
Sneed Law Firm, LLC

Memorandum

To: The Honorable Rob Olson, Chairman
Senate Financial Institution and Insurance Committee

From: William W. Sneed, Legislative Counsel
The State Farm Insurance Companies

Date: February 13, 2020

RE: SB 323

Mr. Chairman, Members of the Committee: My name is Bill Sneed and I am Legislative Counsel for the State Farm Insurance Companies ("State Farm"). State Farm is the largest insurer of homes and automobiles in Kansas. State Farm insures one out of every three cars and one out of every four homes in the United States. At our request, SB 323 was introduced by your committee. Based upon the following we are requesting that you act to move SB 323 favorably for passage.

We believe the three key points to this legislation are:

- Modernizing and streamlining to reduce time and expense which are ultimately borne by the customer;
- Reducing litigation exposure and confusion in terms of what is "similar coverage;" and
- With respect to the commercial section, simply copying existing Kansas law applying to duties on transfer to affiliate company, and now on personal lines section a notice to the customer about what is changing.

This change, with the proposed communication to the customer, allows for more efficient operation going forward and harmonizes Kansas with other states that have recently done the same thing, like Texas and Georgia.

Several of the questions asked about this bill are seen below with our answers.

1. **Why can't we do this now?** The main problematic language is found in 40-2,121 where it speaks of an insurance company "that denies renewal or substitution of similar coverage." Naturally, we would intend for any renewal that comes with amendments to the contract whether those amendments are to the base agreement or come via endorsement, to be "similar coverage." However, we have had litigation in other states on this identical point where a procedure intended as a normal renewal was held by a court to not comply with the special nonrenewal-followed-by-offer requirements found in law like this. The effect of the deemed failure to follow the nonrenewal provisions was that years after the fact customers were not bound by certain duties and limitations found in the new policy version. Needless to say, this is a situation that can undermine planning and proper pricing for a large group of customers. Rather than run that risk, insurers go through the laborious and expensive process of a nonrenewal with follow-on offer to continue doing business with that same customer, but using the new policy form. The problems for the insurer should be pretty obvious in terms of time and expense, but this is not a good consumer outcome, either. It is confusing, at best, for a consumer to receive what appears to be a notice of the termination of a relationship (often one of many years) together with an offer of a new arrangement. This situation is extremely uncommon in other parts of commerce. A typical contrasting example is credit card companies who regularly amend their agreements, adding and removing benefits and altering terms. They do so via a simple notice to the consumer that doesn't appear to indicate that the account is being closed or that the relationship is ending in any way. Quite the contrary, the intent of the credit card company (or the insurer in our case) is to continue the relationship indefinitely into the future. The other two sections included in the bill are added in order that the identical clarifying language is carried over into sections that deal with renewal considerations in other property/casualty lines. It was the judgment of the drafter that the law is more sensible if identical language is found in all sections on the subject.

2. **Why not do this via endorsement?** Whether a change is accomplished through an endorsement or as a change to the main agreement, it will still fall under the influence of the "similar coverage" language discussed above. The risk of litigation that undermines reliance on settled understanding of terms and the parameters of an arrangement cannot be eliminated by using an endorsement.

3. **Some examples of use:** Newly emerging technologies and business arrangements, such as home sharing or transportation network companies, can give rise to immediate needs to alter policy language to clarify what the coverage intent is (or whether there is coverage) for such situations.

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Contracts written before the advent of organizations like Uber, Turo or Airbnb can lead to unintended outcomes in claims situations which then, of course, can affect costs for all consumers, including those that don't use these services. The approach many insurers have taken in these circumstances is to amend the base policy to clarify the extent of coverage and then to offer to add on coverage for the new arrangement to any consumer who deems it of value. That approach ensures that the insurance cost of an activity follows its risk rather than being borne by those not engaging the activity. A law that provides for a clear and easy process of making such changes will enable the nimbleness that insurers will need as the commercial world continues its rapid change.

During our discussions with interested parties, we have agreed to several amendments. Please see the attached balloon.

As you can see, these amendments further strengthen consumer protections and we have agreed to, and request your support on, the balloon.

Based on the above, we believe SB 323 provides a careful balance between streamlining the costs for insurance carriers and maintaining adequate consumer protections for the insureds. Thus, we respectfully request that your committee pass out SB 323, as amended, favorably.

Thank you, and I am available to answer any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Will W Sneed". The signature is fluid and cursive, with the first name "Will" and last name "Sneed" clearly distinguishable.

