

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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U.S. CHAMBER COMMISSION AGITATES OFC WATERS, SUPPORTS FEDERAL REGULATOR

Recommendations of a commission created last year by the U.S. Chamber of Commerce have agitated the optional federal charter (OFC) waters and elicited swift response from some of those who oppose federal insurance oversight.

A March 14 report of the Commission on the Regulation of U.S. Capital Markets in the 21st Century says, in part, that "...the proposed optional federal insurance charter will enable large insurance companies to engage more efficiently on a national or international scale, thus increasing competitiveness and reducing costs for consumers."

The finding of the independent, bipartisan body drew a speedy response from the Independent Insurance Agents & Brokers of America (IIABA). In a March 20 letter from CEO Robert Rusbult, the group said, "We are already receiving numerous inquiries from small businesses around the country asking why the Chamber of Commerce...has endorsed a proposal that would create competitive inequalities, create one of the largest proposed additions to the federal

bureaucracy in recent history, and bring new baggage to the...regulatory system."

The Chamber said it does not have a formal OFC policy and recognizes the anti-OFC sentiments of many of its members. In a letter sent to some member companies prior to release of the report, the Chamber said it would take a position on the issue only with additional input.

The IIABA later said it recognized the distinction between the Chamber and the independent commission it created.

The National Association of Mutual Insurance Companies (NAMIC) also expressed concern. While noting that the recommendation is only a proposal, the group said in a March 21 *BestWire* article, "We would encourage the Chamber to weigh the impact an OFC would have on the thousands of smaller insurance companies that comprise the bulk of the U.S. insurance marketplace."

The Commission was formed to assess legal and regulatory issues affecting U.S. capital markets and to suggest changes that might ensure their viability throughout the coming century.

NCOIL IN ACTION

At the recent NCOIL Spring Meeting in Savannah, Georgia, legislators took the following public policy actions, among others:

- Adopted a **building code model act**, as well as a resolution regarding enforcement of state insurable interest laws, **stranger-originated life insurance (STOLI)**, and related NAIC action
- Moved for further consideration review of an NCOIL **Life Settlements Model Act**, as well as consideration of a draft NAIC **natural catastrophe plan**
- Moved for further consideration a model act regarding **auto rental liability** waivers
- Moved for further consideration a **professional employer organization (PEO)** model

INTERIM MEETING ON LIFE SETTLEMENTS

Saturday, April 21

Hyatt Regency Crystal City at Reagan National Airport
Washington, DC — 10 a.m. to 4 p.m.

NCOIL MARKET CONDUCT REFORM ON THE MOVE

A much-needed statutory reform of market conduct surveillance is gaining ground in the states, based largely on a model law adopted by NCOIL in November 2006. At least six states introduced bills this session that would streamline their surveillance systems—a critical step toward fighting federal efforts to preempt state authority.

In Hawaii, the Senate Committee on Commerce, Consumer Protection & Affordable Housing passed H.90 on March 21. The bill would enact verbatim the NCOIL *Market Conduct Surveillance Model Law*. It next faces the Senate Ways and Means Committee and appears to have no opposition.

Rhode Island H.5406, introduced by NCOIL Vice President Rep. Brian Kennedy, is being held for further study in the Corporations Committee following a late February hearing. Supporters are working with the Committee to address the insurance superintendent's concerns.

The Washington Senate Committee on Financial Institutions & Insurance recently passed S.5717, the companion to a substitute bill passed by the House Insurance, Financial Services & Consumer Protection Committee on February 26. The bill excludes provisions in the NCOIL model that would allow a commissioner, under certain circumstances, to delegate responsibility for conducting an exam to another

state commissioner if that other regulator accepts the responsibility.

On March 13, the Missouri Senate Small Business, Insurance & Industrial Relations Committee passed a substitute amendment to S.483 that brings the bill in line with the NCOIL model. The panel held a February 20 hearing on the proposal. Supporters are working with legislators to resolve a few remaining differences with the NCOIL model act.

In New York, NCOIL legislator Assem. Nancy Calhoun introduced A.1480, now pending in the Insurance Committee. The bill omits language on treatment of contract examiners and delegating exam responsibility. Connecticut Sen. Joseph Crisco, another NCOIL lawmaker, filed S.62 with the Legislative Commissioner's Office on March 15. Also, New Mexico is expected to take up the NCOIL bill now that its session has ended.

