

TESTIMONY OF NEW YORK STATE SENATOR NEIL BRESLIN
ON BEHALF OF THE
NATIONAL CONFERENCE OF INSURANCE LEGISLATORS (NCOIL)
BEFORE THE
SUBCOMMITTEE ON CAPITAL MARKETS, INSURANCE AND GOVERNMENT
SPONSORED ENTERPRISES
COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES
HEARING ON
REFORMING INSURANCE REGULATION – MAKING THE MARKETPLACE
MORE COMPETITIVE FOR CONSUMERS
WASHINGTON, D.C.
NOVEMBER 5, 2003

Chairman Baker, Members of the Subcommittee, thank you for inviting the National Conference of Insurance Legislators (NCOIL) to testify before you today. I'm New York State Sen. Neil Breslin. It is my privilege to represent the 300,000 residents of the City and County of Albany in the New York Senate where I serve as Ranking Minority Member of the Senate Finance and Insurance Committees.

It is also my privilege to serve as Chairman of NCOIL's State-Federal Relations Committee.

NCOIL is a non-partisan organization of state legislators whose primary purpose is to develop and promote legislation that protects consumers and fosters a vibrant insurance industry.

Many legislators active in NCOIL either chair, or are members of, the committees responsible for insurance in their respective legislative houses in states across the country.

As I stated in testimony before Chairman Oxley and the members of the Commerce Committee in 2000, NCOIL welcomes the oversight of Congress on insurance regulation. We are grateful for the ongoing dialogue with this Committee on efforts to improve the state-based system of insurance regulation.

Since its inception more than 30 years ago, NCOIL has supported state regulation of the business of insurance as authorized by Congress in the McCarran-Ferguson Act.

The states have established a strong record under that authorization. Insurance markets have grown and become increasingly competitive in terms of price and products. There are more than 3,300 property and casualty insurance companies and over 1,800 life and health insurance companies now in competition for customers in U.S. insurance markets. The insurance industry is one of the most highly regulated industries in the U.S. No other industry subject to this degree of regulation offers such a competitive environment to American families and businesses.

At the outset, I would like commend the National Association of Insurance Commissioners (NAIC) for their work to improve insurance regulation. The recently adopted "A Reinforced Commitment: Insurance Regulatory Modernization Action Plan" clearly demonstrates their understanding of the challenges facing insurance regulation in the 21st Century.

While such pronouncements are laudable, they demand follow-up with real, measurable results. And more important, such regulatory improvements need to happen without delay.

NCOIL has identified many of the same goals as priorities for regulatory modernization. We have and are developing model laws that would give regulators the

proper statutory authority to carry out needed reforms and, at the same time, would ensure a level of uniformity that will provide insurers with regulatory certainty.

Without such statutory underpinnings, interstate agreements or other administrative or regulatory reform initiatives will last only as long as those who signed them remain in office or until they change their minds.

State legislators are pleased with the NAIC's willingness to work together with us on regulatory modernization – particularly in the area of market conduct reform – to improve insurance regulation for the benefit of consumers and insurers alike.

In my testimony today, I will report to you on the progress NCOIL has made to improve regulation of the insurance marketplace, and our vision for continued modernization.

KEY AREAS OF REFORM

I am here to say that insurance regulatory modernization is well on its way.

By the end of this year, NCOIL will have adopted model laws, or passed resolutions in support of NAIC model laws, addressing four areas of insurance regulation requiring immediate improvement. I would like to take a moment to provide you with a brief overview of what NCOIL has done in each of those areas.

Insurance Producer Licensing

Reform of the multi-state licensing process for insurance producers had demanded immediate action. Under the previous system, it was not uncommon for an insurance agent or broker to wait for more than a year to get licensed in all jurisdictions. The delay was due in large part to idiosyncratic and outdated state-by-state requirements – requirements that did little, if anything, to protect the insurance buyers.

The states rose to the challenge and enacted insurance producer licensing reform legislation, albeit under the threat of a federal takeover of the multi-state licensing function as proposed in the National Association of Registered Agents and Brokers (NARAB) provision of the GLBA. These reciprocity laws now make it significantly easier for producers to receive state licenses.

Today, the NAIC has certified 41 states as meeting the requirements for producer licensing reciprocity under GLBA. I am happy to report that late last month New York enacted producer licensing legislation that meets GLBA requirements. We expect the NAIC to certify New York as the 42nd state.

“Speed-to-Market” for Insurance Products

Critics of state regulation point to the state-by-state regulatory approval process as too slow and too cumbersome, putting insurance carriers on an un-level playing field with

other financial service providers. They say it can take two years to win approval of a product in all 51 jurisdictions.

NCOIL has taken a two-pronged approach to improving the insurance product approval process.

First, for the approval of property-casualty products, NCOIL has adopted the *Property-Casualty Insurance Modernization Act*.

The model law would create a less cumbersome regulatory system and would rely on market competition, which many believe would result in lower insurance costs for consumers. In essence, the model relies on market forces to regulate rates while providing for consumer protection. It contains the essential features of an NCOIL commercial lines deregulation model law which more than 20 states have already adopted.

The NCOIL model is a step toward the competitive rating system found in Illinois. The NCOIL model offers states an alternative to prior approval mechanisms that can stifle innovation and force higher prices upon consumers.

To date, several states have based their insurance rate modernization initiatives on the concepts found in the NCOIL model law. NCOIL is scheduled to review that model law at its upcoming Annual Meeting to determine if it could be improved to gain broader acceptance in the states during the 2004 legislative sessions.

