

Kansas Insurance Department

Proposed amendments to Kansas
Insurance Holding Company System Act



What is an insurance holding company system?

- A holding company system consists of two or more business entities.
- An insurance holding company system is a holding company system that includes at least one insurer.
- Common for one or more companies within a holding company to be non-insurance company.



History of Insurance Holding Company Systems

- In 1960's, increased inflation created interest in equity-based investments (e.g., stocks).
- P&C insurance business profits had declined, leaving many P&C insurers in need of additional capital.
- Increased attention given to the idea of “one-stop” financial service.
- These factors led to interest in diversification.
- Numerous companies merged and formed holding companies.



What does an insurance holding company system look like?

- Parent company that owns or controls one or more subsidiaries.
- Subsidiaries under the ownership or common control of a parent are referred to as affiliates.
- Collectively the parent and subsidiaries are referred to as the holding company system.
- An Insurance holding company system has at least one insurance company in the system.



Example: Zurich US Insurance Pool Group

- Ultimate Controlling Person – Zurich Insurance Group, Ltd. (Switzerland)
- 5 US Life Insurance Companies
- 67 US Property and Casualty Companies
- Numerous insurance companies (180+) in other countries along with management service companies



Zurich US Insurance Pool Group Abbreviated Organizational Chart

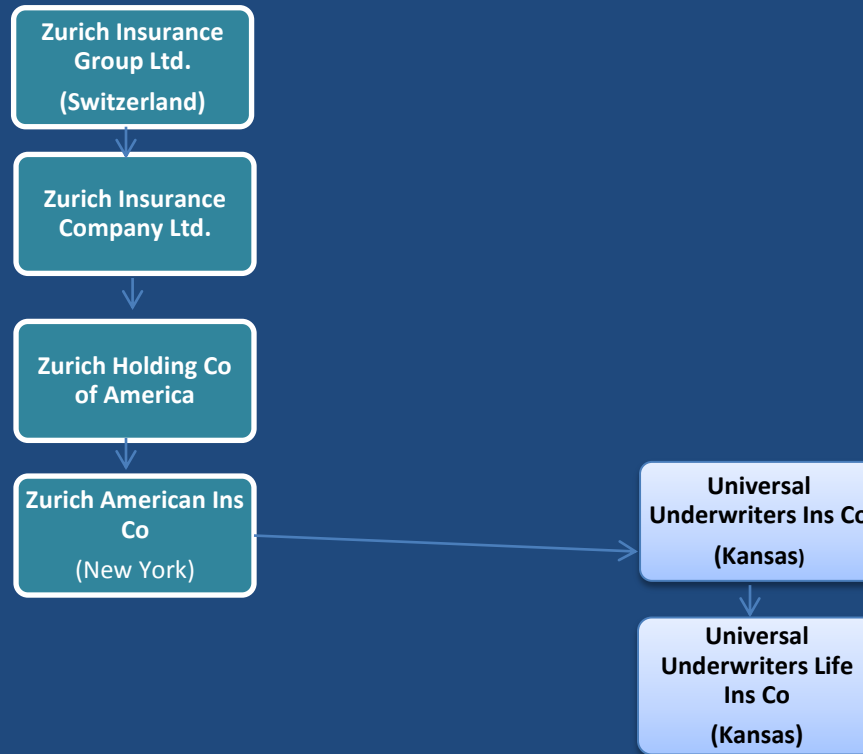
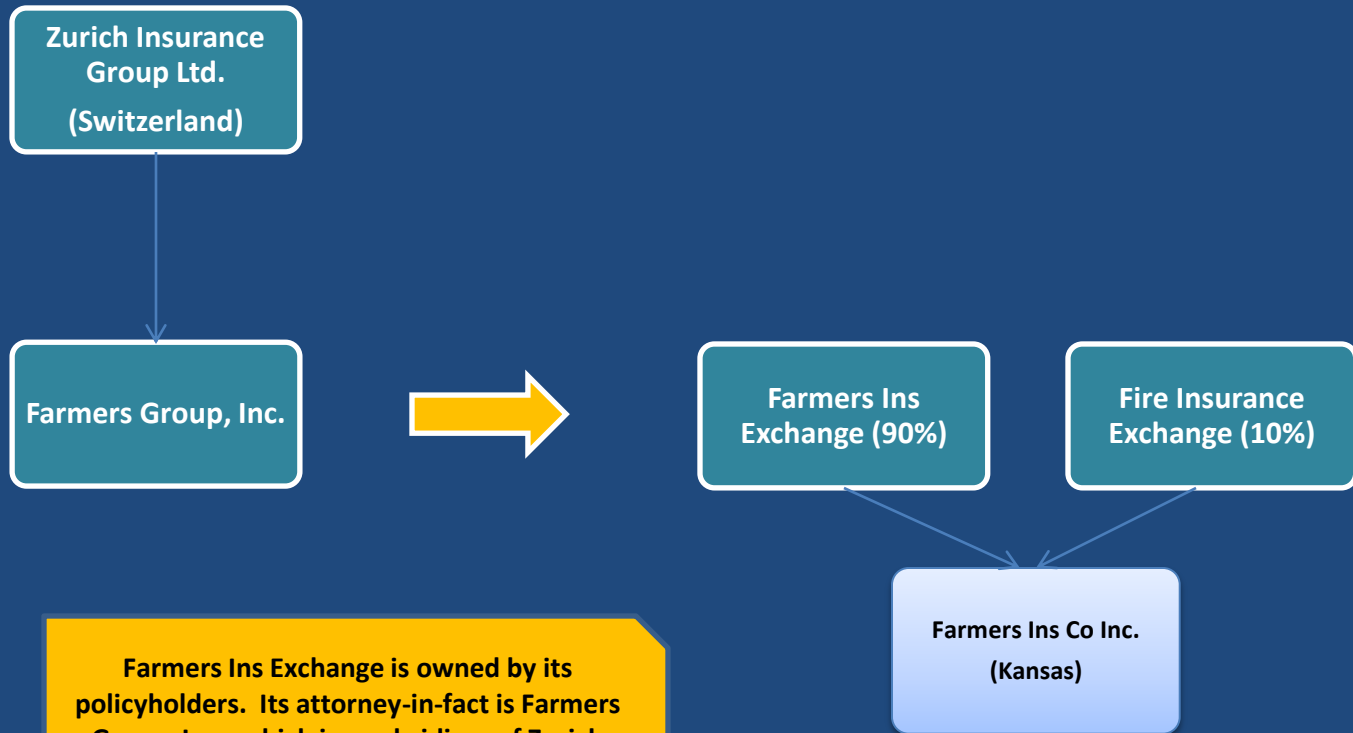


