

SESSION OF 2017

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 16**

As Agreed to April 7, 2017

Brief*

SB 16 would enact new law pertaining to internationally active insurance groups and the corporate governance practices of all domestic insurers; amend a provision in the Insurance Code that exempts the marketing and sale of service contracts from regulation by the Kansas Insurance Department (Department); make provisions pertaining to internationally active insurance groups part of and supplemental to the Insurance Holding Company Act; and replace current law relating to the regulation of reinsurance with model language from the National Association of Insurance Commissioners (NAIC) Credit for Reinsurance Model Code. Descriptions of specific bill provisions follow.

***Group-wide Supervisor for Internationally Active
Insurance Groups [New Section 1]***

The bill would add law based on provisions of the NAIC Insurance Holding Company System Regulatory Act pertaining to internationally active insurance groups.

Acknowledgment of a Supervisor

The bill would authorize the Kansas Insurance Commissioner (Commissioner) to act as the group-wide supervisor (supervisor) for any internationally active insurance group. However, the bill would authorize the

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Commissioner to acknowledge another regulatory official as the supervisor, if the internationally active insurance group:

- Does not have substantial insurance operations in the United States;
- Has substantial insurance operations in the United States, but not in Kansas; or
- Has substantial operations in the United States and Kansas, but the Commissioner determined another regulatory official would be appropriate to serve as the supervisor.

The bill would specify an insurance holding company system (system) not otherwise qualifying as an internationally active insurance group could request the Commissioner to make a determination or acknowledgment of a supervisor.

The bill would require the Commissioner, in cooperation with other state, federal, and international regulatory agencies, to identify a single supervisor for an internationally active insurance group. The bill would authorize the Commissioner to acknowledge a regulatory official from another jurisdiction as the appropriate supervisor, in cooperation with and subject to the acknowledgment of other regulatory officials involved with supervision of members in the internationally active insurance group and in consultation with the internationally active insurance group, as long as the following factors relating to the internationally active insurance group are considered:

- The place of domicile of the insurers holding the largest share of the written premiums, assets, or liabilities;
- The place of domicile of the top-tiered insurers in the system;
- The location of the executive offices or largest operational offices;

- Whether another regulatory official is acting or seeking to act as the supervisor under a system the Commissioner determines to be:
 - Substantially similar to a system of regulation in Kansas; or
 - Otherwise sufficient for providing supervision, enterprise risk analysis, and cooperation with other regulatory officials; and
- Whether another regulatory official acting or seeking to act as the supervisor provides the Commissioner with reasonably reciprocal recognition and cooperation.

The Commissioner would be required to acknowledge a regulatory official acting as the supervisor for an internationally active insurance group. However, the Commissioner would be required to make a determination or acknowledgment as to the appropriate supervisor if a material change results in the internationally active insurance group's insurers domiciled in Kansas holding the largest share of the premiums, assets, or liabilities; or if Kansas becomes the place of domicile of the top-tiered insurers in the system of the internationally active insurance group.

Collection of Information

The bill would authorize the Commissioner to collect any information necessary from any insurer of a system registered with the Department to determine whether the Commissioner may act as the supervisor for an internationally active insurance group or acknowledge another regulatory official as the supervisor. The bill would require the Commissioner, prior to issuing a determination that the internationally active insurance group is subject to supervision, to notify the insurer registered with the Department and the ultimate controlling person within the internationally active insurance group.

The internationally active insurance group would have at least 30 days to provide the Commissioner with additional information necessary for the determination. The bill would require the Commissioner to publish a list, on the Department's website, of all internationally active insurance groups that are subject to group-wide supervision by the Commissioner.

Supervision of the Internationally Active Insurance Group

The bill would authorize the Commissioner, acting as the supervisor for an internationally active insurance group, to engage in the following supervision activities:

- Assess the enterprise risks within the internationally active insurance group to ensure the material financial condition and liquidity risks to the members are identified and reasonable and effective mitigation measures are in place;
- Request, from any member of the internationally active insurance group subject to the Commissioner's supervision, information necessary and appropriate to assess enterprise risk, including information about the members regarding governance, risk assessment, risk management, capital adequacy, and material intercompany transactions;
- Coordinate, with the authority of the regulatory officials of the jurisdictions where members are domiciled, compelling development and implementation of reasonable measures designed to ensure the internationally active insurance group is able to timely recognize and mitigate enterprise risks to members engaged in insurance;
- Communicate with other state, federal, and international regulatory agencies for members and share relevant information;

- Enter into agreements with and obtain documents from any registered insurer, member, and any other state, federal, and international regulatory agencies pertaining to the Commissioner's status as supervisor; and
- Participate in other supervision activities considered necessary by the Commissioner.

