



NCOILETTER

October 2005

www.ncoil.org

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

Inside This Issue:

Fact Findings: 2
Future of Flood Insurance

Proposed NCOIL 4
Aftermarket Crash Parts Resolution

NCOIL TO REVIEW CREDIT SCORING, MARKET CONDUCT MODELS

Legislators at the Annual Meeting in San Diego will review two key NCOIL model laws that offer guidance on critical areas of insurance public policy: insurance (credit) scoring and market conduct surveillance reform.

Credit Scoring

Adopted in November 2002 and slightly amended in July 2003, the *NCOIL Model Act Regarding Use of Credit Information in Personal Insurance* has been instituted via legislation and/or regulation in 27 states. The bill, which NCOIL is examining as per the organization's bylaws, would protect consumers from inappropriate use of their credit information while helping to promote a healthy insurance marketplace.

Several states that enacted NCOIL-based laws included exceptions

for extraordinary life circumstances, in which a consumer impacted by unfortunate events, such as the death or impairment of a breadwinner or the occurrence of a major illness, could have related negative credit data essentially removed from scoring consideration. A consumer could claim only a limited number of extraordinary circumstances.

The NCOIL model law, among other things, would require that an insurer re-underwrite and re-rate an insured whose credit report was corrected and require that the company notify an applicant that credit information would be used, as well as notify when an adverse action was based on credit information and what the four primary credit-related factors were.

The Act would indemnify insurance agents and brokers obtaining credit information and/or *(continued on page 2)*

EXPERTS COMMENT ON TRIA REAUTHORIZATION, OFFER FRAMEWORK FOR LEGISLATIVE RESPONSE

Experts and academics outlined a six-pronged approach for addressing terrorism risk during an October 7 National Symposium on Terrorism Risk Insurance, held in the Cannon House Office Building in Washington, DC. The panel analyzed ongoing policy issues related to reauthorization of the Terrorism Risk Insurance Act (TRIA) in the aftermath of Hurricane Katrina.

Participants in the session, which was sponsored jointly by Congressional Quarterly, The Wharton School, Rand Corporation, the US Department of Homeland Security, The Communications Institute, and the University of Southern California, examined issues

including the economics of terrorism insurance, its relation to national security, and its ability to reduce future losses; developing an equitable insurance program; public and private sector roles for dealing with catastrophic losses; and whether Hurricane Katrina now offers policymakers a new perspective.

In laying out a multilayered framework for addressing terrorism coverage, participants suggested that policymakers should first analyze the likelihood of risk in order to improve insurance pricing and purchasing decisions.

Among other concerns, panelists said state legislators *(continued on page 2)*

NCOIL

(continued from page 1)

NCOIL legislators will examine differences between the NCOIL-NAIC [market conduct] model and the Texas law..., with an eye toward possibly amending the model act sometime in 2006.

insurance scores according to an insurer's procedures and according to applicable law and regulation. Consumer reporting agencies would be restricted as to their ability to provide or sell information submitted in conjunction with an insurance inquiry. Insurers would have to file their scoring models with the department of insurance, which would consider them trade secret.

The NCOIL Property-Casualty Insurance Committee will review the model act during its November 17 meeting, scheduled for 10:15 a.m. to 12:15 p.m.

Market Conduct

The NCOIL-NAIC *Market Conduct Surveillance Model Law* followed more than four years of study by NCOIL's Insurance Legislators Foundation (ILF) into the workings of market conduct regulations, ultimately offering suggestions for state-by-state change.

The model would establish a framework for insurance department market conduct actions, including processes and systems for identifying, assessing, and prioritizing market conduct problems that have

a substantial adverse impact on consumers, policyholders, and claimants. The new system would reduce inefficiency and redundancy found in the present regulatory scheme. NCOIL adopted the model on February 27, 2004, and amended it several months later, on July 16. The NAIC adopted the model on September 12, 2004.

Since that time, several states have introduced similar legislation, including Texas Senate Bill 14, enacted earlier this year. NCOIL legislators will examine differences between the NCOIL model and the Texas law when the State-Federal Relations Committee meets on November 18, from 3:30 to 5:00 p.m. A special Market Conduct Subcommittee, established earlier this year, will bring forward Texas-specific changes to the NCOIL-NAIC version, with an eye toward possibly amending the model act sometime in 2006.

S.B. 14, among other differences, limits market conduct examinations to only those insurers headquartered in a state, limits the information a commissioner may request from an insurer, and makes all market conduct examination results private and not available to the public.

On October 18, the U.S. Senate Banking,

EXPERTS

(continued from page 1)

should acknowledge that terrorism is a national security issue and should assume responsibility for making insurance widely available and encouraging its purchase. They also should make policy decisions that keep pace with new terrorist strategies; appreciate the reality of uninsured losses and the fact that legislators must ultimately step in to cover uninsured risks; craft a workable terrorism insurance program that appropriately spreads the risk of a terrorist attack; and adopt policies that encourages those at risk to implement mitigation measures.

In addition to academic experts,

those participating in the session included representatives of the Congressional Budget Office, Swiss Re, Willis, Westfield Corporation, Liberty Mutual Insurance Corporation, General Motors Corporation, and Risk Management Solutions.

NCOIL was an early supporter of a limited, temporary federal backstop for terrorism insurance and has urged Congress to reauthorize TRIA, noting that failure to do so could have devastating economic impacts throughout the nation.

Legislators will examine issues regarding extending TRIA on November 18, during the NCOIL Annual Meeting.

