

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
STATE-FEDERAL RELATIONS COMMITTEE
POINT CLEAR, ALABAMA
NOVEMBER 15, 2012
MINUTES

The National Conference of Insurance Legislators (NCOIL) State-Federal Relations Committee met at The Grand Hotel Marriott Resort in Point Clear, Alabama, on Thursday, November 15, 2012, at 3:45 p.m.

Rep. Susan Westrom of Kentucky, Vice Chair of the Committee, presided.

Other members of the Committee present were:

Rep. Greg Wren, AL	Sen. Carroll Leavell, NM
Sen. Travis Holdman, IN	Sen. William J. Larkin, Jr., NY
Sen. Ruth Teichman, KS	Rep. Brian Kennedy, RI
Rep. Robert Damron, KY	Rep. Charles Curtiss, TN
Rep. George Keiser, ND	Rep. William Boztow, VT
Rep. Don Flanders, NH	Rep. Kathleen Keenan

Other legislators present were:

Rep. Greg Cromer, LA	Rep. Michael Costello, MA
Rep. Mike Huval, LA	Sen. David O'Connell, ND
Rep. Alan Seabaugh, LA	Rep. Sarah Copeland Hanzas, VT
Rep. Kirk Talbot, LA	Rep. Tyler August, WI

Also in attendance were:

Susan Nolan, Nolan Associates, NCOIL Executive Director
Candace Thorson, Nolan Associates, NCOIL Deputy Executive Director
Ed Stephenson, Nolan Associates, NCOIL Director of State-Federal Affairs – D.C.

MINUTES

After a motion made and seconded, the Committee voted unanimously to approve the minutes of its July 12, 2012, meeting in Burlington, VT

SURPLUS LINES REFORM

Commissioner Jim Donelon (LA), President-Elect of the National Association of Insurance Commissioners (NAIC), gave a report on NAIC activities. He reported that most states had passed legislation implementing the Non-admitted and Reinsurance Reform Act (NRRRA) provisions in Dodd-Frank. He said most state laws gave some authorization to join a multistate tax allocation agreement such as the Non-admitted Insurance Multi-State Agreement (NIMA) or the Surplus Lines Insurance Multi-State Compliance Compact (SLIMPACT). He said that 12 states initially pursued NIMA, that 6 remained and are implementing it, and that nine had joined SLIMPACT. He noted that 10 states are required for SLIMPACT to become operational.

Commissioner Donelon said some states have taken a "single situs" approach in their legislation. He said most states have pursued a single-state solution through regulation, despite their statutory option to join a multistate arrangement. He said it is possible that

states with the option to join a multistate agreement would do so, if one of the options were to prove successful.

Commissioner Donelon related that the NAIC Surplus Lines Task Force is working with interested parties on surplus lines eligibility issues. As the NRRRA is about more than taxes, he said, legislators and regulators should keep the dialogue open, despite whatever other differences exist.

Dan Maher of the Excess Lines Association of New York (ELANY) reported that the surplus lines associations are working to help states align their eligibility requirements with those of the NRRRA, while continuing to assure solvency protections. He said that the industry remains supportive of the non-tax allocation provisions in SLIMPACT, such as disclosure requirements, tax filing dates, and tax reporting uniformity. He said that one thing that the industry would like to see modified is the requirement for brokers to make tax filings in years when they have not sold surplus lines business, as the failure to file often comes with a penalty. Mr. Maher said the industry sees this as a “gotcha” requirement as opposed to a consumer protection. As to tax allocation, he said that uniformity is key. He said that 40 states are keeping 100 percent of taxes due, which may be the fastest path to uniformity.

NAIC-NCOIL MARKET CONDUCT REGULATION WORKING GROUP

Sen. Leavell said he was glad to see NCOIL and the NAIC working together to address market conduct issues. He said that in the past there were reports of abuses in the market conduct examination process. He then thanked Rep. Keiser for working with the NAIC on a new survey tool to help address any remaining problems.

Rep. Keiser said that good solutions have been developed for agent/broker licensing and for form and rate filing; however, solutions to concerns about market conduct examinations have been elusive. He said he had suggested forming a joint NCOIL-NAIC Market Regulation Working Group (N2) to hopefully find common ground and advance reform. He thanked Commissioner Donelon for providing a good group of commissioners to participate. Rep. Keiser noted that the NAIC had been taking the issue seriously, and had recently surveyed the states regarding market conduct examinations. He said the results of that survey are now available.

Rep. Keiser said that in response to his conversations with industry members and others he suggested that an N2 survey of companies might provide important, additional perspectives. He said he drafted a set of possible questions, and he thanked Commissioner Robertson (IN) for his help in refining them. He said the N2 will look at suggested revisions at the upcoming NAIC meeting, and will determine a process to receive the results and to keep the results confidential. He said the NAIC works with a third party that hosts web surveys, and the N2 is considering using that service.

Rep. Keiser said that some in the industry have told him that insurers already have too many surveys to which they are required to respond. However, he said, the N2 needs something beyond anecdotal examples of problems with exams. Bruce Ferguson of the American Council of Life Insurers (ACLI) asked that N2 be aware of the timing of this survey and do its best to avoid conflicting with other important reports.

Sen. Holdman asked about the timeframe for issuing the survey and analyzing responses. Rep. Keiser said that as soon as the questions are finalized, the survey could be distributed in very short order. He said the industry will need some time to respond, and he thought

about a month would suffice. He said he is hoping for analysis to be done by the next set of NAIC and NCOIL meetings.

Mr. Ferguson asked that the N2 consider looking at the issue of unclaimed property audits that are being conducted by attorney general's offices. He said the third-party audits are a particular problem when auditors are paid only on finding wrongdoings.

