



National Association of Insurance Commissioners

September 11, 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 the significant efforts your staff and you have made throughout the legislative process to address the concerns of State insurance regulators with H.R. 5840, The Insurance Information Act of 2008. As you can surely appreciate, any change to the successful State regulatory system must be approached cautiously to ensure that the underlying mission of State regulators – protecting insurance consumers and fostering a fair and competitive market – is preserved.

We noted in our previous letter, and in testimony before your Subcommittee, that insurance regulatory modernization is critical, and we are not averse to Federal assistance where a uniform solution is appropriate. 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 through efforts at the State and Federal levels. With that in mind, we continue to agree with the underlying intent of H.R. 5840: to provide the Federal government with an informed resource on insurance issues, and to provide for consideration of U.S. insurers’ access to foreign markets when the Federal government negotiates with foreign authorities.

As you well know, a number of important changes to the legislation have been made at our request:

- The preemption and scope language has been clarified so that any preemption of an inconsistent State insurance measure is only to the extent of the inconsistency and only to the extent that the measure treats a non-U.S. insurer more or less favorably than a U.S. insurer.
- The savings provisions have been improved to ensure that any preemptive power is explicitly limited to covered agreements, and cannot impede State regulation of an insurer’s rates, premiums, underwriting practices, coverage requirements, or the application of State antitrust laws.
- The definition of a covered agreement has been made solely prospective, and limited to those agreements that provide for recognition of insurance measures that protect U.S. consumers and are substantially equivalent to U.S. protections.
- The Federal authority entering into any covered agreement must coordinate with State insurance regulators to identify provisions in the agreement that protect U.S. consumers and are substantially equivalent to U.S. protections.
- The States and other interested parties are afforded several opportunities for notice and comment and given time to address inconsistent insurance measures. Any preemptive determinations are also subject to judicial review and the Administrative Procedures Act.

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- The Treasury is required to consult with the Advisory Board, which includes State insurance regulators and a State legislator, in determining any stay of preemption.
- The Treasury must stay preemption of the State insurance measure if it is necessary for the protection of policyholders and claimants and for the safety and soundness of the market, or if the preemption will result in a gap in financial or market conduct regulation, or if the preemption necessitates establishing any Federal supervisory authority.
- The legislation now includes non-severability language to ensure the integrity of the protections and improvements made to the preemptive aspects of the legislation.

As the primary protectors of insurance consumers, we thank you for including these significant improvements and we appreciate your patience as we have worked to provide constructive feedback on the legislation. We are dedicated to modernizing insurance regulation, but our willingness to work constructively on the targeted issues addressed by this legislation should not be construed as implicit acceptance of Federal intervention. To be clear, we view the preemptive aspects of this legislation, however narrow, with extreme caution and skepticism. We continue to believe that the Federal government should not be in the business of regulating insurance, and we will continue to unequivocally reject any effort to use this or other legislation as a justification for further Federal involvement.

Again, we thank you for your efforts as well as those of your staff and hope you consider our involvement as a good faith effort to reach consensus on this legislation. With the necessary improvements and safeguards that you have put in place, and with the caveat that they remain in place, the National Association of Insurance Commissioners offers its support, although not unanimous, of H.R. 5840.


Sincerely,



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Kansas Commissioner of Insurance
President, NAIC



Roger Sevigny
New Hampshire Commissioner of Insurance
President-Elect, NAIC



Jane Cline
West Virginia Commissioner of Insurance
Vice President, NAIC



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