Testimony of the
Special Committee on Financial Services Modernization
of the
National Association of Insurance Commissioners

Before the
Committee on Commerce
United States House of Representatives

Regarding
HR 10 and Financial Services Modernization

May 5, 1999

George Nichols III
Commissioner of Insurance
Kentucky

Summary of NAIC’s Testimony by George Nichols III

- Consumers are a huge factor in the HR 10 equation. Paying for insurance products is one of the largest consumer expenditures of any kind for most Americans.

- Figures compiled by the NAIC show that an average family can easily spend a combined total of $3,000 each year for auto, home, life, and health insurance coverage. Families with several members, more than one car, or additional property typically pay much more.

- The interests of insurance consumers in the United States must not be sacrificed in the name of modernizing financial services.

- State insurance regulators strongly oppose the version of HR 10 passed by the House Committee on Banking and Financial Services because the bill sweeps away State authority to protect insurance consumers.

- There is no Federal agency for regulating the business of insurance. If the Federal government prevents the States from supervising insurance adequately, this vital consumer protection function won’t get done at all.

- The NAIC is providing the Committee on Commerce with specific amendments that fix the serious regulatory deficiencies in HR 10. The NAIC’s amendments will also achieve the goals of uniform licensing procedures for insurers and agents, as well as national enforcement of State and Federal laws that protect insurance consumers.

- HR 10 is now at a crossroads. If Congress adopts the NAIC’s consumer protection and uniform licensing and enforcement amendments, the bill can proceed with confidence that insurance policyholders and claimants will remain fairly protected by the States. If Congress fails to adopt these amendments, the critical interests of insurance consumers and State governments will be sacrificed.

Testimony of George Nichols III, Chairman
NAIC Special Committee on Financial Services Modernization

Introduction

My name is George Nichols, and I serve as Commissioner of Insurance in Kentucky. I also serve as Vice President of the National Association of Insurance Commissioners (NAIC) and Chairman of the NAIC's Special Committee on Financial Services Modernization. The NAIC established this Special Committee in 1996 to assist State insurance regulators as they continue to meet the demands of the Nation's rapidly evolving market for financial products.

Today, I would like to make three points regarding HR 10 and financial services modernization.

- First, the interests of insurance consumers in the United States must not be sacrificed in the name of modernizing financial services.

- Second, State insurance regulators strongly oppose the version of HR 10 passed by the House Committee on Banking and Financial Services because the bill sweeps away State authority to protect insurance consumers. We will use every means available to alert the public, Congress, and State officials that HR 10 is currently anti-consumer and anti-State government.

- Third, the NAIC is providing the Committee on Commerce with specific amendments that fix the serious regulatory deficiencies in HR 10. The NAIC's amendments will also achieve the goals of uniform licensing procedures for insurers and agents, as well as national enforcement of State and Federal laws that protect insurance consumers.

Insurance Consumers Are a Huge Factor in the HR 10 Equation

HR 10 has been working its way through Congress with strong backing from important segments of the banking, insurance, and securities industries. The commercial firms pushing the bill argue that new Federal legislation is needed to enable them to develop and market better products, as well as to allow them to compete more fairly in a global economy. NAIC members also support modernizing financial laws. We recognize there are potential business benefits to consumers in our respective States.

However, Congress must also consider the welfare of consumers from the standpoint of making sure that their insurance is safe and their claims are paid. To our knowledge, the millions of people who buy insurance for their homes, cars, health, and financial security are not even aware that Congress is considering HR 10. We do not believe the public will be complacent about HR 10's negative impact on insurance supervision when people learn that it prevents State regulators from monitoring insurer solvency and handling customer complaints.

Paying for insurance products is one of the largest consumer expenditures of any kind for most Americans. Figures compiled by the NAIC show that an average family can easily spend a combined total of $3,000 each year for auto, home, life, and health insurance coverage. This substantial expenditure is typically much higher for families with several members, more than one car, or additional property.

