

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
PROPERTY-CASUALTY INSURANCE COMMITTEE
SAN DIEGO, CALIFORNIA
NOVEMBER 17, 2005
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) Property-Casualty Insurance Committee met at the Hilton San Diego Resort in San Diego, California, on Thursday, November 17, 2005, at 10:15 a.m.

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

Other members of the Committee present were:

Rep. Donald Brown, FL	Sen. James Seward, NY
Sen. Steven Geller, FL	Sen. Harvey Tallackson, ND
Rep. Rich Golick, GA	Rep. Frank Wald, ND
Rep. Ronald Crimm, KY	Sen. Jay Hottinger, OH
Rep. Susan Westrom, KY	Rep. Robert Godshall, PA
Rep. Ed Gaffney, MI	Sen. David Bates, RI
Rep. Morris Hood III, MI	Rep. Brian Kennedy, RI
Rep. Joe Hune, MI	Sen. William Walaska, RI
Rep. Leslie Mortimer, MI	Rep. Craig Eiland, TX
Sen. Alan Sanborn, MI	Rep. Gene Seaman, TX
Sen. Pam Redfield, NE	Rep. Larry Taylor, TX
Rep. Don Flanders, NH	Del. Harvey Morgan, VA
Sen. Carroll Leavell, NM	Rep. Virginia Milkey, VT
Sen. Neil Breslin, NY	Del. J.D. Beane, WV
Assem. Nancy Calhoun, NY	Del. Lidella Hrutkay, WV
Assem. Ivan Lafayette, NY	Del. L. Gil White, WV
Sen. William J. Larkin, Jr., NY	

Other legislators present were:

Rep. Terry Parke, IL	Rep. David Palsrock, MI
Rep. Michael Ripley, IN	Assem. Will Barclay, NY
Rep. Jo Oldson, IA	Rep. Todd Kiser, UT
Rep. Nile Dillmore, KS	Sen. Ann Cummings, VT
Sen. Ruth Teichman, KS	Del. Robert Kiss, WV
Rep. Dennis Keene, KY	Del. Dale Martin, WV
Rep. Glenn Anderson, MI	Sen. Andy McKenzie, WV
Rep. Leon Drolet, MI	

Also in attendance were:

Susan Nolan, Nolan Associates, NCOIL Executive Director
Candace Thorson, NCOIL Director of Legislative Affairs & Education,
Property-Casualty Insurance

MINUTES

The Committee voted unanimously to approve the minutes of its July 8, 2005, meeting in Newport, Rhode Island.

HURRICANE KATRINA'S EFFECT ON P-C INSURANCE MARKETS

New York State Insurance Superintendent Howard Mills reported that the California, Florida, Illinois, and New York insurance departments held a summit earlier in the week regarding development of a national mega-catastrophe program. Among other things, he said, attendees discussed a layered program of private-market, state, and federal responsibility, with primary liability resting in the private market. State catastrophe funds, perhaps including regional systems, would follow, he said, with the federal government stepping in last. Superintendent Mills said that attendees at the meeting generally believed Congress should help promote greater capacity in the catastrophe arena. He said such an effort might include revising the IRS tax code to allow for creation of tax-deferred catastrophe reserves. He added that in order to spread catastrophe risk more successfully, states must get more help from financial services markets.

Sen. Geller, who participated in the summit along with Rep. Eiland, said attendees acknowledged that disaster recovery includes both social policy (such as how to treat the approximately two-thirds of typically uninsured damage) and insurance policy (such as how to ensure that the market can pay policyholder claims in the event of a mega-catastrophe).

Insurance industry representatives spoke to the challenges faced by companies and agents as a result of Hurricane Katrina and subsequent storms. Among other things, they cited the millions of personal and commercial claims, agent/adjuster access issues, and confusion regarding flood versus wind damage as key concerns. They noted that, at the time of the Committee meeting, Congress had not yet extended the borrowing authority of the National Flood Insurance Program (NFIP), which meant that the NFIP could not extend Letters of Credit to Write-Your-Own (WYO) companies so that the companies could pay flood claims. Interested parties were optimistic that Congress would act soon.