Recognition and Cooperation

The bill would authorize the Commissioner to reasonably cooperate with supervision undertaken by a supervisor from a jurisdiction not accredited by the NAIC, as long as the Commissioner's cooperation is in compliance with Kansas law and the supervisor also recognizes and cooperates with the Commissioner's activities as a supervisor for other internationally active insurance groups. The Commissioner would be authorized to refuse recognition and cooperation if recognition and cooperation is not reasonably reciprocal.

Agreements and Documentation

Additionally, the bill would authorize the Commissioner to enter into agreements and obtain documentation from registered insurers, affiliates of the insurer, and state, federal, and international regulatory agencies for members of the internationally active insurance group that would provide the basis for or clarify a regulatory official's role as supervisor.

Rules and Regulations Authority for Supervisor of Internationally Active Insurance Groups

The bill would authorize the Commissioner to promulgate rules and regulations, adopted no later than July 1, 2018, necessary for the administration of this section of the bill.

Liability for Expenses

Under the bill, a registered insurer subject to these provisions would be liable for and required to pay the Commissioner's reasonable expenses for participation in the administration of this section, including the engagement of attorneys, actuaries, any other professionals, and all reasonable travel expenses.

Insurance Holding Company Act

The provisions relating to internationally active insurance groups would be made part of and supplemental to the Insurance Holding Company Act. [Note: Under this act, the Commissioner is granted the power to participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations. A supervisory college could be convened as either a temporary or permanent forum for communication and cooperation among various state, federal, and international regulatory officials charged with the supervision of the insurer or its affiliates.]

Corporate Governance Annual Disclosure [New Section 2]

The bill would also add law based on provisions of the NAIC Corporate Governance Annual Disclosure (CGAD) Model Act. This section of the bill would apply to all insurers domiciled in Kansas and would be effective on and after January 1, 2018.

Definitions

The bill would establish definitions for the following terms:

- “Corporate governance annual disclosure” or “CGAD” – a confidential report filed by the insurer or insurance group made in accordance with the requirements of this section;
- “Insurance group” – those insurers and affiliates included within a system;
- “Insurer” – the meaning set forth in the Kansas Insurance Holding Company Act [in KSA 2016 Supp. 40-3302] (corporation, company, association, society, fraternal benefit society, health maintenance organization, nonprofit medical and hospital service corporation, nonprofit dental service corporation, reciprocal exchange, person or partnership writing contracts of insurance, indemnity or suretyship in this state upon any type of risk or loss, except lodges, societies, persons or associations transacting business), except it shall not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, Puerto Rico, the District of Columbia, or a state or political subdivision of a state; and
- “ORSA summary report” – report filed in accordance with risk management and the Own Risk and Solvency Assessment Act.

The bill would also establish definitions for “Commissioner” and “NAIC.”

CGAD Requirements

The bill would require an insurer or the insurance group of which the insurer is a member to submit a CGAD to the Commissioner by June 1 of each year, with the first filing June 1, 2018. If an insurer is a member of an insurance group, the insurer would be required to submit the report to the Commissioner of the lead state for the insurance group, in

accordance with the lead state's laws, as determined by the procedures outlined in the most recent financial analysis handbook (handbook) adopted by the NAIC.

The bill would require that the CGAD must include a signature of the insurer or insurance group's chief executive officer or corporate secretary attesting the insurer has implemented the corporate governance practices and a copy of the disclosure was provided to the insurer's board of directors or other appropriate committee. An insurer not required to submit a CGAD must submit one if requested to by the Commissioner.

