

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
STATE-FEDERAL RELATIONS COMMITTEE/NCOIL-NAIC DIALOGUE  
BOSTON, MASSACHUSETTS  
JULY 20, 2006  
MINUTES

The National Conference of Insurance Legislators (NCOIL) State-Federal Relations Committee met at the Boston Park Plaza Hotel and Towers in Boston, Massachusetts, on Thursday, July 20, 2006, at 1:30 p.m.

Rep. Craig Eiland of Texas, Chair of the Committee, presided.

Other members of the Committee present were:

Sen. Joseph Crisco, CT  
Sen. Steven Geller, FL  
Sen. William R. Haine, IL  
Rep. Terry Parke, IL  
Sen. Ruth Teichman, KS  
Rep. Robert Damron, KY  
Sen. Carroll Leavell, NM  
Sen. Neil Breslin, NY  
Assem. Ivan Lafayette, NY  
Sen. William J. Larkin, Jr., NY  
Sen. Pam Redfield, NE  
Rep. Brian Kennedy, RI  
Del. Harvey Morgan, VA  
Rep. Virginia Milkey, VT  
Rep. Mark Young, VT

Other legislators present were:

Rep. Richard Laird, AL  
Rep. Bob McCluskey, CO  
Rep. Sandra Adams, FL  
Rep. Pat Patterson, FL  
Rep. Franklin Sands, FL  
Rep. Priscilla Taylor, FL  
Sen. Ralph Hudgens, GA  
Sen. Dean Cameron, ID  
Rep. Michael Ripley, IN  
Sen. Alan Sanborn, MI  
Rep. George Keiser, ND  
Sen. Duane Mutch, ND  
Rep. Frank Wald, ND  
Rep. Robert Godshall, PA  
Rep. Warren Kitzmiller, VT  
Rep. John Morley, VT

Also in attendance were:

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

#### MINUTES

The Committee voted unanimously to approve the minutes of its February 24, 2005, meeting in Weston, Florida.

#### FEDERAL HEARINGS TO UNDERCUT MCCARRAN-FERGUSON ACT

Mr. Donohue reported on recent Congressional Hearings on the McCarran-Ferguson Act. Mr. Donohue reported that Senator Arlen Specter, Chairman of the Senate Judiciary Committee, stated at a June 20, 2006, hearing that states were not doing enough to prosecute insurance anti-trust violators criminally. He reported that Sen. Specter further stated that federal authorities should be given legal powers to step in and prosecute insurance companies for illegality if state prosecutors can't or won't do the job. Mr. Donohue said he believes Sen. Specter will introduce legislation at some point that would undermine McCarran-Ferguson, possibly to allow federal prosecutors to take action against insurance companies for wrong doings regardless of whether the States take action.

In response to a question from Maine Superintendent of Insurance Alessandro Iuppa, NAIC President, said he believed that Sen. Specter would introduce a stand-alone bill regarding McCarran-Ferguson, rather than one in conjunction with an optional federal charter.

#### PROPOSED OPTIONAL FEDERAL CHARTER LEGISLATION

Mr. Donohue reported on the introduction of S. 2509, the National Insurance Act of 2006. He said the legislation was introduced by Senators John Sununu (R-NH) and Tim Johnson (D-SD). Mr. Donohue reported that the legislation seeks to establish a parallel federal system of insurance regulation and supervision for insurance companies, similar to the dual banking system. Mr. Donohue reported that the legislation would set up an Office of National Insurance within the Treasury Department to charter life and property and casualty companies.

Superintendent Iuppa stated that a Treasury Department representative testifying at a recent hearing said that the Treasury Department did not have a position on an optional federal charter. Rep. Eiland responded that it seemed to him that the Treasury Department did say that they would support some kind of federal intervention or oversight role in insurance regulation. Superintendent Iuppa responded by saying that you could draw that conclusion, that the testimony of the Treasury representative was very artful, and that Treasury also was a little reluctant to say it was ready to take it on.

