The Regulator®
INSURANCE REGULATORY EXAMINERS SOCIETY

Where is state regulation headed?

by Scott Hoober
Special to *The Regulator*

To the conspiracy theorists, insurance companies are pushing for federal regulation knowing it will be less effective than state-by-state regulation, solely in order to give themselves more elbow room.

In the meantime, state-based regulators are fighting back purely on the basis of their own self-interest.

The reality is more subtle than that. And the experts writing on the topic in this issue of *The Regulator* — regulators, company people, consumer advocates and lobbyists alike — reflect that subtlety.

Even those who could be classed as foes of state regulation see its values, while even the states' staunchest defenders freely admit that change is not only possible, but inevitable and probably beneficial. (**Editor's Note:** These articles were written prior to the recent industry investigations by the New York Attorney General and other state insurance departments and agencies.)

George Nichols was one of the experts asked to write about state vs. federal regulation back in 1999, when financial-services reform had just passed Congress, and again today. Then Kentucky's commissioner, Nichols today is senior vice president of New York Life Insurance, though that switch hasn't changed his views.

"Five years ago," Nichols writes inside this issue, "the Gramm-Leach-Bliley Act emerged as a defining moment in the insurance industry, prompting this publication to devote an entire issue to the question, 'Is State Insurance Regulation Dead?' My answer, back then, was no — and my answer today is still no."

The consensus of Nichols and most of his fellow guest authors is that state regulation is far from dead. Even David F. Snyder, who as assistant general counsel for the American Insurance Association favors a strong federal presence, agrees that state insurance regulators will continue to play a sizeable role.

"While [the SMART Act] establishes competition as the setter of prices, it still preserves a significant role for the states," Snyder writes.

Consumer advocate J. Robert Hunter says state regulation deserves to become obsolete if it can't stop worrying about what insurers want and

continued on page 2

NOV 2004

The Regulator®

Wayne Cotter, CIE, Editor
quepasa1@optonline.net
Kathleen McQueen, Associate Editor

IRES PUBLICATION COMMITTEE

Polly Y. Chan, CIE, California, CHAIR
Angela K. Ford, CIE, N. Carolina, VICE CHAIR
Wayne Cotter, CIE, New York • Bruce Ramge, CIE, Nebraska
Kathleen McQueen, New York • Gerald A. Milsky CIE, Virginia
Kashyap Saraiya, AIE, New York
Christel L. Szczesniak, CIE, retired (CO) • Linda Yarber, California

The Regulator is published every other month by the

Insurance Regulatory Examiners Society

www.go-ires.org

Opinions expressed in this publication are the authors' and do not necessarily represent the opinions of the authors' employers or IRES.

12730 S. Pflumm Rd., Suite 102 Olathe, KS 66062
913-768-4700 FAX 913-768-4900
IRES Continuing Education Line: 913-768-NICE

David V. Chartrand, executive secretary
Susan Morrison, office manager
Susan Morrison, continuing ed coordinator

e-mail us at
ireshq@swbell.net

Where is regulation headed?

continued from page 1

begin serving consumers.

"I believe that state regulation of insurance has lost its backbone and deserves to be replaced by a unitary federal system," he says.

In the end, however, Hunter exhorts regulators to save themselves — and their jobs — by reversing what he sees as a laissez-faire approach to consumer protection.

Kansas commissioner Sandy Praeger, on the other hand, believes that serving consumers is precisely state regulators' strong suit. Citing examples from a tornado strike in her own state, Praeger speaks of how well the nation's 10,000 state regulators handle the four million consumer complaints they receive in a typical year.

Birny Birnbaum, like Hunter a strong consumer advocate, believes insurers have used the threat of federal regulation to scare states into deregulating rates, risk classifications and forms and cutting back on market regulation. Unlike Hunter, though, he feels the states have made great strides in response to the SMART Act.

Cautious optimism

One of insurers' complaints is the hodge-podge of conflicting state statutes and regulations. Kirk Yeager of Colorado, the IRES president, admits that what he calls "statutory eccentricities" must be replaced by coordination if state regulation is to survive.

Steven Geller, a Florida state representative and president of the National Conference of Insurance Legislators (NCOIL), is, of course, a fan of NCOIL's model act as well as of state regulation. He notes that 41 states have adopted reciprocal producer licensing laws.

Like Colorado's Yeager, Joel Ario of Oregon believes that as hard as it may be to conform to the new world of insurance regulation, state regulation will be the better for going along with the trends recognized in the SMART Act.

"The threshold test of our market regulation efforts," Ario writes, "is whether we are identifying the most important consumer problems."

These articles aren't the kind of pithy sound bites that sound hot on the campaign trail. But if you're looking for a thorough summary of the issues facing state regulation today, check out the rest of this issue of *The Regulator*. ■

About this issue

Five years ago, in our November 1999 issue, we asked ten industry leaders "Is State Insurance Regulation Dead?" The question, we acknowledge, was manifestly morose, but was posed in the wake of con artist Marty Frankel's multi-million dollar fraud scheme and subsequent federal investigations into state regulatory practices. The Gramm-Leach-Bliley bill was also signed into law that November, fueling further speculation about the sustainability of our state-based regulatory system.

Most of our respondents back then believed state regulation was alive and well, thank you. But here we are — five years later — and it appears to some our state-based system is, if not dead, on life support.

Congressmen Michael Oxley and Richard Baker have offered us what they call the SMART Act (State Modernization and Regulatory Transparency Act) which, if enacted, would allow the federal camel's nose to creep further beneath the state-based regulatory tent.

This time, however, it's not high-profile con men or regulatory lapses that are driving the effort. Instead it emanates from a sizeable segment of the industry itself, a segment that views the current system as too slow and cumbersome to respond to the needs of a 21st Century marketplace. *(It should be noted that our authors prepared their responses prior to recent allegations of insurer/producer wrongdoing by New York State's Attorney General and various insurance departments and state agencies.)*

Pros and Cons

Even the most seasoned civil servant would find it hard to argue with some of the premises underlying the SMART Act. It *is* time-consuming for producers to seek out licenses in 50 different jurisdictions, insurers *are* being subjected to overlapping market conduct reviews from multiple state authorities, and ways *must* be found to speed up approvals of commodity-like products.

These goals are laudable and should be pursued on a first priority basis, either federally or by the states, the NAIC and NCOIL. Unfortunately, the SMART Act — if you'll forgive the cliché — throws the baby out with the bathwater.

We say that because to some proponents, SMART means removing product oversight on most commercial *and personal lines* coverages. Product approvals, we hear, are no longer relevant to the 21st Century American marketplace. Really? We wonder whether insurance consumers are so much more sophisticated than they were, say, a century ago when, it could be argued, products were simpler and fewer sought out such coverages.

And isn't far too much time being devoted to talk of disposing of all "desk drawer rules?" Think about it. What are desk drawer rules other than Department policies that help insurance regulatory professionals apply complex insurance laws and regulations to real-life situations? If we have, as many proponents of federal intrusion claim, too many laws and regulations on the books now, imagine how many we'd need to handle all the possible scenarios that confront regulators in the workplace.

