

Many Insurance Issues Facing Congress

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Having kicked most critical decisions down the road, Congress will have to navigate a very crowded highway, including one cluttered with a number of insurance issues, in a short period of time when it returns to work on Sept. 8.

Most importantly, it may take the historic step of becoming involved in hands-on insurance regulation for the first time in the nation's history through passage of legislation creating an Office of Insurance Information within the Treasury Department.

The legislation, the Insurance Information Act, H.R. 5840, may be taken up by the full House relatively soon after Congress returns, according to industry lobbyists. They speculate that it could be taken up on the suspension calendar, which requires a two-thirds majority for passage, and which requires bipartisan support.

Action was delayed after Rep. Jackie Spier, D-Cal., voiced concerns about whether the legislation would inadvertently pre-empt Proposition 103, a 1988 ballot initiative that mandates a prior approval auto insurance rating system for California. On the property-casualty side it rolled back auto rates, and on the life side it repealed the state anti-rebating law.

Harvey Rosenfeld, president of Consumer Watchdog, a nonprofit group based in Los Angeles, said he has also voiced concerns about the bill to House and House Financial Services Committee leaders because of its potential impact on Prop 103.

"Our grave concern is that in the form that would have been taken to the House floor in late July it would authorize a pre-emption of voter-approved regulation of insurance in California and regulation in other states."

Another concern, he said, is that the provisions in the bill "through which a pre-emption to state law is challenged are illusory."

"The bill contains a lot of procedures that apparently were intended to protect against unfair or improper pre-emption, but they were not in our view effective in preventing pre-emption that is unjustified," he explained.

He said he is still in talks with House FSC officials about his concerns, but would not comment further.

The National Association of Insurance Commissioners discussed the issue at a meeting recently in Chicago, with commissioners saying they are working with staffers at the House Financial Services Committee on language acceptable to the commissioners.

Roger Sevigny, NAIC president-elect and New Hampshire insurance commissioner, said that the NAIC is in talks with committee staffers on language that defines an agreement in the bill, H.R. 5840.

NAIC considers crafting of the definition important because it would limit authority to that which federal regulators already have and would not pre-empt current state authority.

At a commissioners' meeting, Sevigny also reiterated the NAIC's "vehement" opposition to an optional federal charter proposal.

Both the American Council of Life Insurers and the National Association of Insurance and Financial Advisors are supporting the bill.

And passage of legislation reforming and modernizing the surplus lines market has a 50-50 chance of passage, according to industry lobbyists. The House passed the bill, the "Non-Admitted and Reinsurance Reform Act" of 2007, H.R. 1065, in June 2007.

Companion legislation is pending before the Senate Banking Committee. The bill was introduced in the Senate by Sen. Martinez and Sen. Bill Nelson, D-Fla., as S. 929 in late February 2007, but it has not yet been acted on in the Senate. The bill also has strong support from Sen. Jack Reed, D-R.I.

Additionally, the House at least is seen as acting on legislation that would re-establish the National Association of Registered Agents and Brokers. The bill is H.R. 5611.

Congress must deal with this agenda, along with a host of other issues, in 15 business days if it hopes to meet its goal of adjourning by Sept. 26.

Steven Brostoff, a spokesman for the ACLI, said the legislation creating the OII may pass the House and could be taken up in the Senate as part of a package that would include legislation reforming and modernizing the surplus lines/reinsurance industries.

Brostoff said action on legislation creating an optional federal charter is not expected until next year.

The ACLI says the Senate Aging Committee may conduct a hearing before Congress adjourns on long term care consumer protection issues, similar to the one held by the House Energy and Commerce Subcommittee on Oversight and Investigations on July 24.

The ACLI also expects legislation providing technical corrections to the 2006 Pension Protection Act to be enacted in this Congress. In addition, there likely will be ongoing discussions on ways to expand retirement savings, particularly for small businesses, Brostoff said, although he was unclear whether any such legislation would pass this year.

Jeff Taggart, president of NAIFA, said the trade group supports legislation creating an OII in Treasury, and also supports legislation reestablishing NARAB.

“As to how fast Congress will act on creating an OII, that remains to be seen,” he said.

He also noted that NAIFA’s National Council is scheduled to vote Sept. 10 on a resolution voicing support for creation of an optional federal charter. “Hopefully, after Sept. 10, we will be able to say that NAIFA supports the concept of an OFC,” he said.

He said creation of an OII and re-establishing NARAB “together address two of NAIFA members’ primary concerns. With respect to NARAB, it will help agents obtain multiple state licenses more easily and quickly,” Taggart said. “With regard to OII, it will fill a void at the highest level of government about the insurance industry and its important role in the inner workings in our economy,” he said.

—*Jim Connolly contributed reporting to this article.*