J. Kevin A. McKechnie from the American Bankers Insurance Association said he agreed with Superintendent Iuppa's conclusions from the Senate hearings. Del. Morgan asked Mr. McKechnie who would be responsible for the collection of taxes if an insurance company operating under the federal charter is selling a product within a state—the state or the federal government? Mr. McKechnie responded that Section 1251 of the legislation preserves state taxing authority in all respects. Sen. Leavell then asked what authority a state insurance regulator would have if a nationally licensed agent selling a state product acted in an illegal way. Mr. McKechnie responded that if the agent was nationally licensed, a national regulator would have authority.

Assem. Lafayette then asked if insurance fraud would be a felony under the legislation, and if so, would the U.S. Attorney General's office be the one to prosecute? Mr. McKechnie responded in the affirmative, depending on how much money was involved. Assem. Lafayette then asked if the bill contains fraud protection for consumers. Mr. McKechnie responded that both the insurers and consumers would have equal protections. Assem. Lafayette stated he would like to see clear language in the bill protecting consumers from fraud, as he felt there are presently not enough protections for consumers from dishonest insurers.

Rep. Wald stated that under section 1106, subsection C, of the legislation, a self-regulatory organization may be formed by national insurers, national agencies and/or federally licensed insurance producers. Rep. Wald asked how self-regulatory organizations would function and what their role would be. Mr. McKechnie responded that the intent is to set up an organization much like the National Association of Securities Dealers. Rep. Wald said that state regulation of insurance has worked well over the years, and questioned why it should be changed now. Mr. McKechnie responded that many thought under Gramm-Leach-Bliley there would be a system for a uniform insurance licensing but that had not emerged. Mr. McKechnie further stated that it is possible to get one securities license to sell securities in every state.

Rep. Keiser stated that under the legislation, fees would be charged to insurance companies to pay for the operations of the National Commissioners Office. Rep. Keiser questioned how long Mr. McKechnie's guaranty that premium taxes would not be impacted would last. Mr. McKechnie responded that premium taxes are permanent and that is the intent of the Senators who wrote the bill.

#### STATE MODERNIZATION AND REGULATORY TRANSPARENCY (SMART) ACT

Rep. Eiland reported that there has been no recent activity on the SMART Act. Superintendent Iuppa said that while he keeps hearing that it will be introduced, he has yet to see any evidence of that.

#### PROPOSED NONADMITTED AND REINSURANCE ACT OF 2006

Mr. Donohue reported that on June 19, 2006, Representative Ginny Brown-Waite (R-FL) introduced H.R. 5637, the Nonadmitted and Reinsurance Reform Act of 2006. He stated

that this legislation comprises Titles Eight and Nine of the SMART Act. He said the nonadmitted language is similar to reforms that were included in the TRIEA legislation passed last December. Mr. Donohue stated that while the SMART Act has stalled, the effort to impose federal standards on state insurance regulation is now centering on dividing the SMART act into smaller parts to move it through the legislative process.

Superintendent Iuppa reported that the NAIC submitted to the House Financial Services Committee technical comments on the bill and asked for clarification on some of the definitional terms. Rep. Eiland asked Superintendent Iuppa what NAIC's position on proposed federal surplus lines legislation will be. Superintendent Iuppa stated that the NAIC has yet to take a position on the bill, and said he does not think it will.

#### NAIC INTERSTATE PRODUCT REGULATION COMPACT

Superintendent Iuppa reported that the Compact has been adopted in 27 states, and reached about 42 percent of the market for life, disability, long-term care and annuities. Superintendent Iuppa stated that the Compact Commission held its first meeting and a Management Committee was selected. Superintendent Iuppa stated that the Compact will be operational sometime in the first quarter of 2007. Rep. Eiland stated that Rep. Damron and Rep. Taylor will serve on the interim Legislative Committee representing NCOIL.

#### ADJOURNMENT

There being no further business, the meeting adjourned at 2:45 p.m.