

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
PROPERTY-CASUALTY INSURANCE COMMITTEE  
SAN FRANCISCO, CALIFORNIA  
NOVEMBER 21, 2014  
MINUTES

The National Conference of Insurance Legislators (NCOIL) Property-Casualty Insurance Committee met at the Grand Hyatt San Francisco in San Francisco, California, on Friday, November 21, 2014, at 3:15 p.m.

Rep. Matt Lehman of Indiana, chair of the Committee, presided.

Other members of the Committee present were:

Rep. Kurt Olson, AL	Sen. Carroll Leavell, NM
Sen. Jason Rapert, AR	Assem. William Barclay, NY
Rep. Peggy Mayfield, IN	Sen. Neil Breslin, NY
Rep. Robert Damron, KY	Assem. Kevin Cahill, NY
Rep. Steve Riggs, KY	Sen. James Seward, NY
Rep. Bart Rowland, KY	Rep. Bob Hackett, OH
Rep. Tommy Thompson, KY	Rep. Michael Henne, OH
Sen. Ronnie Johns, LA	Rep. Marguerite Quinn, PA
Rep. Pete Lund, MI	Sen. David Bates, RI
Rep. Don Gosen, MO	Sen. William Walaska, RI
Rep. George Keiser, ND	Rep. Michael Gambrell, SC
Sen. Jerry Klein, ND	Rep. Bill Botzow, VT
Sen. David O'Connell, ND	Rep. Kathie Keenan, VT
Rep. Don Flanders, NH	Rep. Warren Kitzmiller, VT

Other legislators present were:

Sen. Matt McCoy, IA	Assem. Craig Coughlin, NJ
Rep. Pete DeGraaf, KS	Sen. Kevin Bacon, OH
Rep. Janice Cooper, ME	Rep. Heather Bishoff, OH
Rep. Ken Goike, MI	Rep. Jay Hottinger, OH
Rep. Tom Leonard, MI	Sen. Ronnie Cromer, SC
Rep. Ken Yonker, MI	Rep. Sarah Copeland Hanzas, VT
Sen. Mike Parson, MO	Rep. Willem Jewett, VT
Sen. John Horhn, MS	

Also in attendance were:

Susan Nolan, Nolan Associates, NCOIL Executive Director  
Candace Thorson, Nolan Associates, NCOIL Deputy Executive Director  
Molly Dillman, Nolan Associates, NCOIL Director of Legislative Affairs  
Andrew Williamson, Nolan Associates, NCOIL Director of Legislative Affairs

#### CONSUMER LITIGATION FUNDING

Rep. Lehman, sponsor of a proposed *Model Consumer Lawsuit Lending Alignment Bill*, offered background on NCOIL efforts to develop proposed model legislation regarding consumer litigation funding. He said that as per Committee direction after the Summer Meeting, he and Sen. Breslin, who

had been sponsoring a proposed *Civil Justice Funding Model Act*, had discussed the possibility of a revised proposal and that those discussions had resulted in a new draft for Annual Meeting consideration.

Sen. Breslin commented on the importance of consumer litigation funding and then overviewed the newly proposed *Consumer Litigation Funding Model Act*, saying, among other things, that it differed from his earlier proposal because it included a cap on the rates that funding companies could charge as well as a cap on their administrative fees.

Rep. Lehman asked for further information regarding how “fee,” as related to the proposed caps in Section 5 of the revised proposal, might be interpreted. Jack Kelly, representing the American Legal Finance Association (ALFA), said that interest rates would not be considered fees and, among other things, that fees would not be compounded. He commented that once the idea of capping the amount of fees a lender could charge had been proposed, that idea replaced an earlier concept of capping the length of time during which a lender could impose fees.

Mr. Kelly, responding to questions raised by Rep. Lehman, said that should a plaintiff change attorneys, the new attorney would have to be made aware of the funding transaction; that the litigation funding contract would identify the jurisdiction in which disputes against the funding company must be made; and that specifying in law that a funding transaction is not a loan would help to prevent legal challenges.

During discussion that followed, Rep. Gosen and Mr. Kelly discussed the ability of the proposed model to protect consumers in a broad sense, and Mr. Kelly and Sen. Bacon discussed issues regarding payment of liens.

Thurbert Baker, former Attorney General of Georgia speaking on behalf of the U.S. Chamber Institute for Legal Reform, said that the new proposal contained some important changes but that he still had concerns. He said he opposed the provision establishing that consumer funding transactions are not loans and said that the proposed model should limit the length of time during which funders could charge fees and interest, not just impose caps on what they could charge. Though he said the fee cap was a “step in the right direction,” Mr. Baker also said the proposed model’s 45 percent cap was too high.

John Ashenfelter of State Farm spoke to some specific consumer experiences with litigation funding and to judicial activity in several states and asserted, among other things, that the funding transactions are loans.

Joe Thesing of the National Association of Mutual Insurance Companies (NAMIC) said that consumer litigation funding companies do not take unnecessary risks when contracting with plaintiffs. He echoed Mr. Baker’s concerns regarding rate caps, duration of charges, and establishing in law that consumer litigation funding transactions are not loans. He said it would be better if the proposed model were silent on that issue.

In discussion that followed:

- Committee members and interested parties discussed potential tax consequences when plaintiffs receive consumer litigation funding.

- Sen. Breslin said that plaintiffs were entitled to a “fair and just settlement” and that consumer legal funding could be important in that regard.
- Mr. Thesing commented that insurance was one of the most heavily regulated industries in the country.
- Mr. Baker said that determining that consumer legal funding transactions are not loans would prevent state agencies from regulating consumer legal funding under certain consumer financial protection statutes.
- Mr. Kelly said the proposed model would preclude further anecdotes in which consumers have bad experiences with consumer litigation funding.
- Sen. Rapert and Mr. Kelly discussed tax issues regarding litigation funding versus consumer litigation funding.

Following a motion made and seconded, the Committee declined to adopt the proposed *Consumer Litigation Funding Model Act* by a vote of 15 to 14. Those voting in favor of the proposed model were:

Rep. Peggy Mayfield, IN	Assem. Kevin Cahill, NY
Rep. Robert Damron, KY	Sen. James Seward, NY
Rep. Steve Riggs, KY	Sen. David Bates, RI
Rep. Tommy Thompson, KY	Sen. William Walaska, RI
Sen. Dan “Blade” Morrish, LA	Rep. Bill Botzow, VT
Assem. William Barclay, NY	Rep. Kathie Keenan, VT
Sen. Neil Breslin, NY	Rep. Warren Kitzmiller, VT

Those voting against the proposed model were:

Rep. Kurt Olson, AL	Sen. David O’Connell, ND
Sen. Jason Rapert, AR	Rep. Don Flanders, NH
Rep. Bart Rowland, KY	Sen. Carroll Leavell, NM
Sen. Ronnie Johns, LA	Rep. Bob Hackett, OH
Rep. Pete Lund, MI	Rep. Michael Henne, OH
Rep. Don Gosen, MO	Rep. Marguerite Quinn, PA
Rep. George Keiser, ND	Rep. Michael Gambrell, SC
Sen. Jerry Klein, ND	

#### ADJOURNMENT

There being no further business, the meeting adjourned at 4:30 p.m.