The insurer or insurance group may provide information regarding corporate governance depending on how the insurer or insurance group has structured the system of governance. However, the insurer or insurance group would be encouraged to make CGAD disclosures by the following criteria: the level at which the insurer's or group's risk appetite is determined; the level at which the earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively and the supervision of those factors is coordinated and exercised; or the level at which legal liability for failure of general corporate governance duties would be placed. The bill would require the insurer or insurance group to indicate which of the three criteria was used to determine the level of reporting and explain subsequent changes in its level of reporting.

The bill would require the review of CGAD and additional requests to be made through the lead state, as determined by the procedures from the handbook. Additionally, insurers would not be required to duplicate information contained in documents already provided to the Commissioner.

The bill would authorize the Commissioner to adopt rules and regulations, no later than January 1, 2019, to carry out the provisions of this section.

The insurer or insurance group would have discretion over what information is provided in a CGAD, but the Commissioner could request any additional information and material necessary to provide the Commissioner with a clear understanding of corporate governance policies. Additionally, the bill would require the CGAD to be prepared consistent with all Department rules, regulations, and documentation. The bill would recognize documents, materials, and other information in the CGAD disclosed to the Commissioner as confidential by law and privileged and not subject to the Kansas Open Records Act. The confidential materials subsection would sunset on July 1, 2022.

Sharing of Information

The bill would state neither the Commissioner nor persons who receive CGAD-related documents, materials, and other information would be permitted or required to testify in any private civil action concerning these confidential documents. However, the Commissioner would be permitted, upon request, to share documents and information with other state, federal, and international financial regulatory agencies, provided the recipient of the information agrees in writing to maintain the confidentiality and privileged status of the CGAD-related documents. The bill would authorize the Commissioner to also receive confidential documents with the understanding these documents are confidential or privileged under the laws of the jurisdiction that is the source of those materials. The bill would acknowledge the act of sharing information according to the provisions of the bill would not be considered a delegation of regulatory authority. The bill would specify no waiver of confidentiality or privilege would occur based on a disclosure of CGAD-related materials authorized under this section of the bill.

Third-party Consultants

The bill would authorize the Commissioner to retain, at the insurer's expense, any third-party consultants necessary

to assist the Commissioner in reviewing the CGAD and related information. Third-party consultants and NAIC consultants would act in an advisory capacity and would be subject to the same confidentiality standards and requirements as the Commissioner.

The third-party consultant would be required to verify to the Commissioner, with notice to the insurer, the consultant is free from a conflict of interest. A written agreement with NAIC consultants or third-party consultants regarding sharing and use of information would contain the following:

- Specific procedures and protocols for maintaining the confidentiality and security of CGAD-related information shared with the consultant;
- Procedures and protocols for sharing by the NAIC only with other state regulators from states in which the group has domiciled insurers. Further, the recipient agrees in writing to maintain the confidentiality and privileged status of the CGAD-related documents and has verified in writing the legal authority to maintain confidentiality;
- Ownership of the CGAD-related information remains with the Department and the consultant's use of the information is subject to the direction of the Commissioner;
- Prohibition from storing the information shared in a permanent database after the underlying analysis is complete;
- Provide prompt notice to the Commissioner and to the insurer or group regarding any subpoena, request for disclosure, or request for production of the insurer's CGAD-related information; and
- Consent to intervention by an insurer in any judicial or administrative action in which the consultant

may be required to disclose confidential information about the insurer shared with the consultant.

Penalties Related to Filing of CGADs

The bill would authorize the Commissioner to assess a penalty to an insurer who fails to timely file the CGAD. The penalty would be assessed if the insurer has no just cause for failing to timely file and after notice and hearing. The penalty would be remitted to the state treasurer and deposited in the State treasury to the credit of the fees and penalties fund.

Severability of CGAD Provisions

The bill would contain a severability clause for provisions in this section, but it would not apply to the confidentiality and privileged nature of CGAD-related documents held by the Department.

Service Contracts [Section 3]

The bill would amend the Insurance Code to exempt the marketing and sale of certain service contracts from regulation by the Department by expanding the definition of “service contract” to specify the term could also include additional provisions for incidental payment of indemnity under limited circumstances, including, but not limited to, towing, rental, and emergency road services.

