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February 7, 2024

The Honorable Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Suite CC-5610 (Annex C)
Washington, DC 20580

Re: Non-Compete Clause Rulemaking, Matter Number P201200

Dear Chair Khan:

We write to you today regarding the FTC's proposed non-compete clause rulemaking¹ (the Proposed Rule), which we submit, as currently drafted, infringes upon the McCarran-Ferguson Doctrine, pursuant to 15 U.S.C.A. § 1011 et seq. For the past 79 years, that Doctrine's directive of "the business of insurance shall be regulated by the States" has led to the strongest, safest and most successful insurance market in the world. The Proposed Rule would needlessly encroach on the States' authority related to the non-compete agreement area, specifically the state legislators' authority over it as it relates to insurance. If insurance agencies are not exempt from the Proposed Rule, then NCOIL must oppose it for this reason.

The National Council of Insurance Legislators (NCOIL) is a national legislative organization with the nation's 50 states as members, represented principally by legislators serving on their states' insurance and financial institutions committees. NCOIL writes Model Laws in insurance and financial services, works to preserve the State jurisdiction over insurance as established by the McCarran-Ferguson Act over seventy years ago, and to serve as an educational forum for public policymakers and interested parties. Founded in 1969, NCOIL works to assert the prerogative of legislators in making State policy when it comes to insurance and educate State legislators on current and longstanding insurance issues.

¹ We realize that the formal comment period for this rulemaking has ended, but in light of the significant controversy surrounding the Proposed Rule, and the high likelihood that the rulemaking will be challenged in court should it be finalized in its current form, we kindly ask you accept our comments.



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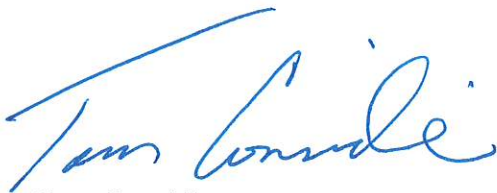
Independent insurance agencies have utilized non-compete clauses and agreements for decades, mainly in an effort to protect the agencies from departing workers who might use agency-related information for use in their own competing business, or share with competitors of the agency. Such clauses and agreements are one small, but effective, part of the state-based insurance regulatory system that has produced the largest, most successful, safest, and most innovative insurance market in the world.

The FTC apparently has some concerns with certain industries' use of non-compete clauses and agreements, calling them "unfair methods of competition." We at NCOIL take no position on those concerns, other than to condemn unfair actions in all instances.

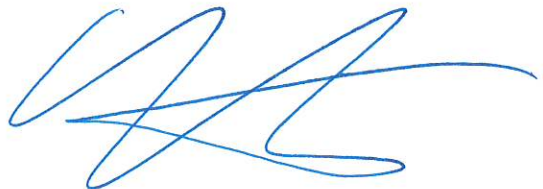
We do note that, broadly speaking, the FTC appears to lack the statutory authority to issue this rule. However, assuming that such authority does exist, the FTC goes too far in its attempt to deal with its concerns with the Proposed Rule. It seeks to assert itself into insurance agency business matters, which it cannot do. Such matters constitute the very heart and core of "the business of insurance" and as such shall be "regulated by the States."

Accordingly, we at NCOIL urge the FTC to exempt insurance agencies from the Proposed Rule. Doing so would ensure that the Proposed Rule does not violate the McCarran-Ferguson Doctrine by infringing upon the Congressionally-delegated rights of the States to regulate the business of insurance. Failing that, we urge the FTC to withdraw the Proposed Rule.

Very truly yours,



Tom Considine
CEO
NCOIL



Will Melofchik
General Counsel
NCOIL