Chart excludes Farmers Ins Co, Inc.
(Kansas Domestic P&C Company)

Farmers Insurance Group Abbreviated Organizational Chart



Farmers Ins Exchange is owned by its policyholders. Its attorney-in-fact is Farmers Group, Inc., which is a subsidiary of Zurich Insurance Group Ltd.



History of Insurance

Holding Company System Regulation

- Under the state-based insurance regulation system in the U.S., the need for holding company supervision was recognized early on with the first National Association of Insurance Commissioners (NAIC) model law adopted in 1969.
- In 1974, Kansas enacted insurance holding company laws based on the NAIC model.



Purpose and Need

- The basic purpose of insurance holding company regulation is to ensure holding company operations outside of an insurer incorporated in a U.S. state (domestic insurer) do not jeopardize the solvency of the domestic insurer.
- Financial surveillance of domestic insurers is a core function of state insurance regulators.



State-Based Regulation

- State-based regulation of insurance requires a cooperative approach between regulators to adequately assess the financial risks posed to an domestic insurer within a holding company.
- This reality led to “windows and walls” approach.



Windows and Walls

- Regulators have “windows” from the insurer to the holding company activity to assess its potential impact on the ability of the insurer to pay its claims.
- “Windows” include documents required to be filed with the NAIC, states, and publicly available information, as well as information learned in discussions with key leaders, company employees, and financial regulators.



Windows and Walls

- Regulators have “walls” to protect the capital of the insurer by requiring the insurance commissioner’s approval for “material transactions” between the insurer and other entities within a holding company.



Windows and Walls

- With regulatory “walls,” money can still flow between the admitted insurer and the holding company, but regulators must assess the risk of large monetary transactions that take funds out of the insurance company’s capital reserves.
- Regulators assess whether a transaction is fair and reasonable and does not jeopardize the protection of policyholders before approving the transaction.



Current Kansas Holding Company Laws

Windows:

1) Access to information about:

- Structure, management, financial condition, ownership, and management of any “controlling person”;
- Identity and relationship of all members of the insurance holding company system;
- Certain recent transactions and agreements between the insurer and its affiliates (K.S.A. 40-3305).

2) Examination authority (K.S.A. 40-3307).



Current Kansas Holding Company Laws

Walls:

- 1) Requirements for prior approval to acquire an insurer (K.S.A. 40-3304); and
- 2) Prior approval of certain material transactions (K.S.A. 40-3306).



See A-1 for a current list of
Kansas insurance companies that are
part of a holding company



Recent Financial Crisis and AIG

- Importance of state-based insurance regulation highlighted by the circumstances involving AIG and the recent financial crisis.
- During the 2007-2008 financial crisis, the U.S. holding company regulatory framework was tested when American International Group (AIG) faced financial uncertainty.



Recent Financial Crisis and AIG

- In 2008, the AIG holding company was comprised of 71 U.S.-based insurance entities and 176 other financial service companies throughout the world.
- The AIG Financial Products unit based in London, a non-insurance component of the AIG holding company system, took on huge losses from risky investments in collateralized debt instruments.



Recent Financial Crisis and AIG

- This loss crippled AIG's financial operations and led to the federal bailout of the AIG holding company.
- U.S. state insurance regulators did not directly regulate the AIG holding company, but were heavily involved in the AIG discussions due to the need for funds from the AIG insurance subsidiaries to rectify AIG's liquidity problem.

