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

MEMORANDUM

To: Senate Committee on Financial Institutions and Insurance

From: Office of Revisor of Statutes

Date: March 22, 2021

Subject: Bill Brief on SB 290 - Increasing healthcare stabilization fund minimum professional liability insurance coverage requirements, changing the membership of the board of governors of such fund and adding options and increasing time for service of process thereon.

SB 290 increases the minimum professional liability insurance coverage requirements of certain healthcare providers, slightly changes the membership of the board of governors of the healthcare stabilization fund and increases the time for service of process on the board of governors. The bill amends K.S.A. 40-3409, K.S.A. 2020 Supp. 40-3402, 40-3403, 40-3408, 40-3414 and 40-3424.

Section 1 amends K.S.A. 2020 Supp. 40-3402, pertaining to the minimum professional liability insurance coverage limits that certain healthcare providers are required to carry in this state. Under current law, healthcare providers, as defined in K.S.A. 40-3401, and amendments thereto, with the exception of pharmacists and optometrists, are required to maintain a policy of professional liability insurance in which the limit of the insurer's liability is not less than \$200,000 per claim, subject to not less than a \$600,000 annual aggregate for all claims made during a policy period. HB 2380 would change those limits, effective on and after January 1, 2022, to a minimum of not less than \$500,000 per claim, subject to not less than a \$1,500,000 annual aggregate for all claims made during the policy period.

Section 2 amends K.S.A. 2020 Supp. 40-3403 in several different ways. While the amendments in subsection (b)(2)(A) through (F) have been made primarily for readability, the amendment to subparagraph (A) adds a new requirement that at least two of the three nominees be Doctors of Medicine, or another way to look at it is that one of the three nominees can be a non-physician. Current law does not specify the number of the nominees who must hold that degree. Section 2, in subsection (d) would increase the threshold amount from \$300,000 to \$500,000 that would require the fund to pay a judgement or settlement by making installment payments of \$500,000 or 10% of the judgement, whichever is greater. Lastly, Effective January 1, 2022, Section 2 would require healthcare providers to make an election to be covered by one of two options provided, in addition to their basic coverage, limiting the liability of the fund with respect to judgements or settlements relating to injury or death arising out of the rendering or failure to render professional services on or after January 1, 2022. Current law provides three options from which each healthcare provider may choose one.

Subsection (I) would allow certain healthcare facilities that qualify as self-insurers via their coverage by a captive insurance company to opt out of selecting one of the new fund coverage limits, so long as the facilities are in substantial compliance with the minimum statutory coverage requirements of the act.

Section 3 amends K.S.A. 2020 Supp. 40-3408, pertaining to the liability of an insurer or self-insurer for injury or death arising out of an act or omission of a healthcare provider. The amendment to this section states that the private insurer is liable only for the basic coverage in effect on the date of the incident giving rise to the claim, subject to an annual aggregate liability of 3X the basic coverage amount.

Section 4 amends K.S.A. 2020 Supp 40-3409, pertaining to service of process. The amendment to this statute would extend the current law from 10 days to 30 calendar days and specify delivery methods in addition to registered mail of certified mail, priority mail, commercial delivery service and first class mail.

Section 5 amends K.S.A. 2020 Supp. 40-3414, pertaining to qualification of healthcare providers or healthcare systems as self insurers. Under current law, any health care provider or health care system that owns or operates more than e medical care facility or more than one health care facility, as defined in [K.S.A. 40-3401](#), and amendments thereto, licensed by the state of Kansas, whose aggregate annual insurance premium is or would be \$100,000 or more for basic coverage calculated in accordance with rating procedures approved by the commissioner pursuant to [K.S.A. 40-3413](#), and amendments thereto, may qualify as a self-insurer by obtaining a certificate of self-insurance from the board of governors. The amendment would increase the aggregate annual premium to \$150,000. This section would also provide that the Board of Governors shall deem applicants for self-insurance who own and operate more than one medical care facility as qualified if the applicant is insured by a captive insurance company.

Section 6 amends K.S.A. 2020 Supp 40-3424, pertaining to fund liability for judgements and settlements against inactive healthcare providers. The amendment would limit the aggregate fund liability for all judgements and settlements made in any fiscal year against an inactive healthcare provider to \$3M in any fiscal year, and on and after January 1, 2022, it would make the aggregate fund liability for inactive healthcare providers equal to three times the coverage amount on the date of any incident that gives rise to a claim.