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Insurance

Industry, Consumer Groups Clash on Flood Insurance Bill

Consumer groups say a flood insurance bill recently approved by a House committee would weaken policy-holder protections, while industry groups and regulators maintain the measure would help preserve a niche market while strengthening oversight.

The conflict centers on a provision of H.R. 2901 and S. 1679, the Flood Insurance Market Parity and Modernization Act, that would eliminate a federal requirement that private insurers alert a customer of intent to cancel services 45 days in advance. The notice requirement—which applies to residential policies only, not commercial—is in place to allow consumers to have enough time to sign up with the National Flood Insurance Program (NFIP), which has a 30-day waiting period for coverage.

Although residential policies make up a small fraction of the private flood insurance market, the notice-elimination provision worries J. Robert Hunter, a consumer advocate and former federal and state insurance regulator. He said that under the legislation, specialty underwriters called surplus line insurers could cancel residential flood insurance policies on a whim, leaving customers with not enough time to get NFIP coverage. State regulators lack regulatory authority to protect consumers from dubious cancellation tactics that surplus line insurers could engage in under the bill, Hunter told Bloomberg BNA.

'Here Comes a Hurricane.' ''Here comes a hurricane, and they cancel [the policy] knowing that hurricane is coming two days from now,'' Hunter, a former Federal Insurance Administrator who ran the NFIP and a former Texas insurance commissioner, told Bloomberg BNA. ''You can't go to the [NFIP] then because there's a 30-day waiting period to get into the program.''

State regulators wouldn't be able to go after surplus line insurers that have at-will cancellation policies because these insurers typically are not regulated like standard insurers, Hunter said.

A spokeswoman for one of the bill's two authors, Rep. Dennis Ross (R-Fla.), refuted the criticisms, arguing that the bill preserves and even expands state regulators' ability to oversee surplus line insurers. Joni Shockey, communications director for Ross, said the bill's elimination of the federal 45-day notice requirement wouldn't impact insurers' practices because states have their own cancellation policies in place that can—contrary to Hunter's view—be applied to surplus line insurers just like standard insurers.

''[T]he National Association of Insurance Commissioners is a supporter of H.R. 2901, and is a main regulator in ensuring that bad actors and surplus line insurers don't harm or take advantage of consumers,'' Shockey told Bloomberg BNA in an e-mail. ''Also, states already have their own insurance cancellation timeframes in place, and this bill would give states more discretion to enforce their cancellation timeframes as established by state law.''

Official with the NAIC, the group that represents state regulators, testified in support of the bill in January. NAIC officials confirmed to Bloomberg BNA in March that the group's position has not changed.

Industry groups say the legislation would maintain consumer protections and state regulatory oversight while giving surplus line insurers the wiggle room needed to create private flood insurance policies for customers, which often include properties of very high value or extenuating circumstances not faced by standard insurers or the NFIP.

The House Financial Services Committee voted in early March to approve the bill; the vote was unanimous, which supporters say bolsters their view of no consumer harm. The Senate companion bill (S. 1679), sponsored by Sens. Dean Heller (R-Nev.) and Jon Tester (D-Mont.), has yet to see movement.

Given the 53-0 vote in committee, Ross is seeking to get the measure considered under suspension of the rules, a procedure usually reserved for noncontroversial matters that allows only limited floor debate, Shockey said (See previous story, 03/04/16).

Form Restrictions. Brady Kelley, executive director of the National Association of Professional Surplus Line Offices Ltd., (NAPSLO), noted that surplus line insurers operate in a high-risk niche where they are the insurers of last resort—and as such, they are typically not bound by so-called form restrictions applicable to standard insurers.

''Surplus lines insurers are generally not subject to form regulation, which means a surplus lines carrier can be more innovative, creative and responsive in developing a product that provides the level of coverage a consumer is seeking, while pricing the product in a fi-

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nancially responsible manner commensurate with the risk,'' he said.

Hunter, however, seized on this difference in regulation as a potential consumer harm.

''They're not regulated, so the [policy] forms can say whatever the surplus line company wants,'' he said.

Regarding surplus lines insurers, ''[Regulators] don't look at the policy forms. They don't look at the rates,'' unlike the case with standard insurers, Hunter said.

Hunter said that while plenty of surplus line insurers are legitimate, like Lloyd's of London and Marsh & McLennan Companies Inc., the cancellation policy changes would be ripe for a company that wants to conduct shady business.

''They could be crooks,'' Hunter said of potential bad actors. ''They could be a fly-by-night operation.''

Kelley said the fear is unfounded.

''[T]he bill doesn't allow for the situation Hunter warns of,'' Kelley said. ''It is important to remember that most surplus lines policies are written on very complex commercial risks for which no cancellation notice requirements apply.''

Primary residential flood insurance written on a surplus lines basis—based on data from California, Florida, Mississippi, Nevada, New York and Texas—is estimated to represent just one-half of one percent of the 2014 U.S. flood insurance market and just two-hundredths of one percent of the $40.2 billion of 2014 total U.S. surplus lines market, Kelley told Bloomberg BNA in an e-mail.

''As a supplemental market, generally speaking, the surplus lines provides coverage options (e.g., supplemental coverages, higher limits, unique terms and conditions, etc.) when the standard market cannot or will not underwrite the level of flood coverage needed,'' Kelley said.

Fixing Biggert-Waters. The legislation aims to clear up a provision in the Biggert-Waters Flood Insurance Reform Act of 2012 (Pub. L. No. 112-141) that caused mortgage lenders to only accept flood insurance offered through the NFIP. That program is $23 billion in debt and many lawmakers and some in industry are seeking to generally shift more flood risk to the private industry with the NFIP's reauthorization looming in 2017 (See previous story, 01/13/16).

The bill would make clear that flood insurance offered by private insurers is eligible to satisfy federally mandated flood insurance requirements. Particularly, it clarifies that surplus line insurance qualifies as private flood insurance by defining clearly what constitutes private flood insurance.

Besides the cancellation provision, the bill has drawn other criticisms. Another prominent insurance consumer advocate, Birny Birnbaum with the Center for Justice, testified against the bill while it was still in subcommittee (See previous story, 01/14/16). Birnbaum expressed concern that the legislation would allow surplus line insurers to cherry-pick the most profitable properties, leaving taxpayers to foot the bill for a more expensive NFIP.

NAPSLO's Kelley, though, said that to qualify for surplus line flood coverage, a property must be ineligible for NFIP coverage.

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