Collectively, the insurance premiums paid by American consumers in 1997 amounted to $116 billion for auto coverage, $29 billion for homeowners policies, $107 billion for life insurance, and $216 billion for health coverage. Almost half a trillion dollars goes toward buying annual personal insurance coverage, a unique product which is purchased to protect people during the times in their lives when they are most vulnerable.

Consumers clearly have an enormous financial and emotional stake in assuring that the promises made by insurance providers are kept.

State Regulators Are the Only Protection for Insurance Consumers

As regulators of insurance, State governments are responsible for making sure the expectations of American consumers are met regarding financial safety and fair treatment by insurance providers. State insurance commissioners are the public officials who are appointed or elected to perform this consumer protection function. Nationwide, we employ 10,000 regulatory personnel and spend $750 million annually to be the watchful eyes and helping hands on consumer insurance problems.

Here are three key factors to keep in mind when considering HR 10 or other Federal legislation affecting State insurance authority –

1. There is no Federal agency for regulating the business of insurance. If the Federal government prevents the States from supervising insurance adequately, this vital consumer protection function won't get done at all.

2. Individual States and their citizens bear the costs associated with regulating insurance providers, including the costs of any insolvencies that occur. State governments thus have a powerful incentive to do the job well, and the record shows they have done so.

3. Overly broad language and imprecise drafting in Federal laws can easily undermine essential State consumer protection laws which apply to ALL insurance providers. The resulting costs to State governments, taxpayers, policyholders, and claimants can be enormous.

Some people have framed the debate over financial modernization as a conflict between Federal and State regulation, or between the banking and insurance regulatory systems. The real issue, however, is whether insurance-related activities of financial services companies will be regulated at all if Federal law prevents the States from doing the job.

The Federal Reserve Board, the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS) have each said they do not intend to regulate insurance. If State governments are prevented from doing it, who will?

HR 10 Prevents State Insurance Regulators from Protecting Consumers

NAIC pointed out the following serious flaws in HR 10 during NAIC President and Connecticut Insurance Commissioner George Reider's testimony before the House Banking and Financial Services Committee on February 11, 1999.

- HR 10 flatly prohibits States from regulating the insurance activities of banks, except for certain sales practices. There is no justification for giving banks an exemption from proper regulations that apply to other insurance providers.

- HR 10 prohibits States from doing anything that might "prevent or restrict" banks from affiliating with traditional insurers or engaging in insurance activities other than sales. This exceedingly broad standard undercuts ALL State supervisory authority because every regulation restricts business activity to some degree. HR 10's total preemption of State consumer protection powers goes far beyond current law, and casts a dangerous cloud over the legitimacy of State authority in countless situations having nothing to do with easing financial integration for commercial interests. It could also throw into question the regulatory cooperation between State insurance regulators and Federal banking agencies being achieved under current law.

- HR 10 uses an "adverse impact" test to determine if State laws or regulations are preempted because they discriminate against banks. This unrealistic standard fails to recognize that banks are government-insured institutions which are fundamentally different from other insurance providers. Sound laws and regulations that are neutral on their face and neutral in their intent would still be subject to preemption under such a standard.

- HR 10 does not guarantee that State regulators will always have equal standing in Federal court for disputes which may arise with Federal regulators.

Frankly, we are quite disappointed and concerned that the House Banking and Financial Services Committee chose not to fix these and other problems pointed out by NAIC. We were told that all parties affected by HR 10 will suffer a certain amount of pain, but nobody has informed insurance consumers that they are among the groups who will suffer when State laws and regulations are preempted.

Real Examples of HR 10's Harmful Impact

1. Connecticut was involved last year in the regulatory approval process for the merger between Travelers Insurance and Citibank. Operating under State law, Commissioner Reider and his staff reviewed the proposed business plan and a complete filing of corporate financial and operating data before making a final decision that the merger should be approved. He met his responsibility to fully review the merger on behalf of the public, and the matter was handled expeditiously with no complaints from the companies making the application. Under HR 10, however, he would automatically be prevented from conducting a proper regulatory review of such a large and influential merger affecting insurance consumers in his State.

