

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
PROPERTY-CASUALTY INSURANCE COMMITTEE
DUCK KEY, FLORIDA
NOVEMBER 18, 2004
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) Property-Casualty Insurance Committee met at Hawk's Cay Resort in Duck Key, Florida, on Thursday, November 18, 2004, at 1:15 p.m.

Rep. George Keiser of North Dakota, chair of the Committee, presided.

Other members of the Committee present were:

Rep. Donald Brown, FL
Sen. Steven Geller, FL
Rep. Rich Golick, GA
Rep. Shirley Bowler, LA
Rep. Edward Gaffney, MI
Rep. Joe Hune, MI
Rep. Mary Ann Middaugh, MI
Sen. Alan Sanborn, MI
Sen. Dean Kirby, MS
Rep. Dan Ward, MO
Sen. Carroll Leavell, NM
Assem. Nancy Calhoun, NY
Rep. Geoff Smith, OH
Sen. David Bates, RI
Rep. Brian Kennedy, RI
Sen. William Walaska, RI
Rep. Craig Eiland, TX
Rep. Larry Taylor, TX
Del. Harvey Morgan, VA
Del. L. Gil White, WV

Other legislators present were:

Rep. Robert McCluskey, CO
Rep. Karen Carter, LA
Rep. David Robertson, MI
Rep. Kathleen Keenan, VT
Rep. Gini Milkey, VT

Also in attendance were:

Susan Nolan, Mackin & Company, NCOIL Deputy Executive Director
Candace Thorson, NCOIL Director of Legislative Affairs & Education,
Property-Casualty and Workers' Compensation Insurance
Franesa Liebich, NCOIL Director of Legislative Affairs & Education,
Health and Life Insurance

MINUTES

The Committee voted unanimously to approve the minutes of its July 16, 2004, meeting in Chicago, Illinois.

IMPLEMENTATION OF NCOIL INSURANCE SCORING MODEL ACT

Bob Tomlinson of the Kansas Department of Insurance said his state had tailored the NCOIL *Model Act Regarding the Use of Credit Information in Personal Insurance* to suit specifics of Kansas law. He said the state's credit scoring regulation defined "sole use" in a different way than the NCOIL model and said he believed the intention of the state credit-scoring statute was somewhat questionable on this point. Mr. Tomlinson said the Kansas regulation stipulated that, upon renewal, some other factor in addition to credit must change in order for an insurer to take an adverse action against a policyholder. He noted that the NCOIL model simply requires that credit information not be the only factor influencing an adverse action. He said the Kansas Insurance Department was trying to interpret state law, not circumvent the NCOIL model. He said regulators would be asking the legislature for clarification on the issue in early 2005.

Mr. Tomlinson said that insurer compliance with the *Fair Credit Reporting Act* (FCRA) was not consistent and that Kansas was working to educate companies on meeting those requirements. Specifically, he said insurers were not complying with FCRA's various mandates regarding notifying consumers of adverse actions.

STATE ACTIVITY REGARDING RATE MODERNIZATION

Ms. Thorson reported that state rate-modernization efforts had stabilized since the 2004 NCOIL Summer Meeting. She said the NCOIL rating models were now especially important in light of federal discussions regarding insurance regulatory reform. She said that rating provisions in the draft State Modernization and Regulatory Transparency (SMART) Act would establish an initial flex-band rating system that would closely track the approach called for by the NCOIL *Property/Casualty Flex-Rating Regulatory Improvement Model Act*. Ms. Thorson said further that the SMART Act would eventually call for an open-rating system similar to that required by the NCOIL use-and-file *Property-Casualty Insurance Modernization Act*.

PROPOSED CLAIMS HISTORY DATABASE MODEL ACT

Sen. Bates, sponsor of a proposed *Model Act Regarding the Use of Claims History Information*, reminded legislators that a 2004 Committee charge was to investigate issues surrounding claims history databases and to consider model legislation. He said there was no more appropriate time for NCOIL to address the issue. He noted that the insurance industry had not submitted its comments on the proposed model act prior to the Annual Meeting.

Wes Bissett of the Independent Insurance Agents & Brokers of America (IIABA) said that approximately 30 states have considered legislation regarding claims history databases. He said the proposed NCOIL model would apply to

homeowners' insurance and would address, among other things, treatment of consumer inquiries and claims without payments; the importance of claims and loss experience of a previous property owner; losses due to natural causes or water damage; appropriate disclosures to consumers, including notifications during real estate transactions; and the filing of various information by insurers and claims-history report providers.

Eric Goldberg of the American Insurance Association (AIA) said the proposed NCOIL model law would exceed the scope of anything considered by the states, particularly because it would include provisions on water damage claims.

Lynn Knauf of the Property-Casualty Insurance Association of America (PCI) said there were distinctions between the use of claims history databases and insurance credit scores and that the proposed model should not be based on language from the NCOIL credit scoring model act. Neil Alldredge of the National Association of Mutual Insurance Companies (NAMIC) agreed.

Jim Tuite of State Farm Insurance Companies suggested that the proposed NCOIL model law may be legislation in search of a problem.

