<u>Federal Legislation Commissioner's Column</u>

December 2015

As the year draws to a close, I would like to take some time to reflect upon the insurance-related legislation that has been under discussion in Congress. While this year's session is not yet complete and some insurance measures are still being debated, what follows is a brief synopsis of some of the legislation that has been passed as well as some issues that remain on the table.

In January the National Association of Registered Agents and Brokers Reform Act of 2015 (or NARAB II as it is commonly called) was enacted as part of H.R. 26, the Terrorism Risk Insurance Program Reauthorization Act of 2015. The Act requires the establishment of a national clearinghouse to streamline market access for nonresident insurance producers. The establishment of the National Association of Registered Agents and Brokers is a significant step to help simplify insurance producer licensing in United States.

The National Association of Insurance Commissioners (NAIC) supported the creation of the NARAB as it would create a one stop mechanism for accessing nonresident markets while preserving important state market regulatory authorities and consumer protections. The NARAB is granted some disciplinary enforcement powers, however state regulators will continue to regulate marketplace conduct, oversee the actions of producers, investigate complaints, protect consumers, and take action against those who violate the law.

The NAIC also applauded passage of the Policyholder Protection Act which was sponsored by our own Sen. David Vitter and clarifies that state insurance regulatory tools designed to protect policyholders will be available regardless of insurance company structure or financial circumstance. The bill also prevents regulators with the Federal Deposit Insurance Corporation (FDIC) from transferring the assets of a state-regulated insurance company or subsidiary to an affiliated bank if state insurance commissioners believe such a transfer would be harmful to policyholders. This ensures that insurance assets designated to pay claims to consumers will be used for their intended purpose. The Act was part of the omnibus spending bill approved by Congress in mid-December.

Also part of the omnibus bill were delays to taxes included in the Affordable Care Act (ACA). The so-called "Cadillac Tax" (which would levy a hefty 40 percent excise tax on employer health plans considered too generous) and the medical device tax were both delayed until 2020. Congress also implemented a delay of one year in the law's Health Insurance Tax which is passed along directly to policyholders and is the first ever federal premium tax on insurance.

Earlier in 2015, Congress issued more clarification regarding the ACA's "small employer" definition. The Protecting Affordable Coverage for Employees Act (H.R. 1624) allows states to choose whether to expand the small-group market to include businesses with up to 100 employees. Set to begin in 2016, the original mandate in the ACA required employers with 51 to 100 employees to offer plans as a small-group. There were concerns that expanding the small group market would put restrictions on plans offered by mid-size businesses and that would result in higher premiums and less flexibility in benefits.

Also, those mid-sized businesses may have, in the face of increased costs, decided to self-insure, a move the Obama administration warns would have been detrimental to the goals of the ACA. For Louisiana, I recently issued Bulletin 2015-07 *Transitional Relief Regarding Small Group Size* stating that the definition of small employer in our state on January 1, 2016 shall extend only to those employers that employ an average of at least 1 but not more than 50 employees. Legislation will be necessary in the next session of our Legislature to maintain that definition.

Another major issue for Louisiana is the federal flood insurance program. With the National Flood Insurance Protection Act due to expire in 2017, there has been much discussion about the proposed Flood Insurance Market Parity and Modernization Act (H.R. 2901). The Act, which was assigned to a congressional committee but has yet to make it to the floor, would clarify that flood insurance purchased through private companies would satisfy the requirement to purchase flood insurance for federally-backed mortgages. The Act amends the Flood Disaster Protection Act of 1973 that requires all mortgages for homes that are backed by the federal government to have flood insurance through the National Flood Insurance Program (NFIP). H.R. 2901 would allow state regulators to have the final word on what constitutes “acceptable” private market flood insurance.

The NAIC supports efforts to create a regulatory environment more conducive to a private flood insurance market and backed the legislation as it was originally introduced. But the NAIC has concerns with amended language in the Act that empowers federal banking and housing regulators to potentially regulate the solvency of private flood insurance carriers or duplicate state insurance regulators efforts.

For some historical perspective, the federal government created the NFIP in 1968 after the private market had determined that flood insurance products were not commercially viable and stopped offering such coverage. Today, new technologies, including flood maps, risk data and computer modelling, have made it more feasible for insurers to clearly understand the risks of a given area and to price accordingly.

Here in Louisiana, we know firsthand the devastation that a flood can cause. That’s why it is so alarming that despite a sharp increase in flood policies immediately after the 2005 storm season that produced Hurricanes Katrina and Rita, the number of flood policies has been on the decline in our state. Prior to Katrina, Louisiana had about 380,000 flood insurance policies. That figure grew to just under 500,000 policies by 2006 but has since dropped back down to about 460,000 policies. As we saw with the flooding of the Red River this spring, flooding doesn’t only affect the coastal areas of Louisiana. In fact, according to FEMA, property owners outside of high-risk flood areas are responsible for 25 percent of NFIP claims in Louisiana.

Several other insurance-related measures are still in play in Congress, having been approved by one body and moved to the other for consideration. The Cybersecurity Information Sharing Act of 2015 (S. 754) has passed the Senate and moves on to the House for consideration. It would grant liability protections for the sharing of information between government and private entities. The Eliminate Privacy Notice Confusion Act (H.R. 601) would amend the Gramm-Leach-Bliley Act to exempt financial institutions who meet certain qualifications from updating their annual privacy policy notice.

Many other bills impacting the insurance sector were introduced in Congress in 2015, but have yet to see action. If you would like additional information, you can give us a call or contact your U.S. Senator or Representative. These bills can be tracked at www.congress.gov.