National Conference of Insurance Legislators

NCOILETTER

...for the states

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LIFE SETTLEMENTS TO TAKE STAGE AT NCOIL MEETING

In what promises to be a heated debate, a newly scheduled NCOIL special session on life settlements will address whether or not to update an NCOIL *Life Settlements Model Act* in light of current issues, including stranger-originated life insurance (STOLI) and insurable interest concerns. The session, to be held by the NCOIL Life Insurance and Financial Planning Committee, will take place on Friday, March 2, from 4:00 to 5:30 p.m., during the upcoming NCOIL Spring Meeting in Savannah, Georgia.

In announcing the meeting, Representative Michael Ripley (IN), chair of the Committee said, "We all agree that STOLI arrangements are unacceptable. With that said, how to strengthen settlement laws to eliminate STOLIs without impeding an individual's right to settle an unwanted or unneeded policy is a delicate question. We will try to act swiftly and justly to eliminate bogus practices and restore the integrity of the life insurance product."

In January, an NCOIL Subcommittee on Life Settlements, formed at the November NCOIL Annual Meeting, hosted two highly charged conference calls and ultimately recommended scheduling a special session in Savannah for members of the full Committee. The session will allow the Committee to query interested parties on mark-ups they will have submitted prior to the Spring Meeting.

Amendment proposals are expected from representatives of the life insurance, life settlement, and premium finance industries and may address issues such as STOLIs, insurable interest, fraud, trusts, disclosure, and settlements regulation.

The NCOIL model was amended in 2004 to address a growing life settlements market. It would, among other things, prohibit a person, wherever located, to (1) act as a provider or broker with an owner or purchaser who is a resident of the state without first having obtained a license from the commissioner; (2) use any form of sales contract or purchase agreement unless it has been filed and approved by the commissioner; and (3) enter into a sales contract if the policy was obtained by false, deceptive, or misleading means.

The special life settlements meeting will immediately follow the regularly scheduled 3:30 to 4:00 p.m. Committee session.

ON THE AGENDA

Many critical insurance public policy issues are scheduled for consideration at the March 1 through 4 NCOIL Spring Meeting, including, among others:

— life settlements
— interstate product regulation compact
— federal efforts to preempt insurance oversight
— state children's health insurance program (SCHIP)
— pharmacy benefit managers (PBMs)
— a national mega-catastrophe program
— statewide building codes
— professional employer organizations (PEOs)
— guaranty fund reform

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:

VIEW FROM THE HILL: SURGE OF INTEREST IN CATASTROPHE, MCCARRAN-FERGUSON, OFC PROPOSALS

Insurers are in the crosshairs of many in the 110th Congress. A growing number, namely lawmakers from Gulf Coast States, are taking aim at insurers with an eye toward rolling back or repealing the McCarran-Ferguson Act, the bedrock of state regulation, at a time when optional federal charter (OFC) talk continues.

Pending Senate legislation would create a Commission on Catastrophic Risk to recommend ways to insure the availability of adequate, affordable catastrophe insurance. S. 292, the *Commission on Catastrophic Disaster Risk and Insurance Act*, has been introduced by Sens. Bill Nelson (D-FL) and Trent Lott (R-MS). A companion bill in the House has been introduced by Rep. Kendrick Meek (D-FL).

The Commission would report to Congress within 90 days on, among other things, federal reinsurance, tax-deferred catastrophe reserves for insurers, and tax-free cat accounts for homeowners.

A recently introduced bill, S. 618, would repeal the McCarran-Ferguson antitrust exemption. Co-sponsors are Sens. Patrick Leahy (D-VT); Arlen Specter (R-PA); Lott, who has waged legal action against State Farm over loss of his coastal home; and Harry Reid (D-NV). The bill would have the Federal Trade Commission draft guidelines for "safe harbors," or industry practices that are not antitrust concerns. Reps. Gene Taylor (D-MS), also a Katrina victim, and Bobby Jindal (R-LA) have dropped a companion bill.

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Senator Leahy also has gone on record saying that the Senate Judiciary Committee will hold hearings on McCarran-Ferguson later this year. Leahy said that he will wait for an Antitrust Modernization Commission to release its report, which is expected in April, before taking action.

