

SESSION OF 2021

**SUPPLEMENTAL NOTE ON HOUSE SUBSTITUTE FOR
SENATE BILL NO. 78**

As Recommended by House Committee on
Insurance and Pensions

Brief*

House Sub. for SB 78 would amend several provisions in the Insurance Code and would codify the National Association of Insurance Commissioners (NAIC) Credit for Reinsurance Model Regulation (Model Regulation) into statute. Amendments to the Insurance Code would pertain to credit for reinsurance, 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 the Insurance Company Holding Act to add certain definitions, require a filing of a notice with the Commissioner of Insurance (Commissioner), and address affiliate agreements to certain transactions. The bill would further 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 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 (KSA 40-2405).

*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>

***Codification of NAIC Credit for Reinsurance Model
Regulation (New Section 1)***

[*Note:* Reinsurance is often referred to as “insurance for insurance companies” and serves as a contract of indemnity between a reinsurer and insurer. In this contractual arrangement, the insurance company (termed “the cedent” or “ceding insurer”) transfers the risk to the reinsurer, which would assume some or all of the policies issued by the ceding insurer. This Supplemental Note reviews the Model Regulation, as follows.]

Purpose

The stated purpose of the Model Regulation is that the actions and information required are necessary and appropriate in the public interest and for the protection of the ceding insurers in Kansas.

Severability

If any provision in the Model Regulation, or the application of the provision to any person or circumstance, is found to be invalid, the remainder of the act, or the application of the provision to persons or circumstances other than those to which it is held invalid, would not be affected.

Credit for Reinsurance—Reinsurer Licensed in Kansas

Pursuant to the Kansas credit for reinsurance statute, the Commissioner would be required to allow credit for the reinsurance ceded by a domestic insurer to an assuming insurer licensed in Kansas as of any date in which statutory financial statement credit for reinsurance is claimed.

Credit for Reinsurance—Accredited Reinsurers

Pursuant to the Kansas credit for reinsurance statute, the Commissioner would be required to allow credit for reinsurance ceded by a domestic insurer to an assuming insurer accredited as a reinsurer in Kansas as of the date in which statutory financial statement credit for reinsurance is claimed. The Model Regulation would set out the filing requirements of an accredited reinsurer and the requirement to maintain a surplus with regard to policyholders of not less than \$20 million or to obtain approval of the Commissioner based on a finding the accredited reinsurer has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers.

If the Commissioner determines the assuming insurer failed to meet or maintain any of the above qualifications, the Commissioner would be permitted to suspend or revoke the accreditation, upon written notice and opportunity for hearing. If an assuming insurer's accreditation was revoked, or if the reinsurance was ceded while the assuming insurer's accreditation was under suspension, a domestic ceding insurer would not be allowed credit.

Credit for Reinsurance—Reinsurer Domiciled in Another State

Pursuant to the Kansas credit for reinsurance statute, the Commissioner would be required to allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that, as of a date on which statutory financial statement credit for reinsurance is claimed:

- Is domiciled in or, in the case of a U.S. branch of an alien assuming insurer, is entered through a state with credit for reinsurance standards similar to those applicable in Kansas;

- Maintains a surplus as previously described; and
- Files a properly executed form with the Commissioner as evidence of submission to this state's authority to examine its books and records.

The provisions relating to the surplus would not apply to reinsurance ceded and assumed under pooling arrangements among insurers in the same holding company system. The term "substantially similar," as referenced in this section, would mean credit for reinsurance standards the Commissioner determines are equal to or exceed the standards of the Kansas credit for reinsurance statute and those of this section.

Credit for Reinsurance—Reinsurers Maintaining Trust Funds

In accordance with the Kansas credit for reinsurance statute, the Commissioner would be required to allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that, as of any date on which statutory financial statement credit for reinsurance is claimed, and for as long as credit for reinsurance is claimed, maintains a trust fund in an amount prescribed by the Model Regulation in a qualified U.S. financial institution for the payment of the valid claims of its U.S.-domiciled ceding insurers. The assuming insurer would be required to report annually to the Commissioner substantially the same information required to be reported on the NAIC annual statement form by licensed insurers, to allow the Commissioner to determine the sufficiency of the trust fund.

