THE COUNCIL
The Council of Insurance Agents & Brokers

Testimony of Scott Trofholz on behalf of The Council of Insurance Agents & Brokers

Senate Banking Subcommittee on Securities, Insurance and Investment Hearing on "Streamlining Regulation, Improving Consumer Protection and Increasing Competition in Insurance Markets."

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Chairman Tester and members of the Subcommittee, thank you for the opportunity to testify before you today in support of The National Association of Registered Agents and Brokers Reform Act. My name is Scott Trofholz. I am the President and CEO of The Harry A. Koch Company, based in Omaha, Nebraska. I personally have been with The Koch Co. for 22 years. We are a profitable and growing 96-year-old firm offering consulting and insurance solutions for businesses and individuals with exposures throughout country. Koch clients include Fortune 500 Companies, small businesses and everything in between. We offer commercial lines, employee benefits, bonds and personal insurance. We are the largest family-owned agency in Nebraska and employee around 100 residents. My testimony today is on behalf of my firm, as well as the member firms of the Council of Insurance Agents and Brokers (The Council). I'm a member of the Board of Directors of The Council, which represents the nation's leading, most productive and most profitable commercial agencies and brokerage firms. Council members specialize in a wide range of insurance products and risk management services for business, industry, government, and the public. Operating both nationally and internationally, Council members conduct business in more than 3,000 locations, employ more than 120,000 people, and annually place approximately 80 percent – well over $250 billion – of all U.S. insurance products and services protecting business, industry, government and the public at-large, and they administer billions of dollars in employee benefits. Since 1913, The Council has

worked in the best interests of its members like myself, securing innovative solutions and creating new market opportunities at home and abroad.

Creating an effective and efficient insurance regulatory system in the United States is important not only to insurance brokers and the industry in general, but to policyholders and the economy as a whole. Agent and broker licensing is a critical piece of the insurance regulatory scheme.

Nonresident insurance agent and broker ("producer") licensing is a growing bureaucratic issue for me and my colleagues. For example, I currently hold nonresident licenses in 48 jurisdictions. Our agency has approximately 88 licensed individuals, 35 of whom are licensed in multiple jurisdictions, who hold a total of 630 licenses across the country. Besides the licensed individuals, the agency is also licensed as a non-resident in 49 states and holds a resident license in our home state. For an agency of 103 staff members, we have a dedicated person who is responsible for all licensing compliance. The time spent on renewals and new license applications is considerable due to the fact there are certain states that require additional requirements, besides the license application or renewal fees. These additional requirements must be submitted to the state before the license can be issued. These items include (but are not limited to) criminal background checks, proof of citizenship, and fingerprints. These additional compliance requirements create more costs to the agency, take time away from the producers, and make the licensing process more unwieldy. I'm constantly facing paperwork to try to stay on top of the multitude of regulations that are quite often redundant and almost always cumbersome. As for our trade association, my predecessors on our Board of Directors formed a task force to work on the growing problems of nonresident producer licensure – *in 1933*.

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Although insurance agent and broker licensing processes have improved over the last decade and a half – due to the enactment of the NARAB provisions of the Gramm-Leach-Bliley Act (GLBA)[1] and the reforms put in place by the states since that time – there remain redundancies, inefficiencies and inconsistencies across the states that result in unnecessary costs on insurance producers and consumers due to the regulatory and administrative burdens the requirements impose. This is why The Council supports adoption of The National Association

[1] Pub. L. No 106-102, 113 Stat. 1338 (1999).

of Registered Agents and Brokers Reform Act of 2013 ("NARAB II"), and the creation of NARAB. We are especially grateful to you, Mr. Chairman, and Sen. Johanns, for your willingness to lead on this issue through the introduction of S. 534 (and the 12 bipartisan other sponsors in the Senate) and we look forward to working with all of the members of this Committee to see this effort through.

