

**THE COUNCIL OF STATE GOVERNMENTS  
RESOLUTION OPPOSING FEDERAL INSURANCE CHARTERING**

**Resolution Summary**

State officials have supervised insurance for more than a century. Through this supervision, states have worked to promote the public interest, ensured the equitable treatment of consumers and promoted fair competition. Despite state success in this area, there has been congressional interest in “reforming” insurance by creating a dual insurance regime that would allow insurers and producers to elect state or federal regulation.

In the 109th Congress, Sen. John Sununu introduced legislation, S. 2509, the National Insurance Act. This legislation proposed to create an independent Office of National Insurance, which would be housed within the U.S. Treasury Department. This national office would oversee a separate system of regulation and supervision for insurers and producers that choose to be licensed or chartered at the federal level. A presidentially appointed national insurance commissioner would lead the office and the office would be funded by various fees collected from insurance companies, producers and agencies that elect federal regulation. While the Bush Administration has not taken a formal position on this legislation, the Treasury Department has stated that it is tracking developments in this arena.

Recently, Sen. Sununu and Sen. Tim Johnson reintroduced this legislation, S. 40, The National Insurance Act of 2007. The primary change to the current bill, as compared to last year’s bill, is the ability of a surplus lines insurer to now opt for federal oversight. Surplus lines insurance is insurance for unique risks that the private market doesn’t cover. In the House of Representatives, Rep. Ed Royce has indicated interest in reintroducing the House companion to Sen. Sununu’s bill that he introduced last year.

State insurance supervision enforces laws developed by state governments to protect the rights of consumers where they live. The legislation introduced by Sen. Sununu contains very little language on consumer protection, but rather relies on the creation of an office of consumer affairs, which would be tasked with producing rules for the regulation of insurance sales and marketing. This is the only language in the proposed legislation that deals with consumer protection issues, thus allowing insurers to opt out of state standards and oversight. Also, this legislation pre-empts laws pertaining to credit scoring, senior discounts, genetic testing, redlining and other insurer practices. The absence of specific regulatory standards in the federal legislation, combined with a heavy reliance on industry self-regulation to implement the National Insurance Act, in all likelihood could lead to regulatory arbitrage between the federal and state systems, with a negative impact on consumer protections and solvency enforcement.

Federal insurance chartering stands to threaten protections that states have put in place for consumers, and also stands to put much-needed state revenues at risk from the loss of fees and assessments. This resolution seeks to educate state legislative leaders about the

potential ramifications of a federal insurance charter, and how this dual scheme could lead to market disruption and policyholder confusion.

### **Additional Resource Information**

National Association of Insurance Commissioners: [www.naic.org](http://www.naic.org)

The National Insurance Act, S. 40: <http://thomas.loc.gov>

National Conference of Insurance Legislators: [www.ncoil.org](http://www.ncoil.org)

### **Federal Insurance Chartering Opposition Management Directives**

**Management Directive #1:** Support state efforts to raise awareness of the attempts to establish federal insurance charter legislation and the potential consequences of these attempts.

**Management Directive # 2:** CSG staff will post approved resolution on CSG's Web site and make available through its regular communication venues at the state and local level to ensure its distribution to the state government and policy community.

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**WHEREAS,** state insurance protection safeguards individual and commercial policyholders, and thereby galvanizes the strength of the U.S. insurance markets through diversity addressing unique local concerns; and

**WHEREAS,** state officials are effective stewards of the insurance marketplace and can preserve these unique and diverse consumer protections; and

**WHEREAS,** insurance is a unique industry apart from banking and securities and presents issues that state officials are best able to address; and

**WHEREAS,** federal chartering would disrupt insurance markets and harm consumers; and

**WHEREAS,** federal chartering would create a bifurcated regime which would only add an additional layer of bureaucracy whereby companies would be able to “opt out” of consumer protections and state oversight; and

**WHEREAS,** federal chartering threatens state revenues of nearly \$14 billion a year in lost state insurance premium tax revenues, fees and assessments; and

**WHEREAS,** Optional Federal Charter legislation stands to threaten the consumer safeguards that have been put into place by enabling and encouraging the outsourcing of enforcement of insurance industry consumer protections; and

**WHEREAS,** federal chartering will result in policyholder confusion and market disruption due to the separate and overlapping systems that would be created; and

**WHEREAS**, an optional federal regulatory system would only be optional for insurers, not for consumers, taxpayers, businesses and local economies.

**BE IT THEREFORE RESOLVED**, that The Council of State Governments supports and encourages state actions to preserve the pre-eminence of state insurance systems and seeks to educate state elected officials on the potential ramifications of a bifurcated scheme on consumers and state revenues.

Adopted this 13<sup>th</sup> day of June 2007, at the  
CSG 2007 Spring Committee & Task Force Meetings  
in Puerto Rico



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Governor Brad Henry  
2007 CSG President



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Representative Deborah Hudson  
2007 CSG Chair