Mark Smith of Insurance Services Office (ISO), a claims-history report provider, said that claims databases provide an automated way of gathering information that insurers have always used for underwriting. Among other things, he said that concern over counting a consumer inquiry as a claim was misguided because insurers were unlikely to incur the expense of opening claims files just to record questions as claims. Mr. Smith also said that claims without payments are justifiable predictors of future loss and that prohibiting their use would expose insurers to fraud.

Tim Mullen of the National Association of Insurance Commissioners (NAIC) said that issues regarding claims history databases were important to regulators. He said the proposed NCOIL model did a good job of initiating discussion.

Rep. Golick said the issues addressed in the proposed model were "very real." Rep. Eiland agreed and said that adoption of an NCOIL claims database model act must be timely, as the NCOIL credit scoring bill had been.

The Committee agreed that interested parties must work to find consensus before the upcoming 2005 NCOIL Spring Meeting.

Upon a motion made and seconded, the Committee voted to defer further consideration of the proposed NCOIL model until the Spring Meeting, at which time legislators would hold an in-depth session on the draft and interested parties would have found greater consensus on the issue.

PROPOSED MEDICAL MALPRACTICE & PATIENT SAFETY MODEL ACT

Ms. Thorson reported that the Committee's consideration of a proposed patient safety model act stemmed from legislators' consideration earlier in the year of a

resolution endorsing certain tort system reforms to the medical malpractice system. She said that, at the time, the Committee had expressed interest in addressing other aspects of the medical malpractice insurance crisis, including patient safety.

Ms. Thorson said that provisions in the proposed model law emanated from a special session during the 2004 NCOIL Summer Meeting. She said the proposal focuses on three issues: mandatory reporting of medical errors by hospitals, ambulatory surgical centers, and mental hospitals; mandatory reporting of hospital infection rates; and guidelines for establishing an effective state medical board.

Ms. Thorson said that Rep. Keiser would present the model to the Health Insurance Committee later the next day. She said the model would be revised and expanded prior to the Spring Meeting, at which time the P-C and Health Insurance Committees would hold a special session on the draft. She said it was anticipated that the model law would be ready for adoption later in 2005.

Rep. Keiser said that patient safety was a crucially important issue and that it had been much discussed at several meetings he had recently attended.

Wes Cleveland of the American Medical Association (AMA) said it was particularly important that information regarding medical errors be kept confidential, and he noted that the AMA supported provisions to that effect in the NCOIL model. He said that properly funding state medical boards also was essential.

David Durden of the Texas Department of Insurance commented on the proposed section regarding reporting of medical errors, which he noted was based on Texas law. He said that legislators might consider establishing one annual reporting date, rather than creating a staggered system based on license renewals.

Upon a motion made and seconded, the Committee voted to defer further consideration of the proposed model act until the Spring Meeting.

PROPOSED 2005 COMMITTEE CHARGES

Rep. Keiser said the proposed 2005 Committee charges were to:

- Establish a position on issues regarding medical malpractice and patient safety
- Establish a position on insurer use of claims-history databases, such as A-PLUS and the Comprehensive Loss Underwriting Exchange (CLUE)
- Facilitate and track state activity regarding rate modernization, taking into consideration challenges that some states face trying to enact rate reform
- Facilitate and track state enactment and implementation of NCOIL's *Model Act Regarding Use of Credit Information in Personal Insurance*
- Interact with Congress to enact appropriate federal natural disaster insurance legislation, and monitor and report on issues and legislation pertaining to natural disaster insurance

- Compile information regarding state best-practice efforts to mitigate natural hazard risks
- Resume consideration of a proposed *Certified Aftermarket Crash Parts Model Act*
- Monitor and report on activities related to broker contingency fees

Upon a motion made and seconded, the Committee unanimously adopted the proposed charges.

BROKER CONTINGENCY FEE ACTIVITY

Rep. Eiland said he had attended a recent Senate Subcommittee hearing on broker compensation fees. Among other things, he commented that Gramm-Leach-Bliley's (GLB) use of the term "producer" to encompass both agents and brokers had led to much of the current confusion regarding how different types of intermediaries are paid. He said it was important to distinguish between agents and brokers. The hearing, he reported, had addressed whether a broker has a fiduciary duty to his or her client, as well as the appropriateness of extending market conduct examinations to the activities of large brokerages.

According to Rep. Eiland, New York State Attorney General Eliot Spitzer testified that there are several areas in which Congress could assist state insurance regulation. Rep. Eiland said that Spitzer had not supported the preemption of state insurance laws.

Rep. Eiland said that the NAIC had drafted a proposal that would amend the NAIC *Producer Licensing Model Act* to require disclosure of compensation income. He said that NCOIL had a proposed model bill, in discussion draft form, that would require disclosure of compensation from any entity other than the insured in a broker, rather than agent, relationship; establish a fiduciary duty for insurance brokers to ensure that brokers protect the best interests of their clients; and create uniformity in allowing insurance commissioners to perform market conduct examinations on brokers. He said the proposed model would apply to all licensed brokers or subagents that conduct the business of insurance on behalf of, and purport to represent the best interests of, the client. Rep. Eiland added that the model would stress strong enforcement of broker misconduct penalties, as compared to other proposals.

Rep. Eiland said that the draft model act would be discussed in further depth during the next day's State-Federal Relations Committee meeting.

ADJOURNMENT

There being no further business, the meeting adjourned at 2:45 p.m.

