NCOILETTER

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NATIONAL CONFERENCE OF INSURANCE LEGISLATORS

Preserving State Insurance Regulation...

- By interacting with Congress on issues of critical importance to insurance public policy
- By educating state lawmakers on the solutions to their insurance-market crises
- By fostering relationships between state legislators
- By asserting the primacy of state insurance regulation under the McCarran-Ferguson Act of 1945

Inside This Issue:

NCOIL SAYS NO TO OPTIONAL FEDERAL CHARTER BILL

In response to the long-threatened introduction of S. 2509, the *National Insurance Act of 2006*, NCOIL recently reasserted its strong opposition to optional federal charter legislation on grounds that it has been crafted not to serve the public but to gratify the industry.

NCOIL believes that S. 2509 would nullify critical state-initiated consumer safeguards, deny consumers access to local experts and as well as recourse in problem times, and ultimately impose the costs of a needless federal bureaucracy upon the public—all without consumer demand.

"I've had no constituent or consumer call me to tell me that he or she wants the federal government to take over from the states the regulation of insurance, or anything else for that matter, and I doubt that any Member of Congress or U.S. Senator has received one either," said Rep. Craig Eiland (TX), NCOIL immediate past president and chair of its State-Federal Relations Committee, upon announcement of the legislation.

S. 2509 would nullify carefully crafted protections resulting from years of consumer and business input and thoughtful consideration by state legislatures. The proposed legislation would unnecessarily preempt states' proven ability to protect consumers against insolvencies and fraud in order to answer industry demands. S. 2509 does not, and cannot by its very nature, respond, as does state regulation, to states' individual and unique insurance markets and constituent concerns.

S. 2509 would deny consumers easy access to local insurance experts when they seek aid and advice regarding insurance coverage. Under the *National Insurance Act of 2006*, consumers would be hard-pressed to com- *(continued on page 2)*

U.S. PANEL TO RECONSIDER MCCARRAN-FERGUSON, THREATENS BEDROCK OF STATE REGULATION

On April 10, U.S. Senate Judiciary Committee Chairman Arlen Specter (R-PA) announced an April 25 Committee hearing in which lawmakers would reexamine the bedrock of state insurance regulation, the McCarran-Ferguson Act of 1945. The hearing, which was subsequently postponed as immigration and other issues take center stage, was entitled *The McCarran-Ferguson Act: Implications of Repealing Insurers' Antitrust Exemption*. Planning for the session falls against the backdrop of a newly introduced Senate Bill 2509, the *National Insurance Act of 2006*, that would establish a bifurcated, optional federal charter (OFC) system of insurance oversight *(see story page 1)*.

McCarran explicitly grants states the authority to regulate the business of insurance and gives insurers a limited exemption from federal antitrust law, so long as company activity is state-regulated. The Act allows insurers to share information that lowers their costs of doing business, including to develop insurance forms and to use loss data for policy pricing.

Congress enacted McCarran after the U.S. Supreme Court had ruled in 1944 that insurance was interstate commerce and, therefore, the prerogative of the federal government.

The 61-year-old law serves a roadblock to those who are lobbying for federal insurance oversight and would need to be repealed if congressional preemptive schemes, such as the OFC or State Modernization and Regulatory Transparency (SMART) Act, *(continued on page 4)*

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municate with and seek redress from a distant federal bureaucracy in Washington.

S. 2509 would force consumers to pay for yet another unwieldy federal mechanism. Though NCOIL understands that the life insurance industry has agreed to cover costs, estimated in millions of dollars, for setting up an optional federal charter scheme, reason dictates that such costs would be passed on to individual policyholders—who for their money would receive fewer consumer protections than they now do under state regulation.

And, in addition, S. 2509 would threaten state premium tax revenue, which states rely on for funding of critical programs such as education, infrastructure, and health services. Any experienced observer can foresee that Congress will eventually reach out for state premium tax dollars to fund what will likely be enormous operational costs.

