

SESSION OF 2020

SUPPLEMENTAL NOTE ON SENATE BILL NO. 402

As Amended by Senate Committee on Financial
Institutions and Insurance

Brief*

SB 402, as amended, would amend provisions governing agent licensing and renewal licensure requirements in the Uniform Agents Licensing Act and in the Public Adjusters Licensing Act.

Uniform Insurance Agents Licensing Act (Sections 1-6)

Definitions (Section 1)

The bill would modify the definition of “biennial due date” as the term applies to both agents (the last day of the agent’s birth month) and to registered businesses (the last day of the month of the business’ initial licensure).

***Biennial Renewal Fee and Continuing Education
Requirements for Licensure (Section 2)***

In addition to the current criteria specified for residential agents to meet educational requirements in the biennial license period, the bill would require agents to submit an application for renewal on a form prescribed by the Commissioner of Insurance (Commissioner) and, on and after January 1, 2022, to pay a \$4.00 biennial renewal application fee.

Under current law, licensed agents holding only a property and casualty (P&C) or life, accident, and health

*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>

(L&H) qualification are required to obtain biennially a minimum of 12 continuing education credits (CECs), including at least 1 hour in insurance ethics and no more than 3 CECs in insurance agency management. If an agent holds both the P&C and L&H certifications, the agent would be required to obtain a minimum of 24 CECs biennially.

On and after January 1, 2022, the bill would increase the minimum CEC requirement for agents holding only 1 certification from 12 to 24 CECs biennially and permit at least 3 hours of instruction in ethics and remove the required insurance agency management hours. [Note: Agents holding both P&C and L&H certifications would continue to be required to obtain 24 CECs biennially.]

The bill would update the CEC requirements for specified lines of insurance to add exemptions for insurance agents licensed to hold only a qualification in either self-service storage unit or travel insurance. [Note: Agents licensed and holding only 1 or more of these qualifications are exempted from the requirement for a minimum of 12 or 24 CECs under continuing law.]

Appointment of Agents; Notification (Section 3, Section 5)

Appointment of agents. The bill would remove affiliation requirements for business entities (insurance companies). Under current law, each officer, director, partner, and employee of the business entity who acts as an insurance agent must be licensed as an insurance agent. The business entity is required to disclose to the Kansas Insurance Department (Department) all of its officers, directors, partners, and employees, regardless of whether such persons are licensed as insurance agents. The current notification requirement and licensure of the business entity's representatives includes an associated time frame for notification to the Department and penalties for failure to notify. The bill would remove the notification time frames and penalties.

The bill would, on and after January 1, 2021, also remove a required annual certification and related certification fee for a licensed insurance agent who is an officer, director, partner, employee, or otherwise legally associated with a corporation, association, partnership, or other legal entity appointed by an insurance company. Under current law, an annual certification fee must be paid for each licensed agent certified by the company at the time the company files its premium tax returns.

Notification. The bill would create reporting requirements on each person or entity licensed in the state as an insurance agent. The following information must be reported to the Commissioner within 30 days of an occurrence:

- Each disciplinary action on the agent's license or licenses by the regulatory agency of another state or territory of the United States;
- Each disciplinary action on an occupational license held by the licensee, other than an insurance agent's license;
- Each judgment or injunction entered against the licensee on the basis of conduct involving fraud, deceit or misrepresentation, or a violation of any insurance law;
- All details of any conviction of a misdemeanor or felony (Details are specified in the bill; minor traffic violations could be omitted.);
- Each change in name (if the change is effected by court order, a copy of such order must be provided to the Commissioner);
- Each change in residence or mailing address, email address, or telephone number;

- Each change in the name or address of the agency with which the agent is associated; and
- Each termination of a business relationship with an insurer if the termination is for cause, including the reason for the termination.

In addition, each person or entity licensed in Kansas as an insurance agent would be required to provide to the Commissioner, upon request, a current listing of company affiliations and affiliated insurance agents. Business entities licensed in Kansas as insurance agents would be required to report each change in legal or mailing address, email address, and telephone number to the Commissioner within 30 days of occurrence. These entities would also be required to report each change in the name and address of the licensed agent who is responsible for the business entity's compliance with the insurance laws of Kansas to the Commissioner within 30 days of occurrence.

