



National Association of Insurance Commissioners

August 22, 2008

The Honorable Paul Kanjorski
Chairman, House Subcommittee on Capital Markets,
Insurance, and Government Sponsored Enterprises
2188 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Kanjorski:

Thank you for your letter of August 8 recognizing the time, effort, and progress we have made in working with your staff and you to refine and improve H.R. 5840, The Insurance Information Act of 2008. We too hope this collaborative effort can continue as we fulfill our commitment to you to provide legislative language addressing our concern with the definition of “agreement.”

State regulators agree with the two underlying premises your bill aims to address. We welcome the idea of Federal officials being fully informed about how the insurance market fits into the broader financial system. The ability of the States and the Federal government to share confidential information would help both levels of government identify and manage systemic risk. While we would strongly prefer this information be maintained at the Department of Commerce to reinforce that the Office is not a regulator, the location of the Office is not the principal issue. We also welcome the idea of U.S. insurance companies having increased access to foreign markets by better plugging into the existing export promotion mechanisms of the Federal government. Despite agreeing to these two goals, we unequivocally reject any effort to use this legislation as a basis for a Federal regulator.

As you noted in your letter, a number of important changes to the legislation have been made at our request. As the primary protectors of insurance consumers, we thank you for including these significant improvements. We appreciate your patience as we have worked to develop our final recommendations. While on the surface a definitional concern might seem relatively innocuous and easily resolved, the definition of “agreement” in the context of this legislation is significant and directly intertwined with the scope of potential preemption of State insurance measures. As the public servants tasked with regulating the industry and protecting consumers, we must assess cautiously and thoroughly any potential threat to our State-based consumer protections or change to the scope of a State’s authority to serve our constituents and foster competitive markets.

We have testified before your Subcommittee and elsewhere that insurance regulatory modernization is critical, and we are not averse to Federal assistance establishing State-based uniformity. Our near-final work on reinsurance modernization, our commitment to the Interstate Compact and our good-faith work on producer licensing and surplus lines reform are a testament to our sensible efforts to improve oversight. States have also made clear that regardless of how a new regulatory tool is developed, the regulatory tool belt must always remain with the States. Our consumer protection obligations demand that we work toward the best regulatory structure possible, without abdicating that responsibility elsewhere. With this in mind, attached for your consideration is a revised definition of covered “agreement” that not

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only recognizes State insurance regulators as the experts and gatekeepers of regulatory structure and reform (while still allowing for such reform where appropriate), but also serves the dual purposes of the bill.

As this definition runs throughout the bill and directly affects the scope of preemption, we also propose a few technical changes directly relating to preemption. First, we propose combining the preemption and scope language into one paragraph for clarity, without losing any of the meaning or intent of your original language. Second, because of the significance and sensitivity of each provision of this bill, we propose a non-severability clause to ensure the integrity of the consumer protection provisions of the legislation remains intact. Finally, to clarify that preemption of State insurance measures is limited to the agreements covered in the bill, we propose making such clarification explicit within the savings provision.

Again, we thank you for your efforts as well as those of your staff and hope you consider our proposals as a good faith effort to reach consensus on this legislation. With these improvements in place and contingent on the bill not adversely changing during the legislative process, the Insurance Information Act would receive the unconditional, although not unanimous, support of the National Association of Insurance Commissioners.

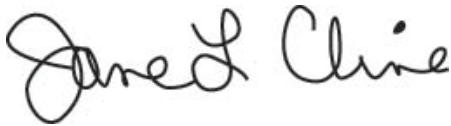
Sincerely,



Sandy Praeger
Kansas Insurance Commissioner
NAIC President



Roger A. Sevigny
New Hampshire Insurance Commissioner
NAIC President-Elect



Jane L. Cline
West Virginia Insurance Commissioner
NAIC Vice President



Susan E. Voss
Iowa Insurance Commissioner
NAIC Secretary-Treasurer



Michael McRaith
Illinois Director of Insurance

Enclosure

PROPOSED REVISION TO PREEMPTION AND SCOPE

- (e)(1) **PREEMPTION OF STATE INSURANCE MEASURES- Standard**
Subject to paragraph (4), a State insurance measure shall be preempted only if such measure treats a non-U.S. insurer differently than a United States domiciled insurer licensed and/or operating in such State and the insurance measure is determined, in accordance with this subsection, to be inconsistent with Federal policy on international insurance matters as
(A) Established by the Office and
(B) Included in a covered agreement.

- (e)(2) **DELETE SCOPE PARAGRAPH**
SCOPE- A State insurance measure shall be preempted under this subsection only to the extent that the measure treats a non-United States insurer domiciled in a jurisdiction that is subject to an agreement referred to in paragraph (1) more or less favorably than it treats a United States insurer domiciled in such State.

PROPOSED DEFINITION OF “COVERED AGREEMENT”

COVERED AGREEMENT –The term "Covered Agreement" means a written bilateral or multilateral recognition agreement entered into between the United States and one or more foreign governments, authorities or regulatory entities that recognizes those business of insurance prudential measures that, as determined by state insurance commissioners as selected by the NAIC, adequately protect US-based insurance consumers and are substantially equivalent to regulation by the states of the identical subject matter.

PROPOSED REVISION TO SAVINGS PROVISION

- (f) Nothing in this section shall affect the preemption of any State insurance measure otherwise inconsistent with and preempted by Federal law. No state insurance measure will be preempted by any agreement not a “covered agreement” as defined in this Section.

PROPOSED NON-SEVERABILITY LANGUAGE

Sec. 3. NON-SEVERABILITY. Each provision of this Act shall not be severable. If any provision is held by a U.S. court to be invalid, this Act shall be invalid in its entirety.