

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
FINANCIAL SERVICES & MULTI-LINES ISSUES COMMITTEE
TAMPA, FLORIDA
DECEMBER 10, 2020
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Financial Services & Multi-Lines Issues Committee met at the Tampa Marriott Water Street Hotel on Thursday, December 10, 2020 at 3:30 P.M. (EST)

Representative Edmond Jordan of Louisiana, Chair of the Committee, presided*.

Other members of the Committee present were (* indicates virtual attendance via Zoom):

Sen. Jason Rapert (AR)
Asm. Ken Cooley (CA)*
Sen. Matt Lesser (CT)*
Rep. Matt Lehman (IN)
Rep. Derek Lewis (KY)*
Rep. Joe Fischer (KY)

Rep. Jim Gooch (KY)*
Rep. George Keiser (ND)*
Sen. Shawn Vedaa (ND)

Other legislators present were:

Rep. Martin Carbaugh (IN)
Rep. Peggy Mayfield (IN)*
Sen. Andy Zay (IN)

Rep. Michael Webber (MI)
Asm. Kevin Cahill (NY)*
Rep. Joe Schmick (WA)*

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO
Will Melofchik, NCOIL General Counsel
Tess Badenhausen, Assistant Director of Administration, NCOIL Support Services, LLC

QUORUM

Upon a motion made by Rep. Matt Lehman (IN), NCOIL President, and seconded by Sen. Matt Lesser (CT), the Committee waived the quorum requirement without objection by way of a voice vote.

MINUTES

Upon a motion made by Asm. Ken Cooley (CA), NCOIL Vice President, and seconded by Rep. George Keiser (ND) the Committee voted without objection by way of a voice vote to approve the minutes from the Committee's September 26, 2020 meeting.

CONTINUED DISCUSSION ON NCOIL INSURER DIVISION MODEL ACT

Sen. Matt Lesser (CT), sponsor of the NCOIL Insurer Division Model Act (Model), stated that the Committee had a good initial discussion on this Model – which starts on page 127 in the legislator binders – at the last meeting in Old Town. Since that time there has been some discussion about potentially replacing the Model with Colorado HB1091 – which is in the binders

on page 141 – to address some concerns from interested parties. Sen. Lesser stated that at this time he would rather make some amendments to the existing Model as opposed to replacing it. For example, Sen. Lesser stated that he thinks the Committee can get to a place where perhaps some drafting notes are included in the Model on issues such as requiring an independent expert and holding a public hearing so that states can have options as to whether or not they want to require those things in their statutes or provide the Commissioner discretion. Sen. Lesser stated that he looks forward to working on the Model after this meeting and hopefully it will be ready for a vote at either the next meeting in March or the July meeting.

Karen Melchert, Regional VP, State Relations at the American Council of Life Insurers (ACLI), stated that she understands Sen. Lesser's desire to not replace the Model with the CO bill but ACLI believes that going with the CO bill would in fact be a cleaner approach because the CO bill is based on the Illinois bill which was actually based on the CT bill and there have been improvements along the way. ACLI and the Reinsurance Association of America (RAA) worked with interested parties in CO to get the bill to a point where they were supportive and they would like a Model at NCOIL that they can support.

ACLI and RAA recognize that there are differences of opinion on issues such as the use of an independent expert. When the issue of insurer divisions came to light in 2017 when CT adopted their statute, the industry was pretty divided and ACLI was not really able to weigh in on any proposal but it has worked over the past couple of years to get to a point where ACLI developed principles and guidelines and that is what based ACLI's suggested revisions to CO's bill which would have moved forward and been enacted but for COVID ending session prematurely. Accordingly, ACLI would like a strong Model from NCOIL and the CO bill as amended is a great place to start and address some of the issues Sen. Lesser and the CT DOI has raised. ACLI looks forward to continuing to work on this in order to develop a Model that ACLI can support in states as the issue is starting to pop up more and more as an important tool for insurers to use to organize their risk portfolio and create their corporate structure.

