



AAICP Compass

Newsletter of the American Association of Independent Claims Professionals

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Federal Update

Mid-Term Elections, Dodd-Frank Act Implementation

The Congressional landscape has changed dramatically since the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) was passed by a Democrat-controlled Congress and signed into law by President Obama in July 2010. Following the November mid-term elections, Republicans assumed for the 112th Congress, the majority in the House of Representatives, and Democrats maintained a slight majority in the Senate. The change in control in the House resulted in Congressman Spencer Bachus (R-AL) replacing Congressman Barney Frank (D-MA) as the Chair of the House Committee on Financial Services. Democrats continue to control the Senate, with Senator Tim Johnson (D-SD) assuming the chairmanship of the Senate Banking Committee upon Senator Chris Dodd's (D-CT) retirement.

Many Republicans have criticized certain Dodd-Frank reforms, and some have suggested a repeal of all or part of the legislation. Congresswoman Michelle Bachman (R-MN) and Senators Jim DeMint (R-SC) and Richard Shelby (R-AL) have each introduced bills (H.R. 87, S. 712 and S. 746, respectively) to repeal the Dodd-Frank Act. However, given Democratic control of the Senate, it is unlikely to occur. Thus, most Republicans have shifted their focus to: (1) amending the Dodd-Frank Act; (2) oversight of implementation of the key provisions of Dodd-Frank; (3) budgetary concerns for regulatory agencies carrying out the bill's requirements; and, (4) the rulemaking implementation timetable. Democrats have accused Republicans of attempting to underfund key implementing agencies and warned that Democrats will resist any attempts to weaken Dodd-Frank.

Federal Insurance Office; Federal Regulation of Insurance

The Dodd-Frank Act created the Federal Insurance Office (FIO) as a new office within the Treasury Department. Although Dodd-Frank does



not provide the FIO with domestic regulatory authority, it authorizes the FIO to monitor all aspects of the insurance industry (except for health insurance and long-term care insurance). To help Congress determine the bounds of such monitoring authority, Dodd-Frank directs the FIO to conduct a study and report to Congress, by January 2013, on how to modernize the regulation of the insurance industry. Some members of the insurance industry support this mandate, while others argue that the FIO should not have a hand in shaping the bounds of its own authority. Those that oppose the mandate suggest that the Government Accountability Office, and not the FIO, should conduct the study.

The Dodd-Frank Act also directs the FIO to submit annual reports to the President and Congress on (1) any actions taken to preempt inconsistent state insurance measures; and (2) the insurance industry generally, including any information requested by Congress. The first of these reports is due September 30, 2011. Moreover, Dodd-Frank requires the FIO to report to Congress on the global reinsurance market and the ability of state regulators to access reinsurance information for regulating companies in their jurisdictions by September 2012 and January 2013, respectively.

In addition to the FIO's statutory authority to monitor, gather information and report to Congress on the insurance industry, the FIO director is authorized to advise the Treasury secretary on the financial health of insurers. Additionally, as a non-voting member of the Financial Stability Oversight Council (FSOC, discussed below), the FIO director will help federal officials at the FSOC determine whether an insurer poses a risk to the financial stability of the U.S. economy.

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Federal Update *Continued from page 1*

Some in the insurance industry have expressed concern that the FIO may serve to set the stage for eventual passage of an optional federal charter for insurers. However, the Chairwoman of the House Financial Services Subcommittee on Insurance, Housing and Community Opportunity, Judy Biggert (R-IL), announced in early April that optional federal charter legislation will not come to a vote in the current Congressional session due to Congressional focus on oversight of the establishment of the FSOC and FIO.

Financial Stability Oversight Council

One of the principle achievements of Dodd-Frank was the establishment of the FSOC, created to identify, monitor and address systemic risks to the financial stability of the U.S. economy. To that end, Dodd-Frank authorizes the FSOC to designate certain financial institutions that, based on material financial distress at the institution, or the nature, scope, size, scale, concentration, and interconnectedness of the institution, pose a systemic threat to the financial stability of the U.S. and recommend such institutions for supervision and regulation by the Federal Reserve Board.

The FSOC is comprised of 10 voting members, including an insurance industry expert appointed by the President and confirmed by the Senate, and 5 non-voting members, including a state insurance commissioner and the director of the FIO.

