

Insurance Code Amendments—ASD Coverage; Termination of Certain Coverage, Notice of; Financial Examinations; State High Risk Pool; Surplus Lines Insurance; SLIMPACT; HB 2352

HB 2352 makes several amendments to the Insurance Code. Among the amendments, the bill makes changes to the definitions of “large employer” and “small employer” in the law requiring insurance coverage for Autism Spectrum Disorders (ASD); updates provisions associated with the mailing of notice of termination of certain insurance coverage and financial examinations of certain insurance companies; repeals 2011 law authorizing the state to join the Surplus Lines Insurance Multi-State Compliance Compact (SLIMPACT); and simplifies the calculation of gross premiums for surplus lines insurance.

ASD Coverage—Amendments to 2014 Law

The bill amends “large employer” to increase the number of employees from at least 51 to at least 101 employees. The limit on the number of employees of a “small employer” changes from a limit of 50 to a limit of 100 employees. (“Small” and “large” employers are terms used in connection with group health benefit plans and the ASD coverage requirement.)

Mailing Notice of Termination of Insurance Coverage

The bill amends a provision in the Kansas Automobile Injury Reparations Act to provide insurance companies the option to mail notice of motor vehicle liability insurance termination by any other mail tracking method currently used, approved, or accepted by the United States Postal Service (USPS).

Under continuing law, automobile liability insurance companies are prohibited from terminating policies or renewals, except in the instance of nonpayment or at the request from the policyholder, until at least 30 days after mailing a notice of termination by certified or registered mail, or USPS certificate of mailing. The bill expands the options associated with providing notice of termination.

Financial Examinations of Certain Insurance Companies and the Kansas Uninsurable Health Insurance Plan

The bill amends provisions in the Insurance Code pertaining to permissible fees and expenses associated with certain financial examinations and the frequency rate of a financial examination of the plan administrator for the Kansas Uninsurable Health Insurance Plan Act (an act governing the State High Risk Pool).

Outside Consulting Fees and Expenses

The bill increases for certain insurance companies, from \$100,000 to \$500,000, the maximum amount allowed for the collective total of payment of outside consulting and data processing fees associated with the financial examination of an insurance company or society or its subsidiaries and the *pro rata* amount to fund the purchase of examination equipment and

computer software. Those companies subject to this consulting fee and equipment purchase limitation are those with \$200 million or more in gross premiums, both direct and assumed, in the prior calendar year.

Kansas Uninsurable Health Insurance Plan Act—Amendments

The bill amends the Kansas Uninsurable Health Insurance Plan Act to decrease the frequency of the required examination period of the financial status of the Plan, from at least once every three years to at least once every five years. By law, the Insurance Commissioner (Commissioner) is required to transmit a copy of these examination results to the Legislature by February 1 of the year following the year in which the examination occurred.

Surplus Lines Insurance; Surplus Lines Insurance Multi-State Compliance Compact

The bill creates new definitions and amends existing requirements in the Insurance Code pertaining to the regulation of excess lines insurance (also referred to by the term “surplus lines insurance”). Additionally, the bill will repeal SLIMPACT. The State of Kansas became a member of the Compact *via* the enactment of 2011 HB 2076.

Definitions

The bill creates new definitions to be applicable to provisions in the Insurance Code relating to the regulation of excess lines insurance coverage. Among the defined terms are:

- Exempt commercial purchaser – any person purchasing commercial insurance that, at the time of placement, meets the following requirements:
 - Employs or retains a qualified risk manager to negotiate insurance coverage;
 - Has paid aggregate nationwide commercial property and casualty insurance premiums in excess of \$100,000 in the immediately preceding 12 months; and
 - Does one of the following:
 - Possesses a net worth in excess of \$20,040,000, except that this amount would be adjusted every five years by rules and regulations of the Commissioner to account for the percentage change in the Consumer Price Index;
 - Generates annual revenues in excess of \$55,100,000 (this amount also would be adjusted every five years as detailed above);
 - Employs more than 500 full-time or full-time-equivalent employees per insured entity or is a member of an affiliated group employing more than 1,000 employees in the aggregate;

- Is a not-for-profit organization or public entity generating annual budgeted expenditures of at least \$33,060,000 (this amount also would be adjusted every five years as previously detailed); or
- Is a municipality with a population in excess of 50,000 persons;
- Home state – as the term applies to an insured:
 - The state in which an insured maintains its principal place of business or, in the case of an individual, the individual’s principal residence; or
 - If 100 percent of the insured risk is located out of the state (its principal place of business), the state to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated;
- Non-admitted insurer – an insurer that is not authorized or admitted to transact the business of insurance under the law of the home state (this term would not include a risk retention group, as defined in 15 USC § 3901(a)(4)); and
- Surplus lines insurance – insurance procured by a surplus lines licensee from a surplus lines insurer or other non-admitted insurer as permitted under the law of the home state. The term also would mean excess lines insurance as may be defined by applicable state law.

Gross Premiums for Surplus Lines Insurance—Calculation of Payment to Commissioner

The bill simplifies the computation method of surplus lines premium provided in current law by instead specifying licensed agents must collect and pay to the Commissioner a tax of 6.0 percent on the total gross premiums charged, less any return premiums, for surplus lines insurance transacted by the licensee pursuant to the license for insureds whose home state is Kansas. (The calculation in current law recognizes multi-state premiums and separately accounts for a tax rate of 6.0 percent for Kansas’ risks and exposures and a remittance, for risks located outside of the state, equal to the tax rate and fees assessed in other states and jurisdictions.)

Signed Affidavit or Statement of Diligent Search—Exempt Commercial Producer

The bill exempts a surplus lines producer seeking to place non-admitted insurance for an exempt commercial purchaser from filing a sworn affidavit or statement with the Kansas Insurance Department, if the surplus lines producer has disclosed to the exempt commercial producer that such insurance may or may not be available from the admitted market and the exempt commercial producer has subsequently requested in writing the surplus lines producer procure or place such insurance from a non-admitted insurer.

Under current law, a statement must be filed annually and specify that, after diligent effort, the agent has been unable to secure the amount of insurance required to protect the property, person, or firm described in the agent’s affidavit or statement from loss or damage in regularly admitted companies.

Rules and Regulations Authority—Insurance Commissioner

The bill permits the Commissioner to adopt rules and regulations as are reasonable, necessary, and incidental to the enforcement and administration of the provisions governing excess lines insurance. Any such rules and regulations must be adopted no later than January 1, 2017.

Effective Dates

The changes relating to ASD coverage will take effect and be in force from and after January 1, 2016, and its publication in the statute book. The changes to law and new law governing surplus lines insurance will be effective on and after January 1, 2016. All other provisions of the bill are effective as of July 1, 2015.