The NCOIL model—which responds to an earlier NCOIL-NAIC draft that garnered little state support—would establish the purpose of market conduct oversight as preventing widespread abuses, not focusing on random and inadvertent errors; create a streamlined framework for evaluating/prioritizing/resolving market conduct problems; enhance state collaboration; and reduce costly duplications of effort. Adoption followed more than five years of NCOIL work on the issue.

Texas and Colorado have already adopted NCOIL-based laws.

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NCOIL PRESSES FOR BUILDING CODES, ADOPTS MODEL

NCOIL laid a foundation for statewide building standards on March 3, when the NCOIL Executive Committee unanimously adopted a proposed *Model State Uniform Building Code* during the NCOIL Spring Meeting that could help states significantly reduce the vast economic and social losses stemming from natural disasters.

"It is critical," said bill sponsor Rep. George Keiser (ND), "that state and local governments appreciate the significant role building codes play in lessening the wide-ranging risk of loss."

The model would apply statewide and would establish structural building

requirements based on the latest technical data. It would provide for stricter standards in areas of high-hazard for wind, flood, and earthquake. It also would create a system for building code regulation.

Numerous parties strongly support the model, including insurer and agent representatives and those from the Federal Emergency Management Agency, Insurance Services Office, and the Institute for Business and Home Safety.

The model was adopted unanimously by the Subcommittee on Natural Disaster Insurance Legislation on March 1 and by the Property-Casualty Insurance Committee on March 2.

NCOIL LIFE SETTLEMENTS DEBATE LEADS TO INTERIM MEETING, NEW RESOLUTION

During a special March 2 session on life settlements, the NCOIL Life Insurance & Financial Planning Committee engaged in lively debate regarding emerging stranger-originated life insurance (STOLI) schemes, and ultimately passed a resolution that addresses STOLIs and related National Association of Insurance Commissioners (NAIC) action. The Committee, which also voted to hold a separate, interim meeting on the subject (see *box page 1*), gathered during the NCOIL Spring Meeting in Savannah, Georgia.

Legislators engaged Director Julie McPeak (KY) and Commissioner James Donelon (LA) on, among other items, issues faced by the NAIC in 2006 when considering changes to its *Viatical Settlements Model Act*. The amended model passed the NAIC Life Insurance & Annuities (A) Committee unanimously.

Representatives of the life insurance, life settlement, and premium finance industries spoke to STOLI issues that are not addressed in an NCOIL *Life Settlements Model Act*, which NCOIL

first adopted in 2000 and which is now under Life Insurance Committee review. Two areas of contention were individual property rights and the characterization of a "life settlement contract."

The Committee later adopted a *Resolution Regarding the Enforcement of Existing State Insurable Interest Laws, Stranger-Originated Life Insurance (STOLI), and Related NAIC Action* that, while encouraging states to address STOLIs through existing state insurable interest and other laws, requests that the NAIC delay final consideration of its *Viatical Settlements Model Act* to allow for further NCOIL study of the issue.

An amendment to the resolution, offered during the March 3 NCOIL Executive Committee meeting, would have reaffirmed NCOIL's intention to revisit its life settlements model law and make any needed changes. The amendment, which failed to receive the two-thirds vote needed to waive the NCOIL 30-day deadline rule, also would have deleted reference to the NAIC process.

In addition, the *(continued on page 4)*

According to the CBO, public disclosure of Part D drug rebates could "make rebates less varied among purchases, with large rebates and small rebates tending to converge toward some average rebate."

PART D PRICE DISCLOSURES COULD RAISE COSTS, CBO SAYS

Responding to an inquiry from U.S. Reps. Joe Barton (R-TX) and Jim McCrery (R-LA) regarding price rebate disclosure, the Congressional Budget Office (CBO) concluded on March 12 that requiring public disclosures could raise Medicare Part D drug costs.

The inquiry followed a request by Rep. Henry Waxman (D-CA) that several Part D plan sponsors submit data on their negotiated price discounts, and rebates from drug makers, to the House Committee on Oversight & Gov.'t Reform. His request comes amid congressional scrutiny of the Part D benefit.

