

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
PROPERTY & CASUALTY INSURANCE COMMITTEE
ATLANTA, GEORGIA
MARCH 2, 2018
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Property & Casualty Insurance Committee met at The Whitley Hotel in Atlanta, Georgia on Friday, March 2, 2018 at 1:45 p.m.

Representative Richard Smith of Georgia, Chair of the Committee, presided.

Other members of the Committees present were:

Sen. Jason Rapert (AR)	Asm. Andrew Garbarino (NY)
Asm. Ken Cooley (CA)	Sen. James Seward (NY)
Rep. Matt Lehman (IN)	Sen. Bob Hackett (OH)
Rep. George Keiser (ND)	Rep. Michael Henne (OH)
Sen. Jerry Klein (ND)	Rep. Tom Oliverson (TX)
Sen. Neil Breslin (NY)	
Asm. Kevin Cahill (NY)	

Other legislators present were:

Rep. Sam Kito (AK)	Rep. Justin Hill (MO)
Rep. Paul Mosley (AZ)	Sen. Paul Wieland (MO)
Rep. Bryon Short (DE)	Sen. Ed Buttrey (MT)
Rep. Renitta Shannon (GA)	Rep. Glen Mulready (OK)
Rep. Darlene Taylor (GA)	Rep. Ron Tusler (WI)
Sen. Thomas Middleton (MD)	
Rep. Joe Hoppe (MN)	

Also in attendance were:

Commissioner Tom Considine, NCOL 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 November 16, 2017 meeting in Phoenix, Arizona, and its January 29, 2018 interim meeting held via conference call.

CONSIDERATION OF CONSUMER PROTECTION TOWING MODEL ACT

Rep. Matt Lehman (IN) stated that the towing industry is one of the last unregulated industries. Accordingly, a Model Law was drafted to deal with some of the issues in that industry such as: unsolicited tows; controlling costs; private towing; notifying the true owner of the vehicle; itemizing costs; allowing easier release of the vehicle; and regulatory requirements. A similar bill was also drafted in Indiana upon further discussions with the towing and insurance industries. The version of the Model before the Committee today contains some amendments

from the prior version discussed at its last meeting in Phoenix, many of which focused on emergency towing requirements.

Rep. Lehman then reviewed some of the provisions of the current version of the Model. Emergency towing is still dealt with, the biggest key being giving “owner choice.” That is, the owner has a right in consultation with law enforcement to say, “here is who I want to call to come and tow my vehicle.” In the past, there were situations where towers were on rotation and in Indiana, a Sheriff went to prison over taking bribes for including towers in the rotations. With regard to private towing, the Model requires private lots be very clearly marked as such and allows for the situation to be worked out at the scene rather than a mandatory towing of the vehicle and resolving it at the towing facility. The Model requires: specific, descriptive itemized invoices for towing charges; towing companies to timely notify vehicle owners of the fact that their vehicle was towed and how to retrieve it; and implements requirements for the release of towed vehicles to the owners. The Model also contains certification requirements for towing companies, and a list of prohibited acts. The Model originally contained specific penalties for violating the Model, but it was determined that such language is better determined on a State by State basis. Some of the provisions that have been removed from the current version of the Model relate to: requiring towers to take pictures, document damage to the vehicle, and write estimates, as it was determined that more time spent on the road is not safe; and fees, as it was determined that fees should not be set in private contracts. Rep. Lehman closed by stating that he believes NCOIL’s role in drafting Model laws is to provide the States with a legislative framework that they can modify to their specific needs. In many instances, NCOIL should not let perfect be the enemy of the good and have drafts of Models on committee agendas for several years.

Erin Collins of the National Association of Mutual Insurance Companies (NAMIC) thanked Rep. Lehman for his work on the Model and stated that the Model contained important reforms. However, NAMIC believes that some of the provisions that were removed from the prior version of the Model should be in the Model that the Committee considers. Specifically, the issues of having an estimate available for the consumer and having fee controls are essential parts of any national Model. Rep. Richard Smith (GA), Chair of the Committee, asked if there should be concern regarding competition among towers if fees are standardized. Ms. Collins stated that the language in the prior version of the Model would not have a chilling effect on competition but would rather create a ceiling on fees to stop them from being abused.

