



NCOILETTER

August 2006

www.ncoil.org

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 Readopts 2
Rating Model

Lawmakers 2
Pursue Joint
Mega-Cat Plan

Federal Bill Calls 3
for Natural Cat
Commission

NCOIL Forges 3
Ahead on Market
Conduct

NCOIL Adopts 4
Resolution on
NAIC Accredita-
tion and IRMA

Legislators 4
Support WC
Reciprocity

CONGRESS CLEARS LANDMARK PENSION BILL

Before adjourning for its August recess last week, Congress overwhelmingly passed H.R. 4, the *Pension Protection Act*, which President Bush is expected to sign.

The bill—widely considered to be a landmark overhaul of the U.S. retirement security system—seeks to strengthen defined-benefit retirement plans by establishing new minimum funding standards for single-employer defined-benefit pension programs. H.R. 4 requires plans in “endangered” or “critical” status to adopt and implement funding improvement plans or rehabilitation plans, respectively. The bill grants companies seven years to fully fund their programs, up from the current 90 percent level, and promises struggling airlines additional time and relief.

H.R. 4 also includes a provision that would make it easier for financial companies to provide investment advice to workers, and promotes automatic enrollment in

401(k) plans at a time when traditional, employer-based pensions are becoming less common.

Pension reform was uncertain for the past four months. The House and Senate approved separate pension bills in December 2005 and March 2006, respectively, that included the extension of expiring tax cuts, among them the much-debated estate tax and several popular tax breaks, such as credits for research and development. A conference committee was assigned to negotiate differences between the bills but was unable to agree on a report before the House passed H.R. 4.

The tax extender provisions subsequently were folded into a separate bill, resulting in a so-called “trifecta” bill, that also would have provided a \$2.10-an-hour minimum wage increase. The House passed the measure while the Senate fell three votes short of the 60 needed to limit debate.

NCOIL IN ACTION

At the July 20-23 NCOIL Summer Meeting, lawmakers took the following policy actions:

- Adopted resolutions regarding **building codes**, **life insurance** awareness, and **receivership law and NAIC accreditation**
- Adopted a model act regarding **auto insurance fraud**
- Readopted NCOIL model laws regarding insurance compliance **self-evaluative privilege**, life insurance **secondary addressees**, **mental health parity**, and property-casualty **rate modernization**
- Reaffirmed support for an NSSTA/NASP **structured settlements** model act
- Supported and amended an IAIABC model agreement regarding **workers' compensation claims reciprocity**
- Held a special meeting on amendments to NCOIL's initial, February 2004 **market conduct** model, and voted to accept, for 20 days, comments from interested parties that had not yet weighed in
- Moved for further consideration a draft natural disaster **mega-catastrophe plan**, model act regarding **pharmacy benefit managers (PBMs)**, model act regarding physician discount **secondary markets**, and model act regarding **reinsurance collateral requirements**, as well as development of a **payday lending** model law
- Deferred, due to time constraints, the bylaws-required reviews of NCOIL model laws regarding **life settlements** and **identity theft**

“Florida is the canary in the coal mine. Our crisis-level problems regarding reinsurance capacity and affordability are spreading to communities along the eastern coast and beyond. Public policymakers must entirely reevaluate how this nation prepares for and responds to major natural events.”

NCOIL REAFFIRMS COMMITMENT TO RATE MODERNIZATION

Lawmakers stood firm in their commitment to state insurance modernization on July 22, when legislators at the NCOIL Summer Meeting in Boston reauthorized an NCOIL *Property-Casualty Insurance Modernization Model Act* that would streamline rate filings for p-c insurers.

The action marked support for ongoing state efforts to adjust rating laws to respond to an increasingly competitive, global insurance environment. According to NCOIL President Rep. Frank Wald (ND), “The model act is critical to the promotion of competitive markets that promote greater capacity and affordability for consumers. It is clear—in this era of federal threats to state oversight—that legislatures must replace restrictive rate-filing laws with more

modern approaches to rate regulation.”

Initially adopted in 2001, the model law would establish a use-and-file rate regulatory system for personal lines of insurance; a no-file system for commercial lines; and an exemption from rate and regulatory requirements for sophisticated commercial insurance buyers, among other things.

State efforts to enact rate reform continue across the country, with many states adopting some form of deregulation. An NCOIL *Property-Casualty Flex-Rating Regulatory Improvement Model Act*, adopted in February 2004, serves as an interim step between restrictive and more open systems.

The NCOIL Property-Casualty Insurance Committee readopted the model act on July 21 and referred it to the Executive Committee, which likewise readopted on July 22.

LAWMAKERS PURSUE JOINT NCOIL-NAIC MEGA-CAT PLAN, SCHEDULE FURTHER DELIBERATIONS

State lawmakers at the NCOIL Summer Meeting recognized the need for national mega-catastrophe preparedness when they voted to further discuss details of a draft NCOIL-National Association of Insurance Commissioners (NAIC) natural disaster proposal.

