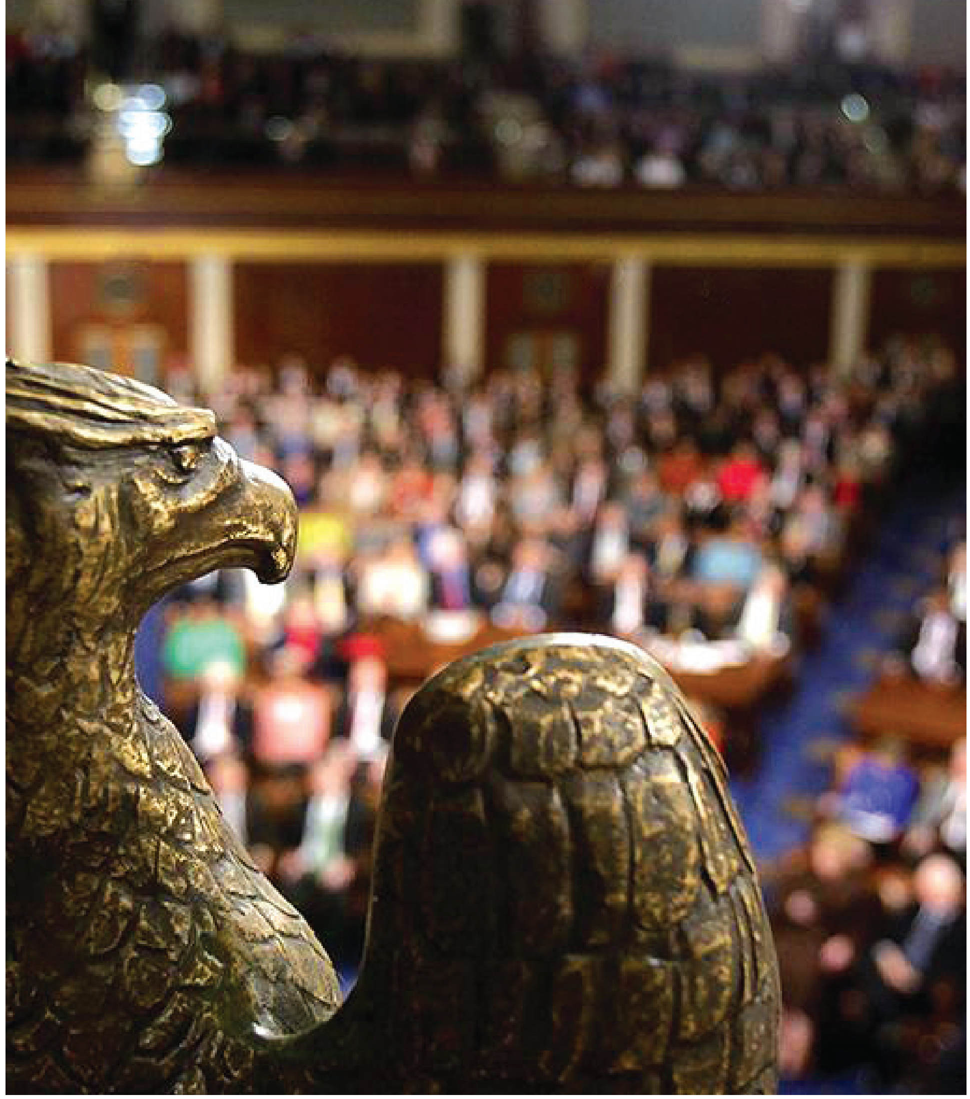

Legislation to Amend the LRRA Splits Industry Opinion

Since the Liability Risk Retention Act (LRRA) was signed into law nearly thirty years ago, the industry has been attempting to get the law amended, with the most recent attempts centering on property coverage. As it stands, the LRRA allows risk retention groups (RRGs) and risk purchasing groups (RPGs) to insure liability only. Legislation introduced into Congress last October is the most recent effort to amend the LRRA, but it is meeting with opposition from some industry supporters.

The *Nonprofit Protection Act* (NPPA), H.R. 3794, introduced by Congressman Dennis Ross (R-FL) and Congressman Ed Perlmutter (D-CO), would allow a small subset of RRGs the opportunity to provide property insurance to its members. The bill, spearheaded by Pamela E. Davis, the founder, president and CEO of Nonprofits Insurance Alliance Group which manages Alliance of Nonprofits for Insurance, Risk Retention Group, would allow for certain RRGs that provide coverage for nonprofits to write property coverage.

Amending the LRRA

Efforts to amend the LRRA began shortly after it was enacted in 1986. Early efforts intended to "shore up" language about domicile regulation and state registration fees and processes. However, beginning in 2002, efforts at amending

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the law have centered on enabling RRGs to write property for their members. Since 2010, proposed legislation has also included creating a dispute resolution process for RRGs and addressing corporate governance concerns. While the continual efforts of the risk retention industry have resulted in several bills introduced into both the House of Representatives and the Senate, none of the bills have made it to the floor for a full vote.

Previous efforts to amend the law intended all RRGs the opportunity to offer property, NPPA will only apply to RRGs whose members are 501(c)(3) nonprofits. The pool of RRGs that qualify to offer property would be further reduced by several stipulations in the bill. A RRG must also have been in operation for at least ten years and have surplus of at least $10 million. The total insured value of risks covered by additional forms of commercial insurance would be capped at $50 million for any one member of the RRG. If NPPA is passed the law would apply to an estimated six RRGs out of more than 230 currently operating groups.

