

SESSION OF 2017

SUPPLEMENTAL NOTE ON SENATE BILL NO. 16

As Amended by Senate Committee on Financial
Institutions and Insurance

Brief*

SB 16, as amended, would enact new law pertaining to internationally active insurance groups and the corporate governance practices of all domestic insurers. Descriptions of specific bill provisions follow.

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

The bill would enact new law based on provisions of the National Association of Insurance Commissioners (NAIC) Insurance Holding Company System Regulatory Act pertaining to internationally active insurance groups. This section of the bill would become effective upon publication in the statute book.

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

- Does not have substantial insurance operations in the United States;

*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>

- 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 must 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 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 Kansas Insurance Department (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, 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 which would provide the basis for or clarify a regulatory official's role as supervisor.

Rules and Regulations Authority

The Commissioner may 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.

Corporate Governance Annual Disclosure **[Section 2]**

The bill would also enact new 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 become effective on 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 [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 U.S., 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 also would 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 the insurer's or group's risk appetite is determined; the level the earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively and the supervision of those factors are coordinated and exercised; or the level at which legal liability for failure of general corporate governance duties would be placed. The insurer or insurance group must indicate which of the three criteria was used to determine the level of reporting and explain subsequent changes in 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 may request any additional information material and 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 require the Commissioner and persons who receive CGAD-related documents, materials, and other

information would not 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 Commissioner may also receive confidential documents with the understanding these documents are confidential or privileged under the laws of the jurisdiction that source 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 must 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

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

Finally, the bill contains a severability clause, but it does not apply to the confidentiality and privileged nature of CGAD-related documents held by the Department.

Background

The bill 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.

The Senate Committee amended the bill to restore the \$300 million threshold for enterprise risk reports contained in the Kansas Insurance Holding Company Act.

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