



The AAICP Compass

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National Insurance Act of 2006 Would Provide Insurers/Adjusters with Option for Federal Charter

By Darryl Nirenberg and Scott Thompson

On April 5, 2006, Senator John Sununu (R-NH) and Senator Tim Johnson (D-SD) introduced S. 2509, the National Insurance Act of 2006. The bill would enable insurance companies, as well as the independent claims adjusters who work with them, to opt for a Federal charter instead of a state one. The bill has been referred to the Senate Banking Committee, on which both Senator Sununu and Senator Johnson serve. Senate Banking Committee Chairman Richard Shelby (R-AL) is expected to hold hearings on the measure, possibly within the next month.

Under the terms of S. 2509, if they opt for a Federal charter, insurance companies and the independent adjusters working with them could operate across state lines without having to be licensed by any state jurisdiction. The bill would create a new Office of National Insurance within the Department of the Treasury for those "National Insurers" and "National Agencies" that choose to be regulated at the Federal level. Sununu-Johnson lists others who undertake related "insurance operations" as eligible for Federal licensing as well, such as independent adjusters working with a National Insurer.

The National Insurance Act would provide several enforcement powers, comparable to those found at the state level, to the Commissioner of National Insurance, the Presidentially-appointed and Senate-confirmed head of the Office of National Insurance. In cases of fraud or other serious wrongdoing, as part of the Office of National Insurance's oversight responsibilities, the Commissioner could revoke or suspend an insurer's Federal license, require the sale of assets or the replacing or suspension of management officials, and impose civil fines. The Commissioner also could place an insolvent National Insurer or National Agency into

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receivership. To ensure adequate protection for policyholders, a Federally chartered insurer would have to belong to a state guaranty association or the newly created National Insurance Guaranty Corporation.

If the Sununu-Johnson legislation were to be amended to allow independent adjusters to opt for a Federal charter even when the insurers they work with do not, Federally-licensed adjusters should expect the Commissioner's enforcement authority described above to apply to them as well. For adjusters choosing the Federal option, the Commissioner's oversight would take the place of the state-level enforcement authority to which they are currently subject.

It is important to note that, even for those companies choosing Federal regulation, certain state laws still would apply if this federal legislation were enacted into law. Insurers (and, where applicable, adjusters) could not, simply by choosing a Federal charter, opt out of state tax,

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unclaimed property, assigned insurance risk plan, and mandatory insurance coverage laws.

The insurance industry is split on S. 2509. Larger insurers and brokers tend to see a Federal regulatory option as a way to increase efficiency and lower transaction costs for companies operating in a national market. On the other hand, state insurance commissioners, smaller insurers, and independent agents largely oppose the optional Federal charter concept, believing it

to be too bureaucratic to achieve meaningful reform across state lines. Some of the industry groups that oppose Sununu-Johnson instead favor the State Modernization and Regulatory Transparency (SMART) Act, draft legislation being developed by House Financial Services Committee Chairman Michael Oxley (R-OH) and Financial Services Insurance Subcommittee Chairman Richard Baker (R-LA). If enacted, the SMART Act would employ various incentives to encourage states to adopt model insurance codes in an attempt

to increase compatibility or regulation across state lines.

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I'm Licensed, but My Adjusting Firm Isn't... Should it Be?

Should the adjusting firm where you work as a property and casualty insurance adjuster be licensed? That depends on what state you are in. You may recall that the "maze of multi-state licensure" for individual adjusters was reviewed in our *Inaugural Issue* (see the *AAICP Compass*, October, 2004). In that article, we highlighted some of the challenges faced in securing licensure as an independent adjuster in several jurisdictions. You might think that it would be easier to identify licensing requirements for the entities employing these individuals. Well, that's debatable.

While 32 states require individuals to be licensed if acting in the capacity of an independent adjuster, only 18 states require the employing entity to be licensed – and one state requires registration. More states, however, are considering new licensing requirements for individuals and adjusting firms (see page 4: *Around the Country—Louisiana*) with every passing legislative session.



Just for fun, we reviewed application materials from the states that currently require entity licensing to assess the efficiencies available to an adjusting firm that must be licensed in multiple jurisdictions. While a few states have endorsed the use of the National Association of Insurance Commissioners' (NAIC) **Uniform Application for Business Entity** for licensure of adjusting firms, we identified 16 *different* applications forms, including the NAIC version.

Acceptance of the NAIC form is certainly a step toward improving the licensing process for entities. However, the regulations that govern these requirements still remain less than uniform. Some laws are very specific regarding whether licensure as a resident and/or non-resident entity is required. Others are simply unclear. Some states require licensure of the adjusting entity only if it has a physical location within the state while other jurisdictions require licensure

if its adjusters handle claims relative to its citizens, regardless of whether it has offices within the state's borders.

