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300 SW TENTH AVENUE ■ SUITE 24-E ■ TOPEKA, KS 66612 ■ (785) 296-2321

MEMORANDUM

To: House Committee on Insurance and Pensions

From: Office of the Revisor of Statutes

Date: February 3, 2021

Subject: Bill Brief for SB 78: Updating certain statutes relating to the regulation of the business of insurance, granting the commissioner of insurance certain investigative powers.

SB 78 updates certain statutes relating to the regulation of the business of insurance and it grants the commissioner of insurance certain investigational powers.

Section 1 amends K.S.A. 40-103, which is the statute that outlines the commissioner's powers and duties. Under current law, the commissioner has the power to make investigations and examinations pertaining to complaints pertaining to and related to insurance fraud, and to investigate possible violations of Kansas criminal statutes pertaining to and related to insurance fraud. Subsection (b)(2) – (5) of the bill would grant the commissioner the ability to appoint investigators to aid in investigations and examinations, and, in connection with such investigations and examinations, the power to subpoena witnesses, to compel the production of books, records and other documents, and to order that depositions be taken. Should an individual refuse to comply with a subpoena, the Commissioner would not be able to act on behalf of the department, the commissioner would be required to apply to the district court for an order to enforce the subpoena.

Section 2 amends K.S.A. 40-201a, pertaining to the definition of "service contract," and when the issuance, making, and administration of a service contract is exempt from regulation as insurance. Current law states that the definition of "service contract" does not include an automobile club service, as defined in K.S.A. 40-2507, and amendments thereto. The bill would strike this provision because the bill also repeals the Automobile Club Services Act.

Section 3 amends K.S.A. 2020 Supp. 40-246i, which is the statute that provides the definitions for the statutes regulating surplus lines insurance. Under current law, the net worth, annual revenue, and annual budgeted expenditure that must be met by a person in order to be considered an "exempt commercial purchaser" must be adjusted every five years by rules and regulations. The bill would strike the requirement that the adjustment be accomplished by rules and regulations and instead require that the adjusted amount be published every five years in the Kansas register.

Section 4 amends K.S.A. 40-4,104 pertaining to the minimum nonforfeiture amount used to calculate the minimum values of any paid-up annuity, cash surrender or death benefits available under an annuity contract. Under current law, the interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of 3% per annum and the interest rate calculated as the five-year constant maturity treasury rate reported by the federal reserve as of a date, or average over a period, rounded to the nearest 1 /20th of one percent, specified in the contract no longer than 15 months prior to the annuity contract's issue date or redetermination date, reduced by 125 basis points; where the resulting interest rate is not less than 1% . The bill would change the 1% interest rate to 0.15%, or 15 basis points.

Section 5 amends K.S.A. 40-22a04 of the Utilization Review Organization Act, pertaining to the conduct and certification of utilization review organizations. Under current law, the commissioner is required to adopt rules and regulations establishing the conduct of utilization review activities performed in the state with the advice of an advisory committee established by K.S.A. 40-22a05. The bill would strike the requirement of using the advice of the advisory committee, and it would add "healthcare providers" to the type of utilization review activities requiring rules and regulations be adopted establishing the conduct of such activities.

Section 6 amends K.S.A. 2020 Supp. 40-22a05, of the Utilization Review Organization Act, which establishes the advisory committee referred to in section 5 and lists the exceptions to the Utilization Review Organization Act. The bill would strike the portion of the statute that creates the advisory committee.

Section 7 amends K.S.A. 2020 Supp. 40-22a06, of the Utilization Review Organization Act, which specifies the exceptions to the certificate requirement for utilization review activities and states which certification provisions of the Utilization Review Organization Act are not applicable to certain organizations. Under current law, the provisions of K.S.A. 40-22a04(b)(2) – (5) do not apply to utilization review organizations accredited by and adhering to the national utilization review standards approved by the American accreditation health care commission, or such other utilization review organizations as the advisory committee might recommend and the commissioner approve. The bill would change the reference to the American accreditation health care commission to the URAC and strike the reference to the advisory committee.

Section 8 amends K.S.A. 2020 Supp. 40-4103 pertaining to requirements that risk retention groups chartered in foreign states must observe. Under current law in subsection (b)(1), a risk retention group seeking to do business in this state must submit a copy of the group's financial statement submitted to its state of domicile that is certified by an independent public accountant. The bill would strike the requirement that the financial statement be certified by an independent public accountant.

Section 9 amends K.S.A. 2020 Supp. 44-1704, pertaining to the registration of professional employer organizations. Under current law in subsection (e), a registrant must renew its registration by notifying the commissioner of any changes in the information provided in such registrant's most recent registration or renewal within 60 days after the end of the registrant's fiscal year. The bill would extend the 60-day time frame to 120 days. Subsection (h) requires that an applicant for registration submit the applicant's or the applicant's parent holding company most recent audit of at the time of initial registration and specifies that the audit cannot be older than 13 months. Thereafter, a professional employer organization or professional employer group must submit a succeeding audit within 60 days after the end of the professional employer organization's or parent holding company's fiscal year. Similar to the amendment occurring in subsection (e), the bill would amend this 60-day time frame to 120 days after the end of the professional employer organization's or parent holding company's fiscal year.

Finally, as mentioned earlier, the bill repeals the Automobile Club Services Act, K.S.A. 40-2501 – 40-2513, and amendments thereto.