

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
STATE-FEDERAL RELATIONS COMMITTEE
CHICAGO, ILLINOIS
JULY 16, 2004
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) State-Federal Relations Committee met at the Hotel Inter-Continental in Chicago, Illinois, on Friday, July 16, 2004, at 2:00 p.m.

Sen. Jim Seward of New York, chair of the Committee, presided.

Other members of the Committee present were:

Sen. Steven Geller, FL
Rep. Rich Golick, GA
Rep. Robert Damron, KY
Sen. Alan Sanborn, MI
Rep. Fulton Sheen, MI
Rep. Greg Davids, MN
Sen. Pam Redfield, NE
Rep. Dan Foley, NM
Assem. Nancy Calhoun, NY
Assem. Ivan Lafayette, NY
Sen. William Larkin, Jr., NY
Rep. Geoff Smith, OH
Rep. Brian Kennedy, RI
Rep. Dan Tripp, SC
Rep. Craig Eiland, TX
Rep. Kathleen Keenan, VT
Rep. Gini Milkey, VT

Other legislators present were:

Rep. Robert McCluskey, CO
Rep. Pat Patterson, FL
Rep. Michael Ripley, IN
Sen. Carroll Leavell, NM
Rep. George Keiser, ND
Sen. Harvey Tallackson, ND
Rep. Robert Godshall, PA
Del. Harvey Morgan, VA

Also in attendance were:

Susan Nolan, Mackin & Company, NCOIL Deputy Executive Director
Tim Tucker, NCOIL Director of State-Federal Relations

MINUTES

The Committee voted unanimously to approve the minutes of its February 27, 2004, meeting in San Antonio, Texas.

CONGRESSIONAL ACTIVITY ON INSURANCE REGULATION

Mr. Tucker said that the U.S. House Financial Services Committee, chaired by Rep. Michael Oxley of Ohio, had over the last several years conducted insurance regulatory oversight hearings. He said that the hearings focused on the states' progress in reforming and modernizing the current insurance regulatory structure. Mr. Tucker said that at the most recent hearing in March of 2004, Rep. Oxley indicated that drafting would begin on some type of federal insurance modernization legislation. He said that the conceptual outline of the legislation is referred to as the Oxley-Baker Roadmap for Regulatory Reform.

Mr. Tucker said that legislation was currently being drafted that would likely create federal standards in the key areas of insurance regulation that states would be required to follow. He said that a draft of the proposed legislation was expected to be released soon and a Financial Services Committee hearing would likely be held in September.

Mr. Tucker said that Sen. Geller sent a letter in June to Chairman Oxley that urged the Committee to move cautiously on the legislative proposal, underscored NCOIL's strong support for state regulation, and offered to provide the Committee with any relevant information on state-level insurance reforms.

Mr. Tucker said that the NAIC had also formally responded late last month to the Oxley-Baker Roadmap by submitting a document that outlined the NAIC's and states' efforts to modernize the key areas of insurance regulation.

Mr. Tucker said that on July 13 the U.S. Senate Banking Committee, chaired by Sen. Richard Shelby of Alabama, held a hearing on the effect of the Gramm-Leach-Bliley Act of 1999 on the financial services industry. He said that despite the intended focus of the hearing, the line of questioning from the Committee members moved toward insurance modernization issues. He said that it was likely that the Committee will hold a hearing in September on insurance issues.

Sen. Geller said Chairman Oxley was pursuing legislation that could ultimately undercut state regulation. He said that the prospect of such legislation has strengthened the relationship between NCOIL and the NAIC. He said that once the legislation was made available NCOIL, NAIC, and the NCSL would attempt to work together to formulate a joint response.

STATE IMPLEMENTATION OF THE NAIC INTERSTATE INSURANCE PRODUCT REGULATION COMPACT

Ms. Nancy Davenport, representing the American Council of Life Insurers (ACLI), said that the ACLI continues to support the enactment of the Interstate Insurance Product Regulation Compact in the states. She said that 18 states had introduced the Compact this year and it had been enacted in Colorado, Hawaii, Iowa, Maine, New Hampshire, Utah, West Virginia, and Virginia.

Ms. Davenport said that enactment of the Compact is important because it promotes insurance product approval uniformity on a state by state basis. She said under the Compact, uniform product standards are being created. She said that insurers would be able to sell products approved by the Compact in all member states.

Mr. Tucker said that NCOIL has a formal position in support of the NAIC Interstate Insurance Product Regulation Compact. He said that the Compact is a key piece of the NCOIL modernization agenda. He said that NCOIL has many informational resources related to the Compact available to states considering the Compact model legislation.