Tim Lynch of the National Insurance Crime Bureau (NICB) thanked Rep. Lehman for his work on these issues and stated that abuses with respect to towers, mainly at accident scenes, is a problem across the country. NCOIL’s timing on this issue is good because there are several States that have dealt or are dealing with it now. From NICB’s perspective, the problem is twofold: consumers who are abused at the accident scene and are overly solicited; and the excessive fees that take place afterwards. The Model has done a very good job of addressing the first point but NICB believes that the Model should contain some type of protections against estimates and fees.

Rep. Lehman stated that the estimate requirements were removed from the Model because that is very difficult to do at the scene of an accident. Rep. Lehman stated he is receptive to including estimate requirements, along with photograph/video documentation requirements, in the Model’s provisions dealing with private towing. As to fees, Rep. Lehman again stated that

he believes that is an issue that cannot be imposed on private contracts, but States can try to do so should they wish.

Rep. Michael Henne (OH) stated that he thinks there needs to be safeguards in the Model about fees for consumers and insurers when dealing with towing companies. The free market does not exist on the side of the road and the consumer does not have a choice as to who tows their vehicle.

Sen. Bob Hackett (OH) stated that this issue was discussed in Ohio for several years and one of the issues for the towers is that they suffer when there is an accident on the interstate and the highway patrol calls several towers to respond to the scene. Sen. Hackett stated that he understands both NAMIC's concerns with wanting certain provisions included in the Model, and Rep. Lehman's view that the Model can be tweaked to respond to different State's concerns. Sen. Hackett would support the Model in either scenario. Rep. Lehman stated that if the Committee would like legislatures to see the Model in their upcoming legislative sessions then it is important to move it to the Executive Committee. Rep. Lehman also stated that the Committee could always return to the Model later to amend it, as is being proposed with the NCOIL Model State Uniform Building Code. Rep. Lehman then made a Motion for the Committee to consider the Model which prompted a Motion to waive the quorum requirement, made by Rep. George Keiser (ND) and seconded by Sen. Hackett. The motion regarding the quorum was approved without objection by way of a voice vote.

John Ashenfelter of State Farm stated that the proposed amendments submitted by NAMIC should be further considered, and discussions should be held on fee provisions. Mr. Ashenfelter stated that he does not think that the estimate and documentation provisions that were removed from the Model are unreasonable. The documentation requirements are important because it is common for there to be further damage to the vehicle after it is hooked up to the tow truck.

Rep. Keiser stated that he thought the issue of costs was the main driver behind this issue being discussed at NCOIL, and if that is correct, then the Model should not be sent to the States for consideration without any such provisions. Rep. Lehman stated that he views the problem as twofold: the actual towing activities; and the storage fees. With regard to storage fees, Rep. Lehman stated that in his experience with his constituents, that is one of the biggest problems, and the Model contains important provisions on that issue. Rep. Lehman stressed that he thinks the most important provision is allowing consumers to decide who will tow their vehicle.

Mr. Lynch noted that estimate provisions that were removed from the Model are law in California and Missouri.

Jim Taylor, President of Auto Data Direct (ADA), stated that ADA ties into state databases in order to retrieve real-time owner and lienholder information. Towing companies and insurers are two of their biggest clients and ADA compliments NCOIL for analyzing these issues. Mr. Taylor stated that certified mail should be required for notification of towing and noted that in several states, the insurer of record is notified in addition to the owner/lienholder. Mr. Taylor further stated that the Model should specifically reference "motor vehicle data bases" when discussing search requirements. The National Motor Vehicle Title and Information System is a valuable tool for determining where the vehicle is titled.

Sen. James Seward (NY) made a motion to defer consideration of the Model until the NCOIL Summer Meeting in July. Sen. Neil Breslin (NY) seconded the Motion. Rep. Lehman requested that a meeting be held among all interested parties between now and the NCOIL Summer Meeting in July to make sure that a final version of the Model is ready for consideration at the July meeting. The Committee voted without objection in favor of the Motion by way of a voice vote.

