

HOUSE BILL REPORT

SB 5717

As Passed House:
April 14, 2015

Title: An act relating to the insurer holding company act.

Brief Description: Amending the insurer holding company act.

Sponsors: Senators Angel, Mullet and Keiser; by request of Insurance Commissioner.

Brief History:

Committee Activity:

Business & Financial Services: 3/13/15, 3/17/15 [DP];
Appropriations: 4/6/15, 4/7/15 [DP].

Floor Activity:

Passed House: 4/14/15, 97-0.

Brief Summary of Bill

- Amends the statutory framework that governs insurance holding companies.
- Repeals the provisions under RCW 48.31C.

HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

Majority Report: Do pass. Signed by 11 members: Representatives Kirby, Chair; Ryu, Vice Chair; Vick, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Blake, G. Hunt, Hurst, Kochmar, McCabe, Santos and Stanford.

Staff: Linda Merelle (786-7092).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass. Signed by 32 members: Representatives Hunter, Chair; Ormsby, Vice Chair; Chandler, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Carlyle, Cody, Condotta, Dent, Dunshee, Fagan, Haler, Hansen, Hudgins, G. Hunt, S. Hunt, Jinkins, Kagi, Lytton, MacEwen, Magendanz, Pettigrew, Sawyer, Senn, Springer, Stokesbary, Sullivan, Taylor, Tharinger, Van Werven and Walkinshaw.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Rachelle Harris (786-7137).

Background:

In 1993 the Legislature amended the insurance code to conform to the financial regulation standards and regulatory statutes recommended by the National Association of Insurance Commissioners (NAIC). The legislation addressed, among other things, insurance holding companies; insurance company examination procedures; insurer capital and surplus requirements; limitations upon individual insurance company exposure to individual risks; valuation of insurance company investments; receivership, liquidation, and rehabilitation of insurance companies; and penalties that may be imposed by the Office of the Insurance Commissioner (Commissioner).

The provisions under this 1993 legislation were codified in RCW chapters 48.31B, which addressed nonhealth-care insurers, and 48.31C, which addressed insurers who provided health care insurance.

Summary of Bill:

The provisions of RCW 48.31B are amended to adopt the NAIC model act regarding insurance holding companies.

Subsidiaries.

A domestic insurer, alone or in cooperation with one or more persons, may organize or acquire one or more subsidiaries. The subsidiaries may conduct any kind of business or businesses. The acquisition of subsidiaries is also subject to the percentage limitations contained in chapter 48.13 RCW, which pertains to insurer investment programs.

Acquisition of, Control of, or Merger with Domestic Insurer.

A person acquiring a domestic insurer must file a pre-acquisition notification with the Commissioner. The required statement regarding acquisition must include an agreement that it will provide an annual report regarding risk as long as the control exists and an acknowledgement that the person and all subsidiaries within its control will provide information to the Commissioner upon request as necessary to evaluate enterprise risk to the insurer.

The Commissioner must approve a merger or other acquisition unless after a public hearing he or she determines that the resulting change of control would cause the domestic insurer to fail to meet the necessary standards. The public hearing must be held within 30 days after receipt of the required statement regarding the acquisition and at least 20-days' notice must be given by the Commissioner. The Commissioner must make a determination within 60 days before the termination of the proposed transaction. If the proposed acquisition of control will require the approval of more than one Commissioner, the public hearing may be held on a consolidated basis upon request. The person making the request must file the statement with the NAIC within five days of making the request for a consolidated hearing.

If the Commissioner determines that the person acquiring control of the insurer must maintain or restore the capital of the insurer to the level required by rule and law, the Commissioner must make such determination no later than 60 days after the date of the notification of change in control.

Divestiture.

A controlling person of a domestic insurer seeking to divest its controlling interest must file with the Commissioner a confidential notice of its proposed divestiture at least 30 days prior to the cessation of control. The insurer must be provided with a copy of the notice. The Commissioner determines whether the controlling person must obtain approval for the transaction. The information remains confidential until the conclusion of the transaction unless the Commissioner determines that the confidential treatment interferes with its enforcement.

Registration of Insurers.

Registration statements required to be filed by insurers must include, in addition to the existing requirements, financial statements of, or within, an insurance holding company system, including all affiliates if requested by the Commissioner. The statements must be in a form and format prescribed by the NAIC. They must also include statements that the insurer's board of directors oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures. The registration statement must also contain any other information required by the Commissioner by rule.

The ultimate controlling person subject to registration must, to the best of their knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurers. An "enterprise risk" is any activity, circumstance, or event involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse affect on the financial condition or liquidity of the insurer or the insurance holding company system.

Transactions Within Insurance Holding Company.

Transactions within an insurance holding company system must be fair and reasonable. Agreements for cost-sharing services and management must include provisions as required by rule. Some transactions may not be entered into unless the insurer has notified the Commissioner in writing of its intention to enter into the transaction. Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer are not relieved of any obligation or liability applicable under law. The insurer must be managed to assure its separate operating identity.

At least one-third of an insurer's directors and at least one-third of the members of each committee of the insurer's board of directors must be persons who are not officers or employees of the insurer or of any entity that controls, is controlled by, or is under common control with the insurer.

Examination of Insurers.

The Commissioner's power to examine an insurer or its affiliates is expanded to allow the Commissioner to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party, by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system. The Commissioner may order any registered insurer to produce information not in the possession of the insurer if the insurer can obtain access to such information pursuant to contractual relationships, statutory obligations, or other methods.

