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STATEMENT OF THE NATIONAL CONFERENCE OF INSURANCE LEGISLATORS (NCOIL)

BEFORE THE SUBCOMMITTEE ON CAPITAL MARKETS, INSURANCE, AND GOVERNMENT SPONSORED ENTERPRISES, COMMITTEE ON FINANCIAL SERVICES, UNITED STATES HOUSE OF REPRESENTATIVES

HEARING ON "ADDITIONAL PERSPECTIVES ON THE NEED FOR INSURANCE REGULATORY REFORM"

TUESDAY, OCTOBER 30, 2007

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TEXAS HOUSE OF REPRESENTATIVES
CHAIR, NCOIL STATE-FEDERAL RELATIONS COMMITTEE
PAST PRESIDENT OF NCOIL

Introduction

Good afternoon Chairman Kanjorski, Ranking Member Pryce and Members of the Subcommittee. Thank you for inviting me to testify before the Subcommittee on the very important issue of insurance regulatory reform.

My name is Craig Eiland. I am a Texas State Representative. I recently served as President of the National Conference of Insurance Legislators' (NCOIL) and presently chair the NCOIL State-Federal Relations Committee.

NCOIL is an organization of state legislators whose main area of public policy concern is insurance. NCOIL legislators chair or are members of the committees responsible for insurance legislation in their state houses. NCOIL states represent a large majority of the premium volume written in the U.S.

I am pleased to be here today on behalf of NCOIL to discuss with the Subcommittee the insurance regulatory marketplace and how the current state system impacts consumers, specific areas that warrant reform and state-based efforts to address them, and the growing importance of global competition.

It would be unrealistic of me to say that state insurance regulation is flawless and modernization is unnecessary. But not as unrealistic as the approach taken by some—that we should abandon a tried and true system for an unproven scheme.

States have fostered—and will continue to work to improve—a dynamic and competitive insurance marketplace. Our states are major players in the global insurance economy. Twenty-six of the top 50 insurance markets in the world are located in the U.S. California has the sixth largest insurance market in the world, New York the seventh, Florida the eighth, and my home state of Texas the tenth.

As a group of legislators dedicated to sound insurance public policy, NCOIL stands by the old adage "if it ain't broke, don't fix it." That being said, NCOIL sees that states need to modernize certain key areas: speed-to market for insurance products, rate and form approval, market conduct, and agent and company licensing. NCOIL has been actively working toward reform, while striving to maintain—and build upon—vital state-instituted consumer protections.

Consumers Benefit from State Regulation

States successfully have regulated the business of insurance for more than 150 years. During that time, state legislatures, regulators, and attorneys general have responded to their constituents' needs and have developed oversight suited to states' unique market demands.

States are adaptable and are equipped to assist consumers on a daily basis, as well as to offer recourse in times of trouble. Consumers, like the many recent victims of natural disasters—including the wildfires last week in California—are best served by having state officials on the ground—people who share with them not only geography, but economic, political and social realities.

While everyday, successful transactions between John Doe and his insurance agent may be overshadowed by headlines of claims problems and profiteering—the current state system does work. It lowers the costs that consumers pay for insurance and promotes availability of coverage. Insurers can share loss history and other information under state-based regulation. This lets smaller and more regional companies compete with the larger carriers. And these smaller companies are important in a functioning market—particularly in times when the market is strained.

State regulation also—through safety nets like guaranty funds and residual market mechanisms—protects the rights of claimants whose insurance companies have failed and ensures that consumers who otherwise could not secure coverage may do so.

Speed-to-Market for Life Products

Providing consumers with access to new, innovative products and offering insurers streamlined product review was NCOIL's goal when it worked with the National Association of Insurance Commissioners (NAIC) and the National Conference of State Legislatures (NCSL) in 2003 to develop the Interstate Insurance Product Regulation Compact.

The Commission created by the Compact serves as a central point of electronic filing for certain insurance products, including life insurance, annuities, disability income, and long-term care. A company can complete a single product filing with the Compact Commission and, upon

approval, offer that product to consumers in all member states. The Compact does not preempt a state's ability to address consumer complaints and deceptive trade practices—state insurance departments retain authority to address abuses in their own markets.

