

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
PROPERTY & CASUALTY COMMITTEE
PORTLAND, OREGON
JULY 16, 2016
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) Property & Casualty Committee met at the Portland Marriott Waterfront Downtown on Saturday, July 16, 2016, at 10:30 a.m.

Representative Matt Lehman of Indiana, Chair of the Committee, presided.

Other members of the Committee present were:

Rep. Deborah Ferguson, AR	Rep. David O'Connell, ND
Rep. Ronald Crimm, KY	Rep. Don Flanders, NH
Rep. Joseph Fischer, KY	Aswm. Maggie Carlton, NV
Rep. Bart Rowland, KY	Asm. Will Barclay, NY
Sen. Dan "Blade" Morrish, LA	Sen. Robert Hackett, OH
Rep. George Keiser, ND	Rep. Michael Henne, OH
Sen. Jerry Klein, ND	Rep. Bill Botzow, VT
	Rep. Kathleen Keenan, VT

Other legislators present were:

Sen. Jan Angel, WA

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO
Paul Penna, Executive Director, NCOIL Support Services, LLC
Will Melofchik, Legislative Director, NCOIL Support Services, LLC

MINUTES

Upon a motion made and seconded, the Committee unanimously approved the minutes of its February 27, 2016, meeting in Little Rock, Arkansas.

UPDATE ON FLOOD INSURANCE AFFORDABILITY EFFORTS AND RELATED STATE, FEDERAL ISSUES

Amy Bach, Executive Director of United Policyholders spoke. Ms. Bach stated that those legislators in States that have experienced flooding know that the flood insurance market is not in the shape we want it to be. Because the Congressional authorization for NFIP will be expiring soon, Congress needs to approve it again or we will run into the same problem we were in a couple years ago where Congress could not agree on reauthorization and closings on home sales could not happen in areas where the borrower needed flood insurance. Ms. Bach stated that United Policyholders is in favor of simplicity and would like 1 contract with 1 policy, 1 premium and 1 set of rules. However, that is not the case in today's market. For years, Ms. Bach and Birny Birnbaum of the Center for Economic Justice (CEJ) were in favor of getting back to an all-risk policy.

Ms. Bach then provided a snapshot of the private flood insurance market. There are some private policies out there but she does not believe that anyone has a great handle on who is selling what in what States. What she knows is that Lloyd's subsidiaries have been selling private flood through a non-admitted surplus lines insurer in Colorado for at least 15 years if not more. You can also buy a wrap policy if you can afford it and a DIC (difference in condition) policy. There is not a lot of knowledge out there about the availability, however, because there has not been a large data-gathering effort.

Ms. Bach further stated there is a lot of opportunity for the private market and it would be great to see admitted carriers get involved. Ms. Bach closed with saying that flood loss is a manageable risk exposure and the sound public policy is to get flood risk back into a home policy.

Frank O'Brien of the Property Casualty Insurers Association of America (PCI) then spoke and stated that it is a very interesting time in the flood insurance market. NCOIL has traditionally had a briefing about it at prior meetings and we are now getting to a point where innovation is starting to take hold. There is now a developing sense in the industry that it is now seen as an underwritable/measurable risk. The industry is not all the way there yet, it is more of a transition phase. The momentum building means that more companies will be moving into the market, which will bring transition issues. Different types of features in policies will create issues for consumers and regulators. Mr. O'Brien said it is important for NCOIL to keep this issue on its agenda for future meetings since there will be regulatory and legislative changes required to be made.

Eric Cioppa, Superintendent of Insurance for the State of Maine stated that NAIC supports H.R. 2901, The Flood Insurance Market and Parity and Modernization Act. There is opportunity for the private flood market to expand.

Rep. Lehman stated that this issue has been on NCOIL agendas for several years and he is pleased to see the progress that has been made.

Rep. Botzow stated that he enjoys this issue because he has seen local towns in Vermont wiped out by floods. He asked what is the difference in risk assessment and assignment between private insurers and the federal government? He asked if someone could tell the crowd what H.R. 2901 specifically does. Also, he asked Mr. O'Brien to say what type of regulatory and legislative changes might need to be made in States.

Mr. O'Brien stated that at its core, H.R. 2901 makes it easier for lenders to accept private flood insurance to satisfy the mandatory flood requirements. In terms of what the States can do regarding upcoming changes - across the country there are non-participating communities in terms of qualifying the NFIP so it would be good to see them participating. Additionally, the framework will need to be put in place for allowing the policies to be sold. Supt. Cioppa agreed with Mr. O'Brien and stated that from a regulatory perspective States will have to think of consumer protection issues such as cancellation rules and unfair claim guidelines.

Birny Birnbaum spoke and handed out some materials. Mr. Birnbaum stated that the implication of H.R. 2901 is that surplus lines writers will be writing the policies. What's going to happen is that as surplus lines cherry pick business, the risky business will stay

with NFIP which will make it more vulnerable and that taxpayers will ultimately have to pay more. Mr. Birnbaum handed out a proposal to move flood insurance back to the States in a more equitable manner.

DISCUSSION OF THE USE OF BIG DATA IN INSURANCE UNDERWRITING

Rep. Lehman stated that we have talked about this issue significantly now and now it is time to get more specific with regards to what needs to be done. Rep. Lehman stated that certain issues are, a.) data ownership, b.) privacy, c.) will carriers begin to require certain technology to be used, d.) will they disclose what they are gathering, e.) who is ultimately responsible if this technology fails.

