



# NCOILETTER

July 2006

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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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## NCOIL REASSERTS RESISTANCE TO FEDERAL OVERSIGHT— APPLAUDS NGA, NCSL FOR JOINING NCOIL IN OPPOSITION

In a July 10 letter to Senators Richard Shelby (R-AL) and Paul Sarbanes (D-MD), Rep. Frank Wald (ND), NCOIL president, voiced NCOIL opposition to federal initiatives considered at the Senate Banking, Housing, and Urban Affairs Committee's July 11 hearing entitled *Insurance Regulation Reform*—initiatives that threaten to unbalance successful state-based insurance regulation.

The letter to Shelby, chair of the Committee, and Sarbanes, ranking member, stresses the short- and long-term costs to citizens and businesses of creating unneeded federal bureaucracies as envisioned by S. 2509, the *National*

*Insurance Act of 2006*, and the State Modernization and Regulatory Transparency (SMART) Act. The letter also expresses concern with H.R. 5637, the *Nonadmitted and Reinsurance Reform Act*.

The NCOIL letter says current federal efforts “would cripple the states’ ability to properly regulate insurance and protect the interests of their citizens.” It asserts that “state regulation has successfully promoted insurer solvency and protected consumers for more than 130 years, and is making great strides to modernize insurance oversight in an increasingly competitive, global environment.” (continued on page 2)

## LAWMAKERS TO PURSUE MARKET CONDUCT REFORM, CONSIDER AMENDMENTS IN SPECIAL SESSION

Uniform regulation of insurer market conduct will take center stage when lawmakers at the NCOIL Summer Meeting in Boston gather during special session to consider proposed amendments to an original, February 2004 NCOIL model law. The session, convened by the NCOIL State-Federal Relations Committee, will take place on July 20 from 2:45 to 4:45 p.m.

The amendments to the NCOIL *Market Conduct Surveillance Model Law* have been offered by an NCOIL Market Conduct Subcommittee and address issues including, in part, state collaboration, market analysis procedures, insurance department data requests, confidentiality, department access to third-party information, and review of complaint and other insurer data.

The Subcommittee was appointed by NCOIL President Rep. Frank Wald (ND) at the Spring Meeting and charged with recommending revisions to the

February 2004 model. At the time, legislators discussed the lack of state, and particularly regulatory, support for a more recent NCOIL-National Association of Insurance Commissioners (NAIC) version, adopted by NCOIL in July 2004 and the NAIC in September 2004, and determined to revisit NCOIL’s original bill.

In general, the NCOIL bill would create a framework for Department market conduct actions, including processes and systems for identifying, assessing, and prioritizing market conduct problems with a substantial adverse impact on consumers, policyholders, and claimants.

The Subcommittee’s amendments follow input from parties including the American Council of Life Insurers, America’s Health Insurance Plans, Allstate, American Insurance Assoc., Consumer Credit Insurance Assoc., National Assoc. of Mutual Insurance Cos., NY Life Insurance Co., Property Casualty Insurance Assoc. of America, and State Farm.

***The NCOIL letter notes that these schemes, if enacted, would shanghai state modernization efforts already in full-swing, such as the interstate insurance regulatory compact for life insurance products, which is now becoming operational, as well as rate deregulation facilitated by flex rating, and more recent market conduct reform efforts.***

## HOUSE HOLDS HEARING ON SURPLUS LINES BILL, TAKES PAGE FROM SMART ACT

Members of the U.S. House Financial Services Committee worked to reawaken interest in the State Modernization and Regulatory Transparency (SMART) Act on June 21, when a key subcommittee held a hearing on a surplus lines bill taken largely from the SMART proposal.

The hearing examined H.R. 5637, the *Nonadmitted and Reinsurance Reform Act*, that would create uniform regulation for surplus and nonadmitted lines and vest oversight in an insured's home state or, for reinsurers, in a reinsurer's home state. Surplus lines premium taxes would go to an insured's home territory.

The bill responds to what many say is a surplus lines system in need of repair. Supporters include producers, who argue that current premium tax collection is confusing and ineffective, and nonadmitted insurers, who similarly stress a need for streamlined regulation.

