

SESSION OF 2021

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2136

As Amended by House Committee on Insurance
and Pensions

Brief*

HB 2136, 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 an automobile club service contract. The bill would define the term “automobile club service contract,” which would mean:

*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>

- A contract that provides, in consideration of dues, assessments, or periodic payments of money, promises to assist in matters relating to travel and the operation, use, and maintenance of an automobile in the supply of features or services or reimbursement thereof, which may include:
 - Such services as community traffic safety services, travel and touring service, theft or reward service, map service, towing service, emergency road service, bail bond service, and legal fee reimbursement service in the defense of traffic offenses, none of which enumerated features or services, if provided by the promisor itself, shall be subject to the insurance laws of this state;
 - The purchase of accidental injury and death benefits insurance coverage issued, as provided by applicable statutes, by an insurance company authorized to do business in Kansas; or
 - Such other features or services not deemed by the Commissioner to constitute the business of insurance.

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 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:

- 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 from current law);
- Reduced by 125 basis points (no change from current law);
- Where the resulting interest rate is not less than 15 basis points or 0.15 percent (1 percent in current law); 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 from current law).

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 for the advice of the advisory committee and add health care providers to those affected by 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 House Committee on Insurance and Pensions at the request of the Kansas Insurance Department (Department).

[*Note:* A companion bill, SB 78, has been introduced in the Senate.]

House Committee on Insurance and Pensions

In the House 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 of the bill as introduced, 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.

No other testimony was provided.

The House Committee amended the bill to:

- Remove language pertaining to the powers and authority of the Commissioner (section 1) and update the bill title accordingly; and
- Include automobile service club contracts in the exclusions from the definition of "service contract" within the general provisions of the Insurance Code. A definition for the term "automobile club service contract" is created by the amendment.

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.

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 court costs and fees 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 House Committee, does not contain provisions relating to investigatory powers of the Commissioner.]

Any fiscal effect associated with the bill is not reflected in *The FY 2022 Governor's Budget Report*.

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