FINANCIAL SERVICES SUBCOMMITTEE

Rep. Robert Damron of Kentucky, chair of the Financial Services Subcommittee, said that the Subcommittee discussed a resolution, sponsored by Rep. Kathleen Keenan of Vermont, that opposed recent regulations promulgated by the Office of the Comptroller of the Currency that impede the ability of the states to regulate state-chartered banks. He said the Subcommittee deferred consideration of the resolution until the Annual Meeting so that banking industry representatives could have additional time to prepare a response to the resolution.

MARKET CONDUCT REGULATORY REFORM

Sen. Seward said that in February the State-Federal Relations Committee culminated a great deal of work on market conduct regulation by adopting the *Market Conduct Surveillance Model Law*. He said that after the February adoption of the Model Law, the NAIC reviewed it and offered some amendments that would allow that organization to support the Model Law.

Sen. Geller said both NCOIL and the NAIC aimed to develop a market conduct model law that had the support of both legislators and regulators. He said that NCOIL requested the NAIC to forward suggested amendments to NCOIL for consideration, rather than amend the Model Law. He said that many of the suggested NAIC amendments clarified and strengthened the intent of the Model Law.

Sen. Geller said that amendments being considered by the Committee, with the exception of section 5(d), were previously publicly available. He said that the NAIC, industry and consumer groups have agreed not to object to the amendments. He said that some of the industry trade groups were unable to take a position on the specific

amendments until they discussed them with their respective memberships. He said that the industry groups, in general, favored the original NCOIL Model Law language.

Sen. Geller said that if the NAIC rejected the amended Model Law, NCOIL would reexamine the amendments made to the Model Law, and possibly repeal some or all of the amendments. He said that the NAIC would take an up or down vote on the Model Law once amended by NCOIL.

Sen. Geller said that an agreement had been reached regarding section 5(d) of the Model Law, which addresses when an insurer can request an administrative hearing. He said under that section states would chose one of three options when considering the Model Law. He said that the first option would retain the original NCOIL Model Law language. He said that the second option was offered by the NAIC. He said that the third option was a compromise between the first two options.

Sen. Geller said that the market conduct regulatory reform was a very complex issue. He said the NCOIL Model Law was a good starting point for market conduct regulation reform. He said that other market conduct issues were likely to come up, and that NCOIL was committed to discussing those issues in the future.

Sen. Geller reiterated that the amendments to be considered by the Committee were either supported, or not opposed, by the NAIC, consumer groups, and industry representatives.

EXPLANATION OF NAIC SUGGESTED AMENDMENTS TO THE NCOIL *MARKET CONDUCT SURVEILLANCE MODEL LAW*

Mr. Tucker said that the proposed amendments being considered by the Committee are consistent with the original intent of the Model Law. He said that the proposed amendments keep the core provisions of the Model Law intact. He said the proposed amendments do not affect the Model Law's reliance upon market analysis and targeted examinations. He said that those provisions were included in the Model Law to ensure regulators performing market conduct activities focus resources on insurer actions that cause the greatest consumer harm.

Mr. Tucker said that the proposed amendment to section 5(d) was one of the most contentious issues in the Model Law. He said that the section addressed the incorporation by reference of NAIC market conduct work products in the Model Law. He said several interested parties had raised the issue of how a state should respond when the NAIC makes a substantive change to its work products. He said that a change by the NAIC to a work product reference in a state's statute could have the effect of changing state law. He said section 5(d) would create a hearing mechanism interested parties could use to ensure that changes made by the NAIC are indeed consistent with a state's legislative intent. He said that the proposed amendment would create the three options for a state to chose from that were outlined by Sen. Geller.

Mr. Tucker said that another of the proposed amendments before the Committee for consideration addressed the issue of domestic deference. He said that domestic deference was the ability of a regulator from one state to accept the market conduct examination report from another state. He said that the proposed amendment could make it easier for a commissioner to accept the examination report of another state by removing the minimum premium requirement.

Mr. Tucker said that the Committee would consider a proposed amendment dealing with the scope of market conduct actions. He said that a goal of the NCOIL Model Law was to ensure that regulators focus on general insurer business practices, rather than random or unintentional errors. He said the proposed amendment added language to the Model Law clarifying that regulators should not focus market conduct activities on random or unintentional errors, provided that those errors did not result in harm to consumers.

Mr. Tucker said that the Committee would also consider a proposed amendment to the self-critical analysis privilege drafting notes in the Model Law. He said that the amendment would remove specific references to the NCOIL *Insurance Compliance Self-Evaluative Privilege Model Law*. He said that specific references to the NCOIL Model Law caused problems for the NAIC because it did not have a position on self-critical analysis generally, or the model specifically.

