



NCOILETTER

September 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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U.S. HOUSE OPTIONAL FEDERAL CHARTER BILL TO INCLUDE LIFE, P-C LINES

At a September 12 meeting of the American Bankers Insurance Association (ABIA), Rep. Ed Royce (R-CA) announced his intention to introduce an optional federal charter (OFC) bill in the U.S. House of Representatives before Congress adjourns in October. Though he did not say when to expect the bill, he did reveal that it would cover both life and property-casualty insurance and would be substantially similar to S. 2509, the *National Insurance Act of 2006*, sponsored by Sens. John Sununu (R-NH) and Tim Johnson (D-SD).

According to Royce, who serves on the House Financial Services Committee, a broad-based bill that addresses more than life insurance would be more likely to succeed, as it would benefit from wider industry backing. Royce compared this to the unlikely odds, in his opinion, of enactment of a draft State Modernization and Regulatory Transparency (SMART) Act, which he said suffers from narrow support.

The SMART Act was first introduced in 2004 as a discussion draft by Reps. Michael Oxley (R-OH) and Rich-

ard Baker (R-LA). The proposal has taken a back seat to OFC discussions, though an element of SMART, regarding surplus lines and reinsurance, has been adopted by the House as stand-alone legislation (see *story page 3*).

An optional federal charter would allow a company to opt-out of state-based insurance regulation in favor of federal oversight. Advocates say federally chartered insurers would continue to pay state premium taxes and contribute to state guaranty funds, while also supporting a new federal mechanism. State legislators and regulators have expressed significant disbelief that funds would continue to flow their way once companies chose a federal charter.

Royce says the need for an OFC relates to the nature of the insurance market. "Without an optional federal charter," he said, "large states like California and New York can act as de facto federal regulators....Congress has the ability to create a national insurance marketplace. I believe the United States is one market and that it should be treated as one mar-

(continued on page 4)

ON THE AGENDA

Many critical insurance public-policy issues are scheduled for consideration at the November 9 through 12 NCOIL Annual Meeting, including, among others:

- federal efforts to preempt insurance oversight
- market conduct surveillance reform
- a national mega-catastrophe program (see *story page 2*)
- life settlements and stranger-owned transactions
- pharmacy benefit managers (PBMs)
- statewide building codes
- guaranty fund reform
- professional employer organizations (PEOs)
- federal pension and long-term care partnership laws
- reinsurance collateral rules for domestic and non-U.S. reinsurers

CATASTROPHE PROPOSALS TAKE STAGE AT NCOIL, IN CONGRESS

Lawmakers anticipate that the NAIC Catastrophe Insurance Working Group will have adopted its proposal prior to the NCOIL conference and that strong regulator attendance will contribute to the Subcommittee's deliberations.

Legislators at the November NCOIL Annual Meeting will begin in-depth consideration of a proposed mega-catastrophe plan that would promote a national approach to disaster management. On Thursday, November 9, the Subcommittee on Natural Disaster Insurance Legislation will convene from 3:00 to 4:30 p.m. to discuss what is contemplated as a joint NCOIL-National Association of Insurance Commissioners (NAIC) work product.

Lawmakers anticipate that the NAIC Catastrophe Insurance Working Group will have adopted its proposal prior to the NCOIL conference and that strong regulator attendance will contribute to the Subcommittee's deliberations. NAIC is expected to submit the latest draft of the proposal in time for the NCOIL 30-day deadline.

The plan would rest primary responsibility with consumers and the private insurance industry. It would call for a new Federal Natural Disaster Catastrophe Commission to evaluate whether public-sector involvement would be called for and, if so, what triggers might be appropriate. Optional state or regional catastrophe funds and a federal reinsurance program would follow should the Commission see a need for public participation.

The proposal would allow for creation of tax-deferred catastrophe reserves and would strongly promote mitigation efforts, including effective statewide building codes and land-use management. It is the latest iteration of an earlier NAIC catastrophe proposal and represents collaboration between Sen. Steven Geller (FL), NCOIL Subcommittee Chair and Past President, and Commissioner Kevin McCarty (FL), NAIC Property and Casualty Insurance Committee Chair.

In Congress, the Subcommittee on Capital Markets, Insurance, and Government-Sponsored Enterprises of the House Financial Services Committee held a September 13 hearing to examine issues related to the availability and affordability of coastal property coverage. The session, entitled *Stabilizing Insurance Markets for Coastal Consumers*, included testimony from Commissioner McCarty, as well as from Lloyd's America, the Independent Insurance Agents & Brokers of America (IIABA), the Reinsurance Association of America (RAA), the Property Casualty Insurers Association of America (PCI), the American Insurance Association (AIA), the National Association of Mutual Insurance Companies (NAMIC), and Greater New Orleans, Inc.

In addressing the House Subcommittee, McCarty commented, in part, on the correlation between rate regulation and rising premiums; access to, and pricing of, reinsurance; and consumer consequences in Florida and across the country. He discussed the success of the Florida catastrophe fund in stabilizing his state's market, as well as the need for a comprehensive national approach, similar to that envisioned in the draft NAIC-NCOIL plan.

Industry representatives, in general, were less enthusiastic about a public role in catastrophe preparedness, asserting that the private market can provide the coverage.

The NCOIL Annual Meeting also will feature a November 11, panel discussion entitled *Reinsurance: Can It Meet the Needs of Consumers in Crisis?* that will look at, among other things, how the market has responded to recent disasters, what lies ahead for policyholders, and what states and the federal government might do to address market woes. Panelists include representatives of Benfield, Swiss Re, AIA, Allstate, and ProtectingAmerica.Org. The session will run from 8 to 9:30 a.m.

