner. Under continuing law, the Securities Commissioner would be subject to the confirmation of the Senate.

The bill would remove provisions pertaining to the initial appointment of the Securities Commissioner by the Insurance Commissioner. The bill would also remove provisions that would have required the Securities Commissioner to serve, subject to Senate confirmation, a four-year term to run concurrently with the term of the Insurance Commissioner.

[*Note:* Law enacted in 2017 consolidated the Office of the Securities Commissioner, a stand-alone agency, into the Department as a division within the Department and changed the appointment authority for the Securities Commissioner from the Governor to the Insurance Commissioner.]

### ***Healthcare Access Improvement Program***

The bill would amend law concerning the hospital provider assessment known as the Healthcare Access Improvement Program (HCAIP). The bill makes the following changes to the hospital provider assessment:

- The annual assessment on services imposed on each provider would be an amount not less than 1.83 percent of each hospital's net inpatient operating revenue and not greater than 3.0 percent of each hospital's net inpatient and outpatient operating revenue. This would apply to hospitals with a complete 12-month fiscal year; and
- The amount of the annual provider tax would be determined by the healthcare access improvement

panel in consultation with the Kansas Department of Health and Environment.

In addition, technical changes were made to replace references to 80(l) of chapter 68 of the 2019 Session Laws of Kansas with section 1 of House Bill No. 2168.

***University of Kansas Medical Center—Cancer Center  
Research Grant***

The bill would create in the State Treasury the Cancer Research and Public Information Trust Fund to enhance research at the University of Kansas Cancer Center. It would create a demand transfer of \$10.0 million from the State General Fund to the Cancer Research and Public Information Trust Fund of the University of Kansas Medical Center (KUMC) beginning in FY 2022. The Director of KUMC would be required to submit a report to the Legislature detailing the manner that such appropriated moneys are to be used to enhance cancer research, cancer education, and outreach programs.

***Wichita State University—Bonding Authority***

The bill would provide Wichita State University authority to secure bonds from the Kansas Development Finance Authority for up to \$25.0 million through FY 2021 for a new business school.

The bill would be effect upon publication in the *Kansas Register*.

**Conference Committee Action**

The Conference Committee agreed to remove the contents of HB 2246 and insert modified provisions of SB 255, as introduced and Senate Sub. for HB 2480, as

recommended by the Senate Committee on Financial Institutions and Insurance.

The Conference Committee further agreed to amend the bill as follows:

- Amend law (in 2020 HB 2168) concerning the hospital provider assessment known as the Healthcare Access Improvement Program; and
- Add language providing Wichita State University bonding authority to secure bonds from the Kansas Development Finance Authority for up to \$25.0 million using appropriated moneys, any special revenue fund, or funds for FY 2021 (in addition to authority provided for FY 2020, included in 2020 SB 66) for a new business school.

## **Background**

As introduced in 2019, HB 2246 would have amended requirements for distinctive license plate development and continuing distinctive license plates and would have added several new distinctive license plates to be issued on or after January 1, 2020. The bill would also have added military branch license plates and three license plates for which royalty fees would be paid: proud educator license plates, Alpha Kappa Alpha license plates; and Knights of Columbus license plates. The Senate amended the bill to authorize additional license plates.

The Conference Committee appointed by the 2020 Legislature removed the contents of HB 2246 and replaced it with modified provisions of SB 255 and Senate Sub. for HB 2480. The Conference Committee also added language pertaining to bonding authority for Wichita State University.

***SB 255 (Appropriations to the University of Kansas  
Medical Center's Cancer Center Research Account)***

SB 255 was introduced by Senator Denning and 28 other Senators.

In the Senate Committee on Ways and Means hearing, a representative of the KUMC provided proponent testimony, stating the funding would help achieve receiving the National Cancer Institute Comprehensive Cancer Center status. Additional proponent testimony was provided by representatives of the American Cancer Society Cancer Action Network and Cancer Alliance Partners Advisory Board, the Executive Director of the Wichita Medical Research and Education Foundation, and a cancer survivor. Written-only proponent testimony was provided by the President of the Kansas Board of Regents and a representative from the Overland Park Chamber of Commerce. There was no neutral or opponent testimony.

The original bill would have created a demand transfer of \$10.0 million into a Cancer Research and Public Information Trust Fund created by the bill. The Senate Committee amended the bill to appropriate the funds into the existing Cancer Center Research account of the State General Fund. The amendment also added the matching requirement on the first \$5.0 million in expenditures from the account.

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, the bill would reduce available revenues to the State General Fund by \$10.0 million in each year beginning in FY 2021. The University of Kansas indicates the bill would increase annual expenditures for the University of Kansas Cancer Center by \$10.0 million beginning FY 2021. Any fiscal effect associated with enactment of the bill is not reflected in *The 2021 Governor's Budget Report*.

***Senate Sub. for HB 2480 (Regulation of Insurance;  
Authority of Commissioner)***

HB 2480, as it passed the House, would have amended a definition of the LTC Insurance Act within the Insurance Code. The Senate Committee on Financial Institutions and Insurance recommended a substitute bill retaining the underlying bill pertaining to LTC policies and incorporating language from five Senate bills: SB 289, as introduced (RBC instructions); SB 290, as introduced (appointment of the Securities Commissioner); SB 292, as introduced (excess lines, assessment of penalty); SB 304, as introduced (reciprocal companies' conversion); and SB 402, as amended by Senate Committee (agent licensing, suspension, and revocation; other requirements of licensure; licensure of public adjusters). The Senate Committee made no amendments to the inserted language and recommended the substitute bill be passed. [*Note:* The Conference Committee removed language pertaining to agent and public adjuster licensure (SB 402).]

