



NCOILETTER

May 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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CONGRESS, GAO TAKE SCATHING LOOK AT TITLE INSURERS

In response to growing regulatory and congressional concerns regarding high profit margins and illegal kickback schemes in the title insurance industry, the U.S. House Financial Services Committee took a scathing look at industry practices during an April 26 hearing, held two days after the release of an interim General Accountability Office (GAO) report that attacked industry operations.

The GAO study, commissioned by Committee Chair Rep. Michael Oxley (R-OH) in January and entitled *Title Insurance: Preliminary Views and Issues for Further Study*, voiced concern over the high

commissions paid to title insurance agents—typically 71 percent of premiums paid—and the widespread ambiguity as to whether competition exists. The report condemned the collusive practices of many title insurers, agents, realtors, homebuilders, lawyers, and lenders who violate state and federal laws to establish sham companies and other kickback arrangements at the ultimate expense of unknowing homebuyers.

GAO noted that regulation of the industry is piecemeal, with different agencies overseeing various functions and insurance departments (continued on page 2)

OFC: NCOIL TO CHALLENGE NEED, EXAMINE IMPACTS

Proponents and opponents of an optional federal charter will trade punches on July 22, during an NCOIL session entitled *Optional Federal Charter: Serving Consumers or Gratifying Industry?* The symposium-style discussion will focus on the devastating consequences of S. 2509, the *National Insurance Act of 2006*, including impacts on consumers, state regulation, and critical premium tax income.

Sen. John Sununu (R-NH), co-sponsor of the bill, has been invited to participate. Other anticipated speakers include representatives of the American Council of

Life Insurers, Optional Federal Charter Coalition, American Insurance Association, Nat'l Association of Insurance Commissioners, Professional Insurance Agents of America, Independent Insurance Agents & Brokers of America, National Association of Mutual Insurance Companies, and Consumer Federation of America.

NCOIL fully opposes any federal attempt to preempt state insurance authority and has committed to educate Congress on the need to preserve state oversight.

The 9:30 to 11:30 a.m. session will be held during the NCOIL Summer Meeting.

NCOIL SETS LEGISLATIVE AGENDA: SUMMER MEETING

The most hotly debated issues affecting state legislatures and the future of state insurance regulation will be on focus during the July 20 through 23 NCOIL Summer Meeting in Boston, Massachusetts. Just some of the items up for discussion include:

- Federal preemption and preservation of state insurance authority (see above)
- Market conduct reform, including reconsideration of an NCOIL model law
- Catastrophic natural disaster insurance: options for a national system
- Benefit mandates and consequences of federal healthcare proposals (see story page 2)
- Pharmacy benefit managers (PBMs): roundtable workshop on the need for state regulation (see story page 4)
- Annuities: state versus federal oversight

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CONGRESS

(continued from page 1)

little aware of the financial irregularities in the title industry as compared to other insurance lines. Part of this, the report notes, is because state regulation does not require—as it does with other coverages—that premiums charged must be supported by underlying costs. Those pushing for reform of the market state that average loss ratios for the industry hover at five (5) percent, compared with approximately 80 percent for auto and homeowners' insurance.

In his opening statement at last month's hearing, Oxley recognized the recent work of state regulators to expose fraud and abuse in the market and expressed concern that escalating real estate prices have dramatically and artificially raised premiums. Oxley asserted that a active realty environment had no bearing on the fixed costs associated with performing a title search.

Those testifying at the hearing, which was held by the Committee's Subcommittee on Housing and Community Opportunity, spoke to the

unique nature of title insurance. Coverage is a one-time premium securing an insurer's prior guarantee of a clean title, rather than some perceived, future risk of loss. Title insurance is required by mortgage lenders but must be purchased by home buyers, who are overwhelmingly unaware of how the industry operates. In addition—and unlike other lines—five large title insurers represent 92 percent of the nationwide market.

Witnesses at the hearing represented the Colorado Department of Insurance/the National Association of Insurance Commissioners' Title Insurance Issues Working Group; the GAO; the U.S. Department of Housing and Urban Development; the Consumer Federation of America; Title One; the Real Estate Services Providers Council; the National Association of Realtors; and the American Land Title Association.

NCOIL will report on issues regarding title insurance when its Financial Services & Investment Products Committee convenes on July 20, during the NCOIL Summer Meeting in Boston.