Asm. Cooley stated that he believes this is a very important Model and he has had discussions with Sen. Lesser about it. Asm. Cooley stated that he looks at the Model the way he always does when he sits down to draft a bill – I like the way I'm doing it wrong better than the way the other person is doing it not at all. This is a good Model to start with but Asm. Cooley stated that he understands how as ideas get examined over time you start seeing possible issues and go through iterations of knocking the birds off and cleaning it up. Somebody has the burden of getting that going. Asm. Cooley stated that he strongly favors the idea of that NCOIL is a group of state lawmakers and is now taking a position on this issue so what do they think in this area – lawmakers are the ones who safeguard the public trust and interest. Asm. Cooley stated that he feels that these types of divisions are highly technical and it is for the good of the order and good of the public to have a provision for a hearing but not a court or regulatory hearing. It may be de minimus and it may be decided that it is perfunctory but they have to put together a record and analysis and provide the opportunity to speak. That furthers the public interest.

For the same reason, Asm. Cooley stated that he believes that a drafting note that addresses having an expert potentially would be a very good drafting note to put in a Model like this and it could maybe be backfilled to include a little authorization for the regulator to hire that expert talent if they go down that trail. Asm. Cooley stated that in his experience with CA regulators they often have very experienced people in the DOI and it would not be uncommon from CA's standpoint to think they could handle it in-house but it is the legislators' job to lay the framework. Asm. Cooley believes that NCOIL should be producing off this chassis a Model that is embraced throughout the country. Accordingly, Asm. Cooley favors having some allusion to a

departmental hearing in the Model because as a public official he wants them to take that step and expose the thinking in the public realm before everyone has to live with it in the headlines of the local paper and acknowledging that they need to make a judgment of whether there is the right talent in house or not is fair in the sense that legislators are pushing regulators on that issue. This is not to be a pest but rather just to say that if the Model is recommended to the 50 states that a good plan is in place.

Paul Martin, VP of State Relations at the RAA, stated that he fully agrees with Asm. Cooley's comments. Mr. Martin stated that as legislators are fully aware, as we get better with a particular issue or concept the legislation tends to get better. The CO bill is a result of trying to take the lessons learned from other states and come up with a Model that becomes a best in class solution for the division issue. The two issues that seem to be causing the most heartburn are the hearing requirement and the expert requirement. When talking about the hearing requirement we are talking about due process and due process basically has two concepts: notice and opportunity to be heard. Right now, under the Model, there is not enough access to information about the potential division or ability to raise concerns from policyholders and policyholders can be insurance policyholders and annuity holders and reinsurers who have ongoing contractual obligations to companies. They may all have questions about capitalization adequacy, proposed leadership of the new entity or the state of domicile. It could be a whole host of reasons why there should be a hearing to flesh the issues out.

Regarding the expert, Mr. Martin stated that he understands that the CT DOI and the CA DOI have a lot of in-house expertise and it can be appreciated that they can say that they know the entities and they are capable of looking at them and determining whether the proposed division is a good idea or not. However, there are some DOI's across the country that may not have those resources so having the expert available to look at those entities and render an opinion as to whether or not the division should go forward is proper. Also, this is one of the few times that industry recommends that the Commissioner should have more authority and more discretion. In this situation, they should. Under the current Model, if a petitioner for a proposed division checks all the boxes the Commissioner must approve the division. RAA believes the Commissioner should have the discretion to review all the evidence and concerns and have a hearing to hear everyone's opinion and then make a decision whether the division should go forward or determine that some changes should be made to the division before it is allowed to proceed. RAA submits that these are not onerous requirements but rather enhance the confidence of the public and industry in the division process. RAA looks forward to working with everyone on this going forward.