On May 9, 2011, the Treasury Department announced the creation of a Federal Advisory Committee on Insurance (Committee) to provide advice to the FIO and the Treasury Department, including to the FIO Director in the Director's role as a member of the FSOC. Half of the Committee's membership will be state and tribal insurance regulators, and the other half "will represent a diverse range of perspectives from, for example, the property and casualty insurance industry, the life insurance industry, the reinsurance industry, the agent and broker community, public advocates, and academia."

Nominations for the Committee must be submitted to the FIO at the Treasury Department within 15 days of the notice's publication in the Federal Register, which will likely result in a deadline before the end of May.

John Huff, Director of the Missouri Department of Insurance, has been designated to serve as the non-voting state insurance commissioner on the FSOC, and Michael McRaith, Director of the Illinois Department of Insurance and the Secretary-Treasurer of the National Association of Insurance Commissioners, assumed the directorship of the FIO in June. However, the Obama Administration has yet to appoint the independent voting member with insurance expertise.

The delay in naming an insurance expert to the FSOC has prompted John Huff and members of the insurance industry to raise publicly their concerns that the insurance industry is being deprived of critical input in the formative period of the FSOC rulemaking process.

NARAB II Bill Reintroduced in the House of Representatives

On March 16, 2011, Representatives Randy Neugebauer (R-TX) and David Scott (D-GA), both members of the House Financial Services Committee, introduced the National Association of Registered Agents and Brokers Reform Act of 2011 (NARAB II). The bill (H.R. 1112), boasts more than 50 cosponsors. It seeks to provide for non-resident licensing reform while preserving state insurance regulation and consumer protections by creating a private nonprofit organization, the National Association of Registered Agents and Brokers, to oversee producer reciprocal licensing and continuing education standards on a national level. If passed, NARAB II would achieve much-needed nonresident licensing reciprocity and help policyholders by permitting greater competition.

NARAB II was referred to the House Financial Services Subcommittee on

Insurance, Housing and Community Opportunity on April 4, 2011, which is chaired by Congresswoman Judy Biggert (R-IL). Identical legislation passed the House of Representatives in the last Congress, but was not taken up by the Senate.

The CLAIM Act Legislation— A Solution

Claims adjusters need flexibility and mobility to quickly and efficiently respond to consumer needs. In today's national market, applying the right expertise to adjusting losses from natural disasters or individual accidents is particularly important, especially in cases occurring across state lines.

Unfortunately, a patchwork of often conflicting state laws frustrates interstate claims adjusting and prevents the most efficient, timely, and cost-effective customer service across state lines, whether for workers compensation, disability, residential, auto, crop or other claims. Currently, claims adjusters have to deal with inefficiencies and outdated restrictions that impose otherwise avoidable costs that ultimately affect consumers.

The **CLAIM Act** legislation, supported by AAICP, advances uniformity, reciprocity, and consumer protections for claims adjusting across state lines. The **CLAIM Act** protects consumers and accelerates adjusting of personal claims related to natural disasters by encouraging states to adopt uniform licensing criteria and by creating incentives for adjusters to take a multistate exam proposed by the National Association of Insurance Commissioners (NAIC).

For more information on the **CLAIM Act** and how to get involved in AAICP's federal advocacy efforts, go to www.aaicp.net.



NAIC UPDATE

The NAIC continues to work on issues affecting AAICP members' related TPA model guidelines and adjuster licensing. An update on NAIC initiatives is provided below for your information:

- **NAIC Uniform Applications:** NAIC 2009 uniform applications are in biannual revision process and any revisions will be adopted by the Working Group for final adoption to take place by the Producer Licensing (EX) Task Force and Joint Executive (EX) Committee/Plenary. Update implementation is expected by January 2012.
- **Third-Party Administrator Guideline:** The guidelines are being developed to replace the current TPA model (#90) and revisions will add workers compensation and other updates, including some health insurance-related changes. The Property and Casualty Insurance (C) Committee adopted the guideline at the Spring National Meeting held in Austin March 26-29, 2011. The joint Executive Committee/Plenary will consider adoption of this guideline at the 2011 Summer National Meeting to be held August 29 – September 1 in Philadelphia. Review of the Large Deductible (EX) Working Group's suggested revisions of the NAIC's Third-Party Administrator Statute (#90) is listed as a Producer Licensing (EX) Task Force essential 2011 charge.
- **Additional Information** can be found on the NAIC website at:
http://www.naic.org/committees_ex_pltf_producer_licensing.htm

Extreme AAICP Website Makeover!

