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**TESTIFYING ON BEHALF OF
THE INDEPENDENT INSURANCE AGENTS OF AMERICA,
THE NATIONAL ASSOCIATION OF INSURANCE AND FINANCIAL ADVISORS, AND
THE NATIONAL ASSOCIATION OF PROFESSIONAL INSURANCE AGENTS**

**ON STATE COMPLIANCE WITH THE “NARAB PROVISIONS” CONTAINED IN
TITLE III/SUBTITLE C OF THE GRAMM-LEACH-BLILEY ACT**

**BEFORE THE SUBCOMMITTEE ON CAPITAL MARKETS, INSURANCE, AND
GOVERNMENT SPONSORED ENTERPRISES OF THE
COMMITTEE ON FINANCIAL SERVICES
UNITED STATES HOUSE OF REPRESENTATIVES**

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Introduction

Good afternoon. My name is Ron Smith, and I am President of Smith, Sawyer & Smith, Inc., an independent insurance agency located in Rochester, Indiana. I am the current State Government Affairs Chairman and a Past President of the Independent Insurance Agents of America (IIAA), and I am testifying today on behalf of IIAA, the National Association of Insurance and Financial Advisors (NAIFA), and the National Association of Professional Insurance Agents (PIA). IIAA, NAIFA, and PIA represent hundreds of thousands of this country's insurance agents and brokers and their employees. Our collective members are large and small businesses that offer consumers a wide array of products, ranging from property, casualty, life, and health insurance to employee benefit plans, retirement programs, and investment advice.

I appreciate the opportunity to testify today on a topic of great interest and critical importance to insurance agents – the NARAB provisions of the Gramm-Leach-Bliley Act and the urgent need for reform of our industry's multi-state licensing system. No segment of the industry is affected more by producer licensing laws than our diverse membership of small and large agents and brokers, and no group will be impacted more by reforms in this area.

Need for Reform

The organizations I am representing today strongly support state regulation of insurance, and we are committed to preserving and strengthening the current system. We also recognize that

the licensing of agents and brokers is a critical component of insurance regulation. Licensing statutes impose minimum eligibility and consumer protection requirements to ensure that a licensed individual or firm is qualified for the activities in which they are engaging. Laws regulating the licensing of insurance producers protect the insurer/insured relationship by attempting to ensure that prospective policyholders obtain reliable insurance that is adequate for their needs. As the United States Supreme Court has recognized, licensing laws embody a

series of regulations designed and reasonably adapted to protect the public from fraud, misrepresentation, incompetence and sharp practice which falls short of minimum standards of decency in the selling of insurance by personal solicitation and salesmanship. That such dangers may exist, may even be widely prevalent in the absence of such controls, is a matter of common knowledge and experience.

Licensing laws are therefore designed to increase the likelihood that insurance purchasers will obtain from qualified persons products that best meet their needs – and that the insurance they purchase will be reliable and appropriate for their purposes. Demonstrating competence to sell insurance products and being subject to an appropriate set of consumer protection requirements and state enforcement mechanisms are still absolute necessities. The licensing process constitutes the primary mechanism by which regulators can stop unscrupulous actors and intervene to protect the public. Without licensing, there is little practical way for states to effectively supervise and regulate the qualifications and actions of insurance providers.

Despite our longstanding support for state regulation and effective licensing laws, we recognize that the current licensing system does not operate as efficiently as it should. Accordingly, we strongly support efforts to enhance and streamline producer licensing and to make the system more uniform across state lines. The average insurance agency maintains licenses in over four states today, and our members increasingly operate in multiple jurisdictions and serve clients and consumers outside of their own home states. My agency, for example, is located in a North Central Indiana town of 7000 people, yet my largest account is in Florida, and I am licensed in over 15 different states. Many of our members are licensed in 10, 20, 30, or more states, and we have numerous members that are licensed in every jurisdiction.

