HOUSE
RESEARCH
ORGANIZATION bill analysis | 5/5/2005 | HB 2613 Eiland, et al.

SUBJECT: Adopting an interstate compact to conduct certain insurance activities

COMMITTEE: Insurance — favorable, without amendment

VOTE: 8 ayes — Smithee, Seaman, Eiland, Isett, B. Keffer, Taylor, Thompson, Van Arsdale

0 nays

1 absent — Oliveira

WITNESSES: For — Brenda Nation, American Council of Life Insurers

Against — None

On — Jose Montemayor, Texas Department of Insurance

BACKGROUND: Under the federal McCarren-Ferguson Act, states have the responsibility and authority to regulate insurance activities. There currently is no federal regulation of insurance, but the federal Gramm-Leach-Bliley Act (GLBA), enacted in November 1999, removed federal and state provisions that required insurance, banking, and securities companies to operate separately. GLBA allows banks, insurers, and securities dealers to operate under common ownership and preempts state agent licensing laws that prevent or interfere with an institution's ability to engage in the sale, solicitation, or cross-marketing of insurance.

DIGEST: HB 2613 would enable Texas to join other states that have adopted the Interstate Insurance Product Regulation Compact to establish and become a member of the Interstate Insurance Product Regulation Commission. The insurance commissioner would serve as the state's representative to the commission.

States involved in the compact would work jointly and cooperatively to:

- promote and protect the interests of consumers of individual and group annuity, life insurance, disability income and long-term care insurance products;
- develop uniform standards for these products;

- establish a central clearinghouse to receive and provide prompt review of these products as well as advertisements related to the products;
- give appropriate regulatory approval to product filings and advertisements that meet accepted uniform standards;
- improve coordination of regulatory resources and expertise between state insurance departments regarding the establishment of uniform standards and review of insurance products covered under the compact;
- create the Interstate Insurance Product Regulation Commission; and
- perform functions consistent with the state regulation of insurance.

**Powers and duties.** The Interstate Insurance Product Regulation Commission would have the power to develop uniform standards for product lines covered under the compact, receive and provide prompt review of products, and approve product filings that satisfy applicable uniform standards. The commission would not be the exclusive entity for receipt and review of insurance product filings. Insurers would not be prohibited from filing their products in any state in which they were licensed to conduct the business of insurance, and any such filing would be subject to the laws of that state.

Nothing in the bill would prevent the enforcement of any other law of a compacting state, and all insurance products filed with individual states would be subject to the laws of those states.

The commission's powers would include:

- promulgating rules, exercising rulemaking authority, and establishing reasonable uniform standards for products covered under the compact, as well as advertisements for these products, and enforcing violations of these standards;
- reviewing and approving products filed with the commission to ensure that they adhered to the commission's uniform standards;
- reviewing and approving rate filings for disability and long-term care insurance;
- reviewing and approving advertisements for long-term care insurance products;

- bringing and prosecuting legal proceedings or actions, provided that these actions did not affect the standing of any state insurance department to be sued; and
- issuing subpoenas.

The commission's powers also would include purchasing and maintaining insurance and bonds, hiring employees, selling property, borrowing money, and other duties related to the operation of the compact. Uniform standards for long-term-care insurance products could not provide fewer protections for consumers than those set forth in National Association of Insurance Commissioners (NAIC) model acts.

The commission could become effective only after 26 states, or states representing more than 40 percent of the premium volume for life insurance, annuity, disability and long-term care insurance products, became compacting states. A state could withdraw from the compact by specifically repealing that state's enabling statute. The compact would dissolve upon the date of the withdrawal or default of the compacting state that reduced the compact to a single state.

All lawful actions of the commission, including all rules and operating procedures adopted by the commission, would be binding upon the compacting states. All agreements between the commission and the compacting states would be binding according to their terms.

**Organization.** The commission would comprise one member from each state participating in the compact. Commission members would adopt bylaws as might be necessary to carry out the purpose and exercise the powers of the compact. A 14-member management committee would carry out duties established in the by-laws, including establishing and overseeing the organizational structure and procedures; and planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations.

The management committee would comprise one member from each of the six compacting states with the largest premium volume for individual and group annuities, life, disability income and long-term care insurance products — four from states with at least 2 percent of this market, and four from states with less than 2 percent of the market, with one selected from each of four different zone regions.

A legislative committee made up of state legislators or their designees would monitor the commission's operations and make recommendations. The commission would have to establish two advisory committees — one composed of consumer representatives independent of the insurance industry, and the other composed of insurance industry representatives.

The commission would have to meet at least once each calendar year. Each member would have the right to vote and participate in the business affairs of the commission.

**Rulemaking.** The commission would have to promulgate reasonable rules, including uniform standards and operating procedures, to effectively and efficiently achieve the purpose of the compact. Rulemaking procedures would have to conform to the Model State Administrative Procedure Act of 1981. A uniform standard would become effective 90 days after its promulgation or at a later date determined by the commission.

A compacting state could opt out of a uniform standard either by legislation or regulation promulgated by the state insurance department. If the state opted out of the uniform standard by adhering to its own regulation, it would have to give the commission written notice no later than 10 business days after the uniform standard was promulgated or at the time the state entered the compact. The state would have to find that the uniform standard did not provide reasonable protections to its citizens, and would have to make specific findings of fact and conclusions of law, based on the preponderance of the evidence, detailing the conditions in the state that warranted a departure from the uniform standard. The state insurance commissioner would have to consider and balance the benefits of interstate agreements and the presumption that a uniform standard adopted by the commission provided consumers reasonable protections.

