NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
FINANCIAL SERVICES & INVESTMENT PRODUCTS COMMITTEE
BOSTON, MASSACHUSETTS
JULY 21, 2006
MINUTES

The National Conference of Insurance Legislators (NCOIL) Financial Services & Investment Products Committee met at the Boston Park Plaza Hotel and Towers in Boston, Massachusetts, on Friday, July 21, 2006, at 1:45 p.m.

Rep. Joe Hune of Michigan, Chair of the Committee, presided.

Other members of the Committee present were:

Sen. Joe Crisco, CT
Rep. Pat Patterson, FL
Rep. Terry Parke, IL
Rep. Daniel Foley, NM
Rep. George Keiser, ND
Rep. Brian Kennedy, RI
Del. Harvey Morgan, VA
Rep. Mark Young, VT

Other legislators present were:

Rep. Sandra Adams, FL
Rep. Franklin Sands, FL
Rep. Priscilla Taylor, FL
Sen. Dean Cameron, ID
Rep. Dennis Horlander, KY
Sen. Pam Redfield, NE
Sen. Duane Mutch, ND
Rep. Virginia Milkey, VT

Others present were:

Susan Nolan, Nolan Associates, NCOIL Executive Director
Paul Donohue, NCOIL Director of State-Federal Affairs

MINUTES

The Committee voted unanimously to approve the minutes of its February 24, 2006, meeting in Weston, Florida.

DISPUTES BETWEEN BANKS AND CREDIT UNIONS

Mr. Donohue reported that credit unions enjoy a tax advantage over banks, since they are generally exempt from all federal, state and local income and franchise taxes. He stated that in nearly half of the states, credit unions would rank among the top ten (10) banks in terms of financial assets. Banks are unhappy, Mr. Donohue explained, because some credit unions now make small-business loans in the $3 million to $20 million range, and their tax advantage gives them the ability to offer those loans at lower rates. According to Mr. Donohue, banks argue that this is unfair competition.

Mr. Donohue reported that the only related legislation before Congress is H.R. 2317, the *Credit Union Regulatory Improvements Act of 2005,* introduced by Representative Edward Royce (R-CA). Mr. Donohue said the bill would expand commercial lending authority for credit unions from the current cap of 12.25 percent to 20 percent of total assets.

CONGRESSIONAL INVESTIGATIONS INTO TITLE INSURANCE

Mr. Donohue reported that in 2005 consumers paid $17 billion in premiums for title insurance. He said the figure is roughly twice the amount paid in 2000 and four times the amount paid in 1995. He said that title insurance prices are based on the sale price of a mortgage loan and that carriers currently pay out less than five cents for every dollar collected in premiums. Mr. Donohue noted that title insurance premiums exceed those collected in most property-casualty lines. According to Mr. Donohue, the title insurance industry is highly concentrated, with only five insurer groups controlling 92 percent of the market nationwide.

Mr. Donohue reported that the House Financial Services Committee recently held a hearing on the title insurance industry and that the Committee Chairman, Michael Oxley (R-OH), expressed concern with current industry practices. One concern, Mr. Donohue said, is reverse competition, which refers to a market structure in which the seller of a product markets it to an intermediary instead of the ultimate purchaser of the product. Mr. Donohue said that title insurers market their products to real estate professionals, who often steer customers to certain title insurers. He said that illegal "kickbacks" are sometimes involved.

According to Mr. Donohue, title insurers claim there is no need for new federal laws because current laws prohibit this activity and should be enforced. He stated that title insurers say their coverage is fundamentally different from other insurance in that the costs are up-front (related to performing title searches) rather than prospective.

Rep. Hune said that he has looked into this issue in his home state of Michigan and has concluded that much of the problem stems from outside of the title insurance industry. As an example, Rep. Hune mentioned that Wayne County, Michigan, is backlogged on recording deeds once they are submitted to the recording office. He said this causes tremendous problems and mentioned a news article in which the FBI estimates that from 2004 to 2005 mortgage fraud in Michigan jumped from $9 million to $26 million. Rep. Hune stated that the Committee would examine the issue going forward.

APPLICATION OF SARBANES-OXLEY TO PRIVATELY HELD COMPANIES

Ed Stephenson, Director of Operations with Barnert Associates, Inc., reported on recent NAIC activity regarding proposed Sarbanes-Oxley (SOX)-like changes to the Model Audit Rule. He said that an NAIC working group passed the changes in March and sent them to the NAIC Financial Condition Committee. An interim hearing, he said, was held in early May in Atlanta, at which time the Committee accepted editorial changes and made significant revisions to the corporate governance thresholds.

Mr. Stephenson said the revisions provided that a company with less than $300 million in direct and assumed premium would not be required to place independent members on the board of directors; however, he said, such company would be required to have an audit committee composed of more than 50 percent of independent members. He said that the threshold previously had been $100 million. Mr. Stephenson reported that the revised language provides an additional threshold of $500 million, at which level a company would be required to have an audit committee composed of more than 75 percent of independent members.

Mr. Stephenson stated that the new, higher thresholds place the burden on companies that are more able to shoulder it. However, he said, it does not resolve whether the requirement will effectively protect policyholders as opposed to shareholders and, if the requirements are imposed by regulation, whether commissioners have the authority to set insurance public policy, which is the prerogative of legislatures.

