

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 MARSHALLS STATE OFFICIALS AGAINST PREEMPTIVE FEDERAL INSURANCE BILL

NCOIL reached out to state governors and attorneys general recently, urging their involvement in a dialogue with federal lawmakers regarding H.R. 5840, the *Insurance Information Act of 2008*—a bill that would preempt state insurance laws and consumer protections. The June 25 letters followed in the wake of a June 10 U.S. House Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises hearing, only days before the Subcommittee was rumored to mark up the proposal.

NCOIL President Rep. Brian Kennedy said, "As strong advocates of states rights, we transmitted these letters to caution our state-level government colleagues about this impending federal threat. While we have no doubt that the sponsors of H.R. 5840 have only the best intentions, we continue to assert that the proposal would infringe on state insurance efforts."

The NCOIL president continued that

"As state officials, we cannot shy away from a dialogue with federal leaders about a proposal that could undo much of our hard work. State statutes and regulations—not federal intervention—have fostered the vibrant insurance marketplace that exists today. We owe it to our constituents—who have never asked for a federal insurance regulator—to protect what we have done well, and that is regulate the insurance market."

Rep. Kennedy said, "States have, and will continue to, modernize insurance regulation in appropriate areas including producer and company licensing, market conduct, and speed-to-market. An Interstate Insurance Product Regulation Compact, which will soon welcome its 33rd member jurisdiction, shows that states can enact comprehensive reform—without federal intervention."

Rep. Kennedy echoed concerns expressed by state legisla-

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BOND-RATING BILL WOULD LEVEL PLAYING FIELD, OPEN DOOR FOR NEW REGULATION

Already under-fire rating agencies and bond insurers faced a new challenge on June 20, when House Financial Services Committee Chair Barney Frank (D-MA) introduced a bill that would level the field on which municipal and corporate bonds are rated, eliminating an arguably substandard rating scale for municipal bonds—and hold the door open for federal regulation of bond insurers.

The *Municipal Bond Fairness Act*, or H.R. 6308—whose vote has been delayed, at Republicans' request, until after the July 4 recess—would force rating agencies to "elevate" municipal bonds to the same rating system used for corporate bonds, particularly regarding municipal bonds that are backed by a municipality's ability to levy taxes and that come with an assurance that

if the municipality cannot pay, then the state will.

Rep. Frank, while noting that municipal bonds have a long track record of investment safety, said that the "unreasonably high" insurance premiums that municipalities must pay to cover their bonds is a result of rating agency practices and bond insurer self-interest. Rating agencies consider things such as the quality of a municipal government—a factor that is irrelevant, Frank argued, to whether its bonds are sound investments. Mono-line bond insurers, which have historically written just one line of coverage, have suffered the consequences, Frank said, of expanding to other, and ultimately unwise, financial instruments. Bond insurers' financial downturns have meant that

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POINT-COUNTERPOINT: PERSPECTIVES ON H.R. 5840

As H.R. 5840, the Insurance Information Act of 2008, moves toward a full Financial Services Committee vote, it is critical, NCOIL knows, that interested parties stand up either for or against the bill—which NCOIL asserts is the latest step toward federal regulation. Advocates of the measure have been quite vocal. Opponents, or at least doubters, have not. The commentaries below represent two major perspectives.

PIA “Not Ready to Give Up on State Insurance Regulation”

By Pat Borowski

“The Office of Insurance Information concept is being used by OFC advocates as a vehicle to enable creation of the initial federal insurance regulatory infrastructure that, once it is established, can be rapidly transformed into the office of a federal insurance regulator....”

PIA National agrees that federal-state coordination for international trade and treaty policy and actions must be formally coordinated, however the Insurance Information Act of 2008 (H.R. 5840) is not the way to achieve this goal.

PIA National proposes that Congress create a formal U.S. state-federal trade commission for the business of insurance. A state-federal trade compact commission would compel competing legal authorities to forge a common direction to implement the necessary changes to expand international insurance trade.

