

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
PROPERTY-CASUALTY INSURANCE COMMITTEE
CHICAGO, ILLINOIS
JULY 16, 2004
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) Property-Casualty Insurance Committee met at the Hotel Inter-Continental in Chicago, Illinois, on Friday, July 16, 2004, at 8:00 a.m.

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

Other members of the Committee present were:

Rep. Jay Bradford, AR
Rep. Donald Brown, FL
Sen. Steven Geller, FL
Rep. Rich Golick, GA
Rep. Shirley Bowler, LA
Rep. Ron Crimm, KY
Rep. Edward Gaffney, MI
Rep. Mary Ann Middaugh, MI
Sen. Alan Sanborn, MI
Rep. Donald Flanders, NH
Rep. Dan Foley, NM
Sen. Carroll Leavell, NM
Assem. Nancy Calhoun, NY
Assem. Ivan Lafayette, NY
Sen. William Larkin, Jr., NY
Sen. James Seward, NY
Rep. Robert Godshall, PA
Rep. Brian Kennedy, RI
Rep. Dan Tripp, SC
Rep. Craig Eiland, TX
Rep. Larry Taylor, TX

Other legislators present were:

Rep. Robert McCluskey, CO
Rep. Pat Patterson, FL
Sen. Mike Bishop, MI
Sen. John Loudon, MO
Sen. Harvey Tallackson, ND
Sen. Pam Redfield, NE
Sen. Rick Metsger, OR
Rep. Kathleen Keenan, 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

MINUTES

The Committee voted unanimously to approve the minutes of its February 27, 2004, meeting in San Antonio, Texas.

DISCUSSION REGARDING INSURANCE SCORING

UPDATE ON STATE ACTIVITY REGARDING INSURANCE SCORING

Ms. Thorson reported that 23 states had enacted legislation and/or regulations based on the NCOIL *Model Act Regarding Use of Credit Information in Personal Insurance*, which the Committee originally adopted in November 2002. She said Tennessee, Iowa, and Colorado had enacted the model in 2004, and that an additional bill in New York was awaiting the governor's signature.

CONSIDERATION OF PROPOSED AMENDMENT TO NCOIL MODEL ACT

Rep. Keiser said that the Committee must clarify the "sole use" language in Section 5 of the NCOIL model, having been unable to resolve the issue during the 2004 Spring Meeting. He said the Committee had before it two proposed amendments: one would revise the language of Section 5 (B) and the other would simply add a drafting note beneath that subsection. Rep. Keiser said that both amendments would clarify that an insurer could not use a minimum threshold to evaluate insurance scores without considering other non-credit-related underwriting factors. He said that a minimum threshold would allow an insurer to take an adverse action against a consumer whose credit score fell below or above some insurer-determined minimum number.

The Committee voted by a two-thirds vote to consider the drafting note amendment, which had not been submitted in accordance with the 30-day deadline.

Wesley Bissett of the Independent Insurance Agents & Brokers of America (IIABA) said that the insurance industry supported both amendments but favored simply adding a drafting note to the model. Mr. Bissett said the drafting note would be less likely to confuse the states, which might otherwise think that NCOIL had substantively changed the model. Oregon Insurance Director Joel Ario, co-chair of the National Association of Insurance Commissioners (NAIC) Credit Scoring Working Group, said that state regulators would be amenable to the proposed drafting note.

After some discussion, and upon motions made and seconded, the Committee voted via unanimous voice votes to adopt both the proposed drafting note amendment and the amended NCOIL model act, and then referred the model to the NCOIL Executive Committee for consideration later that day.

UPDATE ON NAIC CREDIT SCORING ACTIVITY

Director Ario said that the NAIC was considering several best practices for regulating insurer use of credit scores and predicted that regulators would have a final draft ready for the NAIC Fall Meeting in September. He said the best practices were not intended to supersede state insurance laws, but rather to complement them. Director Ario said the best practices related to treatment of adverse actions; extraordinary life circumstances; credit scores that are neutral or that cannot be determined; standards for submitting scoring models to insurance departments; credit experience as the sole factor in underwriting; and periodic reviews of credit scores. In some cases, Director Ario noted, the NAIC had selected language based upon the NCOIL model act.