We believe that creation of NARAB is the best means through which we can achieve comprehensive producer licensing reform. NARAB II creates a national "passport" for such licensure. Insurance producers licensed in their home states can obtain non-resident licenses for any and all other states through the NARAB licensing clearinghouse. It is optional for agents – so an agent can choose to go through NARAB or directly through the states. Moreover, NARAB would not replace or displace state insurance regulation. Indeed, the legislation takes great pains to ensure that there is no question regarding state authority, and clarifies the state's continuing role in the licensure process through the notice period and regulator participation in NARAB, as well as incorporation of the highest state standards in NARAB's licensing requirements.

In my testimony today, I will provide you with an overview of the difficulties faced by Council members in their daily efforts to comply with the current state licensing requirements, as well as a brief discussion of the proposed legislation. First, however, I would like to thank the state insurance regulators, including Commissioner Lindeen, Montana's Insurance Commissioner and the NAIC's Vice President, for all their work on this issue: changing laws and licensing practices in their states; working together at the NAIC to address the issue through models, standards, FAQs and the bully pulpit; and working with all the stakeholders in developing this important proposal. The regulators are to be commended for working in good faith to develop a NARAB proposal that will work for everyone – consumers, insurance producers, and regulators. Regulatory reform is a difficult process, and the regulators have been the brunt of a good deal of griping along the way, but we really do appreciate their hard work, diligence, and patience, and look forward to continuing to work with them as the process continues.

State Insurance Agent and Broker Licensing Today

GLBA's NARAB provisions required that a majority of the 56 U.S. insurance regulatory jurisdictions[2] enact either uniform agent and broker licensure laws or reciprocal laws permitting an agent or broker licensed in one state to be licensed in all other reciprocal jurisdictions simply by demonstrating proof of licensure and submitting the requisite licensing fee.

After enactment of GLBA, the state insurance regulators, through the NAIC, chose to pursue enactment of reciprocal licensing requirements, and pledged to ultimately exceed reciprocity by establishing uniform producer licensing requirements in all the states. The regulators amended the NAIC's Producer Licensing Model Act (PLMA) to meet the NARAB reciprocity provisions, and most of the states followed by enacting some sort of licensing reforms. In 2002, the NAIC officially certified that a majority of the 56 U.S. insurance regulatory jurisdictions met the NARAB reciprocity requirements, thereby averting creation of NARAB.[3] In 2010, the NAIC recently undertook a recertification review and determined that 40 jurisdictions (39 states and the District of Columbia) are currently reciprocal for producer licensing purposes.[4] Seven states that had previously been certified as reciprocal are no longer so.

Even among the states deemed reciprocal, however, administrative inefficiencies and inconsistencies remain that affect every insurer, every producer and every insurance consumer. In a study scheduled to be released this spring, the Foundation for Agency Management Excellence (FAME)[5] has compiled extensive data on state licensing laws and regulations, as well as implementation of those laws and rules. Despite similar requirements in many of the states,

[2] The 56 jurisdictions are the 50 states, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, Samoa and the Virgin Islands.
[3] NAIC NARAB (EX) Working Group Report: Certification of States for Producer Licensing Reciprocity Adopted Aug. 8, 2002; NAIC Certification of States for Producer Licensing Reciprocity, Sept. 10, 2002.
[4] NAIC NARAB (EX) Working Group, First Supplement to the "Report of the NARAB Working Group: Recommendations of States Continuing to Meet Reciprocity Requirements of the Gramm-Leach-Bliley Act," Sept. 2011, available at http://www.naic.org/committees_ex_pltf_narabwg.htm.
[5] FAME is a 501(c)(3) charitable and educational organization administered by The Council of Insurance Agents & Brokers and is located in Washington D.C.

the research shows that differences and inconsistencies abound – whether its business entity lines of authority (required in approximately 30 states, but not required in the rest); pre-licensing education requirements (some states require no pre-licensing education, the rest require between 20 and 200 hours of education); producer appointments (some states require individuals to be appointed with carriers, some require agencies to be appointed, some require both, some require renewals, some are perpetual, etc.); and numerous other requirements. While these may seem like small issues, they can easily turn into large problem for entities with insurance producers licensed as residents in multiple jurisdictions: they must constantly renew licenses throughout the year, based upon the individual requirements in each state.