State regulation needs fixing, no doubt about it. But if anyone thinks federal regulation would be closer to consumers than state oversight, we advise a visit to the U.S. Department of Labor's (DOL) Web site. Check out the rules for filing a complaint against an ERISA health plan (if you can find them) — talk about complex and cumbersome! While you're there, see if you can locate a tally of consumer health insurance complaints closed by the DOL. This is routine information available on most state insurance department Web sites, yet it can't be found on the DOL site.

Anyway, we have to admit we're not exactly objective on this subject, so please read what our esteemed contributors have to say on the following pages. For this special issue, we've canvassed insurance commissioners, consumer advocates, as well as industry and legislative representatives. Many of our contributors are not new to these pages; in fact, three contributed pieces to our 1999 issue. We thank them all for their insightful comments on this crucial issue.

For more information about the SMART Act proposal, go to: **http://banking.senate.gov/index.cfm?Fuseaction=Hearings.Detail&HearingID=130**

George Nichols

Five years ago, the Gramm-Leach-Bliley Act emerged as a defining moment in the insurance industry, prompting this publication to devote an entire issue to the question, "Is State Insurance Regulation Dead?" My answer, back then, was no — and my answer today is still no.

At that time we, as regulators, noted in our Statement of Intent to Modernize Insurance Regulation the need to create a structure allowing for the same efficiencies insurance companies would derive from a federal charter. Over the past 60 months, debates and discussions have circled around this central point. And while the conversation on improving state regulation has come a long way, we still see much that needs to be accomplished.

Now is the time for regulators to shift into high gear. I say the time is now because additional momentum is building on the side of improved state regulatory oversight with Congressmen Michael Oxley (R-OH) and Richard Baker (R-LA) taking leadership roles in their release of the SMART Act. As a former regulator, I recognize that it is often difficult to convey the urgency and importance of the issues facing our industry to state legislators, who are constantly bombarded with requests for assistance on a wide range of issues. Passage of the SMART Act, with appropriate mandates, would help ensure that the uniformity and reciprocity you are trying to achieve will be pushed to the front burner at the state level across the entire nation.

Now when it comes to uniformity, there is no shortage of skeptics out there who are saying the states aren't up to the task. It's up to you to help change that perception. If the SMART Act is structured and passed so that we can go after some of the low-hanging fruit immediately, it will quiet the naysayers and give you the breathing room to tackle the bigger issues over time. So I challenge each of you to step up to the plate, take advantage of the opportunity the Smart Act offers, and show everyone that real uniformity is indeed possible.

What do I mean by low-hanging fruit? I mean those issues we all pretty much agree upon and are resolvable in the short term. An example would be to expand upon the Uniform Producers Licensing Model Act by adopting one true set of national standards for all agents (*i.e.,* continuing education, background checks, appointments), possibly even based on the state with the most stringent requirements. Congress could further strengthen the proposition by providing all states uniform access to the FBI's criminal database.

Similarly, establishing truly uniform standards for appropriate products and creating a single point of filing for those products are must-haves for the industry — even if it means stricter standards on average than currently exist. This requires adopting the interstate compact model in every state within the next year.

The NAIC and NCOIL have brought us far in the area of market conduct. But again, now is the time to take the next steps and create a national accreditation model that looks and feels like the financial examination accreditation program. Larry Cluff, assistant director of the GAO's Office of Financial Markets recently shared some of his personal ideas with *National Underwriter* on how he would revamp market conduct administration. He envisions a system with a centralized market analysis function; investigations by the domiciliary state regulator based on that analysis; and internal controls by insurance companies and routine examinations of those controls by the domiciliary state regulator. From my perspective, Cluff's suggestions warrant serious consideration.

Regardless of where you come in on any of the particulars, it's clear to me — and I hope it is clear to you — that the time is at hand for the regulators to take action. The stakes have arguably never been higher and we may very well be facing the last opportunity for you, the nation's regulatory experts, to take control and help shape the regulatory environment of tomorrow to make it easier for companies to do business, while ensuring consumer protections are still as strong as ever.

George Nichols is Senior Vice President of the New York Life Insurance Company. Mr. Nichols is a former Kentucky Insurance Commissioner and past NAIC President.

Steven Geller

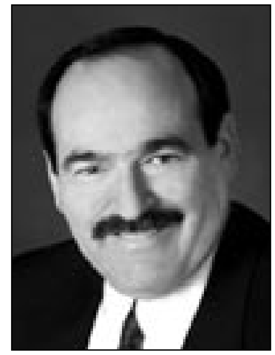
The future of state insurance regulation is at its most critical juncture in history. Congressional efforts to preempt state regulatory authority do more than try to grab power from individual jurisdictions—they threaten to undo the decades of successful state oversight that have protected consumers, forestalled insolvencies, and created competitive insurance marketplaces across the country.

State regulation is an evolutionary process. Legislatures know that more must be done to modernize the way that products go to market, insurer market conduct is overseen, and producers and companies are licensed. Taking their cue from model laws adopted by the National Conference of Insurance Legislators (NCOIL) and from the efforts of others, state lawmakers have made great strides to enhance their regulatory systems in response to an increasingly global insurance arena.

Forty-one states, for instance, have enacted reciprocal producer licensing laws and 24 have adopted property-casualty rate deregulation. Eighteen states have introduced, and nine have already adopted, legislation to create a historic compact for the streamlined approval of life and disability insurance products. And now, with the recent development of a joint NCOIL-National Association of Insurance Commissioners (NAIC) model act, states are ready to whole-scale reform their approaches to market conduct surveillance.

> ***"Congress' zeal to 'improve' insurance regulation, though apparently well-intentioned, ignores what states have already achieved and imposes on consumers the by-products of federal oversight."***

Congress' zeal to "improve" insurance regulation, though apparently well-intentioned, ignores what states have already achieved and imposes on consumers the by-products of federal oversight. How can a far-off federal regulator appropriately respond to the pressing needs of a policyholder in Duluth? How can a new federal advisory committee — one that entirely eliminates the role of state legislatures — exist without a big bureaucratic budget? How can a national system enforce its standards without jeopardizing the $21 billion states receive in premium taxes — funds that support essential state programs?



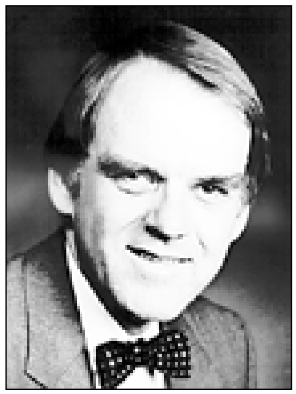
NCOIL's strong opposition to any attempt to usurp state regulatory authority is based on the hard fact that only states are well-suited to oversee insurance. Congress' threats, whether in the form of an optional federal charter or a draft State Modernization and Regulatory Transparency (SMART) Act, are no panacea for the need of state systems to continue evolving in a more complex world.

We, as NCOIL legislators, know that state public policymakers will never stand for the loss of their authority to aid everyday consumers. We know that the SMART Act signals the beginning of the end of state insurance regulation. And we know, without doubt, that the future of state oversight depends on what we do now to mobilize our forces and to overcome an unwise federal effort.

State Senator Steven Geller, who represents Florida's 31st District, is the President of the National Conference of Insurance Legislators (NCOIL), based in Albany, New York.

