NCOILETTER

February 2006 www.ncoil.org

NCOIL TO CONSIDER RESOLUTION OPPOSING FEDERAL PREEMPTION, STATES TAKE ACTION

Legislators at the February 24 NCOIL State-Federal Relations Committee meeting will consider a proposed resolution reiterating their opposition to federal initiatives that would preempt state insurance regulation. The resolution—part of NCOIL's long-standing effort to assert the primacy of state oversight—would serve as a template for legislatures to enact and distribute to their congressional delegations and other key federal lawmakers. The Committee will convene from 3:15 to 4:00 p.m. during the NCOIL Spring Meeting in Weston, Florida.

The *Resolution in Opposition to Federal Preemptive Insurance Regulatory Measures* recognizes that state governments are the proper entities to determine insurance public policy, as authorized under the McCarran-Ferguson Act of 1945, and says that states are the historic protectors of insurance-buying consumers. The resolution notes that local jurisdictions are more responsive to the needs of constituents and more knowledgeable regarding unique market conditions.

The resolution also warns that optional federal charter proposals and the State Modernization and Regulatory Transparency (SMART) Act now looming in Congress would create new "federalized" regulatory approaches that would subject consumers to untested and conflicting federal standards. The proposed schemes would straitjacket state legislatures, governors, insurance commissioners, and attorneys general while jeopardizing the critical revenue that states receive

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SENATE LEADERS PUSH ASBESTOS TRUST FUND BILL AGAINST STRONG OPPOSITION

Despite strong opposition from a number of strange bedfellows— including labor unions, insurers, trial lawyers, conservative Republicans, victims-rights advocates, and many Democrats— leaders in the U.S. Senate pushed a full-Senate vote on S. 852, the *Fairness in Asbestos Injury Resolution Act*.

The bill, sponsored by Senate Judiciary Committee Chair Sen. Arlen Specter (R-PA) and supported by Ranking Minority Committee Member Sen. Patrick Leahy (D-VT), would establish a $140 billion no-fault trust fund to settle claims of asbestos victims injured in the workplace. At press time, early attempts to derail the bill's momentum, including a budget point-of-order based partially on fears of a taxpayer bailout, had failed to permanently halt Senate deliberations.

The fund would require sizeable contributions by insurers, large and small businesses, and bankruptcy trusts. It would create an Office of Asbestos Disease Compensation within the Department of Labor to administer fund payments.

Proponents say the time has come for enactment of asbestos reform legislation and caution that this may be the last such opportunity in the near future. They assert that S. 852 would streamline the asbestos claims process; speed compensation to victims; minimize the role and expense of trial

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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

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from premium taxes. This is not, the resolution says, the way to effect appropriate reform.

Lawmakers in Ohio, Texas, Michigan, Rhode Island, New York, and North Dakota, among other jurisdictions, either have passed or are in the process of adopting resolutions urging Congress to keep insurance oversight a state prerogative.

According to language passed in Texas, state legislatures, NCOIL, and the National Association of Insurance Commissioners (NAIC) "have recognized difficulties in the marketplace that have created regulatory hurdles in certain states or delayed speed-to-market of insurance products." Adoption of model laws that address these concerns have made unnecessary any form of federal preemption, the resolution says.

Previous NCOIL activity opposing usurpation of state authority include, among other things, legislative letter-writing and phone-calling campaigns and adoption of position statements. They follow NCOIL model laws on key elements of state modernization, including market conduct surveillance reform, rate deregulation, producer and company licensing, and speed-to-market for life insurance products.

The resolution also warns that optional federal charter proposals and the SMART Act now looming in Congress would create new "federalized" regulatory approaches that would subject consumers to untested and conflicting federal standards.

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lawyers, thereby freeing up more money for claimants; establish strong medical criteria; and set criminal penalties to reduce fraud. Key supporters include the National Association of Manufacturers, General Electric, General Motors, Honeywell, Pfizer, Ford, and various veterans groups.

Most insurers, however, argue that the trust fund offers no finality to asbestos settlements, since a claim could revert to the court system if a victim's settlement was not paid within nine months, and all claims would automatically revert when the fund sunsets. Given that insurers would need to contribute $20.5 billion of their $45-billion contribution within the first five years—and that many analysts, including the Congressional Budget Office (CBO), estimate that S. 852's drafters have underestimated the costs of the fund and perhaps its ability to withstand almost 30 years—most insurers say they would be better off with the status quo.

The industry points to recent state activity, including legislation in Texas, Ohio, Florida, and Georgia, among other jurisdictions, that establishes strong medical criteria as a key to effective asbestos reform. S. 852 would preempt such initiatives. It also would undue state tort and venue reform legislation.

Other interested parties have complained that the higher contribution rates of small and medium-sized businesses, as compared to their larger counterparts, would result in company bankruptcies and a subsequent reduction in the overall funding of the trust. They say this would speed the fund's dissolution, creating uncertainty for asbestos victims and leading to a significant taxpayer bailout. Concerns also relate to the constitutionality of requiring current asbestos bankruptcy trusts to relinquish their claims-paying assets in order to contribute to the fund.

In November 2003, NCOIL adopted a *Resolution Regarding the Need for Effective Asbestos Reform* that endorsed state and federal asbestos reform legislation that would, among other things, ensure the ongoing and fair compensation of functionally impaired asbestos victims.

The NCOIL Property-Casualty Insurance Committee will discuss issues related to S. 852 on February 24, during the NCOIL Spring Meeting.

PRESIDENT BUSH RENEWS SUPPORT FOR AHP LEGISLATION

In his 2006 State of the Union address this month, President Bush reiterated his support for Association Health Plan (AHP) legislation, saying AHPs would benefit small firms by "giving them the same advantages, administrative efficiencies, and negotiating clout enjoyed by big businesses and labor unions." His administration argues—over opposition by more than 100 groups, including NCOIL—that AHPs would lead to lower premiums, fewer uninsured, and better coverage.

Last year the *Small Business Health Fairness Act*, which would have allowed AHPs, passed the House, then lost traction in the Senate. AHPs are plans that permit related companies to enter into agreements and negotiate health care benefits for association members. AHPs would be federally regulated, exempt from state statutes.

Recently, Sen. Michael Enzi (R-WY) introduced S. 1955, the *Health Insurance Marketplace Modernization and Affordability Act of 2005*, which many view as a compromise AHP proposal. The Enzi bill has three main components: allowance for the creation of AHPs; near-term uniformity of rules in which state mandates that at least 45 states have passed would be the basis for national standards; and long-term harmonization. This last element would establish a federal commission to develop consensus standards based on the most commonly enacted state consumer protection, rating, and access laws.

A related bill, the *Health Care Choice Act of 2005*, would allow multi-state insurer to bypass regulatory statutes in each state of operation and instead select the state in which it wants to be regulated. The insurer would abide by the rules of one state while issuing policies wherever it operates, raising concerns that companies would flock to those jurisdictions with the "loosest" regulations.

NCOIL has opposed bills that would preempt state law and exempt AHPs from state oversight, saying such bills would permit "cherry picking" of healthier groups/individuals and raise rates for those still under state supervision. AHPs also would increase the risk of insurance fraud while undermining state consumer protections.

In 2005 NCOIL renewed its opposition to AHPs in one of several letters sent to federal lawmakers.

NCOIL has opposed bills that would preempt state law and exempt AHPs from state oversight, saying such bills would permit "cherry picking" of healthier groups and individuals and raise rates for those still under state supervision.

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Due to popular demand, the all-new 2006 NCOIL *Insurance Legislative Fact Book & Almanac* is enjoying its second year online, in addition to being available in a print edition.

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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.

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