Director Ario added that the NAIC had recently established a third-party vendor working group. He said the working group's charges were in the process of being finalized but that credit modeling companies, such as ChoicePoint and Fair Isaac, would be considered third-party vendors.

DISCUSSION REGARDING INSURANCE SCORING STUDIES

Robert Zeman of the Property-Casualty Insurance Association of America (PCI) said that the Federal Trade Commission (FTC), in consultation with the Board of Governors of the Federal Reserve and other agencies, had commenced a study into the impact that insurance scores have on the availability and affordability of property-casualty insurance products. He said the investigation had just begun.

Mr. Zeman also said that the property-casualty insurance industry had major concerns with a seven-state data call regarding insurers' use of credit experience. He said the states involved had said that the information would be used, in part, to determine whether insurance scores have a disparate impact on certain low-income and minority consumers. This investigation, Mr. Zeman commented, would be similar to an earlier Missouri study that the industry much disputed. He said that PCI believed it was outside the scope of regulators' authority to request data in order to engage in a broad public policy study of a federally authorized insurance practice. He concluded that PCI was considering several responses to the study.

Clarissa Preston of the Louisiana Department of Insurance said that her state had originally signed on to participate in the multi-state study but had recently withdrawn from the effort. She cited funding concerns and the FTC investigation as reasons for Louisiana's departure.

UPDATE ON ASBESTOS LIABILITY REFORM

Ms. Thorson reported that federal efforts to enact a national asbestos trust fund to pay claims to functionally impaired asbestos victims had failed and that further progress was not anticipated this year.

UPDATE ON STATE ACTIVITY REGARDING RATE MODERNIZATION

Ms. Thorson reported that in 2004 states had been more successful enacting rate regulatory reform than they had in the year prior. She said that nine states had considered legislation based either on the NCOIL *Property-Casualty Insurance Modernization Act*, which would establish, among other things, a use-and-file system for personal lines and a no-file system for commercial, or on the NCOIL *Flex-Rating Regulatory Improvement Model Act*. The flex-rating model, Ms. Thorson said, would establish a 12-percent flex-band within which an insurer could increase or decrease aggregate statewide rates once within a 12-month period. Ms. Thorson said the model was intended as an interim step to help states transition to more competitive systems. She said that even Massachusetts, which is known for its restrictive rate regulation, had enacted commercial lines reforms based on similar provisions in the NCOIL *Property-Casualty Insurance Modernization Act*.

Ms. Thorson noted that the NCOIL rating models are part of a financial modernization package that NCOIL can take to Congress to demonstrate that states are working hard to modernize state regulation of insurance. She said the aim was to fend off federal intervention in state regulation and to protect the billions of dollars that states now collect in premium taxes.

Ms. Preston reported that following Louisiana's creation of a flex-band rating system last year, the state legislature had recently enacted a file-and-use system based in principle on the NCOIL use-and-file model. She said that the flex-band statute had improved the insurance market in Louisiana and that the new reforms were expected to achieve even greater results.

Rep. Kennedy reported that he had successfully introduced legislation in Rhode Island based on the NCOIL flex-rating bill and noted that the law applies to auto, marine, and fire coverage. He said that his legislation represented a significant step forward for Rhode Island rate regulation. Rep. Kennedy concluded that it was important for states to expedite rate approvals and that legislators should be prepared to hear the concerns of various interested parties.

DISCUSSION REGARDING NATURAL DISASTER/FLOOD INSURANCE ISSUES

CONSIDERATION OF PROPOSED NATURAL DISASTER RESOLUTION

Sen. Geller said that it was crucial that state legislators consider appropriate ways to address natural disaster insurance issues, and he stressed that a \$100 billion natural hazard anywhere in the country—whether it be a windstorm, volcano, earthquake, flood, wildfire, or other similar disaster—would devastate economies throughout the nation.

