

SESSION OF 2021

SUPPLEMENTAL NOTE ON SENATE BILL NO. 78

As Amended by Senate Committee on Financial
Institutions and Insurance

Brief*

SB 78, as amended, would amend several provisions in the Insurance Code pertaining to service contracts, surplus lines insurance, the Standard Nonforfeiture Law for Individual Deferred Annuities (Standard Nonforfeiture Law), the Utilization Review Organization Act and oversight of utilization review organizations, and risk retention groups. The bill would also amend a requirement in the Professional Employer Organization (PEO) Registration Act pertaining to registration of PEOs.

The bill also would repeal the Automobile Club Services Act and a statute relating to the power of the Commissioner of Insurance (Commissioner) to examine and investigate into the affairs of persons engaged in the business of insurance to determine whether any unfair method of competition or unfair or deceptive act or practice has occurred.

***Service Contracts; Repeal of the Automobile Club
Services Act (Sections 1, 9)***

The bill would amend the definition of “service contract” within the general provisions of the Insurance Code to specify the term would not include automobile club service contracts. The bill would define the terms “automobile club” and “person” and would state the required information that must be contained in automobile service contracts (e.g., the

*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>

corporate name of the club and description of service or benefits to which the member is entitled).

Under current law, the exclusion applies to automobile club service contracts as defined in the Automobile Club Services Act. The bill would repeal the Automobile Club Services Act, which requires persons providing automobile club services to register with the Commissioner and pay an annual licensing fee.

Definitions, Surplus Lines Insurance (Section 2)

The bill would also amend law relating to definitions associated with surplus lines insurance to update provisions within the definition of “exempt commercial purchaser.” Under current law, the minimum requirements for net worth, annual revenue, and annual budgeted expenditures on exempt commercial purchasers must be adjusted and published by the Commissioner through rules and regulations. The bill would instead require these adjusted amounts to be published in the *Kansas Register*.

Standard Nonforfeiture Law for Individual Deferred Annuities (Section 3)

The bill would amend the nonforfeiture rate used to calculate the minimum values of a paid-up annuity, cash surrender, or death benefit available under an annuity contract. The interest rate used in determining the minimum nonforfeiture rate amount would be specified as an annual rate determined as the lesser of three percent per annum and the interest rate calculated as shown below (current law):

- The five-year constant maturity rate reported by the Federal Reserve as of a date, or average over a period, rounded to the nearest 1/20th of 1 percent, as specified in the contract no longer than 15

months prior to the annuity contract's issue date or redetermination date (no change);

- Reduced by 125 basis points (no change);
- Where the resulting interest rate is not less than 15 basis points or 0.15 percent (1 percent); and
- The interest rate shall apply for an initial period and may be redetermined for additional periods. The redetermination date, basis, and period, if any, must be stated in the annuity contract (no change).

Utilization Review Organization Act (Sections 4-6)

The bill would make changes to the Utilization Review Organization Act as follows.

Certification and Conduct (Section 4)

Under current law, the Commissioner is required to adopt rules and regulations, with the advice of a utilization review advisory committee, which establish standards for the conduct of utilization review activities performed in Kansas or affecting residents in this state by utilization review organizations. The bill would remove the requirement of using the advice of the advisory committee and add health care providers to the type of utilization review activities subject to the required rules and regulations establishing the standards for conduct.

Advisory Committee (Section 5)

The bill would remove requirements establishing the utilization review advisory committee. The bill would maintain the listed exceptions to the Utilization Review Organization Act (e.g., utilization review of health care services, reviews conduct by insurance companies and plans, and certain medical programs).

Certification (Section 6)

The bill would amend requirements in this act pertaining to certification of utilization review activities. The bill would specify provisions of the Utilization Review Organization Act would not apply to utilization review organizations accredited by and adhering to national utilization review standards approved by URAC, an independent, nonprofit accreditation entity, or other such utilization review organizations the Commissioner approves. Under current law, these provisions would not apply to the American Accreditation Health Care Commission (replaced by URAC in the bill); the utilization review organizations are subject to the recommendations of the advisory committee (the bill removes this committee from utilization review law, Section 5).