Meanwhile, earlier this month, Rep. Paul Kanjorski (D-MD), chair of the Financial Services Subcommittee on Capital Markets, Insurance, & Government-Sponsored Enterprises, indicated he would allow a life-only OFC bill to pass through his committee. Speaking before a meeting of the Council of Insurance Agents & Brokers, which supports a federal regulator, Kanjorski did not say whether he would introduce such legislation or simply support another member's bill.

Previously, Kanjorski has clearly opposes legislation that includes property-casualty insurance, which he described as "the albatross around the neck of an OFC." This sets him at odds with Rep. Ed Royce (R-CA), who *(continued on page 4)*

STATUS UNCERTAIN FOR MEDICARE RX NEGOTIATION

Last month, the U.S. House voted 255-170 to pass H.R. 4, the *Medicare Prescription Drug Price Negotiation Act*, in response to growing concerns that Part D drug costs are too high. Though a Senate bill has not yet been introduced, Majority Leader Harry Reid (D-NV) has held S. 3 under an identical title.

H.R. 4, a key piece of the new Democratic majority's "100 hours" agenda, directs the Health & Human Services Secretary to "negotiate with pharmaceutical manufacturers the prices (including discounts, rebates, and other price concessions) that may be charged to PDP [prescription drug plan] sponsors and MA [Medicare Advantage] organizations for covered Part D drugs…"

The bill does not authorize the Secretary to establish a drug formulary, nor does prevent a plan sponsor from getting cheaper prices for a covered Part D drug than what the Secretary negotiated.

Shortly before the House action, President Bush said he would veto any bill that requires the government to negotiate drug prices directly with manufacturers. He said such government interference would hurt private sector competition and increase costs for all Americans.

CONTROVERSIAL FLORIDA CATASTROPHE REFORMS BRING DRAMATIC CHANGE TO STATE HOMEOWNERS' MARKET

Reforms enacted in Florida last month following a special legislative session to address catastrophe insurance will bring dramatic changes to the state's homeowners' insurance market, which has struggled following devastating 2004 and 2005 hurricane activity. Though lawmakers say the legislation will bring much-needed consumer relief, industry representatives predict market instability.

Key to the broad-based reforms is expansion of the state Hurricane Catastrophe Fund—$16 billion beyond its current $16 billion limit. Florida officials say the new system will let primary insurers access less costly reinsurance than is available in the private market. Every eligible residential property insurer in the state—whether or not it purchases cat fund coverage—must make a rate filing based on a "presumed factor" that will reflect the cat fund's reinsurance savings. An insurer cannot consider any costs it incurs to purchase private-market reinsurance.

In addition, the OIR now has authority to reduce or eliminate the collateral requirements for reinsurers domiciled in other countries, based on financial strength and other data.

According to Florida Democratic Minority Leader and NCOIL Past President Sen. Steven Geller, "I believe that the insurers feel we did a lot of things by fixing the reinsurance problem. By making it easier for them to buy reinsurance at very low rates from the state, they seem to feel, and I agree, that we've gone a long way toward remedying the problems in the state of Florida, without going out and killing the insurance industry."

The new law extends well beyond reinsurance. Among other things, already-approved rate increases for the state's insurer of last resort, Citizens Property Insurance Company, are rescinded and the insurer is authorized to provide commercial coverage statewide and to write multiperil coverage in high-risk areas where it currently writes only wind insurance. The law makes it easier for non-homestead policyholders to access Citizens and creates a system for improved company oversight.

Citizens can now compete with the private insurance market and no longer must charge rates above those of the top 20 insurers in

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STATE FARM REINS IN MISSISSIPPI COVERAGE, CITES LEGAL AND POLITICAL ENVIRONMENT

Responding to major setbacks in what it calls an "untenable" legal and political environment, State Farm has announced that it will suspend writing new personal and commercial lines homeowners' policies in Mississippi.