FACT FINDINGS: FUTURE OF FLOOD INSURANCE

Housing, and Urban Affairs Committee held a hearing, entitled "The Future of the National Flood Insurance Program," that looked at further reforms to the NFIP in light of Hurricanes Katrina and Rita. Issues key to the discussion include the financial solvency of the program, overdue implementation of 2004 reforms, and expanding and re-mapping flood insurance zones.

Those testifying represented the Federal Emergency Management Agency, the General Accountability Office, the Nat.'l Hurricane Center, the Consumer Federation of America, the Center on Federal Financial Institutions, the Insurance Information Institute, and academic and state floodplain manager perspectives.

Below are excerpts from opening statements.

Committee Chair Sen. Richard Shelby (R-AL)

"The claims payments that are likely to result from recent flooding bring to the forefront many of the structural weaknesses inherent in the design of the National Flood Insurance Program. For instance, a sizeable portion of properties continue to receive insurance rates that are far from being actuarially sound. I believe the continuation of subsidized rates, particularly for properties that have suffered repetitive losses and those that are vacation homes, represents a financial drain on the flood insurance fund while encouraging

families to remain living in harm's way.

As FEMA currently lacks the reserves to pay the expected claims from Hurricane Katrina, I believe bringing the insurance fund to financial solvency is necessary to assure that all claims are paid in a timely and fair manner, so that impacted families can rebuild their lives as quickly as possible."

Ranking Minority Member Sen. Paul Sarbanes (D-MD)

"I am also concerned about the handling of flood claims, especially since FEMA has not implemented many of the critical reforms Congress passed in response to problems after Hurricane Isabel. Hurricanes Katrina and Rita, and the recent floods in the Northeast, will place even greater strains on the flood insurance program than we have seen in the past. I gather the current estimates are that we will have over \$20 billion in flood insurance payouts, more than has been paid out in flood insurance claims since the program began in 1968."

Sen. Jim Bunning (R-KY)

"Despite it being almost 16 months since the President signed [the Bunning-Bereuter-Blumenaur National Flood Insurance Program Reauthorization Act], and 10 months after the statutory deadline, FEMA has still not implemented the consumer protections called for in the law. FEMA has not even put out those proposed regulations for comment....

After the [Hurricane] Isabel experience, we tried to learn from our mistakes and make the program more user-friendly before the next storm... Hopefully, our witnesses here can answer some of the 64 thousand dollar questions that have plagued this program."

"The claims payments that are likely to result from recent flooding bring to the forefront many of the structural weaknesses inherent in the design of the National Flood Insurance Program."

HURRICANE KATRINA

NCOIL Annual Meeting:

General Session

November 19, 8:00 to 9:45 a.m.

Meeting: Task Force on Terrorism/ Sub. on Nat. Dis. Legislation

November 18, 1:45 to 3:15 p.m.

SAVE THE DATE

The NCOIL Annual Meeting

**November
17 through 20,
2005**

**San Diego,
California**

AFTERMARKET CRASH PARTS TAKE STAGE AT NCOIL

On November 17, the NCOIL Property-Casualty Insurance Committee will consider a proposed *Resolution Regarding Motor Vehicle Crash Parts*, sponsored by the NCOIL Aftermarket Crash Parts Subcommittee. Following months of deliberation, the Subcommittee voted to recommend the following resolution to the full committee at the Annual Meeting, rather than pursue amendments to a draft *Certified Aftermarket Crash Parts Model Act (substitute amendment)*. However, in order that the full Committee may appreciate the Subcommittee's work, members also will bring forward, for the Committee's review, a set of

working amendments that the Subcommittee agreed to early on. More info is available at www.ncoil.org.

NCOIL first considered the model in 2001. In part, the model would endorse certification of aftermarket crash parts by third-party certifying entities, such as the Certified Automotive Parts Association; require disclosure as to use of such parts; deem that certified parts are of "like kind and quality" to car-company parts; provide that a person leasing or financing a vehicle could not be penalized for using a certified part; and identify the Act's purpose as creating a market incentive for the use of certified crash parts.

Proposed Resolution Regarding Motor Vehicle Crash Parts

WHEREAS, NCOIL recognizes that car company, certified, aftermarket, and other motor vehicle crash parts are essential to the crash repair industry; and

WHEREAS, use of these parts fosters a competitive environment that leads to lower repair costs and fewer totaled vehicles—to the benefit of consumers, collision repair facilities, and insurers; and

WHEREAS, the quality of repair parts in terms of fit and finish is essential to the benefit of consumers, collision repair facilities, and insurers; and

WHEREAS, thirty-one states have enacted legislation that, in general, requires consumer notification as to the kind of crash parts to be used by an auto body professional; and

WHEREAS, NCOIL has debated issues related to motor vehicle crash parts for more than ten years, and has heard substantial commentary from interested parties and considered, in-depth, two model laws;

NOW, THEREFORE, BE IT RESOLVED that NCOIL, in the pursuit of open competition, endorses the use of all kinds of crash parts when appropriate for motor vehicle repair; and

BE IT RESOLVED that NCOIL supports consumer awareness of the differences between types of crash parts, as well as notification regarding the kind of crash part for which an insurer will reimburse; and

BE IT RESOLVED that NCOIL believes that if an insurer requires, as a condition of reimbursement, the use of a certain type of crash part, then that insurer should stand behind the part(s) it requires; and

FINALLY, BE IT RESOLVED that NCOIL will distribute this resolution to state legislative and other leaders throughout the country, in order to help promote competition in the collision repair industry.

NCOILetter

Susan F. Nolan, Publisher/Editor

Candace Thorson, Managing Editor
Paul Donohue, Associate Editor
Erik Olson, Associate Editor

Colin Quin, Production Assistant
Vanessa Saari, Production Assistant
Robert Goodman, Business Manager

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.

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