



NCOILETTER

December 2005

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 Presses Market Conduct Reform: Urges NAIC Support 2

Lawmakers Adopt Aftermarket Crash Parts Resolution 2

Action on Mega-Cat Options at NCOIL Spring Meeting 3

NCOIL Adopts Patient Safety Act 3

Legislators Readopt NCOIL Credit Scoring Bill 4

HOUSE PASSES TRIA REAUTHORIZATION BILL, FOCUS TURNS TO HOUSE-SENATE CONFERENCE COMMITTEE

In a decisive 371 to 49 vote, the U.S. House of Representatives on December 7 adopted its version of S. 467, which would reauthorize through 2007 the Terrorism Risk Insurance Act (TRIA), otherwise set to expire at year end. TRIA provides a limited federal backstop for insurance against terrorism.

Under the House bill, TRIA's loss trigger would increase from the current \$5 million to \$50 million in 2006 and \$100 million in 2007. Industry retention levels would differ depending on line of insurance, thus creating a "silo" approach to federal coverage; group life insurance would be incorporated for the first time; and surplus lines laws would be streamlined. Among other things, the bill contemplates some form of coverage mechanism beyond 2007.

A conference committee, to be chaired by Rep. Michael Oxley (R-OH), chairman of the House Financial Services

Committee, is expected to resolve significant differences between the House and Senate bills, which bear the same bill numbers.

The Senate legislation, passed on November 18, includes the same trigger levels as the House version, but would set a flat 17.5 percent retention level in 2006 and 20 percent in 2007. Group life would remain excluded, and certain currently covered lines, including commercial auto and professional liability, would be cut from the program. Importantly, the Senate version would end after 2007.

The Administration has issued public opposition to the House bill, characterizing it as "substantially more complex" than original TRIA and likely to have "unintended regulatory consequences."

NCOIL has long pressed for TRIA reauthorization, having been among the first to publicly support such a program after the terrorist acts of September 11.

NCOIL IN ACTION

During the recent NCOIL Annual Meeting in San Diego, California, legislators took the following public policy actions:

- * Adopted a *Patient Safety Model Act*, a *Resolution Regarding Motor Vehicle Crash Parts*, a *Resolution Regarding Reinsurance Collateral Requirements*, and a *Resolution Urging the Prohibition of Fundraising Events at NCOIL Meetings*
- * Readopted the NCOIL credit scoring model act
- * Accepted a report from the Insurance Legislators Foundation (ILF) regarding enforcement of judgments as related to reinsurance collateral requirements
- * Considered amendments to the NCOIL-NAIC market conduct model law
- * Moved for further consideration the bylaws-required review of the NCOIL identity theft model act, a draft *Approved List of Reinsurers Model Act*, proposed payday lending model legislation, draft LTC partnership program model bills, and a draft *Resolution Regarding the Small Employers Health Benefits Program Act*
- * Participated in special sessions on fallout from Hurricanes Katrina and Rita
- * Participated in a general session on solvency and guaranty funds

Visit www.ncoil.org for info on NCOIL *Spring Meeting Agenda Items*

NCOIL VOWS TO PUSH MARKET CONDUCT REFORM: URGES NAIC TO SUPPORT EFFORTS

NCOIL vowed to renew efforts for market conduct reform, a key element of its financial modernization package, at the November NCOIL Annual Meeting in San Diego, California. Legislators at a November 19 State-Federal Relations Committee/NCOIL-NAIC Dialogue meeting pressed for regulator support and discussed proposals to amend a joint NCOIL-NAIC *Market Conduct Surveillance Model Law* to facilitate its enactment in the states.

Among proposals vetted at the meeting were Texas S.B. 14, the *Insurance Market Conduct Surveillance Act*, enacted this year and sponsored by Rep. Craig Eiland (TX), then-NCOIL President; and return to a model initially adopted by NCOIL in early 2004, which had broad industry support.

Legislators queried regulators in attendance regarding lack of National Association of Insurance Commissioners (NAIC) advocacy of the model. The joint model act, adopted respectively by NCOIL and the NAIC in July and September 2004, has met with little success in the states due, in part, to lack of regulator support.

The Texas law mirrors many

aspects of the NCOIL-NAIC model but includes important differences regarding information sharing and domestic deference. Rep. Eiland explained that his goal was "...not to change the model bill but to create a bill that would pass the legislature." He emphasized the importance of moving forward on modernization efforts.

