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NATIONAL ASSOCIATION OF REGISTERED AGENTS AND BROKERS REFORM ACT OF 2013

JULY 29, 2013.—Ordered to be printed

Mr. JOHNSON of South Dakota, from the Committee on Banking, Housing, and Urban Affairs, submitted the following

R E P O R T

[To accompany S. 534]

The Committee on Banking, Housing, and Urban Affairs, having had under consideration S. 534 a bill to reform the National Association of Registered Agents and Brokers, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

INTRODUCTION

On June 6, 2013, the Senate Committee on Banking, Housing, and Urban Affairs considered S. 534, entitled 'The National Association of Registered Agents and Brokers Reform act of 2013,' a bill to reform the National Association of Registered Agents and Brokers, and for other purposes. The Committee voted to report the bill, as amended, to the Senate.

BACKGROUND

Beginning in the early 1800s, the business of insurance in the United States had been regulated by the States. In 1943, however, the Supreme Court ruled in *United States* v. *South-Eastern Underwriters Association,* that the business of insurance is subject to Congress's power to regulate interstate commerce. Following that ruling, Congress passed the McCarran-Ferguson Act and delegated the regulation and taxation of the business of insurance to the States. However, Congress reserved the right to regulate the business of insurance in instances when it may be appropriate.

Since the passage of the McCarran-Ferguson Act, the States have enacted and enforced a variety of insurance laws and regulations

specific to the needs and perils of each locality. For an insurance company or agent operating nationally, this can mean being regulated by up to 56 independent domestic regulators (this includes the fifty States, the District of Columbia and five U.S. territories). Currently, insurance companies and agents operating in more than one State are required to apply and maintain separate licenses in each State in which they operate, even if the license requirements and paperwork are similar.

In 1999, Congress passed the Gramm-Leach-Bliley Act that included a provision, specifically Section 321, to encourage States to pass uniform agent and producer licensing regulations within three years of enactment. If a majority of the States did not pass uniform rules in that time period, the National Association of Registered Agents and Brokers (NARAB) would be created to grant licenses authorizing its members to operate in any State. The National Association of Insurance Commissioners (NAIC) determined a sufficient number of States passed uniform regulations, however, so NARAB was never created.

Despite the progress made by the States towards uniform licensing requirements, concerns remain. In a 2009 report ("Insurance Reciprocity and Uniformity: NAIC and State Regulators Have Made Progress in Producer Licensing, Product Approval, and Market Conduct Regulation, but Challenges Remain," GAO–09–372), the Government Accountability Office (GAO) highlighted several barriers to insurance producer licensing uniformity and reciprocity, as well as uneven insurance consumer protections. The GAO report noted that licensing inefficiencies "could result in higher costs for insurers, which in turn could be passed on to consumer[s]."

In testimony before the Committee on March 19, 2013, Monica J. Lindeen, Montana State Auditor and Commissioner of Securities and Insurance and Vice-President of the National Association of Insurance Commissioners, stated: "Even with all our progress, the NAIC agrees that further improvement is needed. The states have made such significant progress in reforming producer licensing that today's system is unrecognizable from the system of 10–15 years ago. However, the narrow, targeted area of the non-resident insurance producer licensing process is one of the exceptionally rare instances where we believe Federal legislation could be used."

To address the concerns with the current insurance producer licensing system highlighted by GAO, NAIC and others, Senators Jon Tester and Mike Johanns introduced S. 534, the National Association of Registered Agents and Brokers Reform Act of 2013. This Act would create a National Association of Registered Agents and Brokers that will allow non-resident insurance producers, after meeting and maintaining certain eligibility criteria, to operate in States for which they pay a State's licensing fee.

PURPOSE OF THE LEGISLATION

The National Association of Registered Agents and Brokers Reform Act will streamline and improve the licensing process for approved non-resident insurance producers, eliminating duplicative licensing requirements for those businesses operating in multiple States. This Act will improve the non-resident insurance producer licensing process and strengthen oversight by State insurance regulators.

HEARINGS

On March 19, 2013, the Subcommittee on Securities, Insurance, and Investment held a hearing titled "Streamlining Regulation, Improving Consumer Protection and Increasing Competition in Insurance Markets," where S. 534 was discussed. The witnesses testifying were: The Honorable Monica J. Lindeen, Commissioner of Securities and Insurance, Montana State Auditor, on behalf of the National Association of Insurance Commissioners; Mr. Jon A. Jensen, President, Correll Insurance Group, on behalf of Independent Insurance Agents and Brokers of America; Mr. Scott Trofholz, President and CEO, The Harry A. Koch Company of Omaha, Nebraska, on behalf of the Council of Insurance Agents and Brokers; and Mr. Baird Webel, Specialist in Financial Economics, Congressional Research Service.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 2. Reestablishment of the National Association of Registered Agents and Brokers

Amends Subtitle C of title III of the Gramm-Leach-Bliley Act (15 U.S.C. 6751 *et seq*.). The section-by-section analysis of the amended Subtitle is:

Section 321. National Association of Registered Agents and Brokers

Establishes the National Association of Registered Agents and Brokers ("Association"), which would be an independent non-government entity that would be incorporated as a nonprofit in the District of Columbia.