U.S. HOUSE APPROVES SURPLUS LINES, REINSURANCE BILL

In an expedited process on September 27, the House of Representatives adopted a surplus lines and reinsurance regulatory reform bill and left open the slim possibility of Senate action following the November elections.

Swift approval of H.R. 5637, the *Nonadmitted and Reinsurance Reform Act of 2006*, was somewhat unexpected following the recent remarks of Rep. Chris Cannon (R-UT), chair of the House Judiciary Committee's Subcommittee on Commercial and Administrative Law. During a September 19 Committee hearing, Cannon suggested that quick House movement on the bill was unlikely due to the fluidity of the Congressional calendar.

The 12-page legislation has been described as the "low-hanging fruit" of the much more comprehensive State Modernization and Regulatory Transparency (SMART) Act, first introduced in 2004 as a discussion draft by Reps. Michael Oxley (R-OH) and Richard Baker (R-LA). Progress on the SMART Act has stalled as interest in the Senate, and now apparently in the House, in optional federal charter (OFC) legislation that would address both life and property-casualty insurers has picked up steam (see story page 1).

H.R. 5637 would give the home state of a surplus lines insured sole

regulatory authority, including responsibility for collecting and distributing premium taxes and licensing brokers. Under the bill, states could create an interstate compact or other mechanism to facilitate this activity.

The proposal would require that states adopt the eligibility requirements for surplus lines insurers that are set forth in the National Association of Insurance Commissioners (NAIC) *Nonadmitted Insurance Model Act*. The bill would exempt sophisticated commercial insurance purchasers from conducting the standard "due diligence" search for coverage in the admitted market before turning to surplus lines.

Regarding reinsurance, H.R. 5637 would assign solvency oversight to a reinsurer's state of domicile and would limit the ability of other states to collect financial information on the company. The measure would prohibit non-domiciliary states from curtailing or preempting a reinsurer's contractual agreements.

The Financial Services Committee approved H.R. 5637 on July 26; the bill was discharged from the Judiciary Committee on September 22. The Senate has yet to consider the issue.

NCOIL will address items related to the bill, as well as pending development of a surplus lines compact, during the NCOIL Annual Meeting in November.

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ON FRIDAY, NOVEMBER 10, DURING THE NCOIL ANNUAL MEETING,
THE STATE-FEDERAL RELATIONS COMMITTEE WILL CONSIDER
AMENDMENTS TO A FEBRUARY 2004 NCOIL

MARKET CONDUCT SURVEILLANCE MODEL LAW.

THE SESSION WILL BE HELD FROM 3:15 TO 5:30 P.M.

PROPOSED AMENDMENTS ARE AVAILABLE ON THE NCOIL
WEB SITE AT WWW.NCOIL.ORG.

SAVE THE DATE

NCOIL Annual Meeting & Seminar

November 9-10, 2006

Napa Valley, California

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The Senate bill, S. 2509, was introduced in April. It would create an Office of National Insurance within the Department of Treasury that would have financial regulatory and enforcement authority over federally chartered companies. The bill is in the Senate Committee on Banking, Housing, and Urban Affairs.

NCOIL has staunchly opposed this and other federal preemptive initiatives on the grounds that they

would nullify critical state-initiated consumer safeguards, deny important consumer access and recourse in problem times, and ultimately impose on the public the costs of a needless federal bureaucracy—all without consumer demand. In bifurcating oversight, an OFC would distort state insurance markets and create unlevel playing fields.

NCOIL will report on the issue at its November 9 through 12 Annual Meeting in Napa Valley, California.

BUSH ISSUES ORDER TO INCREASE HEALTH CARE TRANSPARENCY

In an effort to lower the costs of health care by increasing price competition, President Bush late last month signed an executive order regarding *Promoting Quality and Efficient Health Care in Federal Government Administered or Sponsored Health Care Programs*.

The order, which applies only to the federal health plans, requires federal agencies to compile health care cost and quality data and to share it with each other and consumers.

Among other things, federal agencies will be required to use interoperable information technology (IT) systems and to ensure in contracts with outside entities that health IT systems meet certain standards. Agencies also must implement programs to measure the quality of services provided to beneficiaries, make price information available to beneficiaries, and identify and encourage high-quality health care approaches.

Federal programs affected by the order include Medicare, operated by the Department of Health and Human Services (HHS); the Federal Employees Health Benefit Program, administered by the Office of Personnel Management; the health care program operated by the Depart-

ment of Veterans Affairs; and TRI-CARE, the Department of Defense's managed health care program for active duty military, active duty service families, retirees and their families, and other beneficiaries.

The Bush administration believes that the move represents a major change in the way health care is delivered and may lead, by example, to future reform efforts at the state and federal levels.

The executive order precedes congressional information technology legislation that would codify an Office of the National Coordinator of Health Information Technology. On July 27 of this year, the House passed H.R. 4157, the *Health Information Technology Promotion Act*, that also would increase the number of billing codes used by health care providers and would provide an exemption from anti-kickback laws for hospitals that offer health care IT software and hardware to individual physicians.

The Senate passed a less comprehensive bill, S. 1418, or the *Wired for Health Care Quality Act*, on November 18, 2005.

Health and Human Services Secretary Michael Leavitt has noted that the federal government pays for almost 40 percent of all health care costs in the nation.