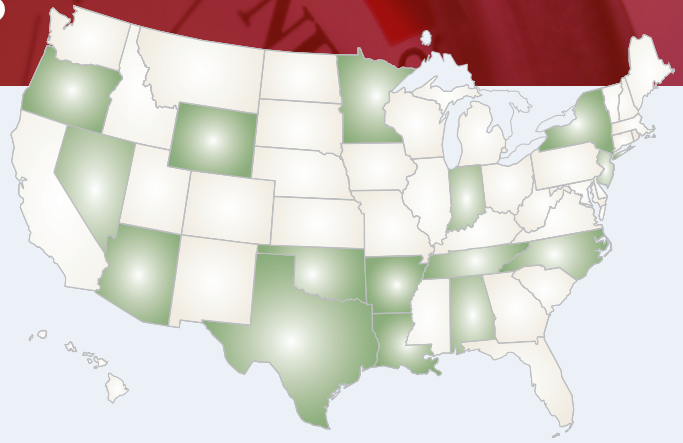
www.aaicp.net

Visit www.aaicp.net and preview the Association's new and improved website! Learn more about AAICP's legislative priorities focused on the development of federal and state solutions supporting adjuster licensing uniformity and reciprocity.

Interested in Joining AAICP?

AAICP membership is open to any organization working with or representing the interests of independent claims professionals. AAICP member organizations have a vested business interest in seeking adjuster licensing reform to ensure uniformity and reciprocity. Membership is comprised of independent claims adjuster and third-party administrator organizations working collaboratively as a community to resolve legislative and regulatory issues affecting the independent claims profession.

For more information on joining AAICP, please contact Susan Murdock, Association Director at susan@murdockinc.com or 703.830.9192.



Around the States

Alabama

House Bill 306 and Senate Bill 269 are companion bills that were filed earlier this year in Alabama. These bills seek to codify the NAIC adjuster licensing guidelines with relatively minor variation. Of note, they seek to create an exemption from licensure for clerical employees who obtain information from, and provide information to, policyholders for portable consumer electronic insurance claims. These exempt individuals must be supervised by a licensed adjuster or agent at a ratio of 25 exempt individuals per licensee. SB 269 passed the full legislature and was signed by the Governor on June 9, 2011. The law will take effect January 1, 2012.

A third bill, House Bill 326, was introduced April 5, but has yet to be heard in a committee. This bill provides qualifications and procedures for the licensing of public adjusters. Amongst other requirements, it mandates that public adjusters take and pass a written examination and complete a minimum of 24 hours of continuing education on a biennial basis. HB 326 also allows for the licensing of nonresident public adjusters and provides standards of conduct for public adjusters to report administrative action taken against them in other jurisdictions. The Commissioner of Insurance will have the authority to promulgate rules necessary to administer and enforce this act.

Arkansas

Senate Bill 378 provides insurance consumers the right to employ their own insurance adjuster. This bill has been raised on the Senate floor twice and failed to pass both times. This topic has now been recommended for a study by the Senate Interim Committee on Insurance and Commerce.

Arizona

Senate Bill 1400 amends current Arizona adjuster licensing law by adding a definition of "salaried employee" to the exemption from licensure for salaried employees of insurers and creates a new exemption for a clerical person who collects and furnishes claim information regarding portable consumer electronics insurance claims so long as 25 such persons are supervised by a licensed adjuster or agent, and enter data regarding the claim into an automated claims adjudication system. Agents acting as supervisors for this specific type of insurance are not required to be licensed as an adjuster. This bill also deletes requirements that adjusters have and maintain an office in Arizona and permits the Director to request fingerprints of applicants. Finally, it requires the Director to grant reciprocity to a Canadian applicant who already holds a resident license in another state. This bill was enacted on April 25, 2011 and is effective July 20, 2011.

