

supported by dozens of organizations including the National Association of State Departments of Agriculture, the U.S. Dairy Export Council, the National Milk Producers Federation, and the National Farmers Union.

In closing, I would like to thank Senator LUGAR for his leadership on this issue. I was pleased to join with him, the ranking member, Senator HARKIN, the Democratic Leader, Senator DASCHLE, Senator CONRAD and others in this effort, and I look forward to working with them and all members of the Senate to see that this measure becomes law.

#### THE GUN SHOW LOOPHOLE

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that a copy of a letter from the International Brotherhood of Police Officers, in support of my amendment to close the gun show loophole, be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

INTERNATIONAL BROTHERHOOD  
OF POLICE OFFICERS,

*Alexandria, VA, May 19, 1999.*

Hon. FRANK LAUTENBERG,  
U.S. Senate, Washington, DC.

DEAR SENATOR LAUTENBERG: The International Brotherhood of Police Officers (IBPO) is an affiliate of the Service Employees International. The IBPO is the largest police union in the AFL-CIO.

On behalf of the entire membership of the IBPO, I am writing to express our support for your amendment that would close the gun show loophole. Every year, there are approximately 4,000 gun shows across the country where criminals can buy guns without a background check. This problem arises because while federally-licensed dealers sell most of the firearms at these shows, about 25 percent of the people selling firearms are not licensed and they are not required to comply with the background check as mandated by the Brady Law.

The "Lautenberg amendment" will close the gun show loophole and help law enforcement trace illegal firearms. The police officer on the street understands that this legislation is needed to help shut down the deadly supply of firearms to violent criminals.

Sincerely,

KENNETH T. LYONS,  
*National President.*

#### FINANCIAL SERVICES MODERNIZATION ACT OF 1999

Mr. BRYAN. Mr. President, I want to voice my disagreement with a portion of Senate Report Number 106-44, which accompanied S. 900, the Financial Services Modernization Act of 1999. The Report describes an amendment that I offered that was adopted by a unanimous vote of the Senate Banking Committee during its consideration of S. 900. I want to explain what I intend that amendment to mean and how I intend its language to be interpreted.

At issue is the standard for determining whether State laws, regulations, orders and other interpretations regulating the sale, solicitation and cross-marketing of insurance products

should be preempted by federal laws authorizing insurance sales by insured depository institutions and their subsidiaries and affiliates. Since the inception of the national banking system, the insurance sales powers of national banks have been heavily restricted. In addition, since the inception of the insurance industry in this country, the States have been the virtually exclusive regulators of that business. Although S. 900 seeks to tear down the barriers that separate the banking, insurance and securities industries, at the same time it seeks to preserve functional regulation. This means that the extensive regulatory systems that have been developed to protect consumer interests in each area of financial services should be retained.

For that reason, one of the principles of the proposed legislation is to ensure that the activities of everyone who engages in the business of insurance should be functionally regulated by the States. After all, the States are the sole repository of regulatory expertise in this area. During my review of the Committee Print before the mark-up and during my conversations with my Senate colleagues, it became evident that the Committee Print's provisions regarding the preemption of State insurance laws and regulations did not adhere to this principle. The Committee Print disregarded the Supreme Court's holding in *Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25 (1996), regarding the standard for preempting State regulation of insurance sales activity.

I therefore introduced an amendment that replaced the Committee Print's insurance sales preemption provisions with substitute provisions based on the Supreme Court's Barnett standard. My amendment deleted all of the provisions in the Committee Print regarding the permissible scope of state regulation of the insurance sales activities of insured depository institutions, their subsidiaries and affiliates. My amendment substituted language that had been developed and analyzed during prior considerations of these issues in previous Congresses, in particular during senate consideration of H.R. 10 last year.

The core preemption standard included in my amendment now appears as Section 104(d)(2)(A) of S. 900. It states:

In accordance with the legal standards for preemption set forth in the decision of the Supreme Court of the United States in *Barnett Bank of Marion County N.A. v. Nelson*, 116 U.S. 1103 (1996), no State may, by statute, regulation, order, interpretation, or other action, prevent or significantly interfere with the ability of an insured depository institution, or a subsidiary or affiliate thereof, to engage, directly or indirectly, either by itself or in conjunction with a subsidiary, affiliate, or any other party, in any insurance sales, solicitation, or cross-marketing activity.