The Model Regulation would set out the trust fund requirements applicable to the following categories of assuming insurers: a single assuming insurer; an assuming insurer that has permanently discontinued underwriting new business secured by the trust for at least three full years; a group including incorporated and individual unincorporated underwriters; and a group of incorporated insurers under

common administration whose members possess aggregate policyholders surplus of \$10 billion, calculated and reported as outlined in the bill, and that has continuously transacted an insurance business outside the U.S. for at least three years immediately prior to making application for accreditation.

The Model Regulation would provide that credit for reinsurance would not be granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the commissioner of another state who has accepted responsibility for regulatory oversight of the trust. The Model Regulation would require the form of the trust and any trust amendments be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. Provisions to be included in the trust instrument would be as outlined in this subsection.

If the trust fund is inadequate because it contains an amount less than required or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee would be required to comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund. Such assets would be distributed according to claims filed with and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies. Trust assets not necessary to satisfy the claims of U.S. beneficiaries of the trust would be returned to the trustee for distribution according to the trust agreement. The grantor would be required to waive any right otherwise available to it under U.S. law that is consistent with this provision.

The term “liabilities” would mean the assuming insurer’s gross liabilities attributable to reinsurance ceded by U.S.-domiciled insurers, excluding liabilities that are otherwise secured by acceptable means. The liabilities included for business ceded by domestic insurers authorized to write accident and health and property and casualty insurance and for business ceded by domestic insurers authorized to write life, health, and annuity insurance would be as listed in the Model Regulation.

The Model Regulation would address the valuation of assets deposited in trusts established pursuant to the Kansas credit for reinsurance statute, the nature of the trust assets allowed, the limitations on foreign investments and securities denominated in foreign currencies in the trust, and restriction on allowed trust investments. Requirements for a mortgage-related security would be specified. The terms “mortgage-related security” and “promissory note” would be defined.

Equity interests. The Model Regulation would address permissible equity interests involving the following: investments in common shares or partnership interests of a solvent U.S. institution, if certain requirements were met; investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if certain requirements were met; an investment in or loan upon any one institution’s outstanding equity interest not exceeding a specified percentage of the assets of the trust; and obligations issued, assumed, or guaranteed by a multinational development bank, provided the obligations are rated “A,” or higher, or the equivalent, by a rating agency recognized by the securities valuation office of the NAIC.

Investment companies. The Model Regulation would provide that securities of an investment company registered pursuant to the Investment Company Act of 1940 would be permissible investments if the investment company met certain investment requirements. The bill would prohibit

investments made by a trust in investment companies from exceeding certain limitations.

Letters of credit. A letter of credit would qualify as an asset of the trust only if:

- The trustee has the right and obligation pursuant to the deed of trust or some other binding agreement approved by the Commissioner to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced; and
- The trust agreement provides that the trustee is liable for its negligence, willful misconduct, or lack of good faith. The failure to draw against the letter of credit when such draw would be required would be deemed to be negligence or willful misconduct.

Credit for Reinsurance—Certified Insurers

Pursuant to the Kansas credit for reinsurance statute, the Commissioner would be required to allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in Kansas at all times for which the statutory financial statement credit for reinsurance is claimed. The credit allowed would be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified insurer by the Commissioner. The bill would require the security to be in a form consistent with requirements of the Kansas credit for reinsurance statute. The amount of security required in order for full credit to be allowed would have to correspond with the requirements outlined.

Certification procedure. The process for certification would require the posting of the application for certification on the Kansas Insurance Department (Department) website, including instructions on how members of the public may

respond to the application, the timing of the Commissioner's final action on the application, and written notice to the assuming insurer that made the application and has been approved as a certified reinsurer that contains the rating assigned to the certified reinsurer. The Commissioner would be required to publish a list of all certified reinsurers and their ratings. To be eligible for certification, the assuming insurer would be required to meet certain requirements, as outlined. Each certified reinsurer would be rated on a legal entity basis, with due consideration being given to the group rating where appropriate. However, an association, including incorporated and individual unincorporated underwriters, that has been approved to do business as a single certified reinsurer would be permitted to be evaluated on the basis of its group rating. Multiple factors allowed to be considered as part of the evaluation process are described.

Based on the analysis of one of the factors conducted pertaining to a certified reinsurer's reputation for prompt payment of claims, the Commissioner would be permitted to make appropriate adjustments to the security the certified reinsurer would be required to post to protect its liabilities to U.S. ceding insurers. If certain conditions exist, the Commissioner would be required, at a minimum, to increase the security the certified insurer is required to post by one rating level.