The decision, which State Farm did not attribute to any specific legal action, follows a wave of litigation in the state that challenges the company's handling of Hurricane Katrina claims, including a well-publicized suit brought by Sen. Trent Lott (R-MS). According to a State Farm spokesman announcing the decision, "We already have business at risk in the state because of political and legal people debating contracts that have stood the test of time." He said State Farm will continue to evaluate its situation "to determine what further steps, if any, are necessary."

The company holds 30 percent of the Mississippi homeowners' market, including 25 percent of coastal exposure. Last month, a jury awarded $2.5 million in punitive damages to Norman and Genevieve Broussard, who said State Farm wrongly denied their claim for damage stemming from 2005 storm activity. The couple said their loss was due to tornado (wind) damage, not storm surge. Wind was covered under their policy; storm surge was not. Nothing remained of the Broussards' home.

U.S. District Judge L.T. Senter, Jr., who had earlier ruled that State Farm was liable for $223,292 in damage to the couple's prop-

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VIEW FROM THE HILL

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will reintroduce his life and p-c bill from last year. Royce has been adamant in his call for a comprehensive OFC.

NCOIL believes regulatory modernization is underway that will address insurer concerns and protect citizens, who have not demanded an OFC or other preemption; is deeply concerned by efforts to amend or repeal McCarran-Ferguson; and continues monitoring progress of catastrophe legislation. The NCOIL Spring Meeting will feature a general session on the consequences of tampering with McCarran, a debate regarding a federal role in catastrophe preparedness, and discussion regarding OFC activity.

STATE FARM

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erty, later reduced the punitive award to $1 million, though maintaining that the insurer was "grossly negligent."

In an effort to stem the onslaught of litigation, State Farm last month reached an ill-fated agreement with Attorney General Jim Hood that would have established a claims resolution process for up to 35,000 State Farm customers in coastal MS counties—most of whom had not yet filed suit.

Judge Senter refused to certify the settlement class, citing insufficient evidence to determine how State Farm's new claims offers would compare to the total claims value of the group. He also cited the plan's lack of guaranteed payments and its binding arbitration provisions.

In 2006, State Farm wrote 29,000 new MS homeowners' policies, more than any other insurer. AG Hood sharply criticized the suspension, saying, "If they paid what they owed in the first place, there never would have been a lawsuit filed."

Insurance Commissioner George Dale said State Farm's decision was a "stark reminder" that Hurricane Katrina fallout has affected all policyholders in the state.

CONTROVERSIAL

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the state. The reforms eliminate Florida's flex-rating provision, which allowed insurers to increase or decrease rates up to five percent statewide/ten percent per territory without prior approval.

An insurer that writes private passenger auto insurance in Florida and writes homeowners coverage in other states now must offer homeowners' coverage in Florida as well, unless it is an affiliate of a company already writing Florida homeowners' business.

The new law imposes various coverage mandates, ends the Florida Panhandle's building code exemption, and promotes mitigation efforts.

The Chief Executive Officer, or Chief Financial Officer, and the Chief Actuary of a property insurer must now certify that the information in its rate filings is accurate.

Within days of the Governor signing the law, the state Financial Services Commission issued an emergency rule freezing rate increases and prohibiting nonrenewals until the 2007 hurricane season ends. The order also applies to pending and already-approved rate hikes.

A spokesperson for the National Association of Mutual Insurance Companies described the law as "the final shot at insurance companies….[Legislators] are guaranteeing that fewer and fewer companies will be able to sustain their operations in Florida."

Frank Nutter of the Reinsurance Association of America said the state runs the risk of raising costs for consumers should a catastrophe strike that exceeds the state cat fund's resources. "They shot the messenger," he said. "Insurers have to charge risk-based pricing; the government doesn't do that. But that doesn't mean the losses go away….[The reforms are] completely antithetical to a sound risk-management program."

Not so, said Insurance Commissioner Kevin McCarty, who said the new law responds to increases in "unregulated global reinsurance costs that have put immense upward pressure on insurance rates in Florida."

The NCOIL Spring Meeting will include discussion of Florida activity, as well as developments in Congress, the states, and within the National Association of Insurance Commissioners to implement natural catastrophe legislation.