



TESTIMONY OF:

Ronald A. Smith, CPCU
Smith, Sawyer & Smith Inc.

On behalf of the
Independent Insurance Agents of America
National Association of Insurance and Financial Advisors
National Association of Professional Insurance Agents

Before the House
Financial Services Subcommittee
on
Oversight and Investigations
and the
Subcommittee on Financial Institutions and
Consumer Credit

March 6, 2001

**STATEMENT OF RONALD A. SMITH
PRESIDENT – SMITH, SAWYER & SMITH, INC.
ROCHESTER, INDIANA**

**STATE GOVERNMENT AFFAIRS CHAIRMAN AND PAST PRESIDENT
INDEPENDENT INSURANCE AGENTS OF AMERICA**

**TESTIFYING ON BEHALF OF
THE INDEPENDENT INSURANCE AGENTS OF AMERICA,
THE NATIONAL ASSOCIATION OF INSURANCE AND FINANCIAL ADVISORS, AND
THE NATIONAL ASSOCIATION OF PROFESSIONAL INSURANCE AGENTS**

**ON THE CREATION OF AN ANTI-FRAUD NETWORK AND
AUTHORIZING STATE INSURANCE REGULATOR ACCESS
TO FEDERAL CRIMES DATABASES**

**BEFORE THE SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
AND THE SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER
CREDIT OF THE
COMMITTEE ON FINANCIAL SERVICES
UNITED STATES HOUSE OF REPRESENTATIVES**

March 6, 2001

Good morning. My name is Ron Smith. I am President of Smith, Sawyer & Smith, Inc., an independent insurance agency located in Rochester, Indiana. I am the current State Government Affairs Chairman and a Past President of the Independent Insurance Agents of America (“IIAA”). I am testifying today on behalf of IIAA and on behalf of the National Association of Insurance and Financial Advisors (“NAIFA”) (formerly NALU) and the National Association of Professional Insurance Agents, Inc. (“PIA”) (collectively, the “Agents”). IIAA, NAIFA, and PIA represent over 1,000,000 insurance agents and brokers and their employees. Our collective members are large and small businesses that offer consumers a wide array of products, ranging from property, casualty, life, and health insurance to employee benefit plans, retirement programs, and investment advice.

Let me start by saying that the last time I testified before a Congressional committee, Chairman Oxley was chairing a subcommittee in a room across the hall. It was Chairman Oxley who was responsible for a breakthrough on the functional regulation language that ultimately led to passage of the Gramm-Leach-Bliley Act, and I want to thank the Chairman once again for his

incredible dedication and hard work to make the functional regulation language reality. The agent community looks forward to working with this new committee under the very able leadership of Chairman Oxley.

I appreciate the opportunity to testify this afternoon on two inter-related topics of great interest and critical importance to insurance agents and brokers – enabling state insurance regulators to access federal crimes database information concerning insurance professionals and creating a “functional” regulator anti-fraud network. I commend Chairman Oxley for recognizing the importance of these issues, for seeking responsible solutions, and for making them legislative priorities. In many ways, both of these related initiatives grow out of the Gramm-Leach-Bliley Act’s “National Association of Registered Agents and Brokers” (“NARAB”) provisions and the imperative need to reform our industry’s multi-state licensing system. No segment of the industry is affected more by producer licensing laws than our associations’ diverse membership of small and large agents and brokers, and no groups will be impacted more by further reforms in this area.

My testimony today is divided into three parts. In Part I, I outline the current licensing system and how that system is being affected by the NARAB licensing reform mandate. In Part II, I explain that authorizing state insurance regulator access to relevant federal crimes database information would enhance the prospects for multi-state licensing reform. I also outline in Part II the practical data collection and administrative concerns that the Agents believe must be addressed to ensure that this access is part of the overall modernization effort begun with the enactment of the GLBA and not an ill-conceived “solution” that is worse than the relatively limited problem it is designed to address. Finally, in Part III, I address the need for the creation of a “functional” regulator data anti-fraud network, and I again outline some of the concerns that the Agents believe must be addressed to ensure that the solution is not worse than the underlying problem.

PART I – THE CURRENT LICENSING SYSTEM AND NARAB

A. The Current Licensing System

I should note at the outset that the Agents have been ardent supporters of state regulation of insurance. The national boards of directors of IIAA, NAIFA, and PIA have repeatedly affirmed their unequivocal support for state regulation of insurance – for all participants and for all activities in the marketplace. Despite this longstanding support for state regulation, we recognize that the current regulatory system does not always operate as efficiently as it should. There are things that can and should be done to improve the current

regulatory regime, and one area of insurance regulation that has drawn warranted criticism is the manner in which the States license insurance agents.