So, how does an independent adjusting firm make sure that it complies with all applicable regulations? First and foremost, it should have a compliance officer whose primary responsibility is to regularly monitor the insurance, and even labor laws, of each state to fully document statutory requirements. Where clarification is required due to the lack of specificity in state law, a compliance officer should consult available guidance materials posted on Department of Insurance websites to determine if any bulletins or general counsel opinions have addressed the issue in a particular state. Additionally, establishing a system to stay abreast of legislative activity around the country, available through a variety of reporting services, will help to ensure that new or existing licensing requirements aren't missed.



Global Markets?

It's 2006 and the global marketplace is a reality, right? Maybe not so in the world of insurance. The National Association of Insurance Commissioners (NAIC) and its member state insurance commissioners have expended substantial resources in recent years, particularly in the wake of Gramm, Leach, Bliley, to promote uniformity and reciprocity. Through a number of speed-to-market initiatives, as well as industry efforts, some of the historical impediments to multi-state insurance operations have been torn down. Many states have also made significant progress in establishing uniform standards for insurance company licensing. Few jurisdictions still have resident agent countersignature requirements and uniformity and reciprocity in producer licensing has expanded.

Adjusters and adjusting firms have not yet become the beneficiaries of similar uniformity and reciprocity efforts. They still must navigate a spider web of differing regulatory schemes across the nation, they still contend with requirements to pass pre-licensing exams in multiple states regardless of their home state qualifications, and they still face protectionist state laws that exclude nonresidents from eligibility for licensure. Laws governing insurance-claims-adjusting activities that are vestiges of a time past, but remain in place and are enforced today, include those laws governing claims fund accounts. Despite the multi-state and international nature of the financial services industry and the global economy of the 21st century, some states still require claims to be funded exclusively from financial institutions located within their jurisdiction. For example, with respect to workers' compensation claims payments in Idaho, the Administrative Code requires that "Checks must be signed and issued within the state of Idaho; drafts are prohibited." ID ADC 17.02.03.051 (Emphasis Added).

Claims fund statutes and rules requiring the use of local financial institutions are



outdated when considered in light of modern banking reforms that facilitate expedited access to funds. Requiring the use of financial institutions in each state of operation impedes the efficiency and modernization of the insurance delivery system. Insurers and adjusting firms with large volumes of claims across a range of states operate with modern automated claims payment systems designed to ensure proper accounting controls, and to facilitate cost-effective and timely payment of tens of thousands (or more) claims annually.

New Mexico is another example where state law requires workers' compensation insurers and self-insureds to pay claims from financial institutions located within the state [NM ST §59A-13-11]. Although the intent of these requirements may have been to ensure prompt payment to injured workers, mandating the use of local financial institutions is not necessary in today's modern banking systems. Concerns about delays in claimants receiving indemnity checks could be addressed through statutory time deadlines for claimants to receive payments and regulatory oversight without requiring placement of funds in local financial institutions.

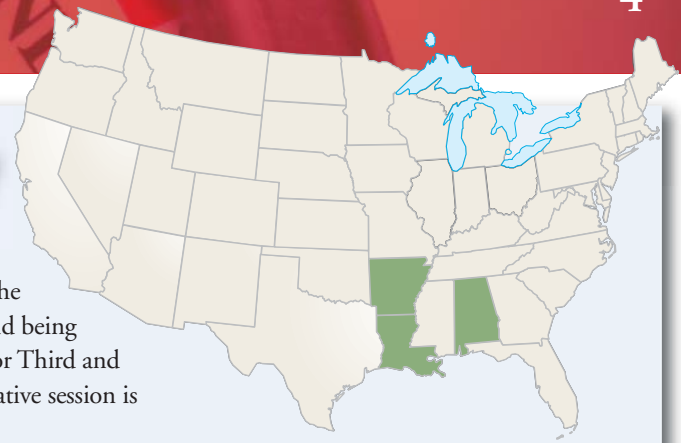
Maine requires insurance administrators to retain funds to pay claims and claim adjustment expenses in a fiduciary account located in Maine [24-A MRSA 1909(6)]. Further, a pre-condition for insurers to write workers' compensation insurance in Maine is that the insurer maintain an employee or claims agent in Maine to "issue drafts and checks in payment

of obligations arising under [the workers' compensation code] in amounts of at least \$1,000 [39-A MRSA 102(15)]. While numerous states have such requirements with respect to claims payments, particularly for workers' compensation claims, most state premium handling requirements generally allow the use of any state or federally insured financial institution.