2. After extensive input from citizen groups, the State insurance department, and Blue Cross/Blue Shield managers, North Carolina's legislature decided that the $2 billion value of the Blue Cross/Blue Shield plan should be put into a trust for the benefit of the public if it is ever sold to private interests. If a bank or bank-affiliated insurer were involved in such a sale, this State law – passed to address local concerns having nothing to do with Federal banking laws – would be preempted because HR 10 dictates that no State law may prevent or restrict a bank from affiliating with an insurer.

3. Pennsylvania enacted a law in 1996 to correct widespread sales and solicitation abuses found during the State's regulatory examinations of companies marketing life insurance products and annuities. The law sets limitations and minimum standards for illustrations used in marketing such products. It also addresses unfair financial planning practices, and prohibits unqualified agents from holding themselves out as financial planners. Under HR 10, Pennsylvania stands to lose this important tool with respect to the solicitation and sale of life and annuity products by financial institutions, even though the need for the law has been established by State regulators.

4. On a broader level, the NAIC is preparing a specific home-state chart for each Member of this Subcommittee showing more than 30 basic insurance laws that HR 10 is likely to preempt if it is not amended. These charts identify State statutes covering such critical areas as examinations, audits, reinsurance, capitalization, valuation, investments, liquidations, guarantee funds, agent licensing, and holding company supervision. NAIC will deliver these graphic illustration charts to the Subcommittee Members when completed.

Current Progress by State Regulators Depends Upon Maintaining Our Authority

HR 10 threatens the substantial progress now being made by State insurance regulators using our existing authority. While Congress and industry have been talking about modernizing financial services regulation, we have been developing and implementing real changes that promote uniformity and efficiency. The process is working because State insurance authority is well defined and accepted under the McCarran-Ferguson Act.

The NAIC is joining with Federal and State banking agencies to develop agreements for cooperating and exchanging information on regulatory matters. In addition, special training classes are being designed by NAIC to help Federal regulators perform their duties better. All-day meetings among top technical experts at the Federal Reserve Board, OTS, OCC, and State insurance departments are also occurring. Participants in

these hands-on exchanges have all agreed that they are exactly what is needed to make functional regulation work.

Under HR 10, the extent of State insurance authority will surely be questioned and tested, not only by banks and their affiliates, but also by traditional insurers that have been complying with present laws for many years. Federal and State regulators may start to question whether the cooperation arrangements we have made with them remain legal. It makes no sense for Congress to undermine State regulatory reforms being accomplished today under existing laws.

NAIC's Amendments Preserve Essential State Consumer Protection Authority

The version of HR 10 passed by the House Banking Committee is very harmful to insurance consumers. To correct its deficiencies, the NAIC is submitting specific amendments to the Commerce Committee that will make HR 10 palatable in the following essential areas –

- Affiliations – The NAIC amendments preserve the power of State regulators to fully review proposed affiliations between banks and insurers, just as we do with any other firm acquiring an insurer. This is sensible, since we are the only regulators who protect the rights of policyholders and claimants. It is also fair, since State guarantee funds are required to pay for any insolvencies which may result from bank-related affiliations.

- Insurance Sales and General Business Activities – The NAIC amendments make it clear that States can regulate the insurance functions of all business entities, including banks. Our amendments cover all aspects of insurance operations, including reinsurance, investments, claims handling, and managing general agents.

- Non-Discrimination – The NAIC agrees that State laws and regulations should not unfairly discriminate against banks on insurance matters, but we also recognize it

would be foolish to ignore the fact that they are government-insured deposit institutions which are fundamentally different from other insurance providers. Our amendments make it clear that State laws cannot overtly discriminate against banks or indirectly be used to prevent them from engaging in businesses permitted by HR 10.

- Equal Standing in Court – The NAIC amendments give State regulators equal standing in court with Federal regulators for all disputes arising over matters relating to HR 10. There is no good reason to grant special deference to Federal regulators simply because a matter occurred before September 1998.