The assuming insurer would be required to submit a specified form as evidence of its submission to the jurisdiction of the State of Kansas, appointment of the Commissioner as an agent for service of process in Kansas, and agreement to provide security for 100 percent of the assuming insurer's liabilities attributable to the reinsurance ceded by U.S. ceding insurers if the assuming insurer resists enforcement of a final U.S. judgment. The Commissioner would be prohibited from certifying any assuming insurer that is domiciled in a jurisdiction the Commissioner has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards.

The certified reinsurer would be required to agree to meet applicable information filing requirements as determined by the Commissioner, both with respect to an initial application and on an ongoing basis. Information submitted by certified reinsurers that is not public information subject to disclosure would be exempted from disclosure under the Kansas Open Records Act and would be withheld from public disclosure. The provisions providing for the confidentiality of public records would expire on July 1, 2026, unless the Legislature reviews and continues such provisions. The applicable information filing requirements are described.

Qualified jurisdictions. If the Commissioner determines, upon conducting an evaluation with respect to the reinsurance supervisory system of any non-U.S. assuming insurer, the jurisdiction qualifies to be recognized as a qualified jurisdiction, the Commissioner would be required to publish notice and evidence of such recognition. The Commissioner would be permitted to establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.

The Commissioner would be required to evaluate the reinsurance supervisory system of a non-U.S. jurisdiction, both initially and on an ongoing basis, to determine whether the domiciliary jurisdiction of the non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction and consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the United States. The Commissioner would be required to determine the appropriate approach for evaluating the qualifications of such jurisdictions and create and publish a list of jurisdictions whose reinsurers the Commissioner would be allowed to approve as eligible for certification. A qualified jurisdiction would be required to agree to share information and cooperate with the Commissioner with respect to all certified reinsurers domiciled in that jurisdiction. A list of additional factors to be considered in determining whether to recognize a qualified jurisdiction is included.

In determining qualified jurisdictions, the Commissioner would be required to consider the list of qualified jurisdictions published through the NAIC committee process. If the Commissioner approves a jurisdiction as qualified that is not on the list of qualified jurisdictions, the Commissioner would be required to provide thoroughly documented justification with respect to the criteria provided in the list of other factors to be considered in making that determination. U.S. jurisdictions meeting the requirements for accreditation under the NAIC standards and accreditation program would be recognized as qualified jurisdictions.

Recognition of certification issued by a NAIC accredited jurisdiction. The Commissioner would have the discretion to defer to the certification of an applicant who has been certified as a reinsurer in an NAIC-accredited jurisdiction and to defer to the rating assigned by that jurisdiction, if the assuming insurer completes the requisite form prescribed and adopted by the NAIC and the Commissioner and such additional information required by the Commissioner. The assuming insurer would be considered to be a certified insurer in Kansas. A change in the certified insurer's status or rating in the other jurisdiction would apply automatically in Kansas as of the date it takes effect in the other jurisdiction. The requirement for notification by the certified insurer of any change in status or rating, the Commissioner's authority to withdraw recognition of the other jurisdiction's rating and certification at any time, and the good standing of the certified insurer's certification absent suspension or revocation by the Commissioner are described.

Mandatory funding clause. The bill would require reinsurance contracts entered into or renewed to include a proper funding clause that requires the certified insurer to provide and maintain security in an amount sufficient to avoid having any financial statement penalty imposed on the ceding insurer for the reinsurance ceded to the certified insurer.

The Commissioner would be required to comply with all reporting and notification requirements the NAIC may establish with respect to certified insurers and qualified jurisdictions.

Credit for Reinsurance—Reciprocal Jurisdictions

In accordance with the Kansas credit for reinsurance statute, the Commissioner would be required to allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is licensed to write reinsurance by, and has its head office or is domiciled in, a reciprocal jurisdiction, and meets other requirements outlined in the Model Regulation.

“Reciprocal jurisdiction” would be defined as a jurisdiction designated by the Commissioner that meets one of three requirements outlined in the bill.