We congratulate NCOIL on their steadfast support of state regulation. We particularly applaud their action to warn state officials of the dangers of the Insurance Information Act of 2008 (H.R. 5840). We join NCOIL in urging our commissioners nationwide to stand up for the state-based system and oppose state preemption.

This legislation would create even more legal conflicts while undermining the authority of the states. This proposed federal entity, the Office of Insurance Information (OII), could attempt to preempt state insurance laws that it determined were “inconsistent” with international insurance agreements.

Because this bill raises critical concerns which must be addressed, this is the time for careful deliberation and public debate by all that have a stake in this game, not a rush to judgment.

The Office of Insurance Information concept is being used by OFC advocates as a vehicle to enable creation of the initial federal insurance regulatory infrastructure that, once it is established, can be rapidly transformed into the office of a federal insurance regulator and therefore, PIA is opposed to H.R. 5840.

Ms. Borowski is senior vice president with the National Association of Professional Insurance Agents (PIA), based in Alexandria, Virginia.

PHYSICIAN MEDICARE REIMBURSEMENTS ON LIFE SUPPORT

Congressional attempts to avert a scheduled 10.6 percent cut in Medicare payments to physicians remained in limbo as lawmakers left Washington in the last days of June for the July 4 recess. At the heart of the partisan gridlock were proposed funding cuts to Medicare Advantage Plans in the form of H.R. 6331.

The *Medicare Improvement for Patients and Providers Act of 2008* (H.R. 6331), which would block the scheduled payment reductions and actually increase reimbursements to physicians moderately, passed the House by a veto-proof margin of 355-59 on June 24. The bill fell one vote short of invoking cloture in the Senate. A companion bill (S. 3101), spon-

sored by Senate Finance Committee Chair Max Baucus (D-MT), had been blocked by Senate Republicans in early June.

H.R. 6331, sponsored by House Ways and Means Committee Chair Charles Rangel (D-NY), proposed a \$14 billion cut in funding for Medicare Advantage Plans to offset associated costs of raising physician reimbursements—a measure that many Republicans and the Administration fervently opposed. Despite indications that the President would veto H.R. 6331, the White House delayed the scheduled July 1 Medicare cuts so that Congress could continue its negotiations.

Lawmakers could have more success with new leg-

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OII Needed To Coordinate Global Insurance Regulatory Policy

By Bruce Ferguson

The ACLI believes that HR 5840, the Insurance Information Act of 2008, will help rectify many of the problems currently facing the insurance industry, and therefore supports its passage. With an increasing number of insurance related bills and tax policy being debated and decided on in Congress, the need for a designated source of insurance information has become all the more evident.

The bill's creation of a federal Office of Insurance Information (OII) would help ensure the implementation of informed insurance policy with the aid of expert analysis, policy guidance, and a unitary voice. Consumers would see benefits from an OII in the form of an advocate pressing for more efficient regulation and uniform consumer protections in the national marketplace. Furthermore, a multitude of international insurance issues demonstrate the difficulties that arise when attempting to navigate global insurance policy and regulation under the current, state-by-state regulatory system.

It is critically important that the federal government be given the explicit authority to formulate U.S. policy on international insurance measures along with the ability to implement these policies in coordination with foreign governments or authorities. This would ensure that a competitive disadvantage does not exist for U.S. life insurance companies that do business abroad, and that they are not retaliated against by foreign governments because of lack of access of foreign companies to the US market. With initiatives such as Solvency II taking effect in the near future, the need for effective changes on the international front becomes increasingly important. Achieving uniformity, efficiency, and effectiveness in the global insurance regulatory system is another reason why ACLI strongly supports HR 5840.

Mr. Ferguson is senior vice president, state relations, with the American Council of Life Insurers (ACLI), based in Washington, DC.

VIEW FROM THE HILL: STATES SHOULD WATCH FOR "OFC-LITE"

Rumors are flying that the U.S. House Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises, as well as the full Financial Services Committee, will hold back-to-back markups of insurance reform bills during the two weeks following a July 4 recess—perhaps on the 9th and 15th, respectively.