Second, for the approval process for life insurance and related products, NCOIL worked closely with the NAIC and NCSL on the development of its *Interstate Insurance Product Regulation Compact*. NCOIL has long endorsed the idea of interstate as way of making the state-based system of insurance regulation more uniform. It was my privilege to recommend the compact approach in testimony to a hearing of the Commerce Committee in 2000.

The *Interstate Insurance Product Regulation Compact* would develop uniform product standards and create a central clearinghouse to receive, review and approve products traditionally provided by life insurance companies.

It would bring greater uniformity, efficiency, and speed to the insurance product approval process.

NCOIL earlier this year adopted a resolution supporting the Compact and is encouraging the states to consider it during the 2004 legislative sessions.

Company Licensing

The process for companies to obtain a new license to do business in a state, or to re-domesticate to another state continues as a problem in search of a solution. In

response to that problem, NCOIL adopted in July of 2002 the *Company Licensing Modernization Model Act*. The model act can promote consistency among the 50 states in licensing insurance companies by using common licensing requirements, forms, and procedures found in the NAIC Uniform Certificate of Authority Application (UCAA).

The NAIC has made good progress streamlining and simplifying company licensure through its Accelerated Licensure Evaluation and Review Techniques (ALERT) program. However, state-specific deviations still remain. State enactment of the NCOIL company licensing model will bring greater uniformity to company licensing. NCOIL will be working with the states toward enactment of the model act in 2004.

Market Conduct Regulation

As NCOIL Past President Rep. Terry Parke (IL) testified in May of this year before the Oversight and Investigations Subcommittee, problems with the current market conduct regulatory system are glaring. Rep. Parke based his statement on a four-year examination of market conduct regulation by NCOIL and the Insurance Legislators Foundation (ILF), NCOIL's educational and research arm.

That examination produced two comprehensive reports entitled: *"Insurance Market Conduct Examination: Public Policy Review,"* released in 2000, and *"The Path to Reform -- The Evolution of Market Conduct Surveillance Regulation,"* released in May of this year.

The earlier study found, among other things, wide disagreement regarding the purpose of market conduct examinations, especially as to whether such examinations should focus on general business practices or only on specific violations of law. The same study found little coordination of market conduct examinations by states, leading to widespread and wasteful redundancies. The more recent study affirmed that the focus of market conduct regulation, particularly examinations, should be to prevent and remedy unfair practices that have a substantial adverse impact on consumers, not to identify inadvertent and minor violations.

The findings of the two NCOIL/ILF reports are consistent with state market conduct regulation problems found in the recent U.S. General Accounting Office (GAO) report entitled: *"Insurance Regulation – Common Standards and Improved Coordination Needed to Strengthen Market Regulation."* As you are aware, the GAO report recommended:

“...that the NAIC and the states give increased priority to indemnifying and a common set of standards for a uniform market oversight program that includes all states. These standards should include procedures for conducting market analysis and coordinating market conduct examinations. Further, NAIC needs to establish a mechanism to encourage state legislatures and insurance departments to adopt and implement standards.”

NCOIL recognized that the development of a model law was the best mechanism to address the market conduct regulation problem. In August of this year, NCOIL formed a Market Conduct Regulation Task Force charged with drafting such a model law. After its formation, the Task Force set an aggressive timetable for adoption of the model act.

I am happy to report that NCOIL will consider a *Market Conduct Surveillance Model Act* when it convenes its Annual Meeting later this month in Santa Fe, New Mexico. That model act would provide a statutory framework for market conduct regulation, and that would

- Create a regulatory continuum ranging from market analysis to full-blown market conduct examinations
- Provide for the possibility of domestic deference for market conduct regulation activities
- Establish uniform examination procedures
- Require coordination of states' market conduct activities through NAIC databases and initiatives
- Require a periodic dialogue between regulators and insurers regarding new statutory and regulatory requirements

Once the model law is adopted by NCOIL and enacted by the states, market conduct regulation will provide consumers with a greater level of protection than they have today. Market conduct regulation will no longer consist of a “dragnet approach” to uncover problems and violations. Rather, marketplace analysis and targeted examinations will ensure that industry practices that cause the greatest harm to consumers will be identified and corrected.

The new market conduct regime would place the onus for compliance in large part on individual insurers. Regulators would expect a “culture of compliance” to emerge within insurance companies. Regulators' resources and expertise would be used more efficiently through interstate collaboration and coordination.

CONCLUSION

It is no coincidence that over the past three years NCOIL has re-doubled its efforts to bring about real and measurable improvements to insurance regulation. State legislators are acutely aware of the forces at work to create an optional federal charter for insurance companies. Our heads are not in the sand. We understand that political and marketplace realities demand that we improve state regulation. We understand that the status quo is not an option.

In previous testimony before this Subcommittee, NCOIL articulated its unwavering opposition to any encroachment on state insurance regulation. Our position has not changed. While not perfect, the state system of insurance regulation has worked, and worked exceedingly well for 130 years. NCOIL strongly believes the creation of a new federal bureaucracy would be unwise, and most likely harmful to insurance buyers.

State legislators know that more work needs to be done, and we will get it done. State legislators and state regulators are working together to create uniformity in the key areas of insurance regulation.

NCOIL welcomes the attention that you, Chairman Oxley, and other members have given to the issue of insurance regulation. There is no question that your focus has expedited the pace of reform. I would be a happy to answer your questions.