

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
STATE-FEDERAL RELATIONS COMMITTEE
SAN ANTONIO, TEXAS
FEBRUARY 27, 2004
DRAFT MINUTES

The State-Federal Relations Committee of the National Conference of Insurance Legislators (NCOIL) met on Friday, February 27, 2004, at 1:30 p.m. at the Hyatt Regency Riverwalk in San Antonio, Texas.

Sen. Jim Seward of New York, Chair of the Committee, presided.

Other Committee members present were:

Sen. Steve Geller, FL
Rep. Shirley Bowler, LA
Rep. Larry Julian, MI
Rep. Fulton Sheen, MI
Sen. Alan Sanborn, MI
Rep. Greg Davids, MN
Sen. Pam Redfield, NE
Rep. Dan Foley, NM
Rep. Frank Wald, ND
Sen. William Larkin, NY
Rep. Geoff Smith, OH
Rep. Brian Kennedy, RI
Rep. Dan Tripp, SC
Rep. Kathleen Keenan, VT
Rep. Ginny Milkey, VT
Rep. Mark Young, VT

Other legislators present were:

Rep. Terry Parke, IL
Assem. Nancy Calhoun, NY
Rep. George Keiser, ND
Sen. Jerry Klein, ND
Rep. Tony Melio, PA

Others present were:

Susan Nolan, Mackin & Company, NCOIL Deputy Executive Director
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 November 21, 2003, in Santa Fe, New Mexico.

UPDATE ON CONGRESSIONAL ACTIVITY

UPDATE ON CONGRESSIONAL MEETINGS

Senator Geller said that, as NCOIL President, he attended the NAIC Commissioners' Conference in Washington, DC in early February and heard an address from US House Financial Service Committee Chairman Mike Oxley (OH). Sen. Geller said that Chairman Oxley has been a vocal critic of state regulation. Sen. Geller said that Chairman Oxley informed the group he was looking for improvements in the key areas of insurance regulation including market conduct, speed to market, and agent and company licensing. Sen. Geller said that Chairman Oxley indicated that Congressional action was imminent.

Sen. Geller said that Congressional involvement in insurance regulation would ultimately lead to the states' loss of premium tax revenue. He said that federal involvement would lead to consumer confusion and ultimately reduce consumer protections. Sen. Geller said that the states need to address problems with state regulation, but solutions are better sought in the state capitals, not Washington. He said he was pleased to see the State-Federal Relations Committee adopt yesterday the NCOIL *Market Conduct Surveillance Model Law*. He said that action demonstrated NCOIL's ability to move quickly and provide the states with guidance on reforming a key area of insurance regulation.

Rep. Parke said that he agreed with Sen. Geller that it is clearly the intent of Congress to get involved in the regulation of insurance. He said that during his recent testimony before Congress, he became convinced that many members understand the problems with state regulation that some segments of the insurance industry have been pointing out. Rep. Parke said that he believes that some type of Congressional action is very likely.

Sen. Geller said he believes that there should be an accounting of true supporters of state regulation. He said it appears at times that those who claim to support state regulation, while pushing for some type of Congressional action, may be doing harm to the efforts of the true supporters of state regulation.

Mr. Tucker said that the work done at NCOIL is on the radar screen of Chairman Oxley. He said that the Financial Services Committee is working on legislation that would create mandatory federal standards in the key areas of insurance regulation. Mr. Tucker said that it is important that legislators take the regulatory reform models enacted at NCOIL and push for their enactment in their states. He said that reforms at the state-level will slow the push for Congressional action.

Sen. Larkin said that state legislators need to be educated on the potential effect of Congressional initiatives on state premium tax revenue. He said that most members of Congress do not understand the level of complexity involved in crafting sound insurance public policy. He

said that state legislators need to interact with their Congressional delegations and urge them to leave the regulation of insurance to the states.

Rep. Parke said that he believes that the relationship with Congress should not be viewed as adversarial. He said that the goal of state and federal regulators is to create sound insurance public policy. Rep. Parke said that state legislators should engage members of Congress and offer to work with them toward that goal.

