

SESSION OF 2012

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2077**

As Further Amended by Senate Committee on  
Financial Institutions and Insurance

**Brief\***

HB 2077 would establish the Insurance Holding Company Act and amend the Insurance Code to modify existing provisions governing insurance holding companies and to update a provision governing life insurance companies to permit the combination sale of life insurance coverage with certain health insurance products, including specified disease and critical illness riders.

**Insurance Holding Company Act**

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 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.

***Supervisory College Oversight***

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

- Initiating the establishment of a supervisory college;

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\*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>

- 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 on-going 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 Insurance Commissioner).

Under the bill, a supervisory college may 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 Insurance Commissioner would be authorized to participate with other regulators charged with supervision of the insurer or its affiliates, including other state, federal, and international regulatory agencies and to enter into agreements pursuant to document disclosure provisions in existing law (KSA 40-3308).

***Definitions (KSA 40-3302)***

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, including, but not limited to, anything that would cause the insurer's risk-based capital to fall into company action level RBC, as such term is defined in KSA 40-2c01 *et seq.*, and amendments thereto, and KSA 40-2d01 *et seq.*, and amendments thereto, as appropriate, or would cause the insurer to be in hazardous condition as set forth in KSA 40-222b, 40-222c, and 40-222d, and amendments thereto.

***Statement Filed with Insurance Commissioner; Public Hearings (KSA 40-3304)***

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

- An agreement by the person required to file the statement that it will provide the annual report (per requirements of subsection (l) of KSA 40-3305) for so long as control exists; and
- An acknowledgment by the person required to file the statement that the person and all subsidiaries within its control in the insurance holding company system will provide to the Insurance Commissioner, upon request, such information as the Commissioner deems necessary to evaluate enterprise risk to the insurer.

The bill also would allow consolidation of a public hearing, if the proposed acquisition of control will require the approval of more than one commissioner of insurance, upon request of the person filing the statement. The interested

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 allows a state insurance commissioner to opt out of a consolidated hearing (notification requirements are specified in the bill). The hearing would be public and held in the state where the insurers are domiciled. State insurance commissioners would be permitted to attend the hearing, in person or by telecommunication. Notification requirements also are specified for instances when an insurance commissioner determines that 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 (KSA 40-3305)***

The bill would amend the required information to be filed with a registration statement to allow that the insurer, if requested by the Insurance Commissioner, include financial statements of or within an insurance holding company system, including affiliates. The financial statements may include, but are not limited to, 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 Commissioner's request, by providing the Commissioner with the most recently filed parent corporation financial statements that have been filed with the SEC. Insurers also may be requested to provide statements 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. Finally, the registration statement filed documents also would include any other information required by the Commissioner through rules and regulations.

The bill also would require the ultimate controlling person of every insurer subject to registration to file an annual

enterprise risk report. The report must identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report would be required to 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 NAIC. The first enterprise risk report would be required to be filed no later than May 1, 2014, and annually thereafter. The failure of an insurer or the ultimate controlling person of an insurer to file a registration statement, any summary of the statement or enterprise risk filing within the specified time for filing would be considered a violation.

***Material Transactions with Affiliates (KSA 40-3306)***

The bill would add a standard to the regulation of material transactions by registered insurers with their affiliates: agreements for cost-sharing services and management must include such provisions as required by rules and regulations adopted by the Insurance Commissioner. The bill also would add certain intercompany agreements subject to prior approval (by the Commissioner): reinsurance agreements or modification that include 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 the next three consecutive years equals or exceeds 5 percent of the insurer's surplus; and tax allocation agreements.

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

***Examination, Information Requests; Subpoena Power (KSA 40-3307)***

The bill would clarify the examiner of insurers to grant the Insurance Commissioner the authority to examine

registered insurers and the affiliates of the registered insurer to ascertain the financial condition, including enterprise risk, 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 as are 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 this information pursuant to its contractual relationships, statutory obligations, or another method. In the event the insurer is unable to obtain the information requested by the Commissioner, the bill would require the insurer to provide the Commissioner a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the information holder. Whenever it appears to the Commissioner that the detailed explanation is without merit, the Commissioner, under the provisions of the bill, would be allowed to require, after notice and hearing, the insurer to pay a penalty of not more than \$1,000 for each day's delay, or the Commissioner would be permitted 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 of competent jurisdiction and upon a proper showing, the court could enter 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 (KSA 40-3308)***

The bill would specify that documents, materials, or other information obtained by or disclosed to the Commissioner or any other person in the course of examination or investigation made pursuant to certain provisions, including reporting requirements, in the Act 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 provisions of 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 could not be permitted or required to testify in any private civil action.