The bill would further specify “service contract” could include, but not be limited to, a contract that offers any one or more of the following services:

- Repair or replacement of tires or wheels on a motor vehicle damaged as a result of coming into contact with road hazards;

- “Road hazard” would mean a hazard encountered while driving a motor vehicle, including, but not limited to, potholes, rocks, wood debris, metal parts, glass, plastics, curbs, or composite scraps;
- Removal of dents, dings, or creases on a motor vehicle that can be repaired using the process of paintless dent removal without affecting the existing paint finish and without replacing body panels, sanding, bonding, or painting; and
- Replacement of a motor vehicle key or key-fob in the event the key or key-fob becomes inoperable or is lost or stolen.

Credit for Reinsurance [Section 4]

The bill would specify the requirements for reinsurance credit on and after January 1, 2018. A domestic ceding insurer would be permitted a credit for reinsurance, as either an asset or a reduction from liability on account of reinsurance, ceded to an assuming insurer under certain conditions. The bill would further specify credit for reinsurance ceded to a certified reinsurer would be limited to reinsurance contracts entered or renewed on or after the effective date of the certification of the assuming insurer by the Commissioner.

Licensed to Transact Business

Credit for reinsurance would be allowed when the reinsurance is ceded to an assuming insurer licensed to transact insurance or reinsurance in Kansas. The bill would permit this credit only with respect to cessions of kinds or classes of business the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a U.S. branch of an alien assuming insurer,

in the state in which the entity was entered and licensed to transact insurance or reinsurance.

Accredited by the Commissioner

Credit for reinsurance would be allowed by the bill when the reinsurance is ceded to an assuming insurer accredited by the Commissioner as a reinsurer in Kansas. The bill would permit this credit only with respect to cessions of kinds or classes of business the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a U.S. branch of an alien assuming insurer, in the state in which the entity was entered and licensed to transact insurance or reinsurance. To be eligible for accreditation, an assuming insurer would be required to:

- File evidence of the assuming insurer's submission to Kansas' jurisdiction with the Commissioner;
- Submit to Kansas' authority to examine the assuming insurer's books and records;
- Be licensed to transact insurance or reinsurance in at least one state or, in the case of a U.S. branch of an alien assuming insurer, be entered through and licensed to transact insurance or reinsurance in at least one state;
- Annually file a copy of the assuming insurer's annual statement filed with the insurance department of the assuming insurer's state of domicile and most recent audited financial statement with the Commissioner; and
- Demonstrate adequate financial capacity to meet the assuming insurer's reinsurance obligations and be otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer would be deemed to meet this requirement at the time of

application if the assuming insurer maintains a surplus of at least \$20.0 million with regard to policyholders and accreditation has not been denied by the Commissioner within 90 days after submission of the application.

Domiciled in States with Similar Reinsurance Standards

Credit for reinsurance would be allowed by the bill when the reinsurance is ceded to an assuming insurer domiciled in, or in the case of a U.S. branch of an alien assuming insurer is entered through, a state employing standards regarding reinsurance credit substantially similar to those applicable under the bill. The assuming insurer or U.S. branch of an alien assuming insurer under this qualification would maintain a surplus of at least \$20.0 million with regard to policyholders (this requirement would not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system) and submit to the authority of Kansas to examine the assuming insurer's books and records. Additionally, the bill would permit this credit only with respect to cessions of kinds or classes of business the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a U.S. branch of an alien assuming insurer, in the state in which the entity was entered and licensed to transact insurance or reinsurance.

Maintaining a Trust Fund

Credit for reinsurance would be allowed by the bill when the reinsurance is ceded to an assuming insurer maintaining a trust fund in a qualified U.S. financial institution for the payment of the valid claims of the assuming insurer's U.S. ceding insurers.

The assuming insurer would be required to annually report information substantially the same as required on the

NAIC annual statement form by licensed insurers. The assuming insurer would be required to submit for the Commissioner's examination the books and records, at the expense of the assuming insurer.

Further, the bill would require the form of the trust to be approved by either an insurance commissioner of the state where the trust is domiciled, or the insurance commissioner of another state who has accepted principal regulatory oversight of the trust; require the form of the trust to be filed with insurance commissioners of every state where the ceding insurer's beneficiaries of the trust are domiciled, and further specify the requirements of the trust instrument; specify the validity of a trust; and require the trustee of the trust to submit a report to the Commissioner, no later than February 28 of each year.