Reciprocity has helped smooth over some of these differences, but unless there is real uniformity in administrative procedures as well as statutory requirements, brokers – and insurance consumers – will continue to suffer from unnecessary costs.

Almost all of the member firms of our association, like our own, continue to hold hundreds of resident and non-resident licenses across the country. For some, the number of licenses has actually increased since enactment of GLBA. One Council member, for instance, has approximately 5,000 licensed individuals, 3,100 of whom are licensed in multiple jurisdictions, who hold 76,100 licenses across the country. Another member has approximately 1,400 individuals holding 12,000 licenses nationwide. In addition to initial licenses, Council members face annual renewals in 51-plus jurisdictions, and must satisfy all the underlying requirements, such as pre-licensing and continuing education, as well as post-licensure oversight. This redundancy costs Council members anywhere from tens of thousands to many millions of dollars annually to administer.

In addition to the lack of full reciprocity, the standards by which the states measure compliance with licensing requirements differ from state to state, as well. These include substantive requirements – pre-licensing education, continuing education and criminal background checks, for example – as well as the administrative procedures to comply with these requirements. In addition to the day-to-day difficulties the current set-up imposes, the lack of

uniform application of law among the states inhibits efforts to reach full reciprocity. Some states may be disinclined to license as a non-resident a producer whose home state has "inferior" licensing standards, even a state with similar or identical statutory language. In fact, several states that have failed to adopt compliant licensure reciprocity regimes (notably California and Florida) claim their refusal is based on this absence of uniform standards – thus implying that the standards of other states do not measure up.

The NAIC has attempted to move the states toward uniformity, and we are especially grateful for the herculean efforts that many state regulators have made toward this goal. Following on the PLMA, the NAIC adopted uniform licensing standards (ULS), which include 42 separate standards purporting to establish uniform approaches to licensing issues ranging from an applicant's age, to education requirements, to examinations, to applications. The NAIC has spent most of the last decade encouraging the states to adopt the ULS, and in 2008 performed as assessment of every state's compliance with the standards. A report was issued, and a follow-up was done in 2009.[6] The 2008 report and 2009 follow-up found a significant lack of uniformity across the states, particularly on licensure requirements such as fingerprinting/ background checks, where divergent state approaches are extremely burdensome on producers.[7]

Even if there were broad state compliance with the ULS, however, producer licensing requirements would be far short of uniformity for the simple reason that a significant number of the "uniform standards" do not create a single requirement for the states to meet, rather they serve more as suggestions or a menu of options to guide state action.

Of the 42 standards, there are roughly 17 that do not require the states to meet a uniform requirement. Some of the 17 are clearer than others in their lack of standard-setting (Standard 12, for example, provides that the standard for failure of examination and re-testing is to be

[6] NAIC Producer Licensing (EX) Working Group, Producer Licensing Assessment Aggregate Report of Findings, Feb. 19, 2008; NAIC Producer Licensing (EX) Working Group, Producer Licensing Assessment Progress Report, Mar. 16, 2009.
[7] NAIC Producer Licensing (EX) Working Group, Producer Licensing Assessment Aggregate Report of Findings, Feb. 19, 2008, p. 14.

"determined by each state"), but all give the states flexibility that is unwarranted if the goal is to have the same requirements in every state.

These numbers – and, more critically, the regulatory and administrative burdens they represent – vividly demonstrate that, despite the improvements that resulted from the enactment of NARAB, comprehensive reciprocity and uniformity in producer licensing laws remains elusive, and it does not appear the NAIC and the States are capable of fully satisfying those goals. That is not a slight on the regulators – it is almost an impossible task getting regulators, legislators, and other stakeholders from 56 different jurisdictions to agree to a single set of licensing requirements and procedures – but it is the reason we need a national licensing framework.