Frank Nutter of the Reinsurance Association of America (RAA) said, in part, that approximately half of insured losses from recent hurricanes would fall to reinsurers. He said the storms had increased demand for catastrophe reinsurance coverage, as well as heightened pressure by rating agencies to boost capital for catastrophe exposures. Mr. Nutter explained that the market was consequently witnessing a surge of capital, particularly into Bermuda, in order to take advantage of a perceived demand increase. He reported that Bermuda regulatory authorities had already approved six (6) new reinsurers, with four (4) more in the pipeline.

AFTERMARKET CRASH PARTS

Rep. Keiser said that, following a Committee hearing at the 2005 Summer Meeting, legislators voted to have NCOIL President Rep. Eiland appoint an Aftermarket Crash Parts Subcommittee that would further review a proposed *Certified Aftermarket Crash Parts Model Act (substitute amendment)* and offer an official recommendation to the full Committee at the Annual Meeting. He acknowledged that NCOIL had examined the issue for many years and said the proposed model law would 1) endorse certification of aftermarket crash parts by third-party organizations, such as the Certified Automotive Parts Association (CAPA); 2) require disclosure as to the use of certified aftermarket crash parts; and 3) provide that a person leasing or financing a vehicle could not be penalized for using a certified part.

Sen. Redfield, chair of the Subcommittee, reported that the group met via conference call several times and solicited input from interested parties. She said the Subcommittee officially recommended Committee

adoption of a proposed *Resolution Regarding Motor Vehicle Crash Parts*, which she said would replace further consideration of the draft model law.

Among other things, Sen. Redfield said the resolution recognizes the importance of competition in the crash repair industry and supports 1) use of all kinds of crash parts when appropriate; 2) consumer awareness of the differences between types of crash parts, as well as notification regarding the kind of part for which an insurer will reimburse; and 3) having an insurer stand behind the part(s) it requires. She said interested parties supported the resolution.

Sen. Redfield noted that the Subcommittee initially agreed to a series of amendments to the model act but ultimately determined that they were unworkable and that an NCOIL resolution would be more appropriate. She said the Subcommittee was presenting, for the full P-C Committee's review, the rejected amendments so that the Committee could appreciate the scope of the Subcommittee's work. Among other things, Sen. Redfield said the amendments would have:

- revised current notification provisions to more clearly identify the kind of crash part to be used and to clarify why a repair facility bases an estimate on a type of part
- added language requiring an insurer to disclose on an insurance contract the kind of crash part it requires, as well as that a consumer may pay the difference between a certified aftermarket and a car-company part if the insurer requires an aftermarket but the consumer would prefer a more expensive car-company version
- added language requiring an insurer to warrant non-car company parts that it requires
- added a drafting note recognizing that a state may wish to impose penalties for violations of state fraud laws
- substituted the provision regarding leased and financed vehicles with a drafting note to the same effect
- deleted references identifying third-party certifying entities as "independent"
- deleted a provision deeming that certified parts are of "like kind and quality" to car-company parts

Sen. Hottinger suggested amending the resolve clause in the resolution that supports having an insurer stand behind the part(s) it requires, if that company stipulates a certain type of part as a condition of reimbursement. He supported language instead that would have an insurer assure that the repairer, parts distributor, and manufacturer warrant all parts and repairs. Following Committee discussion, the Committee waived the 30-day deadline rule and overwhelmingly voted against adopting the amendment. Those in favor of the proposal were:

Rep. Donald Brown, FL
Sen. Jay Hottinger, OH
Sen. William Walaska, RI

The Committee voted, via unanimous voice vote, to adopt the *Resolution Regarding Motor Vehicle Crash Parts* and refer it to the Executive Committee for the group's consideration later in the Annual Meeting. Rep. Keiser said the resolution would appear on the non-controversial calendar.