The bill would require credit to be allowed when the reinsurance is ceded from an insurer domiciled in Kansas to an assuming insurer that meets the following conditions:

- Is licensed to transact reinsurance by, or have its head office or be domiciled in, a reciprocal jurisdiction;
- Has and maintains on an ongoing basis minimum capital and surplus, or its equivalent, calculated in the manner described, in the requisite amounts;
- Has and maintains on an ongoing basis a minimum solvency or capital ratio, as applicable, as specified in the bill;
- Agrees to and provides assurance in the required form of its agreement to:
 - Provide prompt written notice and explanation if it falls below certain minimum requirements or if any regulatory action is taken against it

for serious noncompliance with applicable law;

- Consents in writing to the jurisdiction of the courts of Kansas and to the appointment of the Commissioner as agent for the service of process;
- Consents in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained;
- Provides security in an amount equal to 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded, as required by a provision in each reinsurance agreement, if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award;
- Confirms that it is not presently participating in any solvent scheme of arrangement that involves Kansas ceding insurers and agrees to notify the ceding insurer and the Commissioner and to provide 100 percent security to the ceding insurer consistent with the terms of the scheme, if the assuming insurer enters into such a solvent scheme of arrangement; and
- Agrees in writing to meet the applicable information filing requirements;
- Provides, if requested by the Commissioner, on behalf of itself and any legal predecessors, the documentation specified to the Commissioner;
- Maintains a practice of prompt payment of claims under reinsurance agreements. The criteria that

would be evidence of the lack of prompt payment are enumerated;

- Complies with the requirements of having and maintaining, on an ongoing basis, minimum capital and surplus, or its equivalent, and a minimum solvency or capital ratio, as applicable, as confirmed by the assuming insurer's supervisory authority; and
- Nothing precludes an assuming insurer from providing the Commissioner with information on a voluntary basis.

The Commissioner would be required to timely create and publish a list of reciprocal jurisdictions. A list of reciprocal jurisdictions would be published through the NAIC's committee process. The Commissioner's list would be required to include any reciprocal jurisdiction and consider any other reciprocal jurisdiction included in the NAIC list. The Commissioner would be allowed to approve a jurisdiction not included in the NAIC's list of reciprocal jurisdictions as provided by applicable law or regulation, or in accordance with criteria published through the NAIC committee process.

The Commissioner would be allowed to remove a jurisdiction from the list of reciprocal jurisdictions upon determination that the jurisdiction no longer meets one or more of the requirements of a reciprocal jurisdiction, as provided by applicable law or regulation, or in accordance with a process published through the NAIC committee process, except the Commissioner would be prohibited from removing from the list of reciprocal jurisdictions the following: a non-U.S. jurisdiction subject to an in-force covered agreement with the United States, each within its legal authority, or in the case of a covered agreement between the United States and the European Union, is a member state of the European Union; and a U.S. jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program. Upon removal of a

reciprocal jurisdiction from this list, credit for reinsurance ceded to an assuming insurer domiciled in that jurisdiction would be allowed.

The Commissioner would be required to timely create and publish a list of assuming insurers that have satisfied the conditions set forth and to which cessions shall be granted credit. If a NAIC-accredited jurisdiction determines the conditions for a qualified jurisdiction have been met, the Commissioner would have the discretion to defer to that jurisdiction's determination, and add such assuming insurer to the list of assuming insurers to which cessions would be granted credit. The Commissioner would be allowed to accept financial documentation filed with another NAIC-accredited jurisdiction or with the NAIC in satisfaction of the requirements for a qualified jurisdiction.

An assuming insurer would be required to submit the required properly executed form and additional information as the Commissioner may require when requesting that the Commissioner defer to another NAIC-accredited jurisdiction's determination. A state that has received such a request would be required to notify other states through the NAIC committee process and provide relevant information with respect to the determination of eligibility.

If the Commissioner determines an assuming insurer no longer meets one or more of the requirements, the Commissioner would be allowed to revoke or suspend the eligibility of the assuming insurer for recognition. While eligibility is suspended, no reinsurance agreement issued, amended, or renewed after the effective date of the suspension would qualify for credit, except to the extent the assuming insurer's obligations under the contract are secured. If eligibility is revoked, credit would not be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent the assuming insurer's obligations under the contract are secured in a form

acceptable to the Commissioner and consistent with the provisions of the section on asset or reduction from liability for reinsurance ceded to an unauthorized assuming insurer not meeting the necessary requirements.