Risk Retention Groups (Section 7)

The bill would amend a requirement placed on risk retention groups chartered in states other than Kansas that are seeking to do business in Kansas. Under current law, a risk retention group seeking to do business in this state is required to submit, among other things, a copy of the group's financial statement submitted to its state of domicile that is certified by an independent public accountant and contains a statement of opinion on loss and loss adjustment expense reserves. The bill would remove the requirement that such statement must be certified by an independent public accountant.

Professional Employer Organization Registration Act (Section 8)

The bill would amend certain requirements placed on a registrant's application by:

- Extending, from 60 to 120 days, the time frame specified for the registrant's renewal and

notification of the Commissioner of any changes in the information provided in the registrant's most recent registration or renewal; and

- Extending, from 60 to 120 days, the permissible time frame for the annual filing of the most recent audit by a PEO group.

Technical Amendments

The bill would also make technical amendments.

Background

The bill was introduced by the Senate Committee on Insurance at the request of the Kansas Insurance Department (Department). The bill was referred to the Senate Committee on Judiciary and later rereferred to the Senate Committee on Financial Institutions and Insurance.

[*Note:* A companion bill, HB 2136, has been introduced in the House.]

Senate Committee on Financial Institutions and Insurance

In the Senate Committee hearing, a representative of the Department provided **proponent** testimony, stating the bill seeks to improve efficiencies at the Department, eliminate unnecessary government regulation, and address statutory inconsistencies. Commenting on certain provisions of the bill, the representative indicated the bill would not expand substantive regulatory authority, but instead provide for a process improvement (section 1, supervision and subpoena powers). Addressing the repeal of the Automobile Club Services Act, the representative indicated the registration requirement may have been valuable at some time, but in the Department's view there is no reasonable justification to

continue this practice. A representative of the Insured Retirement Institute submitted written-only **proponent** testimony, stating support for language in the bill regarding the Standard Nonforfeiture Law.

A representative of America's Health Insurance Plans provided neutral testimony, addressing concerns with language in section 1 regarding certain administrative actions. The conferee stated the organization would have no position on the bill if the proposed Department amendment to remove the section in its entirety was adopted. A representative of the Kansas Association of Property & Casualty Insurance Companies, Inc., submitted written-only neutral testimony, stating concerns about the new investigative powers proposed in the bill.

The Senate Committee amended the bill to:

- Remove language pertaining to the powers and authority of the Commissioner (section 1); and
- Include automobile service club contracts in the exclusions from the definition of "service contract" within the general provisions of the Insurance Code. The terms "automobile club" and "person" and requirements placed on such contracts would be contained within the exclusion.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, the Department states because the bill would repeal the Automobile Club Services Act, automobile clubs would no longer be required to register with the Department and as a result, the bill, if enacted, would reduce revenues to the Insurance Department Service Regulation Fund by \$33,670 annually beginning in FY 2022.

The fiscal note indicates the bill could increase the number of cases filed in district courts because it allows the Commissioner to apply to the courts to enforce compliance with subpoenas. This would in turn increase the time spent by the district court judicial and nonjudicial personnel in processing, researching, and hearing cases. The bill could also result in the collection of additional docket fees and civil penalties. However, the additional expenditures and revenues cannot be estimated at this time. Any fiscal effect associated with the bill is not reflected in *The FY 2022 Governor's Budget Report*.

The Kansas Association of Counties (Association) states there could be some costs associated with the servicing of subpoenas and other court activities. The bill could also affect counties if there are costs associated with cooperating in investigations with the Department. The Association states there could be court costs and fees that could be recovered to assist with the additional costs. However, a precise fiscal effect cannot be estimated. The League of Kansas Municipalities states the bill would not have a fiscal effect on cities.

[*Note:* The bill, as amended by Senate Committee, does not contain provisions relating to investigatory powers of the Commissioner.]

Insurance; Automobile Club Services Act; surplus lines; Standard Nonforfeiture Law; Utilization Review Organization Act; risk retention groups; Professional Employer Registration Organization Act