NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
STATE-FEDERAL RELATIONS COMMITTEE
DUCK KEY, FLORIDA
NOVEMBER 19, 2004
DRAFT MINUTES

The State-Federal Relations Committee of the National Conference of Insurance Legislators met at Hawk's Cay Resort in Duck Key, Florida, on November 19, 2004, at 2:40 p.m.

Sen. Steven Geller of Florida, NCOIL President, presided in the absence of Committee Chair Sen. James Seward.

Other members of the Committee present were:

Rep. Robert Damron, KY
Rep. Shirley Bowler, LA
Rep. Larry Julian, MI
Rep. Fulton Sheen, MI
Rep. Greg Davids, MN
Assem. Nancy Calhoun, NY
Rep. Geoff Smith, OH
Rep. Brian Kennedy, RI
Rep. Craig Eiland, TX
Rep. Gini Milkey, VT
Rep. Mark Young, VT

Other legislators present were:

Sen. Joseph Crisco, CT
Sen. Bill Brady, IL
Rep. Terry Parke, IL
Rep. Mike Ripley, IN
Rep. Susan Westrom, KY
Rep. George Keiser, ND
Sen. Duane Mutch, ND
Sen. David Bates, RI
Rep. Gene Seaman, TX
Rep. Larry Taylor, TX
Del. Harvey Morgan, VA
Del. Harry Keith White, WV

Others present were:

Susan Nolan, NCOIL Executive Deputy Director
Candace Thorson, NCOIL Director of Legislative Affairs and Education, Property-Casualty and Workers' Compensation Insurance

MINUTES

Upon a motion duly made and seconded, the Committee voted unanimously to approve the minutes of the July 16 meeting in Chicago, Illinois.

ACTUARIAL OPINION ON CONGRESSIONAL NATURAL DISASTER LEGISLATION

Rade Muslin, representing American Academy of Actuaries, spoke regarding actuarial aspects and implications of natural disaster planning. He discussed the differing policy implications of the four options in NCOIL's July resolution on natural disaster insurance issues and urged the Committee to consider incorporating the correct mixture of pre- and post-funding mechanisms.

UPDATE ON CONGRESSIONAL HEARINGS

Ms. Thorson reported that the U.S. Senate Banking Committee had held a hearing on the effectiveness of state insurance regulation. She highlighted the testimony of Sen. Elizabeth Dole, who commented at the hearing that a NARAB mechanism might be the best approach to improve state insurance regulation.

DISCUSSION OF STATE MODERINIZATION AND REGULATORY TRANSPARENCY (SMART) ACT

Sen. Geller informed the Committee that he had sent a letter to Rep. Michael Oxley (R-OH) on September 10 stating the NCOIL Steering Committee's position in opposition to the SMART Act and summarized the points made in this letter. He said that the Committee would have to determine which one of two approaches NCOIL should take in determining its position on the SMART Act: either participating in further negotiations or remaining apart from negotiations and, in essence, "drawing a line in the sand."

Rep. Eiland reported to Committee members that he had sent a letter in opposition to the SMART Act to the Texas governor, attorney general, and other state public officials. He promised to e-mail a copy of this letter to Committee members so that they could adapt its text for use in their own states. He suggested that in addition to NCOIL, governors, attorney generals and others at the state level must become involved in this effort.

Rep. Kennedy echoed these remarks and urged insurance committee chairs to speak with their state insurance commissioners on the subject. He also noted the possible loss of premium tax if insurance regulation were to be federalized.

UPDATE ON NAIC INTERSTATE INSURANCE PRODUCT REGULATION COMPACT MODEL LEGISLATION

Nancy Davenport of the American Council of Life Insurance (ACLI) reported that 18 states had introduced the compact in 2004 and nine had passed the bill. She said that about 16 states were expected to introduce the compact in 2005 and an approximately equal number of states would not. Ms. Davenport reiterated ACLI's position in support of the compact.

Rep. Bowler said that Louisiana had passed a resolution in opposition to the compact.

REPORT OF FINANCIAL SERVICES SUBCOMMITTEE

Rep. Damron reported that the Financial Services Subcommittee had passed a resolution opposing an Office of the Comptroller of the Currency (OCC) regulation preempting state laws and moved that the State-Federal Relations Committee further adopt this resolution.

Rep. Kennedy suggested a technical change to the resolution to remove the specific name of the Comptroller of the Currency, as a new individual was taking over that office. The Committee voted unanimously to make such a change.

Sen. Geller informed Committee members that the American Bankers Association (ABA) had offered to facilitate a meeting between NCOIL and the new Comptroller of the Currency. He recommended that the Committee move the resolution to the Executive Committee but noted that there had been a great deal of discussion on holding the resolution in Executive Committee in light of the possibility of such a meeting.

Rep. Keiser expressed his support in moving the resolution to the Executive Committee but asked members to consider what NCOIL's position on this issue should be and whether its position would change, regardless of the outcome of a meeting with the Comptroller of the Currency.

Rep. Eiland noted that the National Conference of State Legislators (NCSL) had passed the same resolution and that the Texas Banking Commissioner had already communicated the same information to the OCC.

Rep. Kennedy summarized the resolution for the benefit of members not present at the Financial Services Subcommittee meeting. He highlighted the loss of consumer protections for state residents pursuant to the new OCC regulations.