Before denying statement credit or imposing a requirement to post security for an assuming insurer that no longer meets one or more of the requirements or adopting any similar requirement that will have substantially the same regulatory impact as security, the Commissioner would be required to:

- Communicate with the ceding insurer, the assuming insurer, and the assuming insurer's supervisory authority that the assuming insurer no longer satisfies one of the required conditions; and
- Provide the assuming insurer 30 days to submit a plan and 90 days to remedy the defect, unless a shorter period would be needed for policyholder and other consumer protection. If after the 90 days, the Commissioner determines no or insufficient action was taken, the Commissioner may impose any of the requirements specified on the assuming insurer and provide a written explanation to the assuming insurer of any requirements in the bill.

If subject to a legal process of rehabilitation, liquidation, or conservation, the ceding insurer would be allowed to seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring the assuming insurer post security for all outstanding liabilities.

Credit for Reinsurance Required by Law

The Commissioner would be required to allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of the Kansas credit for reinsurance statute, but only as it relates to the insurance of risks located in jurisdictions where the reinsurance is required

by applicable law or regulation of that jurisdiction. “Jurisdiction” would be defined as a state, district, or territory of the United States and any lawful national government.

*Asset or Reduction from Liability for Reinsurance—
Unauthorized Assuming Insurer*

The Commissioner would be required to allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer that does not meet the requirements of the Kansas credit for reinsurance statute in an amount not exceeding the liabilities carried by the ceding insurer. The calculation of the reduction, where the security is held, who may withdraw the security, and the allowed forms of security would be as outlined in the Model Regulation.

An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer would be allowed only when certain requirements are satisfied.

Required Conditions of Trust Agreements

This section would define “beneficiary,” “grantor,” and “obligations” and outline the required conditions for the trust agreements. The trust agreement would be entered into between the beneficiary, the grantor, and a trustee that shall be a qualified U.S. financial institution. The trust agreement would create a trust account into which assets would be deposited. All assets in the trust account would be held by the trustee at the trustee’s office in the United States. The bill would specify required provisions of the trust agreement, including the responsibilities of the trustee, the laws to which the agreement would be subject to and governed by, and the required notice prior to termination of the trust.

Notwithstanding certain provisions of the bill, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life,

annuities, and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement would be allowed to provide that the ceding insurer would undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the specific purposes outlined in the bill.

Notwithstanding other provisions, when a trust agreement is established to meet the certain requirements pertaining to asset or reduction from liability for reinsurance ceded to an unauthorized assuming insurer that does not meet the credit for reinsurance requirements in conjunction with a reinsurance agreement covering life, annuities, or accident and health risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement would be allowed to provide that the ceding insurer would undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the purposes specified.

The bill would require the reinsurance agreement or the trust agreement to stipulate how the assets deposited in the trust would be valued and what it would consist of, and limitations on the types of investments. The trust agreement would be allowed to further specify the types of investments to be deposited.

Permitted Conditions of a Trust Agreement

The Model Regulation would outline the permitted conditions in a trust agreement, including the terms for resignation or removal of a trustee, the grantor's rights with respect to voting any shares of stock in the trust account and receiving payment of dividends and interest from time to time, the authorities of a trustee with regard to the funds in the account, the transfer of trust assets by the beneficiary, and

the delivery of assets to the grantor upon termination of the trust account.

Additional Conditions Applicable to Reinsurance Agreements

The bill would authorize certain specified provisions in a reinsurance agreement. One such provision would allow the assuming insurer to execute assignments or endorsements in blank or to transfer legal title to the trustee of all shares, obligations, or any other assets requiring assignments so the ceding insurer, or the trustee upon direction of the ceding insurer, would be able whenever necessary to negotiate these assets without consent or signature from the assuming insurer or any other entity.

Final Reporting

A trust agreement would be allowed to be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the Department when established on or before the date of filing of the financial statement of the ceding insurer. The reduction for the existence of an acceptable trust account would be allowed up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time. However, such reduction would not be permitted to be greater than the specific obligations under the reinsurance agreement that the trust account was established to secure. The failure of a trust agreement to specifically identify the beneficiary would not be construed to affect any actions or rights the Commissioner would be allowed to take or possess pursuant to provisions of state law.

Letters of Credit Qualified under Certain Conditions

The Model Regulation would outline the requirements of the letter of credit pertaining to a reduction from liability for reinsurance ceded by a domestic insurer to an assuming

insurer that does not meet the requirements of the Kansas credit for reinsurance statute.

