

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
STATE-FEDERAL RELATIONS COMMITTEE  
SANTA FE, NEW MEXICO  
NOVEMBER 21, 2003  
DRAFT MINUTES

The State-Federal Relations Committee of the National Conference of Insurance Legislators (NCOIL) met on Friday, November 21, 2003, at 2:15 p.m. at the Eldorado Hotel in Santa Fe, New Mexico.

Sen. Neil Breslin of New York, Chair of the Committee, presided.

Other Committee members present were:

Sen. Steve Geller, FL  
Rep. Bob Damron, KY  
Rep. Shirley Bowler, LA  
Rep. Larry Julian, MI  
Sen. Alan Sanborn, MI  
Rep. Greg Davids, MN  
Rep. Frank Wald, ND  
Assem. Ivan Lafayette, NY  
Sen. William Larkin, NY  
Rep. George Keiser, ND  
Sen. Jay Hottinger, OH  
Rep. David Evans, OH  
Rep. Brian Kennedy, RI

Other legislators present were:

Rep. Dan Foley, NM  
Assem. Nancy Calhoun, NY  
Rep. Don Flanders, NH  
Rep. George Keiser, ND  
Sen. Jerry Klein, ND  
Sen. Harvey Tallackson, ND  
Rep. Geoff Smith, OH  
Rep. Kathleen Keenan, VT  
Rep. Mark Young, VT

Others present were:

Timothy Tucker, NCOIL Director of State-Federal Affairs

## MINUTES

Upon a motion duly made and seconded, the Committee approved, as submitted, the minutes of its last meeting, held on July 11, 2003, in Williamsburg, VA.

## UPDATE ON CONGRESSIONAL ACTIVITY

### FINANCIAL SERVICES COMMITTEE HEARING ON REGULATORY MODERNIZATION

Sen. Breslin said that on November 5, 2003, he testified on behalf of NCOIL on the states' efforts to modernize insurance regulation before the U.S. House of Representatives Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises of the Committee Financial Services. He said that his testimony was well-received by the Subcommittee. He said that he witnessed among Subcommittee members a level of frustration with the progress of state insurance modernization efforts and a resolve to bring about immediate solutions. He said that the Subcommittee is looking to NCOIL and the NAIC to bring about reforms that will improve insurance regulation. He said that he believes that the failure of the states to act expeditiously will result in intrusive federal action.

Mr. Tucker said that the November oversight hearing was the latest in a series conducted by the Financial Services Committee that has looked at the states' efforts to modernize the key areas of insurance regulation. He said that Subcommittee members' comments at the hearing gave strong indication that the Subcommittee would consider in 2004 several federal initiatives to address the shortcomings of state regulation including optional federal charters, mandated federal insurance regulation standards, or individual proposals addressing specific areas of regulation.

Mr. Tucker said that Rep. Richard Baker (LA), Chair of the Subcommittee, expressed interest in relying on existing NCOIL model laws to create national federal standards that the states would be mandated to follow. Chairman Baker asked industry representatives to make a case to the Subcommittee regarding why federal legislation mandating national standards would not work.

### SENATE COMMERCE COMMITTEE HEARING ON THE REGULATION OF THE INSURANCE INDUSTRY

Mr. Tucker said that the U.S. Senate Commerce Committee held a hearing in October on the state insurance regulatory structure. He said that Chairman Baker testified before the Committee and discussed the findings of his Subcommittee's oversight hearings. Mr. Tucker said that the Committee expressed frustration with the speed of regulatory reforms at the state level. He said the Committee members appear ready to examine in 2004 initiatives that would bring about insurance regulatory reform.

## FEDERAL LEGISLATIVE INITIATIVES

### OPTIONAL FEDERAL CHARTER LEGISLATION

Mr. Kevin McKechnie, representing the American Bankers Association Insurance Association (ABAIA), said that there is a coalition supporting the enactment of federal legislation creating an optional federal insurance charter. He said those supporting the legislation are the ABAIA, the American Council of Life Insurers (ACLI), the American Insurance Association (AIA), the Financial Services Roundtable (FSR), and the Financial Services Forum (FSF).

Mr. McKechnie said that he believes that it is only a matter of time before Congress considers federal legislation addressing insurance regulation. He said that NCOIL needs to consider what role state legislators and state regulators will have under a federal regulatory scheme. He said that he believes Congress could act on either optional federal chartering legislation that would create a dual insurance regulatory system or legislation that would mandate federal regulatory standards.

In response to a question from Rep. Julian, Mr. McKechnie said federal activity is imminent and NCOIL has a role to play in the creation of a federal regulatory scheme.

Ms. Nancy Davenport, representing the ACLI, said that the ACLI continues to work on a dual track approach; working to improve state regulation and pursuing an optional federal insurance charter. She said that members of Congress are split on their support for a federal regulatory solution. She said that Congressman Michael Oxley (OH), Chair of the House Financial Services Committee, and Chairman Baker appear to support an incremental approach to Congressional action regarding insurance regulation. She said that the Committee expressed interested in relying on NCOIL model laws as a basis for national regulatory standards.

In response to a question from Sen. Geller, Ms. Davenport said she believes there is a strong desire among members of Congress to bring about regulatory modernization.

