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**MEMORANDUM**

To: Chairman Sutton and the House Committee on Insurance

From: Office of Revisor of Statutes

Date: February 19, 2024

Subject: **HB 2787, Updating certain definitions, terms and conditions relating to coverage by the Kansas insurance guaranty association and authorizing the commissioner of insurance to reduce the number of members of the association's board of directors.**

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HB 2787 amends K.S.A. 40-2903, 40-5905, 40-2906 and 40-2910, pertaining to the Kansas insurance guaranty association.

Section 1 of the bill amends K.S.A. 40-2903, which is the definitions section of the Kansas insurance guaranty association act. Back in 2022, the NAIC met to address the issue of continuity of guaranty fund coverage when a policy is transferred from one insurer to another. The fix to the issue was to amend the definition of "covered claim" to have the term include claim obligations that arose through the issuance of an insurance policy by a member insurer, which are later allocated, transferred, merged into, novated, assumed by or otherwise made the sole responsibility of a member or nonmember insurer if: (1) the original member insurer has no remaining obligation on the policy after the transfer; (2) a final order of liquidation with a finding of insolvency has been entered against the insurer that assumed the member's coverage obligations by a court of competent jurisdiction in the insurer's state of domicile; (3) the claim would have been a covered claim, as defined in subsection (c)(1), if the claim had remained the responsibility of the original member insurer and the order of liquidation had been entered against the original member insurer with the same claim submission date and liquidation date; and (4) in cases where the member's coverage obligations were assumed by a nonmember insurer, the transaction received prior regulatory or judicial approval.

Additionally, the term "cybersecurity insurance" has been added as a defined term on page 3, in lines 2 through 7.

Section 2 of the bill amends K.S.A. 40-2905, pertaining to the number of board members of the association. The bill would reduce the number of board members from nine to no more than seven, as of January 1, 2025, based upon the commissioner's determination at the expiration of each board member's term, whether or not to continue the board member's position on the board. Members of the board would be selected by member insurers and would serve a term of three years, but would be removable for inefficiency, neglect of duty or malfeasance.

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Section 3 of the bill amends K.S.A. 40-2906, relating to insolvency of a member insurer and duties of the association. Here, the amendment would add language to limit the association's exposure in the event of a cybersecurity insurance claim. The language added would specify that in no event shall the association be obligated to pay an amount in excess of \$300,000 for all first- and third-party claims under a policy or endorsement providing or that is found to provide cybersecurity insurance coverage and arising out of, or related to, a single insured event, regardless of the number of claims made or the number of claimants.

Section 4 of the bill amends K.S.A. 40-2910, pertaining to exhaustion of rights under an insurance policy and claim recovery reductions. Under current law, a claimant filing a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer that is also a covered claim is required to exhaust the claimant's rights under the policy, and includes a claim "under any kind of insurance, whether such claim is a first- or third-party claim, and shall include, without limitation, accident and health insurance, worker's compensation, Blue Cross and Blue Shield, and all other coverages, except for policies of an insolvent insurer. Any amount payable on a covered claim under the Kansas insurance guaranty association act would be reduced by the full applicable limits stated in the other insurance policy or by the amount of any recovery under such other insurance policy. The bill would amend the statute to add any right under a life insurance policy as an exception to the reduction of claim process. The bill would further clarify that the claim would be reduced by the lesser of: (1) the Association's covered claim limit; (2) the amount of the judgement on the settlement of the claim; or (3) policy limits of the insolvent insurer's policy.

If enacted, the bill would become effective on July 1, 2024.