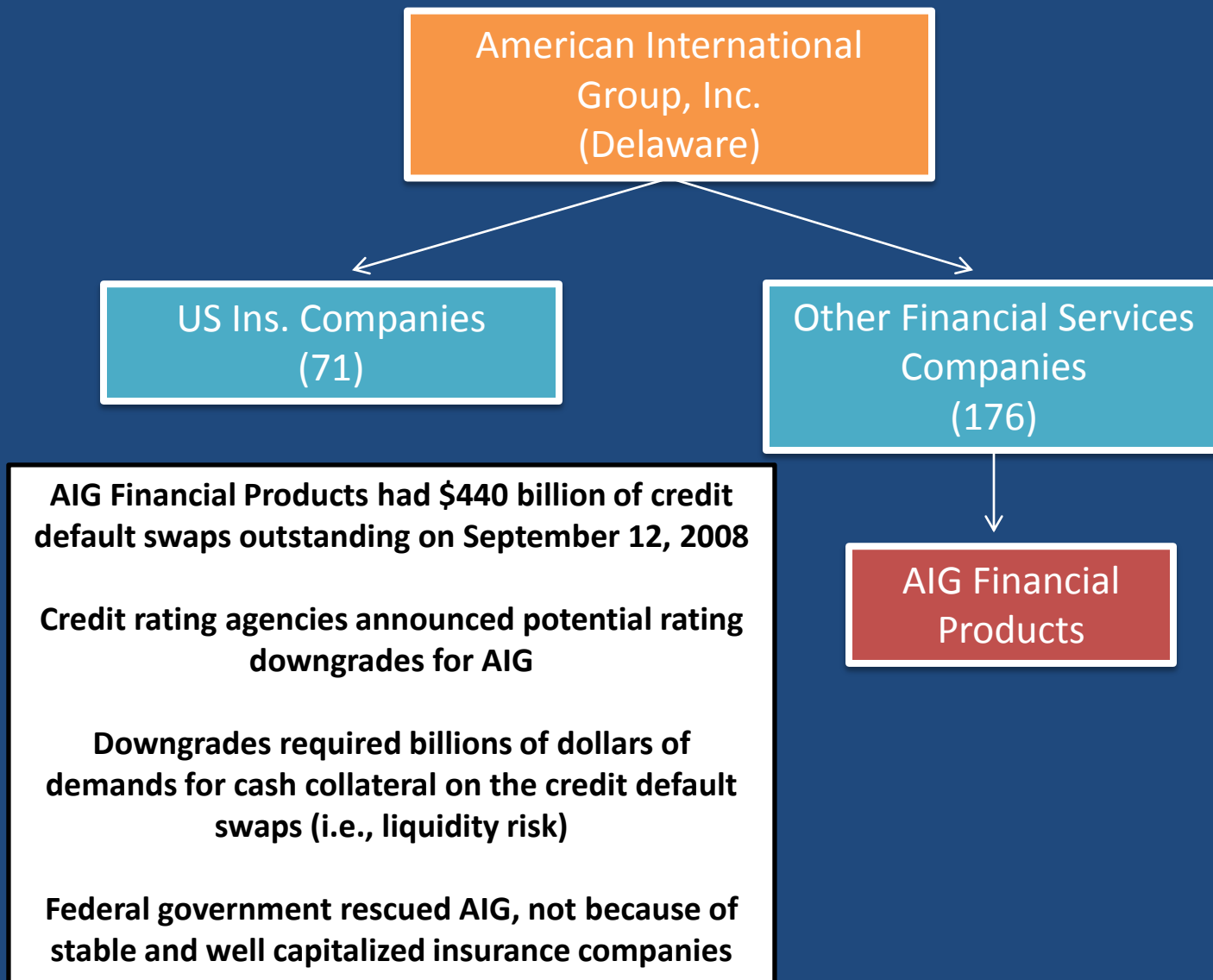


Recent Financial Crisis and AIG

- Had it not been for the regulatory “walls” that were established in the U.S., the funds protecting policyholders in the AIG insurance companies in the U.S. could have been used by the AIG holding company, thereby threatening insurance policyholder protection.
- These “walls” gave the insurance commissioners options when working with banking regulators on AIG holding company’s financial issues.



Recent Financial Crisis and AIG



Regulatory Improvements

- The contagion effects experienced by U.S. insurers in the AIG holding company system's near collapse caused U.S. insurance regulators to reevaluate their holding company system regulatory framework.
- The complexity of many holding company systems, including international operations, illustrated the need to maintain the regulatory “walls” in place, and to enhance the “windows” of the system.



Regulatory Improvements

- The amendments to NAIC's model holding company system act are a result of lessons learned from the recent financial crisis.
- The amendments proposed by KID generally provide additional “windows” for KID to gather and evaluate information needed to effectively protect policyholders of insurers in a holding company system, while enhancing protection of confidential information.



2012 Legislation

- Amendments proposed in 2012 HB 2508.
- HB 2508 language amended into Sub HB 2077 As Further Amended by the Sen. Comm.
- Sub HB 2077 language was the same as HB 2508, except for two changes to (b)(2) of Section 7 as a result of discussions with Industry representatives:
 - Struck references to “affiliates.”
 - Reduced penalty from \$5,000 to \$1,000.