Equally important, S. 2509 would endanger ongoing and productive state financial modernization reform efforts, such as the Interstate Insurance Regulatory Compact for life, disability, annuity, and long-term care insurance products. Compact legislation has now been adopted in 23 of the necessary 26 states for its implementation, is being considered in 13 more, and is expected to be up and running by year-end.

NCOIL vows to join with other advocates of sound public policy regarding the regulation of insurance, in order to oppose what it believes is a flawed proposal—one that would bifurcate insurance regulation and cause more harm than good to the industry and the clients it serves.

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MASSACHUSETTS ENACTS MANDATORY HEALTHCARE LEGISLATION

On April 12, Massachusetts Governor Mitt Romney signed H.B. 4850, a historic healthcare proposal that requires all residents to acquire health insurance or face financial penalty. The legislation, touted by supporters as a national model for health insurance, passed the House of Representatives by 154 to 2 and the Senate by 37 to 0. Romney made several minor modifications before signing the proposal into law.

H.B. 4850 requires Massachusetts residents to acquire health insurance coverage by July 1, 2007. Penalties for noncompliance will be enforced by the Department of Revenue and will range from a loss of personal exemption for tax year 2007 to a penalty that will equal part of what the individual, if insured, would have paid toward a premium.

To help residents acquire coverage, the landmark bill creates a Commonwealth Health Insurance Connector under the Department of Administration and Finance. The new authority will link individuals and small businesses to insurance products that the Connector had certified as high-quality healthcare. The Connector will permit insurance portability and allow multiple employers to contribute to a worker's premium.

Additionally, H.B. 4850 creates a Commonwealth Care Health Insurance Program—a subsidized insurance plan within the Connector. The program will make health coverage available to individuals who are ineligible for MassHealth, the state's public health program for certain low to middle-income residents, and for those who earn less than 300 percent of the Federal Poverty Level (FPL). These plans will be deductible-free, and premiums will be adjusted on a sliding scale. Individuals making less than 100 percent of the FPL will pay no premiums.

The bill also addresses health insurance availability for children and young adults. Medicaid eligibility for children will be expanded, and dental and vision benefits, cut in 2002, will be restored. The age of dependency will increase to either the age of 25, or two years after a child can no longer be (continued on page 4)

IN PERSPECTIVE: FUTURE OF THE NFIP

By Edward Pasterick

When Hurricane Katrina finally completed its pass through the Gulf Coast in August of 2005, it left behind more damage than any storm in the Nation's history. Most of the victims of the storm lived in the States of Louisiana, Alabama, and Mississippi. Many of the victims, more than in most flooding events, were fortunate enough to have been insured under the National Flood Insurance Program (NFIP). This was especially the case in Louisiana, which experienced some 80% of the over 200,000 NFIP losses, the bulk of them losses resulting from the levee breaks in New Orleans. The amount that will eventually be paid under the NFIP to Katrina victims is expected to be about $23 billion, which, to put it in perspective, dwarfs the largest previous NFIP payout for a single storm after Hurricane Ivan, which struck Florida in 2004 and cost the program about $1.5 billion.

The effect of Katrina on the National Flood Insurance Fund was severe. Since 1986, the NFIP has been able to pay over $18 billion in losses and expenses out of policyholder premiums without having to turn to Congress for an appropriation. This has been in spite of the fact that the structure of the NFIP requires that it insure a large number of high-risk properties at rates that are far below adequate levels. That, plus the fact that the bulk of properties insured under the NFIP, even those built to NFIP standards, are in high-risk areas, means that the program is unable to accumulate any significant amount of reserves. Whether such reserves would have been adequate to withstand the effect of Katrina or not, the program as presently constituted certainly could not. The result is that the NFIP will have to borrow the $23 billion from the Treasury to pay losses. In the process of providing the NFIP with the authority to borrow that amount of funds, Congress is also looking at ways to strengthen the financial position of the program and to be more responsive to consumer concerns.

Some of the proposed amendments involve reducing the subsidy that the program now affords certain properties. In particular, the subsidy on second homes and commercial properties would be gradually reduced over a series of years. Primary residences would not be affected. Another proposal would have the General Accounting Office study the effect of expanding the mandatory flood insurance purchase requirements to areas outside the 100-year flood plain.