***HB 2480 (LTC Insurance Act Amendments)***

HB 2480 was introduced by the House Committee on Insurance at the request of the Department. In the House Committee hearing, a representative of the Department testified in favor of the bill. The representative stated currently the Department can regulate only LTC policies that provide coverage for not less than 12 months and, by allowing this change in definition, insurance companies wanting to offer shorter duration LTC policies would be able to offer such policies to Kansas consumers. In follow-up information provided to the Committee, the Department indicated most states offer these types of plans and that the bill would allow Kansas insurers to offer these shorter-term plans and also provide consumer protections, which most states currently do not provide. No neutral or opponent testimony was provided.

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

A hearing scheduled in the Senate Committee on Financial Institutions and Insurance for March 17, 2020, was canceled.

According to the fiscal note prepared by the Division of the Budget on HB 2480 as introduced, the Department states the bill would have no fiscal impact.

#### *SB 289 (RBC Instructions)*

SB 289 was introduced by the Senate Committee on Financial Institutions and Insurance at the request of the Department.

In the Senate Committee hearing, a Department representative stated the goal of the RBC law is to ensure each Kansas domestic company has the required amount of capital needed to support its overall business operations in consideration of its size and risk profile. The representative's testimony also indicated amendments to the effective date of the instructions have been made each year since 2009. [Note: In 2009, a legislative oversight process for updating the annual RBC instructions was established. This process allows the Department to update the requirements by rules and regulations, unless one of two statutory conditions has been met.]

No neutral or opponent testimony was provided.

In the House Committee on Insurance hearing, the Department representative provided testimony in support of the bill. No other testimony was provided.

The House Committee amended the bill to change its effective date to upon publication in the *Kansas Register*.

[*Note:* The Senate Committee substitute bill would not retain this amendment.]

According to the fiscal note prepared by the Division of the Budget on SB 289 as introduced, the Department states enactment of the bill would have no fiscal effect.

*SB 290 (Appointment and Removal of Securities Commissioner)*

SB 290 was introduced by the Senate Committee on Financial Institutions and Insurance at the request of the Department.

In the Senate Committee hearing, a Department representative indicated the wording of the 2017 law could be interpreted to mean that if an Insurance Commissioner served multiple terms and wanted to keep the same Securities Commissioner, that position would have to go through the confirmations process at the beginning of each term. The representative also noted the 2017 law could be interpreted to mean the Securities Commissioner is entitled to serve a full term unless this official has engaged in official misconduct. The Department indicated the bill would allow for leadership changes that do not meet the standard of official misconduct and would clarify the options the Insurance Commissioner would have in regards to the nomination, appointment, and retention of the Securities Commissioner.

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

In the House Committee on Insurance hearing, the Department representative provided testimony in support of the bill. No other testimony was provided.

The House Committee amended the bill to change its effective date to be upon publication in the *Kansas Register*.

[*Note:* The Senate Committee substitute bill would not retain this amendment.]

According to the fiscal note prepared by the Division of the Budget on SB 290 as introduced, the bill would have no fiscal effect.

#### *SB 292 (Excess Lines Coverage Penalties)*

SB 292 was introduced by the Senate Committee on Financial Institutions and Insurance at the request of the Department.

In the Senate Committee hearing, a representative of the Department provided proponent testimony, stating the bill would provide the Commissioner flexibility to decrease the penalty if the circumstances warrant it instead of requiring the Commissioner to assess double the tax amount as a penalty. The Department representative also stated the bill is not intended to increase the penalty amount.

No neutral or opponent testimony was provided.

In the House Committee on Insurance hearing, a Department representative testified in favor of the bill. No other testimony was provided.

The House Committee amended the bill to change its effective date to publication in the *Kansas Register*. [*Note:* The Senate Committee substitute bill would not retain this amendment.]

According to the fiscal note prepared by the Division of the Budget on SB 292 as introduced, the Department indicates enactment of the bill could decrease the funds collected; however, the amount of penalty reduction cannot be estimated. Any fiscal effect associated with enactment of SB 292 is not reflected in *The FY 2021 Governor's Budget Report*.

*SB 304 (Conversion of Reciprocal)*

SB 304 was introduced by the Senate Committee on Financial Institutions and Insurance at the request of the Kansas Association of Property & Casualty Insurance Companies (KAPCIC).

In the Senate Committee hearing, representatives of the Armed Forces Insurance Exchange and Graffin Financial Group appeared as proponents, stating the bill would “level the playing field,” should one of the current three Kansas reciprocals opt to convert to a mutual insurance company. The representative of the Armed Forces Insurance Exchange noted the advantages of the reciprocal structure and a significant limitation: severe restrictions on the ability to raise capital without giving governance or control of the company. The bill would provide financial flexibility to address longer-term concerns. The KAPCIC submitted written-only proponent testimony.

No neutral or opponent testimony was provided.

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

The House Committee on Insurance held a hearing on the bill and recommended the bill be passed favorably.

According to the fiscal note prepared by the Division of the Budget on SB 304, the Department states enactment of the bill would have no fiscal effect.

State government; insurance; health care; higher education

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