



LOUISIANA DEPARTMENT OF INSURANCE

JAMES J. DONELON
COMMISSIONER

September 30, 2016

The Honorable John A. Alario
President of the Senate
P.O. Box 94183
Baton Rouge, LA 70804

Via email
apa.senatepresident@legis.la.gov

The Honorable Taylor F. Darras
Speaker of the House
P.O. Box 94062
Baton Rouge, LA 70804

Via email
apa.housespeaker@legis.la.gov

The Honorable John R. Smith
Senate Committee on Insurance
P.O. Box 94183
Baton Rouge, LA 70804

Via email
apa.s-ins@legis.la.gov

The Honorable Kirk Talbot
House Committee on Insurance
P.O. Box 94062
Baton Rouge, LA 70804

Via email
apa.h-ins@legis.la.gov

RE: Summary Report for Regulation 31— Holding Company

Dear President Alario, Speaker Darras, Senator Smith and Representative Talbot:

Under the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice was hereby given that the Louisiana Department of Insurance (LDI) proposed to promulgate Holding Company Regulation 31. The purpose of Regulation 31 is to implement the provisions of LSA-R.S. 22:691 et seq. entitled the Insurance Holding Company System Regulatory Law and to establish requirements to assist the LDI in effectively regulating holding company systems in conjunction with the latest National Association of Insurance Commissioners' model act.

As noticed in the Notice of Intent, the public and all interested persons were provided an opportunity to submit comments to the LDI on the proposed regulation. The LDI has received a total of seven comments in reference to Regulation 31. The comments and the responses of the LDI are summarized below. A copy of each comment from each interested person or entity is attached for your review.

Out of the seven letters received by the LDI, six of the letters were verbatim in reference to the comments submitted by each insurance company. Comments submitted were from Wilbert Life Insurance Company, Louisiana Insurers' Conference, Pellerin Life Insurance, Jeff Davis Mortuary Benefit Association and Mulhearn Protective Insurance Company. These letters simply reiterated verbatim and supported the comment received from Rabenhorst Life Insurance Company. For convenience, all six verbatim comments from the six interested parties has been labeled as Comment One below. The following is a summary of the comments from Rabenhorst Life Insurance Company.

INTERESTED PARTIES COMMENT ONE:

The comments submitted aver that the proposed amendment of adding "persons" to the definition of "ultimate controlling persons" in Regulation 31 set forth in the Notice of Intent purports to exceeds the authority delegated to the Department by the Louisiana Legislature, and exceeds the statutory authority of the Department as set forth in the Louisiana Insurance Code (the "code") under which it was promulgated. Further, the Amendment is contrary to the Insurance Holding Company System Regulatory law, La. R.S. 22:691.1 *et seq.* (the "Holding Company Law"); therefore, the Amendment is not consistent with the statute under which it is promulgated, nor is it consistent with the statute under which the current Regulation 31 was promulgated. Additionally, the comments stated believe that the Amendment is arbitrary and capricious, unconstitutional, and otherwise deficient in law and authority.

The comments further allege that this amendment to Regulation 31 does not require that the "person" to which it refers to be in control of anything. The comment avers to interpret the definition of "Ultimate Controlling Person" to only require that the person so designated cannot be "controlled by any other person." It does not require or even mention any actual "control" by the person so designated of any other person or entity, associated with a holding company system. Thus, literally any individual or entity that fits the definition of a "person" under La. R.S. 22:691.2(7) could be the Ultimate Controlling Person under Regulation 31, if that person is not controlled by another person.

As such, the comments allege that the definition of "Ultimate Controlling Person" in the Amendment is not consistent with the Holding Company Model Law under which it was promulgated, and further it is overly broad and deficient in law authority. Such amendment may vitiate the disclaimer of affiliation provided under the Code pursuant to La. R.S. 22:691.6(K). Such disclaimer relieves the insurer of any duty to register or report under

the Holding Company law which may arise out of the insurer's relationship with the person disclaiming affiliation.

In conclusion, the comments allege that the Amendment is inconsistent with and contrary to the Holding Company Law in attempting to expand the singular concept of "the ultimate controlling person" under the Holding Company Law into a broad, loose definition incorporating multiple persons that is outside of the technical, understanding of the term of art. The Amendment would also force Regulation 31 out of consistency with the Model Regulation, which is directly contrary to its purpose.

