

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
STATE-FEDERAL RELATIONS COMMITTEE/NCOIL-NAIC DIALOGUE
NEWPORT, RHODE ISLAND
JULY 8, 2005
1:45 - 3:15 P.M.
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) State-Federal Committee and the NCOIL/NAIC Liaison Committee met at the Hotel Viking in Newport, Rhode Island, on Friday, July 8, 2005, at 2:30 p.m.

State-Federal Relations Committee

Rep. Robert Damron, KY, Chair of the Committee, presided.

Other members of the Committee present were:

Sen. Joe Crisco, CT
Sen. Bill Brady, IL
Rep. David Robertson, MI
Rep. Fulton Sheen, MI
Rep. Chris Ward, MI
Assem. Nancy Calhoun, NY
Rep. George Keiser, ND
Sen. Jake Corman, PA
Rep. Brian Kennedy, RI
Del. Harvey Morgan, VA

NCOIL/NAIC Liaison Committee

Committee members present were:

Rep. Craig Eiland, TX, chair
Sen. Joe Crisco, CT
Rep. Robert Damron, KY
Rep. Shirley Bowler, LA

Others present were:

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

MINUTES

Upon a motion duly made and seconded, the Committee voted unanimously to approve the minutes of its March 3 meeting at Hilton Head Island, South Carolina.

OPTIONAL FEDERAL CHARTER INITIATIVES

Mr. Donohue reported that on June 13, 2005, a new group calling itself the Optional Federal Charter Coalition (OFCC) sent a letter to the Senate Banking Committee calling for creation of a federal insurance system enforced by a federal regulator, under which

insurance companies could choose to be regulated. One hundred and thirty-five companies signed the letter, he said. In response to this letter, he explained, NAMIC also sent a letter to the Senate Banking Committee expressing its position that federal regulation would offer no improvements over state regulation.

J. Kevin McKechnie, Chairman of the OFCC and Associate Director of the American Bankers Insurance Association (ABIA), addressed the Committee on his perspective of the need for an optional federal charter (OFC) and on what state regulation would look like under such a system. He explained that while both the SMART Act and OFC would bring uniformity, there were differences in each approach.

Mr. McKechnie explained that under OFC all state-chartered entities and those interstate companies that chose to remain regulated by individual states would be regulated solely by the state. A national insurance commissioner would regulate nationally chartered companies, he said. He surmised that under the SMART Act, states would have to enforce national standards.

Mr. McKechnie opined that OFC would not financially affect the states since a provision preserving state premium taxes was drafted into the bill. He explained that those companies that opted for federal chartering would fund the program. Under an OFC, the guaranty fund setup would remain unchanged except in those states not meeting NAIC guaranty fund model law requirements, and in those instances a federal guaranty system would apply, he said.

The difference between the current system and a system under OFC, explained Mr. McKechnie, was one of scale. He said that OFC would modernize and bring uniformity to the system quicker and cheaper than other ideas currently in circulation.

Wes Bissett of the Independent Insurance Agents and Brokers Association (IIABA) stated that his organization unequivocally opposes an OFC. He said that Agents for Change, a group touted by OFCC as independent insurance agents in favor of an OFC, was a not a legitimate group and did not represent the vast majority of independent agents. He said an OFC would be devastating for state regulation. He predicted that independent agents would have to get both a federal and a state license. Regarding guaranty funds, he predicted that under a federal system, states would be financially responsible for a company that became insolvent. However, they would have no say in the company's regulation to prevent such insolvency.

Wes Bissett also questioned OFCC's claim regarding protection of insurance premium revenue. He explained that even if revenues remain with the states, which he doubted, millions of dollars in fees would be lost. He surmised that OFCC's real goal was that of deregulation. He then discussed the SMART concept, which he differentiated from the SMART Act. He expressed strong endorsement for using targeted, limited legislation to bring about reforms at the state level while leaving the state system in place. Creation of the National Association of Registered Agents and Brokers (NARAB) is an example of federal legislation that was successful in bringing about reform and reciprocity, he said.

He agreed that there were items in the SMART Act that NCOIL was justified in objecting to and predicted that the final version will be much smaller, although it will involve some preemption.

Nancy Davenport of the American Council of Life Insurers (ACLI) stated that ACLI supports a dual track approach and backs both the interstate compact and the OFC. She explained that the life insurance community believes that it does not currently have a voice in Washington and that a national insurance regulator would provide that representation. Representative Damron challenged ACLI's assertion and indicated that in his state, representatives work hard to give the life insurance industry a voice on the Hill.

