

## **Cybersecurity Insurance; Life Insurance; Unfair Trade Practices; Expansion of AHPs; Exemption from Jurisdiction of the Commissioner of Insurance; Third Party Administrators and Fees; HB 2209**

**HB 2209** creates and amends law pertaining to insurance.

The bill amends and makes several updates to the Insurance Code, including:

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

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

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

The bill establishes the Unclaimed Life Insurance Benefits Act.

### *Definitions [New Section 2]*

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

- “Contract” to mean an annuity contract. The term “contract” does 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” does 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 requires 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 requires the insurer, for those potential matches identified as a result of the DMF match, within 90 days of the match to:

- 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 requires 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 requires 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 authorizes 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 prohibits 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 requires 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 states, in the event the beneficiaries or owners cannot be found, these benefits and interest revert to the State as unclaimed property pursuant to the Uniform Unclaimed Property Act (KSA 58-3936), which provides general rules for taking custody of intangible unclaimed property. The bill specifies interest payable on life insurance proceeds under KSA 40-447 is not payable as unclaimed property.

The bill requires 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 is 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 states the failure to meet any requirement of this section with such frequency as to constitute a general business practice is 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 also specifies 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 amends 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 specifies 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 further provides, 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 amends license and renewal application fees and establishes an annual report fee in the TPA Act.

The bill amends 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 requires an annual report fee of \$100 for both home state and non-resident TPAs. The bill establishes 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 amends several health insurance provisions in the Insurance Code related to the regulation of AHPs and small employer plans. The bill amends the Insurance Code to exempt an entity providing certain non-insurance healthcare benefits coverage from the jurisdiction of the Commissioner. The bill also designates certain statutes as the Small Employer Health Insurance Availability Act.

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

The bill removes 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 designates KSA 40-2209b through 40-2209j and 40-2209m through 40-2209o as the Small Employer Health Insurance Availability Act. The bill states 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 modifies 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 also creates 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 exempts 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 amends provisions pertaining to authorized multiple employer welfare arrangements exempted from the jurisdiction of the Commissioner. The bill amends 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 also amends 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 specifies such entity provides coverage for the payment of expenses described to or for the members of the association, their employees, and dependents.

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

**Exemption from Commissioner's jurisdiction—Kansas Farm Bureau.** The bill exempts a nonprofit agricultural membership organization incorporated in Kansas on June 23, 1931 (the Kansas Farm Bureau), 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 specifies the healthcare benefit coverage provided by the nonprofit agricultural membership organization is not considered insurance, notwithstanding any provision of law to the contrary. The bill permits the risk under such coverage to be reinsured by a company authorized to conduct reinsurance in Kansas.

The bill requires 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 also amends 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 updates "association" to "person or entity" in the statute and provides, for persons or entities having a principal office within a metropolitan area that has boundaries in Kansas and any association having its 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.

***Cybersecurity Insurance [Section 18]***

The bill amends 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” includes, but is not 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.