BENEFIT MANDATES: NCOIL TO LOOK AT COSTS, FEDERAL IMPACT

The relationship between state benefit mandates, rising healthcare premiums, and federal preemption efforts will be the focus of a July 22 NCOIL general session entitled *Benefit Mandates: Reducing Healthcare Costs?*, scheduled during the NCOIL Summer Meeting in Boston. The event will take place from 8:00 to 9:30 a.m.

Panelists will discuss whether long-term savings from benefit mandates offset short-term costs and will analyze the potential impact of federal preemptive measures, such as S. 1955, the *Health Insurance Marketplace Modernization and Affordability Act*, on the

existing system. S. 1955, initially scheduled for debate in the U.S. Senate in early May, would permit small businesses to purchase insurance across state lines without complying with state insurance regulations, including benefit requirements. NCOIL strongly opposes the bill on the grounds that it would erode consumer protections and promote cherry picking and fraud, among other concerns.

The July panel will include representatives of health providers, insurers, small employers, labor unions, and consumers. It furthers NCOIL's long-standing interest in exploring the economic consequences of benefit mandates.

STAY TUNED FOR THE JUNE EDITION
UPDATE ON U.S. SENATE "HEALTH WEEK" ACTIVITY:
ENZI AND MEDICAL LIABILITY BILLS

FLORIDA LOOKS TO REVAMP CATASTROPHE MARKET, FACES TOUGH DECISIONS

The Florida homeowners' insurance market, ravaged by two years of record catastrophe losses, is the subject of intense legislative debate as lawmakers work to stem the tide on substantial premium increases and growing market instability.

The House of Representatives has given final approval to HB 7225, which would direct \$920 million of storm-generated sales tax revenue to the beleaguered insurer-of-last-resort, Citizens Property Insurance. Citizens faces an estimated **\$1.7 billion shortfall** following the 2004 and 2005 hurricane seasons. State property owners would fund the remainder of the deficit through a ten-year premium surcharge.

The bill would require Citizens to immediately cease writing coverage on properties worth more than \$1 million, forcing them into the secondary market—a move that leaders of the Florida Senate say would result in exorbitant rate increases.

House Insurance Committee Chair Rep. Dennis Ross, sponsor of HB 7225, argues that the only way to shore up what he describes as a "very out of control market" is to give insurers more freedoms and alleviate the dramatic losses at Citizens.

The House proposal would establish **flex-band rating**, in which homeowners' insurers could raise rates five percent statewide and ten percent in certain areas without prior approval from the Office of Insurance Regulation.

HB 7225 also would authorize a rapid cash buildup for the Florida Hurricane Catastrophe Fund in order to offset losses and would allow smaller companies (with no more than \$25 million in surplus) to more easily buy reinsurance from the Cat Fund in 2006. Supporters of the provision say it is critical to keeping small insurers viable in the Florida market, while those opposed say that what is good for one insurer should be good for all.

Regarding **property mitigation**, HB 7225 would create a \$100 million

endowment to fund no-interest loans, as well as a \$400 million program to retrofit older dwellings and strengthen mobile homes.

Markedly different is the Senate version, S. 1980. Just \$50 million would go to home-retrofitting, and \$5.5 million to wind certification and inspection. The bill would appropriate \$720 million in sales-tax income to the Citizens' shortfall, rather than the House's \$920 million, and would hold fast the **cat fund retention levels** of small insurers.

S. 1980 also would impose a 25 percent surcharge on secondary-homes and would uphold Citizens' obligation to offer coverage to million-dollar properties. Should several pending Senate amendments go through, the Florida system would undergo even more dramatic change—**repeal of its use-and-file rating system** and a prohibition on canceling or non-renewing insureds with coverage for more than three years.

Falling against the backdrop of these discussions is a major insolvency shake-up involving Poe Financial Group, Florida's third largest homeowners' insurer.

In April, the Department of Financial Services took receivership of Poe subsidiary Southern Family Insurance Company, which in March stopped writing new and renewal business and was subsequently unable to raise necessary capital. Other members of the Poe Group also appear headed toward rehabilitation. Poe reportedly had heavy coastal exposures and was deeply affected by recent hurricanes.

NCOIL will pursue examination of a draft NAIC **national mega-catastrophe system** at the NCOIL Summer Meeting. Legislators have long advocated for a countrywide approach to catastrophic natural disaster insurance.

