

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
NCOIL – NAIC DIALOGUE COMMITTEE  
LAS VEGAS, NEVADA  
NOVEMBER 17, 2016  
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) NCOIL – NAIC Dialogue Committee met at the Paris Las Vegas Hotel on Thursday, November 17, 2016 at 5:15 p.m.

Representative Steve Riggs of Kentucky, Chair of the Committee, presided.

Other members of the Committee present were:

Sen. Jason Rapert, AR  
Rep. Matt Lehman, IN  
Rep. Joseph Fischer, KY  
Rep. George Keiser, ND  
Sen. Jerry Klein, ND

Sen. Neil Breslin, NY  
Sen. Bob Hackett, OH  
Sen. Roger Picard, RI  
Rep. Bill Botzow, VT

Other legislators present were:

Asm. Ken Cooley, CA  
Asm. Kevin Cahill, NY

Asm. Will Barclay, NY  
Rep. Marguerite Quinn, PA

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 July 15, 2016, meeting in Portland, Oregon.

## MODEL LAW DISCUSSION

### *ORIGIN/HISTORY OF NAIC ROLE IN MODEL LAWS*

John Huff, NAIC President and Director of the Missouri Department of Insurance stated that the NAIC has been drafting Model Laws for States to consider since its founding in 1871. What makes the NAIC Model Law process stand out in terms of preserving the state-based system of insurance regulation is that a lot of thought is put in before the drafting process even starts – the NAIC Executive Committee must approve a recommendation from one of the NAIC “parent” committees before drafting a new Model or amending an existing Model begins. The subject matter of the Model must involve either a national standard or an issue that begs for more uniformity among the States. Once the decision is made to begin drafting a Model, the dialogue process with interested parties and legislators begins. Once a Model is drafted, it requires 2/3 approval of NAIC membership to be adopted. Some of the hallmarks of the Model process is its transparency and the ability to track the Model’s process on the NAIC

website to see how many States have adopted it. It is also important that all States are included in the process – each State has 1 vote.

Rep. Riggs asked how the NAIC Model Law process has changed and/or expanded over the years. For instance, did NAIC start drafting Models solely relating to the accreditation process? Andy Beal, CEO of NAIC, stated that NAIC has always drafted Models outside of accreditation, but there is no doubt that the accreditation Models receive a higher level of attention. Mike Kreidler, Commissioner of the Washington Insurance Department, stated that the accreditation Models have been a higher priority because a State's failure to adopt one of the accreditation Models could result in that State losing NAIC accreditation status. Rep. Riggs asked if any of the NAIC Commissioners/Directors had an example of enacting legislation in their home State and then taking that idea to the NAIC so a Model could be drafted. Cmsr. Kreidler stated that around 2004, Washington had enacted medical malpractice reporting legislation which led to the NAIC drafting a Model on that issue. Dir. Huff emphasized the word "model" because ultimately it is up to the States to decide what is appropriate to adopt in their State.

Rep. Lehman asked how long does a State have to adopt something from the time NAIC adopts it as an accreditation standard? Dir. Huff stated that after a Model is approved by NAIC membership, it goes to the NAIC F Committee to decide if it will become an accreditation standard. The Model then has a 1 year comment period which is then followed by a minimum 2-year window for States to comply. Rep. Lehman asked what would happen if a State refused to adopt an accreditation Model? David Mattax, Commissioner of the Texas Insurance Department and Chairman of the NAIC Accreditation Committee, stated that it would depend on the facts and circumstances of each situation. For example, was the model introduced and make progress? Rep. Fischer asked what is the impact of a State losing accreditation status? Cmsr. Mattax stated that one of the primary reasons to have accreditation is to have a uniform system of adequate solvency regulation to ensure that the States have faith that their companies are solvent. If a State loses accreditation status, other States lose the ability to rely on that State and then companies within that State are subject to multiple solvency regulations and examinations. Additionally, it can affect other companies' attitudes towards coming into that State to start new business.

Rep. Botzow asked what is the proper check and balance on an entity that creates laws that are tied to accreditation status. Dir. Huff stated that the open and transparent process of the Model process serves as an important check and balance. Additionally, the Models are then subject to each States' legislative process. Further, States can adopt legislation that is "substantially similar" to an NAIC accreditation Model so that it meets that States' specific needs.

#### *DISCUSSION OF REVISED DRAFT OF NAIC INSURANCE DATA SECURITY MODEL LAW*

Rep. Riggs asked if there is a deadline to finish the drafting process of the NAIC Insurance Data Security Model? Dir. Huff stated that there is not a hard deadline but there is a commitment to have a 3<sup>rd</sup> draft available soon for consideration and to have NAIC membership vote on the Model before the end of the year.

Rep. Riggs stated that it might be difficult to enact legislation that deals with only insurance – why does the insurance industry need to be singled out in this area? Dir. Huff stated that he thinks due to the state-based regulation of insurance and the complexities of the insurance industry, it is best to have an insurance-specific law on cybersecurity. Cmsr. Mattax stated that insurance is different from other industries due to the nature of the information insurers collect from consumers and it is paramount that it be as secure as possible. Eric Cioppa, NAIC Secretary Treasurer and Superintendent of the Maine Bureau of Insurance stated that insurance is a state-based system and it is our duty as state regulators/legislators to protect consumer's information as best as possible.