The joint model would establish a framework for insurance department market conduct actions, including processes and systems for identifying, assessing, and prioritizing market conduct problems that have a substantial adverse impact on consumers, policyholders, and claimants. The new system would reduce inefficiency and redundancy found in the present market conduct regulatory scheme.

Legislators will continue to look for ways to improve the model law and will report on their progress at the NCOIL Spring Meeting in Fort Lauderdale, FL, scheduled for February 23 through 26.

The model law is the culmination of more than four years of NCOIL effort that began when the Insurance Legislators Foundation, NCOIL's research and educational arm, commissioned its first of two studies into the issue.

Legislators queried regulators regarding lack of NAIC advocacy of the market conduct model. The joint model act has met with little success in the states due, in part, to lack of regulator support.

LEGISLATORS CONCLUDE NCOIL AFTERMARKET CRASH PARTS DEBATE, ADOPT RESOLUTION

Concluding more than ten years' debate into aftermarket crash parts, NCOIL on November 19 unanimously adopted at its Annual Meeting a *Resolution Regarding Motor Vehicle Crash Parts*, which replaces further consideration of a draft *Certified Aftermarket Crash Parts Model Act (substitute amendment)*.

Strongly endorsed by interested parties, the resolution recognizes the need for competition in the crash repair industry and supports use of all kinds of crash parts when appropriate; consumer awareness of the differences between types of parts, as well as notification of the kind of part for which an insurer will reimburse; and having an insurer stand behind the

part(s) it requires.

An NCOIL subcommittee, formed after the NCOIL Summer Meeting, officially recommended Property-Casualty Insurance Committee consideration of the resolution in place of the draft model law.

The Subcommittee first agreed to a series of amendments to the model but ultimately determined they were unworkable and that a resolution would be more appropriate. At the meeting, the group presented, for the full P-C Committee's review, the rejected amendments so that the Committee could appreciate the scope of the Subcommittee's work.

The P-C Committee adopted the resolution on November 17; the Executive Committee did the same on November 19.

NCOIL TO ACT ON MEGA-CATASTROPHE, BUILDING CODE OPTIONS AT SPRING MEETING

In their latest effort to secure enactment of a national catastrophe program, lawmakers at the February NCOIL Spring Meeting in Fort Lauderdale, Florida, will examine a regulatory proposal to establish a broad-ranging catastrophe plan, and will consider policy statements regarding statewide building codes and the need for federal law pertaining to natural disaster risk.

A February 23 meeting of the NCOIL Subcommittee on Natural Disaster Insurance Legislation, scheduled from 9:15 to 10:00 a.m., will feature examination of a National Association of Insurance Commissioners (NAIC) draft *Natural Catastrophe Risk: Creating a Comprehensive National Plan*, released on December 1. Similar to an approach that NCOIL supported, in concept, during its November Annual Meeting,

the NAIC paper envisions a layered system, in which the private market and consumers, state/regional catastrophe funds, and the federal government assume liability for catastrophic exposure.

The NAIC program, in part, would require that insurers offer all-perils policies; allow for consumer tax credits and premium discounts for mitigation activities; permit insurers to establish tax-deferred catastrophe reserves; mandate creation of catastrophe funds in each state and/or region; promote effective building code and land-use policies; and establish a federal vehicle to provide catastrophic reinsurance coverage to state/regional cat funds.

Of likely concern to legislators is the composition of the would-be National Catastrophe Insurance Commission, an independent *(continued on page 4)*

Of likely concern to legislators is the composition of the would-be National Catastrophe Insurance Commission, an independent body outside the prerogative of any other federal agency, that would have no state legislative presence.

LAWMAKERS UNANIMOUSLY ADOPT PATIENT SAFETY MODEL LAW, SUPPORT MEDICAL ERROR REPORTING

State legislators at NCOIL's San Diego Annual Meeting unanimously adopted on November 19 a *Patient Safety Model Act* that would protect consumers from healthcare errors and that, lawmakers believe, may eventually lead to reduced medical malpractice insurance premiums.

Supported by groups including Consumers Union and The Doctors' Company, the model act would establish mandatory error reporting requirements for hospitals, ambulatory surgical centers, and mental facilities. Events to be reported include wrong-site surgery, death, medication errors, foreign objects left inside patients, suicide, sexual harassment, and hemolytic transfusion reactions as a result of using incompatible blood products, among other "never" events.

