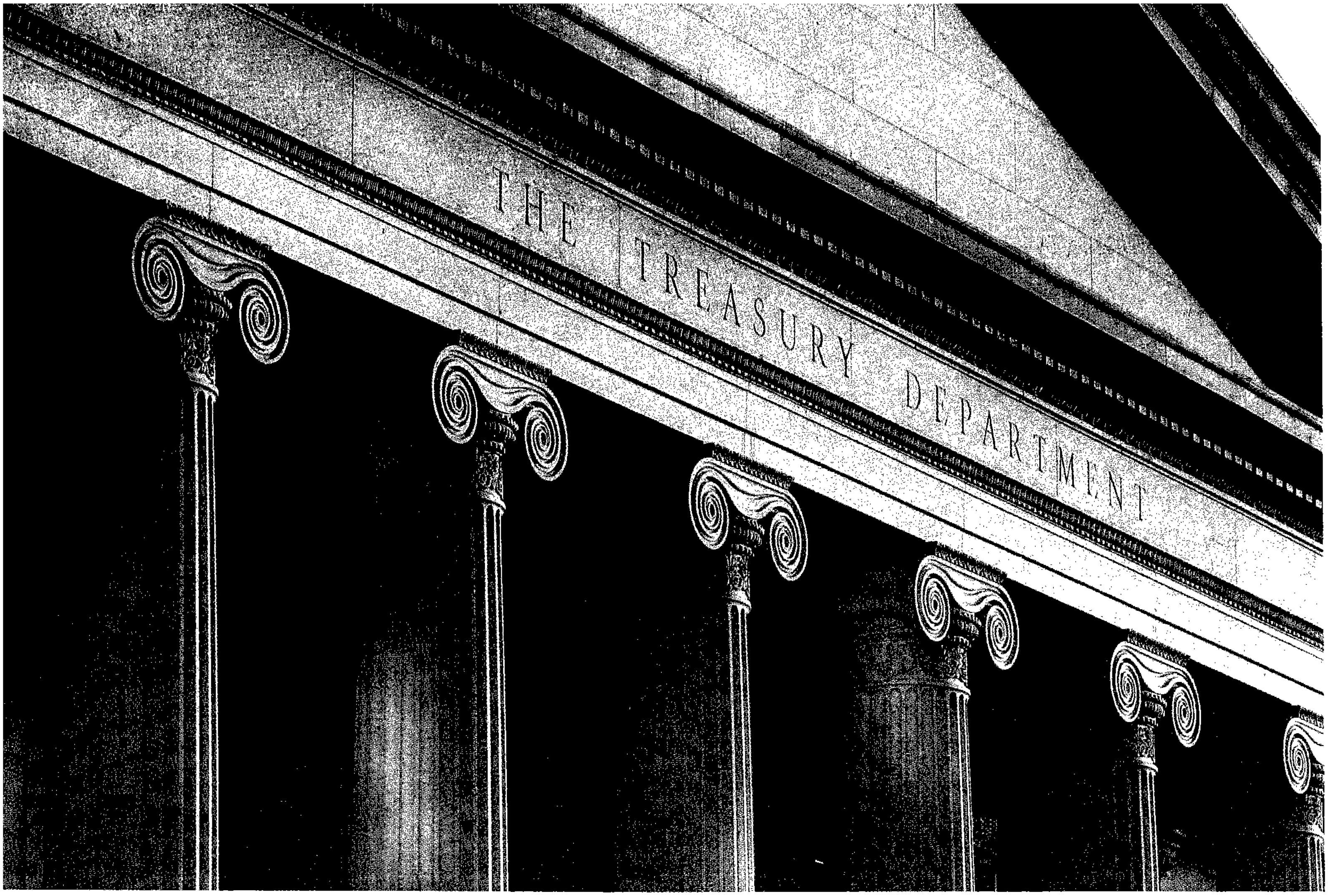

H.R. 5840 Becomes a Federal Power Grab

Bill for Information Office Grants Treasury Secretary Broad New Powers

Proposed legislation that started out as a bill to create an insurance information office has been changed to enable federal regulation of insurance.

When H.R. 5840, the innocuous-sounding *Insurance Information Act of 2008*, was introduced earlier this year, its supporters said it was simply an effort to create an information resource for members of Congress on insurance matters.

"This bill has been misleading from the outset," said PIA National President Robert Page, in a press statement that was featured prominently in the *National Underwriter*. "The title of the bill is a misnomer and the rhetoric of its supporters is designed to conceal what is really going on here. This piece of legislation is part of a coordinated, frenetic push by advocates of federal insurance regulation to sweep away opposition and advance their agenda."

