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MEMORANDUM

To: House Committee on Insurance
From: Jason Thompson, Senior Assistant Revisor of Statutes
Date: March 7, 2017
Subject: Bill Brief for SB 16

SB 16, as amended by Senate Committee, enacts new insurance company holding company system regulatory law and corporate governance annual disclosure law, largely based upon the provisions of NAIC model law. The bill as introduced would have amended K.S.A. 40-3305, pertaining to enterprise risk reports, but that amendment was removed by the Senate Committee.

Section 1 enacts new law based on the NAIC insurance holding company system regulatory act, pertaining to internationally active insurance groups. The provisions of this section would become effective on July 1, 2017.

Subsection (a) authorizes the commissioner to act as the group-wide supervisor for any internationally active insurance group (IAIG), but also authorizes the commissioner to acknowledge another regulatory official as the group-wide supervisor under certain conditions specified in paragraphs (1) through (3).

Subsection (b) provides that, in cooperation with other regulatory agencies, the commissioner shall identify a single group-wide supervisor for an IAIG. The commissioner may determine that the commissioner is the appropriate group-wide supervisor for an IAIG that conducts substantial insurance operations concentrated in Kansas, or the commissioner may acknowledge that a regulatory official from another jurisdiction is appropriate. Paragraphs (1) through (5) list the factors that the commissioner shall consider in making such a determination or acknowledgement.

Subsection (c), on page 2, line 26, lists conditions of material change in an IAIG after which the commissioner shall make a determination of the appropriate group-wide supervisor.

Subsection (d), at the bottom of page 2, authorizes the commissioner to collect all information necessary for the commissioner to determine whether the commissioner may act as the group-wide supervisor of an IAIG. The subsection also requires the commissioner to publish on the Kansas insurance department website a list of all internationally active insurance groups that are subject to group-wide supervision by the commissioner.

Subsection (e), on page 3, line 15, authorizes the commissioner to engage in certain group-wide supervision activities if the commissioner is the group-wide supervisor of the IAIG. The activities include: (1) Assessing the enterprise risks within IAIG; (2) requesting from any member of an IAIG subject to the commissioner's supervision, additional information necessary to assess group risk; (3) developing measures designed to ensure that the IAIG is able to recognize and mitigate risk; (4) communicating relevant information with other state, federal and international regulatory agencies; (5) entering into agreements with and obtaining documents from any insurer or member of an IAIG pertaining to the commissioner's status as group-wide supervisor; and (6) participating in other group-wide supervision duties.

Subsection (f), on page 4, line 16, allows for the acknowledgement of a regulatory official from a non-accredited jurisdiction as the group-wide supervisor of an IAIG and provides certain conditions under which the commissioner may cooperate with group-wide supervision undertaken by the group-wide supervisor.

Subsection (g), on page 4, line 30, authorizes the commissioner to enter into agreements with, or obtain documentation from, any insurer registered under K.S.A. 40-3305 that would provide the basis for or otherwise clarify a regulatory official's role as group-wide supervisor.

Subsection (h), on page 4, line 36, authorizes the commissioner to promulgate necessary rules and regulations to enact the provisions of this section.

Subsection (i), on the bottom of page 4, provides that a registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the commissioner's participation in the administration of this section, including the engagement of attorneys, actuaries and any other professionals and all reasonable travel expenses.

Section 2 enacts new law based on provisions of the NAIC corporate governance annual disclosure model act. The provisions of this section would become effective on January 1, 2018.

Subsection (a), on the last line of page 4, states that nothing in this section shall be construed to impose any further standards or procedures beyond those required by state corporate law. The subsection further states that nothing in the section shall be construed to limit the

commissioner's powers or the rights and obligations of third parties under K.S.A. 40-222, which is the statute that empowers the commissioner to conduct financial examinations. Lastly, this subsection states that the section applies to all insurers domiciled in the state.

Subsection (b), on page 5, line 8, provides the definitions for the section, including "corporate governance annual disclosure" (CGAD).

Subsection (c), on page 5, line 26, requires that each insurer or the insurance group of which the insurer is a member shall file a CGAD no later than June 1 of each calendar year. The subsection also provides that an insurer not required to file a CGAD under this section shall do so upon the commissioner's request. The subsection further provides the form and required content of the CGAD.

Subsection (d), on page 6, line 27, authorizes the commissioner to promulgate any rules and regulations necessary to carry out the provisions of the section.

Subsection (e), on page 6, line 30, provides that, although the insurer or insurance group has discretion over what information is provided in the CGAD, the commissioner may request any additional information deemed material and necessary to provide the commissioner with a clear understanding of the corporate governance policies, the reporting or information system or controls implementing those policies. This subsection also requires that the CGAD be prepared consistent with the insurance department's rules and regulations.

Subsection (f)(1), at the bottom of page 6, provides that the documents, materials or other information, including the CGAD, in the possession or control of the department of insurance that are obtained, created by or disclosed to the commissioner or any other person under this section, are recognized as being proprietary and containing trade secrets. The documents, materials or other information shall be confidential by law and privileged, and shall not be subject to the open records act. The open records exception shall expire on July 1, 2022, unless the legislature reviews and reenacts the provision pursuant to K.S.A 45-229. Subsection (f)(2) provides that neither the commissioner nor any person who received documents, materials or other CGAD-related information, while acting under the authority of the commissioner, or with whom such documents, materials or other information are shared pursuant to this section, shall be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to subsection (f)(1). Subsection (f)(3) allows the commissioner to share documents and information with other state, federal and international financial regulatory agencies, provided that the recipient of the information recognizes and maintains its confidentiality and privileged nature.

Subsection (g), on page 8, line 17, authorizes the commissioner to retain, at the insurer's expense, any third-party consultants reasonably necessary to assist the commissioner in reviewing the CGAD. The subsection places the same confidentiality standards and requirements upon the consultants.

Subsection (h), on page 9, line 19, authorizes the commissioner to assess a penalty upon an insurer for not filing the CGAD by the deadline.

Subsection (i), on page 9, line 28, is a severability clause and provides that if any subsection, other than subsection (f), of the section is held invalid, then the rest of the section shall still be in force.

Subsections (j) and (k), at the bottom of page 9, provide that the first filing of the CGAD shall be in 2018, and the section becomes effective on January 1, 2018.