The "prevent or significantly interfere" language was taken directly from the Supreme Court's Barnett decision

and is intended to codify that decision. No further amplification of the standard was included because my colleagues and I intended to leave the development of the interpretation of that standard to the courts.

There is a great deal of disagreement among both regulators and members of the affected industries as to the manner in which the standard should be amplified. Indeed, State insurance regulators and significant portions of the insurance industry did not support the usage of the "significant interference" test at all but instead sought a clarification, supported by the Barnett opinion, that only state laws and regulations that "prohibit or constructively prohibit" an insured depository institution, or an affiliate or subsidiary of an insured depository institution, from engaging in insurance sales activities should be preempted.

Mr. SARBANES. I wish to associate myself with the statements of my colleague, Senator Bryan, the author of the amendment adopted by the Banking Committee. My understanding in voting for his amendment was that it codified the Barnett Bank standard for preemption of State laws. The Committee Report accompanying S. 900 seeks to amplify, or put a gloss on, the Barnett Bank standard. I would like to ask the Senator from Nevada whether the gloss put on the "prevent or significantly interfere" standard in the Committee Report is in keeping with his amendment.

Mr. BRYAN. My colleague from Maryland asks a perceptive question. The Committee Report attempts to clarify the core preemption standard in a way that is contrary to the meaning of the provision. Page 13 of the Report states that State laws are preempted not only if they "prevent or significantly interfere" with a national bank's exercise of its powers" but also if they "unlawfully encroach" on the rights and privileges of national banks;" if they "destroy or hamper" national banks' functions;" or if they "interfere with or impair" national banks' efficiency in performing authorized functions." The clauses after the initial restatement of the standard are paraphrases of the holdings of the cases cited in Barnett.

As I noted earlier, I intentionally omitted any amplification of the Barnett standard. In addition, the last paraphrase (regarding "efficiency") is correct and harmful. It is incorrect because it implies that it applies to any authorized function. In fact, the case cited by the Supreme Court in Barnett said that a State cannot impair a national bank's ability to discharge its duties to the government. The last paraphrase is harmful because it could dramatically expand the scope of the preemption provision. It could do so if read to prohibit the application of any State law that impairs a national bank's or its affiliate's or subsidiary's efficiency in selling insurance. The Barnett opinion does not support any

such reading. Moreover, if this language had been suggested as an amendment to my amendment, I would not have supported it nor would the majority of my colleagues.

The Committee Report also lists several examples of State law provisions that the Report states should be preempted under the standard, incorporated into S. 900. As noted above, this violates my intent in offering an amendment based on the Barnett standard. For example, page 13 of the Committee Report states that an "example of a State law that would be preempted under the standard set forth in subsection 104(d)(2)(A) would be a statute that limits the volume or portion of insurance sales made by an insurance agent on the basis of whether such sales are made to customers of an insured depository institution or any affiliate of the agent." I strongly disagree. State statutes that limit sales in this manner or that effectively require all insurance agents to engage in public insurance agency activities, and not limit their sales efforts to their captive customers, are not preempted under the Section 104(d)(2)(A) preemption standard.

In addition, page 14 of the Committee Report offers a requirement that insurance activities take place more than 100 yards from a teller window as an example of a State law provision that would be preempted. I wish to note that less restrictive provisions that merely require the physical separation of insurance activities from other activities within a bank are not preempted under the Section 104(d)(2)(A) preemption standard. The intent underlying the amendment was to leave these determinations of what is or is not preempted to the courts, based on the applicable legal standards identified in Barnett.

Finally, I fell compelled to note that page 15 of the Committee Report states that nothing in the preemption provisions can be read to require licensure of the bank itself, only of employees acting as agents. While this is technically true, it creates some potential confusion with the core licensure requirement. This should be read as allowing institution licensure so long as that licensure does not "prevent or significantly interfere with" the exercise of authorized insurance sales powers.

Mr. SARBANES. I would like to point out that the language of the amendment offered by my colleague from Nevada was previously explained in the Report of the Banking Committee that accompanied H.R. 10 last year. For State laws that fall outside the 13-point safe harbor, the bill does not limit in any way the application of the Supreme Court's Barnett Bank decision. State laws outside the safe harbor could be challenged under that decision. This year's Committee Report incorrectly describes the standard that State laws must meet under Barnett Bank in order to avoid being preempted.

