



NCOILETTER

July 2005

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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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OPTIONAL FEDERAL CHARTER AND SMART ACT LOOM—GOVERNORS JOIN NCOIL IN OPPOSING FEDERAL PREEMPTION

In mid-July in Newport, Rhode Island, NCOIL members learned from representatives of the insurance industry that Congress was marshalling forces to preempt state insurance regulation. At the same time, the National Governors Association (NGA) determined to join NCOIL in opposing a federal State Modernization and Regulatory Transparency (SMART) Act, yet another, though veiled, attempt to usurp and undermine state insurance regulation, proposed by Rep. Michael Oxley (R-OH), chair of the U.S. House Committee on Financial Services.

On July 8 in conjunction with the NCOIL summer meeting, legislators were apprised by Optional Federal Charter Coalition Chairman and American Bankers Insurance Association executive Kevin McKechnie that OFC legislation had been drafted and was ready to roll. McKechnie opined that the question of an optional federal charter is not one of if, but when. The legislation would allow insurers to escape from under the umbrella of state

regulation and consumer protections to the vagaries of an optional federal charter.

Concurrently, U.S. Rep. Richard Baker (R-LA) declared at a June 16 Washington hearing on the SMART Act that state modernization efforts were too little, too late. Baker, chair of the House Subcommittee on Capital Markets, Insurance, and Government-Sponsored Enterprises, vowed that Congress would act to commandeer the regulation of insurance.

On July 11, Governor Mark Sanford, chair of the NGA Economic Development and Commerce Committee, along with Governor Janet Napolitano, Committee Vice Chair, sent a forceful letter to Reps. Oxley and Baker, firmly opposing the SMART Act. In lock-step with NCOIL's opposition, Governor Sanford stated, "The Governors firmly believe that the SMART Act would unnecessarily preempt their ability to set sound insurance public policy, as well as endanger ongoing efforts to bring forth effective and efficient state-based regulatory reforms." *(continued on page 4)*

NCOIL IN ACTION

During the NCOIL Summer Meeting, legislators took the following public policy actions:

- * Voted to send a letter to federal agencies opposing plans to let sales of crop insurance bypass independent insurance agents
- * Voted to form a subcommittee to consider a draft aftermarket crash parts model act, and held a hearing on the issue
- * Adopted proposed resolutions regarding underserved life insurance markets and risk-based capital information, as well as a model act regarding claims history info
- * Readopted the NCOIL *Model Anti-Runners Fraud Bill, Property and Casualty Insurance Domestic Violence Model Act, and Natural Disaster Catastrophe Fund Model Act*
- * Moved for further consideration both the bylaws-required review of the NCOIL credit scoring model act and draft LTC partnership program model legislation
- * Moved for further consideration a proposed *Approved List of Reinsurers Model Act*, and held a special Executive Committee meeting on the issue
- * Participated in general sessions on pharmacy benefit managers (PBMs) and ID theft

Further details are available at www.ncoil.org or by calling NCOIL at 518-687-0178.

NCOIL DISPUTES NAIC MOVE TO PLACE NON-PUBLIC INSURERS UNDER SARBANES-OXLEY, PROMOTES ALTERNATIVE APPROACH

Deputy Insurance Commissioner Stolte said that he felt the benefits of the initiative would outweigh the costs, though he admitted that mutual insurers only made up “about five percent” of insurance company insolvencies.

Legislators at the recent NCOIL Summer Meeting in Newport, Rhode Island, debated the need for a pending NAIC proposal to place mutual and other non-public insurers under the auspices of the Sarbanes-Oxley (SOX) Act of 2002 and proposed a joint effort to explore an alternative, more feasible, approach.

State lawmakers at the July 8 meeting grilled Virginia Deputy Insurance Commissioner Douglas Stolte, chair of an NAIC/AICPA Working Group, regarding initiating the regulatory approach over corporate internal controls and questioned the need for further regulation of a much regulated industry and the cost-effectiveness of such an endeavor.

When challenged by concerned legislators regarding the cost of instituting such a proposal, Mr. Stolte said that he felt the benefits of the initiative would outweigh the costs, though he admitted that mutual insurers only made up “about 5 percent” of insurance company insolvencies. When asked if the NAIC was planning to perform a cost-benefit analysis, Mr. Stolte replied that he was “confident that a cost benefit analysis will be done” and that it will be considered before the Working Group makes its final recommendations.

