

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 PRESIDENT KENNEDY TO SUBCOMMITTEE: H.R. 5840 DANGEROUS PATH TO PREEMPTIVE FEDERAL REGULATOR

NCOIL President Rep. Brian P. Kennedy (RI) told members of a U.S. House Financial Services Committee Subcommittee on Capital Markets, Insurance, and Government-Sponsored Enterprises on June 10 that NCOIL is deeply troubled by a bill to create a new Office of Insurance Information (OII)—on the grounds that, among other things, it lacks a legislative presence, implies broad powers over insurance policy, and could lay a dangerous path to a federal insurance regulator.

Rep. Kennedy, testifying on a Manager's Amendment to H.R. 5840, the *Insurance Information Act of 2008*, said "NCOIL finds it hard to close its eyes and ignore the lack of any state legislative presence because it is the state legislators that have shaped by statute the robust insurance market that exists today."

He added, "State solvency laws have helped make the insurance market stable, while the banking market—under federal

regulation—was rocked by the savings and loan scandals of the 1990's and by the subprime lending crisis of today."

H.R. 5840 would create an Office of Insurance Information (OII) to collect, analyze, advise, and issue reports on domestic and "international insurance matters." The OII would be authorized to establish federal policy on such international matters and could preempt state statutes that the OII finds are "inconsistent" with international insurance agreements.

Speaking to the OII's scope, Rep. Kennedy said, "The word 'advise' means 'to recommend' and indicates that OII duties could be interpreted to be broader than simply offering insurance-related data." He stated that the "international insurance matters" in H.R. 5840 could extend to issues generally regarded as domestic policy. He recommended that "the bill should clearly limit the OII's domestic role to that of an informational

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NCOIL TO HEAR FROM NAIC ON CONTROVERSIAL MARKET CONDUCT PLAN, CONSIDER RESOLUTION

Legislators at the upcoming NCOIL Summer Meeting will examine motivations behind, and consequences of, a National Association of Insurance Commissioners (NAIC) plan to dramatically alter the way that states collect market conduct information. The regulator proposal would require that insurers begin filing their market conduct information with the NAIC, in conjunction with—although several months after—insurers' required annual financial statement filings.

On Friday, July 11, the NCOIL State-Federal Relations Committee will hear from representatives of the NAIC regarding the status of the controversial plan, which many observers say has been fast-tracked through the organization. On the Committee agenda is a proposed

Resolution Opposing an NAIC Plan to Utilize the Annual Statement for the Centralized Collection and Dissemination of Market Conduct Data, sponsored by Co-Chair Rep. Robert Damron (KY).

The resolution mirrors concerns raised in a May 23 letter from NCOIL Officers to NAIC President Commissioner Sandy Praeger (KS) that had asked the NAIC Executive Committee to defer any action on the proposal until legislators and regulators had an opportunity to discuss concerns. A May 28 NAIC Executive Committee conference call vote had been scheduled, but the NAIC deferred the vote in response to the NCOIL letter.

On July 3, however, the NAIC Market Regulation & Consumer Affairs (D) Committee will hold a con-

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NCOIL ASKS STATE REGULATORS TO STAND UP FOR STATE AUTHORITY

On June 13—in response to the NAIC’s new “conditional support” for H.R. 5840 (see story page 3)—NCOIL officers reached out to individual state insurance commissioners to question whether they—and, in fact, their state legislatures—could offer any such support for the preemptive federal bill. The NCOIL letter to commissioners (below) was followed later in the month by NCOIL letters to state governors and attorneys general, warning them of the H.R. 5840 threat and urging their involvement to help thwart the federal effort.

“NCOIL finds it hard to believe that you or the members of your State legislature would support a bill that would likely preempt state insurance laws and consumer protections...”

Dear Commissioner:

As Officers of the National Conference of Insurance Legislators (NCOIL), we are writing to question if you, as a state insurance regulator, agree with the National Association of Insurance Commissioners’ recently expressed “conditional support” for proposed federal legislation, H.R. 5840, the *Insurance Information Act of 2008*, and we want to share with you our concerns regarding this proposal.

NCOIL finds it hard to believe that you or the members of your State legislature would support a bill that would likely preempt state insurance laws and consumer protections while impacting the healthy insurance marketplace that states have built, as well as potentially lead down the dangerous path to the creation of a federal insurance regulator.