Bridget Dunn, Head of Gov't Relations at Talcott Resolution (TR) stated that TR is a privately owned insurance company based in CT that was formed in 2018 after the purchase of The Hartford's closed block of life and annuity business. Over the past two years, TR has been working to manage that closed runoff block of business while actively looking to grow its platform. One of the mechanisms that it hopes to utilize in order to acquire other runoff blocks of annuity business is insurer divisions. TR is lucky enough to have an existing division law in CT and it believes that more states that have insurer division laws give it a greater opportunity to grow the platform in a more strategic way. It is important to note that a division is essentially a reverse merger and it does need to have robust Form A-like parameters around it in order to be complete. With that said, it is important that each division follows the Form A-like process for each state which can differ from state to state based on their holding company act. TR is encouraged by the conversations taking place at NCOIL on this issue and looks forward to development and adoption of the Model so that it can be introduced in future legislative sessions.

Daniel Lewallen, Esq. at Faegre, Drinker, Biddle & Reath, LLP, and on behalf of the National Conference of Insurance Guaranty Funds (NCIGF) and the National Organization of Life and Health Insurance Guaranty Funds (NOLHGA), stated that both NCIGF and NOLHGA remain neutral on whether or not insurer division statutes should be adopted and both also agree that if such statutes are adopted any insurer division approval should ensure that the eligibility of a dividing insurer's policyholders for guaranty system protection must not be disrupted because of a division. NCIGF and NOLHGA also appreciate the efforts that have already been made to ensure that a division plan would not result in policyholders losing their eligibility to be covered by the guaranty association or guaranty fund in their state of residence.

NCIGF and NOLHGA believe that as a matter of core principles they are aligned with NCOIL. NCIGF and NOLHGA believe that focusing on addressing two drafting issues can better preserve the principles of guaranty system protection. First, ensuring continuity of guaranty system protection should be mandatory. There needs to be confirmation that there would be no discretionary authority to approve a division plan without satisfying the fundamental policyholder protection concern that none of the dividing insurer's policyholders would lose eligibility for guaranty association or guaranty fund protection as a result of the division. The current draft identifies generally that the continuation of such protection is one of the three requirements that, if satisfied, mandates approval of a division. It does not, however, make it clear the discretionary approval is not permitted where this policyholder protection standard for mandatory approval has not been satisfied.

Second, the division sponsor should demonstrate continuity of guaranty system protection in the plan of division. In order to ensure that this standard is addressed meaningfully in the insurer division review process, it must be incumbent on the sponsor of a division plan to include in the division plan some evidence or basis that the division will not result in any policyholders losing their eligibility for guaranty association or guaranty fund coverage. Following this meeting, NOLHGA and NCIGF will offer specific language suggestions to address these issues including any criteria that should be addressed in the division plan to establish that continuing eligibility for guaranty fund protection will not be jeopardized by an insurer division.

DISCUSSION ON COVID-19 INSURANCE MODERNIZATION INITIATIVES

a.) Update on NAIC's Innovation & Technology Task Force (TF) Initiatives

The Honorable Glen Mulready, Oklahoma Insurance Commissioner, stated that the TF met virtually last Friday during the NAIC's Fall National meeting. The TF updated the anti-rebating amendments to Section 4(h) of the NAIC's Unfair Trade Practices Model Act – Model #880 – with two minor revisions. The TF appreciates NCOIL President, Indiana Representative Matt Lehman's participation and many contributions to the amendments. The NAIC feels the revisions strike the right balance between allowing companies to utilize new technologies to offer value-added products and services that mitigate risk and better serve consumers while ensuring appropriate consumer protections. The TF also heard an update from Rep. Lehman on NCOIL's insurance modernization activities. The NAIC looks forward to continuing to work with NCOIL and also state legislators on issues and legislation related to insurance innovation and technology.

Cmsr. Mulready stated that the TF also discussed comments from interested parties to its request for information related to continuing specific regulatory relief or regulatory accommodations offered by states related to technology and digitalization as a result of the

COVID-19 pandemic. Nine responses were received and the TF summarized them in a document that is available on the NAIC website. The summary includes response tables grouping them into four main categories including which organizations offered a similar or same suggestion. The tables covered the following main areas: electronic commerce; regulatory capabilities; claims facilitation; specific to surplus lines. While most did not include the specific statutes or statutory language they recommend eliminating or revising, the TF did receive the specific recommendations to develop a bulletin to address concerns relating to existing legislation and/or issues related to the state by state implementation of e-signature laws including the Uniform Electronic Transactions Act (UETA) and existing obstacles to moving e-commerce forward.