The NAIC's consumer protection amendments are Attachment I to this testimony. We carefully crafted the amendments to make minimal changes to the existing language and structure of HR 10. Adopting our amendments will not interfere at all with the financial modernization goals which the bill's sponsors hope to achieve.

NAIC's New Amendments Achieve Uniform Licensing and National Enforcement

The NAIC has clearly heard the demands in Congress and industry for more uniformity and efficiency in State insurance supervision. Since NAIC has promoted these same objectives for many years with incomplete success, we now believe it is appropriate to ask Congress for new amendments to HR 10 that will use Federal law to let State regulators get the job done. With these tools, we can overcome the obstacles that have hindered our progress.

The primary benefit of adding these amendments to HR 10 is to achieve the goals of uniform regulatory procedures and national enforcement quickly by using the existing system of State regulation. The extra costs and delays of establishing a NARAB organization could thus be avoided, while also preserving the legal certainty of licensing and enforcement under State and Federal law.

Banking and insurer groups advocating broad preemption of State law in HR 10 say that uniformity and efficiency are major reasons to justify such radical action. However, the NAIC's amendments will achieve the same goals without gutting basic State consumer protection powers.

We propose that the Commerce Committee adopt specific amendments to direct and authorize State insurance departments and the NAIC to accomplish the following goals –

1. Establish a streamlined and uniform non-resident agent licensing process.

2. Remove State law barriers to non-resident licensing, including counter-signature requirements, by a certain date.

3. Establish a streamlined, uniform, and expedited process for insurance company admissions.

4. Authorize the use of social security numbers for licensing purposes, for the producer database, and for use by the Insurance Regulatory Information Network (IRIN).

5. Grant exemptions from the Fair Credit Reporting Act for IRIN, the NAIC, and State insurance departments regarding regulatory licensing activities and related databases.

6. Provide State insurance regulators and NAIC with access to the national criminal history database (NCIC) for regulatory purposes and for checking criminal histories as required by the Federal Insurance Fraud Prevention Act.

7. Grant Federal immunity from liability for NAIC and IRIN database activities.

8. Protect the confidentiality of regulatory communications between among NAIC, State regulators, and Federal agencies.

9. Facilitate the use of regulatory databases, including digital signatures, acceptance of credit cards, and electronic funds transfers.

10. Grant immunity for insurance companies that report agent terminations for cause to State regulators.

A brief description of these amendments is Attachment II to this testimony.

Conclusion – Congress Must Make a Choice to Protect Insurance Consumers

HR 10 is now at a crossroads. If Congress adopts the NAIC's consumer protection and uniform licensing and enforcement amendments, the bill can proceed with confidence that insurance policyholders and claimants will remain fairly protected by the States. If Congress fails to adopt these amendments, the critical interests of insurance consumers and State governments will be sacrificed. There must be no misunderstanding about what is at stake, and no illusion by anyone that insurance consumers will somehow be protected if State regulators are removed from the process.

There is one last fact that Congress should consider. In 1997, insurance products generated 3.2 million consumer inquiries and 392,000 actual complaints made to State regulators. If Congress takes away our powers to handle these complaints, we will be forced to turn consumers away. Who in the Federal government will take care of them?

State insurance regulators and the NAIC want to continue keeping unsound or rogue insurance operations from damaging consumers, banks, and insurance companies. Doing that job will also protect Federal and State governments from unnecessary financial exposures caused by weak and insolvent institutions. We ask the Commerce Committee to help us help consumers by fixing HR 10 in order to preserve the authority States need to get the job done.

Attachment I

NAIC's Consumer Protection Amendments to HR 10

1. Section 104. Operation of State Law.
(a) Affiliations.—

Starting on page 37, delete the entire subsection, and replace with the following:

(1) In General.—Except as provided in paragraph (2), no State may, by statute, regulation, order, interpretation, or other action, prevent or restrict the affiliations authorized or permitted by this Act and the amendments made by this Act.
(2) Insurance.—With respect to affiliations between insured depository institutions, or any subsidiary or affiliate thereof, and persons or entities engaged in the business of insurance, paragraph (1) does not prohibit any State from collecting, reviewing, and taking actions on applications required by the State and other documents or reports the State deems necessary concerning proposed acquisitions of control or the change or continuation of control of any entity engaged in the business of insurance and domiciled in that State, if the State actions do not violate the nondiscrimination requirements of subsection (c).