There are some very real problems with the current multi-state licensing process. As agents and brokers obtain growing numbers of nonresident licenses, our members increasingly struggle to stay on top of the required paperwork and clear the logistical and bureaucratic hurdles that are in place today. Staying in compliance with the distinct and often idiosyncratic agent licensing laws of every state is no easy task. It is an expensive, time-consuming, and maddening effort for many agencies, and a dedicated staff person and tremendous financial resources are often required to manage an agency's compliance efforts. These opportunity costs and wasted man-hours could be better spent working on behalf of our customers. We have many members who are frustrated because they are trapped in a regulatory thicket created by a licensing system full of antiquated, duplicative, and unnecessary requirements. Adding to the frustration is the fact that these inefficiencies continue to exist at a time when advances in technology have encouraged society to expect ease, efficiency, and speed – even from government agencies and state insurance departments.

The problems associated with the current system can be divided into three main categories: (1) the disparate treatment that nonresidents receive in some states; (2) the lack of standardization, reciprocity, and uniformity; and (3) the bureaucracy generally associated with agent licensing. The NARAB provisions contained in the Gramm-Leach-Bliley Act ensure that these three problem areas will be addressed soon – either by the automatic implementation of the provisions themselves or by the enactment of preemptory reforms at the state level.

B. Actions Required to Forestall NARAB's Creation

The so-called “NARAB provisions” are contained in Subtitle C of Title III of the Gramm-Leach-Bliley Act. They offer the promise that effective licensing reform may finally be imminent. NARAB, the National Association of Registered Agents and Brokers, is an entity that does not exist today but is one that would be created if the States cannot on their own reach the licensing reform goals outlined by Congress. In essence, the NARAB provisions put the ball in the States' court. The new licensing agency will only be established if the States fail to take the steps necessary to forestall its creation. In this way, the threat of NARAB creates a strong incentive for the States to reinvent and streamline the current multi-state licensing process.

The Gramm-Leach-Bliley Act is clear about what is required to prevent the establishment of NARAB. The creation of the new “agency” will only be averted if a majority of States (which is 29 because the statutory definition of “State” includes both States and territories) do not achieve the specified level of licensing reciprocity or uniformity. The Act is specific about the

reforms that are necessary, and it gives the States two options – licensing uniformity or licensing reciprocity.

Reciprocity is the easier test to satisfy, and it is the initial goal of state policymakers. To achieve reciprocity, the Gramm-Leach-Bliley Act requires that a majority of states license nonresident agents and permit them to operate to the same extent and with the same authority with which they operate and function in the resident state. This sounds simple, but most States will need to make statutory and regulatory changes in order to meet the level of reciprocity required. The reciprocity standard in the NARAB provisions essentially requires 29 States to each satisfy a three-part test:

- First, not impose any unique licensure requirements on nonresidents and only require a nonresident to submit: (1) a license request; (2) proof of licensure and good standing in the home state; (3) the appropriate fees; and (4) an application.
- Second, offer continuing education (CE) reciprocity to any person who satisfies his/her home state requirement.
- Third, not “impose any requirement . . . that has the effect of limiting or conditioning [a] producer’s activities because of its residence or place of operations,” excluding countersignature requirements.

In short, to satisfy the NARAB test, at least 29 “States” must be prepared to offer full reciprocity to nonresident agents – without imposing any additional obligations or requirements. In order to be “NARAB compliant,” a State must thus be willing to accept the licensing process of an agent or broker’s home state as adequate and complete. No additional paperwork or requirements may be required – no matter how trivial or important they may seem.

The States collectively have three years to achieve the required level of reciprocity. If 29 States fail to offer full reciprocity to nonresidents by November 12, 2002, the National Association of Insurance Commissioners (“NAIC”) will begin the process of establishing NARAB, as provided by the statute. The law requires that the new entity begin operation within two years of the initial deadline. It is unlikely, however, that NARAB will ever come into existence. IIAA, NAIFA, and PIA are optimistic that the States will meet the level of reform required by Congress and implement a licensing system that is in fact better than that offered by the NARAB provisions.

C. Recent Activity / The NAIC Producer Licensing Model Act

Even before the passage of the Gramm-Leach-Bliley Act, efforts were underway to reform the existing licensing system, and some significant strides had already been made. The NAIC, for example, had established the Uniform Treatment Project Initiative, an initial step

toward reciprocity, and developed a national application form. Other early NAIC initiatives include the proactive development of such tools as the Producer Database and Producer Information Network. In addition, many states have recently taken action to eliminate longstanding discriminatory barriers, such as countersignature laws, residency requirements, and solicitation restrictions. Clearly, however, the focus on agent licensing reform has intensified since the enactment of the NARAB provisions, and the pace of reform has quickened as a result.