Robert Hunter

That an NAIC President has quit to become chief lobbyist for one of the most reactionary insurance company trade associations in the country should come as no surprise since our sensibilities have long ago been weakened by the shameful revolving door through which insurance regulators and the regulated have routinely passed. But when the NAIC Vice-President chooses not to become President, and the Secretary-Treasurer, who is next in the succession line, also demurs, something entirely different is going on. Rather than ask where state regulation is headed, the better question might be why is state regulation beheaded?



The answer to that question seems to be that capitulation leads to decapitation.

An NAIC officer recently had the honesty to bluntly tell me "We do not see our citizen/consumers as our constituents; we see the insurance industry as the group we must please." And pleasing insurance companies has been the order of the day for state regulation ever since the first rumblings of federal interest in insurance regulation were heard several years ago.

The nation has witnessed a rout of consumer interests at the state level, starting with the ill-fated NAIC Statement of Intent in 2000 and continuing through the recent supportive comments about the Oxley/Baker "SMART" Bill by New York's Superintendent of Insurance. The "SMART" Bill is nothing more than a wholesale attack on state regulatory authority and on America's insurance consuming public. Perhaps I can understand why regulators, fearing Congress, aren't concerned that the consumer's best interests are sacrificed in this dreadful bill, but they should at least be worried that its provisions would convert state regulators into unfunded functionaries of the federal edict (and would effectively cut off state legislators from any significant future role in insurance regulation).

The idea that state regulation can be saved by removing all consumer protections and state authority to act is foolish, akin to burning a village to save it. Do regulators truly believe that Congress will relent if the states give up their authorities to regulate? What about years from now when the lack of protections results in the inevitable scandal after scandal? Won't Congress rush in even more quickly to take over when the evidence is clear that the system in place, nominally under state control, has utterly failed to protect Americans?

Where are the regulators who would stand up for the consumer at this time of great need? Why are all but a couple of them silent in the face of this assault on consumer interests? If there is no vision, no bravery, no willingness to say "no" to the insurance companies and their federal puppets, should state regulation continue to exist?

I believe that state regulation of insurance has lost its backbone and deserves to be replaced by a unitary federal system. I am not foolish enough to believe that the initial federal system will be a strong protector of the consumer. But I am sure that, over time, consumer protections will be instituted as scandals unfold and that, having no competing state regulatory system, the federal system will be significantly influenced by the urban state legislators in the direction of more and more protections. I believe also that the McCarran-Ferguson Act's antitrust exemptions will fall of their own weight and that ultimately, the death of the state system will benefit America's consumers.

Perhaps some brave commissioners will yet stand up for consumer interests before the ever-weakening NAIC and the ever-bolder Congressmen.

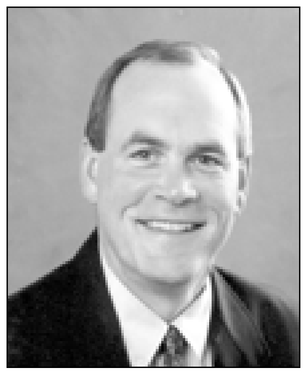
Let me conclude by saying I have always been a strong supporter of a state-based system of insurance regulation and could still be brought back from the dark side if there were just a few regulators who would take up the battle, who would join with consumer groups, labor groups, low-income interest groups, civil rights groups and others to protect the insurance consumer in the years ahead. Wake up! You have the power to reverse this alarming trend.

Robert Hunter is the Consumer Federation of America's Director of Insurance.

Joel Ario

Insurance regulation serves two broad purposes: financial regulation to ensure that insurers have the resources to honor their promises, and market regulation to ensure that consumers are treated fairly. I will focus my comments on market regulation since that is where I have focused at the NAIC.

The threshold test of our market regulation efforts is whether we are identifying the most important consumer problems. If we fail this test, it doesn't really matter whether we are super effective at correcting whatever problems we uncover because the real action is elsewhere. My view is that we haven't done as good a job as we could on this threshold test, but that we are headed in the right direction by making "market analysis" the foundation of our market regulation efforts. As the commissioners stated in the *Regulation Modernization Action Plan,* adopted in 2003, the starting point for modernization is "market analysis to assess the quality of every insurer's conduct in the marketplace."



Let me note here that this new direction will require significant changes for states that have focused their regulatory efforts around market conduct examinations designed to measure legal compliance in certain defined areas. As we focus on market analysis and identification of the most important consumer problems, states are finding new problems that demand attention and discovering that the traditional exam approach is not always well-suited to addressing such problems. Changing focus is not easy and it will take time, but it is necessary if we are to modernize our regulatory programs for the benefit of consumers and the actual problems they face in the marketplace.

We still have a ways to go before our market surveillance tools are as well-honed as our financial surveillance tools, but we are making progress in utilizing a broad range of data — from consumer complaints to relevant data from the financial annual statement to a new market conduct annual statement — to identify market practices that hurt consumers. If we do the job correctly, there is no reason why we can't get to the point where we routinely uncover harmful practices at an early stage, when corrective action is much easier to take than after a practice has become entrenched in the marketplace.

As market analysis improves our ability to identify problems, we'll also need to refine the regulatory tools we have for correcting those problems. We will never eliminate the need for on-site examinations to go after the worst problems, but those exams should be targeted so that they effectively get at the real problems. We're also finding that many problems can be addressed more efficiently through more flexible approaches. Examples include better education on new laws, targeted data calls on emerging problems, and desk audits of problem companies. Our mission is consumer protection, but it doesn't serve consumers to impose unnecessary regulatory costs on insurers.

Our final challenge will be to develop an effective model for interstate collaboration on market problems. The model is likely to be rooted in some form of domestic deference, but it won't be as straightforward as it is on the financial side. While certain market conduct laws should be more uniform than they are currently, there are sound consumer protection reasons why many laws vary in response to local market conditions. Plus there always will be issues with companies that operate differently in different parts of the country. We need to harmonize our laws where we can, but we also must continue to make the case that diversity among the state "laboratories of democracy" is a strength, not a weakness.

Even with continued diversity, however, I do foresee the day when market accreditation standards will stand alongside the current financial ones, and give all states the confidence to rely on each other for routine oversight responsibilities. Companies could help move this process along by developing more accountable self-auditing practices along the lines of the NAIC's recent white paper on best practice organizations. Self audits will never replace regulator oversight, but they can be a valuable complement to our work, particularly in our routine oversight of companies that don't show up as problems through market analysis.

Joel Ario heads the Insurance Division of the Oregon Department of Consumer and Business Services and is Vice President of the NAIC.

Dave Snyder

Since 1999, little systemic progress has been made in the state insurance regulatory system beyond some incremental flexibility in commercial lines and reform in some of the most heavily regulated and dysfunctional states, such as New Jersey. But unproductive micro-management continues to be the regulatory norm in many places. Fortunately, essential modernization is still a possibility in part because of Congressional leadership.

The modernization of the U.S. insurance regulatory system is now more imperative because the world is changing far more rapidly than the slow pace of regulatory progress in the U.S. The demand for insurance capital has become global in scope. Similar global competition for scarce resources is already apparent in the oil markets with rising countries like China demanding much more, thereby impacting the supply and price for everyone else.