Analysis:

- This language enables the States to enforce their insurance holding company acts, provided such acts do not discriminate against banks. It is critical that the States retain this authority because no one else will review these affiliations for the purpose of protecting insurance consumers. Note that the Federal Reserve retains the authority to review all bank affiliations with bank holding companies.

- This language is substantially similar to the section 104 affiliations language in Senator Gramm's Financial Services Modernization Act.

2. Section 104. Operation of State Law.
(b) Activities.—

(1) In General.—

Delete the following phrase from subsection 104(b)(1), page 44, lines 12 and 13:

> "as provided in paragraph (3) and except".

On page 44, line 17, delete "restrict" *and insert* "significantly interfere with the ability of".

At the end of subsection (b)(1), on page 44, line 22, insert the following:

> "where the State action discriminates against an insured depository institution or wholesale financial institution based on its status as an insured depository institution or wholesale financial institution, any subsidiary or affiliate thereof, or any person or entity based on its status of affiliation with an insured depository institution, contrary to the nondiscrimination requirements of subsection (c)."

(3) Insurance Activities Other than Sales.—

Delete subsection 104(b)(3) in its entirety, page 55, lines 3-22.

Analysis:

- These changes do not impact the Section 104(b)(2) Sales language in any way.

- These changes are necessary to enable the States to regulate the non-sales insurance activities of banks, bank affiliates and bank subsidiaries, provided such State action does not discriminate against banks. This change is necessary to preserve State authority to regulate non-sales insurance activities in which banks are currently engaged, such as credit-related activities.

3. Section 104. Operation of State Law.
(b) Activities.—

(2) Insurance Sales.—

Delete subsection 104(b)(2)(C)(i) OCC Deference in its entirety, page 53, lines 20-25 and page 54, lines 1-3.

Renumber subparagraph (ii) on page 54, line 4, as subparagraph (i).

Renumber subparagraph (iii) on page 54, line 13, as subparagraph (ii).

Renumber subparagraph (iv) on page 54, line 21, as subparagraph (iii).

Analysis:

- This change is needed to ensure that equal deference is accorded to State insurance regulators regarding the interpretation of all State sales laws.

4. Section 104. Operation of State Law.
(c) Nondiscrimination.—

In subparagraph (c), on page 58, line 4, insert "affiliations or" after "insurance".

In subparagraph (c)(1), on page 58, line 12, insert "based on their insured status" after "thereof".

Delete subparagraph 104(c)(2), page 58, lines 17-25.

Renumber subparagraph (3) on page 59, line 1, as subparagraph (2).

Renumber subparagraph (4) on page 59, line 6, as subparagraph (3).

Analysis:

- The change to subparagraph (c) is necessary to clarify that affiliations of insured depository institutions authorized under the act are subject to the nondiscrimination requirements of this subsection.

- The change to subparagraph (c)(1) is necessary to clarify that laws that differentiate by their terms between insured depository institutions and other entities are impermissible only if the differentiation is based upon the insured status of those institutions.

- Deletion of subparagraph (c)(2) is necessary to remove the effects test, which would make it impossible to make or enforce insurance laws and regulations. A law or regulation will always impact entities differently for reasons that are wholly unrelated to whether the entities in question are banks.

- These changes leave in the bill strong requirements ensuring that States cannot discriminate against banks.

5. Section 104. Operation of State Law.
(d) Limitation.—

On page 59, line13, insert “(i)” *after the word* “affect” *and before the word* “the”.

On page 59, line 19, insert the following at the end of the paragraph:

> ; and (ii) State laws, regulations, orders, interpretations, or other actions of general applicability relating to the governance of corporations, partnerships, limited liability companies, or other business associations incorporated or formed under the laws of that State or domiciled in that State, or the applicability of the antitrust laws of any State or any State law that is similar to the antitrust laws if such laws, regulations, interpretations, orders, or other actions are not inconsistent with the purposes of this Act to authorize or permit certain affiliations and to remove barriers to such affiliations.