Mr. Tucker said the Committee would also consider a proposed amendment to the Model Law regarding the effect of insurer participation in regulatory compliance organizations. He said that the proposed amendment would change slightly the weight of such insurer participation by regulators when determining market conduct fines. He said it would require a regulator to take such participation into consideration when determining fines but not necessarily would require it to be a mitigating factor.

Upon a motion and a second, the Committee voted unanimously to waive the NCOIL 30-day rule, allowing for the consideration of the proposed amendments.

Mr. Joel Ario, Oregon Insurance Administrator, said that some states could institute by administrative rule many of the provisions contained in the Model Law.

Sen. Seward said that commissioners and administrations change with some regularity, and that market conduct uniformity was more likely with the enactment of statutes in the states.

Mr. Birny Birnbaum, representing the Center for Economic Justice, said that the NCOIL Model Law would provide for reinvention of market regulation and would make a strong case for the benefits of state regulation. He said that the Model Law would improve the efficiency and effectiveness of market conduct regulation.

Mr. Birnbaum said that the NCOIL Model Law was a milestone in insurance regulation because it represented an unprecedented level of cooperation among stakeholders. He said that NCOIL should be commended for its leadership on this issue.

Mr. Paul Basil, representing Assurant, said that his company had experienced problems with market conduct regulation first-hand. He said that the NCOIL Model Law adopted in February went a long way toward addressing many of these problems. He said that the proposed amendments represented a step backwards.

Sen. Seward said that the proposed amendments further clarify the intent of NCOIL to address the problems with market conduct regulation. He said that the enactment by the states of the NCOIL Model Law would create improved market conduct regulation.

Mr. Robert Zeman, representing the Property-Casualty Insurance Association of America (PCI), said that PCI appreciated the work done by NCOIL on market conduct regulatory reform. He said that PCI could not support the amendments until it had an opportunity to review them in detail.

Mr. Jim Tuite, representing State Farm, said that he hoped that NCOIL would continue to look at other market conduct regulatory issues. He said that he looked forward to working with NCOIL on further market conduct reforms.

Ms. Nancy Davenport, representing ACLI, said that the ACLI could not support the proposed amendments the Committee would be considering.

Sen. Seward said that it was important for NCOIL to adopt a market conduct model law for states to use as guidance when considering market conduct regulatory reform. He said that the adoption of a model law that had the support of the NCOIL and the NAIC would send a strong message to Congress that the states were making progress on improving a key area of insurance regulation.

Rep. Tripp said that NCOIL should be careful when considering the NAIC amendments that it accepted only those amendments that improve the Model Law, and not accept them for the sake of gaining agreement.

Sen. Geller said that NCOIL had been working on market conduct regulation for four years and it had conducted an exhaustive review of virtually all aspects. He said that NCOIL needed to take decisive action and adopt the Model Law. He said that delaying consideration would only result in new issues being brought forward at the next meeting.

Rep. Keiser said that by adopting the Model Law in February, NCOIL sent a message to Congress that it was moving forward on market conduct reform. He said that the proposed amendments represented a significant step backwards from the intent of the Model Law. He said that the proposed amendments would hurt market conduct regulatory uniformity.

Rep. Foley said that he had some concerns regarding the interested parties' position on the proposed amendments. He said NCOIL should be careful not to move too quickly.

Administrator Ario said that he represented 51 commissioners with diverse views and political pressures. He said that he was confident that an overwhelming number of commissioners would support the Model Law containing the proposed amendments when it went before the NAIC. He said that the NAIC would consider the Model Law by conference call prior to its Fall Meeting.

A motion was made, and seconded, to adopt the proposed amendments to the NCOIL *Market Conduct Surveillance Model Law*.

Rep. Kennedy said that he was pleased that NCOIL and the NAIC had worked together on the drafting of the Model Law.

Rep. Golick said that he was concerned about NCOIL's pace in adopting the proposed amendments. He said that he would prefer that the Committee wait until November to consider amendments to the Model Law.

The Committee voted 11 to 6 to adopt the proposed amendments to the NCOIL *Market Conduct Surveillance Model Law*.

A motion was made, and seconded, to adopt the NCOIL *Market Conduct Surveillance Model Law*, as amended, and forward it to the Executive Committee for consideration.

The Committee voted 13 to 2, with 2 abstentions, to adopt, as amended, the NCOIL *Market Conduct Surveillance Model Law*.

FUTURE OF MARKET CONDUCT REGULATION

Mr. Phil O'Connor, representing Pro-Active Strategies, said that the NCOIL Model Law still fell short of solving all the problems found in market conduct regulation. He said that the process of developing model bills often leads to the dilution of the original intent. He said that he believed that NCOIL would need to address additional market conduct regulatory issues going forward.

ADJOURNMENT

There being no further business, the meeting adjourned at 3:00 p.m.