Neil Alldredge of the National Association of Mutual Insurance Companies (NAMIC) said a NAMIC cost-benefit analysis of the proposal presented to the NAIC in Boston in June showed eight dollars in cost for every dollar in potential benefit. He stated that the proposed regulation was “a solution looking for a problem.”

Rep. Joe Hune of Michigan, chair of

the NCOIL Financial Services and Investment Products Committee, after much Committee discussion and debate, asked Mr. Stolte and other interested parties, including representatives of NAMIC and the American Council of Life Insurers (ACLI), if they would be willing to work with NCOIL towards an alternative to the NAIC proposals.

Mr. Alldredge stated that “There is room for improved solvency regulation. But this is not that and whatever it is, it is not worth the cost.” His organization would be willing to entertain endeavors toward solvency-related reform, but only if it is not “investor-oriented policy directed in the means of solvency reform.”

Bruce Ferguson of ACLI, having previously spoken to an ACLI alternative approach, also agreed to this request. The ACLI proposal, as outlined, would exempt from compliance and waive the requirement for external audit controls for companies below the \$500 million premium level. Others in the industry have not endorsed this proposal.

A March 10 NCOIL letter to NAIC President Commissioner Diane Koken (PA) and Commissioner Alfred Gross (VA), chair of the Financial Condition (E) Committee, opposed the working group initiative to apply SOX corporate governance to non-public insurance entities via revisions to the NAIC Model Audit Rule. Legislators objected on both substantive and procedural grounds—concerned that regulation meant for publicly held companies was being superimposed upon privately held insurers, as well as that proposed working group amendments to the Audit Rule would be incorporated into statute by reference, thus disallowing legislative examination and debate of the issue.

QUICK TAKE: Excerpt from NGA Letter Opposing SMART Act

“By limiting the role of Governors and state regulators in setting insurance policy, the SMART Act would result in serious confusion in insurance markets by subjecting consumers to new and conflicting federal regulatory standards. Given that market forces vary from state to state, regulators must maintain their ability to effectively respond to unique market conditions with flexible solutions and clear regulatory authority.” (See story page 1 for more details on the governors’ July 11 letter.)

LEGISLATORS TAKE ACTION ON CLAIMS HISTORY INFORMATION, ADOPT MODEL ACT

After raising questions regarding how insurers should treat claims history information, legislators on July 8 adopted an NCOIL model law that would restrict insurer use of inquiries and claims without payments (CWOPs), among other items. Lawmakers acted during the NCOIL Summer Meeting.

The model law, which the Executive Committee adopted in a decisive 31 to 7 vote, represents the culmination of NCOIL's more than one-year consideration of the issue. Among other things, the draft would prohibit taking an adverse action based solely on the claims history of a previous property owner; prohibit taking an adverse action based on consumer inquiries; prohibit using claims experience of the property/new applicant more than five years old; largely prohibit using claims experience to underwrite coverage more than 30 days from when an insurer issued a coverage binder; and require an insurer to re-underwrite and re-rate an insured within 30 days notice that claims info was incorrect/incomplete, and return any overpayment.

The draft also would mandate filings by claims-history report providers and would allow that, upon request of a consumer, an insurer must identify the

claim information that led to an adverse action. Insurers further would be required to abide by the disclosure requirements set forth in the Fair Credit Reporting Act.

Regarding CWOPs, the model would prevent an insurer from using such data unless more than one such event occurred within the previous three years or such a claim affected the nature of the risk and was predictive of future loss.

The P-C Committee adopted amendments related to CWOPs, consumer notification, and filings by claims history report providers before adopting the model and referring it to the Executive Committee. That Committee deleted a section on disclosures to homebuyers due to concerns regarding a seller's responsibilities and the language's appropriateness in insurance law.

The *Model Act Regarding the Use of Claims History Information in Homeowners and Personal Lines Residential Property Insurance* was first considered in November 2004. Subsequent input from certain interested parties led to the amended version adopted on July 8. The model law fulfills a P-C Committee charge to investigate issues surrounding claims history information and to adopt model legislation as appropriate.

NCOIL ENCOURAGES STUDY INTO UNDERSERVED LIFE INSURANCE MARKET, ADOPTS RESOLUTION

In an effort to find solutions to reportedly growing underserved life insurance markets, legislators at NCOIL's recent Summer Meeting adopted a resolution encouraging states to analyze how they might expand coverage in underserved areas, including low-income and minority populations.

