

Testimony of the
National Association of Insurance Commissioners

Before the
Subcommittees on Securities, Insurance, and Investment
Committee on Banking, Housing, and Urban Affairs
United States Senate

Regarding:

The National Association of Registered Agents and Brokers
Reform Act of 2013

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Introduction

Chairman Tester, Ranking Member Johanns, and members of the Committee, thank you for the opportunity to testify this afternoon, and thank you both for your leadership on the NARAB II legislation, S. 534, which we are here to discuss today.

My name is Monica Lindeen, and I am the Montana State Auditor and Commissioner of Insurance and Securities. I currently serve as Vice-President of the National Association of Insurance Commissioners (NAIC), and I present this written testimony on behalf of that organization. The NAIC is the United States standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia, and five U.S. territories. Through the NAIC, we establish standards and best practices, conduct peer review, and coordinate our regulatory oversight. NAIC members, together with the central resources of the NAIC, form the national system of state-based insurance regulation in the U.S.

The NAIC supports S. 534. On March 8, the other NAIC officers and I sent a letter supporting the bill to the Chairmen and Ranking members of the Senate Banking Committee and the House Financial Services Committee. We also supported the Senate version of the bill in the last Congress.

As the regulators of more than 6.8 million individuals and business entities licensed to provide insurance services in the United States, the NAIC recognizes that streamlined non-resident producer licensing is an important goal, but I want to emphasize that efforts to do so must not undermine current state authorities to protect insurance consumers and take enforcement action against malfeasant producers. State insurance regulators take our consumer protection responsibilities very seriously, and our support of this legislation is contingent on the preservation of our ability to carry out that mission as we regulate our markets and enforce state insurance laws.

Policing Insurance Producers and Protecting Consumers

State regulators' top priority is the protection of insurance consumers. We do this in a variety of ways, from licensing and collecting data on insurers and producers to investigating consumer complaints and violations of state insurance laws. We also consistently try to educate consumers regarding their rights and recourses against unscrupulous actors.

Licensing

The state insurance departments have a strong track record regarding the licensing of individuals and business entities through pre-licensure requirements and evaluations and post-licensure consumer protection and market regulation. In addition, state coordination is facilitated through the State Producer Licensing Database maintained by the NAIC.

In order to be licensed, insurance producers must pass an examination by specific line of authority. In addition, many states require pre-licensing education training prior to a candidate taking a producer licensing examination. In addition to the examination process, producer applicants undergo a background check, which includes the fingerprinting of applicants in many states.

Once licensed, most states require an insurance producer to obtain what is known as a company appointment to sell a company's products. States typically require insurance producers to complete 24 hours of continuing education training every two years, with three of the 24 hours addressing ethics.

Monitoring and Tracking Producers

State insurance departments monitor the activities of producers licensed in their state as part of their market conduct regulation responsibilities. When producers operate in multiple jurisdictions, departments must coordinate efforts to track producers and prevent violations. Special databases maintained by the NAIC assist states by sharing information about the activities of insurance producers. One such database, the Regulatory Information Retrieval System (RIRS), contains information on producers and companies against which some type of regulatory action has been taken. The Special Activities Database (SAD) contains data on unauthorized activities and disciplinary actions taken by other regulatory agencies other than a state insurance department. Finally, the Complaints Database System (CDS) provides online access to closed complaints.

The NAIC also maintains the State Producer Licensing Database (SPLD), a nationwide comprehensive database of individuals and business entities licensed by states to sell, solicit or negotiate insurance. The SPLD allows states to share information to facilitate the licensing process and track producers licensed in more than one state. Information shared in the Producer Database (PDB), which companies access to conduct due diligence prior to appointing an agent, includes demographic and biographical information, current and historical license information, types of licenses held, authorized lines of business, and a record of insurance regulatory actions (listed in RIRS). Finally, the SPLD links to SAD and CDS databases to provide states a comprehensive regulatory picture of an insurance producer. This information is pushed to the states through the NAIC's Personalized Information Capture System or PICS Alerts. When one state takes a regulatory action against a producer, all states in which the producer holds a license are electronically notified.

With SPLD in place to serve as a cornerstone, the National Insurance Producer Registry (NIPR), a non-profit affiliate of the NAIC, connects state insurance departments with insurers, producers, licensing service providers, and other stakeholders in the licensing process. Among its many benefits of such a wide-area network, NIPR's state-of-the-art electronic filing system provides efficiencies to the licensing of producers by facilitating the electronic licensing application

process; automating the producer appointment and termination process; providing companies access to data contained in the PDB; and streamlining billing and collection of licensing and appointment fees.

Complaints and Enforcement Actions

State regulators have broad statutory authority to regulate and police their markets on behalf of consumers. State insurance departments take in hundreds of thousands of consumer complaints every year that lead to civil or criminal investigations, fines, and restitution for consumers.

While specific processes vary from state to state, in most cases, action begins with a consumer complaint or inquiry. Professional staff at state insurance departments thoroughly review complaints and investigate whether state laws have been violated by either a producer or an insurer. If a state regulator determines a producer has violated state law, remedies include fines, cease and desist orders, and suspension of licenses to keep bad actors from harming consumers. In my own state of Montana, in 2011, we levied twenty-nine fines totaling \$125,000, and recovered over \$78,000 for consumers through 11 restitutions. For the same year, nationwide, state insurance departments received more than 283,000 official complaints, leading to the suspension or revocation of nearly 25,000 licenses, and nearly 5,000 fines totaling over \$73 million and resulting in \$115 million in restitution for consumers.

