

The National Association of Registered Agents and Brokers Reform Act

Section 321. National Association of Registered Agents and Brokers. This legislation would establish the National Association of Registered Agents and Brokers (NARAB). NARAB would be an independent nonprofit corporation established under District of Columbia law and would not be an agent or instrumentality of the federal government.

Section 322. Purpose. NARAB would provide a mechanism for establishing true nonresident licensing reciprocity for the tens of thousands of insurance producers who operate on a multi-state basis, while ensuring that States retain the authority to regulate marketplace activity and enforce important consumer protection laws.

Section 323. Membership. Any insurance producer licensed in his/her home State would be eligible to join NARAB, unless that person is subject to an active insurance license suspension or revocation. NARAB would also have the authority to deny membership to any insurance producer who fails to satisfy the membership criteria.

Every applicant for NARAB membership must undergo a national criminal background check within the two years prior to application, and the Act describes the procedures for performing such reviews and establishes limitations and protections regarding the use of criminal history information.

NARAB would have the authority to establish membership criteria for producers and create various classes and categories of membership, including a class of membership and eligibility criteria for business entities. The membership criteria would include standards for personal qualifications, education, training, and experience. The Act prohibits the adoption of any qualification less protective than the National Association of Insurance Commissioner's (NAIC) Producer Licensing Model Act and requires NARAB to consider the highest levels of insurance producer qualifications under State licensing laws in establishing membership criteria. Membership would be renewed on a biennial basis.

A NARAB member would be authorized to sell, solicit, or negotiate insurance and perform related activities in any State where the producer seeks to operate, if the member pays the requisite State-established licensing fees. Membership in NARAB would be the functional equivalent of obtaining a nonresident insurance producer license in the jurisdictions designated by the producer. States, other than a member's home State, would be prohibited from denying a license to or improperly impeding the activities of any member that has paid the requisite licensing fees, which would be collected by NARAB and remitted to the appropriate States. States would retain all other authority to regulate market conduct, enforce consumer protection laws, etc.

NARAB would notify the States (including insurance departments) and the NAIC when a producer has met the membership criteria, and the States then have ten business days after such notification to provide NARAB with any evidence that indicates that the producer actually does not satisfy membership criteria. NARAB is also directed to immediately notify the States and

the NAIC whenever a member is newly authorized to operate in one or more States, loses the authority to do so, or when disciplinary action has been taken by NARAB.

NARAB would also establish continuing education requirements for members that are comparable to the requirements of a majority of the States. Members would be exempt from the continuing education requirements of States other than their home State, and NARAB would be prohibited from requiring a member to satisfy duplicative continuing education requirements that have already been satisfied through the member's home State. NARAB would be prohibited from offering continuing education courses.

NARAB would be authorized to place a member on probation, suspend or revoke membership, or assess monetary fines or penalties if the member fails to meet membership criteria or other standards, is convicted of certain crimes, or has been subject to final State disciplinary action. NARAB would have the authority to investigate alleged violations of association standards, and it would be required to refer consumer complaints concerning alleged misconduct or violations of State law to the appropriate insurance regulator(s).

NARAB would also have authority to establish a central clearinghouse or utilize the NAIC or another appropriate entity as a central clearinghouse through which NARAB members could disclose their intent to operate in one or more States and pay the licensing fees to the appropriate States. Similarly, NARAB would also be authorized to establish a national database for the collection of regulatory information concerning the activities of insurance producers or contract with the NAIC or another appropriate entity to utilize such a database.

Section 324. Board of Directors. NARAB's Board of Directors would consist of eight State insurance commissioners and five private sector representatives. The President would make appointments with the advice and consent of the Senate (pursuant to a series of expedited procedures adopted by the Senate during the 112th Congress). After initial appointment, Board members would serve two-year terms, with one-half of the directors appointed annually. The Act also addresses the manner in which Board meetings will be conducted, requires the Board to issue and enforce a code of ethics, and prohibits the payment of compensation for work related to Board membership to any Board member.

Section 325. Bylaws, Standards, and Disciplinary Actions. The Act requires the adoption of any bylaws or standards to be completed pursuant to procedures similar to those contained in the federal Administrative Procedure Act. NARAB would also be required to submit copies of any proposed bylaws or standards (or any proposed amendments) to the President and the States and to post proposals on NARAB's website. In addition, any proposed bylaw or standard would only take effect after notice and opportunity for public comment.

In any disciplinary action (including any proceeding to determine whether to deny, suspend, revoke, or not renew membership or to assess fines), the Association would be required to notify the member of specific charges, provide the member with an opportunity to defend against such charges, and keep a record. Private sector board members would be prohibited from participating in any disciplinary proceeding and would not access to confidential information concerning an action of this nature.

Section 326. Powers. NARAB's powers would include, among other powers, the authority to collect membership fees; adopt, amend, and repeal bylaws; and borrow money and secure funding.

Section 327. Report by the Association. NARAB would be required to provide a written report to the President and the States at the close of each fiscal year regarding the conduct of its business, and the report is required to include audited financial statements. The annual report will also be posted on NARAB's website.

Section 328. Liability of the Association and the Board Members, Officers, and Employees of the Association. NARAB would not be deemed to be an insurer or insurance producer, and its directors, officers, or employees would not be personally liable for any actions taken in good faith in the performance of their responsibilities.

Section 329. Presidential Oversight. The President also would have the authority to remove a Board member for neglect of duty or malfeasance in office and the power to remove the entire Board for acting in a manner contrary to the interests of the public or the purposes of the Act or for failing to perform its duties. The President, or his designee, also would be able to suspend the effectiveness of any bylaw or standard or prohibit any action by NARAB determined to be contrary to the purposes of the Act.

Section 330. Relationship to State Law. The proposed legislation would prohibit States from imposing discriminatory laws, regulations, and licensing fees on NARAB members. States also would be prohibited from imposing any licensing and related requirements on a nonresident NARAB member in connection with multi-state commercial property and casualty transactions, if the member is licensed or authorized to operate in the State where the insured maintains its principal place of business and the contract of insurance insures risks located in that State. States, other than a member's home State, would also be prohibited from imposing licensing, continuing education, and foreign company registration requirements, among other requirements, on NARAB members.

Section 331. Coordination with Financial Industry Regulatory Authority. NARAB would be required to coordinate with the Financial Industry Regulatory Authority in order to ease any administrative burdens that fall on members of both organizations.

Section 332. Right of Action. Any person aggrieved by a decision or action of NARAB may, after exhausting available avenues for relief within NARAB, commence a civil action and obtain appropriate relief in federal district court. In such proceedings, courts shall give appropriate weight to NARAB's interpretations of its bylaws and standards and the Act.

Section 333. Definitions. Among other definitions, the proposed legislation would define "insurance producer" to include any insurance agent or broker, excess or surplus lines broker or agent, insurance consultant, limited insurance representative, and other individual or entity that sells, solicits, or negotiates insurance policies or offers advice related to insurance.