A separate section, based substantially on recently enacted New York State law, would establish a mandatory reporting system for hospital infection statistics. The program would feature a one-year phase-in period, during

which states would keep the reported data confidential in order to insure the completeness and accuracy of the submitted information.

Both reporting sections include whistleblower and privacy protections.

The patient safety model act, which emanated from the NCOIL Property-Casualty Insurance Committee's investigation into rising medical malpractice insurance premiums, is a joint work product of the P-C and Health Insurance Committees and represents the culmination of more than a year of examination into healthcare error reporting.

Before addressing patient safety, NCOIL had adopted a spring 2004 *Resolution Regarding Medical Malpractice Reform*, which supported certain state tort-reform initiatives, including reasonable caps on non-economic and punitive damages.

The P-C and Health Insurance Committees adopted the patient safety model law on November 18 and referred it to the Executive Committee, which adopted it on November 19.

SAVE THE DATE

**The NCOIL
Spring
Meeting**

**February 23
through 26,
2006**

**Fort Lauderdale,
Florida**

NCOILetter

Susan F. Nolan, Publisher/Editor

Candace Thorson, Managing Editor
Paul Donohue, Associate Editor

Vanessa Saari, Production Assistant
Simone Smith, 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

(continued from page 3)

body outside the prerogative of any other federal agency, that would oversee the reinsurance contracts. The 11-member commission would include, in addition to various experts, one member from each of the four (4) NAIC zones—with no state legislative presence contemplated.

Initial selection of Commission members would fall to the NAIC, which would provide the President with a list of candidates for his/her selection and for subsequent Senate confirmation. State legislatures would appear to have no federal role.

Also on the agenda in Fort Lauderdale is a proposed resolution supporting enactment of effective statewide building codes as mitigation against catastrophic loss. NCOIL has scheduled a February 25 general session entitled *Reassessing State Building Codes: Mitigation and Enforcement*, in which experts representing the Institute for Business & Home Safety, Insurance Services Offices, and the insurance and agent industries will look at items including, among others,

enforcement and policyholder compliance. The session is scheduled from 10:00 to 11:15 a.m.

During the Subcommittee meeting, legislators will review a 2004 NCOIL *Resolution Regarding Natural Disaster Insurance Issues* that supports investigation into various options for federal action. A proposed amendment would narrow the scope of the resolution to investigation of a layered catastrophe program.

A special roundtable discussion during the recent NCOIL Annual Meeting analyzed fallout from Hurricanes Katrina and Rita on both domestic and global lines of insurance. Panelists representing the Federal Emergency Management Agency, state insurance regulator, property-casualty and reinsurance industry, agent, and academic perspectives urged legislators to take strong action mitigating future disasters, promoting consumer awareness, and considering the implications of public-private options for catastrophic risk. Among other things, they offered strong distaste for a combined natural disaster/terrorism plan.

NCOIL READOPTS CREDIT SCORING MODEL, WILL CONSIDER EXTRAORDINARY LIFE CIRCUMSTANCES

Recognizing that regulation of credit scores is still a key issue in many states, legislators at the NCOIL Annual Meeting unanimously readopted on November 19 an *NCOIL Model Act Regarding Use of Credit Information in Personal Insurance*. The model, originally adopted by NCOIL in November 2002, has been enacted via legislation and/or regulation in 26 states.

According to NCOIL, the model protects consumers while encouraging a competitive insurance market and has served as the standard in states looking to lay groundwork for use of credit information in underwriting and rating. NCOIL bylaws require that the organization periodically review its model acts.

Legislators also voted to consider at the NCOIL Spring Meeting a drafting note regarding exceptions for extraordinary life circumstances, which permit insurers to exclude or treat as neutral credit information related to a catastrophic life event, such as significant illness

or injury, death of a loved one, or divorce. Seven states have incorporated such provisions into their NCOIL laws.

The NCOIL model would, in part, 1) require an insurer to re-underwrite and re-rate an insured whose credit report was corrected; 2) require an insurer to notify an applicant that credit data would be used, as well as when an adverse action was based on credit info and what the four primary credit-related factors were; 3) indemnify insurance agents/brokers obtaining credit data and/or insurance scores according to an insurer's procedures and applicable law and regulation; 4) restrict a consumer reporting agency's ability to provide/sell info submitted in conjunction with an insurance inquiry; and 5) require the filing of scoring models with the Dept. of Insurance, which would consider them trade secret.

The P-C Committee readopted the act on November 17; the Executive Committee later readopted on November 19.