Neil Alldredge of the National Association of Mutual Insurance Companies (NAMIC) said that NAMIC is opposed to the OFC. He said NAMIC believes that the bill that would be adopted would be very different from the one introduced. He said that insurance companies are better off maintaining the state system. He pointed out that if Congress gets it wrong it will be wrong for everyone in the industry. However, he cautioned, states must reform their 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.

Pennsylvania Commissioner Diane Koken, president of the National Association of Insurance Commissioners (NAIC), said that in order for insurance to be responsive to the needs of consumers, it must evolve to meet the needs of a changing marketplace. She stated that functional regulation should remain at the state level. Individual states can engage in innovation without endangering the entire system, she said. States, she explained, are on time and on target to modernize state insurance regulation.

Commissioner Koken said that the SMART Act incorporates unacceptable levels of preemption. She said that 15 of the 17 titles in the SMART Act preempt state law. She explained that insurance policies are inextricably bound to the separate legal systems of each state. She pointed out that an insurance policy is a contract and when a claim arises, interpretation can only occur under the laws of the state where it was written. She stated that NAIC has not formally taken a position either for or against the SMART Act.

As to the OFC, Commissioner Koken predicted the proposal would result in massive consumer confusion. She pointed out that the volume of consumer complaints and inquiries in the area of insurance is exponentially greater than the volume of consumer inquiries concerning banking. She reasoned that insurance issues are inherently more confusing to consumers than banking issues because insurance companies sell promises. She said consumers naturally look to find answers to their insurance questions at the state level.

However, states must make changes to their insurance systems, said Commissioner Koken. She explained that while regulators have the will to make changes, only legislators have the power to make those changes. An increasing number of states have agreed to take part in the Interstate Compact, she said. She noted that 18 states had

passed the Interstate Compact legislation and that only 26 are required to implement it, which she predicted would occur by the end of 2006. Rep. Bowler expressed the view that she was firmly against interstate compacts. Rep. Damron expressed a contrary view, explaining that for many years compacts have brought states together by creating simpler processes in areas such as insurance regulation. Rep. Damron also pointed out that states could simply withdraw from a compact if they were dissatisfied.

Rep. Bowler inquired as to whether the proposed OFC is legislation available for review. Mr. McKechnie responded that while the OFC is in written form and select senators are currently reviewing it, out of courtesy to them, he was not publicly releasing the document. He predicted that the OFC legislative process would be similar to that of the SMART Act, with introduction of a discussion draft followed by comments and a hearing.

Rep. Eiland said that state legislators are under attack by members of the House and Senate, assisted and encouraged by industry representatives. He explained that it is up to the NCOIL legislators present to change that situation. The best way to do that, he said, is for NCOIL legislators to work with their legislatures to pass insurance modernization bills such as the Interstate Compact. He explained that it is equally important to let their Congressional representatives know the progress made on modernization. To that end, he explained, a letter has been drafted and will be sent to the NCOIL members by e-mail that they can then complete and send to their House and Senate representatives.

Del. Morgan asked Commissioner Koken if she could direct the NAIC to conduct a statistical survey detailing the work that individual states have accomplished in insurance modernization. Commissioner Koken stated that she would check to see if they had such information available. She went on to note that the NAIC is doing its part in furthering insurance modernization. She said the NAIC has developed an electronic filing process. She noted that in 2001 the system had 5000 electronic filings, and that so far in 2005 there had been 210,000 electronic filings.

MARKET CONDUCT REGULATORY REFORM EFFORTS

Ms. Davenport said that while ACLI and others in the industry supported the initial NCOIL *Market Conduct Surveillance Model Law*, the model that ultimately passed did not have industry support. She said that since that time, ACLI has worked with others in the industry to try to develop a consensus draft based on NCOIL's original model. The bill that ultimately passed in Texas, she said, incorporated parts of the original model.

Bob Zemam of Property Casualty Insurers Association of America (PCI) stated that he had been involved in an ongoing dialogue with members of the industry to try to find consensus on a market conduct reform model draft that could be used in the states.

Alaska Commissioner Linda Hall stated that the NAIC is committed to uniformity, collaboration, and market analysis. She explained that the NAIC was making changes through administrative actions. As an example, she said, NAIC conducted 1800 market

conduct examinations solely through existing reports, thereby avoiding direct interactions with the companies. She noted that the NAIC now is attempting to duplicate that result through a new automated process. She said that collaborative procedures between states also have been successful and as a result, there has been a great increase in such actions.

Sen. Brady announced that over the summer the NCOIL Market Conduct Subcommittee would consider amendments to the NCOIL model, including those that Rep. Eiland incorporated into the Texas market conduct bill.

ADJOURNMENT

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

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