Commissioner—Licenses and Renewals; Permissible Considerations (Section 4)

Under continuing law, the Commissioner is permitted to deny, suspend, revoke, or refuse renewal of licenses if the Commissioner finds violation of several listed actions of the applicant or license holder (e.g., providing incorrect, misleading, incomplete, or untrue information; violations of insurance law; been convicted of a misdemeanor or felony). The bill would add "failed to respond to an inquiry from the Commissioner within 15 business days" to this list of actions.

In addition, the bill would require the Commissioner to consider the following criteria when determining whether to grant or renew a license:

- Applicant's age at the time of the conduct;
- Recency of the conduct;

- Reliability of the information concerning the conduct;
- Seriousness of the conduct;
- Factors underlying the conduct;
- Cumulative effect of the conduct or information;
- Evidence of rehabilitation;
- Applicant's social contributions since the conduct;
- Applicant's candor in the application process; and
- Materiality of any omissions or misrepresentations.

Separately, the Commissioner would be required to consider when determining whether to reinstate or grant to an applicant a license that has been revoked:

- Present moral fitness of the applicant;
- Demonstrated consciousness by the applicant of the wrongful conduct and disrepute that the conduct has brought to the insurance profession;
- Extent of the applicant's rehabilitation;
- Seriousness of the original conduct;
- Applicant's conduct subsequent to discipline;
- Amount of time that has elapsed since the original discipline;
- Applicant's character, maturity, and experience at the time of the revocation; and
- Applicant's present competence and skills in the insurance industry.

The bill would provide that an applicant to whom a license has been denied after a hearing could not apply for a license again until after the expiration of a period of one year from the date of the Commissioner's order or such other time as prescribed in the order. A licensee whose license was revoked could not reapply until after five years from the date of the order or such period of time as prescribed in the order or revocation.

Renewal Application—Penalties (Section 6)

The bill would amend provisions applying to the renewal of licensure for an insurance agent to create corresponding penalty provisions when the required renewal application is not received by the Commissioner by the agent's biennial due date. The bill would provide, if the required renewal application is late:

- Such individual insurance agent's qualification and each corresponding license shall be suspended automatically for a period of 90 calendar days or until such time as the agent satisfactorily submits a completed application, whichever occurs first; and
- The Commissioner shall assess a penalty of \$100 for each licensed suspended:
 - If such agent fails to provide the required renewal application and the monetary penalty within 90 calendar days of the biennial due date, the agent's qualification and each corresponding license would expire on such agent's biennial due date;
 - If, after more than 3 but less than 12 months from the date the license expired, the agent desires to reinstate his or her license, the agent must provide the required renewal application and pay a reinstatement fee in the amount of \$100 for each license suspended; and

- If, after more than 12 months have passed since license expiration, the agent desires to reinstate the license, this agent would be required to apply for an insurance agent's license, provide the required proof of CEC completion, and pay a reinstatement fee in the amount of \$100 for each license suspended.

The bill would permit, upon receipt of a written application from an agent claiming extreme hardship, the Commissioner to waive any penalty associated with renewal of an agent's license.

Public Adjusters Licensing Act

The bill would amend the Public Adjusters Licensing Act to add fingerprinting and criminal history record checks of applicants. Under the bill, the Commissioner would be allowed to:

- Require a person applying for a public adjuster license to be fingerprinted and submit to a state and national criminal history record check or to submit a background check, or both:
 - The fingerprints shall be used to identify the applicant and to determine whether the applicant has a record of criminal history in this state or another jurisdiction. The Commissioner would be required to submit the fingerprints to the Kansas Bureau of Investigation and the Federal Bureau of Investigation for a state and national history record check. Local and state law enforcement officers and agencies would be required to assist the Commissioner in the taking and processing of fingerprints of applicants and to release all records of an

applicant's arrests and convictions to the Commissioner; and

- Conduct or have a third party conduct a background check on a person applying for a public adjuster license.