MARKET CONDUCT
Special NCOIL Meeting
Friday, July 21
3:15 to 5:15 p.m.
NCOIL Summer Meeting

The bill would require Citizens to immediately cease writing coverage on properties worth more than \$1 million, forcing them into the secondary market—a move that leaders of the Florida Senate say would result in exorbitant rate increases.

SAVE THE DATE

The NCOIL Summer Meeting

July 20 through 23, 2006*

Boston, Massachusetts

**Please note DATE change*

NCOILetter

Susan F. Nolan, Publisher/Editor

Candace Thorson, Managing Editor
Paul Donohue, Associate Editor
Mike Humphreys, Associate Editor

Simone Smith, Production Assistant
Robert Goodman, Business Manager

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Contact the *NCOILetter* at the:

NCOIL National Office:
385 Jordan Road
Troy, NY 12180
(518) 687-0178 (phone)
(518) 687-0401 (fax)
info@ncoil.org

**The NCOIL Office in
Washington, D.C.**

601 Pennsylvania Ave. NW
Suite 900, South Building
Washington, D.C. 20004
(202) 220-3014 (phone)
(202) 330-5004 (fax)
info@ncoil.org

NCOIL

FACT FINDINGS: TALKING DOWN THE OFC

Introduction of optional federal charter bill S. 2509, the National Insurance Act of 2006, has elicited quick comment from numerous parties opposed to an OFC takeover. NCOIL adamantly opposes S. 2509 or any other preemptive initiative. A sample of anti-OFC comments is below.

"Personally, I've had no constituent or consumer call me to tell me that he or she wants the federal government to take over from the states the regulation of insurance, or anything else for that matter. And I doubt that any Member of Congress or U.S. Senator has received one either."—TX State Representative Craig Eiland, Immediate Past President, NCOIL

"[The bill] reads like a book by horror novelist Steven King. [States need to make sure that S. 2509] remains a work of fiction and that the optional federal charter gets killed off in the first chapter."—Len Brevik, Nat'l Executive Vice President & CEO, Professional Insurance Agents of America

"[The bill is] a 'wish list' of regulatory giveaways promoted for years by large insurance companies that would be extraordinarily harmful to consumers."—Robert Hunter, Director of Insurance, Consumer Federation of America

"While proponents of federal regulation may design a 'perfect system,'

they can neither anticipate nor prevent the imposition of disastrous social regulation in exchange for the new regulatory structure...such regulation could ultimately make coverage less available and affordable for most consumers."—David Winston, Federal Affairs Senior VP, National Association of Mutual Insurance Companies

"Enactment of OFC legislation is a bad idea...The OFC would be the first step along a slippery slope eventually leading to a total federal government takeover of insurance regulation from the states...States should remain the principal regulator of the insurance industry in order to preserve the respective state public policy prerogatives and because states can be more directly responsive and flexible to insurance consumers, industry, and agents."—Aflac

"[S. 2509 would] result in policyholder confusion, market uncertainty, and a host of other unintended consequences."—Maine Ins. Supt. Al Iuppa, President, NAIC

"A one-size-fits-all scheme that creates a new federal bureaucracy is not the answer."—Robert Rusbuldt, CEO, Independent Insurance Agents and Brokers of America

"A new federal bureaucracy with far-reaching authority over the insurance industry...is subject to the political whims of Congress."—Ernst Csiszar, President and CEO, Property Casualty Insurers Association of America

NCOIL TO HOLD PBM ROUNDTABLE

On Friday, July 21, the NCOIL Health, Long-Term Care, and Health Retirement Issues Committee will host a roundtable on pharmacy benefit managers (PBMs), in which experts will answer lawmakers' questions regarding PBM policy concerns. The session will be held from 9:15 to 10:15 a.m., during the NCOIL Summer Meeting.

Invited speakers include experts from the Pharmaceutical Care Management Association; America's Health Insurance Plans; the National Community Pharmacists Association;

and the Massachusetts Health Department.

At a 2006 NCOIL Spring Meeting debate, legislators examined PBM activity and decided to further investigate PBMs and to consider drafting model legislation as appropriate. Among other items, lawmakers expressed concern over a perceived lack of transparency in PBM operating procedures, use of mail-order pharmacies, and staff training requirements.

Draft legislation may be forthcoming and would be submitted prior to the roundtable, in accordance with the NCOIL 30-day deadline for the Summer Meeting.