Agents of all kinds – whether operating in large commercial centers or small communities – face unnecessary bureaucratic hurdles that are imposed by the distinct and often idiosyncratic agent licensing laws of every state. Staying in compliance with state licensing requirements is an expensive, time-consuming, and maddening effort for many agencies, and tremendous resources are often necessary to manage an agency's compliance efforts. These opportunity costs and wasted man-hours could be better spent working on behalf of our customers. Many of our members are frustrated because they are trapped in a licensing system full of antiquated, duplicative, unnecessary, and protectionist requirements. Adding to the frustration is the fact that these inefficiencies exist at a time when advances in technology have encouraged society to expect ease, efficiency, and speed – even from government agencies and state insurance departments.

The problems associated with the current system can be divided into three main categories: (1) the disparate treatment that nonresidents receive in some states; (2) the lack of standardization, reciprocity, and uniformity; and (3) the bureaucracy generally associated with agent licensing. The NARAB provisions contained in the Gramm-Leach-Bliley Act ensure that these three problem areas will be addressed soon – either by the enactment of preemptory reforms at the state level or by the automatic implementation of the provisions themselves.

NARAB Requirements

With the enactment of the Gramm-Leach-Bliley Act (GLBA) and the so-called “NARAB provisions” in November 1999, America’s insurance agents and brokers were assured that effective licensing reform was finally imminent. The GLBA gave the states three years to achieve particular licensing goals outlined by Congress. If the requisite reforms are not enacted by the necessary number of the states, then the statute provides that the National Association of Registered Agents and Brokers (NARAB), a quasi-federal licensing agency, will be established.

The GLBA is clear about what it is required to prevent the establishment of NARAB. The creation of the new “agency” will only be averted if a majority of states (defined by virtue of the statute as 29 states or territories) achieve the specified level of licensing reciprocity or uniformity. The Act is specific about the reforms that are necessary, and it gives the states two options – licensing uniformity or licensing reciprocity.

Reciprocity is the easier test to satisfy, and it is the initial goal of state policymakers. To achieve reciprocity, the Gramm-Leach-Bliley Act requires that a majority of states license nonresident agents and permit them to operate to the same extent and with the same authority with which they operate and function in their resident state. This sounds simple, but statutory and regulatory changes are needed in order to meet the level of reciprocity required. The reciprocity standard in the NARAB provisions essentially requires each qualifying state to meet a 3-part test:

- First, states may not impose any unique licensure requirements on nonresidents and may only require a nonresident to submit: (1) a license request; (2) proof of licensure and good standing in the home state; (3) the appropriate fees; and (4) an application.
- Second, states must offer continuing education reciprocity to any person who satisfies his/her home state requirement.
- Third, states must not “impose any requirement . . . that has the effect of limiting or conditioning [a] producer’s activities because of its residence or place of operations,” excluding countersignature requirements.

In short, to satisfy the NARAB test, states must be prepared to offer full reciprocity to nonresident agents – without imposing any additional obligations or requirements. In order to be “NARAB compliant,” a state must be willing to accept the licensing process of a producer’s resident state (home state) as adequate and complete. No additional paperwork or requirements may be required – no matter how trivial or important they may seem.

In essence, the NARAB provisions put the ball in the states’ court – and gave them three years to achieve the level of reform mandated by federal law. If 29 states fail to offer reciprocity to nonresidents by November 12, 2002, then the process of establishing NARAB will begin. In this way, the threat of NARAB has created a strong incentive for the states to reinvent and streamline the current multi-state licensing process.

Early State Activity / Development of the Producer Licensing Model Act

Even before the passage of the GLBA, efforts were underway to reform and streamline the existing licensing system, and some significant strides had already been made. The National Association of Insurance Commissioners (NAIC), for example, had developed a national application form for agents, established the Uniform Treatment Initiative (an initial step toward reciprocity), and developed groundbreaking regulatory tools such as the Producer Database

and Producer Information Network. In addition, many states had recently taken action to eliminate longstanding discriminatory barriers, such as countersignature laws, residency requirements, and solicitation restrictions. The focus on agent licensing reform, however, has clearly intensified since the enactment of the GLBA.