Analysis:

- This language was originally in subparagraph (a). This change is necessary so that this subparagraph, which preserves State corporate laws of general applicability and State antitrust laws, modifies both subsection (a) Affiliations and subsection (b) Activities.

- The language has been changed slightly to conform to Senator Gramm’s Financial Services Modernization Act. By these changes, the language of subsection (d) is made identical to Senator Gramm’s Financial Services Modernization Act.

6. Section 111.—Streamlining Financial Holding Company Supervision.

Page 76, line 11, delete “in compliance with applicable” *and insert* “subject to”.

Analysis:

- This technical change is needed to ensure that the States retain authority to enforce their capital requirements. As the provision is currently written, the Federal Reserve would be able to step in as soon as a company falls out of compliance with applicable capital requirements, but before the State has had an opportunity to enforce its applicable laws and regulations with respect to such capital requirements.

7. Section 124.—Functional Regulation.

Page 128, line 14, delete “Agency”.

Page 129, line 3, delete “Agency” *from the heading of subparagraph (b).*

Page 129, lines 3-4, delete “insurance agency or brokerage that is a subsidiary of an insured depository institution” *and insert* “insured depository institution subsidiary that is engaged in insurance activities”.

Page 129, line 7, delete “insurance agency or brokerage” *and insert* “entity engaged in insurance activities”.

Analysis:

- These changes are necessary to ensure that all insurance activities of bank operating subsidiaries are functionally regulated.

- As the bill is currently written, this provision is limited to insurance agency and brokerage activities. These changes are necessary because HR 10 permits bank operating subsidiaries to engage in credit-related activities as well as agent/broker activities. Such activities should be functionally regulated.

- By this change, the provisions of HR 10 that apply to insurance affiliates of bank holding companies (including, for example, report, examination and capital requirements) also apply to bank operating subsidiaries that are engaged in insurance activities.

8. Section 303.—Functional Regulation of Insurance.

Page 332, line 11, delete “sales”.

Analysis:

- This technical change is needed to ensure that the bill clearly provides that all insurance activities are functionally regulated by the States.

- This change makes this provision identical to the language in the Bryan amendment to Senator Gramm’s Financial Services Modernization Act, which was adopted by the Senate Committee on Banking, Housing, and Urban Affairs on March 4, 1999.

Attachment II

HR 10 – SUMMARY OF NAIC'S PROPOSED AMENDMENTS RELATED TO UNIFORM LICENSING AND ENFORCEMENT

1) Establish a streamlined and uniform non-resident agent licensing process.

The objective of this amendment is a uniform non-resident agent licensing process, but not a single licensing decision. States would use a common form, which could be submitted electronically and distributed to those states where the applicant wants to be licensed. However, each state would retain the ability and discretion to decide whether to license or not license an agent, based upon uniform procedures. Uniform procedures would be developed by the states collectively through the NAIC. Standards would focus on consumer protection.

2) Remove state law barriers to non-resident licensing, including counter-signature requirements, by a specific date.

Federal preemption of counter signature laws has been in and out of the HR 10 discussions. Many states have repealed these laws over the last few years. Only 8 or 9 states still retain these requirements.

3) Establish a streamlined, uniform, and expedited process for insurance company admissions.

Similar to non-resident agent licensing, there would be a uniform process for insurance company admissions, but not a single licensing point. States would retain the ability and discretion to decide whether or not to admit a company, based upon uniform procedures. The states themselves would collectively establish uniform procedures through the NAIC. Applications could be submitted electronically to a single point for distribution to states where licensure is requested.

4) Authorize the use of social security numbers for licensing purposes, for the producer data base, and for use by IRIN.

The use of social security numbers (SSN's) is restricted under the Federal Privacy Act of 1974. Most states have found ways to supply social security numbers for the producer data base, but a few states still have significant problems. Use of SSN's is the minimum element needed for properly identifying agents. A specific clarification in federal law would resolve any problems relating to use of SSN's for insurance regulatory purposes.

