

SENATE BILL REPORT

HB 1402

As Reported by Senate Committee On:
Financial Institutions, Housing & Insurance, March 26, 2013

Title: An act relating to adopting the insurer state of entry model act.

Brief Description: Adopting the insurer state of entry model act.

Sponsors: Representatives Stanford and Morrell; by request of Insurance Commissioner.

Brief History: Passed House: 3/07/13, 97-0.

Committee Activity: Financial Institutions, Housing & Insurance: 3/21/13, 3/26/13 [DP].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: Do pass.

Signed by Senators Hobbs, Chair; Mullet, Vice Chair; Benton, Ranking Member; Fain, Hatfield, Nelson and Roach.

Staff: Edward Redmond (786-7471)

Background: Insurance companies formed under the laws of another country are defined as alien insurers under the Insurance Code. An alien insurer wishing to do business in the United States must use one of the 50 states as a state of entry. Washington has regulatory framework for insurers using this state as a state of entry.

Deposit of Assets. An alien insurer may use Washington as a state of entry to transact insurance in the United States by maintaining a deposit of assets (trusteed assets) in a solvent trust company or other solvent financial institution. The trusteed assets must be held for the benefit and protection of the United States policyholders and creditors of the insurer. The trusteed assets must be maintained as long as the alien insurer has any outstanding liability related to its insurance transactions in the United States. The trusteed assets deposit must consist of eligible assets in the greater amount of:

- its outstanding liabilities arising out of its insurance transactions in the United States plus the higher of either: (1) \$200,000 or (2) the largest amount of deposit required to be made in this state by any type of domestic insurer transacting the same kinds of insurance; or
- \$500,000.

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.

Trust Agreements. An alien insurer must have a written trust agreement with the trustee. The agreement must be approved in writing by the Insurance Commissioner (Commissioner). The trust agreement must:

- provide that the trustee assets are owned by the trustees and their successors for the purposes of the trust deposit;
- comply with state or federal law;
- require prior written approval of the Commissioner for all withdrawals of trustee assets, except as specifically provided in law; or
- provide reasonably adequate protection for the insurer's policyholders and creditors in the United States.

A trust agreement may be amended. An amendment is not effective until filed with the Commissioner and the Commissioner finds that the amendment is in compliance with the law. The Commissioner may withdraw approval of a trust agreement or an amendment to the agreement. The withdrawal of approval may only be made after notice and a hearing.

Trustees. The trustee must keep the trustee assets separate from other assets and maintain sufficient records. The trustee must file statements certifying the type and amount of the assets with the Commissioner. The trustee assets must not be assigned or transferred without the prior written approval of the Commissioner. An unapproved transfer or assignment is void. The assignee or transferee of the trustee assets must assume all of the obligations and liabilities of the assignor or transferor. The Commissioner may examine trustee assets of any alien insurer in the same manner as assets of other insurers. A new trustee may be substituted for the original trustee in the event of a vacancy or for cause. Any substitution is subject to the Commissioner's approval.

Domestication of an Alien Insurer. An alien insurer authorized to do business in this state may, with the prior written approval of the Commissioner, domesticate its United States branch (branch) by:

- agreeing in writing that a domestic insurer will acquire all of the assets and assume all of the liabilities of the branch; and
- filing the written agreement of transfer and assumption with the Commissioner.

The domestication agreement must be approved by the alien insurer in compliance with the laws of the country where it is organized. If the Commissioner finds that the domestication agreement is properly adopted and the interests of the policyholders of the branch and of the domestic insurer are not materially adversely affected, the Commissioner must approve the domestication agreement. When the domestication of the branch is effective, all the rights, liabilities, and interests of the branch are transferred to the domestic insurer.

Summary of Bill: Most of the regulatory framework regarding alien insurers is repealed. A new regulatory structure is established for alien insurers.

An alien insurer may use Washington as a state of entry to transact insurance in the United States through a branch by:

- qualifying as an insurer licensed to do business in this state; and
- establishing a trust account, under a trust agreement approved by the Commissioner.

Before authorizing the entry of a branch through this state, the Commissioner must require the alien insurer to submit the following:

- a copy of the trust agreement and amendments;
- a copy of its charter, bylaws, and any other documents necessary to show the kinds of business that it is empowered to do in its domiciliary jurisdiction; and
- to an examination of the insurer's affairs at its principal office within the United States. The Commissioner may accept a report of the insurance supervisory official of the insurer's home jurisdiction instead of an examination.