Additional categories of the assuming insurer would have the following requirements:

- The trust fund for a single assuming insurer would be required to consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers, in addition to a maintenance of a trusteed surplus of at least \$20.0 million, except for an authorized reduction in the required surplus;
- The state commissioner with principal regulatory oversight of the trust would be permitted to authorize a reduction in the required trusteed surplus any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three years. The state commissioner would be required to make a finding, based on assessment of risk, that the new required surplus level would be adequate for the protection of U.S. ceding insurers, policyholders, and claimants in light of foreseeable adverse loss development. The bill would state the

risk assessment may involve an actuarial review, considering all material risk factors and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The bill would specify the minimum required trusteed surplus would not be reduced to an amount less than 30 percent of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers covered by the trust;

- For a group including incorporated and individual unincorporated underwriters, the following would be required:
 - For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after January 1, 1993, the trust would be required to consist of a trusteed account in an amount not less than the underwriters' several liabilities attributable to business ceded by U.S.-domiciled ceding insurers to any underwriter of the group;
 - For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, the trust would be required to consist of a trusteed account in an amount not less than the underwriters' several insurance and reinsurance liabilities attributable to business written in the United States;
 - The group would be required to maintain a trusteed surplus of which \$100.0 million would be held jointly for the benefit of the U.S.-domiciled ceding insurers of any member of the group for all years of account;
 - Incorporated members of the group would not be permitted to engage in any business other than underwriting as a member of the group and would be subject to the same level of

- regulation and solvency control by the group's domiciliary regulator as the unincorporated members of the group; and
- The group would be required to provide the Commissioner, within 90 days after the financial statements are due to be filed with the group's domiciliary regulator, an annual certification by the group's domiciliary regulator of the solvency of each underwriter member, or the financial statements prepared by independent public accountants of each underwriter member of the group.
 - For a group of incorporated underwriters under common administration, the group would be required to have continuously transacted an insurance business outside the United States for at least three years immediately prior to applying for accreditation; maintain an aggregate policyholders' surplus of at least \$10.0 billion; maintain a trust fund in an amount not less than the group's several liabilities attributable to business ceded by the U.S.-domiciled ceding insurers to any member of the group according to reinsurance contracts issued in the name of the group; maintain a joint trusteed surplus of \$100.0 million held jointly for the benefit of U.S.-domiciled ceding insurers of any member of the group as additional security for these liabilities; and provide the Commissioner with annual certification of each underwriter member's solvency.

Certified Reinsurer

Credit for reinsurance would be allowed by the bill when the reinsurance is ceded to an assuming insurer certified by the Commissioner as a reinsurer in Kansas and the reinsurer secures its obligations.

To be eligible for certification, the assuming insurer would be required to:

- Be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the Commissioner;
- Maintain minimum capital and surplus, or equivalent, in an amount determined by the Commissioner pursuant to regulation;
- Maintain financial strength ratings from two or more rating agencies deemed acceptable by the Commissioner by regulation;
- Agree to submit to the jurisdiction of Kansas, appoint the Commissioner as the assuming insurer's agent for service of process in Kansas, and agree to provide security for all of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers, if the assuming insurer resists enforcement of a final U.S. judgment;
- Agree to meet the applicable information filing requirements for the initial application and ongoing certification, as determined by the Commissioner; and
- Satisfy any other requirements for certification deemed relevant by the Commissioner.

An association including incorporated and individual unincorporated underwriters would be permitted to be certified as a reinsurer by, in addition to meeting the requirements listed above, satisfying minimum capital and surplus requirements, including a joint central fund; not be engaged in any business other than underwriting as a member of the association; and submitting an annual certification to the Commissioner, or financial statements.

The bill would require the Commissioner to create and publish a list of qualified jurisdictions under which an assuming insurer licensed and domiciled in that jurisdiction is eligible for consideration of reinsurer certification. A list of qualified jurisdictions would be published through the NAIC process. The bill would prescribe the duties of the Commissioner relating to listing a jurisdiction as qualified, and it would authorize the Commissioner to suspend a reinsurer's certification indefinitely, if the domiciliary jurisdiction ceases to exist.

