

SB2773

Measure Title:	RELATING TO THIRD PARTY ADMINISTRATORS.
Report Title:	Administrator; Third party administrator; License
Description:	Encourages disclosure of contracts between insurers and third party administrators (administrators), both to potential insureds and the insurance commissioner. Promotes the financial responsibility of administrators. Regulates administrators' practices in conformity with the general purposes of this article. Governs the qualifications and procedures for the licensing of administrators.
Companion:	HB2346
Package:	Governor
Current Referral:	CPH, WAM
Introducer(s):	KOUCHI (Introduced by request of another party)



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BEFORE THE

LATE

SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION and HEALTH

Senator Rosalyn H. Baker, Chair Senator Jill N. Tokuda, Vice Chair

SB 2773 RELATING TO THIRD PARTY ADMINISTRATORS

TESTIMONY OF Anne Lennan, President, Society of Professional Benefit Administrators

February 2, 2018,

Chair Baker, Vice Chair Tokuda, and Committee Members:

The Society of Professional Benefit Administrators submits this testimony as a response regarding SB 2773 RELATING TO THIRD PARTY ADMINISTRATORS. The Society of Professional Benefit Administrators ("SPBA") is the largest national association representing independent third party administration firms who are responsible for the administration of the employee benefits of nearly forty percent of all United States covered workers. SPBA represents 80 percent of the firms which make third party contract administration of employee benefit plans their primary line of business. Third party administrators ("TPA"s) provide continuing professional outside claims and benefit plan administration guidance for employers and benefit plans. TPAs very often become the "employee benefits office" for the covered workers of many small employers with under 100 employees. The average TPA client employs some degree of self-funding and clients range from Taft-Hartley union/management jointly-administered plans, customized plans for single employers of all sizes, and cost-effective plans designed for related groups of employers in trade associations and other multiple employer configurations.

On behalf of third party contract administration firms, the Society of Professional Benefit Administrators supports the intent of SB 2773, but respectfully requests the following amendments to SB 2773. These amendments seek to conform the language of the bill to the model act promulgated by the National Association of Insurance Commissioners (NAIC) as an example of national best practices.

The purpose of SB 2773 is to encourage disclosure of contracts between insurers and administrators, promote financial responsibility of administrators, and govern the qualifications and procedures for the licensing of administrators. SPBA fully support these purposes, however, SB 2773 departs in several respects from the NAIC model bill, and these departures present challenges to administrators.

First, the proposed SB 2773 does not protect any books and records examined by the Insurance Commissioner. For instance, under SB 2773, documents in the administrator's possession that may be protected by the attorney-client privilege will no longer be privileged if in the Commissioner's possession. To ensure that privileged documents remain privileged and confidential, we respectfully request the Committee's adoption of the NAIC model act's language as follows:

§431- Recordkeeping required; commissioner's access to records.

(b) The commissioner shall have access to the books and records for examination, audit, and inspection.

~~[Trade secrets in the books and records, including the identity and addresses of insureds, shall be confidential and privileged. However, the commissioner may use the information in proceedings brought against the administrator.]~~ Any documents, materials or other information in the possession or control of the commissioner that are furnished by the administrator, payor, insurance producer or an employee or agent thereof acting on behalf of the administrator, payor or insurance producer, or obtained by the commissioner in an investigation shall be confidential by law and privileged, shall not be subject to freedom of information or sunshine requests, shall not be not subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use such documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties.

Second, SB 2773 does not set forth ascertainable standards as to when an administrator is considered "solvent" or "insolvent." As drafted, SB 2773 requires prospective administrators to show annual audited financial statements for the two most recent years to prove solvency. The NAIC model act, however, sets forth a specific, qualitative standard to prove "solvency" by requiring financial statements showing the applicant had a positive net worth. We respectfully submit the following amendments to the licensing requirements in SB 2773 to conform it to the NAIC model act:

§431- License required; application.

(a) No person shall act as or hold out to be an administrator in this State without a license as an administrator issued by the commissioner. (b) An administrator shall apply to the commissioner on a form prescribed by the commissioner and shall include the following: * * *

(5) Annual audited financial statements for the two most recent years that prove the ~~[applicant is solvent]~~ applicant has a positive net worth and information the commissioner may require to review the current financial condition of the applicant,

Third, SB 2773 places licensing requirements on individuals who adjust claims for the administrator, even though the NAIC model act imposes no such requirement. Requiring licensure for such adjusters is unnecessary and will be administratively and financially burdensome. In addition, it may be discriminatory to focus solely on adjusters employed by administrators, when adjusters that are not employed by administrators would not be subject to a similar licensing requirement. Therefore, our recommendation would be to delete

this requirement.

§431- License required; application.

(a) No person shall act as or hold out to be an administrator in this State without a license as an administrator issued by the commissioner. (b) An administrator shall apply to the commissioner on a form prescribed by the commissioner and shall include the following: * * *

~~[(d) If an administrator employs or has contracted individuals to adjust claims for the administrator, the employees or contracted individuals shall first be licensed as individual adjusters.]~~

Fourth, SB 2773 includes a surety bond requirement for administrators of up to \$300,000, which is threefold the amount recommended by the NAIC. SPBA respectfully urges the amendment to SB 2773 such that the surety bond requirements are consistent with the NAIC model act:

§431- Surety bond required. Prior to the issuance or renewal of the administrator license, the administrator shall file and maintain with the commissioner a surety bond in the form and penal sum acceptable to the commissioner, but in no event shall be less than ~~[\$300,000]~~ **\$100,000**, and shall provide that the bond may not be canceled or otherwise terminated until two years have elapsed from the last day the applicant was an administrator, unless the commissioner has given prior written consent. The surety bond shall be undertaken and may be enforced in the name of "Commissioner of Insurance, State of Hawaii."

Lastly, SB 2773 as written does not address third party administrators whose focus are annuity or workers compensation coverage. We believe legislation which has merit should apply consistently to all third-party administrators to create an equitable business environment. For that reason, SPBA respectfully urges the amendment to SB 2773 such that this legislation applies to all third party administrators domiciled in the state of Hawaii:

§431- Definitions. For purposes of this article: "Administrator" or "third party administrator" means a person who collects charges or premiums from, or who adjusts or settles claims on, residents of this State in connection with life ~~[insurance coverage]~~, annuity, accident and health or sickness, stop-loss or workers' compensation insurance coverage, or article 1 of chapter 432, except the following:

The foregoing amendments would conform SB 2773 to the model act promulgated by the NAIC, thereby balancing the State's need for licensure but also reducing unnecessary burden to administrators.

The Society of Professional Benefit Administrators respectfully urges the passage of this measure as amended. Thank you for the opportunity to testify on this matter of critical importance.

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