National Conference of Insurance Legislators

NCOIL ETTER

...for the states

November 2007 www.ncoil.org

NCOIL'S REP. EILAND TESTIFIES AT HOUSE REGULATORY REFORM HEARING

NCOIL Past President Rep. Craig Eiland (TX) told members of Congress on October 30 that an optional federal charter (OFC) is no answer to calls for insurance regulatory reform and that the vibrancy of the state system is proof of its long-standing success. Eiland—speaking at a hearing of the U.S. House Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises—acknowledged that states must work even harder to achieve modernization. He said, however, that those who support an OFC diminish what states have already accomplished.

Eiland noted that several of the largest insurance markets in the world, including California (6th), New York (7th), Florida (8th), and Texas (10th), are located in the U.S. State officials, he asserted, are better able to address local needs than a federal regulator could and offer consumers better recourse in times of trouble. "Though OFC proponents claim an OFC would take two steps forward," Eiland said in his written testimony, "it would actually take three steps back."

Eiland recognized in his written remarks that it would be "unrealistic…to say that state insurance regulation was flawless and modernization is unnecessary." Progress is needed—and improvements have been made—regarding speed-to-market for

life insurance products, rate and form approval, market conduct, and producer and company licensing, he wrote.

Eiland, who is current chair of the NCOIL State-Federal Relations Committee, overviewed state modernization efforts. He credited

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MEETINGS TO WATCH

Auto Rental Damage Waivers
Property-Casualty Insurance Committee—November 16, 9:30 to 11:00 a.m.

Interstate Compacts
State-Federal Relations Committee—November 16, 1:15 to 2:30 p.m.
General Session—November 17, 9:45 to 11:15 a.m.

Life Settlements
Special Subcommittee Meeting—November 14, 2:00 to 5:00 p.m.
Life Insurance Committee—November 15, 2:45 to 4:45 p.m.

Natural Catastrophe Proposals
Natural Disaster Subcommittee—November 15, 10:45 to 11:45 a.m.
General Session—November 17, 8:00 to 9:30 a.m.

Phase II State Authority Recommendations
Special ILF/Executive Committee Hearing—November 16, 2:30 to 4:00 p.m.

Professional Employer Organizations (PEOs)
Workers' Compensation Insurance—November 15, 9:30 to 10:30 a.m.

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

Inside This Issue:

VIEW FROM THE HILL: FALL SESSION SHOWS NO SIGNS OF SLOWING

The Administration and Congress have, some may say, particularly dug in regarding reauthorization of SCHIP. And, adding to the mix, the President has wielded a formal veto threat on controversial natural catastrophe legislation, pushing consensus is even further away despite some gains on flood insurance reform.

The inaugural session of the 110th Congress will force members to go holiday shopping around the District this year, as both Houses plan to continue working past their revised mid-November adjournment target—and perhaps well into December. Appropriations bills on items including farming, new water projects, the State Children's Health Insurance Program (SCHIP), Health and Human Services (HHS), and education have drawn presidential veto threats. The Administration and Congress have, some may say, particularly dug in regarding reauthorization of SCHIP. And, adding to the mix, the President has wielded a formal veto threat on controversial natural catastrophe legislation, pushing consensus is even further away despite some gains on flood insurance reform.

After the House failed to override the President's veto in early October, the House and Senate came back with an amended SCHIP proposal at month's end. The bill—like its vetoed counterpart—would add $35 billion to SCHIP while raising the per-pack cigarette tax from $.39 to $1.00.

The President will mostly likely have his veto pen out and ready, since he promised Republican lawmakers during an October 30 closed-door meeting that he would veto any SCHIP proposal that includes a tobacco tax increase. His vow seems to be out-of-synch with congressional deliberations during which "Nobody is talking about taking cigarette taxes off the table," according to Senate Finance Committee Chair Senator Max Baucus (D-MT).

The impasse has frustrated all involved and has already drawn talk that Democrats will hold funding of SCHIP at its current levels and hold another vote preceding the 2008 presidential elections.