H.R. 5840 would create an Office of Insurance Information (OII) to collect data and serve an “advisory” function to Congress and the Administration regarding international and domestic insurance policy. This alone seems innocuous, but as state officials, we know that the “devil is in the details.” As written, H.R. 5840 does not confine the powers of the OII to merely those of information gathering. Because the bill is not specific in its scope and its advisory nature is questionable, it paves the way for larger preemptive power.

H.R. 5840 would

- preempt your state laws if the OII determined that they were “inconsistent” with new federal international agreements
- dramatically expand the role of the NAIC and diminish that of individual state officials, including legislators, regulators, governors, and attorneys general
- include no role in an OII for state lawmakers or regulators, except for those representing the NAIC
- lay the foundation for an inappropriate federal scheme, such as an Office of National Insurance (ONI) or an optional federal charter (OFC)

NCOIL strongly supports the tenets of a state-based system of insurance regulation. As state officials with boots on the ground, we know and serve the needs of our constituents better than any bureaucratic federal office. Legislators and regulators work side-by-side to improve insurance regulation in our states and to ensure that companies and consumers benefit from the competitive marketplace we have fostered. Success of state-based modernization efforts—including the Interstate Insurance Product Regulation Compact that will soon add its 33rd member jurisdiction—evidences this.

NCOIL would like to confirm your continuing support of successful state insurance regulation and your opposition to H.R. 5840 in its current form. The position taken by the NAIC—on behalf of all state insurance regulators—and presented to Congress at a June 10 hearing is a dangerous policy to pursue. The NAIC, in its conditional support of H.R. 5840, is in effect undermining state-based insurance regulation. A federal insurance office would, as we have found with ERISA, limit the power and authorities exercised by state officials. We hope that you will not let this federal challenge go unanswered.

State insurance committee chairs and the NAIC were copied on this letter.

SAVE THE

DATE

the NCOIL

SUMMER

MEETING

July 10 through 13

at the Marriott

Marquis

New York City

VIEW FROM THE HILL: H.R. 5840 KEEPS ON ROLLING

With few obstacles remaining, H.R. 5840 may steamroll through the U.S. House and arrive in the Senate well before Congress' August recess. With the exceptions of NCOIL (see story page 1) and the PIA, typical supporters of state rights in the debate over the future of insurance regulation are either nowhere to be found or have already offered "conditional support" for the measure.

House Capital Markets Subcommittee Chair Paul Kanjorski (D-PA) appears to have drummed up enough support, or at least non-opposition, from interested parties to move the bill forward after it is marked up in July—unless it gets bogged down by members intent on attaching separate legislation.

While Rep. Kanjorski has made it

clear in statements and through staff that he does not view the OII as a move toward federal insurance regulation, the OII would create a federal insurance office that would be a stepping stone to future preemption. Ultimately, all that would be needed to establish an optional federal charter (OFC) would be legislation to expand the scope of the existing office—a much simpler task than passing a bill to create an entirely new bureaucracy.

Luckily for those who still believe in the role of the states as "laboratories of democracy," H.R. 5840 is unlikely to pass the Senate in 2008. That chamber has yet to begin exploring insurance matters and historically has not acted in haste on non-essential legislation.

Ultimately, all that would be needed to establish an optional federal charter (OFC) would be legislation to expand the scope of an OII—a much simpler task than passing a bill to create an entirely new bureaucracy.

NCOIL STOLI MODEL ANCHORS 2008 STATE BILLS

How to govern life settlements was one of the most controversial policy questions facing state legislators in 2008. Many legislatures considered bills to regulate life settlement transactions this year, and 13 states enacted legislation specifically to protect consumers and make illegal Stranger-Originated Life Insurance schemes (STOLIs).

Laws in ten of those 13 states are based entirely on, or adopt significant provisions of, a 2007 NCOIL *Life Settlements Model Act*. AZ, CT, HI, IN, IA, KS, KY, ME, OH, OK, and, most recently, RI—whose legislature approved

a bill in late June—all passed legislation rooted in the NCOIL model this year.

