

REPORTS OF STANDING COMMITTEES

MR. SPEAKER:

The Committee on **Insurance** recommends **HB 2054** be amended on page 15, following line 20, by inserting:

"Sec. 2. On and after April 1, 2019, K.S.A. 40-2209b is hereby amended to read as follows: 40-2209b. (a) The provisions of K.S.A. 40-2209b through 40-2209j and 40-2209m through 40-2209o, and amendments thereto, shall be known and may be cited as the small employer health insurance availability act.

(b) The purpose and intent of this the small employer health insurance availability act are 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.

Sec. 3. On and after April 1, 2019, K.S.A. 2018 Supp. 40-2209d is hereby amended to read as follows: 40-2209d. As used in this the small employer health insurance availability act:

(a) "Actuarial certification" means a written statement by a member of the American academy of actuaries or other individual acceptable to the commissioner that a small employer carrier is in compliance with the provisions of K.S.A. 40-2209h, and amendments thereto, based upon the person's examination, including a review of the appropriate records and of the actuarial

assumptions and methods used by the small employer carrier in establishing premium rates for applicable health benefit plans.

(b) "Approved service area" means a geographical area, as approved by the commissioner to transact insurance in this state, within which the carrier is authorized to provide coverage.

(c) "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under the rating system for that class of business, by the small employer carrier to small employers with similar case characteristics for health benefit plans with the same or similar coverage.

(d) "Carrier" or "small employer carrier" means any insurance company, nonprofit medical and hospital service corporation, nonprofit optometric, dental, and pharmacy service corporations, municipal group-funded pool, fraternal benefit society or health maintenance organization, as these terms are defined ~~by in chapter 40 of the Kansas Statutes Annotated, and amendments thereto,~~ that offers health benefit plans covering eligible employees of one or more small employers in this state.

(e) "Case characteristics" means, with respect to a small employer, the geographic area in which the employees reside; the age and sex of the individual employees and their dependents; the appropriate industry classification as determined by the carrier, and the number of employees and dependents and such other objective criteria as may be approved family composition by the commissioner. "Case characteristics" shall not include claim experience, health status and duration of coverage since issue.

(f) "Class of business" means all or a separate grouping of small employers established pursuant to K.S.A. 40-2209g, and amendments thereto.

(g) "Commissioner" means the commissioner of insurance.

(h) "Department" means the insurance department.

(i) "Dependent" means the spouse or child of an eligible employee, subject to applicable terms

of the health benefits plan covering such employee and the dependent eligibility standards established by the board.

(j) "Eligible employee" means an employee who works on a full-time basis, with a normal work week of 30 or more hours, and includes a sole proprietor, a partner of a partnership or an independent contractor, provided such sole proprietor, partner or independent contractor is included as an employee under a health benefit plan of a small employer but does not include an employee who works on a part-time, temporary or substitute basis.

(k) "Financially impaired" means a member which, after the effective date of this act, is not insolvent but is:

(1) Deemed by the commissioner to be in a hazardous financial condition pursuant to K.S.A. 40-222d, and amendments thereto; or

(2) placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

(l) "Health benefit plan" means any hospital or medical expense policy, health, hospital or medical service corporation contract,~~and~~ a plan provided by a municipal group-funded pool, or~~a~~ health maintenance organization contract offered by an employer or any certificate issued under any such policies, contracts or plans. "Health benefit plan" also includes a cafeteria plan authorized by 26 U.S.C.~~section~~ § 125~~which~~ that offers the option of receiving health insurance coverage through a high deductible health plan and the establishment of a health savings account. In order for an eligible individual to obtain a high deductible health plan through the cafeteria plan, such individual shall present evidence to the employer that such individual has established a health savings account in compliance with 26 U.S.C.~~section~~ § 223, and any~~amendments~~ and regulations~~promulgated~~ thereunder. "Health benefit plan" does not include policies or certificates covering only accident, credit, dental, disability income, long-term care, hospital indemnity, medicare supplement, specified disease,

vision care, coverage issued as a supplement to liability insurance, insurance arising out of a workers compensation or similar law, automobile medical-payment insurance, or insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(m) "Health savings account" ~~shall have the same meaning ascribed to it~~ means the same as in subsection (d) of 26 U.S.C. section § 223(d).