Rep. Eiland, co-sponsor of a proposed *Resolution Regarding Natural Disaster Insurance Issues*, said the resolution recognized the widespread economic impact of a

major natural event and the potential for various natural disasters across the country. Rep. Eiland said the proposed resolution supported investigating the following options for natural disaster insurance legislation: a natural disaster insurance system modeled after the Terrorism Risk Insurance Program (TRIP); a National Flood Insurance Program that incorporates natural disaster risks; a reauthorized TRIP that incorporates natural disaster risks; and a natural disaster catastrophe fund either for the nation or for targeted regions.

Rep. Eiland noted that Rep. Golick, Rep. Keiser, Sen. Larkin, Sen. Redfield, and Rep. Tripp also co-sponsored the proposed resolution.

Scott Gilliam of the Cincinnati Insurance Companies said he was proposing a minor amendment to the resolution that specified that NCOIL's consideration of new natural disaster approaches did not signal a rejection of strategies previously investigated by NCOIL. He said these other approaches included creating an IRS-allowed tax-deferred catastrophe reserve and establishing a federal reinsurance program for natural risks.

The Committee voted by a two-thirds vote to consider Mr. Gilliam's amendment, which had not been submitted in accordance with the 30-day deadline.

After some discussion, and upon motions made and seconded, the Committee voted via unanimous voice votes to adopt both the proposed amendment and the amended natural disaster resolution, as well as to refer the resolution to the Executive Committee for consideration later that day.

REPORT REGARDING MARYLAND HURRICANE ISABEL CLAIMS

Maryland Insurance Commissioner Alfred Redmer said that his state had faced many challenges as a result of last year's Hurricane Isabel. He said that Maryland incurred \$244 million in insured losses and that the state was unused to dealing with such large storms. He noted that Maryland had responded by interacting directly with policyholders and handling complaints, as well as by working with the NFIP to better educate consumers, regulators, and local governments. Commissioner Redmer said that the sheer volume of the claims was a major problem for the NFIP and for states such as Maryland.

Edward Connor of the Federal Emergency Management Agency (FEMA) said that the situation in Maryland was akin to a "perfect storm," in which all factors that could go wrong did. He cited the state's inexperience with major natural disasters; the subsequent need for better education of insurance professionals; and consumers' misunderstandings of their flood insurance policies and the NFIP as contributing elements. Mr. Connor said the NFIP was reviewing all claims in order to resolve disputes and had, in some cases, paid out additional monies. He said the NFIP was conducting an internal study to determine if systemic problems exist with its claims-handling process. Mr. Connor stressed

that in the history of the NFIP, there had never been widespread problems such as those encountered in Maryland following Hurricane Isabel.

Mr. Connor further said that the President and Congress had just reauthorized the NFIP for four years, rather than the standard one-year extension. He said that the legislation included certain reforms of the program, including a redefinition of repetitive loss properties and a requirement that the NFIP provide better disclosure regarding its appeals process.

REPORT ON MEDICAL MALPRACTICE & PATIENT SAFETY

Rep. Keiser reported that the Committee had held a special meeting on medical malpractice and patient safety the day before. He said the panel had been excellent and had included representation from regulatory, insurer, physician, hospital, and consumer interests. Rep. Keiser said the session had been NCOIL's first step toward consideration of more targeted patient safety reforms during the November Annual Meeting, including possible consideration of a model law or white paper.

OTHER BUSINESS

UPDATE ON BROKER CONTINGENCY FEE ACTIVITY

Mr. Bissett reported that the Washington Legal Foundation (WLF), a public-policy think tank based in Washington, D.C., had earlier this year written New York Attorney General Eliot Spitzer, New York Insurance Superintendent Gregory Serio, and California Insurance Commissioner John Garamendi urging them to investigate broker contingency and placement fees. Mr. Bissett said that these arrangements reward brokers for the volume and/or quality of customers that they place with a given insurer. He remarked that concern regarding the transparency of these arrangements had several years ago prompted insurance departments, particularly that in New York, to require brokerages to disclose to customers that these fees exist. Mr. Bissett said that placement/contingency fees had been part of standard operating procedures for many years and that sophisticated insurance buyers knew how they worked.

Ms. Thorson reported that several other interested parties, including the WLF, had either failed to respond to staff invitations to participate in the Committee's discussion or had been unable to send representation.

ADJOURNMENT

There being no further business, the meeting adjourned at 9:30 a.m.