> ***"Like a runner who is used to sharing the track with some familiar friends, the U.S. insurance regulatory system had, until recently, little new competition."***

Like a runner who is used to sharing the track with some familiar friends, the U.S. insurance regulatory system had, until recently, little new competition. An inefficient regulatory system was acceptable because where else could the capital go? All that is changing as dozens of new insurance markets are opening with more pro-competitive regulatory systems than ours. These markets are dramatically increasing demand for insurance, creating new competition for global insurance capital. Like that runner, if our system doesn't catch up and become more efficient, we will lose the race. Such a loss of competitiveness, and the resulting scarcity of capital, would negatively affect us all in choice, competition and price.

Other challenges are also more apparent now. Global terrorism demands a national response and a national insurance backstop. Unprecedented massive insolvencies, creating record liabilities, demand coordinated attention and effective prevention. These issues are simply too big to be addressed by any single state and deserve attention with resources that should no longer be wasted on prior approval of rates and forms. This notion of government price and product controls that still exists here for insurance has all but disappeared in the U.S. for other products and for insurance in most other countries.

The SMART Act is Congress' latest attempt at insurance regulatory modernization. While it establishes competition as the setter of prices, it still preserves a significant role for the states. If this approach fails to be accepted and made workable, optional federal charter proposals will once again surely be on the table. That is because now, far more than in 1999, there really is no alternative for the U.S. insurance regulatory system but to modernize. The cost of failure is too high, for all of us .

David Snyder is Assistant General Counsel for the American Insurance Association.

Greg Serio

As regulators of insurance, state governments are responsible for making sure the expectations of American insurance consumers are met regarding financial safety and fair treatment. Nationwide in 2002, state insurance departments employed more than 13,000 regulatory personnel and spent $947 million to serve as watchful eyes and helping hands for insurance consumers. The states also maintain a time-tested system of financial guaranty funds that protect consumers from insurer insolvencies.

It is also important for Congress to recognize that the entire state insurance system is authorized, funded, and operated at absolutely no cost to the federal government.

Some industry groups have charged that the state regulatory system is inefficient and burdensome, and that a single federal regulator would be preferable. However, the NAIC and its members do not believe consumers think of us as inefficient or burdensome, especially when compared with federal agencies and departments. During 2002, state insurance regulators handled approximately 4.2 million consumer inquiries and complaints.

Unlike banking and securities, insurance policies are inextricably bound to the separate legal systems of each state. The federal government could not possibly replicate the expertise of state legislatures, regulators, and courts to successfully interpret the contractual and tort laws of 50 states. Moreover, there is no reason for the federal government to do so when the states have a specific modernization plan and timetable to get the job done.

The insurance industry, both property/casualty and life, can greatly contribute to the improvement of insurance regulation by doing the following:

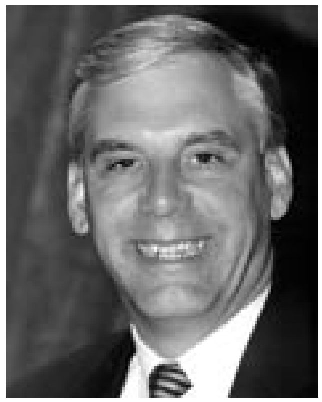
- Join with insurance regulators in state capitals to push for passage of the NAIC's interstate compact legislation. Endorsed by major state legislative groups, this legislation is crucial for giving the industry what it desires most – uniformity of standards across state lines.
- Use the improved systems for product and rate approvals put in place by the NAIC and individual state insurance departments around the country. While the NAIC has seen increased use of its state-based Electronic Rate and Form Filing process, SERFF has not been universally embraced by the industry as its single best electronic portal for making multi-state form and rate filings. Other speed-to-market initiatives also need greater buy-in by the industry.
- Committing to a meaningful program of self-regulation. Federal regulation has not been the "missing link" in the efforts to modernize insurance regulation. Rather, the absence of an industry-wide self-regulating mechanism, promoting the highest and best standards on corporate governance, market conduct and financial safety and soundness, represents a significant hole in the insurance regulatory construct. Meaningful and effective self-policing, closely tied to an insurance regulatory system that recognizes the value of true self-regulation, will go a very long way to fostering uniformity and improving relations between regulators and the regulated. The Insurance Marketplace Standards Association (IMSA), led by a former regulator, holds this kind of promise, and its work is already being integrated into the regulatory processes of New York and Texas.

State regulators understand that protecting America's insurance consumers is our first responsibility. We also understand commercial insurance markets have changed, and that modernization of state insurance standards and procedures is needed to facilitate less costly and less burdensome regulatory compliance for insurers and producers. Insurance regulatory modernization and protection of insurance consumers are not mutually exclusive notions. We can achieve both these important objectives.

Gregory V. Serio is Superintendent of the New York Insurance Department. This article was drawn from testimony he delivered on behalf of the NAIC before the U.S. Senate Committee on Banking, Housing and Urban Affairs in September 2004.

Tom Ahart

State regulation of insurance has a bright and vibrant future, particularly with the impending introduction of the State Modernization and Regulatory Transparency (SMART) Act in the House of Representatives. The SMART Act, a pragmatic, middle-ground approach to regulatory reform, will preserve what is best about state regulation while using federal tools to modernize and streamline areas that need to be reformed. The Independent Insurance Agents & Brokers of America (the Big "I") strongly support this approach.



Using federal legislation to address the existing problems with state regulation is neither a radical concept, nor does it diminish the ability of the states to regulate insurance. Five years ago, Congress proved that a middle-ground approach can work when it passed the National Association of Registered Agents and Brokers (NARAB) provisions of the Gramm-Leach-Bliley Act.

Where is state regulation headed?

The approach envisioned in the SMART Act builds on the "road map" proposed in March by House Financial Services Committee Chairman Mike Oxley (R-OH) and Insurance Subcommittee Chairman Richard Baker (R-LA). In announcing the "road map," Chairman Oxley outlined a conceptual framework for targeted federal legislation that would address the problems in state oversight without establishing federal regulation or creating an "optional" federal charter.

The "federal tools" approach envisioned by Chairmen Oxley and Baker will accomplish a number of important things: With respect to property-casualty lines, it will help make product oversight more market-oriented; provide for the quicker development and introduction of new insurance products; reduce or eliminate unnecessary duplication among states; and create greater accountability.

Federal tools also will implement true national reciprocity and greater uniformity in agent and broker licensing from state to state and preempt countersignature laws and similar barriers to effective multi-state commerce. These are extremely positive and necessary steps to take in order to create uniformity among the states, and yet do so without impinging on the states' rights to regulate the industry.

Clearly, Congress' work in this area need not jeopardize or undermine the knowledge, skills and experience that state regulators have developed over many decades. While federal tools should be used to modernize those areas where existing requirements or procedures are outdated, it is important to ensure that this is accomplished without displacing the components of the existing state regulatory system that work well. To overhaul state regulation entirely would be akin to throwing the baby out with the bathwater. The SMART Act does not make that mistake.