Sen. Seward said that NCOIL activities, such as the adoption of the market conduct model act, will demonstrate to Congress that state legislators are up to the challenge to fixing the problems with state regulation.

FEDERAL LEGISLATIVE INITIATIVES

OPTIONAL FEDERAL CHARTER LEGISLATION

Mr. Bill Anderson, representing the National Association of Insurance and Financial Advisors (NAIFA), said that in 2002, NAIFA changed its position to allow the organization to explore federal initiatives that would improve and augment state insurance regulation. He said that in January 2004, NAIFA clarified that position to define specific types of initiatives the organization would explore. Mr. Anderson said those initiatives included an optional federal charter, a federal insurance administrator, and a national producers' license. He said that NAIFA is still totally committed to state insurance regulation. He said that NAIFA thought it was important to be able to participate in discussions on federal initiatives that could ultimately affect its membership.

Mr. Anderson said that NAIFA believes that Congress is well situated to address several key regulatory issues affecting the life insurance industry. Mr. Anderson said that the life insurance industry is constantly under attack from the tax writing committees on Congress. He said that many proposed initiatives could have a disastrous effect on the future viability of the industry. Mr. Anderson said that the life insurance industry needs a federal insurance administrator to represent its interests on tax matters before Congress and the Administration. He said the life insurance industry also needs a single point of filing for the approval of products.

Rep. Tripp said supporters of federal insurance initiatives should work to have problems with insurance regulation addressed on the state level.

Rep. Foley said that a dual track approach to insurance regulation will not work. He said that one cannot compare SEC and NASD regulation with insurance regulation. He said that if optional federal charter legislation is approved, most companies will opt for the optional federal charter.

Mr. Anderson said that the NAIFA position allows the organization to participate in the discussions at the federal level to protect the interests of their membership.

Mr. Kevin McKechnie, representing the American Bankers Insurance Association (ABIA), said that there is a coalition supporting the enactment of federal legislation creating an optional federal insurance charter.

Mr. McKechnie said that Chairman Oxley has indicated that he will not pursue optional federal charter legislation at this time. He said that it is uncertain what the Oxley proposal will look like but it will most likely include unfunded federal mandates on the states.

Mr. McKechnie said that the Financial Services Committee staff has indicated that they will draft 40 bills that will preempt state law in various ways. He said that he has heard several concepts being discussed though it is unclear what they mean, including the creation of a “federal nexus” and a “federal insurance ombudsman.”

Mr. McKechnie said that the federal tools approach would incrementally carve state regulatory authority away from the states. He said that the optional federal charter approach differs from the federal tools approach because states would retain sole regulatory authority over those companies that chose not to opt for the federal insurance charter.

Mr. McKechnie said that the Senate is just beginning to look at insurance regulation and its activity is likely to increase shortly. He said that the all indications are that the Senate is not likely to take an incremental approach to reform but rather look for a comprehensive fix to insurance regulation.

In response to a question from Sen. Larkin, Mr. McKechnie said that the optional federal charter proposal ABIA supports preserves states’ authority to collect and retain premium tax. He said that supporters of the optional federal charter are “so done” with state insurance regulation they are willing to pay twice; once to the states, and once to the federal government.

Mr. McKechnie said that under an optional federal charter approach, consumer protection will need to be addressed. He said that a federal bureaucracy similar to the Federal Trade Commission will have to be created.

In response to a question from Rep. Foley, Mr. McKechnie said that under an optional federal charter, he believes most insurers would remain state regulated.

In response to a question from Rep. Keiser, Mr. McKechnie said that under the dual banking system, 70 percent of the institutions are state regulated, and 30 percent are federally regulated. He said that the federally regulated institutions account for almost the entire banking market share.

Mr. Wes Bissett, representing the Independent Insurance Agents and Brokers of America (IIABA), said that the notion that optional federal charter proposal is more state regulation friendly is false. He said that under an optional federal charter state statutes are completely preempted. He said optional federal charter supporters view the proposal as a way to achieve deregulation.

