

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
STATE-FEDERAL RELATIONS COMMITTEE/NCOIL-NAIC DIALOGUE
SAN DIEGO, CALIFORNIA
NOVEMBER 18, 2005
3:30 - 5:00 P.M.
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) State-Federal Relations Committee and the NCOIL/NAIC Liaison Committee met at the Hilton San Diego Resort in San Diego, California, on Friday, November 18, 2005, at 3:30 p.m. Rep. Robert Damron of Kentucky, Chair of the State-Federal Relations Committee, presided.

Other members of the Committee present were:

Sen. Joe Crisco, CT
Sen. Steven Geller, FL
Rep. Golick, GA
Sen. Bill Brady, IL
Sen. William Haine, IL
Rep. Terry Parke, IL
Sen. Alan Sanborn, MI
Rep. Fulton Sheen, MI
Rep. Chris Ward, MI
Sen. Neil Breslin, NY
Assem. Nancy Calhoun, NY
Sen. James Seward, NY
Rep. George Keiser, ND
Rep. Frank Wald, ND
Rep. Brian Kennedy, RI
Rep. Gene Seaman, TX
Rep. Virginia Milkey, VT
Del. Harvey Morgan, VA

Members of the NCOIL/NAIC Liaison Committee present were:

Rep. Craig Eiland, TX, chair
Sen. Joe Crisco, CT
Rep. Robert Damron, KY
Sen. Alan Sanborn, MI
Sen. Pam Redfield, NE
Sen. Carroll Leavell, NM
Rep. Frank Wald, ND

Other legislators present were:

Rep. Bob McCluskey, CO
Sen. Ruth Teichman, KS
Rep. Dennis Keene, KY

Rep. Barbara Farrah, MI
Rep. David Law, MI
Rep. David Palsrok, MI
Rep. Don Flanders, NH
Assem. Ivan Lafayette, NY
Sen. William Larkin, Jr., NY
Rep. Ron Peterson, OK

Others present were:

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

MINUTES

Upon a motion made and seconded, the Committee voted unanimously to approve the minutes of its July 8 meeting at Newport, Rhode Island.

STATE MODERNIZATION AND REGULATORY TRANSPARENCY (SMART) ACT

Mr. Donohue reported on his meeting with Glenn Westrick, Council, U.S. House of Representatives Committee on Financial Services, regarding the future of the proposed SMART Act. Mr. Donohue said that Mr. Westrick reported there had been no progress made on the SMART Act because of the time crunch created by the need to draft the proposed Data Security Act and Terrorism Risk Insurance Act (TRIA) extension legislation. Mr. Donohue said that when questioned about the announced retirement of the Committee on Financial Services Chairman, Representative Michael Oxley, and the effect it might have on the future of the SMART Act, Mr. Westrick said Representative Oxley had recently noted that amending and introducing the SMART Act was second on his list of items to accomplish during the next congressional session.

Mr. Donohue also reported that no optional federal charter legislation was introduced in Congress, nor was it released in draft form, despite predictions by some that such legislation would receive a Senate bill number by year-end.

Wes Bissett of the Independent Insurance Agents and Brokers of America (IIABA) stated that there is only so much “insurance oxygen” on Capitol Hill and that it was consumed during the last few months by other pending legislation. However, Mr. Bissett confirmed that the SMART Act is still very high on Representative Oxley's legislative agenda. Mr. Bissett predicted that lawmakers will soon introduce Optional Federal Charter (OFC) legislation in both the House and Senate and that the bills will fundamentally change the debate over insurance regulation. He said he believes industry will work hard and quick to try to pass both bills. He said that he views the SMART Act as a middle ground that would ultimately protect state sovereignty over insurance regulation.

OPTIONAL FEDERAL CHARTER INITIATIVES

J. Kevin McKechnie, Chairman of the Optional Federal Charter Coalition (OFCC) and Associate Director of the American Bankers Insurance Association (ABIA), said he had spoken with Senators John Sununu (R-NH) and Tim Johnson (D-SD) and that they are setting a target date of February 1, 2006, to introduce an OFC bill in the Senate. Mr. McKechnie explained that the original bill ran over 600 pages and that the senators are currently streamlining the bill before introduction. He said they were accomplishing this, in part, by referencing NAIC and NCOIL model laws.

Rep. Eiland reminded legislators that their meeting binders contained a form letter protesting the OFC plan. He asked legislators to customize the form letter with state-specific information and to send it to their congressional representatives.

