

## **NAIFA Skeptical About FTC Regulation Of Insurance**

**BY ARTHUR D. POSTAL**

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A provision in the new insurance industry antitrust exemption bill could expand the authority of the Federal Trade Commission.

One federal law, the McCarran-Ferguson Act, now exempts the "business of insurance" from federal antitrust laws to the extent that insurance is regulated by the states.

Another federal law, adopted in 1980 to curb an FTC commissioner who wanted to conduct a study comparing life insurance policies to mutual funds, prohibits the FTC from investigating insurance companies unless it is authorized to do so by Congress.

The new insurance industry antitrust bill, S. 618, would give the FTC and the U.S. Department of Justice joint antitrust enforcement authority over the insurance industry, and it also would eliminate the bar that keeps the FTC from investigating insurance companies.

"The issue of whether to amend the McCarran-Ferguson Act should be considered along with proposals to create an optional federal charter ... regulatory system for both the property-casualty and life insurance industries," says Michael Kerley, a senior vice president at the National Association of Insurance and Financial Advisors, Falls Church, Va., referring to efforts to give insurers a choice between state and federal regulation.

"While NAIFA remains neutral on the OFC proposal, supporters of OFC base their support on the premise that a federal regulator deemed helpful to the insurance industry, namely an independent regulator within the Department of the Treasury, would be created," Kerley says. "This has worked for national banks, for example."

But "NAIFA does not believe that elevating the FTC as the regulator of the business of insurance is preferable to the regulatory system now established by the states," Kerley says.

NAIFA "does not view this federal bill in any way to be a positive 'back door' approach to achieving the same results as those expected from the optional federal charter proposals that have been introduced in Congress in the past year," Kerley says.

The American Council of Life Insurers, Washington, a group that has made setting up an OFC system a legislative priority, also has declined to embrace S. 618.

“On repeal of McCarran-Ferguson legislation, we believe this issue should be addressed within the context of comprehensive insurance reform,” says ACLI spokesman Jack Dolan.

S. 618 is somewhat different from S. 4025, the insurance industry antitrust exemption bill that was introduced in September 2006 by Sens. Arlen Specter, R-Pa., and Patrick Leahy, D-Vt.

Specter then was chairman of the Senate Judiciary Committee and Leahy was the most senior Democrat.

Leahy, who is now chairman of the Judiciary Committee, and Specter, who is now the ranking minority member, have joined with Sen. Harry Reid, D-Nev., Senate majority leader, and Trent Lott, Senate minority whip, to introduce S. 618.

“Federal oversight would provide confidence that the industry is not engaging in the most egregious forms of anti-competitive conduct, price-fixing, agreements not to pay and market allocations,” Leahy says in a statement about S. 618. “Insurers may object to being subject to the same antitrust laws as everyone else, but, if they are operating in an honest and appropriate way, they should have nothing to fear.”

In addition to the provision eliminating current restrictions on the role of the FTC, one big difference between S. 4025 and S. 618 is that S. 618 does not provide safe harbors that would permit insurers to share loss data or use uniform forms.

Giving the FTC and Justice Department jurisdiction over competition in the insurance industry “would in fact supplant the state laws that currently exist in all states,” Kerley says.

Life insurers rarely share loss data, but new restrictions on sharing loss data could cause big problems for smaller property-casualty insurers, Kerley says.