Timing of the hearing follows recent Senate discussions regarding S. 2509, the *National Insurance Act of*

2006, that would establish an optional federal charter (OFC) for life and property-casualty insurance products. OFC opponents include the Independent Insurance Agents & Brokers of America, which pushed development of the SMART Act's "national standards" approach and reportedly had a strong hand in drafting H.R. 5637.

NCOIL adamantly opposes these and other federal preemptive initiatives that threaten state consumer protections, premium tax revenue, and carefully tailored state laws.

Progress on the SMART Act has lagged over the last year, as staff revise the once 635-page proposal in response to interested-party input. Introduction of H.R. 5637 appears aimed at gaining title-by-title support for SMART.

The June 21 hearing included seven industry witnesses, with no legislative or regulatory representation.

NCOIL will discuss a state surplus lines compact at its July 21 P-C Committee meeting in Boston. The session is likely to lay groundwork for future NCOIL action on surplus lines reform.

### NCOIL

NCOIL commends the National Governors Association (NGA) and National Conference of State Legislatures (NSCL) for, on July 10, joining NCOIL in opposing the optional federal charter (OFC) created under S. 2509. NCOIL agrees with the recent NGA-NCSL statement that "state-based insurance regulation has evolved with changing industry and consumer needs and continues to improve and modernize" and that S. 2509 would "stifle these innovations."

According to NCOIL, the OFC and other ideas being considered by the Senate Committee today and also at a July 18 hearing would nullify critical state-initiated consumer safeguards, deny consumer access and recourse in problem times, undermine

ongoing state modernization efforts, and ultimately impose on the public the costs of a needless federal bureaucracy.

The NCOIL letter notes that these schemes, if enacted, would shanghai state modernization efforts already in full-swing, such as the interstate insurance regulatory compact for life insurance products, which is now becoming operational, as well as rate deregulation facilitated by flex rating, and more recent market conduct reform efforts.

The letter reaffirms NCOIL's commitment to work with other advocates of sound insurance public policy—such as the NGA and the NCSL—to oppose what NCOIL believes are flawed proposals—ones that would cause more harm than good to the industry and the clients it serves.

*(continued from page 1)*

## NCOIL CONTINUES HEALTH REFORM EFFORTS, HIGHLIGHTS MASSACHUSETTS PLAN

With an eye towards finding state solutions for struggling health insurance markets across the country, the NCOIL Health Insurance Committee will hear first-hand of Massachusetts' new, ground-breaking healthcare system on Friday, July 21, during the July 20 through 23 NCOIL Summer Meeting in Boston, Massachusetts. The Committee will convene from 8:00 to 9:15 a.m.

Massachusetts State Representative Peter Koutoujian, House Chair of the Joint Committee on Public Health, will address NCOIL and provide insight into the process by which compromise on the legislation was reached, as well as detail provisions of the plan.

According to Rep. George Keiser (ND), chair of the NCOIL Committee, "Rep. Koutoujian's remarks on recent Massachusetts reforms will be an important part of our discussions regarding state-regulated health insurance. Although the plan may not be suitable for all states, it includes thought-provoking ideas worthy of further investigation. Healthcare reform is an issue of great significance and unless we act to make coverage more accessible and affordable in our individual states, Congress will enact a one-size-fits-all approach that satisfies few."

The Massachusetts legislation was passed in April after Republican Governor Mitt Romney and the Democratic state legislature reached a compromise on the scope of the bill. Parties involved have hailed the plan as a success, and large insurers have

pledged cooperation in implementing the statute.

Among other things, the plan requires that all individuals in the state obtain health insurance coverage by July 1, 2007, if such coverage is considered affordable. The first-year penalty for those without insurance would be a loss of the personal exemption for tax year 2007. Subsequent financial penalties equal to a portion of what an individual would have paid toward an affordable premium will be administered if an individual remains uninsured.