Reinsurance Agreement Provisions

The provisions that would be allowed in a reinsurance agreement with which the letter of credit is obtained would include requiring the assuming insurer to provide letters of credit to the ceding insurer and specifying what they are to cover and stipulating the letter of credit may be drawn upon at any time and would be used by the ceding insurer for its successors in interest only for certain enumerated reasons. However, the enumerated reasons would not preclude the ceding insurer and assuming insurer from providing for an interest payment, at a rate not exceeding the prime rate of interest on certain amounts or the return of any amounts drawn down on the letters of credit in excess of the actual amounts required above or any amounts that are subsequently determined not to be due.

Other Security

The Model Regulation would allow a ceding insurer to take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

Reinsurance Contract

Under the Model Regulation, credit would not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting specific requirements or otherwise in compliance with Kansas credit for reinsurance statute, after the adoption of this section, unless the reinsurance agreement includes a proper insolvency clause; a provision whereby the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction

within the United States, has agreed to comply with all requirements necessary to give the court or panel jurisdiction, has designated an agent for service of process, and has agreed to abide by the final decision of the court or panel; and a proper reinsurance intermediary clause, if applicable, that stipulates the credit risk for the intermediary is carried by the assuming insurer.

Service Contracts; Repeal of the Automobile Club Services Act (Sections 2, 14)

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:

- A service contract that provides in consideration of dues, assessments, or periodic payments of money; and 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.

Credit for Reinsurance Statute (Section 3)

The bill would add another condition under which a domestic ceding insurer may be permitted a credit for reinsurance, as either an asset or a reduction from liability, on account of reinsurance ceded to an assuming insurer.

Assuming Insurer Requirements

The added condition would allow credit for reinsurance if the assuming insurer meets each of the following conditions:

- Has its head office, or is domiciled, in, as applicable, and is licensed in a reciprocal jurisdiction. A reciprocal jurisdiction is a jurisdiction that meets one of the following requirements:
 - Is a non-U.S. jurisdiction subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and the European Union, is a member of the European Union. A covered agreement would be defined as an agreement entered into pursuant to provisions of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act currently in effect or in a period of provisional application and

addresses the elimination, under specific conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in Kansas or for allowing the ceding insurer to recognize credit for reinsurance;

- Is a U.S. jurisdiction that meets the requirements of accreditation under the NAIC Financial Standards and Accreditation Program; or
 - Is a qualified jurisdiction, as determined by the Commissioner, that is not otherwise described in the two previous options and meets certain additional requirements consistent with the terms and conditions of in-force covered agreements, as specified by the Commissioner;
- Has and maintains, on an ongoing basis, minimum capital and surplus, or its equivalent, calculated according to the methodology of its domiciliary jurisdiction, in an amount set by the Commissioner. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it would be required to have and maintain, on an ongoing basis, minimum capital and surplus equivalents, net of liabilities, calculated according to the methodology applicable in its domiciliary jurisdiction, and a central fund containing a balance in amounts set by the Commissioner;
 - Has and maintains, on an ongoing basis, a minimum solvency or capital ratio, as applicable, as set by the Commissioner. If the assuming insurer is an association, including incorporated or individual unincorporated underwriters, it would be required to have and maintain, on an ongoing basis, a minimum solvency or capital ratio in the reciprocal jurisdiction where the assuming insurer

has its head office or is domiciled, as applicable, and is also licensed;

- Agrees and provides adequate assurance to the Commissioner, in a form specified by the Commissioner, as follows:
 - The assuming insurer would be required to provide the Commissioner with prompt written notice and explanation if it falls below the minimum requirements set for capital and surplus or solvency or capital ratio, or if any regulatory action is taken against the assuming insurer for serious non-compliance with applicable law;
 - The assuming insurer would be required to consent in writing to the jurisdiction of the Kansas courts and to the appointment of the Commissioner as the assuming insurer's agent for service of process. The Commissioner may require the consent for service of process be provided to the Commissioner and included in each reinsurance agreement. This provision would not limit or alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws;
 - The assuming insurer would be required to consent in writing to pay all final judgments, whenever enforcement is sought, obtained by a ceding insurer or its legal successor, that have been declared enforceable in the jurisdiction where the judgment was obtained;
 - Each reinsurance agreement would be required to include a provision requiring the assuming insurer to provide security equal to

100 percent of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its resolution estate; and