#### *NAIC UNCLAIMED PROPERTY MODEL UPDATE*

Supt. Cioppa stated that NAIC is not trying to duplicate NCOIL's efforts in this area but rather is trying to build on it. One of the differences between the models is that the NAIC model has a period to look back for lapsed policies. Also, the NAIC model has a hardship exemption if insurers face financial compliance problems. Rep. Riggs asked why didn't NAIC come to NCOIL to amend the NCOIL model with those provisions? Supt. Cioppa stated that the end result will be good and that NAIC views its model as building upon NCOIL's. Sen. Holdman stated that he is not prepared to go back to Indiana to try and adopt the NAIC Model on this issue – that battle has already been fought by adopting the NCOIL Model, which was a very difficult process. Rep. Keiser stated that the NCOIL Model has the hardship exemption that Supt. Cioppa mentioned and agreed with Sen. Holdman's comments. Rep. Riggs agreed with Sen. Holdman and Rep. Keiser and stated it is very difficult to go back to his State and re-open this issue. Rep. Quinn reiterated Rep. Riggs' statements and then applauded NAIC's efforts with its lost life insurance policy locator. Rep. Botzow stated that it is important for NCOIL and NAIC to analyze how each can add value to each other's Model Law process.

#### **COLLABORATIVE EFFORT WITH NAIC ON HOW BEST TO REGULATE AIR AMBULANCES**

Supt. Cioppa applauded North Dakota's efforts to try and regulate air ambulances – unfortunately the proposed law was preempted. Supt. Cioppa stated that this is a great opportunity for NCOIL and NAIC to work together to help consumers. Rep. Riggs asked if Congress is aware of this issue? John Doak, Commissioner of the Oklahoma Insurance Department, stated that he believes that Congress is aware but there still needs to be some heavy lifting at the federal level to help solve the problems facing consumers. Rep. Keiser stated that this issue is a great opportunity for NCOIL and NAIC to fly-in to Washington D.C. to speak to Congress. Rep. Keiser stated that one option is to have the federal government pay for the difference between the standard billing and the balance billing. Rep. Keiser also stressed that until a critical mass is reached to help solve this issue, Congress will be slow to move – NCOIL needs to be aggressive. Cmsr. Kreidler stated that he is encouraged by the efforts of several States on this issue and that it might be appropriate for NCOIL and NAIC to consider a Model law.

#### **NAIC INCORPORATION BY REFERENCE (IBR)**

Dir. Huff thanked NCOIL for its comments on the IBR process and stated that the NAIC is currently reviewing how to improve it with its Governance Review Task Force. Rep.

Riggs asked what if someone reviewed an IBR proposal and determined that it wasn't technical in nature but rather substantive? Dir. Huff stated that question is why it is important to have the IBR process be as open and transparent as possible and efforts are being made to do that. Commissioner Tom Considine, NCOIL CEO, stated that whether or not a change is viewed as technical or substantive, it has the effect of changing the statutory laws in States and there is no independent oversight of it. NCOIL has recommended that it serve as the clearinghouse for receiving and reviewing comments on IBR changes but it was not warmly received. NAIC staff had stated that they had received no complaints on its IBR process. Cmsr. Considine stressed that this proposal was not an effort for NCOIL to serve as a "big brother" to NAIC but rather to move the IBR process forward in a more transparent fashion. Dir. Huff stated that the process Cmsr. Considine described is already provided for in the interested party discussion with any IBR changes. NCOIL is free to survey its members and others to comment on any IBR changes and submit them to NAIC. NAIC believes that adding another level of review to the process as proposed by NCOIL does not add any value.

Rep. Keiser noted that State legislators have no one to blame but themselves for the IBR process because they have time and again delegated such authority in statutes to the NAIC. Rep. Keiser further noted that on one hand, he does not want to review technical changes, but on the other hand there have been some changes that could have been argued were policy changes rather than technical changes and he was not happy about that. Dir. Huff stated that NAIC is committed to strengthening its relationship with NCOIL as is evidenced by strong NAIC attendance at this conference. NAIC is willing to involve NCOIL members with technical changes in a process similar to the conference call that was held to review the revised draft of the NAIC Insurance Data Security Model Act. Sen. Rapert stated that he looks forward to working with NAIC to ensure the preservation of the state-based regulation of insurance.

#### NAIC RETIREMENT SECURITY INITIATIVE

Rep. Riggs applauded NAIC's retirement security initiative and stressed that retirement security is an issue that we must all stay involved in. Dir. Huff stated that 4 out of 10 baby boomers have \$0 saved for retirement – this is a crisis. The retirement security initiative focuses on 3 major regulatory areas: consumer protection – making sure NAIC is up to date with its suitability Models and regulations, and launching the lost life insurance policy locator; education – State legislators should continue to raise this issue in their States with ideas such as mandatory financial education for high school students; innovation – making sure the regulatory area is opened up to ensure that consumers are presented with products that meet today's need.

Asm. Cooley stated that we all need to be mindful that retirement security is vital to our economy. When the financial crisis struck, many older citizens wanted to stay in their jobs as long as they could because they knew they were unable to leave and sustain themselves. This resulted in a scarcity of entry-level positions for college graduates. Accordingly, retirement security allows for older works to retire, still spend money on goods and services, and open up jobs for younger workers. Cmsr. Doak agreed and challenged legislators to strengthen/enact mandatory financial education for high-school students.

#### ADJOURNMENT

There being no further business, the Committee adjourned at 6:15 p.m.