The bill would provide, whenever the Commissioner requires fingerprinting or a background check, or both, any associated costs would be paid by the applicant. The Commissioner would be permitted to use the information obtained from a background check, fingerprinting, and the applicant's criminal history only for purposes of verifying the identity of the applicant and in the official determination of the applicant's fitness to be issued a license as a public adjuster.

The bill would also amend the biennial renewal provisions for licensure to clarify the term "biennial due date" and increase, from 12 to 24 hours, the biennial minimum continuing education courses for licensees and to specify such education include 3 hours of ethics. The bill would remove a requirement that such education include 11 hours of P&C or general continuing education courses.

The bill would also make technical changes.

Background

The bill was introduced by the Senate Committee on Financial Institutions and Insurance at the request of the Department. In the Senate Committee hearing, representatives of the Department and Advisor's Excel, LLC, provided proponent testimony. The Department representative noted Kansas is the only state requiring companies appointing agencies to appoint every agent of the agency instead of only the agents conducting the business. The bill would change the appointments process to give companies flexibility in agents they appoint and it would also streamline the agent renewal process. Written-only proponent testimony was provided by the Kansas Association of

Professional Insurance Agents, National Association of Insurance and Financial Advisors of Kansas, and State Farm Insurance Companies.

Neutral testimony was provided by a representative of the Kansas Association of Insurance Agents (KAIA), indicating the provision of the bill increasing the number of CEC hours from 12 to 24 hours (for agents not licensed in both P&C and L&H) would have the most significant impact on insurance agents. No opponent testimony was provided.

The Senate Committee amended the bill to:

- Delay the effective date for the new biennial renewal application fee;
- Restate current law for P&C and L&H biennial continuing education requirements and specify new provisions relating to CECs are effective January 1, 2022;
- Remove a CEC requirement for insurance agency management credits (3 hours under current law, 6 hours in the bill as introduced);
- Clarify the provisions relating to qualifications for limited lines of insurance would be exempted from the new CEC requirements associated with agents holding P&C or L&H qualifications, or both, and add self-service storage unit and travel insurance to exempted provisions; and
- Delay the effective date for provisions pertaining to appointments of agents.

According to the fiscal note prepared by the Division of Budget on the bill as introduced, the Department states enactment of the bill would reduce revenues to its Insurance Department Service Regulation Fund (Fund). Because the bill would remove the affiliated agent requirement, the Department indicates insurance companies would no longer

retain 45.0 percent of their agents. Under current law, the Department estimates 40,833 agents would pay a \$2.00 renewal fee in FY 2021, for a total of \$81,666. For nonresident agents, an estimated 2,107,982 individuals would pay a renewal fee of \$5.00 in FY 2021, for a total of \$10,539,910. Given the Department's estimated decrease in retained agents, resident revenue would be reduced by \$36,750 and the nonresident revenue would be \$4,742,960. The total estimated revenue decrease into the Fund would be estimated at \$4,779,710. The Department notes it would receive additional revenues, however, into the Fund because the bill would add a \$4.00 biennial renewal application fee for resident agents and business entities. For FY 2021, the Department estimates half of the 23,190 resident agents and 3,096 agencies would renew. As a result, the Department would receive an additional \$52,572 (11,595 resident agents + 1,548 agencies X \$4.00 renewal fee) in Fund revenues.

In addition, because of the aggregate changes in the bill, the Department would need to make computer programming changes for two of its systems at a cost of \$295,000 that would be paid from the Fund.

The Kansas Bureau of Investigation would experience additional fees from fingerprint fees. However, the fiscal note indicates any additional funds received would be offset by associated expenditures for processing the fingerprints.

The Division of the Budget also notes a fiscal response has been requested from the Department of Revenue as the bill eliminates the affiliated agent requirement, which would affect the retaliatory statement of the insurance premium tax filing. However, a response had not been received as of the date the fiscal note was published. Any fiscal effect associated with the bill is not reflected in *The FY 2021 Governor's Budget Report*.