

SESSION OF 2013

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2007

As Recommended by House Committee on
Insurance

Brief*

HB 2007 would establish the Insurance Holding Company Act and amend the Insurance Code to modify existing provisions governing insurance holding companies.

Supervisory College (New Sections 1 and 2)

The bill would enact new law and amend 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) would be 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 would include, but would not be 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;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- 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).

Under the bill, 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 would be 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 (Section 3)

The bill would add 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 (Section 4)

The bill would add 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 would allow consolidation of a public hearing, upon request of the person filing the statement. The person would be 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 would allow 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 would be permitted to attend the hearing either in person or by telecommunication. Notification requirements also would be 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 (Section 5)

The bill would allow 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 would be 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 would be 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 could include any other information required by the Commissioner, as determined through rules and regulations.

The bill would require 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 would be exempt from submitting an enterprise risk report.

The enterprise risk report would identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report would be 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 would be 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 would be considered a violation.

Material Transactions with Affiliates (Section 6)

The bill would add 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 would add certain agreements that would be 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 five percent of the insurer's surplus, and tax allocation agreements.

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

***Examination, Information Request; Subpoena Power
(Section 7)***

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

Further, the bill would allow 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 could not obtain the information, the bill would require 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 found the explanation to be without merit, the Commissioner could 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 would grant 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 would be 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 would be punishable as contempt of court. The bill also would provide for compensation of fees, mileage, and actual expenses incurred in securing the attendance and testimony of witnesses.

Confidential Information, Disclosure Provisions (Section 8)

The bill would specify that documents, materials, or other information obtained by or disclosed to the Commissioner or any other person in the court of examination or investigation would:

- Be confidential and privileged;
- Not be subject to disclosure under the Kansas Open Records Act;
- Not be subject to subpoena; and
- Not be subject to discovery or admissible in evidence in any private civil action.

Additionally, the Commissioner would be prohibited from making the documents, materials, or other information public without the prior written consent of the insurer. These documents could 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 would be required to consider any potential adverse consequences of this disclosure. The Commissioner or any other person who received the documents, materials, or other information would not be permitted or required to testify in any private civil action.

The bill also would authorize 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 would be required);
- Share confidential and privileged documents with states having substantially similar statutes or regulations (a written confidentiality agreement would be 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 would be 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 would further provide that the sharing of information by the Commissioner would not constitute a delegation of authority or regulatory rulemaking. In addition, the Commissioner would be solely responsible for the administration, execution, and enforcement of the provisions of the Act. The bill also would require 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 would be considered confidential and privileged. This information would not be subject to the Kansas Open Records Act or discovery, or admissible in evidence in any private civil action.

The bill also makes a number of technical amendments to the current law regarding insurance holding companies.

Background

The bill was introduced by the 2012 Special Committee on Financial Institutions and Insurance. The Special Committee was directed by the Legislative Coordinating Council to study two topics relating to the regulation of insurance holding companies. The insurance holding company study had been requested by the House Insurance Committee following consideration of legislation similar to 2013 HB 2007.

At the House Committee hearing, proponents included representatives of the Kansas Insurance Department; America's Health Insurance Plans; American Family Insurance; American Insurance Association; Farmers Alliance Mutual Insurance Companies; Kansas Association of

Property & Casualty Insurance Companies, Inc.; National Association of Mutual Insurance Companies Property Casualty Insurers Association of America; and Security Benefit Life Insurance Company.

There were no opponents to the bill.

Testimony provided at the House hearing indicated that the bill was a product of extensive discussions between the Kansas Insurance Department and interested parties. Provisions of the bill were based on legislation that was introduced and amended during the 2012 Session.

The fiscal note provided by the Division of the Budget states the bill would have no fiscal effect on the Kansas Insurance Department's operations.