The most critical response has been the development of the Producer Licensing Model Act, a model law drafted by the NAIC. The NAIC finally adopted the model act in October 2000 after more than two years worth of hard work by state policymakers and many in the private sector. We are particularly proud of the pivotal role that our groups played in the development of the proposal. Early in the process, our organizations assumed a leadership role by bringing together all of the various private sector groups to discuss many of the issues that had divided the insurance industry. Our efforts to broker consensus were successful in a number of key areas and helped enable the NAIC to proceed with its consideration of the model.

In the aftermath of the GLBA's enactment, the NAIC hurried to complete its consideration of the Producer Licensing Model Act. In this rush, the regulator association included an ambiguously worded licensing exemption that could have allowed unlicensed and unqualified individuals to offer advice and guidance, discuss policy options with unknowledgeable consumers, and materially revise existing policies and insurance contracts. To its credit, the NAIC ultimately deleted the unnecessary provision and thus eliminated the potential for conflicting interpretations, avoided the need for judicial interference, and most importantly, protected insurance consumers. As expected, the Producer Licensing Model Act has been the starting point for agent licensing reform in nearly every state, and our organizations have supported and promoted its enactment.

The hope is that every state legislature will consider and adopt the proposal, thus providing much needed uniformity to the current licensing system. The NAIC model law contains the provisions necessary for a state to become "NARAB compliant" and enables a state to achieve the requisite level of reciprocity. The reciprocity provisions, however, are only a small aspect of the total bill, and adoption of the model will bring unprecedented uniformity to the licensing process in many ways that are not required under the NARAB provisions. Among other items, the Producer Licensing Model Act includes the following:

- A requirement that any person "selling," "soliciting," or "negotiating" insurance be licensed and a prohibition against unlicensed individuals performing these same functions without a license – regardless of the context;
- Definitions of the major lines of insurance;
- The recognition of a uniform process for obtaining a resident license;
- The creation of a common set of requirements for obtaining nonresident licenses;
- The recognition and acceptance of a common national application – for both residents and nonresidents;
- Uniform standards for agent/insurer appointments;
- The establishment of true licensing reciprocity; and
- The elimination of discriminatory licensing requirements.

Status and Success of Licensing Reform Efforts

We have now crossed the halfway point on the way to the NARAB deadline, and I would like to offer some reflections on the progress that has been made in the 18 months since the passage of the Gramm-Leach-Bliley Act.

Initially, some believed the establishment of NARAB was inevitable, and other naysayers suggested that the agent community would oppose state reform efforts and block the passage of meaningful reform. Nevertheless, our organizations consistently maintained that state lawmakers would forestall the creation of NARAB and ultimately implement a licensing system better than that offered by the NARAB provisions. I am happy to declare today that we were right and the pessimists could not have been more wrong. In the last several months, the states have achieved reforms unprecedented in the history of insurance licensing, and our organizations have been the leading proponents of these state-level measures. Even those who just a few months ago believed the creation of NARAB was a fait accompli now recognize that the entity is unlikely to ever come into existence.

The associations I represent today have affiliated organizations in every state capital, and our members and state affiliates have been working closely with state lawmakers to enact reform. This partnership has resulted in a staggering amount of reform in a short window of time, and *the NARAB threshold of 29 states will be cleared before the end of 2001 – over one year ahead of the timeframe established in the GLBA.*

Our success at the state level cannot be overstated. Here are the numbers:

- Twenty-two states have enacted reforms that achieve reciprocity and significant uniformity. These states are Arizona, Arkansas, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, Oklahoma, Rhode Island, South Dakota, Utah, Virginia, Washington, and Wyoming.
- Nine additional states have passed licensing reform bills through both chambers of their legislatures, and each of these bills is expected to become law soon. These states are Alaska, Colorado, Hawaii, Illinois, Louisiana, Maine, Maryland, Minnesota, and Oregon. Once these bills become law, the 31 states that will have enacted reform will account for over 46% of all licensed individuals and over 38% the country's property and casualty insurance premiums.
- Many other states are currently considering licensing reform bills, and they are at various stages of the legislative process. Bills in Alabama, Texas, and Vermont have already passed through one legislative chamber, and these three states, combined with the 31 states named above, account for over 53% of all licensed individuals and nearly 47% of the country's property and casualty insurance premiums. Bills continue to move through the committee process in numerous other states as well.
- By the end of this year, we anticipate that over 45 states will have considered licensing reform legislation – with perhaps 40 or more enacting reciprocity and significant uniformity. We anticipate that nearly 50 jurisdictions will do the same by the November 2002 deadline.

