

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS (NCOIL)

Resolution Concerning Principles of State Sovereignty in International Trade

Adopted by the NCOIL Executive Committee on July 13, 2014, and by the International Issues Task Force on July 10, 2014. Sponsored by Rep. Kathleen Keenan (VT), chair of the Trade Agreement Working Group

WHEREAS, a history of free trade agreements, including the North American Free Trade Agreement (NAFTA), the Central American Free Trade Agreement (CAFTA), and numerous bilateral free trade agreements have resulted in enormous economic and legal impacts on the states; and

WHEREAS, the United States, through the U.S. Trade Representative (USTR), is currently in the process of negotiating two broad multilateral agreements, the Trans-Atlantic Trade and Investment Partnership (TTIP) and the Trans-Pacific Partnership (TPP), as well as a Trade in Services Agreement (TISA); and

WHEREAS, ongoing negotiations regarding TTIP, TPP, and TISA need more transparency, accountability to elected officials and regulators, and mechanisms for serious consultation with the states; and

WHEREAS, conflict resolution provisions of international trade agreements have significant implications for state sovereignty and raise concerns regarding open debate and potential cost burdens for the states; and

WHEREAS, these negotiations are being conducted in a manner that does not provide the opportunity for an appropriate degree of public debate and deliberation in relation to the size and importance of the proposed agreements; and

WHEREAS, extreme caution is needed in international trade negotiations to avoid preempting state-level decisions with regard to the regulation of insurance and reinsurance; and

WHEREAS, it is appropriate and necessary that state legislators make clear the principles for which they stand on matters of sovereignty, transparency, due process, and the preservation of an historically effective system of regulation that has endured numerous challenges including the 2008 financial crisis.

WHEREAS, the voice of state legislators is largely unheard in the context of international trade despite the consequences borne by states as a result of previous international trade agreements; and

WHEREAS, NCOIL has, on a number of occasions, urged the USTR to expand state legislative participation on the Intergovernmental Policy Advisory Committee (IGPAC), but to date the USTR has not done so;

WHEREAS, the National Association of Insurance Commissioners, representing state insurance regulators, and the Federal Insurance Office (FIO) have venues through which they can input into international trade activity; and

NOW, THEREFORE, BE IT RESOLVED that the National Conference of Insurance Legislators supports expanded and continuous involvement by the states, through their elected legislative and other representatives, in all ongoing and future international trade agreement negotiations.

AND, BE IT RESOLVED that federal-state consultation should include the timely and comprehensive sharing of information on the substance and likely impact of trade agreements on state laws and regulations; appropriate use of state single points of contact (SPOCs); and a reasonable opportunity for meaningful input by the states;

AND, BE IT ALSO RESOLVED that the National Conference of Insurance Legislators opposes preemption of non-discriminatory state laws and regulations adopted for a public purpose and with due process by “no more burdensome than necessary” and similar standards.

AND, BE IT ALSO RESOLVED that the National Conference of Insurance Legislators supports according state regulations presumptive validity under any international trade agreement;

AND, BE IT ALSO RESOLVED that the National Conference of Insurance Legislators opposes any provision of an international trade agreement that grants greater substantive or procedural rights to foreign investors than to citizens and domestic businesses;

AND, BE IT ALSO RESOLVED that the National Conference of Insurance Legislators supports international trade conflict resolution proceedings that apply due process principles to affected states, including open hearings, state access to documents, and an opportunity for state governments to participate in the proceedings;

AND, BE IT FURTHER RESOLVED that a copy of this resolution will be sent to each state legislature, each state insurance regulator, the National Association of Insurance Commissioners, the U.S. Trade Representative, the U.S. Department of Commerce, the U.S. Department of State, and members of Congress.