According to the CBO, public disclosure of drug rebates could "make rebates less varied among purchases, with large rebates and small rebates tending to converge toward some average rebate." The CBO also concluded that "tacit collusion" among drug makers could develop in cases

where treatments for a particular condition are available from a limited number of manufacturers. Both these outcomes, CBO declared, would result in increased consumer drug prices.

Currently, the contract information between a plan sponsor and drug maker is reported to the Centers for Medicare and Medicaid Services (CMS), which protects the data from public disclosure.

The Part D benefit, enacted in 2003, requires plan sponsors to pass manufacturer rebates through to consumers by either reducing premiums or lowering retail drug prices. It permits plan sponsors to negotiate directly with drug manufacturers for deep discounts through the use of drug formularies, or by promoting one drug over another. Through commitments to increase the market share of a drug, plan sponsors may receive benefits including rebates or below-market pricing.

SAVE THE DATE

**NCOIL
Summer
Meeting &
Seminar**

**July
19 through 22,
2007**

**Seattle,
Washington**

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NCOIL

SENATORS SCHEDULE COASTAL INSURANCE HEARING

Coastal insurance woes will return to the federal spotlight on April 11, when the Senate Banking, Housing, and Urban Affairs Committee holds a newly announced hearing on the availability and affordability of personal and commercial property coverage along the Gulf Coast and other U.S. shores.

Committee Chairman Christopher Dodd (D-CT) publicized the hearing while on a recent trip to New Orleans. Dodd expressed concern regarding the ability of Americans to have and to hold insurance coverage in coastal

communities, and he pledged to examine the industry's claims-paying behavior following Hurricane Katrina. Speaking to the need to rebuild devastated areas, Dodd said, "Insurance companies must fulfill their outstanding obligations to their customers and help them prepare for future catastrophes."

The hearing comes on the heels of a promise Dodd made to the Florida congressional delegation last month, in which he committed the Senate banking panel to exploring the need for a national catastrophe backstop.

LIFE SETTLEMENTS

(continued from page 3)

Life Insurance & Financial Planning Committee voted on March 2 to reauthorize and expand its Subcommittee on Life Settlements and to hold an interim meeting prior to the July 19 through 22 NCOIL Summer Meeting in Seattle, Washington.

The interim session has since been scheduled for **Saturday, April 21, at the Hyatt Regency Crystal City at Reagan National Airport in Washington, DC.** The meeting will take place

from 10 a.m. to 4 p.m.

At the interim session, legislators will engage interested parties on possible amendments to the NCOIL model act and will work towards consensus on outstanding issues.

The existing NCOIL model law would regulate the business of life settlements by requiring, among other things, provider and broker licensing, complex disclosures to the policyowner, and a two-year moratorium on settling a policy.

PEO MODEL ACT ON HOMESTRETCH FOR JULY MEETING, NCOIL SEEKS ADDITIONAL COMMENTS

On March 1, the NCOIL Workers' Compensation Insurance Committee deferred until the 2007 NCOIL Summer Meeting a proposed *Model Act Regarding Professional Employer Organizations (PEOs) in Workers' Compensation Insurance* in order to give an NCOIL PEO Working Group time to consider additional interested-party comments.

The Committee, which convened during the recent NCOIL Spring Meeting, asked interested parties to submit any proposed amendments to the bill by March 30, in order for the Working Group to submit a revised version of the model law in time for the Summer Meeting 30-day deadline. Upon submission of comments, the Group will hold a conference call with interested parties to discuss suggested changes.

AIG, and other groups, have expressed concern that the model law's experience-rating requirements would

lead to sizeable compliance costs, since AIG's current business model is based on use of a master policy.

The draft model would require, among other things, that a PEO register with an appropriate state authority and that the experience rating of a PEO client remain with the client regardless of its relationship with the PEO.

NCOIL began investigating the PEO industry, as related to workers' comp, two years ago in response to disputes between insurers, employers, and PEOs as to the source of coverage for individual employees. Legislators were also concerned that policies were being written based on the experience rating of a PEO, regardless of the line of business or experience rating of the employers listed as PEO clients.

The model considered by the Committee in Savannah reflected amendments already offered by the Working Group in response to earlier interested-party input.