THE 29TH LEGISLATURE
SENATE LABOR AND COMMERCE
SENATE BILL 107

AN ACT RELATING TO INSURANCE…

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Mission:

The mission of the Division of Insurance is to regulate the insurance industry to protect Alaskan consumers.

State-Based Regulation

Unlike any other major industry, the individual state governments are the primary regulators of the business of insurance and are responsible for the safety and soundness of the U.S. insurance system.

- In 1945, Congress passed the McCarran-Ferguson Act (15 U.S.C. 1011 – 1015) which exempted: the business of insurance from most federal regulation. The Act provided that "[n]o Act of Congress shall be construed to invalidate, impair, or supersede any law by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance."
- In the Act, Congress made clear its intent stating that "the continued regulation and taxation by the several States of the business of insurance is in the public interest, and silence on the part of Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States."
- Through the years, Congress has enacted legislation specifically related to insurance including flood insurance, crop insurance, terrorism protection insurance, producer licensing uniformity and reciprocity, uniform standards for surplus lines eligibility and the creation of the Federal Insurance Office (FIO) which is, for the most part, a non-regulatory agency.

State-based regulation works

- One of the reasons why the state-based system of insurance regulation continues is that it has worked.
- For example, during the 2007 - 2009 financial crisis which hit hard the financial services industry of which insurance is a part, the United States Government Accountability Office, in a 2013 report to Congress, noted "[t]he effects of the financial crisis on insurers and policyholders were generally limited, with a few exceptions."
  - ✓ The Independent Insurance Agents & Brokers of America (IIABA) agreed stating in a 2011 letter to the FIO: "Even during the most tumultuous of times, state insurance regulators ensure that insurers are solvent, that claims are paid, and that consumers are protected. IIABA remains dedicated to preserving state insurance regulation."

National Association of Insurance Commissioners

- The National Association of Insurance Commissioners (NAIC) is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and five U.S. territories.
- Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight. NAIC members, together with the central resources of the NAIC, form the national system of state-based insurance regulation in the U.S.
- While much of the business of insurance is local in nature due to differences of risk and other factors particular to a local area, the elected or appointed state government officials who oversee the regulation of insurance companies and producers in their respective jurisdiction (the members of the NAIC), recognize there often is a need for national standards and/or uniformity.
- The NAIC promotes national standards, uniformity, reciprocity, and consistency at the national level through the development of model laws and regulations.

NAIC Model Law Program

- Much of the work of the NAIC is conducted through its committees, task forces, working groups, or subgroups and it is here where discussion most likely begins in the consideration of a new model law. However, these entities may not devote resources to the actual development or drafting of a model law unless it is determined that the subject of the model law necessitates a minimum national standard and/or requires uniformity amongst all states.
- It also must be determined that the NAIC members are committed to devoting significant regulator and association resources to educate, communicate and support a model that has been adopted by the membership.
- Only model laws mandated by federal law are exempt from these determinations.
- The model law development and drafting procedure entails a rigorous process providing notice and opportunity for consumer groups and industry to comment.
- Both the parent committee with oversight for the subject area of a model law and the entire membership of the NAIC must adopt any proposed model law by a two-thirds majority vote.
- The process of creating a national standard, however, does not stop there. The decision to implement each standard remains with the individual states.
- Adoption of certain model laws are required if a state insurance regulatory agency is to be accredited under the NAIC financial regulation standards & accreditation program.

- The mission of the NAIC financial regulation standards & accreditation program is to establish and maintain state regulator standards to promote sound insurance company financial solvency regulation.
- This is a critical function for consumer protection because an insurance company that isn't financially solvent, cannot meet its contractual policy obligations to pay claims in the event of a loss.

- The accreditation program provides a process whereby solvency regulations of multi-state insurance companies can be enhanced and adequately monitored.
- This is important, particularly for a small state such as Alaska, because if another state meets the accreditation standards of the NAIC, then Alaska can have the confidence that insurance companies operating here but domiciled in another state are being adequately regulated for financial solvency by the domiciliary state.
- Similarly, if Alaska is not accredited, other states can no longer rely on examinations performed by the division on insurers domiciled here. Those insurers would become subject to examinations by all states in which they do business which would be a significant financial burden.
- Alaskan consumers could be negatively impacted as companies may decide not to operate in Alaska due to the duplicative examination costs incurred by operating in a non-accredited state.

Length of Accreditation?

- Accreditation is for a five year period and the division's next full accreditation review will occur in 2017.
- One of the key components of the financial solvency regulation accreditation review will be a determination by the NAIC accreditation review team that the state has the necessary solvency laws and regulations to protect consumers and guarantee funds.

HB164 – Risk Based Capital (effective Jan 1, 2015)

- Risk-Based Capital (RBC) is a method of measuring the minimum amount of capital appropriate for an insurer to support its overall business operations in consideration of its size and risk profile. Capital provides a cushion to an insurer against insolvency.
- RBC limits the amount of risk a company can take. It requires a company with a higher amount of risk to hold a higher amount of capital. RBC has two main components:
  - ✓ 1) the risk-based capital formula, that established a hypothetical minimum capital level that is compared to a company's actual capital level, and
  - ✓ 2) a risk-based capital model law that grants automatic authority to the state insurance regulator to take specific actions based on the level of impairment.
- The model addresses insurer reporting requirements, the hearing process, and confidentiality concerns, and includes provisions for exemptions, foreign insurers and immunity.
- This portion of the bill incorporates amendments to Model Law 312, *Risk Based Capital For Insurers Model Act* and adopts Model Law 315, *Risk Based Capital For Health Organizations Model Act.*

HB164 – Insurance Holding Companies (effective January 1, 2016)

- Prior to the 2010 model revisions, the model law focused on protecting the solvency of insurers within an insurance holding company system, by monitoring transactions between insurers and their affiliates, dividends declared by insurers and acquisitions of insurers.
- The model pertains to subsidiaries of insurers, acquisition of control or merger with domestic insurers, acquisitions involving insurers not otherwise covered, registration of insurers, and standards and management of an insurer within a holding company system.
- The model revisions are aimed at assessing the "enterprise risk" within the entire insurance holding company system (including the risk caused by non-insurer affiliates) and determining the impact of such risk upon the solvency of insurers within the insurance group.
- To accomplish this goal, the revisions enhance a chief insurance regulator's ability to supervise the insurance group by mandating reporting of information regarding the solvency and risk of an insurer's non-insurer affiliates and allowing examination of such entities.
- This portion of the bill incorporates changes made to Model Law 440, *Model Insurance Holding Company System Regulatory Act.*

- This new model requires insurers to maintain a risk management framework and complete an ORSA Summary Report to be filed with the chief insurance regulator of the domiciliary state, unless exempt.
- The confidential filing summarizes the insurer's or group's risk management framework, assessment of risk exposures, group risk capital and prospective solvency assessment.
- These reports represent a proactive approach by providing chief insurance regulators with an additional tool to evaluate the prospective solvency of an insurer.
- This portion of the bill adopts Model Law 505, *Risk Management And Own Risk And Solvency Assessment Model Act*.

- There are situations in which a producer soliciting, negotiating or procuring the making of an insurance contract on behalf of an insured also controls directly or indirectly the insurance company.
- In such situations, additional guidelines for business between controlled insurers and controlling producers are necessary for fiduciary and oversight reasons.
- This model requires specific contract provisions to be contained in controlling producer/controlled insurer contracts.
- This portion of the bill incorporates amendments to Model Law 325, *Business Transacted With Producer Controlled Property/Casualty Insurer Act*.

Questions?

Thank you

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