

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
STATE-FEDERAL RELATIONS COMMITTEE AND  
INTERNATIONAL INSURANCE ISSUES COMMITTEE  
PORTLAND, OREGON  
JULY 16, 2016  
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) State-Federal Relations Committee and International Insurance Issues Committee met jointly at the Portland Marriott Waterfront Downtown on Saturday, July 16, 2016, at 10:30 a.m.

Senator Dan “Blade” Morrish of Louisiana, Chair of the International Insurance Issues Committee, presided.

Other members of the Committees present were:

Rep. Joseph Fischer, KY	Rep. Bill Botzow, VT
Rep. George Keiser, ND	Rep. Kathleen Keenan, VT
Rep. David O’Connell, ND	
Rep. Don Flanders, NH	

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO  
Paul Penna, Executive Director, NCOIL Support Services, LLC  
Will Melofchik, Legislative Director, NCOIL Support Services, LLC

## MINUTES

Upon a motion made and seconded, the Committee unanimously approved the minutes of its February 26, 2016, State-Federal Relations Committee meeting in Little Rock, Arkansas, and its February 27, 2016, International Insurance Issues Committee in Little Rock, Arkansas.

## UPDATE ON IIPRC DEVELOPMENTS

Before the first item on the agenda was discussed, Rep. Botzow made a motion which was seconded and approved to suspend the quorum requirement for the Committees.

Karen Schutter, Executive Director & Commission Secretary of the Interstate Insurance Product Regulation Commission (IIPRC) spoke first and made a presentation about IIPRC developments, the related Compact, and the overall structure of both. Ms. Schutter stated that Connecticut is the most recent State to adopt the Compact statute and Washington D.C. is considering adoption. To date, the Compact has approved over 4,000 insurance-related products and is appreciative of NCOIL’s continued support. The purpose of the Compact is to promote and protect the interests of consumers for products such as individual and group annuities, life insurance, long term care, and disability income products. Overall, the Compact is a very successful legislator-regulator partnership and it formalizes and brings together cooperative action. Instead of a company having to go state to state to get its product approved, its can go before one entity, the Commission. The origin for the Compact was a recognition that the insurance

marketplace was changing, and a response to federal regulatory encroachment. Compacts are becoming more popular in different types of markets/industries – most States are part of at least one type of Compact.

The main principle of the Compact is that it is an agreement among participating States to create uniform standards that apply to the products that are submitted and approved by the Commission. Additionally, if a standard does not work for a member State, it can opt-out of that standard. The structure of the Compact is one member from each compacting State, which is typically the State's Insurance Commissioner, although Commissioners sometimes designate representatives. The Compact also has committees such as a legislative committee, consumer advisory committee, technology committee, product standards committee, and an industry advisory committee.

Ms. Schutter stated that the uniform standards start at the worker committee, which is very technical and there are many opportunities for input. The standards ultimately end up at the management committee where two thirds must vote in favor of the uniform standards. Additionally, the Compact is required to notify State legislators of any uniform standards up for adoption so there is opportunity to comment.

Ms. Schutter stated that the NAIC has an important role in the Compact, in the form of both monetary and technical support. Ms. Schutter further stated that the largest and most important benefit from being a Compact state is the ability to get thoroughly reviewed products under standards with strong consumer protections.

#### UPDATE ON H.R. 5143: "TRANSPARENT INSURANCE STANDARDS ACT OF 2016"

Commissioner Tom Considine, NCOIL CEO spoke and stated that since this topic was discussed at the Spring Meeting in Little Rock, he has worked closely with NAIC with the goal of furthering the bill which is extremely important in preventing international encroachment on the state-based regulatory system of insurance. There was an issue with certain definitions in the bill that would have had the effect of excluding the NAIC from the processes outlined in the bill. However, the issue was resolved. A fly-in to Washington D.C. was scheduled for NCOIL leadership in early June but the bill unexpectedly was placed for mark-up so it had to be re-scheduled. The mark-up was largely a success except for an amendment proposed by Congressman Royce. Commissioner Considine stated that NCOIL's position now is that we still support the bill but will work towards altering the amendment to make it more reasonable. The plan now is to re-schedule the NCOIL leadership fly-in and to work on and disseminate letters and talking points that support the bill.

Scott Gilliam of The Cincinnati Insurance Company spoke and stated that Congressman Royce's amendment is a "poison pill" to H.R. 5143. The amendment would require the Government Accountability Office (GAO) to do a very invasive investigation of the NAIC and all of its activities in the international forum. This would include its budgeting, how they use their staff and how they set policies. It is a travesty that in a bill that is presented as something to preserve state-based insurance regulation from international preemption, the GAO has to investigate said system. Mr. Gilliam encouraged NCOIL to keep working on altering the amendment.

Julie McPeak, NAIC Vice President and Commissioner, Tennessee Department of Commerce & Insurance, stated that, as Commissioner Considine mentioned, NAIC was very concerned with the initial definitions in the bill but was glad to see that resolved. Commissioner McPeak stated that NAIC is also not pleased with Congressman Royce's amendment but willing to move forward since the definition issue was far more problematic. Commissioner Considine then noted that NCOIL did withhold its support of the bill pending final resolution of the definitions.

Dave Snyder from the Property Casualty Insurers Association of America (PCI) stated PCI is also not pleased with Congressman Royce's amendment and that PCI endorses the approach NCOIL and NAIC have taken on the bill.