2013 Legislation

- KID anticipates introducing language that is the same as Sub HB 2077, but with three potential changes:
 - Broaden confidentiality under Section 8 for documents filed pursuant to K.S.A. 40-3304.
 - Delay initial compliance date for and create premium volume-based exemption from the new enterprise risk report requirement under Section 5.



Amendments to the Kansas Insurance Holding Company System Act

Supervisory Colleges

Section 1, p. 5, l. 18



What is a supervisory college?

- Regulatory “window” into international operations of a holding company system.
- Provides a forum for cooperation and information sharing between the various regulators of entities within an insurance holding company system with international operations.



What is a supervisory college?

- Regulators involved are those that regulate the various companies within the insurance holding company system, which could include state, federal, and international regulators.
- State insurance regulators have been conducting a similar process with other state and federal regulators within the U.S. for decades. Supervisory colleges would allow for similar activity at the international level.



Why are supervisory colleges needed?

- At the heart of the lessons learned from the recent global financial crisis was the need for regulators to enhance their ability to assess risk posed to domestic insurers by other activities in the holding company system.
- Consideration of any international operations is necessary to fully assess such risk.
- Ultimate purpose is to ensure domestic insurers are solvent so they can pay policyholders' claims.



Supervisory Colleges (Sec. 1)

- Authorizes participation.

“(T)he commissioner of insurance shall have the power to participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance by the insurer with this act.” Sec. 1, p. 5, l. 20-23.



Supervisory Colleges (Sec. 1)

- Allows insurance commission to enter agreements to facilitate participation.

“The commissioner of insurance may enter into agreements in accordance with Section 8...providing the basis for cooperation between the commissioner of insurance and the other regulatory agencies, and the activities of the supervisory college.” Sec. 1, p. 6, l. 7-11.



Supervisory Colleges (Sec. 1)

- Authorizes commissioner to establish, manage, and coordinate participation in a supervisory college as a lead state.

“The powers of the commissioner of insurance with respect to supervisory colleges include, but are not limited to, the following...(1) Initiating the establishment of a supervisory college; (2) clarifying the membership and participation of other supervisors in the supervisory college; (3) clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a group-wide supervisor; (4) coordinating the ongoing activities of the supervisory college, including planning meetings, supervisory activities and processes for information sharing; (5) establishing a crisis management plan; and (6) establishing a regular assessment to the insurer for the payment of expenses incurred pursuant to subsection (c).” Sec. 1, p. 5, l. 24-36.



Supervisory Colleges (Sec. 1)

- Domestic insurer is required to pay reasonable expenses, including necessary travel, incurred by the commissioner.

“Each registered insurer subject to this section shall be liable for and shall pay the expenses, including reasonable expenses for necessary travel, the commissioner of insurance reasonably incurred with respect to the participation in a supervisory college in accordance with subsection (d).” Sec. 1, p. 5, l. 37-41.



Supervisory Colleges (Sec. 1)

- Participation in a supervisory college is discretionary and does not delegate any authority of the commissioner.

“Nothing in this section shall delegate to the supervisory college the authority of the commissioner of insurance to regulate or supervise the insurer or its affiliates within the jurisdiction of the supervisory college.” Sec. 1, p. 6, l. 11-14.



Supervisory Colleges (Sec. 1)

- Information shared by KID with other regulators in a supervisory college is confidential.

“(T)he commissioner of insurance...(m)ay share documents, materials or other information, including the confidential and privileged documents, materials or information...with...members of any supervisory college...provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material or other information, and has verified in writing the legal authority to maintain confidentiality...” Sec. 8, p. 23, l. 4-14.



Kansas companies currently part of an insurance holding company system with international operations include:

AmTrust Insurance Company of Kansas, Inc.

CIGNA Dental Health of Kansas, Inc.

Employers Reassurance Corp.

Union Fidelity Life Ins., Co.

Heritage Casualty Ins., Co.

Farmers Ins. Co., Inc.

Financial American Life Ins. Co.

Homesite Indemnity Co.

Kansas Bankers Surety Co.

MutualAid eXchange

Pyramid Life Ins. Co.

Security Benefit Life Ins. Co.

Travel Air Ins. Co., Ltd.

Travel Air Ins. Co. (Kansas)

UniCare Health Plan of Kansas, Inc.

Union Security Insurance Company

Universal Underwriters Ins. Co.

Universal Underwriters Life Ins. Co.

WellCare of Kansas, Inc.



What does a supervisory college look like?

Example: *Zurich Insurance Group Ltd.*

- Location: Zurich, Switzerland
- Two days of meetings (Nov. 7-8, 2012)
- Participants:
 - KID: Dir. of Financial Surveillance and General Counsel
 - Other state insurance regulators:
 - New York, California, Texas, Michigan, Illinois, Pennsylvania, Maryland
 - International insurance regulators:
 - Switzerland, Germany, Italy, Spain, United Kingdom, Canada



What does a supervisory college look like?

Possible Agenda

Day one (11/7/2012):

- Overview of holding company operations and strategic plan
 - Holding company/insurance operations
 - Holding company strategic plan and impact on insurance company operations
 - Enterprise risk management plan
 - Company acquisitions/formations/disposals
 - Intercompany transactions
 - Reinsurance
 - Investments
 - Other (e.g., restructure of holding company)

Regulatory/supervisory actions and activities



What does a supervisory college look like?