A compacting state could, at the time of the enactment of the compact, prospectively opt out of all uniform standards involving long-term care insurance products by expressly providing for such opt-out in the enacted compact.

If a compacting state elected to opt out of a uniform standard, the standard would remain in effect until the opt-out legislation was enacted or regulation opting out became effective. If a compacting state formally had initiated the process of opting out of a uniform standard by regulation, and the opt-out was pending, the compacting state could petition the commission to stay the effectiveness of the uniform standard in that state. The commission could authorize a stay if it determined the opt-out was being pursued in a reasonable manner and there was a likelihood of success. A stay could be granted for up to 90 days, or up to one year if affirmatively extended by the commission.

Within 30 days of the promulgation of a rule or operating procedure, any person could file a petition for judicial review of the rule or operating procedure. The filing could not stay the rule or operating procedure from becoming effective unless the court found that the petitioner had a substantial likelihood of success.

**Commission records.** The commission would have to promulgate rules establishing conditions and procedures for public inspection and copying of its information and official records, except such information and records involving the privacy of individuals and insurance trade secrets. The commission could promulgate additional rules under which it could make available to federal and state agencies, including law enforcement agencies, records and information otherwise exempt from disclosure, and could enter into agreements with these agencies to receive or exchange information subject to nondisclosure and confidentiality provisions.

**Enforcement.** At the request of a state insurance commissioner, the commission would have to approve or certify a final enforcement order after prior notice to the insurer and an opportunity for a hearing before the commissioner. The commission would have to authorize an action brought by a state insurance commissioner for a violation of any provision, standard, or requirement relating to an advertisement. This authorization would not require notice to the insurer, opportunity for hearing or disclosure of requests for authorization.

**Product filing and approval.** Insurers and third-party filers would file products with the commission for approval and pay the applicable filing fee. The product also could be filed in any state in which the insurer was licensed, and the filing would be subject to the laws of that state. The commission would have to establish appropriate filing and review processes and procedures and establish conditions and procedures for public access to product filing information. In establishing rules for public access, the commission would have to consider the public interest as well as protection of personal medical and financial information and trade secrets that might be contained in a product filing or supporting information. Any product approved by the commission could be sold or issued in those compacting states in which the insurer legally was authorized to do business.

Within 30 days after the commission had given notice of a disapproved product or advertisement, the insurer or third party could appeal the decision to a review panel appointed by the commission. An allegation that the commission acted arbitrarily, capriciously, or in a manner that was an abuse of its discretion or otherwise not in accordance with the law would be subject to judicial review. The commission would have the authority to monitor, review, and reconsider products and advertisements subsequent to their filing or approval upon a finding that the product did not meet the relevant uniform standard. Where appropriate, the commission could withdraw or modify its approval after proper notice and hearing.

**Funding.** To fund the cost of its initial operation, the commission could accept contributions and other forms of funding from the NAIC, compacting states, and other sources. Funding from other sources would have to be of such a nature that the independence of the commission was not compromised. The commission would accept filing fees from each party filing a product to cover the cost of its ongoing operations and activities. The commission would be exempt from all taxation in compacting states, and could not pledge the credit of any compacting state, except by and with the appropriate level of authority of that state.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

SUPPORTERS SAY:

HB 2613 would help preserve the state-based system of insurance regulation by raising product standards and consumer protections, improving the quality of product review and giving insurance companies the regulatory efficiency they need to compete in an evolving financial marketplace. The bill represents a critical element in a national effort to modernize insurance regulation and facilitate the introduction of new products to market.

Fourteen states already have approved legislation to join the compact to establish the Interstate Insurance Product Regulation Commission. Fifteen other states, including Texas, currently are considering this legislation. HB 2613 is NAIC's model act legislation, which was developed carefully through negotiations between industry and consumer groups at the national level over a period of several years.

To better compete with banks and securities companies, some insurance companies have sought federal regulation of life insurance products and repeal of the federal McCarren-Ferguson Act, which gives states the responsibility and authority to regulate insurance. CSHB 2613 would establish an alternative to federal regulation of insurance, which could threaten the premium tax revenue that states currently receive and seriously weaken state oversight of this important industry. In 2003, Texas' premium tax revenue exceeded $1 billion.

The bill would provide a mechanism for streamlining the approval of certain insurance products and advertisements and making regulations more uniform among states. This would allow insurers to get products to market more quickly and better compete with banks and securities firms.

If Texas chose to join the compact, the state could play a strong role in the commission that would be created to approve certain insurance rates, forms, and advertisements for life insurance, long-term care, disability income, and individual and group annuities. Because of the state's size and premium volume for these products, Texas would have a representative on the 14-member management committee and could exert significant influence over the activities of the commission. The bill also would allow Texas to leverage its resources by coordinating regulatory activities with other states.

Other insurance lines, such as automobile and homeowners, would not be affected by the bill. These insurance lines would continue to be regulated by the Texas Department of Insurance (TDI). If the state did not want to be subject to a particular rule or action of the commission, the state could follow "opt-out" procedures outlined in the bill.

Joining the interstate compact is one of the TDI's major priorities for this legislative session. According to TDI, the compact will streamline the insurance regulatory system and preserve the consumer protections that currently exist in statute.

OPPONENTS SAY:

Procedures for public access to filings during the review process should be clearly established in the bill rather than subject to rules adopted by the commission. The public should have clear access to these filings as part of the review process.

The bill should provide stronger representation for consumers by establishing a consumer advocate rather than an advisory board. If responsibility for filings were removed from the state and placed with the commission, there would be a greater need for a separate consumer advocate at the commission level. A separate consumer advocate could speak with a stronger voice than a consumer advisory board that was balanced by an industry advisory board.