

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS (NCOIL)

Resolution Urging Support for State Authority in U.S. Trade Negotiations

Adopted by the NCOIL Executive Committee on July 15, 2012, and International Insurance Issues Committee on July 13, 2012. Sponsored for discussion by Rep. Kathie Keenan (VT)

WHEREAS, the regulation and provision of insurance for the general welfare is a traditional state activity in our system of constitutional federalism; 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, recent US-Australia and US-Korea free trade agreements (FTAs) have raised concerns regarding the impact of trade negotiations on state-level programs and the ability of states to manage their unique systems; and

WHEREAS, an emerging Trans-Pacific Partnership Agreement includes financial services and other provisions that may directly impact insurance regulation; and

WHEREAS, state government officials have repeatedly cautioned federal trade officials against policies that could preempt state regulation; and

WHEREAS, trade agreements are reciprocal by nature, and U.S. state government policies that violate the terms may lead to foreign government retaliation; and

WHEREAS, international trade agreements can affect a broad range of public interest concerns and therefore should be subject to highly participatory and, when appropriate, transparent rule-making procedures; and

WHEREAS, state regulation and provision of insurance is conducted in an open and transparent manner through public hearings and the consideration of legislation that is publicly available, and through transparent state administrative agency rule-making procedures; and

WHEREAS, recent negotiations in the Trans-Pacific Partnership Agreement between the U.S. and eight other nations have not allowed for broad input from state legislators and other officials; and

WHEREAS, few legislators are cleared advisors who sit on an Intergovernmental Policy Advisory Committee (IGPAC) and are allowed to review and comment on negotiating text; and

WHEREAS, pending state requests to appoint additional members to IGPAC have not been acted upon; and

WHEREAS, the limited number of cleared advisors on IGPAC who represent state governments significantly limits consultation with the states and the capacity of states to share expertise with U.S. trade negotiators about policies and regulations that are reserved to the states or subject to state law;

NOW, THEREFORE, BE IT RESOLVED that NCOIL urges the U.S. Trade Representative to:

- **expand** the number of cleared state advisors and proactively seek their review and comment on proposals
- **consult** more directly and substantively with the states to ensure that trade agreements do not preempt state laws and regulations
- **increase** transparency, as appropriate, in the trade negotiation process so that state officials and other public interest representatives can more meaningfully review and comment on proposals that could affect state policies and laws
- **defend**, with input from the states, the general principles of state regulation of insurance free of federal or international preemption or arbitration by international investment tribunals

BE IT FURTHER RESOLVED that a copy of this resolution will be sent to the President of the United States, the U.S. Trade Representative, the Secretary of Commerce, the Secretary of State, the U.S. Senate Committee on Finance, and the U.S. House Committee on Ways and Means and the leadership of the House and Senate, as well as to key state officials.