The TF members are now in the process of determining which issues to prioritize in the 2021 work plan. The TF has also combined the Big Data and Artificial Intelligence Working Groups to create synergy and efficiencies as the use of big data and intelligent algorithms by the industry are so intertwined it just makes sense to combine those two groups. The TF plans to move forward in 2021 with developing a regulatory framework and strategy for reasonably and meaningfully overseeing and monitoring industry's use of big data and intelligent algorithms like AI and machine learning. The TF may start by looking at the development of a corporate governance model or guidance consistent with the intent and expectations of the AI principles. NAIC looks forward to continuing to work with NCOIL on these important initiatives. Rep. Lehman stated that it is always a pleasure to work with the NAIC and that TF and he looks forward to working with them going forward.

b.) Producer Licensing

Wes Bissett, Senior Counsel, Gov't Affairs at the Independent Insurance Agents and Brokers of America (IIABA), stated that he appreciates the opportunity to talk about how the COVID-19 pandemic affected the agent-broker credentialing process at the state level – things like what agents need to do to obtain licenses and what they need to do maintain those by completing continuing education. It is safe to say that the regulatory framework for credentialing and many other things underwent a fairly significant stress test in recent months and at least as it relates to agent licensing and CE issues, the states did very well from IIABA's perspective. Both legislators and regulators deserve a lot of credit for how things played out.

Mr. Bissett stated that he attributes the success to two things. First, there was a very strong statutory framework in place which is based in large part on the NAIC's producer licensing model law which has been broadly adopted by most states. It is flexible and gave regulators the authority that they needed to act on some of these issues. Second, and perhaps more importantly, over the last two decades the industry stakeholders have been working in concert with legislators and regulators to create an online platform that allows agents to satisfy these types of administrative requirements like renewing a license electronically. So, all of that investment of resources and hard work over the last 20 years really paid off during the pandemic.

Mr. Bissett stated that COVID has had an impact on existing licensees and on people trying to get into the industry. IIABA's focus was largely on those existing licensees who already have existing customers and less so on people who were new and trying to get in. If you were an existing insurance agent there were a couple of potential questions that might have come to mind: renewal of license and continuing education requirements which many people do in person. There were 33 states that issued bulletins that provided extension of time for agents to comply with their renewal and CE requirements and that was helpful. In some ways that may

not have even been necessary because of the work that has been done over the last 20 years. Agents in most states now can renew licenses online and can comply with most of their CE online so while it was nice to have that flexibility and a little bit of breathing room in a very difficult environment to comply with those requirements they were arguably not necessary. Mr. Bisset stated that his phone was ringing off the hook in the Spring but not from agents and existing members with concerns about renewals of licenses.

A bigger issue was the universe of people that were not in the industry and were trying to get licenses for the first time. The hurdles that they were facing were an inability to pass an exam which you need to do in order to be licensed for the first time because you couldn't go to an in-person site and take the exam and secondly, their inability to undergo a criminal background check which is another prerequisite because they need to give their fingerprints to regulators in order for that to happen. The good news is that the state regulatory framework had already anticipated this and there is a provision in just about every state code that allows for temporary licensing. Under the NAIC model and laws in most jurisdictions, states can issue temporary licenses of up to 180 days. Commissioners have a lot of discretion when they do that and can condition and post special requirements on anyone obtaining such a license and one of the features of that is that if you are getting a temporary license you have to have a sponsor, either a licensed agent or licensed company that is prepared to assume full responsibility for the actions of that temporary licensee. There were some in the industry that were pushing further for states to issue full blown licenses to new applicants during the process but the temporary licensing system in the IIABA's view worked well and there were 30 states that took advantage of that.