- The assuming insurer would be required to confirm it is not presently participating in any solvent scheme of arrangement that involves Kansas ceding insurers, agree to notify the ceding insurer and the Commissioner, and provide security equal to 100 percent of the assuming insurer's liabilities to the ceding insurer, should the assuming insurer enter into such a solvent scheme of arrangement. The security would be required to be in a form consistent with the provisions allowing for credit when reinsurance is ceded to the Commissioner-certified assuming insurer that has secured its obligations as required and for limitation on asset or reduction from liability for reinsurance not meeting the requirements for credit for reinsurance and as specified by the Commissioner;
- If requested by the Commissioner, the assuming insurer or its legal successor provides to the Commissioner, on behalf of itself and any legal predecessors, certain documentation specified by the Commissioner;
- Maintains a practice of prompt payment of claims under reinsurance agreements;
- The assuming insurer's supervisory authority confirms to the Commissioner on an annual basis

that the assuming insurer complies with the requirements for having and maintaining minimum capital and surplus or minimum solvency or capital ratio; and

- The assuming insurer is not precluded from voluntarily providing information to the Commissioner.

List of Reciprocal Jurisdictions

The following criteria would apply to the list of reciprocal jurisdictions created by the Commissioner:

- A list of reciprocal jurisdictions would be published through the NAIC committee process. The Commissioner's list would be required to include any reciprocal jurisdiction, as defined in the bill, and the Commissioner would be required to consider any other reciprocal jurisdiction included in the NAIC list. The Commissioner would be permitted to approve a jurisdiction that does not appear on the NAIC reciprocal jurisdictions list in accordance with criteria developed by the Commissioner.
- The Commissioner would be permitted to remove a jurisdiction from the list of reciprocal jurisdictions if the Commissioner determines, with a process set by the Commissioner, that the jurisdiction no longer meets the requirements of a reciprocal jurisdiction. However, the Commissioner would be prohibited from removing the following from the list a reciprocal jurisdictions:
 - A non-U.S. jurisdiction subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United

States and the European Union, is a member of the European Union; and

- A U.S. jurisdiction that meets the requirements of accreditation under the NAIC Financial Standards and Accreditation Program.

If a reciprocal jurisdiction is removed from the list, credit for reinsurance ceded to an assuming insurer that has its home office or is domiciled in that jurisdiction would be permitted, if otherwise permitted in the credit for reinsurance statute.

List of Assuming Insurers

The Commissioner would be required to create and publish a list of assuming insurers that have satisfied the conditions required of them and to which cessions would be required to be granted credit. The Commissioner would be permitted to add an assuming insurer to such list if a NAIC-accredited jurisdiction has added such assuming insurer to such a list or, if on initial eligibility, the assuming insurer submits the required information to the Commissioner agreeing and providing adequate assurance and complies with any other requirements the Commissioner would be permitted to impose that do not conflict with an applicable covered agreement.

Revocation or Suspension of Eligibility of Assuming Insurer

The Commissioner would be permitted to revoke or suspend the eligibility for recognition of an assuming insurer determined by the Commissioner to no longer meet one or more of the requirements pertaining to assuming insurers.

While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended, or renewed after the date of the suspension would qualify for credit, except to the extent the assuming insurer's obligations under the

contract are secured in accordance with the section on the asset or reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer that does not meet the requirements for credit for reinsurance.

If an assuming insurer's eligibility is revoked, no credit for reinsurance would be granted after the effective date of revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent the assuming insurer's obligations under the contract are secured in a form acceptable to the Commissioner and consistent with the provisions in the section on the asset or reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer that does not meet the requirements for credit for reinsurance.

Assuming Insurer Requirement to Post Security

If subject to a legal process of rehabilitation, liquidation, or conservation, the ceding insurer or its representative would be permitted to seek and, if determined appropriate by the court in which the proceedings are pending, obtain an order requiring the assuming insurer to post security for all outstanding ceded liabilities.

Agreement on Security Requirements

The capacity of parties to a reinsurance agreement to agree on requirements for security or other terms in the reinsurance agreement would not be limited or altered, except when expressly prohibited by the credit for reinsurance statute or other applicable law or regulation.

Limitation on Credits for Reinsurance

Credit would be permitted only for reinsurance agreements entered into, amended, or renewed on or after July 1, 2021, and only with respect to losses incurred and

reserves reported on, or after the latter of the date on which the assuming insurer has met all eligibility requirements pursuant to the section on condition under which credit for reinsurance would be permitted or the effective date of the new reinsurance agreement, amendment, or renewal.