Most notably, the NAIC has finalized a new agent licensing model law – the “Producer Licensing Model Act.” This model law will be the starting point for agent licensing reform in every state and will promote uniformity and reciprocity in the licensing arena. The Producer Licensing Model Act addresses a wide range of issues and will foster uniformity among the states. Most important for this discussion is the fact that the NAIC model contains provisions that allow a State to become “NARAB compliant” by establishing the requisite level of reciprocity. In other words – if a State enacts those sections of the model related to nonresident licensing and reciprocity, then that State will achieve the level of reciprocity required by Gramm-Leach-Bliley.

The NAIC Producer Licensing Model Act makes great strides in the effort to enhance, improve, and streamline the agent licensing process, particularly in the area of nonresident licensing. For this reason, it is an excellent starting point for any state-level reform. I am pleased to report that IIAA, NAIFA, and PIA have been at the forefront of efforts to enact agent licensing reform in the states, and we are happy with the progress that has already been made during this legislative session. Despite the distracting attempts of some insurer representatives to enact broad and unprecedented licensing exemptions into law, state lawmakers are proving that the states can preserve and strengthen state insurance regulation while also protecting consumers and preserving the high standards of licensure. These goals are not mutually exclusive, and we continue to believe the states are up to the challenge.

D. Additional Plans for the Future

The National Insurance Producer Registry (NIPR), a non-profit affiliate of the NAIC, also has plans to further revolutionize the licensing process. NIPR is the private-public partnership and NAIC affiliate responsible for developing the Producer Database (PDB) and the Producer Information Network (PIN).¹ Once the necessary statutory changes are implemented at the

¹ PDB is an electronic database consisting of information about producers and includes information about a producer’s licensing status, appointment history, and disciplinary actions. PIN is an electronic communications network that links state insurance regulators with the entities they regulate in order to facilitate the electronic exchange of producer-related information.

state level, NIPR will be able to utilize technology and its existing services to create an administratively simpler and cost-effective licensing environment for agents.

NIPR has developed a detailed plan that will ultimately lead to the establishment of a system through which agents can obtain nonresident licenses in multiple states by using a single on-line point of entry. In the near future, a person licensed and in good standing in their home state will have the ability to obtain licenses in other states by submitting a single license application to NIPR, along with the payment of both state and NIPR fees. Upon receipt, NIPR will perform an automated verification to ensure the producer holds an active resident license and will then issue, at the direction and on behalf of the state(s), the appropriate nonresident licenses.

PART II – ACCESS TO FEDERAL CRIMES DATABASES

There are many challenges that the States face in trying to satisfy the NARAB threshold before the November 12, 2002 deadline. The short timeframe alone is the biggest immediate hurdle. As of today, the States have only 20 more months in which to enact and implement licensing reciprocity or uniformity. Practically, this means that most States have only two legislative sessions to address licensing reform. Many States have very short sessions, and seven will meet only once before the November 2002 deadline. I can assure you, however, that the deadline has certainly generated a sense of urgency, and many States are taking steps to achieve compliance within this short window.

In addition to these logistical issues, the States also have a major substantive hurdle that they have had difficulty resolving within the reciprocity framework – the manner in which they investigate the criminal histories of potential license holders and verify the information submitted on license applications. Today, the States have a variety of different requirements and processes for doing this. Some States simply ask an applicant whether they have a criminal history or if they have committed some act that would preclude them from licensure. Other States require applicants to submit a criminal background report with their application. There are also approximately a dozen States that take a proactive role in this process and independently perform criminal background checks, and several of these States require applicants to submit fingerprint cards so that an individual's record can be checked thoroughly. Whatever the actual process, States that impose individualized background check requirements typically also apply these requirements to nonresident applicants – regardless of whether the applicant's criminal background has already been reviewed by any other State.

There is concern that the wide disparity in requirements and trust among the States in this area could undermine the effort to achieve licensing reciprocity. A State with strong background check requirements is naturally uncomfortable licensing an individual who has not previously gone through the same rigors and background review that the state would otherwise require. Indeed, it appears that each State that requires the performance of a background check will continue to impose that requirement even if it has otherwise taken steps to implement the requisite non-resident licensing reciprocity in an effort to become fully NARAB compliant. Under the NARAB reciprocity standard, however, a State is arguably required to license such an individual – without performing the background check.