(n) "High deductible health plan" ~~shall mean~~ means a policy or contract of health insurance or health care plan that meets the criteria established in subsection (e) of 26 U.S.C. section § 223(c) and any regulations promulgated thereunder.

(o) "Index rate" means, for each class of business as to a rating period for small employers with similar case characteristics, the arithmetic average of the applicable base premium rate and the corresponding highest premium rate.

(p) "Initial enrollment period" means the period of time specified in the health benefit plan during which an individual is first eligible to enroll in a small employer health benefit plan. Such period shall be no less favorable than a period beginning on the employee's or member's date of initial eligibility and ending 31 days thereafter.

(q) "Late enrollee" means an eligible employee or dependent who requests enrollment in a small employer's health benefit plan following the initial enrollment period provided under the terms of the first plan for which such employee or dependent was eligible through such small employer, however an eligible employee or dependent shall not be considered a late enrollee if:

(1) The individual:

(A) Was covered under another employer-provided health benefit plan or was covered under section 607(1) of the employee retirement income security act of 1974 (ERISA) at the time the individual was eligible to enroll;

(B) states in writing, at the time of the initial eligibility, that coverage under another employer health benefit plan was the reason for declining enrollment but only if the group policyholder or the accident and sickness issuer required such a written statement and provided the individual with notice of the requirement for a written statement and the consequences of such written statement;

(C) has lost coverage under another employer health benefit plan or under section 607(1) of the employee retirement income security act of 1974 (ERISA) as a result of the termination of employment, reduction in the number of hours of employment, termination of employer contributions toward such coverage, the termination of the other plan's coverage, death of a spouse, or divorce or legal separation; and

(D) requests enrollment within 63 days after the termination of coverage under another employer health benefit plan; or

(2) the individual is employed by an employer who offers multiple health benefit plans and the individual elects a different health benefit plan during an open enrollment period; or

(3) a court has ordered coverage to be provided for a spouse or minor child under a covered employee's plan.

(r) "New business premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or offered, or which could have been charged or offered, by the small employer carrier to small employers with similar case characteristics for newly issued health benefit plans with the same or similar coverage.

(s) "Preexisting conditions exclusion" means a policy provision which excludes or limits coverage for charges or expenses incurred during a specified period not to exceed 90 days following the insured's effective date of enrollment as to a condition, whether physical or mental, regardless of the cause of the condition for which medical advice, diagnosis, care or treatment was recommended or received in the six months immediately preceding the effective date of enrollment.

(t) "Premium" means moneys paid by a small employer or eligible employees or both as a condition of receiving coverage from a small employer carrier, including any fees or other contributions associated with the health benefit plan.

(u) "Rating period" means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect but any period of less than one year shall be considered as a full year.

(v) "Waiting period" means a period of time after full-time employment begins before an employee is first eligible to enroll in any applicable health benefit plan offered by the small employer.

(w) "Small employer" means any person, firm, corporation,~~-or~~ partnership~~-or association~~ eligible for group sickness and accident insurance pursuant to ~~subsection (a)~~ of K.S.A. 40-2209, and amendments thereto, actively engaged in business whose total employed work force consisted of, on at least 50% of its working days during the preceding year, of at least two and no more than 50 eligible employees, the majority of whom were employed within the state. In determining the number of eligible employees, employees participating in an association health plan shall be counted in the aggregate at the association level. Also in determining the number of eligible employees companies which that are affiliated companies or which that are eligible to file a combined tax return for purposes of state taxation, shall be considered one employer. Except as otherwise specifically provided, the provisions of this act which the small employer health insurance availability act apply to a small employer which that has a health benefit plan shall continue to apply until the plan anniversary following the date the employer no longer meets the requirements of this definition.

(x) "Affiliate" or "affiliated" means an entity or person who directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.

(y) "Association health plan" or "AHP" means a coverage for the payment of expenses

described in K.S.A. 40-2222, and amendments thereto, offered by a qualified trade, merchant, retail or professional association or business league that complies with the provisions of K.S.A. 40-2222a and 40-2222b, and amendments thereto.

