

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
PROPERTY-CASUALTY INSURANCE COMMITTEE
SPECIAL MEETING ON INSURANCE BINDERS/CERTIFICATES OF INSURANCE
BURLINGTON, VERMONT
JULY 15, 2012
MINUTES

The National Conference of Insurance Legislators (NCOIL) Property-Casualty Insurance Committee met at the Hilton Burlington in Burlington, Vermont, on Sunday, July 15, 2012, at 8:00 a.m.

Rep. Steve Riggs of Kentucky, chair of the Committee, presided.

Other members of the Committee present were:

Rep. Barry Hyde, AR	Sen. William Larkin, Jr., NY
Sen. Travis Holdman, IN	Rep. George Keiser, ND
Rep. Matt Lehman, IN	Sen. Kevin Bacon, OH
Rep. Ron Crimm, KY	Rep. Michael Stinziano, OH
Sen. Dan Morrish, LA	Rep. Brian Kennedy, RI
Rep. Don Flanders, NH	Rep. Charles Curtiss, TN
Sen. Carroll Leavell, NM	Rep. Bill Botzow, VT
Sen. Neil Breslin, NY	Rep. Kathie Keenan, VT

Other legislators present were:

Rep. John Picchiotti, ME
Sen. Mike Hall, WV

Also in attendance were:

Susan Nolan, Nolan Associates, NCOIL Executive Director
Candace Thorson, Nolan Associates, NCOIL Deputy Executive Director
Michael Keegan, Nolan Associates, NCOIL Director of Legislative Affairs—DC
Michael Carroll, Nolan Associates, NCOIL Director of Legislative Affairs

Interested parties who offered comments included:

Agents:

Wes Bissett, Independent Insurance Agents & Brokers of America (IIABA)
David Eppstein, National Association of Professional Insurance Agents (PIA)

Lenders:

Jose Becquer, Wells Fargo, representing the Lenders' Coalition
Catherine Rodewald, Prudential Asset Resources
Deborah Wright, Prudential Mortgage Capital Company

P-C Insurers:

Eric Goldberg, American Insurance Association (AIA)
Chris Hackett, Property Casualty Insurers Association of America (PCI)
Mike Lane, State Farm Insurance Companies
Joe Thesing, National Association of Mutual Insurance Companies (NAMIC)

PROPOSED INSURANCE BINDER MODEL ACT

Ms. Thorson said the Committee had reviewed a markup of a draft *Model Act Regarding Use of Insurance Binders as Evidence of Commercial Insurance Coverage*, sponsored by Rep. Lehman, at a special July 14 working session. She said legislators at the meeting had considered and voted on proposed amendments, which Rep. Lehman had sponsored for discussion, to Section 3 Definitions

and Section 4(A) Insurer Obligations. She said that the Committee had yet to debate other provisions in the markup.

SECTION-BY-SECTION REVIEW OF BINDER MODEL/AMENDMENTS

Rep. Lehman reported that the Mortgage Bankers Association (MBA) just had submitted [new proposed amendments](#), which he was sponsoring for discussion, that would add two subsections to Section 4 and would revise proposed Section 5 Lender Obligations language.

Rep. Riggs said that the new MBA amendments had been submitted after the 30-day deadline and so the Committee, as per NCOIL bylaws, needed to vote by two-thirds to waive the 30-day rule in order to consider the amendments and to hold other two-thirds votes to adopt them. The Committee unanimously waived the 30-day rule.

MBA AMENDMENTS TO SECTION 4, INSURER OBLIGATIONS

Rep. Lehman said that the proposed MBA change to Section 4 would add the following two subsections:

- C. An insurer or its authorized representative providing a binder involving a commercial property lending transaction shall include coverage details substantially similar to those currently contained on the ACORD 28 (2009/12).
- D. An insurer or its authorized representative shall deliver the policy to the primary insured and the lender within five (5) days after issuance of the policy.

Rep. Lehman and Ms. Wright of Prudential Mortgage Capital Company said that the proposed MBA language tried to respond to certain Committee decisions at the July 14 meeting—specifically, Committee decisions not to 1) add language to the model that would require a binder to include details such as limits and sub-limits and 2) shift the focus of the model to when an insurer issues a binder rather than to when a lender receives it. Ms. Wright said that the MBA was not wedded to the exact wording in its proposed Section 4 subsections, as long as the end result achieved the same purpose.

