

Resolution Regarding Workers' Compensation Proof of Coverage Requirements

Adopted by the Executive Committee on November 20, 2011, and by the Workers' Compensation Insurance Committee on November 18, 2011.

Sponsored for discussion by Rep. William Sandifer III (SC)

WHEREAS, the laws of many states require the insurance industry to notify certain state executive branch agencies when an employer has obtained (or has cancelled or failed to renew) workers' compensation coverage and to disclose additional information about the employer, the insurer, the insurance agent, and the terms and scope of the insurance policy; and

WHEREAS, the purpose of such requirements is to ensure that employers fulfill their statutory obligations and obtain workers' compensation insurance as required by law; and

WHEREAS, the scope of the proof of coverage information required to be submitted is expansive and often includes the name, location, and contact information of employers; the employer's State unemployment insurance number, applicable industry code, rating classification, number of employees, and total payroll; the identity of the employer's current insurance agent and the insurer underwriting the policy; the insurance policy's effective and expiration dates and the policy premium amounts; and other information concerning the policy (e.g., information about policy changes, the addition or deletion of locations, whether it is a wrap-up policy, etc.); and

WHEREAS, there are legitimate public policy reasons to allow parties that have a business relationship with an employer or provide medical treatment to injured workers to verify workers' compensation coverage for a named employer with the appropriate state agency;

WHEREAS, the release of proof of coverage records in response to state open records laws requests can cause substantial competitive harm to the submitting insurers and insurance agents, especially when such requests are made by parties who subsequently utilize the work product of others or package, market, and sell the information for financial gain; and

WHEREAS, state open records laws are designed to promote government transparency and not to impose financial harm and inflict competitive injury on private parties that are obligated by law to provide certain records to their government; and

WHEREAS, insurers and insurance agents invest significant time and intellectual capital securing employers as clients, collecting information about each employer, assessing each client's particular needs, and developing an insurance policy that serves those needs and achieves compliance with state law, and

WHEREAS, the release of such proof of coverage records will allow marketplace competitors to improperly obtain the confidential policy and employer information compiled and developed through the efforts of the submitting agents and insurers.

WHEREAS, the release of such highly confidential and proprietary information was never contemplated by policymakers, serves no public policy purpose, and inflicts unnecessary competitive harm on the insurers and insurance agents who are obligated to submit these records; and

WHEREAS, the insurance industry goes to great lengths to ensure the confidentiality of this information – which protects both the interests of the industry and the privacy expectations of policyholders – and no responsible agent or insurer would readily release this information to the general public; and

WHEREAS, this type of policy information is typically an insurance agent’s most valuable asset and often the primary source of an agency’s financial value, and is developed and maintained on a confidential and proprietary basis; and

NOW, THEREFORE BE IT RESOLVED that the National Conference of Insurance Legislators calls on state policymakers to take the necessary steps to ensure that all insurance policy and related proof of coverage information submitted to state agencies (except the name and location of the insured and name of the workers’ compensation insurer) is properly protected and recognized as confidential under state open records laws.