The Big "I" believes Congress can, and should, help state policymakers create a more uniform and market-oriented system on a national basis while preserving and strengthening the regulatory infrastructure and expertise at the state level. In this way, we will assure that insurance regulation will continue to be grounded on the collective experience of state regulators. The SMART Act will accomplish this purpose—and ensure a bright future for the longstanding system of state regulation, which has done an excellent job in its primary charges: to safeguard consumers and to ensure the financial integrity of individual insurance companies.

Thomas Ahart is past president of the Independent Insurance Agents & Brokers of America (the Big "I") and chairman of its State Government Affairs Committee. He also is president of Ahart, Frinzi & Smith, a Phillipsburg, N.J.-based independent insurance agency.

Birny Birnbaum

From a consumer perspective, as of the fall of 2004, the future of state insurance regulation is looking brighter.

The improvement we speak of is *not* a reduced likelihood of a federal takeover of insurance regulation, though that may be the situation today. Rather, the cause for optimism among consumers is the actions by state regulators to increase their effectiveness in protecting policyholders and claimants, while promoting beneficially competitive markets.

There are two key reasons to be optimistic about the future of state regulation:

- States are using new tools to increase the effectiveness of consumer protection while improving the efficiency of their regulatory efforts;
- States better understand the nature of competition in insurance markets as well as the limits of markets in protecting consumers.

For a long time now, insurers have been promoting the threat of federal regulation in an attempt to cower state regulators into adopting broad deregulation of rates, risk classifications and forms and curtailing their market regulation activities. Although it took state insurance regulators a few years to find their bearings in this high-stakes game, they now have begun to stake out strong positions in areas that are the strength of state insurance regulation – namely, market regulation and risk classification.

We don't want to minimize the tremendous advances made by regulators to improve the efficiency, consistency and effectiveness of filings review – the accomplishments are extraordinary – but it is in market regulation where we've seen a revolution in regulatory practices. And it is in market regulation where state insurance regulators have a "competitive" advantage over federal regulation because state regulators are so much closer to the markets and the attendant market problems in their states than any federal regulator could ever be.

The revolution in market regulation, in our view, is founded on two key initiatives – new tools for regulators and greater accountability of regulators to insurers and consumers. The new tools include market analysis as a means for analyzing insurance markets and targeting regulatory responses, a broad range of regulatory responses to market problems (education, market incentives, rulemaking, targeted exams, enforcement and others) and innovative mechanisms for collaboration among the states. On the last point, the NAIC has developed an impressive list of databases to encourage collaboration among states – a veritable alphabet soup of great resources.

Greater accountability of regulators has been a tough sell. Many regulators fear any perceived restrictions on their ability to protect consumers and confuse efforts to enhance accountability with efforts to impose restrictions. Greater accountability means that active market regulation doesn't cross the line into abusive regulation, but also means inactive regulators can no longer abdicate their responsibilities. We encourage regulators to embrace greater accountability to market regulation stakeholders.

Finally, another promising trend, is the growing recognition among regulators that reliance on market forces – "competition" – is not always the best way to protect insurance consumers and that the nature of competition varies across lines of insurance, geographic areas within a state and different parts of the insurance sales process. This is a lesson still unlearned in Washington.

Many state regulators have discovered that oversight of risk classification decisions has become a more important consumer protection issue than regulating overall rate levels. The flurry of activity by states on insurers' use of credit scoring, prior loss histories, loss databases and treatment of military personnel – to name just a few issues – attests to the importance of and concern about risk classification issues.

We hope in the next year state regulators develop a new regulatory approach for risk classification that looks beyond actuarial principles to broader concepts of fairness in a systematic way. This would be the next important step in assuring that U.S. insurance consumers will continue to reap the benefits of a state-based regulatory system.

Birny Birnbaum is the Executive Director of the Center for Economic Justice in Austin, Texas.

Roger Schmelzer

State insurance regulation's future officially arrived in March 2000 when then-NAIC President George Nichols unveiled his Statement of Intent to reform the state oversight system. Signed by every single commissioner, the document represented a monumental paradigm shift in approach. Finally, regulators were willing to acknowledge that state regulation needed a new direction and that some form of collective effort was needed to bring it about.

The NAIC's showy initiative cast a brighter light on the National Conference of Insurance Legislatures (NCOIL) which got into the reform business a couple of years earlier with its commercial lines modernization model act. This model was later joined by a companion personal lines model and was followed by models on credit-based insurance scoring and most recently market conduct. Elements of the rate modernization models have been enacted in 24 states and the insurance scoring language is now law in 19 states.

Now Congress has come forward with the beginnings of a legislative proposal designed to create more uniformity and competition for the benefit of consumers by mandating reform of state regulations. While the choice seems to be cast as one between federal intervention and the status quo, the truth and the future are really quite different: Regulators and legislators alike have concluded that the time for lip service about reform is over. Tangible, fundamental reform must be achieved instead of just marginal change.

Perhaps the most significant sign has been the commitment from NCOIL to tackle the issues on which fundamental reform are based, rate modernization and market conduct.

Instead of deferring to the regulators, NCOIL leadership has recognized and embraced the concept that it is the elected legislatures that set the public policies while the regulators are in place to administer the law. Although not directly related to reform, NCOIL's bold move to create policy on credit-based insurance scoring was a definitive nod in the direction of legislatures' taking responsibility for setting their state regulatory environments.

Even the recently released State Modernization and Regulatory Transparency (SMART) Act would leave the state system intact, but would impose standards intended to result in a more uniform and competitive regulatory environment. Although SMART unadvisedly bypasses legislatures in favor of the NAIC as keeper and creator of the standards, regulators and state legislators should still band together to study and adapt the substantive areas of SMART as a comprehensive state reform agenda.

Coalescing around an agenda of fundamental reforms will energize the marketplace and is preferable to simply trying to fend off federal proposals. Eventually, simply fending off federal initiatives will catch up with proponents of state regulation leaving Congress a much easier path to assert its will. For now though, state legislative-based public policy reforms supported by regulators have the best chance of producing a dynamic system of regulation for the 21st century.

Roger Schmelzer is Senior Vice President-State and Regulatory Affairs of the National Association of Mutual Insurance Companies (NAMIC).

Sandy Praeger

When natural disasters like tornadoes or violent storms strike, the only thing that matters to consumers and their families is getting their lives back together. Whether that means repairing a home or replacing a car, insurance consumers don't necessarily care *who* is looking out for their interests. But when they do need help, consumers expect to have an advocate they can turn to who will work on their behalf to make sure the insurance products they buy are there when they need them. State insurance departments are the best equipped to handle these inquiries and complaints for consumers because that has been our job for more than 125 years.

The response to a crisis makes a real difference to real people. I am reminded of the devastating tornadoes and storms that hit Kansas in 2003 that resulted in an estimated $276 million in insured loss. After a level F-4 tornado struck Kansas City, Kansas, I surveyed the damage with members of my staff. I met with storm victims and their families as they worked to recover, replace and rebuild. For the most part, insurance companies did a good job in their response to the storms. But there were several cases where families needed the intervention of my office to get a fair settlement.

One family that was displaced was having a hard time getting a timely adjustment from their insurance company. My office put the company on notice. When the adjustment finally came, the couple was told they would only receive $3,800 for one portion of siding on their home. My office had already inspected the home and that number didn't seem like a fair adjustment. So, we went out again—and after our involvement with the insurance company the couple was ultimately awarded $9,800 for that portion of the damage, nearly three times the initial adjustment.