One other development is that we are already seeing states obviate the need for temporary licensing because they are already beginning to offer on-line examinations to new applicants. In less than a year since the outbreak of COVID there have been 26 states that now offer online exams that didn't at the beginning of the year and there are more states on the way. States have the legislative authority to do this. The NAIC Model gives regulators the ability to issue rules and contract with vendors and according to the NAIC they are not aware of any state where there is a statutory impediment to online licensing but there may be some regulatory impediments. So, from a legislative perspective, the IIABA does not see a need for significant or sweeping legislation or a new Model relating to credentialing.

But, the IIABA does think there is an important role for legislators as it relates to oversight. One of the things that COVID has highlighted is the importance of making compliance with simple administrative tasks easy and simple and maybe look at the more substantive issues differently. So, one thing IIABA would urge NCOIL to consider is that there has been an effort over the last few years to create a multi-state system where an agent can go online and renew their license in just about every state electronically in one stop. The impediment to that is that there are a handful of states that the National Insurance Producer Registry (NIPR) calls the NIPR 5 that don't offer the full functionality of the NIPR at the moment so it is really holding down opportunities for a national registry system.

At the risk of alienating legislators in some states such as WA and NY which are in the NPR 5, getting all states onboard with that electronic licensing opportunity would be significantly helpful. The IIABA also urges legislators to monitor the emergence of new online examinations to see if there are hiccups and if there is a need for legislation. But at the moment it has largely been a success story largely due to the stator frameworks enacted. If something changes, the IIABA wont be reluctant to come back to NCOIL with potential legislative recommendations.

Ms. Melchert stated that temporary licenses really were a godsend during the pandemic because when there were shutdowns people couldn't even go to the facilities because they were closed and weren't deemed an essential business although insurance had been; and when lockdowns loosened, social distancing restrictions and indoor limitations were still in place which meant that you had less capacity at these testing centers and you had a backlog of tests that had not been able to be taken for the last couple of months. Also, in Illinois for example, the testing company that does tests for all professional licenses includes insurance licenses so when you add all of those tests together there were obviously problems. Online testing is being worked on but by the ACLI's count there are only 23 states that have implemented online testing and 4 of them have continued to provide temporary licensing.

Ms. Melchert stated that as noted by Mr. Bissett, there is a great framework out there that provides for temporary licenses. No one wants the temporary licenses to go on indefinitely but the industry was faced with the reality of even with the temporary licenses, some of them were for 90 days, some for 120, some for until the end of the emergency which is all well and good but then you run into the problems of the backlog in testing centers so that is why there was an effort made to get more states onboard for online testing. While there is not a need for any legislative action here in terms of a Model law, legislators are encouraged to talk to their DOIs to determine what they need to implement online testing. Sometimes there are contractual issues as you have to get a new contract with a new vendor and that takes time going through the government administrative process.

The other issue the industry is running into now even when we get to the online testing is the processing of fingerprints and background checks. There are states that will not issue the license until they get the fingerprint report back from the FBI and that is being delayed up to 6 weeks. These are folks that have passed the exam and have got a sponsoring insurer. To that end, it may be helpful to look into a provisional license to fill in that gap and would automatically become a permanent licensing upon completion of the fingerprint submission and background check. Hopefully this never becomes an issue again but these are all things that don't need to happen anymore – we don't need to be in a classroom anymore to take an exam as there are university's that provide degrees without stepping foot in a classroom.

This is not a small issue for the industry as just two members of ACLI had over 2,000 temporary licenses from the start of the pandemic to now. These are people that are trying to get jobs and start a career as an insurance agent and when that is delayed they might not pursue it further in which case they have already spent a lot of money. That can also result in losing out on young talent and losing out on the ability to reach new communities and disseminate insurance products to them. ACLI appreciates all of the help it has received from legislators and regulators to provide for temporary licensing, online testing, and online learning and that is important for legislators to know as they return home to see what, if anything, they can do to make these processes easier and move them along.

c.) Remote Notarization

Frank O'Brien, VP of State Gov't Relations at the American Property Casualty Insurance Association (APCIA), stated that this is one of those issues that was always just dealt with and wasn't an issue until it became an issue. It is something that has always had to be done as every once in awhile we all have to get something notarized. Social distancing requirements and the pandemic in general brought this issue and others to the forefront that should be addressed from an efficiency perspective. Eliminating in-person notarization requirements and giving businesses the ability to remotely notarize certain things was a significant relaxation

during the course of the pandemic and about three dozen states passed guidance, orders and bulletins on the issue. As you would expect, however, with so many states doing things different, folks were all over the place. APCIA believes this is an opportunity for NCOIL to step in, particularly within the insurance space because NCOIL is the insurance legislators association, and take a look at where notarization adds value and where it provides a measure of consumer protection and perhaps where it is a requirement or procedure that has outlived its usefulness.