(z) "Qualified trade, merchant, retail or professional association or business league" means any bona fide trade merchant, retail or professional association or business league that: (1) Has been in existence for at least five calendar years; (2) is comprised of five or more employers; and (3) is incorporated in this state, has a principal office located in this state, or has a principal office within a metropolitan area that has boundaries within this state.

Sec. 4. On and after April 1, 2019, K.S.A. 40-2209e is hereby amended to read as follows: 40-2209e. (a) Any individual or group health benefit plan issued to a group authorized by ~~subsection (a)~~ of K.S.A. 40-2209(a), and amendments thereto, shall be subject to the provisions of this act if it provides health care benefits covering employees of a small employer and if it meets any one of the following conditions:

- (1) Any portion of the premium is paid by a small employer, or any covered individual, whether through wage adjustments, reimbursement, withholding or otherwise;
- (2) the health benefit plan is treated by the employer or any of the covered individuals as part of a plan or program for the purposes of section 106 or section 162 of the United States internal revenue code; or
- (3) with the permission of the board, the carrier elects to renew or continue a health benefit plan covering employees of an employer who no longer meets the definition of a "small employer."

~~(b) For purposes of this act an aggregation of two or more small employers covered under a trust arrangement or a policy issued to an association of small employers pursuant to K.S.A. 40-2209, and amendments thereto, shall permit employee or member units of more than two but less than 51 employees or members and their dependents to participate in any health benefit plan to which this act~~

~~applies. Any group which includes employee or member units of 50 or fewer employees shall be subject to the provisions of this act notwithstanding its inclusion of employee or member units with more than 50 employees or members.~~

(e) Except as expressly provided in this act, no health benefit plan offered to a small employer shall be subject to:

- (1) Any law that would inhibit any carrier from contracting with providers or groups of providers with respect to health care services or benefits;
- (2) any law that would impose any restriction on the ability to negotiate with providers regarding the level or method of reimbursing care or services provided under the health benefit plan.

~~(d)(c)~~ Individual policies of accident and sickness insurance issued to individuals and their dependents totally independent of any group, association or trust arrangement permitted under K.S.A. 40-2209, and amendments thereto, shall not be subject to the provisions of this act.

Sec. 5. On and after April 1, 2019, K.S.A. 2018 Supp. 40-2222 is hereby amended to read as follows: 40-2222. (a) Any person or other entity ~~which~~ that provides coverage in this state for medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether such coverage is by direct payment, reimbursement, or otherwise, shall be presumed to be subject to the jurisdiction of the commissioner of insurance unless the person or other entity:

- (1) Is a professional association of architects incorporated in Kansas on October 4, 1954, ~~which~~ that provides coverage for the payment of expenses described herein to or for the members of the association or dependents through a trust established November 1, 1986, and complies with K.S.A. 40-2222a, and amendments thereto;
- (2) is a professional association of dentists incorporated in Kansas on July 3, 1972, ~~which~~ that provides coverage for the payment of expenses described herein to or for the members of the

association or dependents through ~~a an established trust established November 1, 1985~~, and complies with K.S.A. 40-2222a, and amendments thereto;

(3) (A) is a trade association of banks incorporated in Kansas on August 9, 1978, ~~which that~~ provides coverage for the payment of expenses described herein to or for the members of the association or dependents through a trust established July 1, 1989, and complies with K.S.A. 40-2222a, and amendments thereto; or

(B) is a trade organization of banks incorporated in Kansas on June 1, 1982, ~~which that~~ provides coverage for expenses described herein to or for members of the association or dependents, and complies with K.S.A. 40-2222a, and amendments thereto;

(4) is a trade association of truckers incorporated in Kansas on July 1, 1985, ~~which that~~ provides coverage for the payment of expenses described herein to or for the members of the association or dependents through a trust established January 1, 1990, and complies with K.S.A. 40-2222a, and amendments thereto;

(5) is an association of physicians practicing in the Kansas City metropolitan area, incorporated in Missouri on March 5, 1891, and qualified as a foreign corporation in Kansas on May 19, 1987, ~~which that~~ provides coverage for the payment of expenses described herein to or for the members of the association, their employees and dependents through a trust established November 1, 1984, and complies with K.S.A. 40-2222a, and amendments thereto;