5) Exemptions from the Fair Credit Reporting Act for IRIN, the NAIC, and state insurance departments regarding regulatory licensing activities and related databases.

Recent amendments to the Fair Credit Act extended its provisions to databases not typically a part of the credit rating process. These amendments apply to databases used for both credit rating and employment purposes. Expansive interpretations by the Fair Trade Commission have extended the Act even to situations involving administrative licensing. The Act, if it were determined to apply to IRIN, would impose extensive notice and appeal requirements, just as if IRIN were a credit bureau. The solution to these problems is simple – state insurance regulatory activities should be specifically exempted from the Act.

6) Nationwide access for insurance regulators to the national criminal history database (NCIC) for regulatory purposes; and use of IRIN/NAIC to access the database so that insurance companies can obtain criminal histories in order to meet their responsibilities under the Insurance Fraud Prevention Act.

State licensing, fraud, and enforcement staff have long sought access to the criminal history databases maintained by the FBI (usually referred to as NCIC access). The Department of Justice supplies criminal history information to the American Bankers Association so banks can run checks on employees, and also supplies the information to the securities and commodities trading industries. However, the Justice Department has not been willing to extend such authority to state insurance regulators, despite years of discussions.

Only a few states are currently able to access NCIC. In the remainder, enforcement personnel have no practical way to check the possible criminal background of an individual, even when they suspect a serious violation of law.

Under the Federal Insurance Fraud Prevention Act (18 USC 1033), a person with a felony conviction involving dishonesty or breach of trust is barred from the business of insurance unless they have a specific exemption from a state insurance regulator. Insurance companies also have a duty not to employ convicted felons, but there is no reasonable means for them to check the criminal records of job applicants and employees.

Statistics from the few states which are able to run criminal history checks show that between 10 and 15 percent of agent applicants conceal criminal convictions on their applications. Giving authority to the NAIC to obtain criminal records checks would provide a mechanism for regulators and insurance companies to comply with their legal obligations. The industry generally, as well as the IRIN Board, support this goal.

7) Immunity for IRIN/NAIC in database related activities.

The major regulatory databases for insurance, including the financial solvency database, the disciplinary actions listings (RIRS), the Special Activities Database, and the Complaint Data System, are all maintained by the NAIC. Key licensing data is supplied by the states to the producer database, which is part of IRIN.

Although NAIC and IRIN act on behalf of State governmental entities, they have no direct tort immunity from suit. This exposes IRIN and NAIC to potential legal actions. A number of states do grant immunity to the NAIC, but this does not cover all potential suits; a plaintiff could simply file in a different state. Federal immunity would help protect NAIC assets, and permit NAIC and IRIN funds to be spent for their intended purposes, not on lawsuits. Immunity would extend to the NAIC as an entity, as well as its members, officers, and employees.

8) Confidentiality protections for confidential regulatory communications with Federal agencies.

Federal law should clearly state that confidential information can be exchanged between state insurance regulators and Federal agencies. Such protections may also extend to communications with international regulators.

9) Measures to facilitate regulatory database uses, including digital signature and acceptance of credit cards or other electronic funds transfers.

Implementation of efficient electronic processing faces many hurdles, including various state requirements on how payments can be made, and what form of signatures will be accepted. Many of these requirements are in state laws or regulations outside the control of the insurance departments.

In some states, for example, no payments via credit cards can be made. Some require payment with each transaction, even if there are multiple transactions per day with one entity. Other states will bill periodically. Technology exists to use both electronic funds transfers and digital signatures, which would make many transactions more feasible and cost-effective.

10) Immunity for insurance companies that report agent terminations for cause, to ensure that more complete data is reported.

Insurers have long sought this immunity, and regulators support the idea because it means earlier identification of problem agents. Companies simply will not report terminations for cause without strong immunity, because an agent may sue them for defamation. There could be a process where agents reported by insurers are notified, so that they could contest a company's claim for database purposes.