

# THE NATIONAL INSURANCE CHARTER AND SUPERVISION ACT - AN OVERVIEW

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In December 2001, Senator Charles Schumer of New York introduced The National Insurance Chartering and Supervision Act (the "NICSA" or the "Act") providing for the optional federal chartering of insurance companies and insurance agencies. The Act is based upon the same principles and regulatory set up of the dual banking system and is a comprehensive measure that covers all aspects of insurance regulation.

The purpose of the Act is "to establish an Office of the National Insurance Commissioner within the Department of the Treasury; to provide for the chartering, supervision and regulation of national insurance companies and national insurance agencies by that office; to provide for the licensing and regulation of individuals or entities that serve as independent producers; and to address other matters related to the operation of national insurance companies and national insurance agencies." The National Insurance Commissioner (the "Commissioner") will head the office, which is a position similar to that of the Director of the Office of Thrift Supervision and the Comptroller of the Currency.<sup>1</sup> The Commissioner is appointed by the President with the consent of the Senate for a term of five years. Although the Commissioner is subject to the general oversight of the Secretary of the Treasury, the Secretary of the Treasury is prohibited from intervening in any matter before the Commissioner, unless specifically provided by law.<sup>2</sup> The Commissioner also has the authority to, by rule or order, determine that a state law, regulation or order is preempted by the Act and would not apply to a national company or agency.<sup>3</sup>

## *National Insurance Companies*

The most notable provision of the Act is the chartering of national insurance companies. The Commissioner is authorized to organize, incorporate and charter national insurance companies and to convert state insurance companies to national insurance companies.<sup>4</sup> The Act provides for national insurance companies to be chartered under a stock, mutual or fraternal form.<sup>5</sup> The Act also provides for the establishment of notification procedures for the conversion of a national insurance company into a state insurer, as permitted by relevant provisions of applicable state law.<sup>6</sup>

A national insurance company may not underwrite and sell any line of insurance without first obtaining a federal license to do so.<sup>7</sup> With the federal license, a national insurance company may underwrite and sell in any state any line of insurance for which it holds the federal license.<sup>8</sup> The Act restricts a company from obtaining a federal license to engage in the underwriting and sale of both property and casualty insurance and life insurance and annuities.<sup>9</sup> A national insurance company is permitted to reinsure only those lines of insurance for which it has a federal license to underwrite and sell or which it is otherwise specifically permitted to reinsure by the terms of its federal license.<sup>10</sup>

The Act also provides for the issuance of a federal license to U.S. branches of non-U.S. insurers. The U.S. branch of a non-U.S. insurer must establish a trust account in order to obtain a federal license.<sup>11</sup>

Section 203 of the Act provides that the Commissioner must evaluate the background of the organizers of a proposed national insurance company as well as the financial resources and future prospects of such company.<sup>12</sup> The Commissioner is directed to either issue or deny a charter within 60 days after filing all applicable application materials.<sup>13</sup> The Commissioner is also granted the power to extend this 60-day review period as necessary to complete the review of the character and competency of the organizers.<sup>14</sup>

## *Powers*

National insurance companies are provided basic corporate powers as well as specific insurance powers.<sup>15</sup> National insurance companies are provided investment powers which permit national insurance companies to invest funds in any asset so long as such investments are based on reasonable prudence, discretion and intelligence.<sup>16</sup> National insurance companies may establish or require subsidiaries; allocate amounts to separate accounts; and subject to

regulations established by the Commissioner, establish one or more protected cells.<sup>17</sup>

### ***Compliance***

National insurance companies would be required to follow the NAIC model laws on financial and operating standards such as risk-based capital requirements, reserve requirements, and accounting standards until the Commissioner promulgates regulations regarding such requirements.<sup>18</sup> National insurance companies would be required to establish an audit committee, have an annual audit conducted by an independent public accountant and an annual review by a qualified actuary.<sup>19</sup>

The Act establishes consumer protection regulations. The purpose of these protections is to prevent unfair and deceptive acts and practices in the sale, solicitation, issuance, distribution and administration of insurance and other products of national insurance companies, unfair claims practices, discrimination in the underwriting of insurance, and insurance fraud.<sup>20</sup> The Act permits annual on-site examinations of national insurance companies by the Commissioner.<sup>21</sup> The Act allows national insurance companies to enter into mergers and acquisitions, demutualize, and become part of a holding company system with the proper authority and under the regulations established by the Commissioner.<sup>22</sup> The Act also includes regulations regarding the receivership and liquidation of national insurance companies.<sup>23</sup>

### ***National Insurance Agencies***

The Act provides for the federal chartering of insurance agencies and the licensing of federal insurance producers. National agencies, in order to commence business, must obtain a federal producer's license and no person may sell, solicit or negotiate insurance on behalf of a national agency unless that person holds a federal insurance producer license.<sup>24</sup> A federal insurance producer license authorizes the person to sell, solicit or negotiate in any state insurance policies issued by any national insurance company or state insurer for any line or lines of insurance for which the person is licensed.<sup>25</sup> A state licensed insurance producer may not sell, solicit or negotiate an insurance policy by a national insurance company unless such producer is licensed as a federal insurance producer or a determination is made by the Commissioner that the licensing standards of the state in which the insurance producer is licensed is substantially equivalent to those established by the Commissioner for a federal insurance producer license.<sup>26</sup>

### ***State Law Preemption***

With regard to the interplay between the Act and state law, a state may not prevent or interfere with the ability of a national insurance company or federally licensed insurance producer or agency to engage in any activity authorized under the Act.<sup>27</sup> Any federally licensed person may not be required by a state to obtain any state license or similar authorization to engage in any state in any business or activity authorized under the Act.<sup>28</sup>

With certain exceptions, no state law that relates to the formation, chartering, supervision, regulation, or business practices of an insurer, insurance agency or insurance agent or broker or any other matter related to the business of insurance may apply to a national insurance company or a federally-licensed insurance producer or agency.<sup>29</sup> Such exceptions include state laws regarding residual market insurance programs, state and local taxes, corporate governance regulations not inconsistent with the Act, reparation requirements, advisory organization requirements, and workers compensation regulations.<sup>30</sup> Federal antitrust laws are also made applicable to national insurance companies.<sup>31</sup>

### ***Conclusion***

Although it is unlikely the Act will pass any time soon, its introduction is significant. It sends a signal to the insurance industry and state regulators that the federal government is serious about entering the arena of insurance regulation. This should put pressure on state insurance departments to continue their progress towards uniformity in insurance regulation.

### ***Endnotes***

1. NICSА Section 102.
2. NICSА Section 103.
3. NICSА Section 105.
4. NICSА Section 201 and 205.
5. NICSА Section 201.
6. NICSА Section 205.
7. NICSА Section 208.
8. *Id.*
9. *Id.*
10. *Id.*
11. NICSА Section 209.
12. NICSА Section 203.
13. NICSА Section 204.
14. NICSА Section 204.
15. NICSА Section 301.
16. NICSА Section 302.
17. NICSА Sections 303, 304 and 305.
18. NICSА Sections 402, 404 and 405.
19. NICSА Sections 406, 407 and 408.
20. NICSА Section 421.
21. NICSА Section 501.
22. NICSА Sections 602, 605 and 606.
23. NICSА Section 901 *et. seq.*
24. NICSА Section 707.
25. NICSА Section 721.
26. NICSА Section 722.
27. NICSА Section 801.
28. *Id.*

29. *Id.*

30. *Id.*

31. NIOSH Section 802.