Rep. Foley said that he believes that the insurance regulatory debate is a states' rights issue. He said that he also believes that Congress understands federal takeover of insurance regulation could create a tax revenue stream at the federal level that currently does not exist. He said that it is likely that federal legislation could result in another unfunded mandate on the states. Rep. Foley said that NCOIL should stand firm against any attempt to impede on state regulatory authority.

Rep. Foley said that federal regulation of insurance would have a large negative effect on smaller states. He said that local legislators and regulators are in the best position to regulate insurance and protect consumers.

Rep. Wald said enactment of even the least intrusive federal initiatives would signal the beginning of the end of state regulation.

Mr. McKechnie said that the optional federal charter bill the coalition supports was drafted to ensure there is no cost to the federal government and that state premium taxes are not affected.

Rep. Foley said that while the current optional federal charter proposal does not affect the states' collection of premium tax it is only a matter of time before that would happen. He said another, and equally troubling scenario, would be the creation of a new federal premium tax.

Mr. McKechnie said that the current optional federal charter proposal would create a federal regulator that is funded solely through the assessment of insurance companies that chose a federal insurance charter.

Mr. Neil Alldredge, representing the National Association of Mutual Insurance Companies (NAMIC), said that there is a large portion of the insurance industry that is adamantly opposed to the federal regulation of insurance. He said that the creation of a federal regulatory scheme is not necessarily imminent. He said that state legislators could forestall federal initiatives by working to modernize the current state regulatory structure.

Mr. Scott Gilliam, representing the Cincinnati Insurance Companies, said that there is a misconception that the entire insurance industry supports federal regulation or that Congressional action is inevitable. He said that state regulation works best for consumers.

#### NATIONAL FLOOD INSURANCE PROGRAM

Mr. Ed Pasterik, representing the Federal Emergency Management Agency (FEMA), said that several pieces of legislation are under active consideration by Congress that would reauthorize the National Flood Insurance Program (NFIP). He said that the legislation has been introduced that would reauthorize the program for five years and would address properties that are repetitively damaged by floods. He said there is also "fall-back" legislation, in the event the repetitive loss issue cannot be resolved, that would reauthorize the NFIP for one year.

In response to a question from Chairman Breslin, Mr. Pasterik said that the NFIP **insurers** approximately four million properties, and 45,000 to 50,000 of those properties have had more than one loss as a result of flooding.

#### FAIR CREDIT REPORTING ACT REAUTHORIZATION

Mr. Jim Tuite, representing the State Farm Insurance Companies, said that the Congress is close to enacting amendments and reauthorizing the Fair Credit Reporting Act (FCRA). He said FCRA reauthorization is important to the insurance industry because of provisions that relate to the sharing of information between insurance company affiliates. He said that under the amendments likely to be enacted, insurers be required to would allow new customers to opt-out of the sharing of personal financial information.

Mr. Tuite said that the reauthorization legislation would also likely include two other provisions that would require the Federal Trade Commission to study the use of credit information by financial institutions and require protection of consumers against identity theft.

## MARKET CONDUCT REGULATION

### PROPOSED *NCOIL MARKET CONDUCT SURVEILLANCE MODEL ACT*

Sen. Breslin said that the Committee held a very productive meeting on the proposed *NCOIL Market Conduct Surveillance Model Act* on November 20, 2003, and that good progress was made toward the development of a model law. He said the model law could be enacted by NCOIL at the Spring Meeting in San Antonio.

## IDENTITY THEFT

### PROPOSED *NCOIL IDENTITY THEFT PROTECTION MODEL ACT*

Rep. Kennedy said that the proposed *NCOIL Identity Theft Protection Model Act* is based on a bill he sponsored and that was enacted in Rhode Island. He said that the model act would impose criminal penalties against any individual who knowingly produces any identification document, steals or transfer information unlawfully, or uses another individual's personal financial information without authorization. He said that the model makes identity theft a felony offense and imposes incarceration. He said that most states have some type of identity theft provisions, but they are categorized as merely misdemeanor offenses. He said stronger identity theft statutes are needed given the upswing in such crimes and the damaging effect they have on consumers.

Upon a motion and second, the Committee voted unanimously to adopt the *NCOIL Identity Theft Protection Model Act*.

## REPORT OF THE *NCOIL FINANCIAL SERVICES SUBCOMMITTEE*

Rep. Greg Davids, Chairman of the Financial Services Subcommittee, said that the *NCOIL Financial Services Subcommittee* met earlier in the day and adopted a *Resolution in Support of Federal Legislation Protecting American Investors*. He said that the recent mutual fund scandal warrants the enactment of federal legislation to protect American investors.

Upon a motion and second, the Committee voted anonymously to adopt the *NCOIL Resolution in Support of Federal Legislation Protecting American Investors*.

## COMMITTEE CHARGES

Sen. Breslin said that the proposed State-Federal Relations charges for 2004 were to:

- Articulate to members of Congress state legislators' views regarding strategies and mechanisms to modernize the state-based system of insurance regulation;
- Actively oppose Congressional initiatives to enact optional federal charter legislation; and

- Facilitate individual state implementation of proposals to modernize insurance regulation, specifically in the areas of rate and form filing requirements, producer licensing, speed to market for products, and market conduct.

Upon a motion and second, the Committee voted unanimously to adopt the Committee charges as proposed.

#### ADJOURNMENT

There being no further business, the meeting was adjourned at 3:15 p.m.