The plan, which is a joint effort of NCOIL Subcommittee on Natural Disaster Insurance Legislation Chair Sen. Steven Geller (FL) and NAIC Property-Casualty Insurance Committee Chair Commissioner Kevin McCarty (FL), would establish a multi-layered system that would rest primary responsibility with consumers and the private insurance industry.

The proposal would call for a newly created Federal Natural Disaster Catastrophe Commission to evaluate whether public-sector involvement would be called for and, if so, what triggers might be appropriate. Optional state or regional catastrophe funds and a federal reinsurance program would follow should the Commission see a need for public participation.

According to Sen. Geller, NCOIL’s decision to pursue the mega-catastrophe discussion is a critical step in the right direction—and one that is important for states across the country.

“Florida is the canary in the coal mine,” he said. “Our crisis-level problems regarding reinsurance capacity and affordability are spreading to communities along the eastern coast and beyond. Public policymakers must entirely reevaluate how this nation prepares for and responds to major natural events. It’s not a question of whether a mega-catastrophe will strike. It’s merely a question of when.”

The proposed NCOIL-NAIC system also would allow for creation of tax-deferred catastrophe reserves and would strongly promote mitigation efforts including effective statewide building codes and land-use management. It responds to an earlier NAIC proposal that takes a similar multi-layered approach to disaster preparedness.

The Subcommittee will work with the NAIC in the coming weeks to refine details of the draft in time for consideration at the September NAIC Fall Meeting and the November NCOIL Annual Meeting.

Sen. Geller and Commissioner McCarty developed the proposal under the direction of NCOIL legislators and NAIC regulators, with any final plan contemplated as a joint work product. The negotiations build upon the long-standing efforts of NCOIL and the NAIC to promote a national catastrophe system.

FEDERAL BILL CALLS FOR NATURAL DISASTER COMMISSION

Asserting a crisis for coastal residents in her state, Rep. Debbie Wasserman Schultz (D-FL) has introduced a bill that would establish a national commission to examine whether the federal government should act as backstop for insurers in bearing costs for natural disaster claims.

H.R. 5891, the *Catastrophic Disaster Risk and Insurance Commission Act of 2006*, would establish a 17-member commission to determine, among other things, if it is possible to create a national cat program administered federally that would serve as a backstop to the traditional insurance and reinsurance industries.

The commission also would examine other proposals, including establishment of tax-deferred cat reserves and creation of policyholder tax-free savings accounts.

The group would look at current mitigation efforts; states' ability to stabilize p-c markets; and ways to encourage private-sector involvement in a federal backstop to minimize taxpayer exposure.

Rep. Wasserman Schultz stressed that a reinsurance program would need to hedge risk exposure to protect tax-

payers and ensure that it would not become a public subsidy for coastal residents.

In announcing the bill Rep. Wasserman Schultz said, "There is a growing economic crisis in my home state. The private market for insurance is literally collapsing before our eyes, and not just for homeowners but for commercial firms too.... The insurance market is literally drying up."

The Commission would include former Congresspersons (a Republican and a Democrat); a state insurance regulator; a state emergency official; Treasury, FEMA, and NOAA representatives; an independent agent; a mortgage lender; an antitrust lawyer; consumer, p-c, reinsurer, and realtor representatives; and scientific experts.

The House bill is similar to Sen. Bill Nelson's (D-FL), S. 3114, the *Commission on Natural Disaster Risk and Insurance Act*.

NCOIL has not taken a position on H.R. 5891 but does strongly support a federal role in natural disaster insurance, as well as tax-deferred cat reserves and statewide building codes. Lawmakers are working with the NAIC to promote a national mega-cat system (see story page 2).

**Resulting
amendments
tackle very real
issues of concern,
such as the scope
and content of
examinations,
market conduct
analysis and
action protocol
and procedures,
data collection,
confidentiality,
and domestic
responsibility and
deference.**

NCOIL FORGES AHEAD ON MARKET CONDUCT REFORM

On July 20, NCOIL moved forward in its effort to effect needed market conduct reform by previewing a newly proposed market conduct initiative at the NCOIL Summer Meeting in Boston.

Rep. Craig Eiland (TX), NCOIL State-Federal Relations Committee Chair, said, "NCOIL is committed to effect market conduct reform and will continue its efforts to develop a needed statutory approach. State legislators will develop a model that will garner support in the states. Our goal is to have an model for states to begin adopting in January 2007."

The proposal stems from an initial NCOIL model law adopted in early 2004 and was crafted in reaction to a perceived lack of regulatory or industry support for a subsequent NCOIL-National Association of Insurance Commissioners (NAIC) model act adopted in late 2004.

The proposal is the result of numerous subcommittee teleconferences held between March and July of this year, in which legislators discussed and debated the pros and cons of proposed amendments to the initial NCOIL model and

received interested party input.

Resulting amendments tackle very real issues of concern, such as the scope and content of examinations, market conduct analysis and action protocol and procedures, data collection, confidentiality, and domestic responsibility and deference.

