

## 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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Len Brevik, Nat.'l Assoc. of Professional Insurance Agents

David Snyder, American Insurance Association

## NCOIL TO CONGRESS: DON'T IGNORE STATE PROTECTIONS OR RAISE HEALTHCARE COSTS

In a letter sent to U.S. House Speaker Nancy Pelosi and Senate Majority Leader Harry Reid, NCOIL reminded Congress of key consumer protections afforded by states, cautioned against consumers paying more for quality healthcare, and stressed that states are appropriate venues for reform.

The November 30 letter—transmitting a newly adopted set of NCOIL principles—said that “legislators—on the front lines and in the trenches in the states—share your concerns over rising healthcare costs. We, too, want affordable coverage and quality healthcare for our constituents. And we strongly believe that reform should not increase the cost of healthcare for consumers.” The letter, signed by presiding NCOIL President Sen. James Seward (NY), said that “states, acting as ‘laboratories of democracy,’ can provide the way to achieve such goals.”

The principles support greater anti-fraud coordination; a study of impacts of proposed federal reforms on other insurance lines; state ability to enter freely into compacts; and federal funds to promote state innovation.

The tenets reiterate long-standing NCOIL opposition to federal preemption of state regulatory authority, repeal of the McCarran-Ferguson antitrust exemption, and federally directed interstate health insurance sales. The principles—adopted by the Executive Committee at the NCOIL Annual Meeting—stress that reform shouldn't impose unfunded federal mandates on states.

At the meeting, the Committee also adopted a *Resolution Supporting the Role of Insurance Agents and Brokers in the Healthcare System*—which supports the right of agents and brokers to enroll consumers in any health insurance plans.

## U.S. HOUSE, NCOIL APPROVE CREDIT DEFAULT SWAP REGULATION

Under pressure to regulate a previously unregulated market, the U.S. House on December 11 adopted credit default swap (CDS) legislation as part of its approval of H.R. 4173, the *Wall Street Reform and Consumer Protection Act*.

The new CDS provisions require all standardized transactions between “major swap participants” to be centrally cleared and traded on an exchange or other electronic platform. The bill directs federal regulators to implement registration, capital, and margin standards, among other things.

CDS could not be regulated as insurance, the bill says, presumably preempting state efforts to implement NCOIL *Credit Default Insurance Model Legislation*. The model, adopted at the NCOIL Annual Meeting, would ban so-called “naked” CDS and establish a state regulatory framework for “covered swaps”—to be called credit default insurance (CDI).

NCOIL legislators, adopting the model after a year's work, said they knew Congress could ultimately preempt their efforts but that NCOIL could best protect consumers by moving ahead with state rules for the industry.

## NEW NCOIL MODEL LAW TARGETS AIRBAG FRAUD

Following special meetings and calls over the last five months, NCOIL on November 22 adopted a *Model Act Regarding Auto Airbag Fraud*—legislation that would protect consumers by establishing a comprehensive set of anti-fraud policy options. The Executive Committee adoption, which was unanimous, took place during the Annual Meeting.

Property-Casualty Insurance Committee Chair Rep. Charles Curtiss (TN) com-

mented, “As a result of this model, states will be better prepared to ensure the safety of consumers through disclosure, transparency, and tough penalties for those who commit fraud. The intensity of our discussions and the strong, ongoing participation of interested parties prove the importance of this issue and the need for swift state enactment of the model.”

The bill would set forth criminal penalties; would require de-

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## VIEW FROM THE HILL: A TALE OF TWO CHAMBERS

Was it the best of times or the worst of times on Capitol Hill? That depends on your view, but one thing is for sure: Congress was moving fast and Congress was moving slow. While the full House pushed forward with a wide-ranging overhaul, Senate Banking Committee members lagged behind and split into subgroups.

On December 11, the House approved H.R. 4173, the *Wall Street Reform and Consumer Protection Act*, by 223 to 202. The bill consolidates proposals adopted individually by the House Financial Services Committee. It would create a Financial Services Oversight Council—comprised partially of state insurance, securities, and banking regulators as non-voting members—to monitor for systemic risks and designate companies for heightened regulation.