As the drafting process for H.R. 5840 proceeded in the House, the Treasury Secretary's powers were expanded, giving him authority to preempt state insurance laws, regulations and practices, not only when he says they conflict with international agreements, but also when he says they conflict with "national insurance policy" as set by the Treasury Department.

By the time that the House Capital Markets Subcommittee approved H.R. 5840 on July 8, 2008, the bill had been transformed into legislation that would enable a federal takeover of most insurance regulation:

- Under H.R. 5840, Congress grants *new powers* to the Secretary of the Treasury, making the Secretary the principal federal authority for domestic and international insurance issues of national interest with the power to determine which state laws, regulations and industry practices will be preempted.
- H.R. 5840 effectively guts the McCarran-Ferguson Act of 1945 and the Gramm-Leach-Bliley Act of 1999, which establish and affirm that the states are the regulators of the business of insurance.

"This is no longer a bill that is only about creating an insurance information office," said PIA National President-elect Kenneth R. Auerbach, Esq. "The current version of this bill would effectively lay open to review and approval by the Secretary of the Treasury the laws and practices of all 55 United States jurisdictions in most matters relating to insurance."

"The Office of Insurance Information concept is being used by advocates as a

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OII Is Broad Assault on State Regulation

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vehicle to enable creation of the initial federal insurance regulatory infrastructure that, once it is established, can be rapidly transformed into the office of a federal insurance regulator," said PIA National Executive Vice President & CEO Leonard C. Brevik. "PIA is opposed to federal insurance regulation, so PIA is opposed to H.R. 5840. This is dual regulation. They are one and the same."

PIA believes that consumers are best served by the current system under which the business of insurance is regulated by the states. PIA opposes federal regulation of insurance, and also opposes proposals which would create a dual regulatory system through an optional federal charter for insurers, which would essentially allow them to decide whether to be regulated by the states or the federal government.

In a speech in April to the Maine Insurance Agents Association Auerbach said that despite the arguments advanced by advocates of federal insurance regulation, what is really underway is a competition for market share by major players.

"Federal involvement is being marketed as a way of making insurance regulation more efficient, but the subprime mortgage meltdown occurred under federal regulation," Auerbach said. "All at the same time that the insurance industry — which is under state regulation — remained on a firm financial footing, achieving record profits and lower prices for consumers."

"So our question is, why would it be more efficient for the one sector of financial services that has prudently conducted its business to be subsumed into a federal regulatory structure that has failed in the supervision of banking and securities?" he said.

The initial version of H.R. 5840 dealt with setting up a federal insurance information office. It also addressed international insurance agreements, granting the Treasury Secretary power to preempt state insurance laws and regulations he determined to be in conflict with international agreements.

On June 10, the Capital Markets subcommittee held a hearing on H.R. 5840. Illinois Insurance Commissioner Mike McGrath surprised everyone by saying that the NAIC could support H.R. 5840 with some key changes that limited the scope of preemptions.

When McGrath registered objections to the preemption provisions, one of the committee's prime sponsors of an Optional Federal Charter, Rep. Melissa Bean (R-Ill.) told McGraith that he would make "an ideal candidate" for federal insurance regulator. When NCOIL President Brian Kennedy said giving the NAIC and not NCOIL a lead role in this office "allows the tail to wag the dog," Rep. Kanjorski quickly offered to give NCOIL a seat on the OII Advisory Group and asked if that would assuage their objections to the bill.

It was unusual to see such bare-knuckles tactics being utilized in a public hearing, as opposed to behind closed doors.

The Manager's Amendment

In response to comments filed with the subcommittee by PIA, NCOIL and NAIC, a new version of the bill (called the Manager's Amendment) was drafted by committee staff. While it did narrow the scope of preemptions a little, this change was negated by expanded new powers granted to the Treasury Secretary. Now, in addition to being able to preempt state law in relation to international insurance agreements, that power was broadened to include "national insurance policy," which was to be set by Treasury.

So what began as a bill to set up an insurance information office and deal with relatively narrow concerns regarding international treaties was now a bill that effectively put the U.S. Treasury Secretary in charge of most insurance matters in the country.

The bill's supporters maintained that the concerns of its opponents were misplaced, that the bill should be read more narrowly.

"People have been encouraged to read the bill more narrowly than this," Auerbach said. "If that is the case, then PIA wants the actual language in the bill to articulate that narrowness. The current language provides the power to determine which state laws, regulations and industry practices will be preempted, without any proper legislative authority acting to do so."

"This is a federal power grab," Auerbach concluded.

NAIC's "Conditional" Support

As the Capital Markets subcommittee approached a scheduled mark-up of the revised H.R. 5840 on July 8, a letter to the subcommittee was received that had been signed by NAIC President Sandy Praeger. In it, she endorsed the revised H.R. 5840, on behalf of the NAIC.