RESPONSE PROVIDED FOR BY THE LDI TO COMMENT ONE:

The LDI has reviewed all six letters and verbatim comments and has rejected the comments on the foregoing basis. The Commissioner avers that he has not exceeded his statutory authority by adding the word "persons" to the definition of "Ultimate Controlling Person" found in Regulation 31 because the language in the definition of "person" found in LSA-R.S. 22:691.2(7) provides that a person can be more than one individual or any such combination of entities in addition to an individual. The definition of ultimate controlling person or persons must be read in context with the whole subpart in order to understand its application.

When reading the definition of "person" the definition provides that a person can be an individual but also any similar entity enumerated in the definition or any combination of the entities in addition to an individual acting in concert. Additionally, the words "acting in concert" as found in the definition of "person" pursuant to LSA-R.S. 22:691.2(7) makes it clear that the law anticipates that two or more persons or entities or the combination thereof may act in concert. LSA-R.S. 22:691.2 states:

§691.2. Definitions

As used in this Subpart, the following terms shall have these meanings unless the context shall otherwise require:

(7) "Person" means an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, an unincorporated organization, *any similar entity or any combination of the foregoing acting in concert*, but shall not include any joint venture partnership exclusively engaged in owning, managing, leasing, or developing immovable or corporeal movable property. (emphasis added)

So for example, a person may include an entity or an individual or both. Therein lies the rationale why the Department added the term "persons" in Regulation 31 and for clarification purposes. Therefore, by adding the term "persons" is not substantive in nature but is strictly a clarification which the Department has the authority to promulgate in accordance with the Administrative Procedure Act. Additionally, the LDI has historically had to provide to the insurance industry this clarification. In order to assist the insurance industry in its application of LSA-R.S. 22:691.2 et seq. entitled the Insurance Holding Company System Regulatory Law, the Department has amended Regulation 31 to include the term "persons". The comments presented objecting to the amendment of

“persons” to the definition of ultimate controlling person is without merit. The LDI avers that the addition of the word “persons” in Regulation 31 does not conflict with the NAIC Holding Company Model Act because the intent of the NAIC Holding Company Model Act is to ensure that all entities or individuals that fall under the definition of control make a disclosure to all insurance Departments. The comment that interprets and imposes the limitation of control to only one person or entity who can be in control is absurd and contrary to the intent of the Holding Company Law in Title 22 and the NAIC Holding Company Model Act. The requirement that such disclosure be done by all that may potentially have control over an insurance company is in line with the Holding Company Law in Title 22 and the NAIC Model Act because such disclosure ensures that the LDI has the authority to review and ensure that the financial condition and stability of those in control of an insurance company doing business in our state is in compliance with all financial requirements of Title 22. This ensures the protection of our consumers in our state. LSA-R.S. defines control as the following:

“(3) “Control”, including the terms “controlling”, “controlled by”, and “under common control with”, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by R.S. 22:691.4(E) and 691.6(K) that control does not exist in fact. The commissioner may determine that control exists in fact, notwithstanding the absence of a presumption to that effect.

The amendment of “persons” does in no way vitiates or prevent the filing of a disclaimer of affiliation provided under LSA-R.S. 22:691.6(K). Finally, LSA-R.S. 22:691.11 grants the Commissioner the authority to issue rules, regulations or orders as necessary to carry out the Subpart which is Subpart G-1 entitled Insurance Holding Company Systems Regulatory Law. The promulgation of Regulation 31 is within the LDI’s authority as provide by law.

STATE FARM BUREAU INSURANCE COMMENT TWO:

In Regulation 31, the language found in Form B contains a typographical error that stricken from the text found in LAC 37:XIII.135 Form B.---Annual Registration Statement. Item 5. TRANSACTION AND AGREEMENTS

(4) guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the Registrant’s assets to liability, other than insurance contracts entered into the ordinary course of the Registrant’s assets to liability, other than insurance contracts entered into in the ordinary course of the Registrant’s business;

RESPONSE PROVIDED FOR BY THE DEPARTMENT TO COMMENT ONE:

Although the typographical error found occurred in the 2015 promulgation of Regulation 31 and this section is not currently being amended by the current Regulation 31 Notice of Intent, the Department has no issue correcting this typographical error since it is not a substantive change.

If you have any questions or need any clarification please contact Claire Lemoine, Supervisory Attorney with the Louisiana Department of Insurance who assisted the Commissioner in the preparation of the Regulation 31. Ms. Lemoine can be reached at (225) 342-4242, or electronically at clemoine@ldi.la.gov.

Sincerely,



Claire Lemoine
Attorney
Louisiana Department of Insurance

Enclosures: Regulation 31—Holding Company.
Copies of interested party letters