The bill would establish a Consumer Financial Protection Agency that would centralize federal consumer protection authority. H.R. 4173 also would create a pre-funded dissolution regime to wind down failing non-bank financial firms and set forth regulation of credit default swaps (see *story page 1*), among other things.

But for insurance legislators what may be most controversial is a proposed Federal Insurance Office (FIO). The Treasury-based agency would analyze insurance data and develop federal policy on international insurance matters—and,

at the urging of optional federal charter (OFC) supporters, would require the FIO to study how to modify and improve U.S. insurance oversight. The FIO also would have authority over insurer redlining activity, among other things.

On December 10, NCOIL wrote House Speaker Pelosi (D-CA) reiterating NCOIL's adamant FIO opposition and offering input on other aspects H.R. 4173. NCOIL has asserted—and reaffirmed at its Annual Meeting in a newly adopted *Resolution Opposing Legislation to Create a Federal Insurance Office*—that an FIO would lead to an OFC.

In the Senate, lawmakers are too busy arguing over healthcare reform to focus on financial regulatory measures. Banking Committee Chairman Christopher Dodd (D-CT) postponed a markup of his expansive, controversial discussion draft, unveiled on November 10, after hearing from Committee colleagues that there may be a chance for bipartisan legislation. Senators have splintered off to work on compromise language. Results of the pow-wows will be known when the Committee reconvenes later this month.

With only a week left until the holiday recess, House members could be left in limbo as they await Senate action. With Senators still struggling to reach some agreement, it is all but assured that regulatory reform will carry into 2010.

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## NCOIL WORKERS' COMP MODEL COMBATS CONSTRUCTION INDUSTRY MISCLASSIFICATION

NCOIL took a strong stand against employee misclassification on November 22—unanimously approving a *Construction Industry Workers' Compensation Coverage Act* that would protect injured workers through transparency, accountability, and disclosure.

The model—adopted at the recent NCOIL Annual Meeting in New Orleans—would help states identify and deter abusive practices through strict coverage requirements up front and increased penalties and enforcement on the back end.

The bill mandates construction workers' comp with the exception of sole pro-

prietors on residential projects and homeowners and holds primary contractors liable. The model also establishes auditing procedures, penalties for insurance fraud, and enhanced state enforcement authority.

First proposed as a broad-based workers' comp bill addressing all employments, the model was narrowed to focus on construction—an area of widespread abuse—and was developed over seven conference calls with a variety of interested parties.

In 2010, NCOIL will examine use of independent contractors in the trucking and transportation industries.

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Visit [www.ncoil.org](http://www.ncoil.org)

for more details on **action taken** and **issues debated**

at the **NCOIL Annual Meeting!**

## POINT-COUNTERPOINT: FEDERAL INSURANCE OFFICE, HELP OR HARM?

The U.S. House on December 11 passed the Wall Street Reform and Consumer Protection Act, H.R. 4173, that among other things would create a Federal Insurance Office (FIO) in the Treasury charged with analyzing insurance data and developing federal policy on international insurance matters. NCOIL reaffirmed its opposition to an FIO—saying that it would be a first step to optional federal chartering—in a November 22 resolution (see View page 2). The writers below answered the following: *Would the proposed FIO help or harm insurance oversight?*

### Federal Insurance Office Would Preempt Successful State Oversight

By Len Brevik

The Federal Insurance Office Act of 2009 (H.R. 2609) has become the latest platform for the ongoing debate over whether the business of insurance should be regulated by the states, as it is now, or by the federal government.

This bill authorizes a federal insurance office within the Treasury Department, led by an unconfirmed appointee of the Treasury Secretary empowered to override existing law. This is a recipe for disaster. State legislators have compiled an excellent track record of success; to transfer that authority to federal authorities with a proven record of failure in the regulation of financial services is unwise. Such a federal power grab is especially unjustified, because the real reason it is being advanced is to unfairly benefit a handful of major players in financial services at the expense of current market participants.