Complicating the debate is a mid-October Congressional Research Service study that reported 21 states will run out of SCHIP money next year, and unless Congress provides more funding, at least nine of those states will exhaust funds by March.

There is a small bit of sunshine, though, in otherwise cloudy debates over reform. In the waning days of October, the House Financial Services Committee unanimously passed H.R. 3959, a short bill that would phase-in actuarially sound flood insurance rates for homes built prior to 1974, or to when the National Flood Insurance Program had released a particular area's initial flood map. The bill would apply to such existing homes sold today for at least $600,000.

Risk-based pricing for the overburdened NFIP is almost a no-brainer for politicians fighting over far more expansive bills, including H.R. 3121, a plan that would add wind coverage to the program. And adding to the natural catastrophe debate is presidential hopeful Sen. Hillary Clinton (D-NY), who just signed her name with Sen. Bill Nelson (D-FL) to the companion of a House bill—introduced by two other Florida legislators—that would create a backstop for state reinsurance programs via catastrophe pools and federal loans.

Clinton's action, some criticize, may be suspect now that Florida has moved up its Democratic primary date. Whether any of the above controversial bills go through, though, remains to be seen—and very well may wait until the holiday lights go out.

NCOIL PEO MODEL HEADS TO VEGAS

Members of an NCOIL Professional Employer Organization (PEO) Working Group closed the door on their review of amendments to a draft *Model Act Regarding Professional Employer Organizations (PEO)* during an October 27 interim meeting in Arlington, Virginia—clearing the way for final consideration at the NCOIL Annual Meeting in Las Vegas.

The newly adopted Subcommittee draft—which does not claim to be a comprehensive PEO framework—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. The full Workers' Compensation Insurance Committee will con-

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HOTLY DEBATED LIFE SETTLEMENT MODEL NEARS ADOPTION

Following more than 18 months of debate, special meetings, and extended sessions, an NCOIL *Life Settlements Model Act* is geared for adoption at the NCOIL Annual Meeting in Las Vegas. Legislators on the full Life Insurance & Financial Planning Committee are expected to consider the model on November 15, one day after a long-working Life Settlements Subcommittee holds what is likely its last special session on proposed revisions to the NCOIL model law.

The Subcommittee will convene from 2:00 to 5:00 p.m. on November 14 and will discuss stranger-originated life insurance (STOLI) in relation to trusts and insurable interest. Previously, the Subcommittee met during an interim meeting in Chicago on Saturday, October 25, to review proposals related to the regulation of securities, among other things.

The Subcommittee also on October 25 gave interested parties one final deadline—November 2—to submit mark-up comments focused specifically on a drafting note, sponsored by Subcommittee Chair Rep. George Keiser (ND) and Rep. Robert Damron (KY), regarding the definition of STOLI and Fraudulent Life Settlement Act. Parties also were to address a penalties section for businesses or individuals that participate in stranger-originated life insurance schemes.

Lawmakers hope to adopt an amended model act in order to give state legislators returning to sessions in January a model bill from which to develop or amend life settlements legislation and statutes.

[Under Phase II,] states would restore the stature of state insurance agencies in order to clarify regulatory roles and enhance insurance regulators' authority. Legislatures would expand their oversight of insurance regulation by developing standards and best practices and via establishment of an insurance accountability office.

PHASE II RECOMMENDATIONS SET STRATEGIES FOR STATE REFORM

Legislators will hear recommendations contained in Phase II of a groundbreaking *Study on State Authority: Making a Case for Proper Insurance Oversight* on November 16, when the NCOIL Executive Committee and Insurance Legislators Foundation (ILF) Board hold a joint hearing on the study's proposed strategies to enhance state regulatory reform. The session, scheduled from 2:30 to 4:00 p.m. during the NCOIL Annual Meeting, will also feature consideration of a proposed resolution regarding redirection of state premium tax assessments.