Sen. Larkin expressed skepticism that the states would get to keep premium tax revenue under an OFC. Mr. McKechnie pointed out that, unlike the SMART Act, the OFC contains a specific provision permitting states to keep premium tax revenues. Sen. Larkin responded that in his communications with Representative Baker and Representative Oxley and others on the Financial Services Committee, no one would commit to preserving premium tax revenue under an OFC.

Rep. Wald questioned whether producers with federal licenses would have to obtain nonresident licenses in those states in which they currently operate. Mr. McKechnie stated that as the plan now stands, national producers would register and pay fees only at the national level. However, he stated, there was a proposal within the OFCC to address the potential problem of applying different market conduct standards to national versus state-licensed producers. Mr. McKechnie said that the suggested proposal centered on the concept of a fee-based “limited state license.”

Joel Ario, Oregon Insurance Administrator and Vice President of the National Association of Insurance Commissioners (NAIC), said he has not seen the OFC bill but predicted that if there were an OFC, it would put the federal government in a dominant position, as has occurred in the banking industry. He explained that once the government permits national banks to do one thing, states are almost required to fall in line and mirror the actions of the government. He said if the states fail to match federal regulations, state-chartered banks simply threaten to pull out of the state charter and move to the federal charter. Therefore, he said, it is really a fallacy to call it an “optional” federal charter. Administrator Ario then surmised that lawmakers included the provision guaranteeing state premium tax revenue only as a way to move the bill but that, in reality, two or three years after passing the bill, lawmakers would amend that provision and states would lose their premium tax revenue.

Alessandro Iuppa, Maine Insurance Superintendent, and President-Elect of the NAIC, pointed out that states do not license producers to generate revenue; they license producers to provide consumer protection. He predicted that a future OFC bill would

have a long way to go in proving its ability to protect consumers before it could receive support from insurance commissioners.

Sen. Brady asked if OFC proponents were making the implied threat that any other insurance regulatory bill would be much more damaging to states than an OFC. Mr. McKechnie responded that the SMART Act would preempt state laws, thus creating confusion, whereas the OFC would build a separate parallel system that would work independently and separately from the state system, thereby preserving state law for those companies that remain state-licensed.

Del. Morgan queried whether banks were behind an OFC, since his experience with national banks was that they did not like the one-size-fits-all rules of the national banking charter. Mr. McKechnie responded that, as result of differing state laws, banks were in favor of an OFC because their insurance business was not as ordered as their national banking business. Rep. Eiland pointed out that an OFC would ultimately result in the Wal-Martization of the insurance industry, driving out the smaller niche companies and agents.

Mr. Bissett of the IIABA stated that his organization unequivocally opposes an OFC. Mr. Bissett said there is currently a collective action problem at the state level in getting all states to regulate insurance in a uniform manner. He explained that the SMART Act would bring about uniformity without, in the long run, damaging state sovereignty. He then responded to Mr. McKechnie's assertion that the SMART Act would not protect state fees and taxes by pointing out that the SMART Act does not need such a provision, since the whole purpose of the Act is to strengthen and preserve state regulation. Mr. Bissett also explained that under an OFC, producers would still have to obtain licenses in every state in which they currently sell insurance and, if they wish to sell a separate line of national insurance, they would have to obtain a national insurance license as well.

Neil Alldredge of the National Association of Mutual Insurance Companies (NAMIC) said that NAMIC is opposed to the OFC. However, he cautioned, states must reform their insurance regulatory systems in order to fight federal regulation. He opined that one of the best things for states to do would be to repeal their prior approval rating laws.

IMPLEMENTATION OF THE NAIC INTERSTATE INSURANCE PRODUCT REGULATION COMPACT MODEL LEGISLATION

Administrator Ario noted that 19 states have passed the interstate compact legislation and that only 26 are required to implement it, which he predicted would occur by the end of 2006. He also said that the NAIC has already developed 39 standards concerning products covered under the interstate compact. He explained that these would become the national standards for products under the compact. He said when the 26-state requirement was reached, the standards will be handed over to the Interstate Commission for immediate implementation. Rep. Damron pointed out that the poor performance of FEMA during the latest hurricanes illustrates how states address local problems better than the federal government and that interstate compacts give the states the flexibility

they need to get the job done. Rep. Eiland stated that since this is one of the ways to show that states are addressing insurance modernization issues, passing the interstate compact is critical to preserving state sovereignty over insurance regulation.