This bill will not achieve its stated goal of making insurance regulation more efficient, but rather will create confusion in the marketplace. We are also concerned that state-based insurer solvency requirements could be eroded under such a federally-dominated regulatory regime. The reserves of the insurance industry must never be expropriated to pay for losses incurred due to bad decisions in the banking and securities sectors.

Insurance companies are solvent today because of the diligent, effective and efficient oversight provided by our national system of state-based insurance regulation. The Main Street insurance agents who are members of PIA strongly support this system. Rather than create a new federal insurance czar and bureaucracy within the Treasury Department,

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### Insurance Regulatory Modernization—Doing the Right Job, Right

By David Snyder

Consumers are best served by a healthy, competitive, private insurance market that is effectively and efficiently regulated. But despite positive efforts, the current U.S. regulatory system has fundamental gaps in both its effectiveness and its efficiency. As the Administration succinctly stated: “Our current insurance regulatory system is highly fragmented, inconsistent and inefficient.”

The proposed Federal Insurance Office (FIO) would close some gaps, by providing insurance expertise at the federal level, where other financial services are regulated and where there will likely be enhanced systemic risk oversight, and by giving the U.S. a strong voice in international insurance negotiations. Current state-based regulation cannot Constitutionally provide that voice, which is urgently needed because of the increasing regulatory standards and directives issued by international organizations and major markets. And, a stronger U.S. representative might also assist U.S. P/C insurers to break down foreign trade barriers that cost them jobs and \$40 billion annually.

There are other issues that the FIO proposal does not address, including inefficiencies and unique regulatory aspects capable of disrupting well functioning markets. For this reason, comprehensive insurance regulatory modernization is still needed.

The U.S. insurance regulatory system lacks the efficiency needed for a modern, vigorous, globally competitive insurance system. For example, only 2 of the 15 model laws and regulations cited by the NAIC to the International Monetary Fund as proof that current U.S. regulation complies with international standards, have actually been adopted nationwide. Prior approval rate and form regulation—which our system clings to although other countries reject it—continues to disrupt mar-

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**“Current state-based regulation cannot Constitutionally provide [an international] voice, which is urgently needed...”—AIA**

# NCOILetter

Susan F. Nolan, Publisher/Editor

Candace Thorson, Managing Editor

Mike Humphreys, Associate Editor

Jordan Estey, Associate Editor

Simone Smith, Production Assistant

Laurie Dingmon, Business Manager

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## Federal

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Congress should continue to work with the states on ways to improve the system, not bifurcate and preempt it.

*Len Brevik is Executive Vice President and CEO of the National Association of Professional Insurance Agents (PIA) in Alexandria, Virginia.*

## Insurance

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kets, deprive consumers of choice, raise costs and force insurers to lose business. While the FIO does not solve all of these problems, it could at least begin to address some of them.

*Mr. Snyder is VP & Assoc. General Counsel for Public Policy at the American Insurance Association (AIA) in Washington, DC.*

## NEW NCOIL

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tailed record-keeping; and would mandate disclosures by repair facilities, law enforcement, and persons trading or selling a motor vehicle, among other things. It also would require repair facilities to place a permanent label on a dashboard disclosing salvaged airbag use and would encour-

age state efforts to insure use of only salvaged airbags that meet specific criteria.

Due to time constraints, the P-C Committee deferred its review of a separate model act—on aftermarket crash parts and auto body steering—until the March 5 through 7 NCOIL Spring Meeting near Charleston, SC.

Register at [www.ncoil.org](http://www.ncoil.org) for the **NCOIL SPRING MEETING** and **secure rooms in host hotel at exceptional prices!**  
 March 5 through 7, 2009 —  
 Isle of Palms, near **Charleston, South Carolina**

**NCOIL**  
*...for the states*

D.C. Office: 601 Pennsylvania Avenue N.W., Suite 900, South Building  
 Washington, D.C. 20004  
 National Office: 385 Jordan Road  
 Troy, NY 12180

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