Nationwide, it is estimated that some 10,000 state insurance employees handle more than four million complaints and inquiries every year. Is there room for improvement? Absolutely. That's why the National Association of Insurance Commissioners has outlined a detailed framework to create a more effective, state-based national system of insurance regulation. Working with Congress and state legislators, we are addressing areas that can lead to a more streamlined and seamless system of regulation—including uniform standards for market conduct, agent and company licensing and an antifraud network.

State insurance departments work on behalf of real people with real concerns in their own states. They are most familiar with specific concerns and crises that may be unique to their part of the world. Consumers, in many cases, directly elect the person who is accountable for regulating insurance in their state. In other states the governor, who also answers to the electorate, appoints the chief regulator. Can you imagine a new federal bureaucracy trying to serve tens of millions of insurance consumers? It is doubtful that a toll-free telephone number in Washington, D.C. could begin to come close to helping consumers the same way state insurance departments respond to consumers' needs daily. We already have the people and the infrastructure in place to do the job.

Sandy Praeger is Kansas Insurance Commissioner.

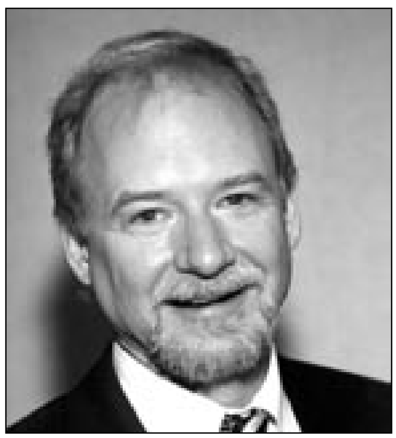
> "***Working with Congress and state legislators, we are addressing areas that can lead to a more streamlined and seamless system of regulation—including uniform standards for market conduct, agent and company licensing and an antifraud network.***"

Kirk Yeager

Where is state regulation headed?

Will the NCOIL and NAIC efforts over the past few years be viewed as adequate to halt or slow the feds' interest in regulation? Right now the jury's out on that question, but it's quite clear that state-based regulation cannot continue on its current course. The NCOIL model provides for regulatory reform in several key areas currently being implemented in many states. These include (1) implementation of market analysis; (2) selection of insurers for examination and determination of the scope of examinations based on market analysis criteria; (3) further implementation of speed to market initiatives regarding rate and form filings; (4) deregulation of commercial lines; and (5) further streamlining of the licensing process for producers.

Even if states are able to accomplish each of the base requirements of the NCOIL model and NAIC initiatives, there are still many challenges facing continued state regulation of insurance. One issue that no one wants to discuss is whether departments have sufficient numbers of adequately trained staff to ride out the rough waters during these turbulent times. Many insurance departments continue to experience severe budget shortages and the ongoing expectation of "doing more with less."



Additionally, restrictions on both travel and training budgets have reduced the number of staff members with access to the quality training provided by organizations such as NAIC, IRES and SOFE. While the commitment of staff to stay in key positions during tough times is admirable, states must recognize that the cumulative knowledge in many departments is eroding, that key positions may not be adequately replaced, and that skeleton-crew staffing will not be adequate to handle demanding issues or the restructuring required by transition.

Other challenges for the state regulatory system vary by line of coverage. Virtually every regulatory reform initiative hinges on coordination among the states' processes. While great strides may be made regarding regulatory procedures, such as market conduct examination processes, market analysis protocol and uniform reporting of findings, the true efficiencies from uniformity among the states will not be achieved until states are willing to replace statutory eccentricities with coordination and sharing of information.

Currently, states have the most commonality of laws related to commercial property and casualty insurance, life insurance and annuities. At the other end of the spectrum are health and private passenger auto insurance, for which states maintain a wealth of idiosyncratic requirements — most of which flow directly from statutes. This underscores the importance of coordinating our uniformity efforts with legislative processes. Legislators must become aware of the importance of revising statutes with national uniformity as an objective. Given that forcing such a cultural change on the majority of legislators is far beyond the job descriptions of many commissioners, this essential building block for national coordination may represent the biggest obstacle to achieving true uniformity.

Will state regulation survive? No, not in the form most of us know (and love). Will state regulation in some form prevail in the future? Yes, if regulators at all levels (not just commissioners) acknowledge that change is necessary and urgent, and that a new course of action needs to begin now. Several years ago, in the middle of a Department-wide reorganization, I recall one staffer who continually insisted that "Change is good." I didn't believe it then . . . but I do now.

Kirk Yeager is President of IRES.

Scott Laird 1950 - 2004

by Stephen E. King, CIE
IRES president-elect

Scott Laird passed away unexpectedly on September 15, at the young age of 54. As friends and as an organization, it is important that we remember and pay tribute to Scott, by recognizing his contributions to IRES. But most of all, it is important to say good bye to a dear friend.

It was Thursday, September 16, late in the afternoon, when I received an e-mail from Sharie, Scott's wife. Generally, the e-mails she sends contain a joke or "words of wisdom." However, this day was different. As I read her words, I quickly realized that the message was tragic, explaining that Scott had passed away in his sleep.

Scott Laird joined IRES in 1990, and served on its Board for 11 years. However, Scott also made numerous "unrecognized" contributions to this organization, such as his years of service as a member of the Publications Committee; editor of the Regulator; one of the originators of the Al Greer Award; and serving as unofficial counsel to many IRES presidents. More recently, he was the head of the committee responsible for selecting each year's Al Greer Award recipient. Scott left state service in 2002 to work as a compliance officer with the American Century Casualty Co. in Houston.

Scott and Sharie have been personal friends for over 15 years. In 1988, Scott was hired as a market conduct examiner for the Texas Insurance Department. I first met him in February 1989, when several Texas examiners came north to Omaha to see how the Nebraska Insurance Department conducted market conduct examinations. (Incidentally, Scott couldn't believe any place could be as cold *and* windy as Omaha in February.)

Scott was proud to be a "good ol' boy" from Texas and a graduate of the University of Texas. Friends were always careful never to say anything derogatory about the Longhorns in his presence. I could always expect a call after a Cornhusker-Longhorn football game (it was not difficult to recognize the down-home Texas drawl) as he explained what a great game the Cornhuskers played, but how they just didn't measure up to the Longhorns. Scotty was very good at "twisting the knife," just a little.

For the past few years, we have looked forward to getting "the group" together (the Domers, Milskys, Lairds, and Kings) at the CDS. The CDS in Denver was no exception, as you could always find Scott, Gary Domer, Gerry Milsky and myself just "hanging out" between sessions. In the evening, we looked forward to getting together for dinner with our wives. We are thankful that we were given the opportunity to share time with the Lairds at this year's CDS.

I not only speak for the Kings, the Domers and the Milskys, but for all of Scott's friends around the country, when I say, "Scotty, we miss you."

Those of us who knew and loved him are collecting tributes to Scott. If you have any special Scott Laird anecdotes or memories, please send them to the IRES office and we will forward them to his wife, Sharie. ■

C.E. News

Did you miss the CE compliance deadline?