Ceding Insurer's Right to Credit for Reinsurance

A ceding insurer's right to take credit for reinsurance would not be altered or impaired, to the extent that credit is not available under the conditions to be met to qualify for credit, if the reinsurance qualifies for credit under any other applicable provision of the credit for reinsurance statute.

Limitations on Assuming Insurer

Nothing in the reinsurer requirements to allow credit for reinsurance would authorize an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement except as permitted by the terms of the agreement or limit or alter the capacity of parties to any reinsurance agreement to renegotiate the agreement.

Definitions, Surplus Lines Insurance (Section 4)

The bill would 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 5)

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 3 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);
- 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 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).

Utilization Review Organization Act (Sections 6-8)

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

Certification and Conduct (Section 6)

Under current law, the Commissioner is required to adopt rules and regulations, with the advice of a utilization review advisory committee, establishing 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 activities affecting 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 7)

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 conducted by insurance companies and plans, and certain medical programs).

Certification (Section 8)

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 7).

Insurance Holding Company Act (Sections 9-11)

Definitions

The following definitions would be added to the Insurance Holding Company Act:

- “Group-wide supervisor” would mean the regulatory official authorized to engage in conducting and coordinating group-wide supervision activities who is determined or acknowledged by the Commissioner under KSA 40-3318 to have sufficient significant contacts with the internationally active insurance group; and
- “Internationally active insurance group” would mean an insurance holding company that:
 - Includes an insurer registered under KSA 40-3305; and
 - Meets the following criteria: has premiums written in at least three countries; the percentage of gross premiums written outside the United States is at least 10 percent of the insurance holding company system’s total gross written premiums; and based on a three-year rolling average, the total assets of the insurance holding company system are at least \$50 billion or the total gross written premiums of the insurance company system are at least \$10 billion.

Notice of Divestiture of Controlling Interest

With regard to transactions affecting control of domestic insurers, the bill would require any controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer, in any manner, to file with the Commissioner, with a copy to the insurer, confidential notice

of its proposed divestiture at least 30 days prior to the cessation of control. The Commissioner would be required to determine those instances in which each party seeking to divest or to acquire a controlling interest in an insurer would be required to file for and obtain approval of the transaction. The bill would require the information regarding the proposed divestiture to remain confidential until the conclusion of the transaction, unless the Commissioner determines that confidential treatment of the information will interfere with enforcement. These requirements pertaining to the notice of proposed divestiture would not apply if a statement of intent to acquire control of a domestic insurer was filed with the Commissioner.

With respect to a transaction affecting control of a domestic insurer, the acquiring person would also be required to file a preacquisition notification with the Commissioner containing the information in the form and manner prescribed by the Commissioner through rules and regulations.

Amendments or Modifications of Affiliate Agreements

Amendments or modifications of affiliate agreements would be included in the material transactions involving a domestic insurer and any person in such insurer's holding company system that cannot be entered into without written notification to the Commissioner within the time requirements set out in statute and which the Commissioner has not disapproved.

Risk Retention Groups (Section 12)

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 13)***

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.

Background

SB 78 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.]

SB 78, as amended by the House Committee on Insurance and Pensions, includes provisions pertaining to reinsurance (from SB 28, as amended by the Senate Committee on Financial Institutions and Insurance).

Senate Committee on Financial Institutions and Insurance

In the Senate Committee hearing on SB 78, 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.

House Committee on Insurance and Pensions

In the House Committee hearing, a representative of the Department provided **proponent** testimony. No other testimony was provided.

The House Committee amended the bill to insert provisions pertaining to the codification of the NAIC Credit for Reinsurance Model Regulation and amendment to the Kansas credit for reinsurance statute (from SB 28, as amended by the Senate Committee) and update language pertaining to service contracts (for which language largely conforms to language previously included in HB 2136). The House Committee report incorporates these amendments into a substitute bill.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on SB 78 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 the House Committee, does not contain provisions relating to investigatory powers of the Commissioner.]

SB 28 (Reinsurance)

According to the fiscal note prepared by the Division of the Budget on SB 28 as introduced, the Department indicates enactment of the bill would have no fiscal effect.

Insurance; Automobile Club Services Act; Insurance Holding Company Act; Professional Employer Registration Organization Act; Standard Nonfeiture Law; Utilization Review Organization Act; reinsurance; risk retention groups; surplus lines; NAIC Reinsurance Model Regulation