This subcommittee may have heard concerns from some who claim that the progress made to date is insufficient because the larger states have not yet acted. These responses are ironic when you consider that many of these same groups were recently claiming that the states were unlikely to clear the 29-state NARAB threshold. Because our organizations have a presence in every state, we are in close contact with state policymakers, and we are optimistic that the remaining large states will soon begin to actively consider licensing reform.

Our optimism is based in large part on the following observations:

- Thirty state legislatures have either adjourned for the year or are scheduled to adjourn by the end of this month. Of that group, 26 are expected to enact substantive licensing reform into law this year. Florida, New Mexico, Tennessee, and West Virginia are the only states in this group not expected to take action this year, and several of these states have already indicated a desire to advance reform before the November 2002 deadline.
- Forty-one states will adjourn by August, and we anticipate that at least 35 of these states will enact reform this year.
- Most of the remaining states, including the largest states, have legislative sessions that continue on an ongoing basis. These additional states include New York, California, Illinois, Pennsylvania, Michigan, Ohio, New Jersey, and Massachusetts. Each of these states is working to enact licensing reform, and we are optimistic that most of them will do so this year. Given the overwhelming success achieved so far, we have every reason to believe that reform is imminent in most of these remaining states.

Again, we expect that approximately 40 states will enact significant licensing reform legislation in 2001, with most of the remaining states taking similar action before November 2002.

Although we are pleased to have played a part in this success, we must commend the hundreds of state legislators who have worked diligently on insurance licensing reform over the last several months. While we recognize that the enactment of the NARAB provisions has had the effect of galvanizing support for agent and broker licensing reform, state lawmakers have done their part to modernize insurance regulation. Several state legislative organizations, including the National Conference of Insurance Legislators, the American Legislative Exchange Council, and the National Conference of State Legislatures should also be commended for educating state leaders and focusing the spotlight on the need for licensing reform.

Continued Progress and Future Challenges

Given the pace of activity that has occurred so far this year, it is now extremely unlikely that NARAB will ever be created. Congress gave the states three years to collectively achieve the mandated level of reform, and the states will clear a hurdle thought to be insurmountable in only half of the allotted time. While these unprecedented accomplishments are staggering, we intend to keep the pressure on. Our organizations believe it is essential that we have “national” reform. Reaching the statutory bare minimum is not good enough in the long term, and we will not settle for uniformity and reciprocity in 29 states alone. Accordingly, we will continue to push for national reform – both in the period preceding the November 2002 deadline and in the months that follow.

As I have outlined, the states with early legislative adjournment dates have acted most quickly, and we must now focus on those states with legislatures that meet on an ongoing basis. These states also tend to be the larger states. Effective and meaningful reform must be national in scope, and it is essential that the largest states be part of the mix. Many of the larger state legislatures have been focused on difficult budget issues in the early months of this year, and such issues have necessarily dwarfed the consideration of licensing reform. States are also working diligently to implement the privacy requirements included in Title V of the GLBA. Since the privacy issue has a more immediate deadline, it has been a top insurance priority for many regulators and legislatures this year. As the privacy issue is addressed and as budget,

redistricting, and other important issues move toward resolution, licensing reform will become a priority.

We are pleased, however, by the progress that we have seen in some of the larger states in recent weeks. Bills are actively under consideration and moving through the legislative process in California, Illinois, and Texas. In addition, Michigan, New York, Ohio, and Pennsylvania are all expected to begin consideration of reform bills in the coming weeks, and the insurance departments in these states are hard at work behind the scenes. These states are critically important, and we are confident that they will ultimately enact licensing reciprocity and other reforms.