Sen. Neil Breslin (NY), chair of the Subcommittee that developed the model and reported it up to the State-Fed Committee on July 20, said, "The amended model is an attempt to reach a middle ground on these controversial issues—one that serves legislators, regulators, the consumers they serve, and industry alike."

Following review of the proposal at a special July 20 market conduct meeting, Rep. Eiland established a 20-day comment period on specific language within the model for interested parties who had not already input into the process.

Upon review of those comments, the draft will go before the full State-Federal Relations Committee for a vote at the NCOIL Annual Meeting, and likely will be referred to the Executive Committee at that same meeting for final approval.

SAVE THE DATE

NCOIL Annual Meeting & Seminar

**November
9-10, 2006**

**Napa Valley,
California**

**Reserve Early
to Secure Room
in Conference
Hotel**

NCOILetter

Susan F. Nolan, Publisher/Editor

Candace Thorson, Managing Editor
Kevin Horan, Associate Editor
Mike Humphreys, Associate Editor

Simone Smith, Production Assistant
Allyson Wray, Production Assistant
Robert Goodman, Business Manager

Opinions expressed in the *NCOILetter* do not necessarily reflect the views or opinions of the National Conference of Insurance Legislators. The *NCOILetter* is published monthly by Nolan Associates.

Contact the *NCOILetter* at the:

NCOIL National Office:
385 Jordan Road
Troy, NY 12180
(518) 687-0178 (phone)
(518) 687-0401 (fax)
info@ncoil.org

**The NCOIL Office in
Washington, D.C.**

601 Pennsylvania Ave. NW
Suite 900, South Building
Washington, D.C. 20004
(202) 220-3014 (phone)
(202) 330-5004 (fax)
info@ncoil.org

NCOIL

NCOIL RESOLUTION OPPOSES NAIC ACCREDITATION CHANGES, COMMITS TO IRMA EXAMINATION

Prompted by concern over recent National Association of Insurance Commissioners (NAIC) activity on accreditation and receivership law, NCOIL on July 22 adopted a *Resolution Regarding Efforts to Make Insurer Receivership Model Act ("IRMA") Provisions Part of the NAIC Accreditation Standards*. Legislators took action during the Boston NCOIL Summer Meeting.

The resolution, among other things, recognizes the primacy of state legislatures in setting receivership public policy. It opposes inclusion of IRMA standards into the accreditation system on the grounds that the model law does not directly relate to solvency, and opposes an initiative to truncate the process whereby additional accreditation standards are exposed and adopted.

In addition, the resolution commits NCOIL to investigating the merits of IRMA, including the need for any revisions, and to taking action as appropriate.

In the mid-1990s, as the NAIC began adding more models to its existing

accreditation standards, NCOIL cautioned the NAIC to develop a more deliberative process by which new standards would be exposed and incorporated, and stressed a need for a cost-benefit analysis of any proposed change. This resulted in the current process for inclusion of new models. In addition to truncating the exposure period, regulators are now proposing to eliminate the cost-estimate requirement.

At the Summer Meeting, an NAIC representative said that the NCOIL Property-Casualty Insurance Committee should wait until the NAIC had completed its work before opposing regulator recommendations. Committee Chair Sen. Pamela Redfield (NE) responded that the appropriate time for legislators to weigh in was during the discussion process.

Recently passed by the NAIC, IRMA has drawn criticism from many in the insurance industry, who charge that the model act is incomplete and, to some extent, unfair. Concerns include, among other things, the model law's failure to address issues regarding large deductible insurance policies.

NCOIL RECOGNIZES GAPS IN WORKERS' COMP COVERAGE, ENDORSES MODEL RECIPROCITY AGREEMENT

NCOIL legislators overwhelmingly supported a model reciprocity agreement for workers' compensation insurance claims on July 22, during the July 20 through 23 NCOIL Summer Meeting in Boston, Massachusetts.

The *Model Agreement Between Jurisdictions to Govern Coordination of Claims and Coverage* was developed in 2005 by the International Association of Industrial Accident Boards and Commissions (IAIABC) and subsequently adopted by the National Council on Compensation Insurance (NCCI). The agreement would streamline claims processes when an employee is injured while working in a second state by defining temporary employment, specifying covered benefits, and determining the coverage source for injury claims.

The NCOIL Executive Committee on July 22 voted unanimously to support the IAIABC model, with the inclusion of two amendments proposed by the NCOIL Workers' Compensation Insur-

ance Committee, which in no way detracted from the model's original intent.

Lawmakers added a drafting note to the agreement that would suggest that states be aware of the definition of temporary employment as it relates to emergency situations, in order to address concerns regarding the coverage of emergency workers who are deployed to an affected area for a time period longer than that covered in the model, such as following Hurricane Katrina.

The Committee approved a second amendment, sponsored by Committee Chair Senator Carroll Leavell (NM), that deleted Appendix One, regarding Oregon Enabling Legislation, as the language was not essential to the model.

At the 2006 NCOIL Spring Meeting, the Committee voted overwhelmingly to support the model agreement. During the subsequent Executive Committee meeting, legislators voted to remit the model to the Workers' Compensation Insurance Committee for further consideration.