

Congress may take insurance regulation from states

By **ALBERT B. CRENSHAW**
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State insurance regulators nationwide "are now fully prepared to go before their various legislative committees with recommendations for a system of insurance law which shall be the same in all states," the head of the National Association of Insurance Commissioners said confidently.

Unfortunately, he said it in 1871.

And now?

"We can deliver before 2008," another leader of the group told a House subcommittee in March.

Americans who move from place to place learn — sometimes to their delight, other times to their horror — that insurance is a quirky affair, regulated differently by each state. The auto insurance required in one jurisdiction, for instance, may fit right into the family budget, while in another it might mean no pizza or movies for a month.

This has been the American system, especially since 1945, when Congress formally handed over the authority via the McCarran-Ferguson Act. Since then it's been an article of faith in the insurance industry that state regulation is the most desirable system.

But now many in the industry say it's time for fundamental change — and these voices are being heard on Capitol Hill. Reaching basic agreement on a new structure certainly hasn't become any less complicated in the past 133 years, nor is there agreement on what such a basic change might mean for consumers.

Critics say the system stifles competition and builds in inefficiency and high cost, while reform would give consumers greater choice and better prices.

Consumer groups agree but worry that change could significantly weaken controls, leaving Americans with soaring premium costs, abusive sales practices and unjustified insurance cancellations.

Congress is now studying whether to step in. The Supreme Court long ago ruled, in the case that prompted McCarran-Ferguson, that insurance is interstate commerce, subject to federal authority. But exactly how much authority Washington should exert is proving no easy decision.

What Congress eventually decides is of major importance to both industry and consumers. Huge amounts of money are at stake.

Insurance premiums in 2002, the most recent data available, totaled more than \$885 billion — \$508 billion for life and health insurance and \$377 billion for property.

"There are three camps right now," said Robert Rusbult, head of the Independent Insurance Agents & Brokers of America, a trade group known as the Big I. Some want the status quo, some want the option of federal regulation, and some want to reform the state system by putting federal pressure on state legislatures, he said.

The prospect of federal intervention in some form has touched off a classic Washington-style round of jockeying for position as industry players try to shape the debate to favor their interests. Even referring to insurance as one industry is slightly misleading. Each component has its own set of concerns and priorities. For example, automobile and homeowner insurers seek to curtail or eliminate state regulation of their prices. Writers of life insurance have different issues.

The insurance bloc breaks down even further in the matter of size — the enormous firms that operate nationwide and the small outfits with a local or regional focus.

Many life insurers and big property-casualty companies have endorsed what they call an optional federal charter. That system would resemble bank regulation, in which companies would have the option of being regulated by Washington or the states.

This prospect frightens small companies, particularly property insurers. If they do business in their home state, guided by state regulations, they might well be competing against large national players playing by looser federal rules. Small companies want to preserve the states' sway over insurance, although they agree local systems could be made easier and more efficient. This position is supported by the National Association of Insurance Commissioners, who are, of course, the state regulators whose future is at issue here.

The capital markets and insurance subcommittee of the House Financial Services Committee has held 15 hearings over the past three years on the subject. Last month, Michael Oxley, R-Ohio, chairman of the full committee, rejected pure federal regulation, dual regulation and an optional federal charter. Instead, he said in a speech to the NAIC that he favors a hybrid system in which states would still be primary regulators but with "a federal-state partnership to coordinate our insurance policies and uniformity."

Oxley's "road map" was quickly endorsed in principle by most in the industry, not surprisingly, because in principle at least it promises to give the NAIC, insurance agents and carriers what they want. It promises continued regulation by the states, which the NAIC wants; more uniform and streamlined licensing for agents, which they want; more efficient approval of new products and an end to repetitious state investigations of company behavior, which life insurers particularly want; and an end to what Oxley called "the travesty of price controls" imposed by states, which the property insurers want.

An Oxley aide said the process of writing a bill is just beginning, and its exact form is far from set.

Whatever emerges is certain to be controversial. Many insurers don't see how Oxley's plan can deliver what it promises — while consumer groups worry it just might do that.

J. Robert Hunter, director of insurance for the Consumer Federation of America, told the capital markets subcommittee that the road map sacrifices consumer protections for efficiency. He told the panel that fear of federal regulation has already led many states to deregulate commercial insurance.

"In the rush to head off federal intervention, states have left very small businesses, which are frequently not sophisticated buyers of insurance, exposed to abuse," he said.

Key pressure for a large federal role is coming from life insurers and large property carriers, which operate in most or all states. Such carriers say dealing with one national regulator would be simpler and easier than 50-plus state-level ones.

These big carriers have also watched banks with envy since the 1990s. That's when Congress allowed banks to offer additional financial services, allowing them to push new products to market in a matter of weeks while state regulators took months or years to approve insurers' offerings.

Those favoring the federal option have derided state regulators, pointing to petty bureaucratic requirements that go to the color of paper insurers must use in submitting materials for approval, and whether staples are required or forbidden.

"We know we have some problems in this regulatory system," NAIC President and South Carolina Director of Insurance Ernst Csiszar acknowledged to the capital markets subcommittee last month. But he said an optional federal charter would be "the worst of all worlds."

He and others fear such an option would allow companies to play state and federal regulators against one another, touching off a race to the bottom as regulators seek to keep companies from jumping back and forth to whichever standard is more lenient.

NAIC officials argue that states are working vigorously to clean up their inefficiencies.

That seems to alarm some segments of the industry. Whereas once state regulation was often a cozy arrangement in which commissioners came from the industry and went back to it — a disincentive for doing anything the industry would call unreasonable — politicians have found in recent years that being a tough insurance regulator can be a steppingstone to higher office. Congress is now sprinkled with former insurance commissioners.