An insurer who fails to provide requested information and does so without merit may be fined \$10,000 for each day's delay or the Commissioner may suspend or revoke the insurer's license. Any fine collected must be paid to the Office of the State Treasurer for deposit into the General Fund. Whenever it appears to the Commissioner that any person has committed a violation which prevents the full understanding of the enterprise risk to the insurer by affiliates or by the insurance holding company system, the violation may serve as an independent basis for disapproving dividends or distributions and for placing the insurer under an order of supervision.

Supervisory Colleges.

The Commissioner has the power to participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance by the insurer with this title.

Confidential Treatment of Documents.

Documents, materials, or other information in the possession or control of the Commissioner that are obtained by or disclosed in the course of an examination or investigation; all information reported pursuant to the annual enterprise risk report; documents regarding insurance registration requirements and transactions written on insurance holding company systems; and documents submitted as part of a preacquisition notification (Documents) are privileged and confidential by law. They are not subject to subpoena, to discovery, or admissible in evidence in any private civil action.

The Commissioner is authorized to use the Documents in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties. The Commissioner must not otherwise make the Documents public without the prior written consent of the insurer to which it pertains, unless the Commissioner, after giving the insurer and its affiliates who would be affected notice and an opportunity to be heard, determines that the interest of policy holders, shareholders, or the public is served by the publication. The Commissioner or any person who has received the Documents may not be required to testify in any private civil action concerning any confidential documents, materials, or information.

The Commissioner may share confidential and privileged Documents with other state, federal, and international regulatory agencies and the following: the NAIC; and state, federal, and international law enforcement authorities, including members of any supervisory college. The recipients must agree in writing and have verified in writing the legal authority

to maintain the confidentiality and privileged status of the Documents shared. The Commissioner may only share confidential and privileged documents, material, or information with commissioners of states having confidentiality statutes or rules substantially similar to the provisions of this act.

The Commissioner must enter into written agreements with the NAIC that govern the sharing and use of information provided. Documents in the possession or control of the NAIC are confidential by law and privileged, exempt from disclosure under the Public Records Act, not subject to subpoena, and are not subject to discovery or admissible in evidence in any private civil action. There shall be no waiver of any applicable privilege or claim of confidentiality in the Documents as a result of disclosure to the Commissioner due to authorized sharing.

Repealed Sections.

The provisions under RCW 48.31C are repealed.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on January 1, 2016, except for section 14, relating to the expiration of the exemption for health carrier provider contracts and provider compensation agreements from the Public Records Act, which takes effect on July 1, 2017.

Staff Summary of Public Testimony (Business & Financial Services):

(In support) The NAIC has set up an accreditation system so that states where an insurer is not domiciled can rely on the regulations and procedures of the insurer's home state. It is important that Washington maintains its accreditation with the NAIC and if this bill is not enacted Washington will lose its accreditation. The failure of this bill would have a significant adverse effect on companies doing business in other states. Regulators depend on the financial supervision of insurers domiciled in Washington. If accreditation is lost, other regulators may feel the need to confirm the financial supervision of an insurer, and that would be duplicative. The process regarding acquisitions will not change with the provisions of this bill. We need to have the bill passed this year.

(In support with amendment(s)) There are two concerns about this bill, which can both be remedied with proposed amendments. The bill proposes to prohibit the current right to obtain documents regarding proposed acquisitions and mergers, and other financial statements. These documents are currently public record. The preacquisition filings contain a wealth of information that would no longer be public. These are things that the public has relied upon for years. If members of the public want to look at the claims history, they will not be able to look at those, as well. The bill excludes all interested parties from participation in the decision of whether mergers must take place, and the public cannot participate in a meaningful way. Even the notice of preacquisition can only be disclosed to the insurer. It is not clear that adoption of this bill is necessary to maintain accreditation. At worst, the NAIC would expect a version of the bill to be adopted that is substantially similar to the model act.

(Opposed) The bill increases the exemption under the Public Records Act from confidential and proprietary information and trade secrets to all documents obtained under the statutes that govern the holding companies. A standard is being changed. A hearing regarding the acquisition is before the Commissioner and not an administrative law judge. There is no notice required to be provided to anyone other than the insurer.

Staff Summary of Public Testimony (Appropriations):

(In support) The Office of the Insurance Commissioner is in favor of this bill. The House has passed this bill twice, first last year and then the companion to this particular bill unanimously from the floor this year. Stakeholders worked on the bill prior to session so it is an agreed-to bill. It gives the Insurance Commissioner the ability to see what goes on within a holding company and the transactions within that company. It gives the Insurance Commissioner greater fiscal oversight.

(Opposed) None.

Persons Testifying (Business & Financial Services): (In support) Senator Angel, prime sponsor; Lonnie Johns-Brown, Office of the Insurance Commissioner; Mel Sorensen, Property Casualty Insurers Association of America, American Council of Life Insurers, America's Health Insurance Plans; Jean Leonard, Washington Insurers, National Association of Mutual Insurance Companies; and Cliff Webster, American Insurance Association.

(In support with amendment(s)) Patricia Petersen.

(Opposed) Rowland Thompson, Allied Daily Newspapers.

Persons Testifying (Appropriations): Lonnie Johns-Brown, Office of the Insurance Commissioner.

Persons Signed In To Testify But Not Testifying (Business & Financial Services): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.