

SESSION OF 2022

SUPPLEMENTAL NOTE ON SENATE BILL NO. 448

As Amended by Senate Committee on Financial
Institutions and Insurance

Brief*

SB 448, as amended, would amend the state Unfair Trade Practice Law to exempt additional practices from those practices considered to be unfair or deceptive acts or practices in the business of insurance that relate to unfair discrimination and rebates. The bill would amend the Uniform Insurance Agents Licensing Act to clarify that allowed rebating practices would not be grounds for disciplinary action against an applicant or license holder seeking or issued a license under such act. The bill would also amend current law relating to fire and casualty insurance rates to replace the term “agent” with “producer.”

The bill would also make technical amendments.

[*Note:* Rebating is the term used to encompass the offering or providing of any rebate, discount, abatement, credit, or reduction of premium named in an insurance policy, any special favor or advantage in the dividends or benefits to accrue, or other valuable consideration not specified in the policy, as an inducement to the sale of a policy.]

*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>

Amendments to the Unfair Trade Practices Law

Practices Exempted from Definition of Discrimination or Rebating

The bill would amend state Unfair Trade Practices Law with language from the National Association of Insurance Commissioners (NAIC) Unfair Trade Practices Model Law to exempt the following from practices considered as unfair and deceptive acts or practices pertaining to unfair discrimination and rebates:

- Engaging in an arrangement that would violate Section 106 of the Bank Holding Company Act Amendments of 1972, as interpreted by the Board of Governors of the Federal Reserve System or Section 5(q) of the Home Owners' Loan Act [*Note:* such Acts generally prohibit a bank from conditioning the availability or price of one product on the requirement that the customer also obtain another product from the bank or an affiliate of the bank];
- The offer or provision by insurers or producers, by or through employees, affiliates, or third-party representatives, of value-added products or services at no or reduced cost when such products or services are not specified in the policy of insurance if the product or service:
 - Relates to the insurance coverage; and
 - Is primarily designed to satisfy one or more of nine conditions listed in the bill;
 - The cost to the insurer or producer offering the product or service to any given customer shall be reasonable in comparison to such customer's premiums or insurance coverage for the policy class;

- If the insurer or producer is providing the product or service offered, the insurer or producer shall ensure that the customer is provided with contact information, upon request, to assist the customer with questions regarding the product or service;
 - The Commissioner of Insurance (Commissioner) may adopt rules and regulations when implementing the permitted practices to ensure consumer protection;
 - The availability of the value-added product or service shall be based on documented objective criteria and offered in a manner that is not unfairly discriminatory;
 - If the insurer or producer does not have sufficient evidence but has a good-faith belief that the product or service meets the criteria that it is primarily designed to satisfy one or more of the nine listed conditions, the insurer or producer may provide the product or service in a manner that is not unfairly discriminatory as part of a pilot or testing program for not more than one year. Notice of such a pilot or testing program must be provided to the Commissioner and an insurer or producer may proceed unless the Commissioner objects within 21 days of the notice; and
- An insurer or producer may:
 - Offer or give non-cash gifts, items or services, including meals to or charitable donations on behalf of a customer, in connection with, or to commercial or institutional customers in connection with, the marketing, sale, purchase, or retention of contracts of insurance, as long as the cost is determined reasonable; and

- Conduct raffles or drawings to the extent permitted by state law, as long as there is no financial cost to entrants to participate, the drawing or raffle does not obligate participants to purchase insurance, the prizes are not valued in excess of a reasonable amount determined by the Commissioner, and the drawing or raffle is open to the public. All of these options must be offered in a manner that is not unfairly discriminatory and must not require the customer purchase, continue to purchase, or renew a policy in exchange for the gift, item, or service; and
- An insurer, producer, or representative of an insurer or producer shall not offer or provide insurance as an inducement to the purchase of another policy.

Amendment to Uniform Insurance Agents Licensing Act

Disciplinary Action on License

The bill would clarify that rebating practices permitted by law would not be grounds for the Commissioner to deny, suspend, revoke, or refuse to renew any license issued under the Uniform Insurance Agents Licensing Act.

Background

The bill was introduced by the Senate Committee on Financial Institutions and Insurance at the request of the Kansas Insurance Department.

A companion bill, HB 2635, was introduced in the House.

Senate Committee on Financial Institutions and Insurance

In the Senate Committee hearing, representatives of the Kansas Insurance Department and State Farm Insurance Companies provided **proponent** testimony. The Kansas Insurance Department representative stated the bill would update and modernize rebating statutes to clarify what is a permissible rebate or value-added product or service, while still providing consumer protection. The Kansas Insurance Department representative stated the language contained in the bill largely adopts the rebating section of the NAIC Unfair Trade Practices Model Act. The Kansas Insurance Department representative noted the exemption in the commercial insurance rebating section is not in the NAIC model but aligns with the general flexibility permitted to much of the commercial insurance market. The commercial exemption was recently adopted in Missouri and was suggested for inclusion by a major property and casualty insurance carrier. Written-only proponent testimony was provided by representatives of the Kansas Association of Property and Casualty Insurance Companies, Inc., and the American Property Casualty Insurance Association.

Written-only opponent testimony was provided by a representative of the Kansas Association of Insurance Agents.

No other testimony was provided.

The Senate Committee amended the bill to remove language pertaining to commercial and casualty insurance in response to an agreement reached with interested parties, amend the bill title to reflect the amended content, and remove one exemption proposed for inclusion as an acceptable rebate.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Kansas Insurance Department and the Office of Judicial Administration both state the bill would have no fiscal effect.

Insurance; Unfair Trade Practice Law; rebating; disciplinary action; Uniform Insurance Agents Licensing Act; rules and regulations; Kansas Insurance Department