Possible Agenda

Day two (11/8/2012):

- Significant investment activities
- Changes in product or business units
- Changes in perceived strengths and weaknesses
- Key insurance companies:
 - Changes in perceived strengths and weaknesses
 - Specific group-wide concerns
- International supervisory concerns
- US regulatory concerns
- Executive session of US regulators and International supervisors



Amendments to the Kansas Insurance Holding Company System Act

Registration (Enterprise Risk Reporting)

Sec. 5, p. 13, l. 20



Registration (Sec. 5)

- Under current Kansas law, every insurer authorized to do business in Kansas that is a member of an insurance holding company system must register with the commissioner of insurance.
- The insurer must file a registration statement that includes certain information about the finances and operations of the insurer and its holding company.
- These regulatory “windows” into the holding company system help KID access enterprise risk.



Why assess enterprise risk?

- “Enterprise risk” is an activity or event that would have a material adverse effect on an insurer’s financial condition or liquidity or its holding company system as a whole.
- Financial surveillance of domestic companies is core function of KID.
- Ultimate purpose is to ensure domestic insurers can pay policyholders’ claims.



Why do enterprise risk regulations need enhancement?

- Response to economic downturns and worldwide discussions on contagion risk within the financial sector.
- Response to regulators' experience regarding the financial impact that non-insurance entities within the group can have on an insurance company's financial solvency; e.g., AIG.
- Proposed amendments to the Registration requirements of Section 5 add features that would better enable KID to identify enterprise risks in a holding company system.



Registration (Sec. 5)

- The key changes to Section 5 include:
 - 1) Enterprise risk reporting;
 - 2) Broader requirements for financial statements of affiliates; and
 - 3) Statements regarding governance and internal control.



Enterprise Risk Reporting (Sec. 5)

- “Enterprise risk report” is a new regulatory “window” to better enable KID to assess enterprise risk in a holding company system.
- “Ultimate controlling person” of a holding company system must file an annual enterprise risk report.
- “Ultimate controlling person” means the entity in a holding company system that is not controlled by any other entity.



Enterprise Risk Reporting (Sec. 5)

- Enterprise risk report must identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer.
- Insurer files “Form F.”
- Report is filed with the “lead state” commissioner of insurance of the insurance holding company system.



Enterprise Risk Reporting (Sec. 5)

“(T)he ultimate controlling person of every insurer subject to registration also shall file an annual enterprise risk report. The report, to the best of the ultimate controlling person’s knowledge and belief, shall identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state commissioner of insurance of the insurance holding company system as determined by the procedures within the financial analysis handbook adopted by the national association of insurance commissioners.” Sec. 5, p. 16, l. 8-16.



Form F

Enterprise Risk Report (Form F) includes the following information:

- Any material developments regarding strategy, internal audit findings, compliance or risk management affecting the insurance holding company system;
- Acquisition or disposal of insurance entities and reallocating of existing financial or insurance entities within the insurance holding company system;
- Any changes of shareholders of the insurance holding company system exceeding ten percent (10%) or more of voting securities;
- Developments in various investigations, regulatory activities or litigation that may have a significant bearing or impact on the insurance holding company system;
- Business plan of the insurance holding company system and summarized strategies for next 12 months;
- Identification of material concerns of the insurance holding company system raised by supervisory college, if any, in last year;
- Identification of insurance holding company system capital resources and material distribution patterns;
- Identification of any negative movement, or discussions with rating agencies which may have caused, or may cause, potential negative movement in the credit ratings and individual insurer financial strength ratings assessment of the insurance holding company system (including both the rating score and outlook);
 - Information on corporate or parental guarantees throughout the holding company and the expected source of liquidity should such guarantees be called upon; and
 - Identification of any material activity or development of the insurance holding company system that, in the opinion of senior management, could adversely affect the insurance holding company system.



Enterprise Risk Reporting (Sec. 5)

Potential changes to Sub HB 2077 language:

- Initial enterprise risk report must be filed by *May 1, 2015*.
- The ultimate controlling person of an insurer with total direct and assumed annual premiums of less than \$300 million is not required to submit an enterprise risk report under this subsection.



Financial Statements (Sec. 5)

- A new requirement of the annual registration statement is that the insurer must provide financial statements of all affiliates if requested by the commissioner.
- This “window” into the financial health of a domestic insurer’s affiliates is vital to assessing a holding company system’s enterprise risk.



Financial Statements (Sec. 5)

“(I)f requested by the commissioner of insurance, the insurer shall include financial statements of or within an insurance holding company system, including all affiliates. Financial statements may include, but are not limited to, annual audited financial statements filed with the U.S. Securities and Exchange Commission (SEC) pursuant to the securities act of 1933, as amended, or the securities exchange act of 1934, as amended. An insurer required to file financial statements pursuant to this paragraph may satisfy the request by providing the commissioner of insurance with the most recently filed parent corporation financial statements that have been filed with the SEC...” Sec. 5, p. 14, l. 25-34.