Additionally, many states have formed separate criminal insurance fraud units. These units, which may or may not reside within the state's insurance department, investigate insurance fraud in order to prevent bad actors from harming consumers and to keep fraudulent claims from increasing the cost of insurance. Recent years have seen an increase in the number of fraud investigators employed by the states as awareness and scrutiny of insurance fraud has increased.

Educational Efforts

In addition to monitoring producers and investigating potential producer violations of state insurance laws, state regulators also provide educational materials, comparison guides, seminars, and strive to improve our outreach to help consumers know their rights. Independently and through the NAIC, state regulators issue frequent consumer alerts; we also share information about insurance companies through tools such as our Consumer Information Source (CIS) service, including closed complaints, licensing information, and financial data on producers and insurers. CIS allows consumers to obtain key information before purchasing an insurance policy.

NARAB II - Background

Turning to the legislation itself, allow me to offer comments about the road that brought us here today. As you know, the proposed legislation will amend the Gramm-Leach-Bliley Act to create a non-profit corporation known as the National Association of Registered Agents and Brokers, or NARAB, in order to streamline non-resident market access for insurance producers licensed in

their resident states. NARAB will be led by a Board of Directors, the majority of which will be state insurance commissioners, and the Board will establish membership requirements applicable to eligible non-resident insurance producers. Membership will permit insurance producers to access insurance markets similar to what non-resident producer licensing allows.

Insurance commissioners have worked for a very long time to address non-resident insurance producer licensing reform. Starting with the NAIC's Producer Licensing Working Group in the late 1990's and the NARAB Working Group in the early 2000's, the NAIC developed and adopted a Producer Licensing Model Act (PLMA) to facilitate non-resident licensing and improve reciprocity. States met and exceeded the non-resident reciprocity requirements of the Gramm-Leach-Bliley Act and continued to work diligently towards uniformity in resident licensing standards.

In the mid-to-late 2000s, the NAIC reconstituted its NARAB Working Group in order to update and strengthen our approach to reciprocity. After a considered evaluation of new issues and administrative practices, the NARAB Working Group recommended the NAIC adopt a heightened standard for reciprocity, which was adopted by the NAIC Executive Committee and Plenary in 2009. A subsequent review determined that the states continued to meet and exceed GLBA's reciprocity standard.

Even with all our progress, the NAIC agrees that further improvement is needed. The states have made such significant progress in reforming producer licensing that today's system is unrecognizable from the system of 10-15 years ago. However, the narrow, targeted area of the non-resident insurance producer licensing process is one of the exceptionally rare instances where we believe Federal legislation could be used. NARAB II would streamline the administrative process of non-resident licensing (or its equivalent under NARAB), but not at the expense of consumer protection, state revenues or market regulatory authority.

Specific Provisions of Interest

Today's bill contains improvements over versions introduced in previous Congresses, and hopefully with support from both regulators and producers, it will continue to attract bipartisan co-sponsors and votes as it works its way through the legislative process. I would now like to take a few moments to address some of the provisions in the NARAB II bill that were crucial to winning the support of state regulators.

The proposed legislation would establish NARAB with a 13-member governing board comprised of eight state insurance commissioners and five insurance industry representatives. This strong regulator majority serves to ensure that while the industry has several seats at the table, regulators will be able to ensure that consumers' best interests are served by establishing membership criteria drawing from the highest standards that exist in state law. NARAB will be administering what has been a regulatory function, and so it should be guided by regulators. As

a result, the bar will be raised with respect to non-resident producers seeking to access other markets. This will virtually eliminate the risk of a race to the bottom where consumer protection is concerned. In addition to the strong regulator majority on the board, the legislation also preserves the existing authorities of states with respect to resident licensing, market regulation and consumer protection, and the supervision and enforcement of laws related to producer conduct and possible disciplinary actions. These components of our regulatory programs are essential to serving our monitoring function and protecting consumers.

The bill also includes important disclosures to the states, maintains business entity licensing, and protects state revenues and licensing structures to ensure there is no additional cost or revenue loss to the states—something that is critically important. NARAB’s administrative costs will be funded through fees paid by producers.

Another important provision from our perspective requires pre-notification to state regulators and the NAIC of any producer seeking to do business on the basis of NARAB membership. Therefore, while the states will no longer issue licenses to non-residents seeking NARAB membership, the bill requires notice and a 10-day “look” period during which a state may bring up any objections to a producer that seeks to do business in their jurisdiction through that membership.

Lastly, the bill requires the board to establish a strong ethical conduct code related to NARAB’s affairs and operation, and mandates an FBI criminal background check from applicants who have not had one within the previous two years. The latter requirement further raises the bar in the area of consumer protection.

Taken together, these provisions preserve state regulatory authority to police our markets and to protect insurance consumers while streamlining the licensing process for insurance producers, and help to explain why the NAIC has chosen to support the bill we are discussing today.

Conclusion

We look forward to continuing our consumer protection efforts and working with you to advance the NARAB II legislation. The bill is the result of many years of negotiations and discussions between state regulators, the insurance producer community, and your respective staffs. We cannot stress enough that the improvements included in this version of the legislation, and agreed to by all involved, are absolutely critical to our support. We thank the sponsors and cosponsors for working with us to achieve a good bill that accomplishes the goals of facilitating non-resident licensing and at the same time preserving state authorities. NARAB represents a unique and very narrow case where federal legislation can be used to streamline a process, while preserving state authority, and should not be interpreted to suggest support for any further preemption of State insurance laws. Insurance regulatory reform should always begin and end with the States.

Thank you again for the opportunity to be here and I look forward to your questions.