

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

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NCOIL TO NAIC: LEGISLATORS OBLIGATED TO OVERSEE REGULATORS —SUBCOMMITTEE TO IMPLEMENT NEW

NCOIL President Rep. Brian Kennedy (RI) told members of the National Association of Insurance Commissioners (NAIC) at their recent Winter Meeting in Houston, Texas, that state legislators—because they have delegated authority by statute to insurance regulators and the NAIC—are compelled to actively oversee those entities. Speaking at a Legislative Liaison Committee meeting, Rep. Kennedy informed regulators that NCOIL had formed a select subcommittee to implement strategy recommended by *A Study on State Authority: Making a Case for Proper Insurance Oversight*.

The Insurance Legislators Foundation (ILF)—the research and educational arm of NCOIL—commissioned the study to take an in-depth objective look at insurance regulation in the states in order to make any necessary improvements.

Responding to a query by then-NAIC President Walter Bell (AL), Rep. Kennedy said: “We, as state legislators, are

obligated to properly oversee our insurance regulators and—in turn—the NAIC, as state legislatures have both directly and indirectly delegated authority to these entities to enforce our will.... NCOIL will do its best to ensure that the state system continues to thrive, so that we can take credit for its success, rather than share the blame for its failure.”

NCOIL at its Annual Meeting in Las Vegas in late November unanimously adopted Phase II of the study, which comprised critical recommendations that look to gain new ground in insurance regulation, while at the same time regain territory that has been lost. The Executive Committee on November 17 created a select subcommittee of the group’s officers and past presidents in order to find the best ways to implement the Phase II proposals.

The forward-looking strategy—vetted at a special November 16 joint meeting of the Executive Committee and ILF—advocated ways to clarify

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NCOIL IN ACTION

At the recent Las Vegas Annual Meeting, legislators took the following actions, among others:

- adopted a report on Phase II recommendations of an ILF *Study on State Authority* and formed a select subcommittee to examine implementation (see story above)
- adopted a resolution supporting H.R. 506 federal health partnership legislation, as well as one opposing draft IRS rules on captive insurers
- adopted an amended NCOIL *Life Settlements Model Act*, as well as model laws on p-c guaranty funds and PEOs
- considered resolutions on young-adult dependent health benefits and prescription drug transparency
- considered model legislation on rental vehicle damage waivers, as well as on physician discounts and accident response fees

VIEW FROM THE HILL: TRIA AND LOTT—THE FINAL COUNTDOWN

As Congress battled over extending a federal terrorism insurance backstop, one of the insurance industry's harshest critics prepared to exit public service.

Days before recessing for the year, the House stood strong in a futile battle against the Senate and the Bush Administration over H.R. 2761, the *Terrorism Risk Insurance Revision and Extension Act of 2007*. H.R. 2761 would reauthorize the federal terrorism insurance program (TRIP)—set to expire on December 31.

After the smoke cleared, H.R. 2761, as amended by the Senate, was passed by the House without its hoped-for expansions. The legislation would extend TRIP for seven years and eliminate the program's distinction between foreign and domestic acts of terrorism. H.R. 2761 would also mandate that the Government Accountability Office (GAO) conduct studies on nuclear, biological, chemical, and radiation risk, and on insurance scarcity and capacity restraints.

In the final days, House members fought admirably for a "compromise" package that would have included a "reset" provision to benefit previously attacked areas, lowered the "trigger"

for federal involvement from \$100 to \$50 million, and added coverage for group life. Their concerns fell on deaf ears as Senators refused to negotiate on their own proposal, which had already received a mild endorsement from President Bush.

Meanwhile, Senator Trent Lott (R-MS) surprised many Washington insiders when he announced that he will resign his seat before 2008.

Lott had state insurance legislators and regulators, and many industry representatives, up in arms earlier this year when he teamed with Judiciary Committee Chair Patrick Leahy (D-VT), Ranking Member Arlen Specter (R-PA), and Majority Leader Harry Reid (D-NV) to introduce S. 618, the *Insurance Industry Competition Act*.

The measure to repeal the McCarran-Ferguson Act's limited antitrust exemption looked like it could slide through the Senate and into the House, where Speaker Nancy Pelosi (D-CA) had assured bipartisan support. However, the Judiciary Committee was sidetracked by a series of controversial hearings on former Attorney General Alberto Gonzales, regarding the dismissal of U.S. attorneys and domestic surveillance by the National Security Agency. Bad for Gonzales, good for state regulation.

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NCOIL MODEL STRENGTHENS GUARANTY FUND SAFETY NETS

The critical safety nets that protect consumers when their insurers become insolvent will offer even stronger defense under a new NCOIL property-casualty insurance guaranty fund model law, adopted on November 17 at the NCOIL Annual Meeting in Las Vegas.

The *Post-Assessment Property and Liability Insurance Guaranty Association Model Act* would create a comprehensive, statutory remedy for paying the claims of certain consumers once their p-c insurers have been declared insolvent. The model bill responds to increasing concerns that state guaranty fund laws—although historically

successful in promoting swift payment of consumer claims—were not designed for today's complex insurance products.

The model act—consistent with the idea that guaranty funds should help only the neediest claimants—would prohibit people with significant financial resources from receiving guaranty fund coverage. The model law also, among other things, would cap the amount of money that a fund could pay for each claim.

The Property-Casualty Insurance Committee adopted the model on November 16, prior to Executive Committee passage on the 17th, after having considered the issue for more than one year.