NARAB II

The inability of the states to fully implement licensing reciprocity and to make real progress toward uniform laws and regulations has been demonstrated repeatedly in the dozen years since GLBA's enactment. The federal law put pressure on the states and resulted in real improvements in licensing processes, but the resistance to comprehensive change has stymied attempts to achieve comprehensive reform. As a result, brokers continue to face differing licensing obligations across the states, imposing administrative and financial burdens that affect not only brokers, but consumers as well. This is why The Council – as well as all other major stakeholders, including the state insurance regulators represented through the NAIC, support enactment of S. 534, the NARAB II legislation.

NARAB would be a self-regulatory national licensing authority operated by a presidentially-appointed Board of Directors. A majority of the Board would be state insurance regulators, with the remainder representing the various segments of the insurance industry.

NARAB membership would be voluntary. Insurance producers – agents, brokers, and agencies – who opt to become members of NARAB would have to obtain resident licenses from

their home states before applying for NARAB membership. Once licensed in their home states, producers operating in multiple jurisdictions could apply for NARAB membership and one-stop nonresident licensing. To qualify for membership, a producer would be required to comply with NARAB's membership criteria. The NARAB Board would establish the membership criteria, which would include standards for personal qualifications, education, training and experience. In addition, NARAB member applicants would be required to undergo a national criminal background check if their resident state does not require one. Non-resident states would be prohibited from imposing any requirement upon a member of NARAB that is different from the criteria imposed by NARAB.

Applicants would have to pay the fees mandated by each State to receive licenses. Moreover, NARAB would levy and collect assessments from members to cover administrative expenses. The licenses would be obtained from, and the fees would be paid to, NARAB, which would ensure that appropriate licensure applications are filed with, and the requisite fees paid to, each State from which NARAB members seek a license. In other words, NARAB would function as a clearinghouse to more efficiently process multi-state license applications.

NARAB membership would be renewed annually, and NARAB would have the authority to bring disciplinary actions to deny, suspend, revoke or decline renewal of membership. The membership criteria for any NARAB member must meet and exceed the highest professional requirements that currently exist among States. Thus, as a practical matter, to be eligible for NARAB membership a producer would have to effectively satisfy the substantive licensing requirements for all the States.

NARAB would thus be given the authority, among other things, to:

- Create a clearinghouse for processing insurance producer licenses which would avoid duplication of paperwork and effort state-by-state;
- Issue uniform insurance producer applications and renewal applications to apply for the issuance or renewal of state licenses;

- Develop uniform continuing education standards and/or establish a reciprocity process for continuing education credits;
- Create a national licensing exam process; and
- Utilize a national database for the collection of regulatory information concerning the activities of insurance producers.

Finally, the legislation does not seek to replace or displace state insurance regulation. Indeed, the bill very clearly retains state regulatory authority over insurance producers. Although NARAB would have an important role in the licensing of non-resident insurance producers, the bill clarifies the state regulators' continuing role in the licensure process through the notice period and regulator participation on the NARAB Board and in standard setting. Moreover, state regulators would continue to supervise and discipline producers, and would continue to enforce state consumer protection laws.

Conclusion

The licensing of insurance agents and brokers across the country is unnecessarily burdensome, inefficient and costly. The states have worked for years to devise a system to overcome the obstacles created by 56 different jurisdictions seeking to do it their own ways, but for understandable reasons, the political dynamic in those jurisdictions has precluded uniformity. The NARAB provisions of the Gramm- Leach-Bliley Act, enacted in 1999, were the first step in the process toward creating a sensible, streamlined system. Meanwhile, the pace of interstate activity in the insurance marketplace has outstripped the pace of reform efforts in individual states. The NAIC leadership is to be commended for embracing the administrative simplicity that would be achieved through the enactment of S. 534. We strongly believe that this legislation is needed to finally create a state insurance producer licensing system that works for today's agents and brokers – and today's marketplace.

Thank you for your consideration of our views, and for your willingness to devote your legislative attention to this issue.

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