The Committee and interested parties then discussed:

- how to satisfy lenders' request for more detailed/expanded binder forms, including 1) whether state law should reference a specific company's form and 2) the potential role of a contemplated ACORD 875 form, which would merge an ACORD 28 evidence of insurance with an ACORD 75 commercial property binder
- whether to focus the proposed model solely on banning binder expiration dates or to also establish specific rules on the data that binders must convey
- how lenders might receive evidence of insurance at policy renewal
- whether an expanded binder form could cause some insurers to lengthen their underwriting process, thereby delaying policy issuance
- how the proposed model might impact agents, including increased liability exposure

REP. LEHMAN PROPOSAL

Rep. Lehman expressed interest in returning the model to what he said was its original, simple intent: to ban binder expiration dates. To do so, he suggested, the Committee could:

- decline to adopt the MBA's proposed new subsections C and D to Section 4, and
- delete the existing Section 5, which related to Lender Obligations, in its entirety

Rep. Lehman said that, upon taking such actions, the model would include no references to either lenders or evidence of insurance. He said that lenders could address their evidence of insurance needs “outside the model” by requiring to see a policy itself, for instance. He also said, among other things, that the marketplace could play a role in how lenders and insureds resolve their evidence of insurance concerns.

Responding to Rep. Lehman’s suggestion, as well as to a question he posed regarding whether the contemplated ACORD 875 form might be “a step in the right direction,” interested parties made the following comments, among others:

- Mr. Goldberg, representing certain property-casualty insurers, expressed support for striking Section 5 Lender Obligations but said that he could not yet comment on a possible ACORD 875 form.
- Mr. Becquer, of Wells Fargo and on behalf of the Lenders’ Coalition, supported striking Section 5 but stressed that, even without Section 5, the draft NCOIL model still would not address certain lender concerns—specifically, the model would not require binders to include more details than they currently do and would not clarify that certificates are more than “information only.”
- Mr. Eppstein, representing certain property-casualty insurance agents, supported striking Section 5 and also supported, “in concept,” the contemplated ACORD 875 form.

SECTION 4 INSURER OBLIGATIONS

Rep. Riggs suggested that the Committee look at Section 4(B), since the Committee at its July 14 meeting had last finished reviewing Section 4(A). Ms. Thorson said that 4(B) read as follows:

- B. An insurer shall only cancel an insurance binder in accordance with the minimum cancellation provisions included in the insurance policy and in accordance with *[insert appropriate state law on insurance policy cancellations]*.

Rep. Lehman said that IIABA, PIA, and MBA each had proposed amendments related to Section 4(B) but that all three groups had withdrawn their proposals. Rep. Riggs said that the Section 4(B) language, therefore, would remain as originally introduced.

SECTION 5 LENDER OBLIGATIONS

Rep. Riggs said the Committee would move on to Section 5, and Rep. Lehman made an official motion to delete Section 5 in its entirety, as per his earlier suggestion. The Committee struck Section 5 via unanimous voice vote.

SECTIONS 6 AND 7, PENALTIES AND EFFECTIVE

Ms. Thorson said that Section 6 related to penalties and that Section 7 provided an effective date of 90 days after enactment of the Act. Upon a motion made by Sen. Leavell, the Committee adopted the provisions, as introduced, via unanimous voice vote.

SECTION 2 PURPOSE

The Committee then discussed the Purpose of the model, as addressed in Section 2, so that the Purpose would accurately reflect provisions in the amended draft, including the exclusion of Section 5 Lender Obligations. After legislator and interested-party discussion, the Committee approved via unanimous voice vote the following revised Section 2:

Section 2. Purpose

This Act establishes that insurance binders obligate coverage until a policy is issued or cancelled.

TITLE OF MODEL ACT

Ms. Thorson recognized that the proposed title of the model was the *Model Act Regarding Use of Insurance Binders as Evidence of Commercial Insurance Coverage*. Sen. Leavell, in an effort to ensure that the title accurately reflected provisions in the amended draft, made a motion to revise the proposed title to the following: *Model Act Regarding Use of Insurance Binders as Evidence of Coverage*. The Committee approved Sen. Leavell's motion via unanimous voice vote.