OTHER BUSINESS

REVIEW OF NCOIL MODEL LAWS, AS PER BYLAWS

Rep. Keiser said NCOIL bylaws required the Committee to review the NCOIL *Model Act Regarding Use of Credit Information in Personal Insurance*, originally adopted on November 22,

2002, and amended on July 16, 2004. He said time constraints had prevented discussion of the issue at the 2005 Summer Meeting.

Ms. Thorson reported that 26 states had adopted legislation and/or regulation based on the NCOIL model act, making it the organization's most successful model law, and that legislatures were still considering similar statutes. Among other things, she said the model act would prohibit an insurer from denying, canceling, or non-renewing a policy based solely on credit information. She said it would 1) require an insurer to re-underwrite and re-rate an insured whose credit report was corrected; 2) require an insurer to notify an applicant that credit information would be used, as well as notify when an adverse action was based on credit data and what the four primary credit-related factors were; 3) indemnify insurance producers obtaining credit information and/or insurance scores according to an insurer's procedures and according to applicable law and regulation; and 4) restrict a consumer reporting agency's ability to provide or sell information submitted in conjunction with an insurance inquiry.

Ms. Thorson noted that approximately seven (7) states with NCOIL-based laws had added exclusions for extraordinary life circumstances. These provisions, she said, permit insurers to exclude or treat as neutral credit information related to a catastrophic life event, such as significant illness or injury, death of a loved one, or divorce. Ms. Thorson said an insured generally needs to verify such a circumstance.

Sen. Leavell said New Mexico had such an exclusion. He said the Committee may wish to consider adding a similar provision to the NCOIL model, perhaps as a drafting note.

Representatives of the insurance industry voiced strong support for the model act. They issued no objection to an extraordinary life circumstances provision, provided it would not be anti-competitive.

Following Committee discussion, legislators voted unanimously to 1) readopt the NCOIL credit scoring model act and 2) consider an extraordinary life circumstances drafting note at the 2006 Spring Meeting. Rep. Keiser said the model would appear on the non-controversial calendar for Executive Committee consideration on November 19.

ILF STUDY REGARDING AUTO INSURANCE BEST PRACTICES

Ms. Thorson said the Insurance Legislators Foundation (ILF), NCOIL's educational and research arm, had voted to pursue a study into auto insurance best practices, such as red-light cameras, black boxes, and staggered licenses for young drivers. She said the study would be developed in conjunction with entities including the Insurance Institute for Highway Safety (IIHS). Ms. Thorson said the ILF also had voted to pursue a separate study into enforcement of judgments as related to reinsurance collateral, and she commented that this other issue was more time sensitive. Because the ILF generally engages in one study at a time, Ms. Thorson said, the best practices report had been delayed and would be developed in more detail prior to the 2006 Spring Meeting.

CONSIDERATION OF PROPOSED 2006 COMMITTEE CHARGES

Ms. Thorson said the proposed Committee charges for 2006 were as follows:

- Facilitate and track state activity regarding rate modernization, tort reform issues, and claims-history databases

- Facilitate and track state enactment and implementation of the NCOIL *Model Act Regarding Use of Credit Information in Personal Insurance*
- Interact with Congress to promote enactment of federal mega-catastrophe legislation and work with interested parties, as appropriate; monitor and report on state activities pertaining to natural disaster insurance
- Monitor and report on activity regarding the National Flood Insurance Program (NFIP)

Assem. Lafayette suggested adding a charge regarding drafting model legislation, as appropriate, that would deter insurance fraud. Sen. Geller suggested adding language regarding investigating the relationship between disaster payments made by the Federal Emergency Management Agency (FEMA) and insurance.

Following Committee discussion, legislators voted unanimously to amend and adopt the proposed 2006 charges.

ADJOURNMENT

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