In addition, APCIA believes that it is a good use of NCOIL's time to take a look at whether online notarizations should be utilized. We are able to meet virtually via Zoom and able to get licensed online and obtain degrees in a virtual setting so why can't some of these consumer protections requirements be done virtually as well. One of the things that has happened over the past few months and which both Cmsr. Mulready and Rep. Lehman have noted is the ability of both NCOIL and NAIC to come together and hash out Models and changes that provide a good amount of consumer protection as well as efficiency. APCIA believes that remote notarization is one of those areas and looks forward to having this remain on NCOIL's agenda in 2021 and working with the Committee going forward.

Rep. Jordan stated that he looks forward to working on this issue. Louisiana passed a bill on this issue and there was an Executive Order as well. One of the issues with the bill and the Order is that it requires you to retain the records for 10 years which is longer than the state attorney Bar requires – the Bar requires 7 years after the conclusion of a matter. Rep. Jordan stated that he would hope that whatever Model is passed by NCOIL would comply with state requirements. If it is 10 years, so be it, but there should be a level of uniformity. Mr. O'Brien agreed with Rep. Jordan.

Rep. Lehman stated that it is interesting that when COVID began a lot of us realized that due to technology, some ways of doing things would be modernized. The two issues of producer licensing and remote notarization are two issues that Rep. Lehman stated he is glad to see moving forward because we should not go back to how we used to do it as the way we are doing things now is much better. Rep. Lehman stated that he looks forward to working on these issues.

Rep. George Keiser (ND) stated that the pandemic provided an opportunity for all industries, especially the insurance industry. The industry was able to respond in amazing ways and temporary licensing is one example. However, we are not where we want to be. We do not want temporary licensing as a standard because there is a great value of going through the full licensing process and protecting consumers. We need to work on all levels towards those things which we had to do out of necessity which we shouldn't really want to do and can be eliminated by action at this time.

Many states have gone to online learning and online testing so that issue has been eliminated for some states. Many states are still having a problem with electronic signatures and state legislators need to look at their legislation related to that and how the laws may be causing some problems with licensing and other issues. The federal government needs to look at this as the FBI has to come up with another way for getting fingerprinting done in a more reasonable timeframe than just saying we can't do it because of the pandemic. This meeting is an example of one of the reactions to technology. North Dakota is a very small state but within about two months of the onset of the pandemic, Zoom was the mode of operation in the state and if someone didn't have that capacity the state worked with them to provide such. We need to take the lessons learned from this pandemic and find solutions rather than saying if another

pandemic occurs we will go back to temporary licensing, because it is not the best solution for consumers.

Rep. Jordan stated that he agreed with Rep. Keiser's comments. Separate from temporary licensing issues, Louisiana regulated hemp a couple of years ago and you have to go through a background check with fingerprints and there were a lot of delays with that. Accordingly, Rep. Jordan understands Rep. Keiser's concerns. With regard to remote notarization, a lot of Louisiana bankers wanted that as in Louisiana a notary is sort of a dying breed so ways are being looked at to determine whether some things need to be notarized going forward. Rep. Jordan stated that he looks forward to working on these issues and he agrees that temporary licensing shouldn't just be the standard going forward. With any crisis comes opportunity for innovation and this is an example of that so it is important to keep our thinking caps on and keep being innovative in these areas.

ADJOURNMENT

Upon a Motion made by Rep. Lehman and seconded by Asm. Cooley, the Committee adjourned at 4:45 p.m.