

T@GS

The Independent Insurance Agents' Association of Montana



January 2014



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IIAM Capitol Report: Legislative Session Opens by Bob Biskupiak

The 64th Legislative Session is off and running. The first week included the typical legislator orientation and numerous networking opportunities.

The schedule has picked up significantly and a fair number of insurance relate bills have been introduced and will be heard in committees in the coming weeks. Many more un-introduced bills have the possibility of coming forward and that is the unpredictable part of the legislature.

The Big "I" Legislative Committee has been assembled and is evaluating the impact on our industry and our customers. I am fortunate to have dedicated committee members with such diversity and experience in their particular areas of expertise.

- Andrew Brekke, Erickson Insurance Group, Havre
- Mindy Carver, PayneWest Insurance, Missoula
- Tom Chamberlin, Mandeville Insurance, Columbus
- Deanna Darnielle, Darnielle Insurance, Billings
- Tom Grau, Retired, Great Falls

- Chris Hindoiem, Hub International, Missoula
- Chuck Mazurek, Chair, Retired, Helena
- Clara Mays, PayneWest, Missoula
- Richard Miltenberger, Leavitt Great West, Helena
- Keith Nelson, Bryant Arrotta Insurance, Great Falls
- Jeremy Norby, Seitz Insurance, Sidney
- Perry Wolfe, Wolfe-Daniels Agency, Scobey

More information on the Legislative Committee is located [on our website](#).

I know you will join me in extending my appreciation to for [Representative Tom Berry](#) serving in the House and [Senator Fred Thomas](#) for serving in the Senate. Not only is it helpful, but it is critical to have insurance professionals as lawmakers.

During the session I provide updates on specific bills impacting our industry thru the legislative bulletin. If you would like to be added to our data base to receive this newsletter, please email Natalia Rogers at nrogers@iiamt.org.

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TRIA & NARAB II Signed Into Law

Huge Victory for Big “I” independent insurance agents and insurance consumers.

WASHINGTON, D.C., Jan. 12, 2015 — In one of the biggest legislative victories for the Independent Insurance Agents & Brokers of America (IIABA or the Big “I”) in a decade, a bill extending the Terrorism Risk Insurance Act (TRIA) program and establishing the National Association of Registered Agents and Brokers (NARAB II) was signed into law by President Barack Obama.

The Big “I” praised the President for signing H.R. 26, the “Terrorism Risk Insurance Program Reauthorization Act of 2015,” into law.

“The Big ‘I’ is extremely proud that all of our hard work on TRIA and NARAB II has come to fruition and will benefit thousands of small businesses and insurance consumers across the country,” says Bob Rusboldt, Big “I” president & CEO.

“It’s been a long time coming, but the Big ‘I’ has been vigilant for our members and consumers and today’s action by the President on this bipartisan legislation marks a tremendous victory for our association and the rest of the industry.”

H.R. 26 would extend for six years the Terrorism Risk Insurance Act (TRIA) program, which expired Dec. 31, 2014, leaving much of the commercial property/casualty market and important segments of the U.S. economy at risk to a terrorist attack.



This important legislation also includes the National Association of Registered Agents and Brokers (NARAB II) legislation that would establish a permanent NARAB to streamline nonresident agent licensing to benefit small businesses and many insurance consumers.

“The retroactive reauthorization of TRIA provides certainty and stability for insurance markets, policyholders and commercial lenders, and the quick action by Congress should result in little to no market disruption from the short expiration that occurred,” says Charles Symington, Big “I” senior vice president of external and government affairs.

“Attention now turns to implementation of NARAB II, and the Big ‘I’ will continue to lead the charge as we have since NARAB II was first introduced in Congress. While this may take some time, the Big ‘I’ looks forward to working on implementation of this important

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new law that will provide relief for agents and brokers as well as increased choice for consumers.”

In addition to reauthorizing the TRIA program for six years, the bill would also raise the trigger amount needed in total losses before the TRIA program kicks in from the current \$100 million to \$200 million, over five years, beginning in calendar year 2016.

Also over five years, starting Jan. 1, 2016, the mandatory recoupment would also go from \$27.5 billion to \$37.5 billion, increasing by \$2 billion each year.

For all events, the bill would raise the private industry recoupment total from the current 133% of covered losses to 140% of covered losses.

Once signed into law, it will retroactively restore the federal reinsurance backstop for policyholders and the insurance market in the event of a catastrophic act of terror on American soil.

NARAB II would achieve much needed reciprocity in producer licensing and help policyholders by giving consumers more flexibility.

This legislation would build upon regulatory experience at the state level, promote greater consistency in non-resident agent and agency licensing, ease the burden that many agents face in doing business across state lines, and increase consumer choice.

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New Webinars

Legal and Ethical Obligations for Insurance Professionals

24 ways to get into so much trouble, even Agent Jack Bauer can't save you.

February 11th
11am to 2pm MT
filed for 3 CE*
\$79



This webinar discusses the many ethical and legal obligations that insurance professionals have as a matter of statute, regulation, or case law. 24 specific areas of agency operation are examined, along with any legal and ethical components within those areas.

Competing with Direct Sales & Captive Agency Insurers in Personal (and Commercial) Lines

March 25th
11am to 2pm MT
will be filed for 3 CE*
\$79



While the focus is primarily on personal lines where direct sales and captive agency companies dominate the marketplace, the first hour addresses both personal and commercial lines and many of the principles discussed throughout the webinar are applicable to both personal and commercial lines.

