

HOUSE BILL REPORT

HB 1034

As Passed Legislature

Title: An act relating to the administrative supervision of financially distressed insurers.

Brief Description: Conducting the administrative supervision of financially distressed insurers.

Sponsors: By Representatives Kirby, Roach and Simpson; by request of Insurance Commissioner.

Brief History:

Committee Activity:

Financial Institutions & Insurance: 1/20/05, 2/1/05 [DP].

Floor Activity:

Passed House: 3/9/05, 96-0.

Senate Amended.

Passed Senate: 4/11/05, 42-0.

House Concurred.

Passed House: 4/18/05, 95-0.

Passed Legislature.

Brief Summary of Bill

- Allows the Insurance Commissioner (Commissioner) to place an insurer under administrative supervision if the Commissioner makes a finding that one of several specific conditions is met.
- Allows the Commissioner or an administrative supervisor appointed by the Commissioner to prevent an insurer under administrative supervision from undertaking various financial activities without the prior approval of the Commissioner or the administrative supervisor.
- Permits an insurer an administrative hearing on any action or failure to act by the Commissioner. Permits an insurer to request consideration of an action of an administrative supervisor. Allows the insurer an administrative hearing if the request of the insurer is denied after reconsideration by the administrative supervisor.
- Allows the Commissioner to adopt rules to implement this Act.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: Do pass. Signed by 10 members: Representatives Kirby, Chair; Ericks, Vice Chair; Roach, Ranking Minority Member; Tom, Assistant Ranking Minority Member; Newhouse, Santos, Schual-Berke, Serben, Simpson and Williams.

Staff: Jon Hedegard (786-7127).

Background:

The Insurance Commissioner (Commissioner) oversees the regulation of insurance in Washington. An important regulatory responsibility of the Commissioner is the monitoring the solvency of insurance companies and health carriers. The monitoring is achieved by the use of risk assessment formulas and various financial reporting requirements. If certain criteria are met, the Commissioner can apply for a court order for rehabilitation or liquidation of a domestic insurer (an insurer formed under the laws of Washington).

For the purpose of chapter 48.31 RCW ("Mergers, Rehabilitation, Liquidation"), "insurer" includes life insurers, disability, property insurers, casualty insurers, vehicle insurers, title insurers, surety bonding companies, insurers or companies offering charitable gift annuities.

Summary of Bill:

The Commissioner is given the ability to place an insurer under administrative supervision. An insurer under administrative supervision is subject to greater scrutiny. The insurer may be required to receive prior approval from the Insurance Commissioner or the appointed administrative supervisor before taking certain actions.

When an insurer may be put under administrative supervision.

The Commissioner may place an insurer under administrative supervision if the Commissioner makes a finding that:

- the continuance of the insurer's business is financially hazardous to the public or to its insureds consistent with Title 48 RCW or rules adopted by the Commissioner;
- the insurer has or appears to have exceeded its powers granted under the insurer's certificate of authority and Title 48 RCW or rules adopted by the Commissioner;
- the insurer has failed to comply with the applicable provisions of Title 48 RCW or rules adopted by the Commissioner and the continuance of the insurer's business is or will be financially hazardous to the public or to its insureds;
- the business of the insurer is being conducted fraudulently; or
- the insurer consents.

When an Insurer exceeded its powers.

An insurer has "exceeded its powers" if it:

- refuses to permit examination of its books, papers, accounts, records, or affairs;
- unlawfully removes books, papers, accounts, or records necessary for an examination;
- fails to promptly comply with the applicable financial reporting statutes or rules;
- neglects or refuses to make up prohibited deficiencies in capital, capital stock, or surplus;

- transacts insurance or write business after revocation or suspension of licensure; or
- unlawfully or in violation of an order (1) totally reinsures its entire outstanding business; (2) merges or consolidates substantially its entire property or business; or (3) engages in any unauthorized transaction.

Impact of Administrative Supervision.

The Commissioner must adopt standards and procedures to maintain orderly continuation of the operations of an insurer under administrative supervision. The Commissioner may prevent an insurer from doing any of the following things without the prior approval of the Commissioner or the appointed supervisor:

- sell or encumber any of its assets; withdraw bank accounts;
- lend funds; invest funds; transfer property;
- incur debt, obligation, or liability; merge or consolidate with another company;
- approve new premiums or renew any policies; enter into any new reinsurance contract or treaty;
- terminate, surrender, convert, or lapse a policy except for nonpayment of premiums;
- release, pay, or refund amounts received, accrued or reserved on any insurance policy;
- make a material change in management; or
- increase salaries and benefits of officers or directors.

Insurer's Right to Administrative Hearing.

Any action or failure to act by the Commissioner is subject to chapter 48.04 and chapter 34.05 RCW. An insurer may contest an action of an administrative supervisor. If denied after reconsideration, the insurer can request a proceeding under chapter 48.04 and chapter 34.05 RCW.

Other Provisions.

Administrative supervisors are added to the persons receiving immunity.

Exemptions from public disclosure and disclosure in civil actions are created for actions related to the administrative supervision of an insurer. The Commissioner may open proceedings or make information public if the Commissioner deems it to be in the best interest of the insurer, its insureds or creditors, or the general public. The Commissioner's decision to disclose any confidential materials is subject to applicable law.

The Commissioner is not prevented from beginning liquidation or rehabilitation proceedings in addition to administrative supervision.

The Commissioner may adopt rules to implement this Act.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: The bill is a 1989 model act from the National Association of Insurance Commissioners. Nineteen states have adopted the model. Why pursue a 1989 model act in 2005? We have seen four companies go into receivership since 1999. The four companies offered different products. Their troubles were not due to the type of market they were in. In all four of the companies, we saw problems long before they went into receivership. We saw signs of financial deterioration for years. The Insurance Commissioner could not take action though. We feel the bill gives us the opportunity to aid the company before it has to go into receivership. Their officers are left in place and all of the proceedings are confidential. It is a step before receivership. Under this bill, we could take action more quickly. We could make sure that the insurer does not take actions that lead to receivership.

Testimony With Concerns: We support the concept but have some concerns about the actual words used. In section 3, subsection (1)(c), it cites "failure to comply with the insurance code." This could allow the imposition of administrative supervision for one time, minor code violations. In section 5, the authority over activities looks like it could be burdensome and costly for an insurer to get their desired actions approved. This may be the model language, we need to check on that.

Persons Testifying: (In support) Mary Clogston and Jim Odiorne, Office of the Insurance Commissioner.

(With concerns) Cliff Webster, American Insurance Association.

Persons Signed In To Testify But Not Testifying: None.