INTERSTATE INSURANCE PRODUCT REGULATION COMMISSION (IIPRC)

IIPRC Executive Director Karen Schutter presented a map of the states that have joined the Compact and those that have introduced legislation. Arkansas and Montana are particularly interested in joining, she said.

Ms. Schutter reported that 164 companies, or 70 percent of the market, have registered with the IIPRC, and that registrations and filings were up over last year. She said that the IIPRC Annual Meeting would be in Washington D.C. later in the month, just before the NAIC meeting. She reported that the standards for individual life, annuity, long-term care, and disability income products are complete, and that the first group life standard is about to be approved. She said filing fees are being raised, in line with the goal of making the IIPRC self-sustaining.

Ms. Schutter recognized Sen. Teichman, who was leaving the legislature, for her work on the IIPRC Legislative Committee as a representative of the National Conference of State Legislators (NCSL). Ms. Schutter said the Senator was an inaugural member and provided important input into the establishment of the Commission.

PRODUCER LICENSING

Sen. Leavell said that the success of state producer licensing reform, particularly use of the National Insurance Producer Registry (NIPR) by 50 or so jurisdictions, is something of which all parties should be proud. He stressed that efforts in response to the National Association of Registered Agents and Brokers Reform Act (NARAB II) should continue, in order to demonstrate that federal intervention is unnecessary.

Wes Bissett of the Independent Insurance Agents & Brokers of America (IIABA) spoke on the licensing of the health exchange "navigators" mandated by the Affordable Care Act (ACA). He said the ACA describes their funding and responsibilities but is silent on how navigators will be licensed and regulated. He said the IIABA is asking the states to fill that vacuum.

Mr. Bissett said state licensing of navigators would be consistent with state oversight of other professionals who sell, consult, or perform enrollment functions for policyholders. Mr. Bissett said that there is nothing in the ACA that prevents states from licensing navigators and that the HHS regulations require navigators to comply with state rules. In response to a question from Rep. Keiser, Mr. Bissett confirmed that this is true for both a state-established and a federal exchange. He said the states will not select or pay for the navigators used by a federal exchange, but states will still be able to regulate them as to qualifications and enforcement.

Mr. Bissett said that the IIABA has developed a navigator regulation template for use by the states. He said that Maine, Iowa, and Maryland have already implemented regulation. He said there are certain things that a navigator statute should address: scope of activities, particularly limits on recommending particular plans; background checks; education; training;

competency exams; the application of the insurance code with regard to enforcement; and, some form of legal liability for bad or negligent action.

David Eppstein of the National Association of Professional Insurance Agents (PIA) said that his organization supports proposed NARAB II, which he said is federal legislation but not federal regulation. He also encouraged states to continue increasing their use of technology for filing and to expand the use of the National Insurance Producer Registry (NIPR).

UPDATE FROM THE NATIONAL INSURANCE PRODUCER REGISTRY (NIPR)

NIPR Executive Director Maryellen Waggoner referred to maps she provided that detailed the states' use of various NIPR products. She said that every state provides data to the database and that every state uses that the products for non-resident renewal, address change request, and the reporting of actions attachments repository. She said almost every state is in compliance with the surplus lines licensing data reporting provisions in the Dodd-Frank Act and that everyone is proud of the work the states have done to meet the two-year deadline for that.

MULTISTATE TAX COMMISSION (MTC) NON-INCOME TAXPAYER PROJECT

Rep. Kennedy said that the MTC Non-Income Taxpayer Project is working on model legislation that would apply income taxes to proceeds paid from investments in partnerships, LLCs, and real estate investment trusts (REITs) that are currently disregarded entities for insurance companies. Rep. Kennedy said that he objected to the project because insurance companies generally pay gross premium tax instead of corporate income taxes.

Rep. Kennedy said that the proposal would be considered for adoption by the MTC at its December meeting. He said the MTC has gone forward with the proposal in spite of the fact it was rejected by the Massachusetts legislature. Rep. Kennedy said there has been no input from the NAIC or state legislators. He said he is concerned the proposal will potentially disrupt the long-standing system of premium taxes in the U.S. and that it also raises the risk of retaliatory taxes.

Rep. Kennedy said he is working to get both the NCSL and the NAIC involved in an effort to stop adoption of this model. He suggested to the Committee that NCOIL join in a letter with NCSL to the MTC in opposition to the model. Rep. Kennedy also suggested that Rep. Damron take up the issue at the upcoming Council of State Government (CSG) meeting. Kate Kiernan (ACLI) said that the industry has attempted to provide input to the MTC and feels largely ignored. Rep. Damron suggested that the ACLI also contact CSG, as it is a group where the legislative and executive branches meet together.

Rep. Kennedy made a motion for NCOIL to work with NCSL on an opposition letter to the MTC, to be reviewed and approved by NCOIL leadership and sent to the membership for approval. The motion was seconded and the Committee voted unanimously to approve that plan of action.

2013 COMMITTEE CHARGES

Rep. Westrom referred the Committee to the meeting materials, in which the proposed 2013 charges were listed:

- review FIO report on U.S. regulation and take a position as appropriate
- work to expand the Interstate Insurance Product Regulation Compact

- continue working toward uniformity in surplus lines regulation
- work towards enhancement of state producer licensing and market conduct regulation
- work with other state organizations to form consensus/positions on state-federal issues

Upon a motion made and seconded, the Committee unanimously adopted the proposed 2013 charges.

ADJOURNMENT

There being no further business, the meeting adjourned at 4:45 p.m.