**CE approval cannot be guaranteed.*

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Workers' Comp and the Independent Contractor

by Dennis Gambill

Montana was one of the first states to enact legislation relating to the needs of injured workers. The State Accident Insurance and Total Permanent Disability Fund was enacted in 1909, for coal miners.

Workers' Compensation laws, later adopted by all states between 1911 and 1940, were designed to provide medical care and income to workers injured on the job, benefits to families of employees killed on the job, and to protect employers from costly and unpredictable lawsuits by workers.

Those original legislated laws have been litigated and changed many times over the years and will continue to be as circumstances and conditions change.

Over the recent few years weather related damages to property in Billings has brought insurance consumers up close and personal with damage repair contractors. The most recent storms resulted in numerous roof and siding damages.

While there probably will always be controversy between insurers and contractors, some things are fairly spelled out by Montana law.

What is an "independent contractor"?

Black's Law dictionary defines "independent contractor" as "a person who contracts with another to do something for him but who is *not controlled* by the other nor subject to the other's right to control with respect to his *physical conduct in the performance of*

the undertaking". (Emphasis mine).

39-71-120, MCA: "An independent contractor is one who renders service in the course of an occupation and: has been and will continue to be *free from control or direction over the performance of the services*, both under the contract *and in fact*; and is engaged in an independently established trade, occupation, profession, or business." (Emphasis mine).

Montana code provides that anyone desiring the independent contractor designation shall apply for an independent contractor exemption unless they have elected to be bound by one of the three workers' compensation plans. (Certain exceptions under 39-71-401, MCA, (2)(r)(iii) or (2)(r)(iv) can apply).

Care must be taken to verify that either an exemption certificate or proof of workers' compensation exists. A bulletin by the Montana Department of Labor & Industry, in 2007, stipulates that "Failure to obtain the exemption certificate or workers' compensation insurance will result in the state treating the worker as an employee of the hiring agent. Hiring agents will be responsible for the claims for injuries or occupational diseases and payment of premiums on the wages of those considered their employees".

The implications of this can be very expensive! So how can you guard against a problem such as this? Always request a certificate of insurance, not only verifying liability insurance, but also workers' com-

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pensation if the contractor has elected one of the three compensation plans. If workers' comp has not been elected, then *require* a copy of the independent contractor exemption certificate. (A note on any insurance certificate: The cert. is only a '*snap shot*' in time---the information on that form is verified *as of the date of issue*. Also, a certificate does not alter anything contained in the insurance policy/policies for which it was issued).

A homeowner may also have a little more protection: 39-71-401, MCA: "Employments covered and exemptions"-stipulates that the Workers' Compensation Act does not apply to....(b) casual employment." (39-71-116, MCA, "Definitions"---"Casual employment means employment not in the usual course of trade, business, profession or occupation of the employer."). This may give some relief but *always* check with your legal counsel if in doubt! And, watch out for the "control factor"!

39-9-207, MCA, "Contractor Registration" provides that "a person who...engages a construction contractor who is registered under this chapter on the date of the contract is *not liable as an employer* for work-

ers' compensation coverage under 39-71-405, for any unemployment insurance coverage, or for wages and fringe benefits for: (1) the registered construction contractor; (2) the employees of the registered construction contractor; or any subsequent subcontractors or the employees of any subsequent subcontractor...". (Emphasis mine).

It is easy to see that there are many pitfalls and problems in something so seemingly uneventful as having your home reroofed or damaged property repaired but those problems can become very expensive. Questions relating to these issues can be addressed to either the Independent Contractors Control Unit with the Dept. of Labor & Industry or to your legal counsel.

About the Author:

Dennis Gambill is an insurance litigation consultant. He previously was a property/casualty underwriter and insurance agent. He also was an adjunct professor at Eastern Montana College teaching risk and insurance courses.

This article provided compliments of Darnielle Insurance Agency, Billings.

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Now Available: Updated GLBA Model Privacy Form

by Joseph Doherty, [IIABA Legal Advocacy](#)

The Big “I” Office of General Counsel has updated its legal advocacy memo titled “The Privacy Provisions of the Gramm-Leach-Bliley Act and Their Impact on Insurance Agents & Brokers.”

Although the previous model privacy form complies with the Gramm-Leach-Biley Act (GLBA), proper use of the new form provides agencies with a safe harbor from Federal Trade Commission enforcement actions regarding an agency’s privacy notice. The updated memo includes a new model privacy form and a link to fillable PDFs agencies can use to create a privacy form tailored to their privacy policy—resources de-

veloped in a collaborative effort by several federal agencies that oversee business compliance with the GLBA. As always, agents and brokers should ensure their privacy notices are consistent with their current business practices and privacy policies.

The Big “I” is pleased to make this and other legal advocacy memos available as a free benefit to all Big “I” members. To access the updated memo, log in to the [Big “I” website](#), select Legal Advocacy under the Resources drop-down menu and navigate to “Gramm-Leach-Bliley Act” under the Memoranda & FAQ tab. Contact [Joseph Doherty](#) with any questions.

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The exclusive Big “I” Professional Liability Fireman’s Fund Insurance Company agency E&O policy form gives you a choice in employment practices liability coverage endorsements.

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- Wrongful Termination of Employment Extension
- Employment Practices Liability Extension

- Employment Practices Liability Extension with Limited Coverage for Harassment of a Third Party

Learn more about Employment Practices Liability Endorsements included with the Fireman’s Fund Pro Gard® E&O policy form, available exclusively to Big “I” members, by requesting a coverage comparison from [Mike Sell](#) at (406) 442-9555 extension 104.

These descriptions of coverage are abbreviated and are subject to the terms, conditions and exclusions of the actual policy.

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