

SENATE BILL REPORT

SB 5717

As Passed Senate, March 4, 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: Financial Institutions & Insurance: 2/12/15, 2/18/15 [DP].
Passed Senate: 3/04/15, 48-0.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: Do pass.

Signed by Senators Benton, Chair; Angel, Vice Chair; Mullet, Ranking Minority Member; Darneille, Fain, Hobbs, Pedersen and Roach.

Staff: Susan Jones (786-7404)

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). In part the legislation addressed the following: 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 1993 legislation was codified in RCW chapters 48.31B – Insurer Holding Company Act, and 48.31C – Holding Company Act for Health Care Service Contractors and Health Maintenance Organizations.

NAIC updated the model insurance holding company system regulatory act. The updated act will become part of NAIC accreditation standards starting January 1, 2016. If Washington fails to adopt this act into state law, OIC will lose accreditation in 2016. The model act: (1) allows new disclosure regarding enterprise risk and supervisory colleges; (2) updates the provisions for acquisitions, divestitures, and examinations; (3) updates intercompany

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agreement requirements between insurers and their affiliates; and (4) updates confidentiality provisions of holding company filings and information.

Summary of Bill: The provisions of the Insurer Holding Company Act are amended to adopt the NAIC model act.

Subsidiaries. A domestic insurer, alone or in cooperation with one or more persons, may organize or acquire one or more subsidiaries, which may conduct any kind of business. The acquisition of subsidiaries is also subject to certain percentage and investment limitations.

Acquisition of, Control of, or Merger with Domestic Insurer. A person acquiring a domestic insurer must file a preacquisition statement with the Commissioner. The required statement must include certain information and an agreement that it will provide an annual report regarding risk 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 acquisition unless after a public hearing the Commissioner determines that the resulting change of control would cause the domestic insurer to fail to meet the necessary standards. Time periods for the public hearing, notice, and the determination are provided. 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.

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 ceasing control. A copy must be provided to the insured. The Commissioner determines whether approval for the transaction is required.

Registration of Insurers. Registration statements in the NAIC format 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, and statements regarding corporate governance and internal controls.

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 notified the Commissioner in writing of its intention to enter into the transaction.

An insurer's officers and directors are not relieved of any obligation or liability applicable under law despite the control of the insurer by any person. The insurer must be managed to

assure its separate operating identity. Requirements are provided regarding non-officer/employee board members and committees.

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 through certain methods. Delays in compliance may result in \$10,000 daily fines, and suspension or license revocation. Fines are deposited into the general fund. If it appears 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 act. However, health care service contractors and health maintenance organizations are added to the definition of insurers under the Insurer Holding Company Act.

Confidential 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 and are not subject to subpoena, to discovery, or admissible in evidence in any private civil action. Provisions regarding use of the Documents in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties and the requirements for sharing with other regulators are provided.

Repealed Sections. The provisions under the Holding Company Act for Health Care Service Contractors and Health Maintenance Organizations are repealed. However, health care service contractors and health maintenance organizations are added to the definition of insurers under the Insurer Holding Company Act.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on January 1, 2016; except Section 14 takes effect July 1, 2017.

Staff Summary of Public Testimony: PRO: NAIC is a national organization of state regulators. There are committees and subcommittees. The bill came from years of discussion within members of NAIC. After the fiscal meltdown, they found that there was a

need to determine the solvency of insurers and those related to the insurer. Regulators need to be able to look at the practices within the holding company in order to guaranty the solvency of the insurers. This provides a greater degree of consumer protection. If not put into law, this would be a damaging situation for those insurers domiciled in Washington. If not put into place by the end of 2015, Washington would lose its accreditation. NAIC set up a system that by accreditation, other states have confidence in home state regulators and do not have to send other examiners.

Persons Testifying: PRO: Senator Angel, prime sponsor; Mel Sorenson, Property Casualty Insurers, American Council of Life Insurers, America's Health Insurance Plans; Jean Leonard, WA Insurers, National Assn. of Mutual Insurance Companies; Cliff Webster, American Insurance Assn.; Lonnie Johns-Brown, Office of the Insurance Commissioner.