Indiana

House Bill 1486, the Indiana Insurance Department's omnibus bill, includes language providing for independent adjuster licensing that closely mirrors the NAIC guidelines. This bill also creates an exemption from licensure for a clerical person who collects and furnishes claim information regarding portable consumer electronics insurance claims so long as 25 such persons are supervised by a licensed adjuster or agent, and enter data regarding the claim into an automated claims adjudication system. Agents acting as supervisors for this specific type of insurance are not required to be licensed as an adjuster. This bill also contains numerous other insurance related provisions. HB 1486 passed the Indiana General Assembly, has been signed into law by the Governor, and is effective July 1, 2011.

Louisiana

House Bill 283 makes numerous technical changes to the Louisiana Insurance Code, including minor non-substantive cleanup of the adjuster laws. These changes

include the updating of terms and language, the removal of outdated references to certain dates, and consolidation of all provisions authorizing fees into a single provision of law. HB 283 has passed the full House and is waiting to be heard in Senate Committee on Insurance.

Minnesota

House File 1405 creates an exemption from licensure for clerical employees who obtain information from, and provide information to, policyholders pertaining to portable consumer electronic insurance claims so long as these clerical employees are supervised by a licensed adjuster or agent at a ratio of 25 exempt individuals per licensee. This bill also defines automated claims adjudication system for the collection, data entry, calculation and final resolution of portable electronics insurance claims. This legislation would not permit a resident of Canada to obtain resident adjuster licensure in Minnesota unless that person passes the resident license exam and satisfies other applicable requirements. HF 1405 passed the legislature and was approved by the Governor. It will become effective on January 1, 2012.

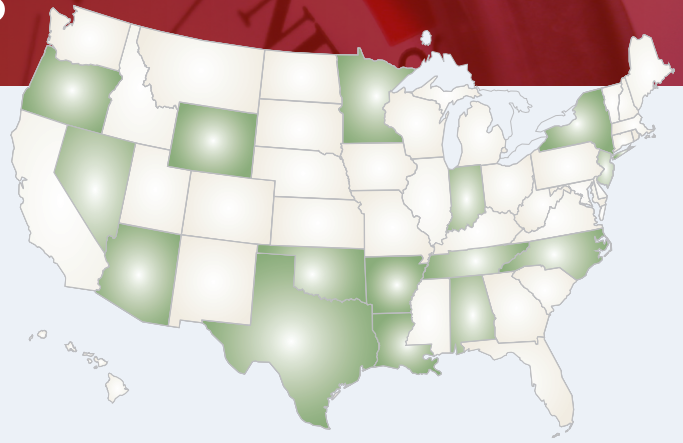
Nevada

Senate Bill 152 revises provisions governing insurance adjusters to include several NAIC model guideline exemptions. It also creates an exemption from adjuster licensure for clerical employees who collect information from, and give information to, policyholders regarding a portable consumer electronic insurance claim. These individuals must be supervised by licensed adjusters or licensed agents. Finally, SB 152 requires business entity applicants to provide the names of officers and directors for the applicant, and names of the executive officers, directors and any person who owns more than 10% of the voting securities of the applicant. Each person disclosed is required to furnish information to the Commissioner as though applying for an individual license. SB 152 passed the Legislature and is waiting for approval by the Governor.

Assembly Bill 74 revises provisions relating to the licensing of insurance adjusters to remove the residency requirement, requires that an applicant either pass an examination before receiving a license as an insurance adjuster or, if not a resident of Nevada, be currently licensed in a state that requires an examination.

New Jersey

Senate Bill 1557 was enacted into law on January 5, 2011. This bill changes the term of public adjuster licenses from four years to two years. It also requires every individual licensed public adjuster, as well as each individual sub-licensee of a licensed public adjuster that is a corporation, firm or association, to complete a minimum of 15 hours of continuing education every two years as part of license renewal. Additionally, the Commissioner may waive the requirements for continuing education on an individual basis for reasons of hardship. The Commissioner may also waive the continuing education requirements for a public adjuster who is a non-resident licensee if the Commissioner deems that such licensee has satisfactorily completed the continuing education requirements for licensed public adjusters in the state in which he resides that are equivalent to New Jersey's continuing education requirements.



Around the States

New York

Assembly Bill 3785 was introduced in January 2011 and has been referred to the Insurance Committee but has not been heard. This bill would require independent adjusters to complete pre-licensing and continuing education courses and give the Superintendent the authority to require an applicant for an Article 21 license to submit his or her fingerprints and permits the licensing of non-resident adjusters on a reciprocal basis.