Supt. Cioppa stated that the NAIC has formed a Big Data Working Group to try and answer some of those and other questions. It is a tough issue because there are several concerns but also great opportunities for carriers to use technology in a way that is beneficial to consumers. Privacy is a huge concern. Also, there is a question of whether smaller carriers be able to compete.

Joe Thesing of the National Association of Mutual Insurance Companies (NAMIC) stated that unfortunately there are no clear answers to the issues/questions Rep. Lehman presented. When NAMIC talks to legislators about technology it is important to remember the goal of technology data-sets – to more accurately assess risk. We need to ask whether legislators and regulators have the tools needed to appropriately analyze the data-sets.

Rachel Jensen of the American Insurance Association (AIA) stated that they are pleased with the NAIC Big Data Working Group, particularly with their effort to try and define what big-data is. AIA supports explorations as to how big-data is used but with the understanding that not all insurers use the data in the same way.

Ms. Bach stated that from her perspective there is a lot of downside for consumers and insurers in overly relying on data they buy from companies who are in the business of profiting from selling data. Her concern is that the increasing reliance of insurers on big-data is that the public strongly values their privacy and they do not like things such as their shopping habits being used. She believes that legislators will have to use a firm hand to prevent such practices.

Mr. Birnbaum stated that State legislators have an opportunity here to prevent federal encroachment. NCOIL should consider working with NAIC dealing with ownership of data. Also, transparency of the data being used needs to be demanded by regulators.

John Ashenfelter from State Farm stated that they do share data with Ford and its mostly for safety purposes - they focus on protecting consumers.

Mark Smith from ISO-Verisk stated that Verisk has a telematics data-exchange contract with GM and its available for any insurer that signs up for the data exchange. They hope more OEM's will join them. Also, there are many consumer benefits from big-data and they stand to explain them if called upon.

Rep. Henne questioned what the line is between proprietary and transparency. He would like to see more transparency so the industry can better understand what data is

going into rate-calculations. Mr. Thesing stated that NAMIC is always happy to work with legislators on ways to educate customers about insurance scoring and underwriting tools. Ms. Bach stated that helping consumers use competition to avoid carriers that are unfairly using big-data would be helpful. Mr. Thesing said that the suggestion that carriers are using data to price unfairly is unfounded and that there are laws in place to prevent that.

Rep. Keiser stated that when consumers shop, that is by definition price optimization. Rep. Keiser stated that if the algorithms are valid, the companies will succeed and the more we reign that back in the less value there is for the good driver that has the right fit to the algorithm. By over-regulating this, we are protecting the bad drivers. Whatever solution we come up with, we have to be careful it is a balanced solution for good and bad drivers. If companies want to have invalid predictors, they will eventually fail – we have to allow for competition in the market. Lastly, Rep. Keiser stated that he thinks consumers own the data and they should be able to opt-in to collection efforts.

Mr. Thesing stated that it would be beneficial for NCOIL to be involved with the NAIC Big Data Working Group. Rep. Lehman agreed and stated that this issue is not going to go away anytime soon.

Mr. Birnbaum stated that we should embrace big-data because of its great potential but it certainly needs guidance.

Dave Snyder from PCI stated that every rating factor used by companies is subject to certain regulations. Also, it is important to not lose sight of that fact that we are talking about risk and we should focus on what are the cost-drivers and what can we do to reduce them.

Alan Smith from R Street Institute stated that fairly discriminating which is what insurers are in the business of doing is all about predictive power. Things such as credit scores are much better than certain social data.

Charlie Burhan from Liberty Mutual stated that the introduction of complex rating variables actually allows carriers to take on more risk. Also, historically, rating factors and statistics often don't make sense at first blush – they take time to become accepted and recognized as useful.

FOLLOW-UP DISCUSSION GENERATED BY PROPERTY & CASUALTY GENERAL SESSION

Rep. Lehman stated that due to time constraints the Committee was unable to have a follow-up discussion on the Property & Casualty General Session titled “Innovation and Disruption: What Does It Mean to the Marketplace and Insurance Industry, What Will it Mean?” However, Rep. Lehman stated that the issues discussed in that general session will surely be discussed at the Annual Meeting in November and beyond.

RE-ADOPTION OF FLEX-RATING REGULATORY IMPROVEMENT MODEL ACT

Joe Thesing stated that NAMIC supports the re-adoption and sees it as a valuable tool.

Rep. Keiser asked if any changes should be made to the model and Mr. Thesing stated that NAMIC supports the Model as it is drafted.

Aswm. Carlton stated that she has concerns over flex-rating and had voiced them when her home state of Nevada had introduced similar legislation. She sees the 12% as a stumbling block to people using the Model. Rep. Lehman stated that it is important to note that the Model is meant for States to adapt to their respective industries/markets – the 12% can be adjusted. Mr. Thesing stated that NAMIC's experience is that a flex-band allows insurers flexibility to respond to changes in the marketplace more quickly. Also, there is no evidence that any of the States that have adopted the Model have then set forth huge rate increases. Also, he noted that the Model allows for a rate decrease, it is not just an increase.

Rep. Keiser stated that this was a very important issue when NCOIL adopted the Model. North Dakota settled upon requiring prior approval. Rep. Kesier questioned the value of re-adopting the Model since it seems that almost all States have gone through the process and settled upon either the Model or prior approval. Mr. Thesing stated that NAMIC would like to have the Model re-adopted so that it can remain an option if and when there is an appetite in a State to talk about rate modernization. Rep. Lehman agreed.

Upon a motion made and seconded, the Committee re-adopted the Flex-Rating Regulatory Improvement Model Act.

ADJOURNMENT

There being no further business, the Committee adjourned at 12:00 p.m.