No agenda has been set, but it is a safe bet that the Committees will consider both H.R. 5840, the *Insurance Information Act of 2008*, sponsored by Subcommittee Chair Congressman Paul Kanjorski (D-PA), and H.R. 5611, the *National Association of Registered Agents and Brokers Act Reform Act of 2008*, sponsored by Congressman David Scott (D-GA).

Depending on the form of the amended drafts—which are expected to be released during the July 4 recess

—either or both are likely to move through the Committees and to the Rules Committee for floor consideration, as interested parties other than NCOIL support or acquiesce to H.R. 5840, and H.R. 5611 has 45 co-sponsors.

If amended into one bill, H.R. 5840 and H.R. 5611 could create an "OFC-Lite" package that would offer a unique threat to state insurance regulation. Such a combined bill would create a federal office of insurance with broad and preemptive powers that could make international insurance policy and, perhaps eventually, domestic policy—all without legislative input—and would establish a non-profit, industry-dominated mechanism—away from state insurance oversight—for producer licensing.

The decision on

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NCOILetter

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tors and other officials that H.R. 5840 could lead to optional federal chartering, which would not only jeopardize state innovations but would establish duplicative and costly dual regulation, and would force consumers and businesses to interpret overlapping, ambiguous statutes. He questioned, "How can the bill's sponsors say that H.R. 5840 is not the first step towards an OFC when members of the Subcommittee—proponents of an OFC—are claiming bragging rights to that very fact?"

When forewarning other state officials, NCOIL officers cautioned that H.R. 5840 would preempt state laws that a now non-existent Office of Insurance Information (OII) determined were "inconsistent" with new federal international insurance agreements; dramatically diminish the role of individual state officials; and lay foundation for an Office of National Insurance or an OFC.

NCOIL stated that while H.R. 5840 would create the OII to collect data and serve as a federal "advisor"

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for international and domestic insurance policy—which alone seems innocuous—state officials know that the "devil is in the details." As written, the NCOIL letters said, the bill does not confine OII powers to merely those of information gathering. Because H.R. 5840 is not specific in its scope and its advisory nature, it paves the way for larger preemptive power despite the good intentions of its main sponsor Congressman Paul Kanjorski (D-PA).

The June 25 letters also reiterated NCOIL concerns regarding NAIC "conditional support" for the bill. Just after the June 10 Subcommittee hearing, NCOIL leadership wrote to state insurance regulators to ask them if they, as individual regulators, shared the NAIC stance. The June 12 letter strongly urged commissioners to stand up for the state-based system.

NCOIL had earlier written key Congresspersons and will continue such efforts. The July 11 Summer Meeting State-Federal Relations and NCOIL-NAIC Dialogue Committee sessions will spotlight the bill and NAIC conditional support."

BOND-RATING

the municipal bonds they protect are now perceived as greater risks.

In addition to its mandate on rating agencies, H.R. 6308 would require the Dept. of Treasury to collect data on municipal bond insurers, including items such as risk concentration, financial soundness, and underwriting standards. This bond insurer information could lead to later congressional action. Said Frank, "It may be, based on that [data], that we have to do some regu-

lation of those insurers."

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Although Frank stated that he did not expect much rating agency opposition—due to recent agency bad press—Standard & Poor's has criticized H.R. 6308, saying that its proposed uniform rating scale could unravel the "independence" of the ratings system. Moody's and Fitch Ratings have said that they were reviewing use of a single rating standard. For their part, bond insurers have not formally commented on the bill.

PHYSICIAN

isolation being developed by the Senate Finance Committee. In an effort to satisfy both Republicans and Democrats, the new bill would halt the scheduled reimbursement reductions without the

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major cuts to Medicare Advantage proposed in H.R. 6331/S. 3101. Lawmakers are unlikely to reach compromise by July 10, however. Any subsequent bill would likely reimburse physicians retroactively.

VIEW

an OFC-Lite may ultimately be made by the 111th Congress. The Senate is well behind in its consideration of such preemptive bills—having focused its attention, instead, on important

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homeowners and mortgage issues and the thorny wind versus water flood insurance debate. Regardless, the battle lines on the latest preemptive attack are being drawn.