Trusteed Assets. The branch's trusteed assets must at all times be in an amount equal to the:

- branch's reserves and other liabilities; plus
- minimum capital and surplus or the authorized control level risk-based capital, whichever is greater, required to be maintained by a domestic insurer licensed to transact the same kind of insurance.

Trust Agreement. The trust agreement must contain specific provisions:

- regarding the type of assets that are eligible to be trusteed assets;
- vesting title of the assets in the trustees;
- providing for successor trustees;
- requiring recordkeeping;
- stipulating that withdrawals of assets are permitted only as specifically allowed, except with the approval of the Commissioner;
- specifying that the assets are for exclusive benefit, security, and protection of the United States policyholders and creditors of the branch; and
- requiring the trust must be maintained as long as there are any outstanding liabilities related to insurance transactions in the United States.

The trust agreement must be approved by the Commissioner. The trust agreement and all amendments must be authenticated and are not effective unless the Commissioner finds that:

- the trust agreement or its amendments conform with the law;
- the trustee is eligible or the trustees are eligible to serve in that role; and
- the trust agreement adequately protects the interests of the beneficiaries of the trust.

The Commissioner may approve modifications of a trust agreement, which in the Commissioner's judgment are not prejudicial to the interests of the people of this state or the United States policyholders and creditors of the branch. After notice and hearing, the Commissioner may determine that the trust agreement should no longer be approved and withdraw approval.

The Commissioner may:

- examine the trusteed assets of any branch at the alien insurer's expense; and
- require the trustee or trustees to file a statement certifying the assets and the amounts of the trust fund.

Lack of compliance with the requirements regarding the trust agreement is grounds for the revocation of the insurer's license or the liquidation of its branch.

Licensing. Before issuing any new or renewal license to any branch, the Commissioner may require satisfactory proof that the insurer will not engage in any insurance business not authorized by the law or its charter. The Commissioner must issue a renewal license to any branch if the Commissioner is satisfied that the insurer is compliant with the law and that its continuance in business in this state will not be hazardous or prejudicial to the best interests of the people of this state.

A branch must not be authorized to transact insurance in Washington if:

- it fails to comply substantially with any applicable law that, in the judgment of the Commissioner, is reasonably necessary to protect the interest of the policyholders;
- it transacts any kind of business in this state that is not permitted to be done by a licensed domestic insurer;
- it transacts any kind of business in the United States that a domestic insurer in this state is not permitted to transact, unless in the judgment of the Commissioner the transacting of the insurance business is not prejudicial to the best interests of the people of this state; and
- it transacts any kind of business in the United States other than an insurance business and the business necessarily or properly incidental to the kind or kinds of insurance business that it is authorized to do in this state.

A branch must keep full and correct records. The records must be maintained in its principal office within this state and open to inspection by the Commissioner.

When a branch's trusted surplus is reduced below minimum financial requirements, the Commissioner may take the same types of actions against the alien insurer as the Commissioner is allowed to take against a similarly situated domestic insurer.

Financial Filings. Every authorized branch must file with the National Association of Insurance Commissioners (NAIC):

- annual and quarterly statements of the business transacted within the United States and the assets held by or for it, and of the liabilities incurred against such assets. The statements must be in the same format required of a domestic insurer licensed to write the same kinds of insurance; and
- annual and quarterly report statements regarding trusted surplus.

The annual statement and trusted surplus statement must be signed and verified by a person responsible for the branch. The items of securities and other property held under trust deeds must be certified in the trusted surplus statement by the United States trustee or trustees.

Every examination of a branch must include a trusted surplus statement as of the date of examination and a general statement of the financial condition of the branch.

Trusts Created Before January 1, 2014. All trusts created before January 1, 2014, must be continued under the instruments creating those trusts. If the Commissioner determines that the instruments are inconsistent with the law, the insurer must correct the inconsistencies within six months of the Commissioner's determination.

An alien insurer must maintain the same amount of minimum capital and surplus levels or authorized control level of risk-based capital as a domestic insurer licensed to transact the same kinds of business. An alien insurer that is using another state as a state of entry, but is continuously authorized in this state, may meet the trust deposit standard of the other state until December 31, 2016.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on January 1, 2014.

Staff Summary of Public Testimony: PRO: This bill levels the playing field between domestic companies based in the U.S. and companies that are organized overseas. The bill adopts an NAIC model that was vetted by all 50 states and was developed in a stakeholder process. This is insurance-modernization legislation that is advisable as we anticipate more companies entering the market from Asia using Pacific Coast states as their state of entry.

Persons Testifying: PRO: Drew Bouton, Office of the Insurance Commissioner.