North Carolina

House Bill 298 and Senate Bill 323 are companion Department bills that make numerous changes to the North Carolina insurance laws. The legislation also provides an exemption from licensure for clerical employees who obtain information from, and provide information to, policyholders pertaining to portable consumer electronic insurance claims and enter data regarding the claim into an automated adjudication system. These exempt individuals must be supervised by a licensed adjuster or agent at a ratio of 25 exempt individuals per licensee. HB 298 has passed the legislature and was sent to the Governor for his approval.

Oklahoma

SB 778 is the Oklahoma Insurance Department's omnibus bill which broadly impacts all parts of the insurance code. Specific to adjusters, this bill creates an exemption from licensure for clerical employees who obtain information from, and provide information to, policyholders pertaining to portable consumer electronic insurance claims and enter data regarding the claim into an automated adjudication system. These exempt individuals must be supervised by a licensed adjuster or agent at a ratio of 25 exempt individuals per licensee. SB 778 has passed the legislature and is waiting on the Governor's approval.

Senate Bill 965 modifies exemptions from adjuster examination and reexamination requirements within the Insurance Adjuster Licensing Act and repeals Title 36, Section 1435.7A, which provides application guidelines and requirements for a resident provisional insurance producer license. This bill has been signed by the Governor.

Oregon

House Bill 3619 which has passed its committee of origin creates an exemption for clerical individuals who collect and furnish claim information and conduct data entry into an automated claims adjudication system in regards to portable consumer electronic insurance claims. Exempt individuals must be supervised by a licensed adjuster or a licensed insurance producer at a ratio of 25 exempt individuals per licensee. This bill has the full legislature and has been sent to the Governor for approval.

Tennessee

Senate Bill 2018 and House Bill 1047 defines "independent adjuster" and replaces the words "public adjuster" with the words "public and independent adjusters" throughout a large part of the insurance code. This change will require independent adjusters to meet many of the requirements and conditions previously applicable only to public adjusters including written examinations prior to licensure,

background checks, and other various requirements. "Independent Adjuster" is now defined as a person who:

1. Independently contracts, for compensation, with insurers; and
2. Investigates, negotiates or settles property, casualty or workers compensation claims for insurers or workers compensation claims for self-insureds.

This legislation also seeks to establish that an independent adjuster must maintain a copy of each contract between the independent adjuster and the insurer or self-insurer and comply with the record retention policy as agreed to in that contract; must not give legal advice, and must not deal directly with any policyholder or claimant who is represented by an attorney without that attorney's permission; must comply with all local, state and federal privacy and information security laws; and may not have any financial interest in any adjustment or acquire for such adjuster or any person any interest or title in salvage, without first receiving written authority from the principal. Both bills are waiting to be heard in their respective committees.

Texas

House Bill 2699 has been passed by the legislature and sent to the Governor's office for signature. This bill seeks to amend the adjuster licensing law by changing the definition of adjuster from "individual" to "person" which clearly permits the Texas Department to require entity licensure. This bill also requires any such business entity applicant to prove that they are eligible to designate Texas as their home state and that they are trustworthy. It also creates a new exemption for clerical individuals who collect data from, and furnish data to, insureds regarding portable consumer electronic claims. These exempt individuals must be entering that data into an automated claims adjudication system while under the supervision of a licensed adjuster or agent at a ratio of 25 exempt individuals for each licensee. Finally, no resident of Canada may obtain a Texas resident license or declare Texas their home state unless they satisfy the majority of the resident adjuster requirements.

Wyoming

House Bill 4 was enacted by the Governor on February 18, 2011. Currently, the Wyoming Insurance Department licenses insurance producers, insurance adjusters and insurance consultants, among others. This bill requires applicants for those three license types to submit fingerprints and provide permission to the department to conduct a criminal history background check.

House Bill 9, also enacted by the Governor in February, increases license fees for nonresident agents, adjusters and insurance consultants; clarifies that adjuster and surplus lines broker licenses are annual licenses and may lapse without payment of annual fees; and provides for home state designation by insurance adjusters for purposes of meeting continuing education requirements.