NCOIL CLOSES IN ON ILLEGAL STOLI, UNANIMOUSLY ADOPTS AMENDED MODEL ACT

Following more than 35 hours of debate over the past 16 months, NCOIL unanimously adopted an amended NCOIL *Life Settlements Model Act* on November 17, during the Las Vegas Annual Meeting. The model law is a targeted attempt to prohibit controversial stranger-originated life insurance (STOLI) transactions while encouraging legitimate life settlements.

According to Life Insurance & Financial Planning Committee Chair Rep. Michael Ripley (IN), "The end product of our work represents a thoroughly vetted proposal that takes aim only at what's wrong with the life insurance market—STOLI. The tireless work of our Life Settlements Subcommittee resulted in a model law that will offer important guidance to states..."

The model act would isolate and prohibit illegal STOLI transactions through clear definitions, disclosures, and strong penalties. Among the adopted amendments was a first-of-its-kind definition of STOLI, requirements that a provider report information

regarding settled policies to an insurance commissioner as part of an annual statement, and requirements regarding the disclosure of broker compensation information to policyowners. The Subcommittee had previously made the decision to impose requirements for settling policies that would parallel a two-year incontestability period.

Rep. George Keiser (ND), Subcommittee chair, said, "STOLI occurs at the front-end of a life insurance sale. By defining STOLI, and strengthening reporting requirements and penalties for participating in STOLI, the NCOIL model gets at the heart of what needs to change."



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STATES HIT HURDLES ON HEALTH INSURANCE REFORM

State efforts to achieve health insurance reform hit hurdles in recent weeks, both in states working to modernize and in those that already enacted change. Pennsylvania Governor Ed Rendell is leveraging lawmakers to take action on his stalled healthcare proposal, while data shows that thousands in Massachusetts are still uninsured, despite new enrollment mandates.

Pennsylvania

After months of gridlock in the Pennsylvania legislature, Governor Ed Rendell is leveraging lawmakers to revive his "Cover all Pennsylvanians" plan. On December 5, Rendell threatened to withhold state money that helps doctors afford their medical liability coverage unless the legislature agrees to use some of that money to support his plan.

Rendell has his eye on some of the

\$500 million surplus in MCare—the fund that provides low or no-cost supplemental insurance to healthcare providers. The MCare surplus, generated by premium taxes paid by HMOs, reflects a decline in medical liability claims.

The governor's legislation, which aims to expand health insurance to 800,000 uninsured adult Pennsylvanians, hit a roadblock in 2007 when lawmakers rejected Rendell's originally proposed three (3) percent payroll tax to help fund the system. It would also be supported with federal Medicaid dollars and premiums paid by insureds and small businesses.

Massachusetts

Officials say that thousands of residents have yet to register for private, unsubsidized—and required—health plans. The state's health care reform

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SAVE THE DATE

The NCOIL
**ANNUAL
MEETING**

February 28 –
March 2

Washington, DC

NCOILetter

Susan F. Nolan, Publisher/Editor

Candace Thorson, Managing Editor
Mike Humphreys, Associate Editor
Jordan Estey, Associate Editor

Simone Smith, Production Assistant
Laurie Dingmon, Business Manager

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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

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the roles of regulators and attorneys general and strengthen commissioners' authority; regain and enhance legislators' oversight of regulators and of the NAIC; and require the NAIC to follow open meetings laws and preclude regulators from attending closed meetings.

The study also supports strengthening state regulation through expansion

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of the Interstate Insurance Product Regulation Compact; creating an independent commission of stakeholders to further review the current regulatory structure; and increasing NCOIL resources to accomplish these tasks by reallocating state NAIC assessments.

The ILF study is available at www.ncoil.org.

STATES

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law, enacted in 2006, mandates that those who earn more than 300 percent of the federal poverty level must acquire the unsubsidized coverage. Those who fail to enroll by January 1 will face a tax penalty.

Policy analysts attribute the low compliance levels to an economic tradeoff, with many residents choosing to forego a comparatively small tax break in order to avoid paying thousands of dollars in insurance premiums. The penalty for noncompliance will increase significantly in 2008, however. People who do not comply with state law by then will pay, for each month that they are not enrolled, up

to 50 percent of what it would cost them to purchase health insurance from an approved health plan.

The problem extends to employers, who are similarly choosing to pay fees rather than premiums. The state now requires that small employers offer insurance to their workers or pay a \$295 per year penalty for each full-time employee. The mandate applies to companies with 11 or more workers. If an uninsured employee uses free medical care more than three (3) times in one year, the employer is then on the hook for a percentage of the treatment cost. But, at only \$295, it appears that many small companies are willing to gamble.

NCOIL PEO MODEL PUSHES FOR ACCOUNTABILITY IN WORKERS' COMPENSATION RATING

In a move toward accountable rating of certain workers' compensation insurance, NCOIL unanimously adopted a *Model Act Regarding Workers' Compensation Insurance Coverage in Professional Employer Organization (PEO) Relationships* on November 17, during the NCOIL Annual Meeting. The model law strives for coverage that would accurately reflect the experience of parties involved and is the culmination of more than two years of NCOIL examination into PEO insurance issues.

The model instructs that all PEOs operating within a state must be licensed through an appropriate state authority. The proposal also instructs that the experience of a PEO client is most important for rating purposes, regardless of the client's relationship with the PEO.

NCOIL began investigating the PEO industry, as related to workers' compensation insurance, in response to disputes between insurers, employers, and PEOs regarding the source of coverage for individual employees. The problems surfaced when these workers sought medical treatment for work-related injuries. Legislators were also concerned that high-risk businesses, such as roofing companies, were benefiting from the more favorable ratings enjoyed by low-risk employers, such as those who are office-based.

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