COMMITTEE CHARGES FOR 2006

Mr. Donohue read the proposed charges for the State-Federal Relations Committee for 2006. The Committee unanimously adopted the charges, as follows:

- Increase NCOIL/state legislator visibility and effectiveness on Capitol Hill
- Explore possibility of joint lobbying efforts with other national organizations regarding opposition to proposed federalization of insurance regulation
- Interface with Congress regarding modernization of insurance regulation and encroachment on state authority
- Work toward and monitor implementation of NCOIL and other state insurance modernization initiatives, specifically market conduct regulation, rate and form filing requirements, and speed-to-market for insurance products
- Examine and take position on NAIC choice of law under the Interstate Insurance Product Regulation Compact
- Consider proposed amendments to NCOIL/NAIC *Market Conduct Surveillance Model Law*
- Jointly with the Property-Casualty Insurance Committee, interact with Congress to enact appropriate federal natural disaster insurance legislation, and monitor and report on issues and legislation pertaining to natural disaster insurance

PROPOSED AMENDMENTS TO THE NCOIL/NAIC MARKET CONDUCT SURVEILLANCE MODEL LAW

Rep. Damron started the session by pointing out that there had been discussion regarding possible amendment of the NCOIL/NAIC *Market Conduct Surveillance Model Law*. He explained that normally NCOIL does not amend model laws for at least two years after initial enactment. He said that NCOIL must first make a policy decision concerning how to go about amending the bill, in that it is a joint model with the NAIC. He pointed out that it was only appropriate that this discussion take place at the full Committee meeting, with the NAIC present.

Rep. Damron said that a Market Conduct Subcommittee met via conference call several weeks prior to the Annual Meeting but that it had become clear that the issue was too big to resolve at the subcommittee level. He pointed out that one of the bills referenced for review at this meeting was the newly enacted Texas *Insurance Market Conduct Surveillance Act*, SB 14.

Administrator Ario stated that the NAIC did not have a problem with legislation that set goals and gave commissioners the means to achieve those goals. He said that commissioners were concerned with any legislation that tied their hands and limited their ability to get critical information. He said that any of the market conduct bills discussed

so far would be acceptable to the NAIC if one converted all the “shalls” in the bills to “mays.” He explained that not all the commissioners voted in favor of the joint NCOIL/NAIC *Market Conduct Model Surveillance Model Law* that the NAIC adopted in September of 2004. In discussing how he thought NCOIL and NAIC might best proceed, he said that choosing the original NCOIL model as a starting point would be a better option than reviewing the newly enacted Texas *Insurance Market Conduct Surveillance Act*. He said he remains confident that the NAIC will come to some sort of compromise with NCOIL, given sufficient time and discussion. He urged NCOIL legislators not to abandon the process of trying to work together with the NAIC.

Jim Tuite, Associate General Counsel of State Farm Mutual Automobile Insurance Company, thanked the State-Federal Relations Committee for its efforts in moving forward to identify needed amendments to the NCOIL/NAIC market conduct model act. He indicated that it was the hope of industry to build upon the current NCOIL model with provisions from SB 14 in Texas. He said that the concept of domestic deference was common in the area of “financial examinations.” He pointed out that the Government Accountability Office was critical of current state regulatory market examination practices in its report, *INSURANCE REGULATION: Common Standards and Improved Coordination Needed to Strengthen Market Regulation*. He also noted that two NCOIL studies, prepared by PricewaterhouseCoopers and Georgia State University, called for coordinated examinations by states. He said legislators could review the amendments the industry favored and said he hoped that NCOIL would not draw out the amendment process longer than necessary.

Sen. Redfield said that when she introduced the original NCOIL market conduct bill it had support from those in her state legislature. However, when she tried to introduce the July 2004 amendments, she said that she lost all support and the bill did not pass. Sen. Brady then asked for clarification as to how the Committee was going to proceed during the interim between meetings. Rep. Damron responded that any amendments to the market conduct bill must be undertaken mindfully and without haste. He said he agreed with Sen. Redfield, who expressed the view that the original NCOIL market conduct model law was a good bill that had industry support and that it would make a better starting point for amendment discussions with the NAIC than the Texas bill. Rep. Damron then asked industry representatives to submit any comments they had on the original NCOIL bill before December 20.

Sen. Geller stated that NCOIL must find middle ground between what industry wants and what the commissioners want. He said that amending the joint market conduct model law is necessary, although he said the Texas bill went too far and that his state commissioner would not agree to such constrictive provisions. He joined in the suggestion that NCOIL study its original market conduct bill as a source for amendments to the current model.

ADJOURNMENT

There being no further business, the meeting adjourned at 6:00 p.m.

