

SESSION OF 2019

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 28**

As Amended by House Committee on Insurance

**Brief\***

SB 28, as amended, would amend provisions governing fraudulent insurance acts and associated criminal penalty provisions to add clarifying definitions (KSA 2018 Supp. 40-2,118) and repeal nearly identical provisions also addressing fraudulent insurance acts (KSA 2018 Supp. 40-2,118a).

The bill would create the following definitions and update references in criminal penalty provisions to specify “amount involved” as the term relates to the severity level of the crime:

- “Amount involved” would mean the greater of:
  - The actual pecuniary harm resulting from the fraudulent insurance act;
  - The pecuniary harm that was intended to result from the fraudulent insurance act; or
  - The intended pecuniary harm that would have been impossible or unlikely to occur, such as in a government sting operation or a fraud in which the claim for payment or other benefit pursuant to an insurance policy exceeded the allowed value. The aggregate dollar amount of the fraudulent claims submitted to the insurance company shall constitute *prima facie* evidence of the amount of intended loss and is sufficient to establish the aggregate amount involved in the fraudulent insurance act, if not rebutted; and

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\*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>

- “Pecuniary harm” would mean harm that is monetary or that otherwise is readily measurable in money, and does not include emotional distress, harm to reputation, or other non-economic harm.

## **Background**

SB 28 previously addressed risk-based capital (RBC) instructions. The provisions previously contained in SB 28 were placed in SB 66 by the House Committee on Insurance. [Note: See the supplemental note on SB 66 for more information on RBC instructions.] SB 28, as described in this supplemental note, only includes the provisions of HB 2213, as amended by the House Committee on Insurance.

### ***HB 2213 (Fraudulent Insurance Acts)***

HB 2213 was introduced by the House Committee on Corrections and Juvenile Justice at the request of the Office of the Attorney General. The bill was referred to the House Committee on Insurance.

In the House Committee hearing on February 25, 2019, an Assistant Attorney General in the Fraud and Abuse Litigation Division (Division) provided testimony in support of the bill, noting as of July 1, 2017, the Kansas Insurance Department (Department) began forwarding all cases of criminal insurance fraud to the Division for potential criminal prosecution. The conferee also noted the bill codifies and clarifies what “amount involved” means and mirrors the definition for “aggregate amount of payments illegally claimed” in the Kansas Medicaid Fraud Control Act. Both statutes, the conferee continued, criminalize the making of fraudulent claims. The conferee also noted the repeal of the second statute pertaining to fraudulent insurance acts (KSA 2018 Supp. 40-2,118a) is requested as the only present difference between the two statutes is the means by which

the fraudulent insurance act is presented to the insurance company.

On February 25, 2019, the House Committee on Insurance amended HB 2213 to expand one of the provisions associated with the term “amount involved.” The amendment was requested by the Office of the Attorney General. On February 28, 2019, HB 2213 was stricken from the Calendar pursuant to House Rule 1507. On March 13, 2019, the House Committee on Insurance amended SB 28 by removing its contents related to RBC instructions. The House Committee then inserted provisions of HB 2213 in SB 28.

According to the fiscal note prepared by the Division of the Budget on HB 2213, as introduced, the Office of Judicial Administration and the Department indicate enactment of the bill would have no fiscal effect.