Mr. Bissett said that enactment of an optional federal charter could bring about “baggage,” such as provisions similar to the community reinvestment requirement found in

federal banking regulation, mandated suitability requirements, and unprecedented rate and form oversight.

Mr. Bissett said that when considering an optional federal charter proposal, it is important to look at other areas where the federal government has become involved with mixed success, including OSHA, RMA, and TRIA.

Mr. Bissett said that an optional federal charter would not be “optional” for agents. He said that agents writing business for both state and federally chartered agents would need two licenses. He said that an optional federal charter would bring about consumer confusion.

Mr. Bissett said that the movement in Congress is to pursue a federal standards approach. He said that the mandated federal standards approach strengthens and preserves state regulation by mandating states enact models that have been developed by state legislators and regulators.

Mr. Scott Cipinko, representing the Life Insurance Council (LIC), said that it is often represented that all life insurance companies support the creation of an optional federal charter. He said that LIC supports state regulation, and is committed to working to improve the system.

In response to a question from Rep. Tripp, Mr. Cipinko said that unlike the ABIA, the LIC member companies would not be supportive of any proposal that would require life insurance companies to pay more for regulation.

Rep. Tripp said that state legislators will be unable to assist constituents on many insurance issues and problems if optional federal charter legislation is approved.

Rep. Parke said that NCOIL should become as involved as possible in the discussion in Washington on the future of insurance regulation. He said that NCOIL must clearly articulate to Congress what the states are doing to improve insurance regulation.

Mr. Tucker said that the NCOIL had increased its visibility in Washington and was engaged with key Congressional members and Committee staff. He said that Sen. Breslin’s testimony before Chairman Baker’s Subcommittee clearly and forcefully laid out NCOIL efforts to improve state insurance regulation.

Rep. Tripp said that it would be effective if NCOIL legislators went to Washington to talk with members of Congress about the progress the states are making to improve insurance regulation.

MARKET CONDUCT SURVEILLANCE MODEL LAW

Sen. Seward said that the State-Federal Relations Committee yesterday adopted the proposed NCOIL *Market Conduct Surveillance Model Law*. He said the NCOIL Executive Committee would consider the model law later that day. Sen. Seward thanked the consumer representatives, industry representatives, the NAIC and staff for assisting in the effort to develop the model law. He also thanked his colleague and former Chair of the Committee, New York State Senator Neil Breslin, for his leadership and insight in the crafting of the model law.

Mr. Jim Tuite, representing State Farm Insurance Companies, said that State Farm had consistently raised concerns about the model law. He said that State Farm believes that the model act failed to maintain the concept of due deference and self-evaluative privilege.

NAIC INTERSTATE INSURANCE PRODUCT REGULATION COMPACT

South Carolina Insurance Director Ernie Csiszar and NAIC President said that 12 states have introduced the Interstate Compact this year. He said that the NAIC is working to develop product standards for 24 product categories. Director Csiszar said that the standards would be rolled out at the NAIC Winter Meeting in December 2004.

Ms. Nancy Davenport, representing the American Council of Life Insurers (ACLI), said that Connecticut introduced the Interstate Compact this week making 13 the number of introductions this year. She said that Kansas passed a resolution in support of the Interstate Compact. Ms. Davenport said that the ACLI working in all states toward the enactment of the Interstate Compact.

REPORT OF THE NCOIL FINANCIAL SERVICES SUBCOMMITTEE

Rep. Greg Davids, Acting Chairman of the Financial Services Subcommittee, said that the Subcommittee heard an update on federal legislative activity and an update on the NCOIL *Identity Theft Protection Model Act*. Rep. Davids said the Subcommittee engaged in a dialogue regarding the possible focus of the Subcommittee going forward.

Rep. Davids said that issues for Subcommittee discussion included indexed annuities and implications of the Sarbanes-Oxley Act on the states. He said he would recommend that those issues be put on the Subcommittee agenda for the Summer Meeting.

ADJOURNMENT

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