NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
PROPERTY-CASUALTY INSURANCE COMMITTEE
SAN ANTONIO, TEXAS
NOVEMBER 14, 2015
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) Property-Casualty Insurance Committee met at the Hilton Palacio del Rio in San Antonio, Texas, on Saturday, November 14, 2015, at 9:45 a.m.

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

Other members of the Committee present were:

Sen. Jason Rapert, AR	Rep. Don Flanders, NH
Sen. Travis Holdman, IN	Sen. James Seward, NY
Rep. Ron Crimm, KY	Sen. Robert Hayes, Jr., SC
Rep. Steve Riggs, KY	Rep. Bill Botzow, VT
Rep. Ken Goike, MI	Rep. Kathie Keenan, VT
Rep. Don Gosen, MO	Rep. Warren Kitzmiller, VT
Rep. George Keiser, ND	Sen. Mike Hall, WV

Other legislators present were:

Assem. Ken Cooley, CA	Rep. Michael Webber, MI
Rep. Romy Cachola, HI	Rep. Joe Atkins, MN
Rep. Martin Carbaugh, IN	Assem. Maggie Carlton, NV
Rep. Peggy Mayfield, IN	Sen. Jan Angel, WA
Rep. Jim Gooch, KY	Rep. Graham Hunt, WA
Rep. Mike Huval, LA	Rep. Brandon Vick, WA

Also in attendance were:

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

MINUTES

Upon a motion made and seconded, the Committee unanimously approved the minutes of its July 18, 2015, meeting in Indianapolis, Indiana.

FEMA FLOOD INSURANCE AFFORDABILITY STUDY/RELATED ISSUES

Andy Neal of FEMA's Federal Insurance and Mitigation Administration said that a 2014 law required FEMA to study the affordability of National Flood Insurance Program (NFIP) premiums. He said that Phase One of the study, released in early 2015, examined what an affordability program could look like and addressed items including who might receive assistance and how much would they get, who would pay for such financial support, and who would administer it. He said that FEMA likely would release Phase Two, which had been intended to provide a cost/benefit analysis to the U.S. of having an affordability program, in early December. Mr. Neil cautioned, though, that the National Academy of Sciences, which was developing the study, had determined that such analysis was not possible. He said that researchers would need to know what the full-risk premiums were for properties that have not been charged full-risk amounts, but there was no way for researchers to gauge that.

Mr. Neal said that following enactment of the 2012 Biggert-Waters Act, FEMA conducted a voluntary study with the National Academy of Sciences that assessed FEMA's risk-rating methodology. He also said that FEMA had submitted to Congress a study regarding reinsurance and NFIP privatization.

In response to a question from Rep. Henne, Mr. Neal said that flood maps often change because topographical data is refined and risk models are improved.

In response to a comment from Rep. Riggs regarding the difficulty of defining "affordability," Mr. Neal agreed that it was a challenge but said that FEMA was required to establish certain parameters to help determine what could be considered an affordable rate.

Sen. Rapert then spoke to recent flooding in Arkansas, saying that many areas would not have flooded if federal officials had maintained the dams for which they were responsible. He then asked Mr. Neal about FEMA's role in ensuring that such structures were maintained. Mr. Neal said, among other things, that it was a complex problem, that some federal funding was available to help homeowners when levees were being constructed, and that additional homeowner education was needed.

Following a question from Rep. Keiser regarding whether certain "grandfathered" properties would lose their subsidized rates, Mr. Neal said, in part, that properties built before NFIP flood maps were now losing their subsidies when they were found to be at higher risk.

Rep. Botzow commented that NFIP should consider horizontal risk in addition to the agency's current emphasis on vertical flood hazards. Mr. Neal said that the current modeling was considered "cutting edge" when first implemented but that a technical mapping advisory committee established by Biggert-Waters had just recommended, among other items, that FEMA consider more gradations of risk when assessing flood hazard. He said it would take time to develop a revised approach.

Assem. Carlton said that recent wildfires and related flooding in Nevada had led to uncertainty. Mr. Neal said that although it didn't address all the nuances of such a situation, FEMA now waived the 30-day waiting period for flood coverage when there was a wildfire on federal land.

Birny Birnbaum of the Center for Economic Justice (CEJ) encouraged NCOIL to work toward state-based flood insurance reforms, including through consultation with the NAIC, before NFIP reauthorization discussions take place in 2017. He commented that flood insurance should be provided by the private market and overseen by the states and that doing so would allow states to "reclaim" their insurance regulatory authority. He said that including flood risk in the standard homeowners' insurance policy would substantially reduce the cost of flood coverage, among other benefits.

Mr. Birnbaum also said there was a "dramatic need" to change the current NFIP approach to affordability so that subsidies would go only to those who need them.