The bill would require the Commissioner to assign a rating to each certified reinsurer and publish a list of all certified reinsurers and their ratings.

The bill would also require the certified reinsurer to secure obligations at a rating specified in rules and regulations promulgated by the Commissioner and maintain security in an acceptable form. The Commissioner would have the discretion to defer to a rating assigned by another jurisdiction in which the reinsurer was certified.

Additionally, the bill would outline the requirements for minimum trusteed surplus requirements if a certified reinsurer maintains a trust; require the Commissioner to reduce allowable reinsurance credit if the security is insufficient and permit the Commissioner to impose further reductions; and permit a certified reinsurer ceasing to assume new business in the state to request to maintain certification in an inactive status.

Other Assuming Insurers

Credit for reinsurance would be allowed by the bill when reinsurance is ceded to an assuming insurer other than the above-listed categories, but only relating to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.

Assuming Insurer is Not Licensed, Accredited, or Certified

Generally, credit for reinsurance would not be permitted for assuming insurers domiciled in states with similar reinsurance standards or maintaining a trust if those assuming insurers are not licensed, accredited, or certified to transact insurance or reinsurance in Kansas. However, credit for reinsurance would be permitted if the assuming insurer, in the reinsurance agreement, agrees to submit to the jurisdiction of any court of competent jurisdiction in any state and comply with any judgments, and designates the Commissioner or a designated attorney to receive lawful process. These criteria for unlicensed, unaccredited, or non-certified assuming insurers would not conflict with or override the obligation of parties to a reinsurance agreement to arbitrate disputes.

Assuming Insurer is Not Licensed, Accredited, or Meeting Requirements of Domicile

An assuming insurer who is not licensed, accredited, or meeting the requirements of domicile would not be permitted a credit permitted for assuming insurers maintaining a trust fund or certified with secured obligations, unless the assuming insurer agrees to the following in a trust agreement:

- Comply with an order of the state commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer assets of the trust fund to the state commissioner with oversight if that trust fund is inadequate, insolvent, or placed in receivership, rehabilitation, or liquidation;
- Distribute the assets and file claims with and valued by the state commissioner with regulatory oversight in accordance with the laws of the state where the trust is domiciled that are applicable to the liquidation of domestic insurance companies;

- Distribute assets in accordance with the trust agreement in the case of a state commissioner with regulatory oversight finding the trust fund assets are not necessary to satisfy claims; and
- Waive any right otherwise available under U.S. law if the law is inconsistent with these requirements.

Suspension or Revocation Authority

The bill would permit the Commissioner to suspend or revoke a reinsurer's accreditation or certification under certain circumstances. The Commissioner would be required to give notice and opportunity for a hearing to the reinsurer, prior to suspension or revocation. A suspension or revocation would not take effect until after the Commissioner's order on a hearing, unless the reinsurer waives the right to a hearing; the order is based on a regulatory action by the reinsurer's domiciliary jurisdiction, or the reinsurer voluntarily surrendered or terminated the ability to transact insurance or reinsurance in the domiciliary jurisdiction; or the Commissioner finds an emergency requires immediate action. Additionally, reinsurance credit would not be permitted after the date of revocation or suspension, except to the extent the reinsurer's obligations under the contract are secured.

Management of Reinsurance Recoverables, Diversification, and Notification

The bill would require the domestic ceding insurer to manage its reinsurance recoverables proportionate to the book of business, diversify the reinsurance program, and provide notification to the Commissioner.

Assuming Insurer Not Meeting Requirements

The bill would specify that when a domestic insurer cedes reinsurance not meeting the above requirements, an

asset or reduction from liability would be allowed only in an amount not exceeding the liabilities carried by the ceding insurer. The reduction would be required to be in the amount of funds held by or on behalf of the ceding insurer under a reinsurance contract with the assuming insurer as security for payment of obligations under the contract. The bill also would list the acceptable forms of security.