By 2006, in a surprisingly short time, the Compact met its threshold of 26 member states and/or 40 percent of life insurance premium volume. Today, 30 states are members of the Compact—representing more than 50 percent of premium volume. Member states include Pennsylvania, Ohio, Texas, Michigan, and Virginia, among others. Compacting legislation is pending in the District of Columbia, Illinois, New Jersey, New York, and Wisconsin.

NCOIL, NCSL, NAIC, and the Compact staff continue to work towards the adoption of Compacting legislation. We expect several states to reintroduce bills during the 2008 session and believe that once New York, Florida, or California join, most other states will follow suit.

To date, the Compact has approved 36 standards and continues to receive and approve company filings.

Rate and Form Modernization

You have heard in the past from elements of the property-casualty industry that say a federal regulator is the way to achieve rate deregulation. It is true that more needs to be done. But those who support a federal approach fail to tell you about what we have achieved.

Almost 30 legislatures have enacted some form of rate deregulation—including "no-file" commercial lines language in the historically restrictive commonwealth of Massachusetts. These laws are based significantly on two NCOIL model acts. The first, which we adopted in 2001, would establish use-and-file for personal lines, no-file for commercial lines, and exemption from rate and form-filing requirements for large commercial policyholders. The second model law, adopted in 2004, would set a flex-rating band of 12 percent for those states moving toward modernization.

According to a November 2005 compendium of state property-casualty laws, approximately

- 39 states have some form of *commercial lines* deregulation
- 23 states have some form of more open *personal lines* regulation
- Seven (7) states have some form of *flex-rating* for commercial and/or personal lines

More and more states are recognizing the need to streamline their rate-filing requirements. That is not to say that NCOIL, the NAIC, or other groups can back off their own modernization efforts. But it is to say that we should acknowledge, and appreciate, the change that is taking place.

Market Conduct Examinations

NCOIL commissioned a ground-breaking study in early 2000 that—after exhaustive research and testimony—concluded that the underlying system of market conduct examination regulation was in need of reform.

In response to the study, NCOIL in 2006 adopted a *Market Conduct Surveillance Model Law*, which advocated a new, targeted system for market conduct exams. Our model provides a much-needed statutory approach to market conduct oversight. It would cut out costly and unnecessary duplication of market conduct examinations. It focuses on market analysis measures prior to examination, methods for collecting market data, a structure for performing targeted exams, and domiciliary state responsibility.

Already, since its adoption late last year, six (6) states introduced bills based largely on the NCOIL model act. Washington and Hawaii enacted bills. My home state of Texas and the state of Colorado had previously adopted NCOIL-based laws.

We anticipate introduction and enactment of market conduct measures in 2008 and urge the NAIC and insurance regulators to assist in promoting modernization efforts in market conduct surveillance.

Agent and Company Licensing

Producer licensing is also a key element of financial modernization. Congress—by passing *The Gramm-Leach-Bliley Act* (GLBA), otherwise known as *The Financial Modernization Act*, in 1999—challenged states to enact uniform agent and producer licensing laws. GLBA threatened that if fewer than 29 states adopted uniform laws and regulations, a new National Association of Registered Agents and Brokers (NARAB) would come into play and promote that uniformity.

NCOIL has historically supported reciprocity and uniformity in licensing and has worked closely with state insurance departments and legislatures to develop related legislation nationwide. We served as a liaison between legislators and regulators and as a clearinghouse of information for states considering producer-licensing legislation post GLBA. Key NCOIL legislators introduced legislation in their respective states.

In August 2002, due in part to the work of NCOIL, the NAIC certified that 35 states complied with GLBA licensing provisions, thereby avoiding NARAB.

NCOIL recently convened a panel of industry representatives to discuss the current marketplace and to consider strategies to promote uniform licensing—as some in the insurance industry say that uniformity has not been achieved and that reciprocity has eroded. We agree that qualified agents and brokers should not jump through hurdles to sell coverage, and we continue to work to effect change.