Designee holders who missed the October 1 deadline for reporting required continuing education credits during the annual compliance period, Sept.1, 2003 to Sept. 1, 2004 will soon be receiving notices from the IRES CE Office that IRES will no longer recognize their designation. To be automatically reinstated, designee holders must certify all past CE hours and pay a $60.00 reinstatement fee.

As we start a new compliance period (9/1/04-9/1/05), we would like to draw to your attention to some commonly misunderstood rules.

- No course/seminar/training receives more than 12 CE hours other than the IRES CDS. If you stay and pickup your certificate, you can earn 15 CE hours for attending.
- September 1 through September 1 is the compliance year. In other words, the courses you submit must fall within this time frame. We give you 30 days after that to gather up your paperwork and send it to us. Do not assume the October 1 deadline is for taking courses, it is the deadline to get the paperwork to us.
- On-line, self-study courses are not acceptable unless the testing is proctored, meaning you sit for the exam and your attendance can be documented. The only on-line courses that we approve are the NAIC courses listed in the back of your NICE manual. (For current updates on the manual see our Web site.)

If you have an old version of the NICE manual, it would be a good idea to go to the IRES Web site and download the latest version of the manual.

"Reach Back" feature coming to IRES

A "Reach Back" provision will be added to the IRES Continuing Education program as a direct result of a membership survey taken last year. It will take effect with the reporting year 9-1-04 to 9-1-05.

Missouri regulators Gary Kimball, CIE, and Cynthia Campbell, CIE, chaired a special subcommittee of the Accreditation and Ethics Committee that worked on this project. They said that thanks go to all IRES members who responded to the survey as well as to those Committee members who studied this issue.

With this change, the IRES continuing ed program is being amended to allow members to "Reach Back" and use up to three excess CE credits earned during the prior reporting period. Thus, any three excess qualifying hours earned between 9-1-03 and 9-1-04 could be used to satisfy the CE requirement for 15 CE credits due by the 9-1-05 deadline.

Let's assume you earned 20 CE credits by September 1, 2004. You attended the 2004 CDS in Denver and also passed a five-hour course from LOMA or CPCU. Next year, however, you accumulate only twelve hours, and you have conflicts preventing you from attending the CDS in Tampa. Under the revised plan, you will be able to "Reach Back" and use three hours you earned earlier (between 9-1-03 and 9-1-04) to make up the hours you need for the 2005 requirement.

The IRES staff is developing a short form to use to submit your reachback request. As with all CE credits, members will submit this form along with documentation for the "Reach Back" hours being claimed.

Additional information will follow on this improvement in the NICE program as further details are worked out. Remember, this is not an "automatic" program. Members will need to send in documentation of the qualifying credits you want to reach back and use. Again, please remember that this provision allows a designee to "Reach Back" only one year.

We hope that this added flexibility will help some IRES members with those year-end crunches that sometimes make it difficult to obtain the needed 15 credit hours.

IRES State Chapter News

California — The California chapter would like to congratulate **Woody Girion**, CIE, who was promoted to Deputy Commissioner, Consumers Services and Market Conduct Branch. Woody is a chartered IRES member. We also congratulate **Doug Barker**, principal author of this year's IRES "Article of the Year" Award. Our chapter is currently in the midst of a membership drive.
— Polly Chan; ChanP@insurance.ca.gov

Colorado — In September, **Susan Gambrill**, Deputy Commissioner of Insurance, presented "*Colorado's Small Group Reform - An Historical Overview.*"
— Dayle Axman; dayle.axman@dora.state.co.us

Louisiana — We held our State Chapter meeting on August 26. **Molly Kirby**, Legislative Coordinator, and **Pam Williams**, Senior Health Policy Advisor, presented a legislative review of recently enacted legislation. We held another Chapter meeting on September 23 to discuss changes to our by-laws, membership dues and a proposal to add industry members. **Larry Hawkins**, State Chair and Director of Market Regulation, presented a recap of the CDS in Denver. At this time we have 52 members in our Chapter.
— Larry Hawkins; lhawkins@ldi.state.la.us

Nebraska — Ann Frohman, Deputy Director and General Counsel for the Nebraska Department of Insurance, spoke at the August chapter meeting. Ann discussed company insolvency issues and the processes involved in the receivership, supervision and rehabilitation of insurance companies. **Karen Dyke**, Nebraska IRES State Chair, briefly discussed the Denver CDS. The next meeting will be in February 2005. Details of upcoming meetings can be found on the IRES Web site.
— Karen Dyke; kdyke@doi.state.ne.us

Oregon — Our guest speaker in August was Rates and Forms Analyst **Dave Bolton** of the Oregon Insurance Division. Mr. Bolton discussed what an insurer needs to file prior to using rates in the marketplace. We also heard from the Insurance Division Administrator **Joel Ario** who provided us with an update on the NAIC initiatives. In September we invited Administrator for the Governor's Advocacy Office, **Naomi R. Steenson**, and an Ombudsman in the Governor's Advocacy Office, **Alma Amador,** to discuss some of the health insurance programs available to uninsured Oregonians.
— Gary Holliday; Gary.R.Holliday@state.or.us

Virginia — Our quarterly IRES meeting was held in September; 32 regulators attended. Agent Investigators **Raymond House** and **Larry Beadles** spoke on topics presented at the Denver CDS. Market Conduct Examiner **Julie Roper** discussed CDS topics related to examination tools, such as I-SITE Market Analysis and I-SITE Financial applications. Market Conduct Examiner **James Young** provided CDS highlights from the Commissioner's roundtable discussion and spoke on the history and current state of market regulation and Market Analysis reorganization and accreditation. Market Conduct Examiner **Paul Wilkinson** reported on the NAIC Integrating Market Regulation Class in Baltimore.
— Weldon Hazlewood; WHazlewood@scc.va.us

Washington, DC — Our September 15 meeting focused on exchanging continuing education information. We also discussed our recruitment strategy for increasing membership.
— Betty M. Bates; Betty.Bates@dc.gov

"Quote" of the Month

The insurance industry needs to take a long, hard look at itself. If the practices identified in our suit are as widespread as they appear to be, then the fundamental business model needs major corrective action.

— New York State Attorney General Eliot Spitzer, announcing a lawsuit against allegedly illegal practices by insurance broker Marsh & McLennan at a joint Attorney General/NY Insurance Department press conference

Regulatory Roundup

by
Stroock & Stroock & Lavan LLP

NEW YORK – Bill that modifies certain return of premium obligations on excess lines policies awaits Governor's signature