Rep. Damron noted that the resolution only asked the OCC to stop interfering in state regulation. He noted a typographical error in paragraph seven of the resolution, i.e., the word "subsidy" should read "subsidiary." The Committee voted unanimously to adopt the technical amendment.

Rep. Bowler moved to defer consideration of the resolution until the next NCOIL meeting. The motion was duly seconded and defeated by a vote of four in favor, nine opposed.

The Committee then voted in favor of Rep. Damron's motion to advance the resolution to the Executive Committee.

UPDATE ON JOINT NCOIL-NAIC MARKET CONDUCT SURVEILLANCE MODEL LAW

Rep. Kennedy reported to the Committee that in September, the NAIC adopted the model by a vote of 30-20, and that debate involved a lively discussion.

Commissioner McCarty, representing the NAIC, urged passage of the model law in the states.

Sen. Geller said that NCOIL had no desire to change the model at this point. He suggested that NCOIL would not revisit the model until it was introduced and reviewed in the states.

Rep. Parke noted that 20 states had opposed the model at the NAIC. He said he was concerned that the model needed more work.

Robert Zeman, representing the Property Casualty Insurers Association of America (PCI) said that his association has concerns about the model. He said PCI would be opposed to the model if introduced as written. He urged further discussion on the model.

Sen. Geller provided Committee members an overview of the model bill's development.

Rep. Eiland recommended that states file the bill and obtain comments from interested parties.

Nancy Davenport said ACLI was supportive of the original model bill but opposed the amended version that was adopted by the NAIC. She argued that the current model puts too much discretion in the market conduct process, thus generally maintains the status quo. She said the ACLI would oppose the existing model in the states.

Sen. Brady suggested the appointment of a monitoring committee to report back on state activity at the next NCOIL meeting.

James Tuite, representing State Farm Insurance Companies, said that the existing model is not ready for consideration and argued it should not be introduced in the states at this time.

Timothy Mullen, NAIC staff, said that NAIC membership was split on the model—but that most support the structure of the model. In response to a question from Sen. Geller, he indicated that if the model were amended to its previous form the NAIC membership would be less supportive.

2005 COMMITTEE CHARGES

The Committee voted unanimously to adopt its 2005 charges as follows:

- Increase NCOIL/state legislator visibility and effectiveness on Capitol Hill
- 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
- Identify and consider financial services issues requiring state legislation
- Jointly with the Property-Casualty Insurance Committee, interact with Congress to enact appropriate federal natural disaster insurance legislation, and monitor and report on issues related to natural disaster insurance

REVIEW OF MODEL LAWS PER BY-LAWS

The Committee voted unanimously to readopt the NCOIL *Company Licensing Modernization Model Act.*

The Committee voted unanimously to defer until its next meeting review of the NCOIL *Exhaustion of Administrative Remedies Model Act*.

CONSIDERATION OF PROPOSALS TO ADDRESS BROKER CONTINGENCY FEE ISSUE

Rep. Eiland provided Committee members with an overview of the broker contingency fee issue, beginning with the October 14, 2004, filing of a lawsuit by New York State Attorney General Eliot Spitzer against the Marsh & McLennan brokerage. He discussed various suggestions put forth thus far by various parties to address the issue and then presented a discussion draft for NCOIL's consideration. He said that any model on broker disclosure should address three key elements, i.e., disclosure for brokers, the fiduciary duty between broker and client, and market conduct examinations of brokers. Rep. Eiland then discussed the specific elements of his discussion draft.

Georgia Commissioner Oxendine, representing the NAIC, informed Committee members that NAIC's approach thus far had been to develop amendments to the Producer Licensing Model Act. He said NAIC was taking a two-pronged approach to the issue. Pursuant to this approach: (1) a broker who receives compensation from a client would be prohibited from taking any money from a company unless such compensation was fully disclosed and the written consent of the client was obtained; and (2) agents must disclose to clients the source(s) of their compensation. He urged legislative adoption in early 2005 of a single model bill—rather than competing models—that does not overreach and suggested that the issue could be re-visited as more information on the subject became known.

Wesley Bissett of the Independent Insurance Agents and Brokers of America (IIABA) said that bid-rigging and market manipulation problems identified thus far were not systemic. He said product service agreements identified as an issue were limited to only a few large brokers nationwide and were not representative of independent agencies. He said that the best way to prevent this type of activity from occurring is through the promotion of competition in the marketplace. He said IIABA favored the NAIC draft as a remedy.

William Anderson of National Association of Insurance and Financial Advisors (NAIFA) endorsed the comments of Commissioner Oxendine. He indicated concerns with the NCOIL discussion draft.

Kate Paolino of American Insurance Association (AIA) urged Committee members to give careful consideration to the subject, noting the need for clear language. She said that the NAIC's approach to amend the Producer Licensing Model Act made the most sense.

Timothy Kovac of PIA National said PIA supports disclosure for brokers but also feels that it is very important that a model acknowledge the distinct differences between agents and brokers.

John Washburn, representing the Council of Insurance Agents and Brokers (CIAB), urged Committee members to beware of unintended consequences when fashioning draft language to address the issue. He cited the prevalence of case law in various states in determining fiduciary duty and suggested possible conflicts with this case law in the event that legislators attempt to fashion statutory remedies.

ADJOURNMENT

There being no further business, the meeting was adjourned at 3:45 p.m.

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