Phase II sets forth six (6) recommendations. Under the study, NCOIL member states would direct the premium tax assessments that they pay to the NAIC to NCOIL instead, in order to help legislators assume a larger role in regulatory modernization. States would restore the stature of state insurance agencies in order to clarify regulatory roles and enhance insurance regulators' authority. Legislatures would expand their oversight of insurance regulation by developing standards and best practices and via establishment of an insurance accountability office.

Phase II also proposes amending insurance codes to provide that state regulators may only participate in meetings pertaining to development and debate of public policy if those meetings are open to the public. The study would strengthen state insurance regulation by expanding the interstate insurance compact, and it would support an independent commission of stakeholders to consider how state insurance regulation could be further improved.

In response to the Phase II recommendations, the ILF will consider a draft resolution that supports the redirecting of state premium tax assessments to NCOIL rather than the NAIC, in order to implement other Phase II proposals—including expanded legislative oversight of insurance and establishment of a commission to review the further improvement of the state system. Additional proposals based on Phase II may be considered at future NCOIL conferences.

At the July NCOIL Summer Meeting, legislators heard

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NCOILetter

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NCOIL'S REP. EILAND

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the Interstate Insurance Product Regulation Commission (IIPRC) with providing a central point of filing for life insurers to access the 30 compacting states, and he acknowledged that federal coaxing may be warranted to get all states on board. Eiland said product uniformity does not—and should not—exist in the property-casualty insurance market.

The Subcommittee hearing was the second in a series to examine the effectiveness of the state-based insurance system. The tone of the hearing was noticeably less adversarial than at the first in the series, on October 3. Members this time were less inclined to attack state oversight itself and were more interested in what Congress could do to ensure uniformity, where it is appropriate, and to facilitate global competition.

In addition to NCOIL, witnesses represented the Financial Services Roundtable, Consumer Federation of America (CFA), Reinsurance Association of America (RAA), The Cincinnati Insurance Companies, and the National Association of Life Brokerage Agencies (NALBA).

Those testifying had mixed reviews of state oversight. Scott Gilliam of Cincinnati said states should retain insurance authority, noted that smaller insurers value their connection to state officials, and suggested that Congress consider drafting legislation that would let an insurer be regulated by its home state while offering products nationally.

Alessandro Iuppa, immediate NAIC Past President and now Zurich employee, who testified for the Financial Services Roundtable, said the state system was not sophisticated enough to address the growing international market and expressed new support for an OFC.

Frank Nutter of RAA described three options that he said would help the market: a single-state "passport" system that would let a license in one state to permit business in all others; an OFC; or a modified OFC that would let an insurer choose between a federal regulator, a state regulator, or the current 50-state system.

John Felton, representing NALBA, said the IIPRC has not done enough to speed products to market. An OFC, he claimed, would improve the process and ultimately lower prices.

Bob Hunter of CFA said what mattered was protecting consumers, not state versus federal oversight. He blasted the current OFC proposal, describing it as "insurer-backed," but also said the state system has serious problems related to claims abuses, unfair prices, and record surpluses, among other things.

Rep. Eiland's testimony is available at

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sider the proposal on November 15.

Participating in the October 25 interim session were representatives of the American Academy of Actuaries (AAA), National Association of Insurance Commissioners (NAIC), National Association of Professional Employer Organizations (NAPEO), and National Council on Compensation Insurance (NCCI). Following morning discussion regarding the role of PEOs in workers' compensation, the Working Group reviewed suggested amendments throughout the afternoon.

Because the Group had not finished examining proposed revisions to the model act at the July Summer Meeting, the Workers' Compensation Committee reauthorized the Group so it could hold further discussions with interested parties.

PHASE II

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results of Phase I of the study. That report addressed, in part, how globalization, threats to state authority, and other environmental factors come into play; a brief history of state insurance oversight; the current state of the regulatory structure; the evolving role of NAIC; and case studies of select states.

The ILF study is the first of its kind to take an aerial snapshot of state oversight in order to determine where it works well to promote competition and where improvement is warranted. The full text of Phase II is available at www.ncoil.org.