

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
SPECIAL STATE-FEDERAL RELATIONS COMMITTEE MEETING ON  
MARKET CONDUCT REFORM  
BOSTON, MASSACHUSETTS  
JULY 20, 2006  
MINUTES

The State-Federal Relations Committee of the National Conference of Insurance Legislators (NCOIL) held a special meeting on market conduct reform at the Boston Park Plaza Hotel & Towers in Boston, Massachusetts, on July 21, 2006, at 10:30 a.m.

Rep. Craig Eiland of Texas, chair of the Committee, presided.

Other members of the Committee present were:

Sen. Joseph Crisco, CT	Sen. Neil Breslin, NY
Sen. Steven Geller, FL	Assem. Ivan Lafayette, NY
Sen. William Haine, IL	Sen. William Larkin, NY
Rep. Terry Parke, IL	Sen. James Seward, NY
Sen. Ruth Teichman, KS	Rep. Brian Kennedy, RI
Rep. Robert Damron, KY	Del. Harvey Morgan, VA
Rep. Dennis Horlander, KY	Rep. Virginia Milkey, VT
Sen. Pam Redfield, NE	Rep. Mark Young, VT
Sen. Carroll Leavell, NM	

Other legislators present were:

Rep. Sandra Adams, FL  
Sen. Dean Cameron, ID  
Rep. Michael Ripley, IL  
Rep. Ronald Crimm, KY  
Rep. George Keiser, ND  
Sen. Duane Mutch, ND  
Rep. Frank Wald, ND  
Assem. Nancy Calhoun, NY

Others present were:

Susan Nolan, NCOIL Executive Director  
Candace Thorson, NCOIL Deputy Executive Director  
Paul Donohue, NCOIL Director of State-Federal Affairs  
Harry MacAvoy, Director of Research & Program Development, NYS Assembly

#### REPORT OF MARKET CONDUCT SUBCOMMITTEE

Sen. Breslin, chair of the Subcommittee on Market Conduct Reform, gave a historical account of the development of a February 2004 NCOIL *Market Conduct Surveillance Model Law*. He said the effort began with two Insurance Legislators Foundation (ILF) studies and numerous hearings. Sen. Breslin said negotiations with the National Association of Insurance Commissioners (NAIC) led NCOIL to amend its model and adopt a joint NCOIL-NAIC draft in July 2004.

Sen. Breslin said the NAIC subsequently adopted the model in September 2004 but that, due to a lack of state, and particularly regulatory, support, only Texas had enacted a version of the joint bill.

Sen. Breslin explained that the Subcommittee had been created to re-evaluate NCOIL market conduct reform options, including the need for revisions to the February 2004 draft. He said interested parties had been invited to submit comments on the model act and that the following groups had offered input:

- AFLAC
- Allstate
- American Council of Life Insurers (ACLI)
- America's Health Insurance Plans (AHIP)
- American Insurance Association (AIA)
- Center for Economic Justice (CEJ)
- Consumer Credit Insurance Association (CCIA)
- NAIC
- National Association of Mutual Insurance Companies (NAMIC)
- New York Life
- Property-Casualty Insurance Association of America (PCI)
- State Farm

Sen. Breslin noted that the Subcommittee had deliberated at length and was recommending various revisions for Committee consideration.

## DISCUSSION

Rep. Eiland said the Texas market conduct law took effect in September 2005 and that, since then, the state insurance department had conducted 40 exams under its provisions. He said the experience in Texas had thus far been positive. He noted that Colorado also had passed a market conduct bill.

Rep. Eiland guided Committee members through the Subcommittee recommendations on a section-by-section basis. He emphasized that a primary goal of the bill is to establish structure for targeted market conduct examinations. He stressed that an Insurance Commissioner's response to an individual complaint would not be deemed a market conduct action under the bill.

Regarding Section 4, Domestic Responsibility and Deference to Other States, Rep. Eiland overviewed the significance of interstate cooperation within the larger goal of harmonizing market conduct surveillance.

Regarding Section 5, Market Analysis Procedures, Rep. Eiland said the purpose of the section was to establish a uniform structure for states to use when conducting market analysis.

Sen. Geller commented on the meaning of the term "objective sources" under Section 5(a), suggesting that the definition could lead to the exclusion of information from consumer groups.

He also raised a concern about whether, for example, a Tillinghast study done on a one-time basis, and therefore not published annually, could be prohibited from use for market analysis.

Del. Morgan suggested that, in Section 5(e), the list of items that would trigger a market conduct examination was inadequate. He said the language could preclude a market conduct exam if an insurer were in violation of rate or form filing requirements or termination statutes.

Mr. Donohue replied that the list was not exclusive, noting use of the word “may” in the opening sentence.

Sen. Geller suggested that Del. Morgan’s understanding of the limiting nature of the statute was correct.

