

SESSION OF 2019

SUPPLEMENTAL NOTE ON SENATE BILL NO. 78

As Amended by House Committee on Judiciary

Brief*

SB 78, as amended, would create and amend law within the Kansas Consumer Protection Act (KCPA), as follows.

Assignment of Rights or Benefits to a Residential Contractor under an Insurance Policy on Residential Real Estate

The bill would create law regarding a post-loss assignment of rights or benefits to a residential contractor under a property and casualty insurance policy insuring residential real estate (assignment). Specifically, the bill would state an assignment may authorize a residential contractor (as defined by the bill to include certain persons involved in repair or replacement of roof systems, other exterior work or cleanup, or interior or exterior repair and cleanup on residential real estate) to be named as a co-payee for the payment of benefits under a property and casualty insurance policy covering residential real estate. Such assignment would be required to include a specified notice in capitalized, 14-point type. The residential contractor would be required to provide a copy of the assignment to the insurer of the residential real estate within three business days of the signing of the assignment, and the assignment would have to provide that, in addition to any other right to revoke, the named insured has the right to cancel the assignment within five business days after execution.

*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>

The bill would state an assignment shall not, under certain circumstances, impair the interest of a mortgagee or prevent or inhibit an insurer from communicating with the named insured or mortgagee. An assignment would be void if the residential contractor violates any of the provisions of the new section or is not in compliance with the requirements of the Kansas Roofing Registration Act.

The bill would direct the Commissioner of Insurance to strictly enforce statutory provisions requiring insurers to promptly provide a named insured a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

Any violation of the new section would be a deceptive act or practice under the KCPA.

In addition to “assignment” and “residential contractor,” the bill would define “residential real estate” and “roof system.”

Amendments to KCPA Definitions of “Supplier” and “Consumer Transaction”

The bill also would amend definitions in the KCPA. Specifically, it would amend the definition of “supplier” by removing an exclusion for any bank, trust company, or lending institution which is subject to state or federal regulation with regard to disposition of repossessed collateral by such entity. The bill would amend the definition of “consumer transaction” to exclude the disposition of repossessed collateral by any supplier that is subject to and compliant with any state or federal law or rules and regulations with regard to disposition of such repossessed collateral.

Background

SB 78 was introduced by the Senate Committee on Judiciary at the request of the Kansas Association of Property and Casualty Insurance Companies (KAPCIC). As introduced and passed by the Senate, SB 78 contained provisions regarding assignment of rights to a residential contractor under an insurance policy on residential real estate.

In the Senate Committee hearing, representatives of KAPCIC, Farm Bureau Financial Services, and the Kansas Roofing Association testified in support of the bill. Written-only testimony supporting the bill was submitted by representatives of American Family Insurance, American Property and Casualty Insurance Association, Farmers Mutual Insurance Company, Kansas Association of Insurance Agents, National Association of Mutual Insurance Companies, and State Farm Insurance Companies.

The Senate Committee amended the bill pursuant to a request from KAPCIC to add further specificity to certain phrases, adjust the required notice, and adjust the provision requiring the assignment be provided to the insurer.

The Senate Committee of the Whole amended the bill to adjust the definition of “residential real estate.”

In the House Committee on Judiciary hearing, representatives of KAPCIC, Farm Bureau Financial Services, and the Kansas Roofing Association testified in support of the bill. Written-only testimony supporting the bill was submitted by representatives of American Family Insurance, American Property and Casualty Insurance Association, Bremen Farmers Mutual Insurance Company, Farmers Mutual Insurance Company, Kansas Association of Insurance Agents, National Association of Mutual Insurance Companies, and Upland Mutual Insurance.

The House Committee amended the bill to clarify the definition of “residential contractor,” remove a requirement the

statement contain specified language regarding assurances by the residential contractor, and adjust the requirement regarding the residential contractor providing a copy of the assignment to the insurer. The House Committee also amended the bill to include language based upon HB 2162, regarding the KCPA definitions of “supplier” and “consumer transaction.” [Note: Further background regarding HB 2162 is provided below.]

According to the fiscal note prepared by the Division of the Budget on SB 78, as introduced, the Office of the Attorney General indicates the bill could result in additional complaints and cases being filed with its Consumer Protection Division, as well as additional civil penalties of up to \$10,000 per violation. However, the fiscal effect cannot be estimated. The Kansas Insurance Department indicates enactment of the bill would have no fiscal effect on the department.

HB 2162 (Definitions of “Supplier” and “Consumer Transaction”)

HB 2162 was introduced by the House Committee on Judiciary at the request of Representative Ellis. In the House Committee hearing, an attorney testified in support of the bill, stating some judges are interpreting the current exclusion in the definition of “supplier” as a blanket exclusion for the specified entities, rather than as an exclusion for such entities with regard to disposition of collateral. Five private citizens also testified in support of the bill. A representative of the Kansas Bankers Association provided neutral testimony, stating the current exclusion was added in 2005 and was intended to be a narrow exception for occasional instances where such entities needed to sell repossessed property. No opponent testimony was provided.

According to the fiscal note prepared by the Division of the Budget on HB 2162, the Office of the State Bank Commissioner and the Office of the Attorney General indicate enactment of the bill would have no fiscal effect.