The bill also would authorize the Commissioner, in order to assist in the performance of the Commissioner's duties, the ability to:

- Share documents, materials, or other information, including those privileged and confidential documents, with other state, federal, and

international regulatory agencies, with the National Association of Insurance Commissioners (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 reported pursuant to the provisions under the bill for registration statements, 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 the NAIC and its affiliates and subsidiaries, and from certain regulatory and law enforcement officials and jurisdictions. The Commissioner would be required 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 (a requirement in the bill) with the NAIC regarding sharing and use of information provided pursuant to this act, including the procedures and protocols for sharing by the NAIC with other state, federal, or international regulators. Notice requirements to insurers and affiliates are specified in the bill.

The bill would further provide that the sharing of information by the Insurance Commissioner pursuant to this act would not constitute a delegation of authority or regulatory rulemaking and the Commissioner is solely responsible for the administration, execution, and enforcement of the

provisions of this 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 and not subject to the Kansas Open Records Act, or subject to discovery or admissible in evidence in any private civil action. The confidentiality and disclosure provisions in this act will expire on July 1, 2017, unless the Legislature reenacts the provisions. The relevant provisions in this act must be reviewed by the Legislature prior to July 1, 2017.

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

### **Life Insurance Coverage, Health Insurance Products**

The bill would amend a provision in the Insurance Code governing life insurance policies to permit the combination sale of life insurance coverage with certain health insurance products, including specified disease and critical illness riders.

The bill would require the riders to meet certain requirements, including the rate and form filing requirements applicable to accident and sickness policies (KSA 40-2201 *et seq.*) and the provisions governing accident and health insurance specified in Article 4 of the Kansas Administrative Regulations. The combination policy would be required to show the premium charge for the specified disease or critical illness rider, or both, and the premium charged for life insurance.

Additionally, the bill would allow the insured to cancel the disease or critical illness rider, or both, and continue the life insurance policy by payment of the stated premium.

## **Background**

HB 2077 was introduced during the 2011 Session at the request of the Kansas Insurance Department whose representative indicated that the Department has received, on average, requests from at least 50 percent of the group-funded workers compensation pools over the past several years requesting to file the statements after the filing due date. The proposed due date to file audited financial statements is the same as that required of insurance companies (this amended time frame also is being proposed in 2011 HB 2076 for municipal group-funded pools). There were no opponents to the bill at the time of the House Committee hearing.

The Senate Committee on Financial Institutions and Insurance 2011 amendments to the bill deleted the contents of the original bill and inserted the provisions of 2011 SB 14, as amended by the House Committee on Health and Human Services. (The House Committee amendment deleted a provision that would have allowed the Insurance Commissioner to approve any increases in the maximum lifetime coverage limits recommended by the Board (Kansas Health Insurance Association)). The contents of the original bill were included in the Conference Committee Report for HB 2076.

The Senate Committee on Financial Institutions and Insurance further amended the bill during the 2012 Session. The amendments deleted the contents of HB 2077, as amended by the Senate Committee and inserted provisions that would create and amend the Insurance Holding Company Act (HB 2508) and provisions pertaining to the combination sale of life insurance coverage with certain health care riders (HB 2373, as amended by the House Committee on Insurance). The Senate Committee adopted amendments that would enact the Insurance Holding Company Act and amend statutes regulating holding companies. The Senate Committee inserted amendments to HB 2508, as introduced, to delete certain references to

affiliates and decrease a penalty amount. The amendments were submitted by the Kansas Insurance Department.

The fiscal note prepared by the Division of the Budget on the original bill would no longer apply. The fiscal note for HB 2508, as introduced, states the Kansas Insurance Department indicates enactment of the bill would have no fiscal effect, but would increase the supervision of domestic insurance companies that are part of holding companies with international operations. The fiscal note for HB 2373, as introduced, states the Kansas Insurance Department indicates passage of the bill would have no fiscal effect on its operations.