The NCOIL model—enacted after more than 35 hours of debate—includes a first-of-its kind STOLI definition, extensive disclosure requirements, and a strong penalty section for those who participate in STOLI plans. Interested parties including representatives of life insurance, life settlement, premium finance, and investment industries participated in the NCOIL deliberations.

The Life Insurance & Financial Planning Committee will discuss legislative efforts at the NCOIL Summer Meeting.

NAIC OFFERS "CONDITIONAL SUPPORT" FOR H.R. 5840

On behalf of the NAIC, Insurance Director Michael McRaith (IL) offered "conditional support" for H.R. 5840, the *Insurance Information Act of 2008*, at a June 10 U.S. House Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises hearing.

According to the NAIC, the group endorses H.R. 5840's goal of authorizing a federal agency to work with state insurance regulators to compile and analyze data, as well as its objective of creating a central, federal-government contact that would take the lead on international insurance matters.

The NAIC's conditional support for the federal insurance office scheme comes after years of opposing federal encroachment of insurance regulation via optional federal charter (OFC) legislation. Many observers, including NCOIL, assert that H.R. 5840 brings insurance regulation one step closer to an OFC.

H.R. 5840 would establish the OII within Treasury to advise the federal government on domestic and international insurance matters. It would set federal policy on such international issues and could preempt state laws that it found "inconsistent" with federal policy.

NCOILetter

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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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NCOIL PRESIDENT

clearinghouse.”

Noting that Chairman Kanjorski, primary sponsor of H.R. 5840, has previously questioned the practicality of an optional federal charter (OFC), Rep. Kennedy commented that “An OII would establish a framework that a future Congress could build upon to create a federal insurance regulator—such as an OFC or an Office of National Insurance. Creating an OII and not expecting an OFC is like building a baseball diamond and asking people not to play. As in the movie *Field of Dreams*, ‘if you build it, they will come.’ That is not our dream.”

Rep. Kennedy raised concerns regarding the role of the National Association of Insurance Commissioners (NAIC). He said, “NCOIL believes that giving the NAIC a primary role in the Office of Insurance Information (OII) allows the ‘tail to wag the dog.’”

“It is unprecedented,” the NCOIL president said, “that the federal government would give such power to a private trade association.” Stressing that a system of checks-and-balances is critical, he said H.R. 5840 would

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“enhance the authority of the NAIC at the expense of the state officials to whom they, as individual regulators, are accountable.”

H.R. 5840 would give the NAIC a primary role in the collection and dissemination of insurance data. Under the bill, the OII would act as a liaison between the federal government and the NAIC; representatives of the NAIC would sit on an OII Advisory Group—which would not include state legislators; and the OII would consult with the NAIC when preparing its biennial reports to Congress.

Rep. Kennedy stressed state reform successes—pointing to the now 33-jurisdiction strong Interstate Insurance Compact, which welcomes legislative input. He also questioned who, under H.R. 5840, would protect consumers and whether states would be left holding the bag regarding enforcement.

Other witnesses represented the Department of Treasury; NAIC; American Insurance Association (AIA); American Council of Life Insurers (ACLI); Reinsurance Association of America (RAA); and Property Casualty Insurance Association of America (PCI).

NCOIL

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ference call whose stated purpose is to adopt the Life & Annuity and Property & Casualty Market Conduct Annual Statement (MCAS) Blanks and Instructions—prior to actual, final adoption of the proposal by the Executive Committee/Plenary, which will vote via conference call on July 8.

The draft NCOIL resolution urges the NAIC to extend its consideration of the annual statement proposal in order to fully address the concerns of state legislators and other interested parties—and to give state legislators critical opportunities to comment.

The resolution notes that no state legislature has pursued such a fundamental change in its approach to market conduct. NCOIL, the resolution

says, questions NAIC authority to collect market conduct data as part of an annual statement filing, as well as whether the costs of compliance might outweigh the benefits to consumers, insurance companies, regulators, and state legislatures. The resolution also draws attention to concerns regarding the ongoing confidentiality of certain market conduct data, and it commits NCOIL to working with individual state regulators and the NAIC regarding an appropriate collection of market conduct information.

Legislators and regulators will further their discussion of the issue at a July 11 NCOIL-NAIC Dialogue, in which both sides will debate the pace and procedure by which the NAIC plan has evolved, as well as suitable next steps.

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