A Resolution to Improve Access to Underinsured Life Insurance Markets recognizes that underserved markets are significant and growing, and that the situation places consumers, families, and communities at risk of financial hardship. According to the resolution, the problem is exacerbated by an aging and decreasing number of life insurance agents, to whom most consumers turn

in order to purchase coverage.

The resolution encourages state legislators, regulators, industry and community groups, and other interested parties to undertake a complete and comparative study of possible solutions to the problem, including, among others, the option of granting limited term life insurance licenses for certain agents.

The resolution reserves the right of state legislatures to implement any such solutions, or others not addressed in the study, as they find appropriate.

The National Association of Insurance Commissioners (NAIC) is examining issues related to expanding life insurance coverage, particularly as related to limited life insurance licenses.

In an effort to find solutions to reportedly growing underserved life insurance markets, legislators adopted a resolution encouraging states to analyze how they might expand coverage in underserved areas, including low-income and minority populations.

SAVE THE DATE

The NCOIL Annual Meeting

November 17-20, 2005

San Diego, California

NCOILetter

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OPTIONAL FEDERAL CHARTER

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The NGA concurred with NCOIL that “. . . states are positioned best to address the needs of consumers and industry given their long history and expertise in such important areas as solvency, rate supervision, market conduct regulation and anti-fraud activities.”

In September 2004, NCOIL was the first organization of state officials to go on record opposing the SMART Act or any other federal preemptive initiative. The National Association of Insurance Commissioners (NAIC), after ongoing dialogue with Rep. Oxley, in March 2005 sent a letter to Oxley expressing concern with basic facets of the SMART Act.

The Independent Insurance Agents and Brokers of America (IIABA) initiated

the SMART Act. The American Council of Life Insurers (ACLI) and American Insurance Association (AIA) are primary drivers of the OFC initiative. The new Optional Federal Charter Coalition, representing 135 banks, financial services trade groups, agencies and insurance companies, recently coalesced and went into action publicly in a June 13 letter to Sens. Shelby and Paul Sarbanes (D-MD) asking for creation of an OFC and a federal regulatory agency to oversee it. Members include AIG, Allstate, State Farm, and Prudential Financial.

Representatives of the National Association of Mutual Insurance Companies and IIABA weighed in at the meeting as opposing an optional federal charter.

NCOIL FORMS SPECIAL SUBCOMMITTEE TO FURTHER CONTROVERSIAL AFTERMARKET CRASH PARTS DEBATE

After hearing testimony from more than a dozen witnesses representing various aspects of the certified aftermarket crash parts debate, the NCOIL Property-Casualty Insurance Committee voted 22 to 7 to form a special subcommittee to further NCOIL's consideration of a draft model law that would support the use of certified aftermarket crash parts. The Committee's action came on July 7, during the NCOIL Summer Meeting in Newport, Rhode Island.

The controversial model law would, in general, endorse certification of aftermarket crash parts by third-party organizations, such as the Certified Automotive Parts Association (CAPA); require disclosure as to the use of certified aftermarket crash parts; and provide that a person leasing or financing a vehicle could not be penalized for using a certified part.

A substitute amendment to the original model act would make certain changes to the earlier version, including revising the model's purpose so as to create a market incentive for the use of certified aftermarket crash parts; creating more specific criteria for qualifying as a third-party certifying entity; and including in an estimate recycled, salvaged, and independent manufacturer-supplied parts as possible parts used in a repair.

The Committee voted that NCOIL

President Rep. Craig Eiland (TX) should appoint legislators to the special subcommittee and that interested parties should be given 30 days to submit comments on specific changes to the draft model law. The subcommittee is charged with deliberating on the suggested revisions and reporting its proposals to the full Committee at the 2005 NCOIL Annual Meeting this November.

During the Annual Meeting in 2002, after having considered the model act for more than a year and a half, NCOIL deferred further review of the proposal until the 2005 Spring Meeting, citing a need to address other issues. At the Spring Meeting, the Committee voted to resume its consideration of the draft and to hold a hearing on the matter at the summer conference.

Those testifying on July 7 represented CAPA, Keystone Automotive, the Alliance of Automobile Manufacturers, the Association of International Automobile Manufacturers, the Texas Automobile Dealers Association, Vehicle Information Services, the American Insurance Association, the Association of Consumer Vehicle Lessors, the MA Auto Body Association, the Society of Collision Repair Specialists, Automotive Service Association, Cobb's Collision Center, and the PA Collision Trade Guild.