CONSIDERATION OF AMENDMENTS TO NCOIL MODEL STATE UNIFORM BUILDING CODE

Tyler Laughlin, Oklahoma Deputy Insurance Commissioner, stated that the proposed amendments to the NCOIL Model State Uniform Building Code are taken from legislation that was passed in Oklahoma. Similar legislation is also in place in Alabama and Mississippi. Essentially, the proposed amendments state that if an individual wants to build a new home or retrofit their existing home to the Insurance Institute for Business & Home Safety (IBHS) standards, the insurer must provide that homeowner with a premium discount upon determining that it is actuarially justified. Mr. Laughlin stated that 90% of the damage from the 2013 Moore, Oklahoma tornado could have been avoided if IBHS standards were utilized. If a homeowner makes an investment to build or retrofit to the IBHS standards, the discount should be given because the risk to the home has been lowered. Mr. Laughlin noted that this is in fact a mandate on insurers, but every law passed is some type of mandate, and this is a slightly different mandate because consumers end up bearing the cost of most mandates. In this case, this can be termed as a "reverse mandate" because it is forcing the company to do something by passing cost savings on to the consumer. From Oklahoma's standpoint, with the number of tornadoes it has experienced, it has reached the point of either mandating building codes throughout the state or trying to encourage citizens who want to make the investment in strengthening their home to get an actuarially justified premium discount.

Rep. Henne stated that this type of law will reduce claims, so insurers will want to write this type of business, but insurers don't need the government telling them how to write a profitable business. Government should not get involved in this issue. If an insurer chooses to offer these types of discounts, then others will follow to remain competitive. Mr. Laughlin stated that he respects Rep. Henne's opinion but states like Oklahoma have seen for far too long the lack of incentives for consumers to strengthen their homes. Without this type of law, there is no way to ensure that this type of discount would permeate the marketplace and in fact, insurers may enjoy consumers making an investment to strengthen their home without being required to provide a discount since their risk is lowered and the premium remains constant.

Rep. Keiser stated that hail storms are prevalent in North Dakota and when he replaced the shingles on his roof with those that are hail-resistant, the installer told him to check with his insurance company to see if he would get a discount. The insurance company did not provide a discount because their research showed that the hail-resistant shingles did not perform any better than regular shingles when the hail reached a certain size. Rep. Keiser stated that when one of his employees did the same thing, his insurance company did give him a discount. Rep. Keiser asked if there is any data on the return on investment of strengthening a home to IBHS standards because in the case of his employee, it will take 15 years to see a return on the investment. These same arguments also apply to security system installation. In the case of shingle installation, Rep. Keiser stated he had a choice to switch insurers if he wanted to, and regulators should not be determining this type of activity, the private market should.

Buddy Combs, Oklahoma Deputy Insurance Commissioner, stated that this can be viewed as a “chicken or the egg” situation. In Oklahoma, the Insurance Department had frequently heard that insurance companies will eventually get to the point of offering these types of discounts, but given the number of tornadoes experienced, the severity of damage they inflict, and the amount of lives lost, how much longer should we wait for insurers to voluntarily get to that point. Mr. Combs stated that it is important to note that these proposed amendments are an effort to try and make this work for all involved since insurers only have to offer the discount when it is actuarially justified. Rep. Keiser replied that if Oklahoma feels that strongly, a building code should be mandated.

Rep. Lehman asked if there are any other examples of requiring premium discounts for using and/or adding safety features to a home or building. Mr. Combs stated that he is not aware of any other examples, but that one of the reasons this specific type of discount was chosen is because the IBHS was created by the insurance industry.

Ron Jackson of the American Insurance Association (AIA) stated that AIA supports mitigation efforts such as strengthening homes to IBHS standards, but competition among insurers is very important. There may be different ways that insurers would like to respond to homes that are strengthened to IBHS standards so when the government requires all insurers to react in the same way, an important part of market competition is removed.

