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NARAB II: Nationwide Insurance Producer Licensing Bill Returns for Another Round

Once again, the legislation that would provide for a national system to register insurance agents and brokers (collectively “producers”) by creating a National Association of Agents and Brokers (termed “NARAB II”), has been re-introduced in the U.S. House of Representatives. The National Association of Registered Agents and Brokers Reform Act of 2009 (the “2009 Bill”) was introduced on May 21, 2009, and is similar to prior NARAB II legislation introduced last year (the “2008 Bill”). The 2009 Bill’s goal is to permit licensed insurance producers to operate nationwide after obtaining membership in NARAB II. Below we provide an overview of the 2009 Bill and certain changes from the 2008 Bill. For a more detailed summary of NARAB II and the issues surrounding such legislation, see [NARAB II: The Proposed Nationwide Producer Licensing Bill](#), dated November 3, 2008.

I. Overview of NARAB II

Like the 2008 Bill, this year’s legislation would create NARAB II, a nonprofit corporation organized under the laws of District of Columbia. NARAB II membership is intended to create a one-stop process for nonresident producer licensing. Although NARAB II membership would provide producers the option of nonresident licensing that is fully reciprocal, the 2009 Bill would not adversely affect states’ authority to continue to license either resident or nonresident producers. In addition, the 2009 Bill addresses only marketplace entry for nonresident insurance producers and would neither regulate resident producers nor interfere with a state’s day-to-day regulatory oversight of insurance producers, whether resident, nonresident or NARAB II members. Moreover, the 2009 Bill would leave states free to regulate unfair trade practices and consumer protection with respect to both resident and nonresident producers, including NARAB II members.

II. Differences From the 2008 Bill

The 2009 Bill is very similar to the 2008 Bill introduced last year (and even has the same lead

sponsors in Reps. David Scott (D-GA) and Randy Neugebauer (R-TX)), but there are a few changes worth noting.

While NARAB II would continue to be governed by a board of 11 members, the process of appointing members to the board is different from the 2008 Bill. In the 2008 Bill, specified trade associations and the NAIC appointed the 11-member board. In our *Client Alert* on the 2008 Bill we pointed out that because the board’s members could be deemed to exercise sufficient federal governmental authority, the legislation could violate the Appointments Clause of the U.S. constitution because these individuals were not appointed by the President. However, in the 2009 Bill, now all 11 members will be appointed by the President with the advice and consent of the Senate, eliminating this constitutional concern.

Six of the 11 members will be state insurance commissioners with the President giving consideration to a list of recommended candidates from the NAIC. This differs from the 2008 Bill in which the NAIC directly appointed the six state insurance commissioners to the board. Not more than three of these six state insurance commissioner members are permitted to belong to the same political party.

The remaining five members of the board appointed by the President are private sector representatives, with two representing property and casualty producers, one representing life or health insurance producers and one representing each property and casualty insurers and life or health insurers. Unlike the 2008 Bill where specified national trade associations appointed these members of the board, the President directly appoints the five private sector representatives, but the President may seek recommendations from national trade associations representing these groups.

The 2008 Bill raised concerns regarding its requirement for mandatory criminal background

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checks and NARAB II's authority to deny membership on the basis of a criminal record. Some believed that applicants should have the right to receive a copy of any record used to determine eligibility and that the criminal background check should be limited. While the 2009 Bill continues to require mandatory criminal background checks and the authority to deny membership on the basis of a criminal record, producers now will have the right to obtain a copy of any criminal history record information concerning the producer and may challenge its accuracy and completeness. The 2009 Bill now also requires NARAB II to notify the NAIC when a producer becomes a member and identify, on an ongoing basis, the states in which the member is authorized to operate.

III. Future of NARAB II

The 2008 Bill passed the House by a voice vote in September 2008 with bipartisan support but ultimately stalled in the Senate when the bill was never taken up for action. NARAB II continues to receive strong support from major producer trade associations, including the Independent Insurance Agents and Brokers of America, the National Association of Insurance and Financial Advisors and the National Association of Professional Insurance Agents (which did not endorse the 2008 Bill). The National Association of Mutual Insurance Companies has also come out in support of 2009 Bill, believing that in addition to streamlining and modernizing state regulation, it would ultimately lead to more choices and lower costs for insurance consumers.

However, the 2009 Bill is not without its critics. It continues to be opposed on the one hand by those who support a much broader Federal role in producer regulation and, on the other hand, by those who wish to maintain the primacy of state producer regulation. For example, the American Council of Life Insurers continues to favor a more comprehensive approach to insurance regulatory reform by maintaining "the best approach to reform of producer licensing is through an optional federal charter...[and that] is the only insurance regulatory reform concept that addresses the dynamic and global nature of the insurance marketplace."

On June 15, 2009, the NAIC Producer Licensing Task Force adopted a report of the NAIC NARAB Working Group entitled "Continuing Compliance with Reciprocity Requirements of the Gramm-Leach-Bliley Act" with the intent of carrying out a formal reassessment of producer licensing reciprocity under updated standards. In March of this year, the NAIC released an update of its 2008 assessment of state producer-licensing laws, practices and processes. The report identifies areas where the states' reciprocity and uniformity initiatives require changes and improvements, along with areas where such measures have been successful. The Chair of the NAIC Producer Licensing Task Force indicated that "the updates demonstrate that the NAIC's producer-licensing reform strategy is working, showing significant progress in the past year." The NAIC continues with its efforts to focus on improving producer licensing standards at the state level.

The 2009 Bill, with its 39 co-sponsors, has been referred to the House Committee on Financial Services. Despite what appears to be strong support in the House, with the Senate focused on comprehensive financial services regulatory reform in an already crowded legislative agenda, we expect NARAB II to have difficulty once again receiving the attention and consideration necessary to pass Congress this year.

About the Authors

R. Dean Conlin is a partner at LLB&L. He has more than 30 years of experience in a wide range of insurance regulatory and corporate matters for domestic and alien insurers and reinsurers.

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