In addition to individual state criminal background check requirements, a provision added to the 1994 Violent Crime Control Act (P.L. 103-322) makes it a federal crime for any individual to participate in the business of insurance “who has been convicted of any criminal felony involving dishonesty or breach of trust” or who has been convicted of a crime under Section 320603 of the Act. This provision, codified in Section 1033(e) of Title 18 of the United States Code, also makes it unlawful for any individual who is engaged in the business of insurance to willfully permit the participation of any such individual in the business of insurance. These requirements were created out of the concern that many individuals were working in the insurance industry who have a history of criminal activity that render them unfit to serve in a fiduciary capacity. The creation of these new requirements, however, has created widespread uncertainty within the industry regarding the scope of each insurance company or insurance agency employer’s responsibility to verify that their employees are not in violation of these 1033 requirements.

It is our understanding that the Federal Bureau of Investigation (“FBI”) maintains a series of databases that are repositories of information on criminal investigations, arrests, and convictions. It is our further understanding that no one – including a state regulator – may access this information without affirmative statutory authorization from Congress. On the whole, we support the NAIC’s request for state insurance regulator access to this information so that more complete criminal background checks may be performed on insurance professionals. We are concerned, however, that unfettered access and dissemination rights could lead to unnecessary, unwarranted, and invasive intrusions and become incredibly expensive to exercise. For that reason, we believe it is essential that the extension of any right to the state insurance commissioners to access FBI database information must include the following protections and requirements:

- (1) The information that is made available should be limited to information regarding crimes included within the ambit of Section 1033. There is no reason, for example, to disseminate information regarding youth offenses or any other alleged offenses that do not bear on an individual's fitness to act as an insurance professional.
- (2) Insurance professionals – like banking and securities professionals – should be required to have a criminal background check performed only once; they should not be required to undergo repeated checks on a state-by-state basis. The statute should dictate that only a single check will be performed and it could leave it to the States to determine how such a check will be completed. This will leave the option of having the resident state regulator perform the background check for all resident insurance professionals or to have a central processing agent perform the checks on behalf of some or all States.
- (3) The administrative requirements for performing a check should be minimized to the greatest extent possible. Fingerprinting, for example, can be an incredibly onerous process, particularly when repeated over time. For this reason, if fingerprints are required to access FBI database information, then an individual's fingerprints should be taken one time only and stored electronically if necessary. It also should not be required for a resident of any State unless the State itself imposes that requirement.
- (4) The determination of a state insurance regulator that an applicant to be a licensed agent or other insurance professional satisfies the 1033 requirements should be sufficient to satisfy any and all 1033 requirements – for both insurance agency employers and appointing insurers.
- (5) A non-employer should not be permitted to receive any of the crimes database information.
- (6) Criminal penalties should be imposed on any entity that receives FBI database information to make a 1033 determination or for other expressly authorized purposes if they use that information for any other purpose or if they disseminate that information in any way.
- (7) Insurance agents should not be required to incur any additional expense for the performance of the background checks as any such expenses would be viewed as a new tax on their ability to do business.

The Agents would be supportive of a statute that granted state insurance regulators access rights – either directly or through an appointed agent such as the NAIC or one of its subsidiaries – provided that it included the protections and addressed the concerns noted above.

PART III – THE CREATION OF A FUNCTIONAL REGULATOR ANTI-FRAUD NETWORK

The Agents also would be supportive of the statutory creation of a financial services anti-fraud network through which banking, securities and insurance regulators could share information regarding disciplinary actions and investigations among themselves to better enable them to coordinate their anti-fraud efforts. Nothing better illustrates the need for better coordinated regulatory efforts than the recent Martin Frankel debacle, and no one is more interested in insuring that access to the business of insurance is foreclosed to swindlers and scam-artists than the Agents.

Again, however, the Agents believe that any such proposal must be designed to minimize potential costs and to ensure the integrity of the information – much of which will be unverified at the time that it is initially disseminated among regulators. To minimize the cost, we believe that any viable proposal will not create any new bureaucracy, regulations, or collection of information. It would instead simply link the existing facilities of each of the regulators to foster better communication among them. To ensure the integrity of the information, it is essential that access be limited strictly to regulators and information that is not relevant to financial or fraudulent activities should be barred from the network.

CONCLUSION

In closing, I want to thank you for asking me to testify before you today on these important issues. IIAA, NAIFA, and PIA strongly support your efforts to increase access to relevant criminal history information and to enhance the ability of all financial services regulators to better coordinate their anti-fraud efforts. We also believe, however, that such initiatives should be carefully crafted to minimize the potential costs, unwarranted personal intrusions, and other inadvertent side effects that may accompany the implementation of these well-intentioned ideas.

IIAA, NAIFA, and PIA would be pleased to provide any further assistance or information to you as you move forward in your consideration of these issues.