Mr. BRYAN. In closing, I should say that I would have brought my concerns regarding the Committee Report language directly to the Committee Chairman, Senator GRAMM, and his staff but I did not have the opportunity to read the Committee Report language discussing my amendment prior to its publication.

#### MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

##### EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting a withdrawal and sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

#### MEASURE PLACED ON THE CALENDAR

The following joint resolution was read the second time and placed on the calendar:

S.J. Res. 26. Joint resolution expressing the sense of Congress with respect to the court-martial conviction of the late Rear Admiral Charles Butler McVay, III, and calling upon the President to award a Presidential Unit Citation to the final crew of the U.S.S. *Indianapolis*.

#### EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-3291. A communication from the Director, Corporate Audits and Standards, Accounting and Information Management Division, General Accounting Office, transmitting, pursuant to law, the report of financial statements for the Congressional Award Foundation for fiscal years 1997 and 1998; to the Committee on Governmental Affairs.

EC-3292. A communication from the Regulations Policy Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Secondary Direct Food Additives Permitted in Food for Human Consumption", received May 19, 1999; to the Committee on Health, Education, Labor, and Pensions.

EC-3293. A communication from the Regulations Policy Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers", received May 19, 1999; to the Committee on Health, Education, Labor, and Pensions.

EC-3294. A communication from the Administrator, Agricultural Marketing Service, Marketing and Regulatory Programs, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Avocados Grown in South Florida; In-

creased Assessment Rate" (Docket No. FV99-915-1-FR), received May 19, 1999; to the Committee on Agriculture, Nutrition, and Forestry.

EC-3295. A communication from the Administrator, Agricultural Marketing Service, Marketing and Regulatory Programs, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Raisins Produced From Grapes Grown in California; Increase in Assessment Rate" (Docket No. FV99-989-2-FIR), received May 18, 1999; to the Committee on Agriculture, Nutrition, and Forestry.

EC-3296. A communication from the Congressional Review Coordinator, Regulatory Analysis and Development, Policy and Program Development, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Imported Fire Ant; Quarantined Areas and Treatment" (Docket No. 98-125-1), received May 19, 1999; to the Committee on Agriculture, Nutrition, and Forestry.

EC-3297. A communication from the Director, Office of Regulatory Management and Information, Office of Policy, Planning and Evaluation, Environmental Protection Agency, transmitting, pursuant to law, the report of two rules entitled "Spinosad; Pesticide Tolerance (FRL 3 6081-8)" and "Tebuconazole; Pesticide Tolerance for Emergency Exemption (FRL # 6079-1)", received May 18, 1999; to the Committee on Agriculture, Nutrition, and Forestry.

EC-3298. A communication from the President and Chairman, Export-Import Bank of the United States, transmitting, pursuant to law, a report relative to a transaction involving U.S. exports to Saudi Arabia; to the Committee on Banking, Housing, and Urban Affairs.

EC-3299. A communication from the Assistant General Counsel for Regulations, Office of the Secretary, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled "Revised Restrictions on Assistance to Noncitizens-Final Rule (FR-4154)" (RIN2501-AC36), received May 18, 1999; to the Committee on Banking, Housing, and Urban Affairs.

EC-3300. A communication from the Assistant General Counsel for Regulations, Office of the Secretary, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled "Section 8 Tenant-Based Assistance; Statutory Merger of Section 8 Certificate and Voucher Programs; Interim Rule (FR-4428)" (RIN2577-AB91), received May 18, 1999; to the Committee on Banking, Housing, and Urban Affairs.

EC-3301. A communication from the General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled "Final Flood Elevation Determinations, 64 FR 24517, 05/07/99", received May 18, 1999; to the Committee on Banking, Housing, and Urban Affairs.

EC-3302. A communication from the General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled "Suspension of Community Eligibility, 64 FR 24512, 05/07/99", received May 18, 1999; to the Committee on Banking, Housing, and Urban Affairs.

EC-3303. A communication from the General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled "Final Flood Elevation Determinations, 64 FR 24516, 05/07/99", received May 18, 1999; to the Committee on Banking, Housing, and Urban Affairs.

EC-3304. A communication from the General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled "Final Flood