Section 322. Purpose

Describes the purpose of the Association.

Section 323. Membership

Establishes minimum Association membership criteria for insurance producers, authorizes the Association to create additional criteria, and requires the Association to create continuing education requirements. Allows the Association to take certain actions against a member who fails to maintain the membership criteria. This section also requires the Association to notify the States that an insurance producer satisfied the Association's membership criteria, and gives each State 10 days to appeal. Membership is granted on a 2-year basis.

Establishes Association membership as the equivalent of a nonresident insurance producer license and authorizes Association members to conduct insurance business in any State if the member pays the licensing fee.

The Association is authorized to share confidential information with certain regulators, clearinghouses, and databases. The Association must refer consumer complaints against members to the appropriate State insurance regulator.

Section 324. Board of Directors

Establishes a bipartisan 13 member Board of Directors for the Association composed of eight State insurance commissioners, three individuals with demonstrated expertise and experience with property and casualty insurance producer licensing, and two individuals with demonstrated expertise and experience with life or health insurance producers licensing. The five experts could include industry representatives, consumer advocates or academics, among others.

All 13 members will be appointed by the President of the United States, with the advice and consent of the U.S. Senate to staggered 2-year terms. The Senate will consider these nominations on the privileged track established during the 112th Congress under Senate Resolution 116.

Section 325. Bylaws, standards, and disciplinary action

Outlines the process of enacting and amending the bylaws and standards of the Association, as well as establishes the process to handle disciplinary action against an Association member.

Section 326. Powers

Enumerates the powers of the Association.

Section 327. Report by Association

Requires that the Association submit an annual report to the States and the President of the United States on activities of the Association that includes an audited financial statement. Given that the U.S. Department of the Treasury has a Federal Insurance Office, the Association's annual report to the President must be delivered through the Treasury Department.

Section 328. Liability of the Association and the board members, officers, and employees of the Association

Exempts the Association from being treated by the States as an insurance producer. This section also limits the personal liability of the Board of Directors and other Association employees for actions done in good faith within the scope of their Association duties.

Section 329. Presidential oversight

Provides that the President of the United States may remove a Board member, or the entire Board, for certain reasons. This section also allows the President to suspend any bylaw, standard, or action of the Association if the President determines its implementation is contrary to the purpose of this Subtitle.

Section 330. Relationship to State law

Preempts only State laws that relate to the licensing of non-resident insurance producers, conflict with Association membership requirements or discriminate against Association members. Preserves the McCarran-Ferguson Act's State-based regulatory authority to investigate and discipline insurance producers doing business in their state.

Section 331. Coordination with regulators

Requires the Association to coordinate with the Financial Industry Regulatory Authority (FINRA) to ease any unnecessary administrative burdens for FINRA-regulated Association members.

Section 332. Right of action

Confers jurisdiction for any civil action taken against the Association to an appropriate United States district court.

Section 333. Federal funding prohibited

Prohibits the Association from receiving, accepting, or borrowing funds from the Federal Government to cover establishment or operational costs.

Section 334. Definitions

COST OF LEGISLATION

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Summary: S. 534 would establish the National Association of Registered Agents and Brokers (NARAB) and authorize it to license producers of insurance (mostly agents and brokers) to operate in multiple states. Under current law, each state establishes requirements for licensing insurance producers within that state; producers must comply with the requirements of each state where they are licensed to operate. Under the bill, insurance producers that join the NARAB would be able to obtain a license to act as a producer in any state other than their home state by meeting the NARAB's eligibility requirements and paying certain fees.

CBO estimates that enacting S. 534 would increase revenues by $490 million and increase direct spending by $483 million; taken together, those effects would reduce the deficit by $7 million over the 2014–2023 period. Pay-as-you-go procedures apply because enacting the legislation would affect direct spending and revenues. Implementing S. 534 would not have a significant net effect on discretionary spending.

