

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 494 (Mayes)
Version: April 5, 2021
Hearing Date: July 6, 2021
Fiscal: Yes
Urgency: No

SUBJECT

Insurance Holding Company System Regulatory Act

DIGEST

This bill amends the Insurance Holding Company System Regulatory Act to conform to the National Association of Insurance Commissioners' (NAIC) recent changes to its Insurance Holding Company System Model Act and Model Regulations.

EXECUTIVE SUMMARY

The NAIC is created and governed by the chief insurance regulators from the 50 states, the District of Columbia, and the five U.S. territories, dedicated to establishing standards and best practices for insurance standards and regulations. California is accredited by the NAIC. In 2020, the NAIC unanimously adopted revisions to its Insurance Holding Company System Model Act and Model Regulations to enact changes recommended in the wake of the 2008 Great Recession; the changes, among other things, entitle states to more information relating to an insurance group's financial profile and its available capital resources. This bill amends California's Insurance Holding Company System Act to comport with the NAIC's changes, which is necessary for California to maintain its NAIC accreditation. Consistent with existing provisions of the Insurance Holding Company System Act, the bill provides that information provided to the Insurance Commissioner in connection with the Act is confidential except in specified circumstances and may not be disclosed to the public.

This bill is sponsored by the California Department of Insurance. There is no known opposition. This bill passed out of the Senate Insurance Committee with a 12-0 vote.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that the business of insurance, and every person engaged therein, are generally subject to regulation by the states. (15 U.S.C. § 1012.)
- 2) Establishes the Insurance Holding Company System Regulatory Act (the Act), which authorizes the Insurance Commissioner “Commissioner” to regulate, and require the registration of, every insurer that is authorized to do business in the state and is a member of an insurance holding company system. (Ins. Code, div. 1, pt. 2, ch. 2, art. 4.7, §§ 1215 et seq.)
- 3) Requires insurance holding company systems registered in the state to make a number of financial disclosures relating to their solvency and enterprise risk, and authorizes the Commissioner to require the company to provide documents, including proprietary materials so that the Commissioner can investigate the company’s financial health. (Ins. Code, §§ 1215.5-1215.8.)
- 4) Provides that all information, documents, and copies thereof obtained by or disclosed to the Commissioner or any other person in the course of an examination or investigation into an insurance holding company system:
 - a) Shall be kept confidential and are not subject to disclosure by the Commissioner under the California Public Records Act (CPRA). (Gov. Code, §§ 6250 et seq.)
 - b) Are not subject to a subpoena issued to, or discovery from, the Commissioner, and is not admissible into evidence in a private civil action if obtained from the Commissioner.
 - c) May not be made public by the Commissioner, except to insurance departments of other states, without the prior written consent of the insurance company to which it pertains, unless the Commissioner, after giving the insurer and affected affiliates notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication of the information. (Ins. Code, § 1215.8(a).)

This bill:

- 1) Adds the following relevant definitions to the Act:
 - a) “Group capital calculation instructions” is the group capital calculation instructions as adopted by the NAIC and as amended by the NAIC in accordance with the procedures adopted by the NAIC.
 - b) The “NAIC Liquidity Stress Test Framework” refers to an NAIC publication that includes a history of the NAIC’s development of regulatory liquidity stress testing, the scope criteria applicable for a specific data year, and the

- liquidity stress test instructions and reporting templates for a specific data year. The scope criteria, instructions, and reporting template may be adopted by the NAIC and amended by the NAIC in accordance with the procedures adopted by the NAIC.
- c) "Scope criteria," as detailed in the NAIC Liquidity Stress Test Framework, are the designated exposure bases along with minimum magnitudes thereof for the specified data year, which are used to establish a preliminary list of insurers considered scoped into the NAIC Liquidity Stress Test Framework for that data year.
- 2) Requires the ultimate controlling person of an insurer subject to registration under the Act to file an annual group capital calculation, unless a specified exemption applies.
 - 3) Requires the ultimate controlling person of an insurer subject to registration under the Act and scoped into the NAIC Liquidity Stress Test Framework to file the results of a specific year's liquidity stress test.
 - 4) Allows the Commissioner to share certain confidential documents obtained or disclosed pursuant to provisions of the Act to be shared with the NAIC and a third-party consultant designated by the Commissioner.

COMMENTS

1. Author's comment

According to the author:

The National Association of Insurance Commissioners (NAIC) adopted revisions to the NAIC Insurance Holding Company System Model Act and Model Regulation last December. This proposal amends California law to assist in evaluation of insurance group risk and liquidity stress, and will help California retain NAIC accreditation for the California Department of Insurance.

2. This bill ensures California can maintain its NAIC accreditation

The NAIC is the U.S. standard-setting and regulatory support organization created by and composed of the chief insurance regulators from the 50 states, the District of Columbia and five U.S. territories.¹ The NAIC establishes standards and best practices, conducts peer reviews, and coordinates regulatory oversight by Commissioners in the

¹ See NAIC, *Our Story*, <https://content.naic.org/about> [last visited Jul. 2, 2021].

