

Insurance Holding Company Act; HB 2007

HB 2007 establishes the Insurance Holding Company Act and amends the Insurance Code to modify existing provisions governing insurance holding companies.

Supervisory College

The bill enacts new law and amends existing provisions in the Insurance Code governing insurance holding companies to establish the Insurance Holding Company Act. Under the new Act, the Insurance Commissioner (Commissioner) is granted the power to participate in a supervisory college for any domestic insurance company (insurer) that is part of an insurance holding company system with international operations.

The powers assigned to the Commissioner include, but are not limited to:

- Initiating the establishment of a supervisory college;
- Clarifying the membership and participation of other supervisors in the supervisory college;
- Clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a group-wide supervisor;
- Coordinating the ongoing activities of the supervisory college, including planning meetings, supervisory activities, and processes for information sharing;
- Establishing a crisis management plan; and
- Establishing a regular assessment to the insurer company for the payment of expenses incurred pursuant to requirements of the bill (expenses, including travel, incurred by the Commissioner).

The supervisory college could be convened as either a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the insurer or its affiliates. The Commissioner is authorized to participate in the supervisory college with other regulators, including other state, federal, and international regulatory agencies, and to enter into agreements pursuant to document disclosure provisions in existing law.

Definitions

The bill adds the following definition for the term “enterprise risk”:

Any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the

insurer or its insurance holding company system as a whole. This could include anything that would cause the insurer's risk-based capital (RBC) to fall into company action level RBC (as defined by law) or would cause the insurer to be in hazardous condition (as defined by law).

Statement Filed with Insurance Commissioner; Public Hearings

The bill adds the following to the list of items that are required to be included with a statement filed with the Commissioner (transactions affecting control of the insurer, including mergers and acquisitions):

- An agreement that the annual report (as defined by law) will be provided for so long as control exists; and
- An acknowledgment that any information the Commissioner deems necessary to evaluate enterprise risk to the insurer will be provided.

The bill also allows consolidation of a public hearing, upon request of the person filing the statement. The person is required to file the statement with the National Association of Insurance Commissioners (NAIC) within five days of making the request for a public hearing.

The bill also allows an insurance commissioner to opt out of a consolidated hearing and allow the hearing to be public and held in the state where the insurers are domiciled. Insurance commissioners are permitted to attend the hearing either in person or by telecommunication. Notification requirements also are specified for instances when an insurance commissioner determines the person acquiring control of the insurer is required to maintain or restore the capital of the insurer to the level required by law and regulation.

Registration Statements

The bill allows the Commissioner to request financial statements of an insurance holding company system, including its affiliates, as part of the insurer's registration statement. The financial statements could include annual audited financial statements filed with the U.S. Securities and Exchange Commission (SEC). An insurer required to file financial statements is allowed to satisfy the request by providing the Commissioner with the most recently filed parent corporation financial statements that have been filed with the SEC.

Insurers also are requested to provide statements ensuring the insurer's board of directors and principal officers oversee corporate governance and internal control, and that the insurer's principal officers have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures. Finally, the registration statement can include any other information required by the Commissioner, as determined through rules and regulations.

The bill requires the ultimate controlling person of every insurer subject to registration to file an annual enterprise risk report. Ultimate controlling persons of insurers with total direct and assumed annual premiums of less than \$300 million are exempt from submitting an enterprise risk report.

The enterprise risk report identifies the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report is filed with the lead commissioner of insurance of the insurance holding company system, as determined by the procedures within the financial analysis handbook adopted by the NAIC. The first enterprise risk report is required to be filed no later than May 1, 2015, and annually thereafter. The failure to file a registration statement, any summary of the statement, or enterprise risk filing within the specified time is considered a violation.

Material Transactions with Affiliates

The bill adds a standard to the regulation of material transactions by registered insurers with their affiliates, including agreements for cost-sharing services and other provisions required by rules and regulations adopted by the Commissioner.

The bill also adds certain agreements that are subject to prior approval by the Commissioner, including all reinsurance pooling agreements and 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 5.0 percent of the insurer's surplus, and tax allocation agreements.

The bill inserts language clarifying the determination of extraordinary dividend or distribution for an insurer (other than a life insurer).

Examination, Information Request; Subpoena Power

The bill clarifies that the Commissioner has the authority to examine a registered insurer and its affiliates to determine the financial condition of the insurer. The Commissioner also is permitted to order any registered insurer to produce records, books, or other information in the possession of the insurer or its affiliates that are reasonably necessary to determine compliance with the Act.

Further, the bill allows the Commissioner to order any registered insurer to produce information not in possession of the insurer, if the insurer can obtain access to the information through its contractual relationships, statutory obligations, or another method. If the insurer cannot obtain the information, the bill requires the insurer to provide the Commissioner a detailed explanation of the reason the information cannot be obtained and the identity of the information holder. If the Commissioner finds the explanation to be without merit, the Commissioner may require, after notice and hearing, the insurer to pay a penalty of not more than \$1,000 for each day's delay, or to suspend or revoke the license of the insurer.

The bill also grants the Commissioner the power to issue subpoenas, administer oaths, and examine under oath, any person for the purposes of determining compliance with the examination and information request provisions required under the bill for registered insurers. Upon the failure or refusal of a person to obey a subpoena, the Commissioner is permitted to petition a court for an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order is punishable as contempt of court. The bill also provides for compensation of fees, mileage, and actual expenses incurred in securing the attendance and testimony of witnesses.

Confidential Information, Disclosure Provisions

The bill specifies that documents, materials, or other information obtained by or disclosed to the Commissioner or any other person in the court of examination or investigation 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 in evidence in any private civil action.

Additionally, the Commissioner is prohibited from making the documents, materials, or other information public without the prior written consent of the insurer. These documents may be made public if the Commissioner determines, after giving the insurer and its affiliates notice and opportunity to be heard in accordance with the Kansas Administrative Procedure Act, that the interests of policyholders, shareholders, or the public would be served by the publication. The Commissioner is required to consider any potential adverse consequences of this disclosure. The Commissioner or any other person who received the documents, materials, or other information is not permitted or required to testify in any private civil action.

The bill also authorizes the Commissioner to:

- Share documents, materials, or other information, including those privileged and confidential documents, with other state, federal, and international regulatory agencies; with the NAIC and its affiliates and subsidiaries; and with state, federal, and international law enforcement authorities, including members of the supervisory college (a written confidentiality agreement is required);
- Share confidential and privileged documents with states having substantially similar statutes or regulations (a written confidentiality agreement is required);
- Receive documents, materials, and other information, including confidential and privileged documents and information from NAIC and its affiliates and subsidiaries, and from certain regulatory and law enforcement officials and jurisdictions. The Commissioner is required to maintain this information as confidential and privileged under the laws of the jurisdiction that is the source of this information; and
- Enter into written agreements with the NAIC regarding sharing and use of information provided pursuant to the Act, including the procedures and protocols for sharing by NAIC with other state, federal, or international regulators.

The bill further provides that the sharing of information by the Commissioner does not constitute a delegation of authority or regulatory rulemaking. In addition, the Commissioner is solely responsible for the administration, execution, and enforcement of the provisions of the Act. The bill also requires that no waiver of any applicable privilege or claim of confidentiality in the documents, materials, or other information will occur as a result of this disclosure. Documents, materials, or other information in the possession or the control of the NAIC are considered confidential and privileged. This information is not subject to the Kansas Open Records Act or discovery, or admissible in evidence in any private civil action.