(6) is organized as a farmers' cooperative under the Kansas cooperative marketing act, K.S.A. 17-1601 et seq., and amendments thereto, on January 13, 1983, and is an association of farmers' cooperatives and other like associations operated on a cooperative basis and their affiliated companies, ~~which that~~ provides benefits for employees, and family members of such employees, of such associations, and complies with K.S.A. 40-2222a, and amendments thereto;

(7) is any other qualified trade, merchant, retail, or professional association or business league

~~incorporated in Kansas which that provides coverage for the payment of expenses described herein to or for the members of the association, their employees and dependents and that complies with K.S.A. 40-2222a, and amendments thereto;~~

(8) conclusively shows by submission of an appropriate certificate, license, letter or other document issued by the United States department of labor that such person or entity is not subject to Kansas law; or

(9) conclusively shows that it is subject to the jurisdiction of an agency of this state or the federal government. For purposes of this act, tax exempt status under section 501(c) of the federal internal revenue code of 1986 shall not be deemed to be jurisdiction of the federal government.

(b) For the purposes of this section, a qualified trade, merchant, retail or professional association or business league ~~shall mean any bona fide trade, merchant, retail or professional association or business league that:~~

(1) ~~Has been in existence for at least five calendar years; and~~
(2) ~~is comprised of five or more employers means the same as in K.S.A. 40-2209d, and~~
amendments thereto.

Sec. 6. On and after April 1, 2019, K.S.A. 2018 Supp. 40-2222a is hereby amended to read as follows: 40-2222a. At the time the initial application for coverage is taken with respect to new applicants and upon the first renewal, reinstatement or extension of coverage following the effective date of this act with respect to persons previously covered, each association described in subsection (a) of K.S.A. 40-2222, and amendments thereto, shall provide a written notice stating that:

- (a) The coverage is not provided by an insurance company;
- (b) the plan is not subject to the laws and regulations relating to insurance companies;
- (c) the plan is not under the jurisdiction of the commissioner of insurance; and
- (d) if the plan does not pay medical expenses that are eligible for payment under the plan for

any reason, the individuals covered by the plan may be liable for such expenses.

Sec. 7. On and after April 1, 2019, K.S.A. 2018 Supp. 40-2222b is hereby amended to read as follows: 40-2222b. (a) As a condition precedent to continuation of the exemption provided by K.S.A. 40-2222, and amendments thereto, each association described in ~~subsection (a)~~ of K.S.A. 40-2222, and amendments thereto, shall, no later than May 1 of each year, pay a tax at the rate of 1% per annum upon the annual Kansas gross premium collected during the preceding calendar year. For associations that have a principal office within a metropolitan area that has boundaries in Kansas and associations that have their principal office located within the borders of this state and offer policies to non-residents of Kansas, the tax owed under this section 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. In the computation of the tax, such associations shall be entitled to deduct any annual Kansas gross premiums returned on account of cancellation or dividends returned to members or expenditures used for the purchase of reinsurance or stop-loss coverage.

(b) Every association subject to taxation under the provisions of this section shall pay the tax imposed and make a return under oath to the commissioner of insurance under such rules and regulations and in such form and manner as the commissioner may prescribe.";

Also on page 15, following line 21, by inserting:

"Sec. 9. On and after April 1, 2019, K.S.A. 40-2209b and 40-2209e and K.S.A. 2018 Supp. 40-2209d, 40-2222, 40-2222a and 40-2222b are hereby repealed.";

And by renumbering sections accordingly;

On page 1, in the title, in line 1, by striking "amending"; in line 2, by striking all before the semicolon and inserting "pertaining to association health plans; jurisdiction of the commissioner; exemption from regulation as small employer health plans; updating requirements, terminology and references related thereto"; in line 3, after "amending" by inserting "K.S.A. 40-2209b and 40-2209e

and"; also in line 3, after "40-2209" by inserting ", 40-2209d, 40-2222, 40-2222a and 40-2222b"; in line 4, by striking "section" and inserting "sections"; and the bill be passed as amended.

Chairperson