Governance & Internal Control (Sec. 5)

- As a part of the annual registration, the insurer must provide statements that the insurer's board of directors and principal officers have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures.
- Ensures an insurer has developed proper governance and internal controls.

“(S)tatements that the insurer’s board of directors and principal officers oversee corporate governance and internal controls and that the insurer’s principal officers have approved, implemented and continue to maintain and monitor corporate governance and internal control procedures...” Sec. 5, p. 14, l. 35-39.



See A-2.1 – list of companies that would qualify for a possible exemption to the Enterprise Risk Report requirement.

See A-2.2 – Form F (Enterprise Risk Report).

See A-3 – Form B (Insurance Holding Company Annual Registration Statement).

See A-3 – Form C (Summary of Changes to Registration Statement).



Amendments to the Kansas Insurance Holding Company System Act

Acquisitions & Mergers

Sec. 4, p. 7, l. 34



Acquisitions & Mergers (Sec. 4)

- The enhancements to Section 4 essentially align procedures for acquisitions and mergers involving a domestic insurer that is subject to registration under Section 5 with the enterprise risk reporting requirements of Section 5.



Acquisitions & Mergers (Sec. 4)

- Additional information required for an acquisition or merger:
 - Agreement by acquiring entity to file the enterprise risk report required in Section 5.
 - Acknowledgement to provide such information necessary to evaluate enterprise risk to the insurer.



Acquisitions & Mergers (Sec. 4)

“The statement to be filed with the commissioner of insurance hereunder...shall contain the following information...an agreement by the person required to file the statement referred to in subsection (a) that it will provide the annual report, specified in subsection (l) of K.S.A. 40-3305, and amendments thereto, for so long as control exists...(and) an acknowledgment by the person required to file the statement referred to in subsection (a) that the person and all subsidiaries within its control in the insurance holding company system will provide to the commissioner of insurance upon request such information as the commissioner of insurance deems necessary to evaluate enterprise risk to the insurer...” Sec. 4, p. 8, l. 21-24, p. 10, l. 13-22.



Acquisitions & Mergers (Sec. 4)

- Process for handling multiple department approvals of an acquisition or merger of a number of insurers; e.g., holding a public hearing on a consolidated basis.

“If the proposed acquisition of control will require the approval of more than one commissioner of insurance, the public hearing referred to in paragraph (2) may be held on a consolidated basis upon request of the person filing the statement referred to in subsection (a). Such person shall file the statement referred to in subsection (a) with the national association of insurance commissioners within five days of making the request for a public hearing. A commissioner of insurance may opt out of a consolidated hearing, and shall provide notice to the applicant of the opt-out within 10 days of the receipt of the statement referred to in subsection (a). A hearing conducted on a consolidated basis shall be public and shall be held within the United States before the commissioners of insurance of the states in which the insurers are domiciled. Such commissioners of insurance shall hear and receive evidence. A

commissioner of insurance may attend such hearing, in person or by telecommunication.” Sec. 4, p. 12, l. 9-23.



Acquisitions & Mergers (Sec. 4)

- Acquiring party may be required to maintain or restore the capital of the insurer to the level required by law within 60 days after the change in control.

“As a condition of a change of control of a domestic insurer, any determination by the commissioner of insurance that the person acquiring control of the insurer shall be required to maintain or restore the capital of the insurer to the level required by the laws and regulations of this state shall be made not later than 60 days after the date of notification of the change in control submitted pursuant to subsection (a) of this act.” Sec. 4, p. 12, l. 24-29.



See A-4 – Form A (Statement Regarding the Acquisition and Control or Merger with a Domestic Insurer).



Amendments to the Kansas Insurance Holding Company System Act

Material Transactions

Sec. 6, p. 16, l. 25



Material Transactions (Sec. 6)

- Section 6 generally requires prior approval by the commissioner of certain material transactions between a registered insurer and its affiliates.
- Prior approval of material transactions is a regulatory “wall” used to protect the capital of the insurer from financial risks within a holding company system.
- Similar rules protected AIG’s insurance operations from removal of their capital by the AIG holding company.



Material Transactions (Sec. 6)

- The amendments subject the following material transactions to prior approval:
 - Reinsurance pooling agreements;
 - Reinsurance agreements in which the projected reinsurance premium or a projected change in the insurer's liabilities in any of the next three consecutive years equals or exceeds 5% of the insurer's surplus; and
 - Tax allocation agreements.
- Added clarity regarding determination of extraordinary dividend for insurers (non-life).



Material Transactions (Sec. 6)

“The following transactions involving a domestic insurer and any person in such insurer's insurance holding company system may not be entered into unless the insurer has notified the commissioner in writing of such insurer's intention to enter into such transaction at least 30 days prior thereto, or such shorter period as the commissioner may permit, and the commissioner has not disapproved such transaction within such period...Reinsurance agreements or modifications thereto, including...(a)ll reinsurance pooling agreements...and...agreements in which the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or a projected change in the insurer's liabilities in any of the next three consecutive years equals or exceeds 5% of the insurer's surplus as regards policyholders, as of December 31 next immediately preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurer...(and)...all management agreements, service contracts, tax allocation agreements and all cost-sharing arrangements...” Sec. 6, p. 17, l. 4-10, 29-42.



