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**Testimony in Support of House Bill 2213
Clarifying the definition of “amount involved” in an insurance fraud**

**Presented to the House Insurance Committee
By Assistant Attorney General Paul Brothers**

February 25, 2019

Chairman Vickrey and Members of the Committee:

Thank you for the opportunity to appear on behalf of Attorney General Derek Schmidt and provide testimony in support of HB 2213. My name is Paul Brothers and I am an Assistant Attorney General in the Fraud and Abuse Litigation Division. One of the responsibilities of the Fraud and Abuse Litigation Division is the prosecution of crimes related to insurance fraud.

As of July 1, 2017, the Kansas Insurance Department began forwarding all cases of criminal insurance fraud to the Fraud and Abuse Litigation Division for potential criminal prosecution. Since these referrals began, the Fraud and Abuse Litigation Division has prosecuted several cases of committing a fraudulent insurance act under K.S.A. 40-2,118.

K.S.A. 40-2,118 defines what a fraudulent insurance act is and criminalizes committing a fraudulent insurance act with the severity level of the crime varying depending on the “amount involved.” K.S.A. 40-2,118 does not define the term “amount involved.” HB 2213 seeks to provide a definition for “amount involved.”

First, we believe HB 2213 contains a drafting error in section (g)(1)(C). Currently, section (g)(1)(C) states “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 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.” After review, we believe (g)(1)(C) was intended to state “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.” (Underlined text inadvertently omitted from the bill.) We request the committee amend HB 2213 to reflect the intended language of section (g)(1)(C).

HB 2213 codifies and clarifies our current understanding of what “amount involved” means in K.S.A. 40-2,118. As currently written, we do not believe “amount involved” necessarily requires an actual loss as a result of the fraudulent insurance act. Rather, “amount involved” refers to the monetary amount claimed in the fraudulent insurance act regardless of whether the amount is paid or not.

The definition HB 2213 uses for “amount involved” mirrors the definition currently used in K.S.A. 21-5926(a) to define “aggregate amount of payments illegally claimed” in the Kansas Medicaid Fraud Control Act. The mirroring of definitions between these two statutes is logical. Both statutes criminalize the making of fraudulent claims whether that be against the Medicaid program or a private insurance policy. Additionally, both statutes use the monetary value of the fraudulent claim to determine the severity level of the crime.

Finally, HB 2213 repeals K.S.A. 40-2,118a. K.S.A. 40-2,118a is nearly identical to K.S.A. 40-2,118. The only difference between these two statutes is the means by which the fraudulent insurance act is presented to the insurance company. K.S.A. 40-2,118a only covers fraudulent insurance acts presented by written statement. K.S.A. 40-2,118 covers fraudulent insurance acts presented by written, electronic, electronic impulse, facsimile, magnetic, oral, or telephonic communication or statement. K.S.A. 40-2,118 encompasses the conduct proscribed in K.S.A. 40-2,118a. HB 2213 removes this duplication by repealing K.S.A. 40-2,118a.

We believe HB 2213 adds necessary clarity to K.S.A. 40-2,118 by defining the term “amount involved” and eliminating duplication through the repeal of K.S.A. 40-2,118a. For these reasons, on behalf of Kansas Attorney General Derek Schmidt, I encourage you to amend HB 2213, as outlined above, and report the bill favorably.

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