Linda Lanam of the American Council of Life Insurers (ACLI) informed Committee members that unfair trade practice acts do make reference to rates being unfair and, therefore, would be subject to the scope of Section 5. She suggested that a drafting note could be added to address specific state statutes that might need to be incorporated.

Rep. Eiland summarized Section 6, Protocols for Market Conduct Actions. Sen. Geller inquired, with respect to Section 6(c), whether a Commissioner in one domicile would be required to accept the decisions reached as a result of a market conduct report by the Commissioner of another domicile.

Rep. Eiland replied that in such a scenario a Commissioner could require additional penalties or modifications by an insurer as a result of the market conduct action taken by another state.

Rep. Eiland summarized Section 7, Protocols for Targeted Market Conduct Examinations.

Tim Mullen of the NAIC explained, with respect to Section 7(1) regarding costs and fees of examinations, that the NAIC Market Conduct Examiners Handbook publishes recommended examiner salaries, on a per diem rate basis, that are geared primarily toward contract examiners. He said that such recommendations are updated every other year and that they are national.

Sen. Geller suggested that the rate limit of 125 percent of per diem allowances as prescribed by the NAIC might increase to 150 percent for contract examiners. Alternatively, he suggested keeping the 125 percent requirement as long as a provision was incorporated to reflect regional cost differences.

Rep. Wald inquired whether there was an arbitration mechanism contained in the bill. Rep. Eiland indicated that there was, though it was not mandatory.

Rep. Eiland overviewed Section 8, Confidentiality. He detailed issues regarding requiring insurers to provide privileged information contained in third-party models.

Ms. Lanam explained that companies using third-party models might not have access to the source codes for those models. This, she explained, was the industry’s reason for requesting a

drafting note that would phase-in the third-party disclosure requirement over a 12 to 18 month period. She emphasized the importance of confidentiality to industry interested parties.

Tom Larson of Equicat, a third-party vendor, indicated that third-party models include many trade secrets and that making such information available to outside parties would be problematic. He indicated that both Florida and California have been able to address industry concerns with respect to confidentiality. In response to a question from Rep. Eiland, he described the types of third-party information typically provided to Florida regulators.

Sen. Geller outlined some issues Florida regulators had observed regarding hurricane catastrophe models used in the state. He said the Florida Legislature passed a new law in 2006 that would require such “black box” modeling to be made available to regulators. He explained that in the event an insurer does not provide such modeling information, the data could not be used for rating purposes.

David Foy of the Florida Office of Insurance Regulation noted that, prior to the 2006 law, Florida regulators would question insurers on actuarial issues when the Department could not access confidential information used to create third-party models. He noted that insurers could provide some of answers but could not offer full details due to the proprietary nature of the “black box” modeling information.

Kate Paolino of the American Insurance Association (AIA) expressed concern regarding liability. She noted that companies may be caught in a “Catch 22” because in some states companies are required to use certain vendors, but these vendors will not allow access to their proprietary modeling information. She said that proposed language in the NCOIL bill that would require insurers to cause third-party modeling information to be made available was troublesome.

Del. Morgan suggested that the language in the draft was adequate and that it protected the confidentiality of third-party vendor data.

James Tuite of State Farm Insurance Companies said the issue was not one of confidentiality but, rather, one of trade secrets. He suggested that the concern of modelers had to do with sharing their formulas with others.

Reps. Keiser and Damron voiced their concern regarding regulators’ inability to access “black box” information.

Rep. Eiland continued his review of the bill, summarizing Sections 9, Market Conduct Surveillance Personnel; 10, Immunity for Market Conduct Personnel; 11, Fines and Penalties; and 12, Data Collection and Participation in National Market Conduct Databases.

Rep. Eiland overviewed Subcommittee efforts to address industry concerns regarding the inclusion of inaccurate insurer data in the NAIC Complaint Database.

Sen. Geller expressed unease with language that would require Insurance Department personnel to review the accuracy of insurer-specific complaint data reported to the NAIC. He said the language was overly broad.

Rep. Eiland summarized Sections 13, Coordination with Other States through the NAIC; 14, Additional Duties of the Commissioner; and 15, Effective Date.

Del. Morgan inquired whether the language contained in Section 12(4)(d) would provide a company an excuse not to provide requested information.

Rep. Eiland replied that it would not. He noted the language was based on proposed amendments to the Federal Rules of Civil Procedure relating to the discovery of electronic data.

Rep. Parke expressed his approval of the work that had been done on the model and asked whether it was the intent of the Chair to pass this model with modifications at the next NCOIL meeting in November.

Rep. Eiland replied that such was the plan. He asked for specific comments from interested parties that had not yet input, including regulators, within 20 days, or by August 9.

#### ADJOURNMENT

There being no further business, the Committee adjourned at 4:30 p.m.