TRANSPORTATION NETWORK COMPANY (TNC) REGULATORY ACTIVITY

Comm. James Donelon (LA), speaking on behalf of the National Association of Insurance Commissioners (NAIC), offered background on NAIC efforts related to TNCs. He said that following an August 2014 NAIC seminar on commercial ridesharing, the NAIC Property and Casualty Insurance (C) Committee formed a "sharing economy" working group to look at ridesharing issues. Comm. Donelon said the working group had developed a white paper on TNC oversight and was discussing TNC workers' compensation concerns. He said that 27 states and the District of Columbia had passed TNC legislation, and he described insurance issues related to Periods 1, 2, and 3 of a TNC transaction.

Rep. Hackett said that certain TNC legislation in Ohio also would apply to taxi drivers who use an app to find passengers, and he said there was discussion as to whether these taxi drivers should abide by all the legislation's rules for TNC drivers. Comm. Donelon said that the taxi industry had weighed in on Louisiana TNC deliberations but not regarding apps. He said, though, that he believed taxi drivers with apps should be regulated like TNC drivers.

Rep. Keiser suggested that there may be a Phase 4. He said this would be the time when a TNC driver has dropped off a passenger and is returning home but does not have the app on and is not accepting new passengers. He said that in this scenario, the driver was only in the area, which could be a significant distance from where the driver is normally located, because he/she had picked up a TNC passenger. Rep. Keiser said that the TNC driver's personal auto insurance policy would seem to apply, though in his opinion the driver was concluding a commercial transaction.

Frank O'Brien of the Property Casualty Insurers Association of America (PCI) said that the NCOIL TNC model act, adopted at the Summer Meeting, was poised to be a significant factor in state deliberations, particularly in Connecticut, Massachusetts, Rhode Island, Vermont, and West Virginia. He said the model also might play a role in states that are revisiting their TNC laws.

PRICE OPTIMIZATION EFFORTS, STATE DEVELOPMENTS

Comm. Donelon said the NAIC had drafted a definition of "price optimization," since there was no generally accepted one, and was developing a white paper regarding the insurer practice. He said regulators were concerned that consumers could be adversely impacted when insurers use underwriting and rating factors that are unrelated to risk of loss. He reported that all states except Illinois specifically prohibit rates from being excessive, inadequate, or unfairly discriminatory and that regulators in those jurisdictions were trying to determine how price optimization factored in. Several states, Comm. Donelon said, had issued bulletins that banned price optimization, though he noted that the practice is legal in EU countries.

Comm. Donelon said that the pending NAIC white paper, which he said would be released at the upcoming NAIC Fall Meeting, offered several recommendations, including that:

- regulators use state laws prohibiting excessive, inadequate, and unfairly discriminatory rates to describe price optimization activities that are not allowed
- insurers derive rating plans from sound actuarial analysis and make them cost-based

- two insurance consumers with the same risk profile should be charged the same premium for the same coverage, though there could be temporary deviations between new and renewal business
- states allow flexibility to reflect insurer loss and expense costs

Rep. Keiser expressed concern regarding “price minimization,” saying that it also was a problem. Comm. Donelon said that, subject to solvency considerations, regulators often do approve insurers’ reduced rate proposals. He asserted that regulators believe rates should not rely on factors such as a consumer’s propensity to shop around.

During discussion that followed, Comm. Donelon said that insurers look at online profiles and other metrics to anticipate consumer behavior and that price capping also could be a form of price optimization.

Mr. Birnbaum of the Center for Economic Justice (CEJ) said that cost-based insurance rates are critical because, among other reasons, insurance is a unique product that consumers must purchase. He commented that insurer rating plans were “qualitatively different” and more granular than they were a decade or more ago. The amount of consumer information that insurers can access has vastly increased, he said.

Regarding the NAIC white paper recommendations, Mr. Birnbaum said it was a “slippery slope” to allow regulators to decide when it is okay to depart from cost-based pricing, such as allowing renewal business to temporarily pay less than new business when all other factors were equal. He also noted that the EU, which allows price optimization, does not require cost-based rates.

In addition, Mr. Birnbaum compared the current rating environment to the time when NCOIL adopted its 2002 insurance scoring model act and insurer use of credit data was relatively new.

Rep. Gosen and Mr. Birnbaum then discussed the pros and cons of targeting advertising to different segments of the population (e.g., senior citizens versus younger consumers) based on their likelihoods of shopping for insurance.

STANDARDIZED RULES FOR TOWING COMPANY ACTIVITY

Lynda Weaver of Nationwide Insurance said that towing company practices affected consumers, businesses, insurers, and other entities and that there were concerns regarding, for instance, towing company fees and consumer rights of recovery. She suggested that the Committee consider model legislation to establish state standards.

ADJOURNMENT

There being no other business, the Committee adjourned at 10:45 a.m.