See A-5 – Form D (Prior Notice of Transaction).



Amendments to the Kansas Insurance Holding Company System Act

Examinations

Sec. 7, p. 20, l. 22



Examinations (Sec. 7)

- Section 7 provides commissioner authority to examine registered insurers.
- Amendments strengthen the commissioner's authority to examine a registered insurer's affiliates, creating a larger "window" for information.

"Subject to the limitation contained in this section and in addition to the powers which the commissioner of insurance has under K.S.A. 40-222 and K.S.A. 40-222a, and amendments thereto, relating to the examination of insurers, the commissioner of insurance shall...have the power to...examine any insurer registered under K.S.A. 40-3305, and amendments thereto, and such insurer's affiliates to ascertain the financial condition, including enterprise risk, of such Insurer." Sec. 7, p. 20, l. 23-35.



Examinations (Sec. 7)

- Strengthens authority to order an insurer and its affiliates to produce information not in their possession, if information can be obtained through contractual relationships, statutory obligations, or another method.
- Adds power to issue subpoenas, administer oaths, and examine under oath any person for purposes of determining compliance with Section 7.



Examinations (Sec. 7)

“To determine compliance with this act, the commissioner of insurance may order any insurer registered under K.S.A. 40-3305, and amendments thereto, to produce information not in the possession of the insurer, if the insurer can obtain access to such information pursuant to contractual relationships, statutory obligations or another method. In the event the insurer cannot obtain the information requested by the commissioner of insurance, the insurer shall provide the commissioner of insurance a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of information. Whenever it appears to the commissioner of insurance that the detailed explanation is without merit, the commissioner of insurance may require, after notice and hearing, the insurer to pay a penalty of not more than \$1,000 for each day’s delay, or may suspend or revoke the license of the insurer.” Sec. 7, p. 21, l. 1-14.

“The commissioner of insurance shall have the power to issue subpoenas, administer oaths and examine under oath any person for purposes of determining compliance with this section...” Sec. 7, p. 21, l. 27-29.



Amendments to the Kansas Insurance Holding Company System Act

Confidentiality

Sec. 8, p. 21, l. 41



Confidentiality (Sec. 8)

- With increased information sharing with additional regulatory “windows” comes increased concern about protection of confidential and privileged information.
- Changes include enhanced confidentiality provisions, which are strongly supported by Industry.



Confidentiality (Sec. 8)

- Any information reported by an insurer pursuant to Sections 4, 5, and 6, and in the course of an examination or investigation under Section 7 is confidential and privileged, not subject to disclosure under the Kansas Open Records Act, not subject to subpoena, and not subject to discovery or admissible as evidence in any private civil action.



Confidentiality (Sec. 8)

“Documents, materials or other information obtained by or disclosed to the commissioner of insurance of insurance or any other person in the course of an examination or investigation made pursuant to K.S.A. 40-3307, and amendments thereto, and all information reported pursuant to K.S.A. 40-3304, 40-3305 and 40-3306, and amendments thereto, shall:

- (1) Be confidential and privileged;*
- (2) not be subject to disclosure under the Kansas open records act, K.S.A. 45-215 et seq., and amendments thereto;*
- (3) not be subject to subpoena; and*
- (4) not be subject to discovery or admissible in evidence in any private civil action.” Sec. 8, p. 22, l. 16-27.*



Confidentiality (Sec. 8)

- Generally, confidential documents, materials, or other information cannot be made public without the prior written consent of the insurer.
- Commissioner can make confidential information public, after opportunity for notice and hearing, if doing so is in the interest of policyholders, shareholders, or public.



Confidentiality (Sec. 8)

“The commissioner of insurance shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer to which it pertains unless the commissioner of insurance, after giving the insurer and its affiliates who would be affected thereby, notice and opportunity to be heard in accordance with the provisions of the Kansas administrative procedure act, determines that the interests of policyholders, shareholders or the public would be served by the publication thereof, in which event the commissioner of insurance may publish all or any part thereof in such a manner as the commissioner of insurance may deem appropriate. In making such determination, the commissioner of insurance also shall take into consideration any potential adverse consequences of the disclosure thereof.”
Sec. 8, p. 22, l. 28-39.



Confidentiality (Sec. 8)

- Commissioner or other person cannot be required to testify in any private civil action.
- Commissioner may share confidential information with other regulators and NAIC with agreement in writing to maintain confidentiality and privileged status of such information.
- Commissioner may only share confidential documents reported with the Registration Statement under Section 5 to states having substantially similar confidentiality laws and that agree in writing not to disclose the information.



Confidentiality (Sec. 8)

“Neither the commissioner of insurance nor any person who received documents, materials or other information while acting under the authority of the commissioner of insurance or with whom such documents, materials or other information are shared pursuant to this section shall be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to subsection (a).” Sec. 8, p. 22, l. 40-43, p. 23, l. 1-2.

“(T)he commissioner of insurance...may share documents, materials or other information...with other state, federal and international regulatory agencies, with the national association of insurance commissioners and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, including members of any supervisory college described in section 1...provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material or other information, and has verified in writing the legal authority to maintain confidentiality.” Sec. 8, p. 23, l. 4-14.