The plan also creates the Commonwealth Health Insurance Connector to review and certify good-value health products. The Connector would serve as a clearinghouse for individuals and employers to purchase policies with pre-tax dollars. Partially subsidized health plans will be available to low-income individuals, and employers will be strongly encouraged to participate in employee healthcare under the landmark plan.

The Committee discussion will further NCOIL's examination of state reform efforts, and will precede a general session on the cost of state healthcare benefit mandates, scheduled for 8:00 to 9:30 a.m. on July 22.

General session speakers include Kevin Corcoran of the American Chiropractic Association, Mila Kofman of the Health Policy Institute at Georgetown University, Rich Marlin of the Massachusetts AFL-CIO, Marty Mitchell of America's Health Insurance Plans (AHIP), and Geoff O'Hara of the U.S. Chamber of Commerce.

*The first-year penalty for those without insurance would be a loss of the personal exemption for tax year 2007. Subsequent financial penalties equal to a portion of what an individual would have paid toward an affordable premium will be administered if an individual remains uninsured.*

### Consideration of Proposed NCOIL-NAIC NATIONAL MEGA-CATASTROPHE PLAN

#### NCOIL SUMMER MEETING

*Subcommittee on Natural Disaster Insurance Legislation*

*Thursday, July 20, from 9:15 to 10:15 a.m.*

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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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## FACT FINDINGS: MCCARRAN-FERGUSON UNDER FIRE

*On June 13, the Senate Committee on the Judiciary held a hearing, entitled The McCarran-Ferguson Act: Implications of Repealing the Insurers' Antitrust Exemption, that took aim at the cornerstone of state insurance regulation. The hearing fell against the backdrop of various pending federal preemptive initiatives, as well as the work of a federal anti-trust commission evaluating current exemptions.*

*NCOIL legislators communicated with key Senate colleagues prior to the hearing regarding the critical need to preserve McCarran. Below are excerpts from witness testimonies.*

"The reality is that insurance is like the canary in the mine. When an insurance price spikes or availability shrinks, it is because an underlying problem (e.g., a particular cost driver) needs to be addressed.... Instead of looking at insurer activity under the McCarran-Ferguson Act as the issue, it would be better to look at the underlying problems and fix them."—Marc Racicot, President, American Insurance Association

"The McCarran-Ferguson exemption...has interfered with the ability of public and private enforcers to use readily the full panoply of federal antitrust remedies ....[However,] repeal of the exemption should not require preemption of state regulatory systems, which comprehend far more than antitrust policy, and are consistent with a preference for competition in this critical sector of the nation's economy."—Elinor R. Hoffmann, Assistant AG, New York State Attorney General's Office

"...the NAIC believes the limited federal antitrust exemption for the 'business of insurance' has worked well for decades to maintain a vigor-

ous and competitive marketplace. Congress recognized the unique nature of insurance when it enacted the McCarran-Ferguson Act in 1945 to authorize continued state-supervised sharing of loss-related information among competing insurers....Ultimately, the competition fostered by the exemption benefits both individual consumers and businesses, from large multi-national corporations to small firms in every rural county...."—Michael McRaith, Illinois Insurance Director, representing the National Association of Insurance Commissioners

"CFA believes that application of anti-trust laws to the insurance industry could result in double-digit savings for America's insurance consumers....Our study shows remarkable potential benefits for consumers if the antitrust exemption is removed and states do a better job of regulating insurers."—Robert Hunter, Insurance Director, Consumer Federation of America

"Since repeal or substantial modification of the McCarran-Ferguson Act's limited antitrust exemption is likely to create legal uncertainty and have a chilling effect on legitimate insurer use of [aggregate insurer data], no change should be considered without proof that it is needed and that it will help, not harm, competition in the property-casualty insurance business."—Kevin Thompson, Senior Vice President, Insurance Services Office

"We believe that the law should be replaced by a series of safe harbors to make clear that certain types of conduct by insurers are pro-competitive and beneficial to the American economy. Other than safe harbors, it is our strong position that the insurance industry should be subject to the same antitrust rules as other industries."—Donald C. Klawiter, Chair, American Bar Association Section of Antitrust Law