

Testimony of the
National Association of Insurance Commissioners

Before the
Subcommittee on Capital Markets, Insurance, and
Government Sponsored Enterprises
Committee on Financial Services
United States House of Representatives

Regarding:
“H.R. 5840, the Insurance Information Act of 2008”

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On Behalf of the National Association of Insurance Commissioners

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Chairman Kanjorski, Ranking Member Pryce, and Members of the Subcommittee, thank you for inviting me to testify before the Subcommittee on H.R. 5840, the Insurance Information Act of 2008.

My name is Michael McRaith. I am the Director of Insurance for the State of Illinois. I am testifying today on behalf of the National Association of Insurance Commissioners (“NAIC”).

The NAIC has testified many times before Congress on insurance regulatory reform. In prior testimony, we recognized that certain fundamental improvements to State-based regulation may require tailored Federal assistance, State empowerment, or selective Federal partnership. We also rejected purported “reforms” that are mere veiled attempts to undermine State authority and substitute deregulation or self-regulation for effective consumer protection and fair-minded commercial oversight. Some Commissioners are opposed to the Federal government expanding its knowledge of insurance and gaining any preemptive powers. There were broad concerns about the bill as introduced. Due to our open dialogue with you, the latest discussion draft has addressed many of the concerns and has earned the conditional support of the NAIC.

H.R. 5840 – Targeted Federal Involvement

Thousands of State regulators continue to work each day with and on behalf of consumers, companies and producers. The experience and institutional expertise within State insurance departments allows for consumer and company access unmatched by any Federal agency. Indeed, while State insurance regulators have a proven record of success on solvency issues, all States, individually and collectively, continue to modernize all aspects of regulation. However, State insurance regulators acknowledge and accept the limitations upon States with respect to international matters and foreign relations imposed by Article I, Section 10 of the United States Constitution. For this reason, we appreciate the important and constructive dialogue with this Subcommittee and the bill sponsors regarding the substance of H.R. 5840.

Mr. Chairman, we appreciate and respect your assurances to consider the NAIC's comments in the final drafting of this bill. We conditionally support H.R. 5840, subject to some important clarifications, a number of which are highlighted in this testimony. Furthermore, our conditional support also hinges on the proposal not changing in ways detrimental to insurance consumers as it winds its way through the legislative process. We appreciate the opportunity you have provided for input and the willingness you have shown to address the concerns raised by the NAIC. We look forward to continuing our constructive and substantive discussions to produce a measure that will garner our full support.

H.R. 5840 – Enhancing Competitiveness

State insurance regulators support the narrow objectives of (1) allowing a Federal agency to work with State insurance regulators to receive and analyze industry data, and (2) establishing a central contact point in the Federal government for foreign governments regarding international insurance matters. However, to be clear, support for these objectives does not include support for even nominal preemption of the fundamental prudential standards of the States by the Office of Insurance Information (“OII”). For example, insurance regulators oppose the notion that the OII can enter into an “agreement” with a foreign government and then, through the terms of that agreement, impose upon all States an industry practice or standard that threatens essential consumer protections. For that reason, the term “agreements” in Section 313(e) of the proposed bill should be more tightly defined. Clarification may also be needed to identify exactly which entities have authority to negotiate such international agreements. States’ concern about federally negotiated “agreements” is not protectionist in any sense. Rather, State regulators believe that the relative merits of a regulatory practice in another country, or the international commercial needs of an industry participant, should not supersede – or be allowed to supersede – market or solvency protections the States have deemed essential. In this regard, the NAIC has worked closely with the United States Trade Representative over the years in the trade negotiation process with respect to the insurance sector of to ensure that such protections are not displaced via U.S. trade agreements.

Regarding the ability of the Secretary of the Treasury to grant a stay on proposed preemption, the NAIC suggests that the language should read “shall stay preemption” instead of the current language which reads “may stay preemption.”

From our reading of the bill, we also recommend clarification to ensure that, in addition to the processes described in the bill, the Administrative Procedures Act will apply.

