

HOUSE BILL REPORT

HB 1065

As Passed House:
March 2, 2015

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

Brief Description: Amending the insurer holding company act.

Sponsors: Representatives Kirby, Blake, Ryu, McBride and Stanford; by request of Insurance Commissioner.

Brief History:

Committee Activity:

Business & Financial Services: 1/13/15, 1/14/15 [DP];

General Government & Information Technology: 2/3/15, 2/6/15 [DP].

Floor Activity:

Passed House: 3/2/15, 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 GENERAL GOVERNMENT & INFORMATION TECHNOLOGY

Majority Report: Do pass. Signed by 7 members: Representatives Hudgins, Chair; Senn, Vice Chair; MacEwen, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; McCabe, Morris and Takko.

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 preacquisition 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.

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 method. 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 (Documents) in the possession or control of the Commissioner that are obtained by or disclosed in the course of an examination or investigation, and all information reported pursuant to the annual enterprise risk report and the supervisory colleges 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 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 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 section 14 relating to amendments to the Public Records Acts, which takes effect on July 1, 2017.

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

(In support) The Commissioner and stakeholders were able to work together during the interim to work out differences. The focus of this bill is to shine more light and transparency on insurance companies and their affiliates. The bill contains requirements regarding privileged communications and notifications for transactions that need to take place. The provisions in the bill would bring the Washington code in conformance with the NAIC accreditation requirements. The provisions in this bill must pass in every state, which would allow regulators to rely on the regulatory supervision of the "home" regulator. The model acts of the NAIC are developed with the participation of relevant stakeholders. Not all of the NAIC model acts are standard for accreditation, but this one is. The purpose of the holding company act is to provide the Commissioner with the tools to understand and regulate the ownership of the insurance companies as they operate within the structure of a holding company. It is important that insurance companies can provide very sensitive information to the Commissioner. Changing the language of the model act would put the state's accreditation at risk.

(In support with concerns) The provisions of the bill significantly change the disclosure of records associated with the transactions of insurance companies. More records are closed to the public. Proprietary and trade secret information provided to the Commissioner is confidential and privileged. These cannot be used in any court proceedings. The NAIC would be in control of the information that is shared with them, and they would have the ability to override Washington law.

(Opposed) None.

Staff Summary of Public Testimony (General Government & Information Technology):

(In support) Provisions of the bill were negotiated during the interim with company trade associations and other stakeholders, and there is strong support across the industry. This bill is based on model NAIC legislation and is critical to maintain Washington's national accreditation. The bill will give confidence in the integrity of the regulations of the Commissioner and prevent regulatory duplication across state lines. The deadline to pass this

legislation in order to maintain NAIC accreditation is 2015. The bill failed last year over controversy about the confidential treatment of information. These issues have been fixed.

(In support with concerns) Transparency and protection of sensitive information is really important to protect the public. Regulations can be complex and esoteric. Other states, such as Oregon, have secrecy laws for transactions of holding companies. Washington's is tightly regulated and more open than other states currently, but once made more secret with the bill, it will allow hiding of money and other problems. Public access to documents related to these transactions should be maintained, rather than repealed as under the bill. Issues should be handled on an individual basis rather than with the blanket of secrecy. Not all holding company filings should be confidential.

(Opposed) None.

Persons Testifying (Business & Financial Services): (In support) Representative Kirby, prime sponsor; Lonnie Johns-Brown, Office of the Insurance Commissioner; Mel Sorensen, Property Casualty Insurance, American Council of Life Insurers, and America's Health Insurance Programs; Jean Leonard, Washington Insurers; Cliff Webster, American Insurance Association; Len Sorrin, Premera Blue Cross; and Chris Bandoli, Regence Blue Shield.

(In support with concerns) Rowland Thompson, Allied Daily Newspapers.

Persons Testifying (General Government & Information Technology): (In support) Representative Kirby, prime sponsor; Mel Sorensen, Property Casualty Insurance Association of America, American Council of Life Insurance, American's Health Insurance Plans; and Jean Leonard, Washington Self-Insurers Association, National Association of Mutual Insurers.

(In support with amendment(s)) Lonnie Johns-Brow, Office of the Insurance Commissioner; and Dennis Julnes.

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

Persons Signed In To Testify But Not Testifying (General Government & Information Technology): None.