U.S.² NAIC is a key part of the national system of state-based insurance regulation and promotes uniform practices amongst states in regulating multi-state insurers. California is accredited by NAIC.

The NAIC plays a major role in state insurance regulation by accrediting state insurance departments and propounding model legislation.³ While the state is not strictly required to maintain NAIC accreditation, domestic insurers in a state that is not accredited face significant regulatory burdens in other states in which they do business, so failing to maintain current NAIC-recommended standards would put the state at a significant disadvantage. Consequently, there is a substantial premium on each state maintaining its accredited status.

According to California Insurance Commissioner Ricardo Lara, the NAIC unanimously adopted revisions to the Insurance Holding Company System Model Act and Model Regulations in December 2020, in order to help state insurance departments evaluate insurance group risk and liquidity stress. The NAIC has further recommended that these revisions become mandatory for accreditation in November 2022, with enforcement of the standard beginning January 1, 2023. As a result, if the Legislature does not incorporate these revisions into the Act, California will be at risk of losing its NAIC accreditation. Commissioner Lara also states that the revisions will protect consumers by allowing the California Department of Insurance to better understand the financial risk profiles and solvency of insurance groups.

3. This bill maintains existing limitations on the public's right to access specific materials provided to the Commissioner

Currently under the Act, materials and information obtained by or provided to the Commissioner in the course of an examination or investigation under the Act are confidential.⁴ The materials and information cannot be disclosed under the CPRA, cannot be subpoenaed from the Commissioner, and cannot be disclosed by the Commissioner in discovery; furthermore, if a person obtains such materials or information from the Commissioner, that information is not admissible into evidence in a private civil action.⁵ There is nothing, however, to stop a litigant or member of the public from attempting to obtain or subpoena such materials from an insurance company directly.

This bill clarifies that the materials and information provided to the Commissioner in the course of an investigation are recognized as being proprietary and containing trade secrets. Generally speaking, it appears likely that the information provided to the

² See NAIC, FAQs, available at <https://content.naic.org/sites/default/files/about-faq.pdf> [last visited Jul. 2, 2021].

³ NAIC, *Financial Regulation Standards and Accreditation Program* (Apr. 2019) at pp. 1-3.

⁴ Ins. Code, § 1215.8(a).

⁵ *Ibid.*

Commissioner in connection with the Act will contain trade secrets and/or proprietary information, given that the contemplated information relates directly to an insurance company's financial health and the specifics of its solvency; such information is highly sensitive and could put a company at a significant competitive disadvantage if it became public. The CPRA provides existing protections for trade secrets, so this bill appears consistent with existing NAIC law and existing exemptions from disclosures.⁶

The bill also provides that specified portions of information required to be provided to the Commissioner under this bill – information relating to the ultimate controlling person's annual group calculation and NAIC liquidity stress test results, and information relating to a non-U.S.-based insurance holding company system's annual group calculation – must also remain confidential. As with the information already rendered confidential under the Act, this information would cover highly sensitive financial and business information about the company providing the information.

Finally, this bill authorizes the Commissioner to share certain otherwise-confidential information with a designated consultant for the purpose of analyzing the results of the stress test and other financial information. The information in question – such as liquidity stress test results – is highly technical, and it appears reasonable for the Commissioner to be able to disclose the information to a third-party consultant who has agreed to keep the information confidential.

Overall, the bill's provisions making certain insurance company, and insurance party controlling person, financial information confidential and exempt from disclosure under the CPRA appears consistent with existing exemptions in the Insurance Code and elsewhere.

SUPPORT

California Department of Insurance (sponsor)

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

⁶ See Evid. Code, § 1060; Gov. Code, § 6254(k); Ins. Code, § 1215.8.

Prior Legislation:

AB 553 (Daly, Ch. 213, Stats. 2015) updated the Act by outlining a process for determining the lead state for domestic insurance groups, authorizing the Commissioner to act as the groupwide supervisor for any internationally active insurance group, and expanding the list of confidential documents submitted to the Commissioner that are confidential and not subject to disclosure by the Commissioner, as specified.

AB 1234 (Levine, Ch. 448, Stats. 2014) supplemented the Act's provisions related to the confidential treatment of materials submitted to the Commissioner by providing that the materials are not subject to discovery or admissible into evidence in a private civil action if obtained by the Commissioner in any manner.

SB 1448 (Calderon, Ch. 282, Stats. 2012) revised the Act necessary to maintain standards consistent with the NAIC's model act, and provided that all information required to be reported to the Commissioner in insurance holding company system registration documents shall be kept confidential, shall not be subject to disclosure pursuant to the CPRA, and shall not be subject to subpoena.

PRIOR VOTES:

Senate Insurance Committee (Ayes 12, Noes 0)

Assembly Floor (Ayes 77, Noes 0)

Assembly Appropriations Committee (Ayes 16, Noes 0)

Assembly Insurance Committee (Ayes 13, Noes 0)
