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NCOIL PRESIDENT APPLAUDS 5TH CIRCUIT DECISION TO REVERSE US DEPARTMENT OF LABOR FIDUCIARY RULE

Court Rules That DOL Exceeded Authority

Manasquan, NJ – AR Sen. Jason Rapert, NCOIL President issued the following statement regarding the 5th Circuit Court of Appeals ruling in *US Chamber of Commerce et. Al. v. Acosta* that the US Department of Labor had exceeded its regulatory authority in creating the regulation that held advisors to a higher standard:

“As legislators, we take our responsibility to create law seriously. This was a clear overreach of legislative intent and I applaud the court for this ruling. NCOIL has been at the forefront of protecting state-based regulation of insurance and will weigh in when the federal government or international regulatory bodies subvert legislative prerogatives. I am especially pleased that the court chose not to tinker with the rule, but rather saw it for what it was and struck it down completely.”

NCOIL first raised concerns about this issue with a resolution opposing the Fiduciary Rule and calling for its repeal that passed the Life Insurance & Financial Planning Committee at the 2016 Summer Meeting. NCOIL communicated that opposition to the Department of Labor. Having not received satisfactory resolution from the DOL, the NCOIL Executive Committee approved the resolution at the 2016 Annual Meeting. A copy of that resolution is below. NCOIL weighed in again approving of the Trump Administrations 18-month delay in 2017.

National Conference of Insurance Legislators (NCOIL) Resolution in Opposition to the United States Department of Labor (DOL) Fiduciary Rule

Sponsored by Sen. Jason Rapert (AR)

WHEREAS, the DOL has recently promulgated its final “Fiduciary Rule” (Rule), published at 81 Fed. Reg. 20946 on April 8, 2016; and con

WHEREAS, the Rule redefines the circumstances under which providing “investment advice” could give rise to “fiduciary” status under the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (Code); and



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WHEREAS, NCOIL strongly supports the States' rights to regulate their own insurance markets and products, including retirement related financial products; and

WHEREAS, Congress has affirmed the primary role of State regulators over the business of insurance through various legislative acts, including the McCarran-Ferguson Act and most recently the Dodd-Frank Act; and

WHEREAS, the state-based regulatory structure governing the manufacture, distribution, and sale of retirement related financial products is effective and proven; and

WHEREAS, state insurance regulation has in place on-going substantive procedures, processes and protocols to license, regulate and supervise insurance agents of retirement related financial products; and

WHEREAS, under the proven State-based legislative and regulatory structure, tens of millions of Americans have been able to receive sound retirement assistance, products and services from financial professionals who have consistently served the best interests of customers; and

WHEREAS, the Rule promulgated by the DOL would threaten the proven State-based legislative and regulatory structure by imposing a vague and burdensome fiduciary standard on non-fiduciary sales relationships, thereby upending the retirement savings marketplace; and

WHEREAS, the Rule will prevent consumer access to crucial retirement education and services, ultimately harming the very people it seeks to aid; and

WHEREAS, NCOIL believes in protecting the interests of consumers against excessive government regulation that will only hurt average working Americans trying to save for retirement; and

WHEREAS, Congress has opposed the Rule by passing a Joint Resolution of Disapproval (H.J. Res. 88); and

NOW, THEREFORE, BE IT RESOLVED, that NCOIL urges the DOL to repeal its Rule; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that NCOIL urges state legislators and other interested stakeholders to join in opposition to the Rule;

AND, BE IT FINALLY RESOLVED, that this resolution will be distributed to state legislative leadership, committee chairs and members, state regulators, and other interested parties.

educational forum for public policy makers 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 perennial insurance issues.