Insurers and their adjusting firms should not have to establish and maintain separate accounts in multiple jurisdictions to comply with state requirements. Requiring the use of local financial institutions is similar to, by and large, discarded countersignature laws requiring local agents countersign policies. The courts reviewing the challenges to the countersignature laws noted that they were not justifiable in the modern economy. In the context of countersignature litigation in Florida, the federal court noted that the requirement of a resident agent serves no valid purpose noting that under the challenged law:

[A] customer from Pensacola may obtain coverage...from Miami (more than 700 miles away), but not from...Mobile (less than 50 miles away). Indeed, it is farther from Pensacola to Key West than from Pensacola to Indianapolis; erecting a fence at the Florida border does nothing to promote geographic proximity. Council of Insurance Agents and Brokers vs. Tom Gallagher, 287 F. Supp. 2d 1302 at 9, N.D. Fla. 2003.

Applying the same logic, the Pensacola claimant would be better served by a claim check issued on the Wells Fargo Bank with many locations nationwide, but none in Florida, than a check issued on the First Bank of Miami with locations in the Miami area only. The laudable goals for providing prompt payments or oversight of deposits can be accomplished by less restrictive means than the burdensome and duplicative requirements of using financial institutions physically located in each jurisdiction in which a claim is paid.



Around the Country

Louisiana

The Louisiana Legislature is currently considering legislation that would establish a licensing requirement under the Insurance Commissioner for certain property and casualty insurance adjusters. **House Bill 1056** creates **The Louisiana Claims Adjuster Act** and would require licensure and continuing education for “*adjusters*” which is defined as any “person” (individual or legal entity) who investigates or adjusts losses on behalf of an insurer as an independent contractor or as an employee of an adjustment bureau; an association; a property and casualty producer; an independent contractor; an insurer; or a managing general agent. Licensure would also be required of any individual that supervises the handling of claims. The bill adopts the use of the National Association of Insurance Commissioners’ (NAIC) Uniform Applications for Individuals and Business Entities and also provides for a limited number of exemptions from licensure such as licensed attorneys when acting in their professional capacity as such; persons handling claims relative to life, accident or health insurance policies and persons handling claims involving workers’ compensation benefits pursuant to Title 23, the state’s Labor and Workers’ Compensation statutes. The bill appears to be moving

through the legislative process having passed favorably out of the House Insurance Committee and being placed on the House calendar for Third and Final Reading. Louisiana’s legislative session is scheduled to end on June 19.

Arkansas

On March 28, 2006, the Arkansas Commissioner of Insurance released AR Bulletin No. 3-2006, which announced the Department’s intent to require criminal history background checks, via fingerprints, for all new individual license applicants, including adjusters. The new procedure, effective May 1, 2006, applies to all resident applicants applying for licensure after that date. The application must include a legible photocopy of the applicant’s driver’s license as well as the applicable fee. The new application (form ASP-122) can be found on the Department’s website at www.insurance.arkansas.gov under the “License Division” link. Questions regarding the new requirement may be directed to Fred Stiffler, Director of the License Division at 501-371-2750 or fred.stiffler@arkansas.gov.

Alabama

On May 1, 2006, the Alabama Department of Insurance issued Bulletin No. 5-1-2006 regarding its new regulation for alternative

procedures for resolving disputed personal lines insurance claims arising from various natural events. The regulation provides a mediation process for all disputed claims incurred prior to December 31, 2005, as well as future claims, from various storms.

This mediation program is intended to serve as a non-adversarial, non-binding, alternative dispute resolution procedure to facilitate the resolution of disputed claims as quickly and fairly as possible. Either party can request mediation through the Department of Insurance, who will schedule a mediation conference within 60 days of receipt of such request. A mediation conference fee of \$350 dollars is required to be paid by the insurance company with no cost to the policyholder except in unusual circumstances, such as failure to appear at mediation conference unless there is a valid excuse. For more information regarding this new program, you may contact the Alabama Department of Insurance at www.aldoi.org.

NAIC UPDATE

The Consumer and Market Affairs Committee of the NAIC continues to focus its efforts primarily on issues facing insurance agents. At its quarterly National meeting in March, the Committee announced the formation of a new subgroup which is soliciting input from the insurance industry regarding the most critical state issues relating to agent licensing reforms. The AAICP is continuing to communicate with

members of the Committee and the new subgroup, which is comprised of insurance regulators from around the country, regarding critical licensing issues facing independent adjusters. The AAICP also plans to provide written feedback, documenting obstacles to efficient multi-state licensure for independent adjusters, to the Producer Licensing Outreach subgroup and other appropriate NAIC committees in the coming months.