OTHER COMMENTS

Mr. Thesing of NAMIC expressed concern over a Committee decision on July 14 to apply the proposed model act to all lines of insurance, including residential, and not just to commercial lines as initially drafted. He said there could be negative unintended consequences of the broader approach, and he encouraged the Committee to defer final action on the proposed model until p-c industry representatives could consider the possible consequences and report to the Committee. Mr. Lane of State Farm, expanding on Mr. Thesing's comments, said that eliminating residential binder expiration dates could discourage consumers from providing important underwriting information to insurers. Mr. Lane also said that "hard-and-fast" expiration dates were important because state laws relative to binders varied significantly.

In Committee discussion that followed, legislators addressed:

- whether to defer the model until the November Annual Meeting
- how the proposed NCOIL model, in establishing that binders are contracts, might impact future litigation
- how the proposed model could impact marketplace activity

After Committee discussion, Rep. Lehman moved adoption of the proposed [model law, as amended](#).

Ms. Thorson noted that a two-thirds vote would be required. The Committee then voted 13 to 2 in favor of adoption. Legislators who voted in favor were:

Rep. Barry Hyde, AR	Sen. William Larkin, Jr., NY
Sen. Travis Holdman, IN	Rep. George Keiser, ND
Rep. Matt Lehman, IN	Sen. Kevin Bacon, OH
Sen. Dan Morrish, LA	Rep. Brian Kennedy, RI
Rep. Don Flanders, NH	Rep. Charles Curtiss, TN
Sen. Carroll Leavell, NM	Rep. Bill Botzow, VT
Sen. Neil Breslin, NY	Rep. Kathie Keenan, VT

Legislators who opposed the motion were Rep. Crimm and Rep. Stinziano.

PROPOSED CERTIFICATES OF INSURANCE MODEL ACT

Ms. Thorson provided background on a proposed [Certificates of Insurance Model Act \(substitute\)](#). She said, among other things, that the Committee began discussing certificate of insurance model legislation in July 2010 and had set aside its original draft during a May 11 call, anticipating an industry consensus proposal. Ms. Thorson said that the new draft before the Committee reflected input from the American Insurance Association (AIA), Independent Insurance Agents & Brokers of America (IIABA), National Association of Mutual Insurance Companies (NAMIC), National

Association of Professional Insurance Agents (PIA), and Property Casualty Insurers Association of America (PCI).

Mr. Bissett of IIABA said that certificate fraud was a problem and that there was nothing to discourage third parties from asking agents to include false or misleading information on a certificate. He said the proposed model would address that concern by extending the reach of state insurance law so that it applied to third parties. He said the draft model would help agents who were being pressured to change certificate forms and would clarify that certificates do not convey rights, such as disclosure to third parties, that the policy did not authorize.

Mr. Eppstein of PIA said that government agencies sometimes pressured agents to change certificates and that the proposed NCOIL model would give insurance regulators clear authority to curb fraud. He said that although the proposed model no longer included the original draft's "for information only" disclosure requirement—a point of contention for lenders, Mr. Eppstein said—certain p-c industry representatives wanted to add "for info only" to the current proposal. He said that lender concerns were addressed when the Committee adopted the *Model Act Regarding Use of Insurance Binders as Evidence of Coverage*.

Mr. Goldberg of AIA said, among other things, the proposed *Certificates of Insurance Model Act (substitute)* made an important distinction between the purpose of certificates versus the purpose of insurance policies.

Ms. Rodewald of Prudential Asset Resources distinguished between certificates provided to third parties such as government agencies and certificates provided to lenders. She agreed that the forms given to third parties were informational, but she asserted that, because lenders are parties to an insurance contract, the certificates that lenders receive should not be. She said lenders could not support the proposed certificates of insurance model act unless it included a specific lender carve-out.

After interested parties discussed the appropriateness of a lender carve-out, the Committee agreed to request markup amendments to the proposed model act and to consider them via conference call prior to the Annual Meeting 30-day deadline.

ADJOURNMENT

There being no further business, the meeting adjourned at 9:30 a.m.