Regarding company licensing, NCOIL adopted a model law in 2002 that requires all states to use the current version of an NAIC Uniform Certificate of Authority Application (UCAA). This is a process that allows insurers to file copies of the same license application for admission in numerous states. Our model also calls for the repeal of state company licensing requirements and forms outside the UCAA. As a result of this effort, all states are now considered "uniform" states.

Global Impact

Recent events along the coastal United States have demonstrated how significant U.S. and non-U.S. reinsurance is to our national economy. Since 2000, NCOIL has facilitated discussion of existing reinsurance collateral requirements and current proposals to reduce non-U.S. reinsurance collateral, as well as pending international accounting standards and other international issues that affect the states today and that will impact them in the future. NCOIL legislators continue to meet with EU parliamentarians and regulators to discuss mutual concerns and proposed reforms.

NCOIL has resolved that collateral rules should provide sufficient security for reinsurance contracts, while avoiding excessive mandates that would increase costs or reduce capacity. NCOIL acknowledges that it is critical that reinsurance rules are effective and fair and that collateral requirements are imposed only as needed.

In 2002, the NCOIL International Insurance Issues Committee adopted an *Approved List of Reinsurers Model Act* that would provide for reduced collateral requirements for non-U.S. reinsurers that meet certain financial solvency criteria. The model has been held in the NCOIL Executive Committee in response to NAIC requests for more time to address the issue. We have urged the NAIC regulators to resolve the issue and continue to monitor and input on NAIC efforts.

An Optional Federal Charter (OFC)

NCOIL believes that though optional federal charter (OFC) proponents claim an OFC would take two steps forward, it would actually take three steps back. It would add rather than lessen

costs, as it would ultimately impose the expense of a needless federal bureaucracy upon businesses and the public.

An OFC would allow insurance companies to opt out of state oversight and ignore carefully crafted protections resulting from years of consumer and business input and thoughtful consideration by state legislatures. An OFC could not, by its very nature, respond, as state regulation does, to states' individual and unique insurance markets.

An OFC would specifically

- result in a morass of federal and state directives
- cause duplication and ambiguity
- negatively impact smaller companies
- compromise state guaranty fund mechanisms
- threaten key premium tax revenue that funds education, health care, infrastructure, and other state programs, and
- lead to higher business taxes to make up for premium tax shortfalls

While NCOIL vigorously advocates for the modernization of insurance regulation, creating a bifurcated system of insurance regulation is not the way to move forward. State legislatures and insurance departments are proactively modifying statutes, regulations and systems to streamline insurance regulation, promote competition, and improve efficiency.

As state and federal legislators, we have common goals—that of a healthy insurance marketplace and consumer satisfaction—but NCOIL must strongly disagree with an OFC approach, as it would prove counterproductive to these objectives. Though perhaps well-intentioned, OFC proposals are ill-advised and that would bring more harm than good to the consumers we all serve.

Conclusion

State legislators work alongside regulators and consumer and industry representatives to create an insurance environment where consumers receive the highest possible degree of protection, products are accessible and affordable, competition thrives, and companies can bring innovative products to the market quickly to meet consumer demands.

We understand that insurance products and environments constantly evolve and believe that state officials who are close in proximity to developing issues are better positioned to act than would be a federal bureaucracy and a 1-800 number. The federal government should not burden itself with overseeing a new entity when states have readily accepted and successfully governed the business of insurance.

We do believe and agree with members of this Subcommittee that insurance modernization is necessary—particularly in the areas that I have outlined today. We would cordially recommend that Congress rely on states to continue to address marketplace issues as they develop. We are

making important progress—progress that has been trivialized by proponents of OFC and other proposed federal measures that would preempt state authority.

NCOIL believes that states have a winning track record in their role as what former Supreme Court Justice Louis Brandeis aptly called "laboratories of democracy." We believe that states should keep on playing that role and build on the great successes achieved to date.

NCOIL will continue to work with all interested parties to ensure a strong, vibrant insurance market. We welcome any input from Subcommittee members regarding regulatory reform. Thank you for the opportunity to address this Subcommittee and I look forward to your questions.

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