William W. Sneed

WWS:kjb

SENATE BILL No. 323

By Committee on Financial Institutions and Insurance

1-28

1 AN ACT concerning insurance; relating to property and casualty
2 insurance; pertaining to denials of renewal of policies; altered terms
3 exception; notice to insured; amending K.S.A. 40-2,121 and K.S.A.
4 2019 Supp. 40-276a and 40-2,201 and repealing the existing sections.
5

6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2019 Supp. 40-276a is hereby amended to read as
8 follows: 40-276a. (a) Any insurance company that denies renewal of an
9 automobile liability insurance policy in this state shall give at least 30 days
10 written notice to the named insured, at ~~his~~ *the insured's* last known
11 address, or cause such notice to be given by a licensed agent of ~~its~~ *the*
12 *insurance company's* intention not to renew such policy. No insurance
13 company shall deny the renewal of an automobile liability insurance
14 policy except in one or more of the following circumstances or as
15 permitted in subsection (b):

16 (1) When such insurance company is required or has been permitted
17 by the commissioner of insurance, in writing, to reduce its premium
18 volume in order to preserve the financial integrity of such insurer;

19 (2) when such insurance company ceases to transact such business in
20 this state;

21 (3) when such insurance company is able to show competent medical
22 evidence that the insured has a physical or mental disablement that impairs
23 ~~his~~ *the insured's* ability to drive in a safe and reasonable manner;

24 (4) when unfavorable underwriting factors, pertinent to the risk, are
25 existent; and of a substantial nature, which could not have reasonably been
26 ascertained by the company at the initial issuance of the policy or the last
27 renewal thereof;

28 (5) when the policy has been continuously in effect for a period of
29 five years. Such five-year period shall begin at the first policy anniversary
30 date following the effective date of the policy, except that if such policy is
31 renewed or continued in force after the expiration of such period or any
32 subsequent five-year period, the provisions of this subsection shall apply
33 in any such subsequent period; or

34 (6) when any of the reasons specified as reasons for cancellation in
35 K.S.A. 40-277 ~~are existent, and amendments thereto, exist, except that:~~

36 (A) When failure to renew is based upon termination of agency contract,

1 obligation to renew will be satisfied if the insurer has manifested its
2 willingness to renew; and (B) obligation to renew is terminated on the
3 effective date of any other automobile liability insurance procured by the
4 named insured with respect to any automobile designated in both policies.

5 (b) Renewal of a policy shall not constitute a waiver or estoppel with
6 respect to grounds for cancellation ~~which~~ *that* existed before the effective
7 date of such renewal. Nothing in this section shall require an insurance
8 company to renew an automobile liability insurance policy if such renewal
9 would be contrary to restrictions of membership in the company ~~which~~
10 *that* are contained in the articles of incorporation or the bylaws of such
11 company.

12 (c) *It shall not be considered a denial of renewal under this section if*
13 *the insurer makes changes to the policy, and the insurer, no later than 30*
14 *days prior to the renewal date, either delivers the new policy to the*
15 *insured or makes the new policy available to the insured via electronic*
16 *means pursuant to the provisions of K.S.A. 2019 Supp. 40-5801 et seq.,*
17 *and amendments thereto.* ←

*Notice provided under this subsection must:
(1) appear in a conspicuous place in the
renewal notice; (2) clearly indicate each
change to the policy being made on
renewal; and (3) be written in plain
language.*

18 (b)(d) (1) No insurance company shall refuse to renew a policy until
19 after June 30, 2002, based on an insured's failure to maintain membership
20 in a bona fide association, until both the insurance company and bona fide
21 association have complied with the requirements of this subsection. No
22 insurance company shall refuse to renew any coverage continuously in
23 effect before July 1, 2002, unless:

24 (A) The application for insurance and the insurance policy ~~shall~~
25 clearly disclose that both the payment of dues and current membership in
26 the bona fide association are prerequisites to obtaining or renewing the
27 insurance;

28 (B) the bona fide association has filed a certification with the
29 commissioner of insurance verifying the eligibility of the insurance
30 company to refuse to renew an insurance policy based on the membership
31 in the bona fide association; and

32 (C) ~~any money~~ *monies* paid to the bona fide association as a
33 membership fee:

34 (i) Shall not be used by the insurance company directly or indirectly
35 to defray any costs or expenses in connection with the sale or purchase of
36 the insurance; and

37 (ii) shall be set independently of any factor used by the insurance
38 company to make any judgment or determination about the eligibility of
39 any individual to purchase or renew such insurance. For the purposes of
40 ~~this provision paragraph~~, the individual may be a member of the bona fide
41 organization or an employee or dependent of such a member.

42 (2) (A) Upon request, the bona fide association shall file a statement
43 with the commissioner of insurance verifying that the bona fide

1 association meets the requirements of this paragraph.