Definition of Qualified U.S. Financial Institution

The bill would define a qualified U.S. financial institution for letters of credit issued or confirmed by that institution to mean an institution organized or licensed under the laws of the United States or any state; regulated, supervised, and examined by the U.S. federal or state authorities having the regulatory authority over banks and trust companies; and determined by either the Commissioner or the securities valuation office of the NAIC to meet the standards of financial condition and standing. The bill would also define “qualified U.S. financial institution” pertaining to any institution eligible to act as a fiduciary of a trust.

Rules and Regulations Authority for Reinsurance Provisions

The Commissioner would be granted the authority to adopt, no later than January 1, 2019, rules and regulations necessary to administer reinsurance provisions.

Effective Date of Reinsurance Contracts

The bill would apply to all cessions under reinsurance contracts occurring on or after January 1, 2018.

Technical Amendments

The bill would also make technical amendments.

Conference Committee Action

The Conference Committee agreed to the provisions of SB 16, as amended by the House Committee of the Whole, and further agreed to add the contents of SB 19, as amended by the House Committee on Insurance.

Background

The bill would include provisions of SB 16 and SB 19.

SB 16—Internationally Active Insurance Groups, Corporate Governance Practices, and Service Contracts

SB 16 was introduced by the Senate Committee on Financial Institutions and Insurance at the request of the Department. In the Senate Committee hearing, a representative of the Department testified in favor of the bill, stating the bill would protect consumers by standardizing the method of supervision of internationally active insurance groups. A representative of the American Council of Life Insurers (ACLI) stated ACLI is supportive of the bill. A representative of the Kansas Association of Property and Casualty Insurance Companies (KAPCIC) testified in opposition of the bill, stating KAPCIC does not support a repeal of the \$300 million threshold for enterprise risk reports. There was no other testimony. A Department representative appeared in support of the bill at the House Committee hearing. No other testimony was provided.

The Senate Committee amended the bill to restore the \$300 million threshold for enterprise risk reports contained in the Kansas Insurance Holding Company Act. [*Note:* The Conference Committee retained this amendment.]

The House Committee on Insurance amended the bill to make provisions relating to internationally active insurance

groups part of and supplemental to the Insurance Holding Company Act. This technical amendment was requested by the Revisor. [Note: The Conference Committee retained this amendment.]

The House Committee of the Whole amended the bill to modify the term “service contracts” in a current exemption of the marketing and sale of service contracts from regulation by the Department. [Note: The amendment inserts the provisions of HB 2233, as amended by the House Committee. Further background information on that bill is found in the supplemental note for HB 2233. The Conference Committee retained this amendment.]

According to the fiscal note prepared by the Division of the Budget, the Department states enactment of SB 16, as introduced, would have no fiscal effect.

As amended by the House Committee of the Whole, SB 16 could have an effect for consumers as the expansion of the definition of “service contract” could affect the sale or marketing of the contracts; however, a fiscal effect cannot be estimated. It would have no fiscal effect on the Department.

SB 19—Reinsurance

SB 19 was introduced by the Senate Committee on Financial Institutions and Insurance at the request of the Department. In the Senate Committee hearing, a representative of the Department testified in favor of the bill, stating the bill would update reinsurance law to assure customers are adequately protected in Kansas. The representative noted the bill would give the Department the tools needed to determine qualified reinsurers. No other testimony was provided.

In the House Committee on Insurance hearing, the Department representative appeared in support of the bill. A representative for Allstate submitted written-only neutral

testimony, which included a request for an amendment to clarify which contracts or agreements would be subject to provisions in the bill relating to credit for reinsurance ceded to a certified reinsurer.

The House Committee amended the bill to clarify which reinsurance contracts would be subject to new standards imposed by the bill. [*Note:* The Conference Committee retained this amendment.]

According to the fiscal note prepared by the Division of the Budget, enactment of SB 19, as introduced, would allow the Department to assess a fee for application for qualified reinsurers that would be used to cover the expenses necessary for review by the Department's Division of Financial Surveillance (Division). However, the Department cannot estimate how much revenue would be generated from the fee or the additional costs borne by the Division. Any fiscal effect associated with SB 19 is not reflected in *The FY 2018 Governor's Budget Report*.

internationally active insurance groups; sale of service contracts; reinsurance; Insurance Holding Company Act

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