Mr. Stephenson noted that internal controls provisions of the proposed changes do differ from SOX in significant ways. Among other things, he said, the proposed requirements do not require an attestation by an outside auditor and do not specify a particular framework. According to Mr. Stephenson, these are two of the greater cost drivers in the SOX legislation.

Mr. Stephenson said that commissioners will propose to incorporate these changes into the NAIC accreditation system and commented that NCOIL had an opportunity to affect the process going forward.

Other interested parties then commented among them, Neil Alldredge, Senior Director of State Advocacy with the National Association of Mutual Insurance Companies (NAMIC), reported that his group opposes NAIC efforts to apply SOX-like provisions to non-public companies and will continue its opposition in the states.

Following Committee discussion regarding distribution of a February 2006 NCOIL resolution opposing the NAIC effort, Rep. Keiser moved that NCOIL draft a strong letter from NCOIL President Rep. Frank Wald (ND) resending the resolution. The Committee determined to send such a letter via unanimous voice vote.

PROPOSED NCOIL PAYDAY LENDING MODEL ACT

Rep. Hune said that, as per Committee discussion at the Spring Meeting, a Payday Lending Subcommittee had been formed to consider issues that might be included in a future NCOIL payday lending model law. Rep. Hune reported that the Subcommittee's recommendations were as follows:

- Establish loan terms of between 15 to 45 days
- Institute a $1,000 maximum loan cap
- Use the term "finance charge" instead of "interest rate"
- Cap insufficient funds fees at $25.00 and require that a borrower's check be presented to his or her bank no more than two times
- Prohibit collateral requirements
- Allow payments in increments as low as $5
- Require a database to verify the number and size of a consumer's outstanding loan(s)
- Require disclosure of the consumer's payment obligations, the loan terms and the date a consumer's check will be presented
- Require a prohibition against taking criminal action for failure to pay
- Require consumer notification that payday loans are not intended to meet long-term financial needs and that borrowers may cancel a loan up until the second day after the loan is made
- Require loan companies to collect and maintain information that is consistent with the banking requirements of the state in which it is doing business.

Rep. Hune said the Subcommittee had yet to resolve issues regarding rollovers, repayment plans, and locations of payday loan establishments.

Interested parties addressed the Committee regarding the potential payday loan provisions. Elizabeth Renuart, attorney for the National Consumer Law Center, stated that payday lending is predatory and irresponsible and outlined various concerns, including, among others, that lending establishments target low-income and minority populations and that they lead to a "debt trap." Ms. Renuart said that Massachusetts, Connecticut, New York, and West Virginia do not allow payday lending. She said that many consumer groups and the National Association for the Advancement of Colored People (NAACP) also oppose payday lending, and she urged the Committee to abandon interest in a model act.

Mike Waters, Vice President of Government Affairs for QC Holdings, representing Community Financial Services Association (CFSA), said Association members make approximately 60 percent of all payday loans in the United States. Mr. Waters stated that CFSA developed business best practices for its member store operators and also developed military best practices in 2005, which have passed in eight states. He stated that his organization tries to police the industry and supports enabling statutes that have included consumer protections in most of the 36 states that have enacted payday lending laws.

Mr. Waters stated that CFSA worked for four years in Illinois with consumer groups to pass the *Payday Loan Reform Act,* HB 1100. He said the Local State Association of Payday Lenders found a loophole that has allowed members to get around the law by writing loans for terms of more than 120 days. Mr. Waters said the Illinois law only applies to loans of less than 120 days. This has caused CFSA member companies to lose approximately 70 percent of their business in Illinois, he said. Mr. Waters stated that CFSA is working with the state and consumer groups to close that loophole.

John Rabenold, Vice President for Check N' Go, stated that payday lending has grown because traditional financial institutions have exited the small loan market and increased their fees. He said that the greatest benefit of model legislation would be to show states that there are ways to end the cycle of debt by proving important disclosures, limiting the amount of money loaned, limiting the number of transactions outstanding at one time, limiting rollovers, and allowing payment plans.

Mr. Rabenold addressed what he called major problems with the NCOIL model law proposal, including the minimum loan term of 15 to 45 days. Mr. Rabenold stated that with a 15-day term the due date would fall on a day the consumer does not get paid. He suggested a term of no more than 10 days, or to keep it at 14 days but allow a consumer the option to having a shorter term that would be tied to his or her pay day.

Mr. Rabenold said his group supported rollovers and payment plans commenting that there is an advantage to customers if they have the ability to refinance a loan and defer a due date. Mr. Rabenold also stated that his group supports the prohibition of facilities near gambling locations and military bases.

Rep. Foley said that payday loan companies serve a need in the community. He said that if legislatures put them out of business, then they had better be willing to advocate to credit unions and banks that they must service the payday lending population, Rep. Foley stated as those institutions have said they want nothing to do with that type of client. Ms. Renuart responded by stating that according to industry information only six percent of payday loan customers have nowhere else to go for credit.

Rep. Hune stated that the Committee will have further discussions on this issue at the November meeting.

ADJOURNMENT

There being no further business, the meeting adjourned at 3:00 p.m.

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