This was a major bombshell. The National Conference of Insurance Legislators (NCOIL), comprised of state lawmakers involved in setting insurance policy in their states, had been conducting a nationwide campaign warning state officials of the dangers posed by H.R. 5840. PIA supported NCOIL in the effort.

Supporters of state regulation were perplexed. How could the NAIC endorse a bill on behalf of its members that would give away much of their members' authority? As a trade association, the NAIC has no authority to cede power to the federal government on behalf of individual states. Only the states can do that.

An NCOIL-NAIC discussion session was held July 14 by NCOIL at their summer meeting. NCOIL President and Rhode Island State Rep. Brian Kennedy said that he was "baffled" by the endorsement of a bill that could preempt state insurance regulation.

During the session, North Dakota State Rep. George Keiser, R-Bismarck (R) said, "I felt sold out. I'm not looking for a 'seat at the table.'" He said that if state legislators and regulators are going to oppose federal oversight, then a clear position has to be taken.

New York State Sen. William J. Larkin (R) added his disappointment in the NAIC's position, noting that "we're the representatives of the people." He suggested that the NAIC was acting like a federally recognized charitable organization that is being run by its staff, rather than the state insurance commissioners. Larkin also criticized pending federal legislation that would create an optional federal charter for insurers. If a federal charter is put in place, he said, New York stands to lose $3.3 billion in revenue.

Action Delayed

As the House worked feverishly to

adjourn by August 1, there was a risk that H.R. 5840 would be sent to a vote on the House floor, bypassing the full Financial Services Committee. There were reports earlier that the bill would be considered by the full committee on July 15, but that session had been cancelled.

An attempt to pass H.R. 5840 in the final three days before adjournment was mounted. The bill would be brought up under the "suspension calendar." As this began to unfold, PIA went out with a strongly-worded press release declaring that the bill was not as described by its supporters, but was really legislation that enabled federal regulation of insurance. PIA also launched a nationwide grassroots alert, asking all members to contact their Members of Congress.

One day later, when the bill was expected to come up, the *National Underwriter* broke the news that it would be delayed until September, when Congress returns from its August recess.

No companion bill has been introduced in the Senate as yet, but Banking Committee Chairman Chris Dodd (D-Conn.) indicated H.R. 5840 could see action there soon.

PIA Members:

Contact your Members of Congress today and ask them to stop H.R. 5840!

Please log on to www.pianet.com/GRASSROOTS and take action now!

PIA Sends Letters to Congress, All State DOIs

Bill a "Broad Assault on the Authority of All States"

PIA National has sent letters to all of the nation's state commissioners of insurance and to Members of Congress, warning against the unintended consequences of the Insurance Information Act of 2008 (H.R. 5840).

"Some in Congress may be tempted to think that there is consensus within the insurance industry regarding H.R. 5840. This is not the case," said PIA Executive Vice President & CEO Leonard C. Brevik. "Our letter to Congress along with our letter to all of the state insurance commissioners points out that there is no consensus on this bill."

What started out as a bill to create an insurance information office and deal with insurance issues in international agreements has become legislation that would enable federal regulation of insurance. Under H.R. 5840, Congress grants new powers to the Secretary of the Treasury, making the Secretary the principal federal authority for domestic and international insurance issues of national interest with the power to determine which state laws, regulations and industry practices will be preempted.

H.R. 5840 effectively guts the McCarran-Ferguson Act of 1945 and the Gramm-Leach-Bliley Act of 1999, which establish and affirm that the states are the regulators of the business of insurance.

"PIA is concerned that Congress is trying to ride roughshod over our state departments of insurance," Brevik said. "This bill has been quietly transformed into legislation enabling federal insurance regulation."

PIA believes that consumers are best served by the current system under which the business of insurance is regulated by the states. PIA opposes federal regulation of insurance, and also opposes proposals which would create a dual regulatory system through an optional federal charter for insurers, which would essentially allow them to decide whether to be regulated by the states or the federal government.

"Supporters of H.R. 5840 are now attempting to convince members of Congress that these powers are not new, will only be exercised under very limited circumstances, and only as a last resort," said the PIA letter to the state commissioners of insurance. "Unfortunately, the actual language of the bill does not track with the narrowness of these comments, and press comments do not mitigate that problem. Hence, those that desire to transfer insurance regulation from the states to the federal government may do so under this current language."

"PIA believes that the current version of H.R. 5840, the Insurance Information Act of 2008, effects a broad assault on the authority of all states and the Departments of Insurance that regulate the business of insurance," the letter goes on. "We respectfully suggest that you contact your federal elected officials to express your concerns about this flawed legislation."

A separate letter has been sent to all Members of Congress detailing the flaws in H.R. 5840 and its potential for creating unintended consequences.