The New York Legislature passed SB 6474, which was apparently introduced in response to a New York Insurance Department Office of General Counsel (OGC) opinion (No. 308 (2003)) issued in November 2003, that interpreted Insurance Law Section 3428(d) to apply to excess lines brokers. Section 3428(d) limits to 10% of gross premiums or $60, whichever is greater, the minimum earned premium that an insurer may retain in the event of the cancellation of a policy that is subject to a premium financing agreement. The term "premium finance agreement" is defined in the New York Banking Law with specific reference to the payment of premiums to an authorized insurer or to an insurance agent or broker. The party requesting the opinion "believed that since the phrase 'to an insurance agent or broker' immediately follows the phrase 'an authorized insurer' that it is reasonable to conclude that the Legislature must have meant that the payment was to be made to an insurance agent acting on behalf of an authorized insurer or an insurance broker acting on behalf of the insured of an authorized insurer." Because excess lines brokers do not act on behalf of authorized insurers, the inquirer argued that excess lines brokers must therefore be exempt from the Section 3428(d) cap on premium retention in the event of cancellation of an insurance policy that is subject to a premium financing agreement. The OGC rejected this reasoning, responding that, if the Legislature had intended this meaning, it would have drafted Section 3428(d) to include an express statement in this regard. SB 6474 would reverse the effect of the OGC's interpretation of Section 3428(d) by adding a brand new subsection (e) that expressly excludes policies procured by excess lines brokers from the provisions of Section 3428(d). Industry experts express doubt as to whether the Bill, which is currently being held by the Senate, will be signed into law by Governor George Pataki. *To view SB 6474, visit www.senate.state.ny.us. To view the New York Insurance Department Opinion No. 308 (2003), visit www.ins.state.ny.us/rg031109.htm.*

SOUTH CAROLINA – Governor signs flex-band rating Bill for personal insurance lines

South Carolina Governor Mark Sanford has signed into law SB 686, which, among other things, allows personal lines insurers to increase or decrease rates within a seven percent band without prior approval from the Insurance Department. The flex-band rating provision, known as the Property and Casualty Insurance Personal Lines Modernization Act (the "Act"), is limited to fire, allied lines, and homeowner's insurance policies and does not apply on an individual insured basis. The Act allows an insurer no more than two rate increases during any twelve-month period and the second rate increase filing in the twelve-month period is subject to regulatory prior approval. SB 686 became effective when signed into law by the Governor. *To view SB 686, visit www.scstatehouse.net.*

MASSACHUSETTS – Legislation requires insurers, prior to paying claims, to check with the Department of Revenue to determine whether a claimant owes past-due taxes

In August, Massachusetts Governor Mitt Romney signed into law HB 4744, which, among other things, requires that every company authorized to issue policies of insurance exchange information with the Department of Revenue (the "Department") to ascertain whether a claimant owes taxes to the state prior to

---

The New York-based Stroock & Stroock & Lavan LLP Insurance Practice Group includes partners Donald D. Gabay, Martin Minkowitz, William D. Latza and William Rosenblatt. The Insurance Practice Group also includes insurance finance consultants Vincent Laurenzano and Charles Henricks. They gratefully acknowledge the assistance of Robert Fettman, a law clerk, and Todd Zornik, an associate in the group. This column is intended for informational purposes only and does not constitute legal advice.

making any nonrecurring payment equal to or in excess of $500 to that claimant (the "Tax Reporting Provisions"). The Tax Reporting Provisions allow an insurer to remit to the Department the full amount of taxes owed to the state at the time it notifies the Department or at any time prior to making payment to the claimant. Opponents of HB 4744 argue that it places the insurance industry in an unfamiliar role, namely, assisting the state in meeting its tax-collection obligations. The Tax Reporting Provisions of HB 4744 will become effective on December 7, 2004. *To view HB 4744, visit www.mass.gov.*

MAINE – Governor signs legislation allowing life settlements

On June 4, Governor John Baldacci signed into law LD 1907, which allows a holder of a life insurance policy to be a viator, which is a person who assigns or sells such policy to a third party for more than its cash surrender value but less than its expected death benefit. LD 1907 includes a privacy protection clause, which prohibits, among other things, settlement providers and producers, insurance companies, and insurance producers from disclosing the identity of the viator or the insured to any other person, subject to certain exemptions. The viator has the right to rescind the settlement agreement before the earlier of thirty calendar days after the settlement contract is executed by all parties or fifteen calendar days after payment is received by the viator. *To view Senate Bill LD 1907, visit http://janus.state.me.us/legis.*

Casual Observations

Of Lizards & Ducks

When did insurance advertising get so funny? After all, providing protection for your family was never a laughing matter and insurance advertising used to reflect that. Traveler's umbrella sheltered us from financial storms, Allstate's hands protected us from life's vicissitudes, and Prudential's rock was always there, standing firmly behind us during unsettling times.

But no more. Insurance ads have gone the cute and fuzzy route. We guess it started decades ago when MetLife signed Snoopy to a long-term contract. Now lizards and ducks have joined Madison Avenue's merry menagerie.

We wouldn't be surprised — what with a presidential election, Florida hurricanes and the SMART Act diverting your attention — if you missed the news this fall that the AFLAC duck was voted among the top five advertising characters in the country. As a result, he will soon be inducted into a new Advertising Walk of Fame on New York's Madison Avenue.

The duck garnered 14% of the 600,000 votes cast, outpolling all but the M&M talking candies, and leaving such long-time heavyweights as the Pillsbury Doughboy and Mr. Peanut in the dust. Incidentally, those loquacious M&Ms were allowed to compete collectively, which doesn't seem fair to us at all.

Love or hate that daffy AFLAC duck, you've got to respect the upstart's marketing muscle. In 1999, he was nothing more than a weak-kneed duckling. Five years later, he has single-handedly transformed AFLAC into a household word. Of course, consumers are still perplexed about what type of insurance products the company actually offers, but that will be the next move, we're sure, in the company's overall marketing strategy. Maybe a mongoose will be hired to explain that.

The duck certainly is doing a lot better than his property-casualty counterpart, the GEICO gecko. The cloying gecko may not have captured the country's imagination, but GEICO's companion commercials featuring the "but I've got some good news" teaser have proven highly effective with people from all walks of life.

In fact, coming home from the Denver CDS last August, our pilot announced to passengers: "We anticipate a great deal of turbulence on this flight, but I have some good news . . . I just saved a bunch of money on my car insurance." We may not like wacky animals selling us insurance, but we like wacky pilots even less.

— W.C.

BULLETIN BOARD

√ All AIE and CIE holders are urged to check out the important Continuing Ed news developments on page 16 of this issue. If you aren't sure about the status of your continuing ed compliance, do NOT delay. Contact Susan Morrison right away at the IRES office, 913-768-4700, or check My NICE Credits at www.go-ires.org

√Now is the time to let us know if you would like to take part in a breakout session or panel presentation on ANY regulatory issue during the IRES annual meeting next summer in Tampa. Polished speakers and presenters are always in demand.

√ Marianne Chillas of MRC Consulting Group, Inc. passed away on Oct. 8, 2004 in Middletown, Delaware. Marianne was a longtime IRES member who held the CIE designation. She was with the Delaware Insurance Department for 11 years, Navigant for 3 years and MRC Consulting for 4 years.

In the next REGULATOR:

√ Where is Spitzer investigation leading?

√ Virtual Adjusting is here

√ Commissioners' interview continues

√ Welcome new IRES members:

Cheryl Alexander, Utah
Joelle M. Free, Louisiana
Daedre Y. Holland, Virginia
Michael W. Lamb, Tennessee
Marlene Bukoski, Michigan

The Regulator®

Published by the
Insurance Regulatory Examiners Society
12730 S. Pflumm Rd., Suite 102, Olathe, Kansas 66062

e-mail: ireshq@swbell.net
www.go-ires.org

AUTO
First Class Mail
U.S. Postage Paid
Kansas City, MO
Permit No. 1794

Where is state regulation headed?