The NAIC appreciates the references in the bill regarding the intent of the OII not to regulate insurers, but clarification is needed to emphasize that this intent includes the entire “business of insurance,” including, but not limited to, insurers, reinsurers and insurance producers.

H.R. 5840 – Increasing Insurance Knowledge at the Federal Level

State insurance regulators fully support the goal of H.R. 5840, namely, increasing knowledge of insurance at the Federal level. We believe that institutional knowledge of insurance issues at the Federal level is fitting in this age of global competition and global challenges. This Federal knowledge of course, should be partnered with the State insurance regulatory system and institutional knowledge that has existed and operated effectively for over 137 years.

The NAIC maintains a vast compendium of financial and subject matter information on all facets of insurance. The collection and interpretation of that information, and its continual development and refinement over the years, has been of immense benefit to State insurance regulators and consumers; it has shaped market trends, strengthened consumer protections, and aided regulators and lawmakers when making public policy decisions.

The NAIC’s comprehensive collection of insurance information is the largest in the world. We have also invested heavily in software tools to analyze and enhance the data. For a Federal agency to attempt to recreate this vast archive would be an unnecessary taxpayer expense and a redundant effort. If the Federal government needs access to insurance financial information, the States, individually or collectively through the NAIC, can supply the data. We appreciate your recognition of the quality of our extensive data resources in the discussion draft.

Enhancing State Regulation

While State insurance regulators wholeheartedly support and actively engage in efforts to help U.S. insurers compete globally, we oppose and caution against any legislation with a broadly preemptive approach. Given the assurances that your staff and you have given that State regulators’ experience and expertise will be considered fully as this proposal moves forward, we

remain confident that the final markup will continue to allow State insurance regulators to ensure solvency and consumer protections while fostering the most competitive insurance industry. While the hint of broad preemption of State insurance regulation will result in unqualified opposition to the proposal, regulators do recognize the merits of the narrow purpose of the current proposal.

State insurance regulation has consistently outperformed its Federal counterparts in the banking and securities sectors in terms of protecting consumers and maintaining solvency. Insurance consumers have access to local protections that ensure companies pay claims as promised. Companies and producers in every State have access to local regulators to address the idiosyncrasies of individual company or producer needs or concerns.

Recognizing the limits imposed by Article I, Section 10 of the U.S. Constitution with respect to international matters and foreign relations, and acknowledging the need for a global contact point for the U.S. insurance industry, State insurance regulators accept that insurance is an integral part of the existing trade apparatus to help U.S. insurance companies access foreign markets. That apparatus must also be used, when necessary, to avoid creating artificial incentives for U.S. insurers to go offshore and evade more rigorous U.S. regulatory scrutiny.

State insurance regulators accept the objective of H.R. 5840. We accept the notion of a Federal office narrowly crafted to increase insurance knowledge in the Federal government which, in turn, can enhance the international competitiveness of U.S. insurers. As such, H.R. 5840 would create the OII to serve as a representative to the Trade Promotion Coordinating Committee (TPCC) regarding the export and promotion of U.S. insurance products and services.

Given the limited objective of the legislation and the absence of explicit or unilateral Federal preemption, State insurance regulators will continue to work to improve the proposal. To be clear though, State regulators would object to the OII or any other Federal entity having the authority to preempt consumer protections and solvency standards adopted by States.

Conclusion

Mr. Chairman, Congresswoman Pryce and Members of the Subcommittee, State insurance regulators have been engaged in the protection of consumers and companies since 1851. Insurance regulation is constantly reviewed, analyzed and updated to reflect the evolution of the local, State, national and international economies. To this end, we know well that changing circumstances require openness and good faith dialogue. In concept, H.R. 5840 is a good bill that, with necessary refinements, can be improved to receive the unrestricted support of State insurance regulators, all of whom are solely focused on consumer protections and fostering a competitive insurance marketplace.

Thank you for the opportunity to testify. I am happy to answer your questions.