The advancement of licensing reform has also been slowed in some states as a small segment of the industry has attempted to attach broad, unnecessary, and unprecedented licensing exemptions to state reform bills. Advocates of such provisions have aggressively sought loopholes that would enable unlicensed individuals to sell and negotiate insurance; offer recommendations and advice to consumers; discuss policy options with unknowledgeable consumers; materially revise existing policies and insurance contracts; and solicit policies and coverages. Although these efforts have failed in every state, they have nevertheless served as a distraction and have slowed the speed of reform.

In addition, individual state insurance commissioners will clearly have an impact on the success of legislative reform efforts in their own states. Some insurance departments have been hesitant to introduce and support the Producer Licensing Model Act, and we hope the NAIC will more actively encourage the adoption of its own model law in the remaining states. State legislators will be looking to insurance regulators for guidance on this issue, and it is important that commissioners work closely with their legislatures and stress the importance and urgency of licensing reform.

Additional Steps

As I noted previously, the Producer Licensing Model Act contains many elements that are intended to establish greater uniformity among the states. In addition to enacting these elements of the model law, there are other steps that states can take and that policymakers should consider.

First, every state should access and provide licensing information to the Producer Database (PDB). The PDB is an electronic database of information about producers and includes data about an individual's licensing status, appointment history, and disciplinary actions. Regulators accessing the database can check in real time whether an agent or broker is licensed and in good standing in a particular state or in multiple states. However, state regulators, consumers, and private industry will not be able to realize the potential of the system until every state has "joined" the PDB. The NAIC has been working for several years to add every jurisdiction to the system, but the progress has been slow in the handful of remaining states. The PDB is a core element of regulator plans to create a system in which agents can obtain nonresident licenses in multiple states through a single on-line point of entry – and every state needs to be participating.

Second, insurance regulators must also continue their efforts to achieve greater uniformity across state boundaries. While the NAIC Producer Licensing Model Act offers significant elements of uniformity, there are other steps that can be taken. The model law creates a more uniform process for obtaining licenses initially, but the renewal of insurance licenses can be a complex, logistical nightmare for agents. Reform of renewal process is a critical element of

licensing reform, and we are already working with the NAIC and others to achieve results in this area. In addition, reform is needed to address the manner in which states regulate and license corporate entities.

Third, state countersignature laws have come under increased scrutiny and criticism in recent years, and many in the industry advocate their repeal. Each of the national associations I represent today has endorsed the abolition of these and similar protectionist laws, and we have been pleased with the manner in which many states have repealed these antiquated requirements. Today, only five states (Alabama, Florida, Nevada, South Dakota, and West Virginia) retain a mandatory countersignature law, and Alabama is expected to repeal its law in the coming weeks. We anticipate that others will consider similar actions soon.

Finally, although we are strong and ardent supporters of state regulation of insurance, we believe that Congress can also assist the move toward further licensing reform and uniformity. One way in which Congress can continue to advance the reform effort is by utilizing the oversight authority of this committee. Through committee hearings such as this and in other ways, the Congress can appropriately play a role in the debate over insurance reform. Congress can also assist this effort by providing state regulators with limited and clearly defined access to federally maintained databases. This will help regulators implement a more effective and uniform procedure for those states that conduct background checks. In general, however, we look forward to working with the Financial Services Committee on these and similar issues in the future.

Conclusion

By enacting the NARAB provisions of the Gramm-Leach-Bliley Act, Congress took affirmative steps to ensure that the insurance agents and brokers of this country would finally have access to a streamlined and functional multi-state licensing mechanism. While we have consistently argued that the states were up to the challenge, we are nevertheless extremely pleased with the results of the legislative activity that has occurred in the last six months.

Although state lawmakers should be proud of the efforts and accomplishments made to date, additional work remains. We must continue to build on this progress and gain enactment of similar reforms in the remaining states. We are confident that this will occur, and we will continue to work closely with state policymakers to achieve meaningful licensing reform on a national basis. We also look forward to securing additional elements of reform in the future.

IIAA, NAFIA, and PIA appreciate the opportunity to present our views on the state and future of insurance licensing. As you continue to consider these and other insurance-related reform issues, please know that we are happy to provide any further assistance and information that this subcommittee may deem appropriate and helpful.