Why Only Nonprofits?

One of the RRGs that would benefit from NPPA has led the way for the bill's introduction into Congress. Alliance of Nonprofits for Insurance, Risk Retention Group (ANI) was formed in 2000 to provide small nonprofits affordable liability insurance. The motivation behind ANI's campaigning for the NPPA is primarily its inability to provide auto physical damage insurance to its members.

"Unlike most commercial business who purchase their professional liability separate from the General Liability and Property, nonprofits are typically offered their coverage from traditional insurers on a combined basis... on a 'take it or leave it' basis," explained Pamela David. "ANI has been using a partner commercial carrier for both the property and auto physical damage, but we have grown a lot and are reluctant to have the vast majority of our members insured by one company over which we have no control."

Several years ago, ANI discovered that traditional insurance companies won't provide BOP (business owner's policy) property coverages without also writing the corresponding liability coverage. ANI has found no company willing to write small auto physical damage policies without writing the liability. "We knew that that we had to get this law changed," said Davis. "Eighty percent of the nonprofits ANI serves have annual budgets of less than $1 million per year. These are very small community-based organizations with virtually no clout in the insurance marketplace."

Davis said that she had been traveling between California and Washington, DC nearly once a month for two years to meet with members of Congress. Members of ANI and associated brokers sent "about 450 letters" to Congress in support of the proposed legislation.

The original bill started out with much broader language, but received considerable opposition. According to Davis, "We were challenged to demonstrate through market surveys that the monoline property and auto physical damage coverage we are seeking to offer our members is simply not available in the traditional market. While other RRGs would like to have the option of providing property and auto physical damage, no other market segment was able to demonstrate, like ANI was, that the property coverage our members need is simply not provided by traditional insurers. The bill was crafted to solve the specific market failure that has been proven."

Opinion is Split

The NPPA has the support of ANI and several national insurance associations according to Davis, including the Reinsurance Association of America, the Council of Insurance Agents & Brokers and Property Casualty Insurers Association of America. The bill has also been endorsed by the Vermont Captive Insurance Association (VCIA). According to Richard Smith, president of the association, "I see the LRRA legislation as a step forward for the industry. The industry has been pursuing the expansion of the LRRA to allow property coverage for over a decade to no avail. Although the current legislation is too limited, my hope is that it brings a greater chance of passage if it is more narrowly defined. My hope that if it passes, there will be the proverbial 'foot in the door' to expanding it for all RRGs in the future."

Conversely, the board of the National Risk Retention Association (NRRA), the trade association for RRGs and RPGs, voted in December to oppose the NPPA. The association is primarily opposed to certain language in the bill. A new clause redefines commercial liability within the bill to exclude, "health, life, or disability insurance or workers compensation insurance or express contractual obligations." This added section would not allow RRGs to offer contract liability or warranty coverage. Several existing RRGs primarily write this type of commercial insurance.

According to Jon Harkavy, executive vice president and general counsel, Risk Services, LLC and an active member of NRRA, "[The NPPA] has a new definition of commercial insurance which doesn't exist in the LRRA and which was totally unnecessary for the purpose that the legislation seeks to address. I see this as both disqualifying a number of RRGs and I see it also, if passed, as encouraging states like California, who have a very restricted definition of liability insurance, to seize upon this and make their law more restrictive."

The NRRA Board is also concerned with the narrow scope of the proposed legislation. The number of nonprofit RRGs who would benefit from this legislation is smaller than the number of RRGs and PGs that currently offer contractual liability products. Joe Deems, executive director of NRRA said that, "The legislation was pursued without any advance knowledge or submission to us for input as to the potential effect it might have on the RRG industry. NRRA's Government Affairs Committee tries to address issues for their possible effect upon the industry as a whole."

"I'm sympathetic to non-profits," said Harkavy. "But I think that there are medical practitioners and others equally deserving of the opportunity to write property and have an equal amount of difficulty being able to provide property coverage as ANI says nonprofits have. I have trouble isolating ANI's situation from any other group or policyholder as far as difficulties in not writing property."

NRRA has long endorsed an amendment to the LRRA that would allow its members to write property coverage, but considers the language in the NPPA too exclusive and contentious to be the right bill for the industry, Deems added. "NRRA has not changed its position regarding of the inclusion of property coverage into the LRRA for qualified companies," said Deems, "and is looking forward to the next session of Congress to work with the bill's sponsors and proponents to draft a broader bill that is more inclusive and beneficial to the RRG and PG community."

Outlook

There has been no movement on the bill since it was referred to the House Committee on Financial Services in late October. As 2016 is an election year, bills will be much harder to get passed. While NPPA has some positive backing, those against it will be lobbying hard to keep it from being passed.

"Any bill in Congress is a long shot," said Davis. "However, I have been pleasantly surprised with the reception we have had, especially the past six months. I believe that our message is starting to get traction. We are not asking for any handouts from Congress, only the ability for small and mid-sized nonprofits to pool their resources to jointly provide a type of coverage that the traditional insurance market simply is not providing." ■

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