S. 534 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the costs to state, local, and tribal governments of complying with the mandates would be less than $1 million in 2016 and each year thereafter. Those costs would not exceed the annual threshold for intergovernmental mandates established in UMRA ($75 million in 2013, adjusted annually for inflation). S. 534 contains no new private-sector mandates as defined in UMRA.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 534 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—											
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2014–2018	2014-2023
CHANGES IN DIRECT SPENDING												
Estimated Budget Authority	1	2	53	56	57	59	61	64	67	70	169	490
Estimated Outlays	1	2	47	55	57	59	61	64	67	70	162	483

	By fiscal year, in millions of dollars—											
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2014–2018	2014-2023
CHANGES IN REVENUES												
Estimated Revenues	0	0	56	56	57	59	61	64	67	70	169	490
NET DECREASE IN THE DEFICIT FROM CHANGES IN DIRECT SPENDING AND RECEIPTS												
Impact on Deficit	1	2	−9	−1	0	0	0	0	0	0	−7	−7

Note: CBO estimates that implementing S. 534 would not have a significant net effect on discretionary spending.

Basis of estimate: CBO expects that cash flows related to the NARAB would be recorded in the budget as revenues and direct spending because the association's authority would exist only through a preemption of states' power to regulate the licensing of insurance producers. This preemption would stem from an exercise of the sovereign power of the federal government.

Under the current regime for licensing insurance producers, a producer who wishes to operate in more than one state must meet the licensing requirements in each of those states and pay the appropriate licensing fees. The National Insurance Producer Registry (NIPR), an affiliate of the National Association of Insurance Commissioners (NAIC), facilitates that multi-state licensing process by providing a single portal to submit applications and pay licensing fees. Under S. 534, an insurance producer who meets the eligibility requirements established by the NARAB and becomes a member would be eligible to sell insurance in any state where the member pays the appropriate state licensing fee. In 2012, approximately 2.4 million active insurance producers used the services of the NIPR; about 1.7 million of those producers were licensed in only one state. CBO expects that the NARAB's membership base would be made up of some, but not all, of the remaining active producers (approximately 730,000) because we expect that some producers operating in multiple states would find it cost-effective to forgo membership in the NARAB and follow each state's licensing procedures.

For this estimate, CBO assumes that S. 534 will be enacted near the start of fiscal year 2014.

Direct spending

Under S. 534, the NARAB would be responsible for establishing eligibility requirements for membership in the association, evaluating applicants' eligibility for membership, and managing licensing requirements for members. S. 534 would direct the NARAB to establish separate classes of membership for businesses and individuals and require members to meet certain continuing education requirements.

The bill would authorize the NARAB to establish a system that simplifies the process of notifying a state of a producer's intent to operate there and paying the required fees. Similarly, S. 534 would authorize the NARAB to create a database to centralize information about regulatory actions taken by states against insurance producers. Currently, the NIPR offers services that streamline the process to apply for a nonresident license. Similarly, the NAIC maintains a database of state regulatory actions. The bill would allow the NARAB to establish those capabilities or make use of the systems already in place.

The bill would provide at least two years from the date of enactment for the association to set up operations. During that time, the NARAB would be authorized to borrow funds from the public to cover start-up costs, which would be repaid from membership fees.

Based on information about the cost to operate similar professional organizations, CBO estimates that enacting S. 534 would increase direct spending by $483 million over the 2014–2023 period to cover start-up, staffing, and operating costs of the association.

Revenues

S. 534 would authorize the NARAB to charge members fees to cover the cost of operating the organization. CBO assumes that the NARAB would use its authority to borrow funds to organize and begin its operations before membership fees could be collected. CBO estimates that collecting those fees would increase revenues by $490 million over the 2014–2023 period.

Spending subject to appropriation

Under S. 534, membership in the NARAB would be available to insurance producers who have undergone a background check conducted by the Attorney General. Applicants that have undergone a similar background check within two years of submitting an application to the NARAB would be exempt from this requirement. Otherwise, the NARAB would be authorized to request such background checks as part of its review of an applicant's eligibility.

The bill would direct the Attorney General to establish regulations to implement this new requirement and to collect fees to carry out background checks. We expect that those fees would be classified as offsetting collections and would be credited to the salaries and expenses appropriation of the Federal Bureau of Investigation (FBI). This is the same budgetary treatment accorded to fees currently collected by the FBI for similar purposes. CBO estimates that the collections and spending of those fees would have no significant effect on net discretionary spending in any year.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR S. 534 AS ORDERED REPORTED BY THE SENATE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS ON JUNE 6, 2013

	By fiscal year, in millions of dollars—												
	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2013–2018	2013–2023
NET INCREASE OR DECREASE (−) IN THE DEFICIT													
Statutory Pay-As-You-Go Impact ...	0	1	2	−9	−1	0	0	0	0	0	0	−7	−7
Memorandum:													
Changes in Outlays	0	1	2	47	55	57	59	61	64	67	70	162	483
Changes in Revenues ...	0	0	0	56	56	57	59	61	64	67	70	169	490

Estimated impact on state, local, and tribal governments: S. 534 contains intergovernmental mandates as defined in UMRA because

it would preempt state laws and impose a notification requirement on state insurance regulators. CBO estimates that the aggregate cost of intergovernmental mandates in the bill would be less than $1 million in 2016 and each year thereafter. Those costs would not exceed the annual threshold for intergovernmental mandates established in UMRA ($75 million in 2013, adjusted annually for inflation).