Other proposed provisions would increase the coverage limits available and expand coverage to include additional living expense, business interruption, and optional replacement cost coverage for contents and possibly optional additional coverage for basements.

Congress has also expressed its concern that the provisions of the Flood Insurance Reform Act of 2004 be implemented. Of particular note are sections dealing with a pilot program to address severe repetitive loss properties and with formalizing a claims appeal process.

One of the activities stemming from the 2004 Act that requires the attention of State legislators is improving flood insurance education for insurance agents. The NFIP has taken the course of working within the current regulatory framework in upgrading agent training. This means that FEMA has published minimum standards for agent training and has made available training courses and resources, both in person and online. However, we have left it to the States to use their authority to encourage agents to avail themselves of this training. We would welcome any assistance that legislators can provide in this endeavor.

The NFIP has become an important part of the Nation's economy. Hopefully, the proposed future changes will strengthen its ability to protect people from the financial devastation that can be caused by flooding.

Mr. Pasterick is a Senior Advisor with the Federal Emergency Management Agency (FEMA).

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SAVE THE DATE

The NCOIL Summer Meeting

July 20 through 23, 2006*

Boston, Massachusetts

****PLEASE NOTE DATE CHANGE***

NCOILetter

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were to become law. Pending OFC legislation would expose insurers to federal antitrust law if they chose optional federal charter—rather than state—regulation.

Senate interest in McCarran also comes as a federal Antitrust Modernization Commission is examining ways to update U.S. antitrust law, including whether Congress should sunset current immunities and exemptions. The Commission is scheduled to report to Congress and the President by April 2007.

NCOIL is a staunch advocate of state insurance authority as granted under McCarran-Ferguson and fully opposes any federal initiative, including S.B. 2509, that would preempt state oversight, erode key consumer protections enacted by state legislatures, and threaten the $13 billion in premium tax income that currently represents the second or third largest revenue item in most state budgets.

State legislators will investigate these issues in depth during the July 20 through 23 NCOIL Summer Meeting in Boston.

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claimed as a dependent, whichever occurs first. Young adults also will be eligible for lower-cost products offered through the Connector.

H.B. 4850 makes other dramatic changes to the Massachusetts health insurance market. The bill merges the non- and small-group markets in July 2007, with the expectation that non-group premiums in the state will decrease by 24 percent. Under the legislation, the state cannot create any new health insurance mandates until 2009.

In the version adopted by the legislature, Massachusetts employers with at least 11 employees would have paid a "Fair Share Contribution" to the state if they did not provide, or contribute to, health insurance for their employees. The Contribution would have cost employers an estimated $295 per employee per year. Governor Romney vetoed this proposal, though it has been reported that legislators plan to override that decision.

Under H.B. 4850, employers whose uninsured employees frequently receive care at the expense of taxpayers, due to their uninsured status, will be required to pay a "Free Rider" surcharge. The surcharge will require employers to pay between 10 and 100 percent of the state's costs to provide services to the uninsured employees. H.B. 4850 requires all employers with more than ten 10 workers to offer Section 125 plans, or "cafeteria plans," that permit employees to purchase insurance with pre-tax dollars.

The bill also contains provisions aimed at reducing racial and ethical health disparities, and will shift federal resources from supporting individual hospitals to providing coverage for uninsured individuals.

NCOIL will examine the significant implications of the Massachusetts legislation during the July 20 through 23 NCOIL Summer Meeting in Boston.

MEDICARE PART D: DATES TO REMEMBER

March 30, 2006: End of transitional period for participants enrolled before March. All new entrants are subject to a 30-day transitional period.

April 30, 2006: Many beneficiaries not already enrolled will automatically be enrolled by the Center for Medicare & Medicaid Services (CMS).

May 15, 2006: Deadline for new Medicare D participants. Individuals enrolling after this date may be subject to a penalty.

November 15, 2006: New enrollment period begins; ends on December 31.