## EU EQUIVALENCE

Dave Snyder stated that Solvency II was enacted because the European Union (EU) had an antiquated, non-risk based solvency system in place and the EU realized said system needed reform. Mr. Snyder stated that such an effort is entirely appropriate but the European market is very different from the U.S. market and the problem is that Solvency II has a provision that says companies based outside the EU may be subject to discriminatory treatment if their regulatory system from where they are based is not deemed equivalent. Some countries have gone through an equivalency evaluation but the U.S. has not and has said we have a highly sophisticated system - we should be recognized as equivalent without having to go through that process. Mr. Snyder stated that the countries that have gone through said process had to make dramatic changes in their legislation or prove that they are in every major and minor way consistent with Solvency II.

Mr. Snyder said that since Solvency II's implementation, we have started to see actions against U.S. companies, the first of which was the U.K. demanding very extensive reporting. German regulators have now started saying to U.S. reinsurance companies that have been doing business there for a number of years that since they have not been deemed equivalent, the companies cannot do business in Germany. Mr. Snyder said that the objective should be open markets and mutual recognition.

Commissioner McPeak then spoke and stated that in June 2015, the European Commission granted provisional equivalence to the U.S. for 10 years solely in the area of group solvency. Commissioner McPeak noted that the stringent regulatory guidelines of Solvency II might be to encourage a covered agreement. Commissioner McPeak stated that NAIC continues to work with German regulators to understand the positions they have taken against U.S. insurers.

## COVERED AGREEMENTS

Commissioner McPeak stated that NAIC's primary concern is that a covered agreement could potentially result in the preemption of state laws and consumer protections and therefore have an impact on virtually all U.S. insurers if the terms of a covered agreement are not consistent with NAIC models or state laws. Due to such a potential impact, state regulators have asked to directly participate in the negotiation process of a covered agreement to ensure that U.S. insurers and their consumers are protected. However, their participation in the process has not been as meaningful as promised. It

remains to be seen how the negotiations will continue, particularly in the wake of Brexit. Reinsurance collateral seems to be the point that is getting the most interest in the covered agreement negotiations. Commissioner McPeak stated that NAIC can see a covered agreement as a way of receiving recognition of the U.S. insurance regulatory system being equivalent under Solvency II but they want to make sure that equivalence is not achieved at the cost of something that will not be workable and does not result in the unnecessary preemption of State law.

Dave Snyder stated that the negotiations have been a closed-door process so it is difficult to understand exactly what direction they are headed in. Mr. Snyder stated that NCOIL has a critical role to play – to remind federal agencies that in Dodd-Frank they decided to keep insurance regulation on a State level because it works. Mr. Snyder noted that NCOIL's efforts in doing so thus far have not gone unnoticed and have been successful.

Scott Gilliam stated that Congress should be required to ratify any covered agreement negotiated by the administration. Mr. Gilliam also stated that the issues of covered agreements and equivalency under Solvency II should not be treated as intertwined. Covered agreements should not be used by the administration as a bargaining chip to achieve equivalency. The U.S. is already deserving of equivalency without a covered agreement.

#### CONSIDERATION OF RESOLUTION ENDORSING NAIC CREDIT FOR REINSURANCE MODEL LAW AND REGULATION

Rep. Fischer moved passage of the Resolution.

Eric Cioppa, NAIC, Superintendent of the Maine Bureau of Insurance agreed with Mr. Gilliam's assertion that the U.S. system, particularly its reinsurance structure, should be deemed equivalent without a covered agreement. The NAIC Model Law and Regulation (Models) strengthen state regulation, prevent regulatory arbitrage and most importantly protect U.S. policyholders. The Models contain a very transparent and methodical way to, if necessary, reduce collateral.

Rachel Jensen from American Insurance Association (AIA) spoke and noted that the AIA, American Council of Life Insurers (ACLI) and the Reinsurance Association of American (RAA) each support the resolution but submitted proposed amendments in an effort to strengthen and clarify it. Matt Wulf from RAA spoke and echoed Ms. Jensen's comments. Scott Gilliam stated that The Cincinnati Insurance Company supports the Resolution as initially drafted. Dennis Burke of the RAA spoke and clarified some of their proposed amendments. John Gerni of the ACLI stated that it is important for NCOIL to go on record supporting the Models.

Rep. Fischer stated that in his experience with Resolutions, the whereas clauses merely provide context to the Resolution as a whole and therefore moved to adopt the Resolution without any changes. Matt Wulf of the RAA then offered an amendment to the Resolution to clarify that 35 States, not 32, have adopted the Models. The amendment was adopted.

The Committee then unanimously adopted the Resolution, as amended with the correct number of states.

#### BREXIT IMPACT ON U.S. INSURANCE MARKET: OPPORTUNITY OR THREAT?

Dave Snyder stated that there is an opportunity for the U.S. to establish itself as an equal partner with the EU and a non-EU participating U.K. NCOIL needs to be engaged in all international issues and work with the NAIC and the federal government to achieve the appropriate balance in international insurance regulation and use Brexit as an opportunity to show leadership.

Sen. Holdman stated that an effort needs to be made for NCOIL to visit Brussels. We have reached a point where, if NCOIL and State legislators as a whole want to be involved, action is needed – we cannot just keep talking about it. Mr. Snyder supports such an effort but also stated that while it may seem that NCOIL has not had an impact on these international issues, that is far from the truth. Commissioner McPeak stated that NAIC would welcome further NCOIL engagement in the international forum. Scott Gilliam and Rep. Riggs spoke and strongly supported Sen. Holdman's idea.

#### ADJOURNMENT

There being no further business, the Committee adjourned at 1:45 p.m.