2 (B) For the purposes of this subsection, "bona fide association"
3 means an association ~~which~~ *that*:

4 (i) Has been in active existence for at least five consecutive years
5 immediately preceding the date the statement is filed;

6 (ii) has been formed and maintained in good faith for purposes other
7 than obtaining or providing insurance and does not condition membership
8 in the association on the purchase of insurance;

9 (iii) has articles of incorporation and bylaws or other similar
10 governing documents;

11 (iv) has a relationship with one or more specific insurance companies
12 and identifies each such insurance company; and

13 (v) ~~and~~ does not condition membership in the association or set
14 membership fees on the eligibility of any individual to purchase or renew
15 the insurance or on any factor that the insurance company could not
16 lawfully consider when setting rates. For the purposes of this provision,
17 the individual may be a member of the bona fide organization or an
18 employee or dependent of such a member.

19 (3) Membership fees collected by the bona fide association shall not
20 be deemed to be premiums of the insurance company that issued the
21 coverage unless the bona fide association:

22 (A) Uses any portion of such membership fees directly or indirectly
23 to defray any costs or expenses in connection with the sale or purchase of
24 the insurance; or

25 (B) sets or adjusts membership fees for any member of the bona fide
26 association based on any factor used by the insurance company that issues
27 the insurance to make any judgment or determination about the eligibility
28 of any individual to purchase or renew the insurance. For the purposes of
29 this provision, the individual may be a member of the bona fide
30 organization or an employee or dependent of such a member.

31 (4) If the membership fees are determined to constitute premiums
32 pursuant to paragraph (3) of this subsection, the insurance company shall
33 not refuse to renew a policy as otherwise permitted by this subsection.

34 Sec. 2. K.S.A. 40-2,121 is hereby amended to read as follows: 40-
35 2,121. Any insurance company that denies renewal or substitution of
36 similar coverage for the same exposures under any property or casualty
37 insurance policy ~~which~~ *that* is used primarily for business or professional
38 needs shall give at least 60 days' written notice to the named insured at
39 such person's last known address of the insurance company's intention not
40 to renew such policy. The company may satisfy this obligation by causing
41 such notice to be given by a licensed agent. *It shall not be considered a*
42 *denial of renewal under this section if the insurer makes changes to the*
43 *policy, and the insurer, no later than 60 days prior to the renewal date,*

1 either delivers the new policy to the insured or makes the new policy
 2 available to the insured via electronic means pursuant to the provisions of
 3 K.S.A. 2019 Supp. 40-5801 et seq., and amendments thereto. ←

4 Sec. 3. K.S.A. 2019 Supp. 40-2,201 is hereby amended to read as
 5 follows: 40-2,201. (a) (1) A policy of insurance for property and casualty
 6 coverage ~~will~~ shall be considered renewed by: ~~(1)~~ (A) The issuance and
 7 delivery of a policy by the current insurer or by an insurer within the same
 8 group of affiliated insurers replacing the existing policy at the end of the
 9 policy period or term with no gap in coverage; or ~~(2)~~ (B) the issuance and
 10 delivery of a certificate or notice extending the term of the policy beyond
 11 its policy period or term.

12 (2) ~~It shall not be considered a denial of renewal under this section if~~
 13 ~~the insurer makes changes to the policy, and the insurer, no later than 30~~
 14 ~~days prior to the renewal date, either delivers the new policy to the~~
 15 ~~insured or makes the new policy available to the insured via electronic~~
 16 ~~means pursuant to the provisions of K.S.A. 2019 Supp. 40-5801 et seq.,~~
 17 ~~and amendments thereto. ←~~

18 (b) As used in this section, the term "group affiliated insurers" means
 19 two or more insurance companies that are under substantially the same
 20 management or financial control.

21 (c) When a policy of insurance is renewed by an insurer within the
 22 same group of affiliated insurers, notice of the change of the policy to the
 23 affiliated company shall be provided to the insured at the last known
 24 address and made available to the agent of record on or before 30 days
 25 before the end of the term or period of the existing policy of insurance.
 26 Such notice may be satisfied by delivery of the new policy to the insured.

27 Sec. 4. K.S.A. 40-2,121 and K.S.A. 2019 Supp. 40-276a and 40-
 28 2,201 are hereby repealed.

29 Sec. 5. This act shall take effect and be in force from and after its
 30 publication in the statute book.

Notice provided under this subsection must:
 (1) appear in a conspicuous place in the
 renewal notice; (2) clearly indicate each
 change to the policy being made on
 renewal; and (3) be written in plain
 language.