Digital Insurance

Sustaining a strong U.S. insurance market 80 years later

By Jon Godfread and Pamela Hunter
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Reflecting on 1945, we recall major events like the end of World War II and President Franklin D. Roosevelt's untimely death — moments that shaped a generation. Yet, within the insurance industry, we also mark another significant but lesser-known milestone from that year — the passage of the McCarran-Ferguson Act, signed 80 years ago this spring.

The journey to this Act began in 1942 when the Department of Justice, responding to concerns of longstanding insurance abuses, investigated the South-Eastern Underwriters Association. A Georgia grand jury indicted them for conspiring to fix premium rates and monopolizing markets, charges initially dismissed by the district court on the grounds that insurance was not commerce under the Commerce Clause.

This view was abruptly reversed in 1944 by the Supreme Court in United States v. South-Eastern Underwriters Association, when the Court ruled that insurance transactions across state lines constituted interstate commerce, subject to federal regulation — a seismic shift overturning nearly 80 years of precedent.

Congress introduces the McCarran-Ferguson Act

This upheaval prompted a strong reaction from state insurance legislators and regulators, who understood that a change to a federally regulated insurance market would both harm consumers and weaken markets. In response, Congress passed the McCarran-Ferguson Act in 1945, which set forth that "the business of insurance" shall be regulated by the states without interference from federal activity unless the state laws conflicted with federal laws on federal matters like national security, or Congress enacts a specific insurance law, such as the Affordable Care Act. As we commemorate the 80th anniversary of the McCarran-Ferguson Act, it is vital to understand how this legislation has safeguarded state insurance systems and highlight its ongoing importance in providing financial security and ensuring the economic stability of Americans.

In passing the McCarran-Ferguson Act, Congress knew that insurance regulatory authority should be as close to the consumer as possible, allowing state legislators and regulators to protect consumers in ways that are most directly relevant to their lives and localities. Today, consumers can directly contact their state's insurance department for assistance with complaints or issues regarding coverage, and state regulators directly mediate relationships between consumers and insurance companies.

State-based regulation also fosters competition and innovation in insurance markets, which benefits consumers. When states have the freedom to develop their own insurance laws, they can create environments where insurers are encouraged to compete for business by offering better products or more affordable rates. While early critics of McCarran-Ferguson thought the law would result in price-fixing and higher costs for consumers, it has turned out to be the opposite. State-based insurance regulation has created the strongest, safest, and most successful insurance market in the world.

How state regulation works

A 'one-size-fits-all' model for insurance regulation cannot address the variety of state needs. As we have seen this year, each state has its own unique risks, whether it is hurricanes in Florida, wildfires in California, or tornadoes in Oklahoma. State legislators and regulators must craft flexible insurance solutions tailored to their consumers and create competitive markets that can better respond to the needs of local communities.

State legislatures have consistently implemented exciting reforms that encourage new kinds of insurance products, such as microinsurance, insurance designed for specific sectors, or new insurance solutions to meet modern risks, like cyber insurance. This partnership between state legislators, regulators, and their constituents has resulted in the ability to respond to emerging issues that would be difficult to address quickly at the federal level. States have the power to enact laws that focus on safeguarding consumers from unfair practices, such as excessive premiums, unjustified claim denials, or discriminatory pricing, all in a way that reflects the local needs of each state's residents.

While the 50 states serve as "Laboratories of Democracy," their diversity does not make national coordination of insurance regulation impractical. Collaboration among state regulators and legislators is crucial for setting standards and regulatory frameworks that ensure robust markets and consumer protection. Organizations like the National Council of Insurance Legislators (NCOIL) and the National Association of Insurance Commissioners (NAIC) facilitate policy coordination at a national level. Through the cooperation between these entities, the United States has established a system of insurance regulation with legislative oversight that is national in scope, yet not federal, maintaining the necessary balance between uniformity and state-specific needs.

Today, the insurance industry continues to evolve, shaped by emerging risks, advancing technologies, and new challenges. Yet, the McCarran-Ferguson Act remains the foundational element of U.S. insurance regulation and the outcomes produced by this system are the envy of the world. Eight decades after its enactment, state-based insurance regulation remains the most effective and adaptive framework for navigating the complexities of the industry and as we move forward, we are confident that this system will continue to strengthen, innovate, and safeguard consumers nationwide.

Jon Godfread
North Dakota Insurance Commissioner and President, National Association of Insurance Commissioners

Pamela Hunter
President, National Council of Insurance Legislators

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