“(N)otwithstanding the provisions of paragraph (l)...the commissioner of insurance may only share confidential and privileged documents, material or information reported pursuant to subsection (1) of K.S.A. 40-3305...with the commissioner of insurance of states having statutes or regulations substantially similar to subsections (a) and (b), and who have agreed in writing not to disclose such information.” Sec. 8, p. 23, l. 15-21.



Confidentiality (Sec. 8)

- Commissioner must maintain confidential or privileged status of information received based on the laws of the jurisdiction that is the source.

“(The commissioner)...may receive documents, materials or information, including otherwise confidential and privileged documents, materials or information from the...(NAIC)..., and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information.” Sec. 8, p. 23, l. 22-30.



Confidentiality (Sec. 8)

- Commissioner must enter into written agreements with NAIC governing sharing and use of information, including procedures and protocols regarding confidentiality and security of information shared with NAIC.



Confidentiality (Sec. 8)

“(The commissioner)...shall enter into written agreements with the national association of insurance commissioners governing sharing and use of information provided pursuant to this act consistent with this subsection that shall...(s)pecify procedures and protocols regarding the confidentiality and security of information shared with the...(NAIC)...and its affiliates and subsidiaries pursuant to this act, including procedures and protocols for sharing by the...(NAIC)...with other state, federal or international regulators;...specify that ownership of information shared with the...(NAIC)...and its affiliates and subsidiaries pursuant to this act remains with the commissioner of insurance and the...(NAIC’s)...use of the information is subject to the direction of the commissioner of insurance;...require prompt notice to be given to an insurer and its affiliates whose confidential information in the possession of the...(NAIC)..., pursuant to this act, is subject to a request or subpoena to the...(NAIC)...for disclosure or production; and...require the...(NAIC)...and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which the...(NAIC)...and its affiliates and subsidiaries may be required to disclose confidential information about the insurer and its affiliates shared with the...(NAIC)...and its affiliates and subsidiaries pursuant to this act.” Sec. 8, p. 23, l. 33-43, p. 24, l. 1-15.



Confidentiality (Sec. 8)

- Sharing of information does not constitute delegation of regulatory authority by the commissioner.
- No waiver of any applicable privilege or claim of confidentiality as a result of disclosure.
- Clarification of the confidential and privileged nature of information in the possession of the NAIC pursuant to the act.



Confidentiality (Sec. 8)

“The sharing of information by the commissioner of insurance, pursuant to this act, shall not constitute a delegation of regulatory authority or rulemaking, and the commissioner of insurance is solely responsible for the administration, execution and enforcement of the provisions of this act.” Sec. 8, p. 24, l. 16-20.

“No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner of insurance under this act or as a result of sharing as authorized in subsection (d).” Sec. 8, p. 24, l. 21-24.

“Documents, materials or other information in the possession or control of the national association of insurance commissioners, pursuant to this act, shall be confidential by law and privileged, shall not be subject to the open records act, K.S.A. 45-215 et seq., and amendments thereto, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.” Sec. 8, p. 24, l. 25-30.



Confidentiality (Sec. 8)

- Documents received pursuant to the act are not subject to the Kansas Open Records Act, K.S.A. 45-215, et seq.

*“Documents received pursuant to this section shall not be subject to disclosure pursuant to the open records act, K.S.A. 45-215 et seq. , and amendments thereto.”
Sec. 8, p. 23, l. 30-32.*



KID's Anticipated Costs

- The domestic insurer would be responsible for paying KID's reasonable costs associated with attending the supervisory college.
- The amendments present no additional costs to KID outside of its existing budget.



Accreditation Issues

- The next NAIC accreditation review in 2016.
- This is effectively the deadline for implementing the Model Holding Company System Act revisions in order to maintain accreditation.
- Accreditation is necessary for KID's company examinations to be accepted by other state insurance regulators; otherwise, companies would be subject to duplicitous examinations by other states.



Adoption and Industry Support

- To date, ten states have adopted the insurance holding company system revisions:
 - CA, CT, IN, KY, LA, NE, PA, RI, TX, WV
- The insurance holding company system act amendments proposed in 2012 Sub HB 2077 enjoyed strong Industry support, including:

Polsinelli Shughart, PC, American Council of Life Insurers (ACLI), Kansas Association of Property and Casualty Insurers, American Insurance Association (AIA), Security Benefit Life Insurance Company, Farmers Alliance Mutual Ins. Co., Farmers Ins. Co., American International Group, Inc. (AIG).



Summary

- Kansas has been regulating insurance holding companies since 1974.
- Experiences of the recent financial crisis, especially with AIG, led to scrutiny of insurance holding company regulation.
- The conclusion was that regulators need enhanced “windows” to look into the operations and financial health of insurance holding company systems, including international operations.



Summary

- The key amendments include authorization to participate in supervisory colleges, enterprise risk reporting requirements, and enhanced confidentiality provisions.
- The goal in monitoring insurance holding companies is to ensure domestic insurers remain solvent and are able to pay policyholders' claims.
- Such financial surveillance of domestic companies is a core function of KID, as is protecting consumers who rely upon domestic companies to pay their claims.