Paul Martin of NAMIC stated that he is personally a strong supporter of the IBHS standards as his home was retrofitted to said standards with great success. However, the free market should drive issues like this, not government mandates. Insurers already voluntarily provide discounts for things such as security systems and hail-resistant shingles.

Rep. Glen Mulready (OK) then made a Motion to delay consideration of these proposed amendments, and to extend the underlying NCOIL Model State Uniform Building Code, due to his colleague and sponsor of these proposed amendments, Rep. Lewis Moore (OK), being unable to be here today, and there seeming to be further discussion needed on this topic. Sen. Neil Breslin (NY) seconded the Motion. The Committee then voted without objection by way of a voice vote to proceed in that manner.

UPDATE ON ALI PROPOSED RESTATEMENT OF THE LAW OF LIABILITY INSURANCE

Commissioner Tom Considine, NCOIL CEO, provided the Committee with an update on the status of the of the American Law Institute’s (ALI) Proposed Restatement of the Law of Liability Insurance (Proposed Restatement). At the 2017 NCOIL Annual Meeting in Phoenix, Arizona, a general session was held discussing the Proposed Restatement, which led to the NCOIL P&C Committee adopting a Resolution in opposition to the Proposed Restatement. The Resolution was then adopted by the NCOIL Executive Committee in January 2018 and sent to ALI leadership, which led to a dialogue between NCOIL and the ALI.

Cmsr. Considine stated that the ALI Council met in February to discuss the current draft of the Proposed Restatement and based on his and others understanding, the ALI Council gave the drafters of the Proposed Restatement guidance to make certain changes. Accordingly, it was thought best to tread lightly and not take all the actions called for in the Resolution due to that encouraging news of changes being made, and that there is no final version of the Proposed Restatement available for review. However, a letter was sent out this past week to the State Presiding Jurists across the country alerting them of the Proposed Restatement and

encouraging them to voice their concerns since as State Presiding Jurists they have an influential role in the ALI. Cmsr. Considine stated that a new draft of the Proposed Restatement is expected next month, followed by an ALI meeting in May where final adoption of the Proposed Restatement is expected to be considered. Cmsr. Considine stated that nature of the changes in the next draft will dictate NCOIL's next steps.

Rep. Keiser stated that this a scenario that requires NCOIL to consider drafting Model Laws to counter the provisions of the Proposed Restatement that are contrary to settled law because if the Proposed Restatement ends up being adopted by the ALI without substantial changes, courts across the country will look to the Proposed Restatement for guidance, not to the NCOIL Resolution.

Sen. Breslin stated that if the Proposed Restatement is adopted without substantial changes, he believes that courts would take notice if NCOIL sent a response to every court in the country citing the Proposed Restatement's provisions that conflict with settled law. Restatements are "secondary" sources of law, judges are already hesitant to use such sources in deciding legal issues. Accordingly, if such a "secondary" source was then denounced by NCOIL as not being an accurate restatement of settled law, the consequences to ALI would be devastating. Sen. Breslin stated that he is concerned by the nature of the ALI's responses to date, and therefore it is critically important to the industry and to the validity of the law to ensure that the ALI makes the proper changes to the Proposed Restatement. Rep. Keiser agreed but stated that NCOIL needs to be prepared to act with Model Laws should the ALI refuse to make noteworthy changes.

INTRODUCTION OF THE ROLE OF INSURANCE IN PUBLIC-PRIVATE PARTNERSHIP PROJECTS

Rep. Lehman stated that in Indiana, there was a \$1 billion public-private partnership (P3) project on a highway extension that went belly-up. It was discovered afterwards that the bonding requirement was less than 20%. A bill was filed in Indiana to make that bonding requirement 100% but then there is an issue of how many contractors out there can post a \$1 billion bond. Rep. Lehman stated that the construction industry sought guidance as to what the correct percentage of bonding should be - this could be an area that NCOIL could offer such guidance in. Rep. Lehman encouraged the Committee members to come forward with any material related to this issue at any future meetings.

ADJOURNMENT

There being no further business, the Committee adjourned at 3:00 p.m.