Registration with Secretaries of State

Under current law, about 10 states require nonresident insurance producers to register with their respective secretaries of state, and to pay fees. The bill would prohibit states from imposing this requirement and from collecting those fees. Based on the number of producers that are currently registered in states that impose this requirement, CBO estimates that the states would lose less than $1 million in fee revenue in 2016 and each year thereafter.

Licensing requirements

Most states collect a fee from nonresident insurance producers when they obtain a license. Under the bill, the NARAB would collect those fees from their members and remit them to the states. Although states might receive those fees with some delay, CBO estimates that the cost to states of the mandate would be minimal.

Notification requirement

The bill would require state insurance regulators to notify the NARAB of the results of complaint investigations. CBO estimates that the cost to states of that notification requirement would be minimal.

Education and bonding requirements

Finally, the bill would prohibit states from requiring nonresident producers to be bonded and to complete education requirements. States do not collect revenue in connection with their education or bonding requirements; therefore, states would not incur a cost to comply with this mandate.

Estimated impact on the private sector: S. 534 contains no new private-sector mandates as defined in UMRA.

Estimate prepared by: Federal costs: Susan Willie; Impact on state, local, and tribal governments: Elizabeth Cove Delisle; Impact on the private sector: Paige Piper/Bach.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b), rule XXVI, of the Standing Rules of the Senate, the Committee makes the following statement concerning the regulatory impact of the bill.

This legislation seeks to address several deficiencies within the current State-based regulation structure of the insurance industry, specifically the licensing of non-resident insurance producers.

Currently, insurance companies and agents operating in more than one State are required to apply and maintain separate licenses in each State in which they operate. This Act creates a new, independent, non-profit association that is authorized to grant

membership to certain individuals and companies who meet criteria established by this Act, and allows those members to be licensed for the business of insurance in any State in which the member pays a licensing fee. This will streamline the licensing process for members, eliminating duplicative application and licensing requirements. Because of this, this Act will reduce unnecessary costs while strengthening coordination and oversight by State insurance regulators.

Furthermore, while this Act streamlines the licensing process for non-resident insurers, it does not alter or preempt the State-based regulation of the business of insurance, including market conduct and consumer protection. It does not alter or preempt State investigative or disciplinary authority over insurance producers and agents licensed in each State. It is not expected that the reported bill will have any burdensome impact on the individuals or companies being regulated.

Subsection (j) of the newly amended section 323 of the Gramm-Leach-Bliley Act allows for the creation of a clearinghouse and a database for the States and the Association's members to use to share information regarding the licensing status of its members, as well as other information and data. The confidential or privileged information the Association is authorized to share under this subsection must remain confidential or privileged, and allows the Association to limit the sharing of certain information to non-governmental entities that they deem sensitive. Because of this, this Act will protect the personal privacy of the Association's members.

JUSTIFICATION FOR NEW EXECUTIVE POSITIONS

In accordance with Section 4, of Senate Resolution 116 of the 112th Congress, the Committee makes the following evaluation and justification for the creation of new positions requiring appointment by the President.

This legislation creates a 13 member Board of Director for the National Association of Registered Agents and Brokers, with staggered terms of two years, all of which require Presidential appointment with the advice and consent of the Senate. As reported by the Committee, all of the 13 nominations will be considered under the privileged track established in Section 1 of Senate Resolution 116 of the 112th Congress.

In order for the Association to achieve the goals established under this legislation, a Board of Directors consisting of adequate representation of both the public and private sectors is needed. Because of the power granted to the Association and its Board of Directors, the Committee agrees with the portion of the United States Department of Justice's opinion, expressed in a 2008 letter from the Department to the Senate, that the Members of the Board should be appointed by the President, with the advice and consent of the Senate.

CHANGES IN EXISTING LAW (CORDON RULE)

On June 6, 2013, the Committee unanimously approved a motion by Senator Johnson to waive the Cordon rule. Thus, in the opinion of the Committee, it is necessary to dispense with section 12 of rule

XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.

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