

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
PROPERTY-CASUALTY INSURANCE COMMITTEE  
WORKING SESSION ON CERTIFICATES OF INSURANCE/INSURANCE BINDERS  
POINT CLEAR, ALABAMA  
NOVEMBER 18, 2012  
MINUTES

The National Conference of Insurance Legislators (NCOIL) Property-Casualty Insurance Committee met at The Grand Hotel Marriott Resort in Point Clear, Alabama, on Sunday, November 18, 2012, at 8:00 a.m.

Rep. Steve Riggs of Kentucky, chair of the Committee, presided.

Other members of the Committee present were:

Rep. Greg Wren, AL	Sen. Dean Kirby, MS
Rep. Barry Hyde, AR	Rep. George Keiser, ND
Sen. Travis Holdman, IN	Rep. Don Flanders, NH
Rep. Matt Lehman, IN	Sen. Carroll Leavell, NM
Sen. Ruth Teichman, KS	Assem. Nancy Calhoun, NY
Rep. Ron Crimm, KY	Rep. Charles Curtiss, TN
Rep. Robert Damron, KY	Rep. Bill Botzow, VT
Sen. Dan Morrish, LA	Rep. Kathie Keenan, VT

Other legislators present were:

Sen. Tom Buford, KY	Sen. David O'Connell, ND
Rep. Greg Cromer, LA	Rep. Jim Dunnigan, UT
Rep. Gene Reynolds, LA	Del. Harry Keith White, WV

Also in attendance were:

Susan Nolan, Nolan Associates, NCOIL Executive Director  
Candace Thorson, Nolan Associates, NCOIL Deputy Executive Director  
Ed Stephenson, Nolan Associates, NCOIL Director of Legislative Affairs–DC  
Dan Valente, Nolan Associates, NCOIL Director of Legislative Affairs

Interested parties who offered comments included:

*Lenders:*

Tom Alleman of Cox Smith, on behalf of the Independent Bankers Association of Texas  
Jose Becquer, Wells Fargo  
Kathy Marquardt, Mortgage Bankers Association (MBA)  
Catherine Rodewald, Prudential Asset Resources  
Deborah Wright, Prudential Mortgage Capital Company

*P-C Agents:*

Wes Bissett, Independent Insurance Agents & Brokers of America (IIABA)  
David Eppstein, National Association of Professional Insurance Agents (PIA)  
Andy Harris, on behalf of the National Association of Professional Insurance Agents (PIA)

*P-C Insurers:*

Scott Gilliam, Cincinnati Insurance Companies  
Eric Goldberg, American Insurance Association (AIA)  
Joe Thesing, National Association of Mutual Insurance Companies (NAMIC)

## PROPOSED CERTIFICATES OF INSURANCE MODEL ACT

Ms. Thorson said the draft *Certificates of Insurance Model Act*, which sought to clarify limits on certificates that third parties use to verify insurance, as well as to stem fraud and misuse, was a substitute for an original version that the Committee set aside in May. She said the Mortgage Bankers Association (MBA) had submitted two amendments relating to certificates used by commercial lenders, during a post-Summer Meeting comment period. She reported that a third amendment, which would exempt certain certificate forms from the model, reflected consensus between several p-c insurer representatives following a September P-C Committee conference call.

Ms. Marquardt of the MBA said that because the underlying proposed model would not ensure that lenders receive sufficient evidence of insurance, the lending industry could not support the draft model act without the MBA amendments. However, she said, the MBA was willing to withdraw its amendments to the draft certificates model—while still opposing it—in order to focus on proposed MBA changes to a July 2012 NCOIL *Model Act Regarding Use of Insurance Binders as Evidence of Coverage*.

Rep. Hyde, sponsor of the MBA certificate-of-insurance model amendments, withdrew his sponsorship. The amendments would have made the following changes to Section 3(C):

- C. The current edition of standard certificate of insurance forms promulgated and filed with the commissioner by the Association for Cooperative Operations Research and Development (ACORD), the American Association of Insurance Services (AAIS), and the Insurance Services Office (ISO), and the Mortgage Bankers Association (MBA) are not required to be filed by individual insurers.
  
- D. A certificate of insurance is not a policy of insurance and does not affirmatively or negatively amend, extend, or alter the coverage afforded by the policy to which the certificate of insurance makes reference. A certificate of insurance shall not confer to any person new or additional rights beyond what the referenced policy of insurance expressly provides.
  
- E. A certificate of insurance of property coverage cannot be issued as a matter of information only in a commercial lending transaction involving a deed of trust, mortgage lien, or any other security interest in real property as security. Commercial lending shall not include one to four family residential properties.

Rep. Keiser then moved adoption of the draft insurer consensus amendment, which he was sponsoring and which would add language to Section 3(C) as follows:

- C. The current edition of standard certificate of insurance forms promulgated and filed with the commissioner by the Association for Cooperative Operations Research and Development (ACORD), the American Association of Insurance Services (AAIS), the Insurance Services Office (ISO) are not required to be filed by individual insurers. Additionally, certificate of insurance forms whose specific content and wording are established by Federal law or regulation, or any law or regulation of this State, are not required to be filed by individual insurers.

The Committee unanimously adopted Rep. Keiser's proposed amendment, then upon a separate motion unanimously adopted the amended model act.

## AMENDMENTS TO NCOIL INSURANCE BINDER MODEL ACT

Rep. Lehman, sponsor of the NCOIL *Model Act Regarding Use of Insurance Binders as Evidence of Coverage*, explained that legislators developed the binder model as an alternative to using the certificates model to address lender evidence-of-insurance concerns. He suggested that the binder model reflects compromise between stakeholders.

Rep. Hyde said he was sponsoring the proposed MBA amendments, which, among other things, would add the following language to a Section 3 definition of “Lender” and to Section 4, regarding insurer obligations:

### Section 3. Definitions

- E. “Lender” means an individual, partnership, corporation, association, or other entity, or loan servicer acting on behalf of such party, who lends money and receives or otherwise acquires a mortgage, a lien, a deed of trust, or any other security interest in or on any real or personal property as security for the loan, excluding one to four family residential real property.

### Section 4. Insurer Obligations

- A. An insurer that provides an insurance binder as defined in this act is obligated to provide the coverage according to the terms of such binder until the insurer issues the insurance policy or cancels the binder.
- B. An insurer shall only cancel an insurance binder in accordance with the minimum cancellation provisions included in the insurance policy and in accordance with *[insert appropriate state law on insurance policy cancellations]*.
- C. An insurer must deliver an insurance policy to an insured or lender no later than thirty days following the earlier of: (1) the insurance policy effective date (including each annual renewal date); or (2) payment of the required premium, provided however that, in lieu of the insurance policy, the insurer or the insurance agent or broker may provide the insured or lender with proof of insurance in the form of an insurance binder as defined in this Act, so long as it remains effective until delivery of the policy.
- D. If an insurer does not deliver an insurance policy to an insured or lender within thirty days following the earlier of the insurance policy effective date or payment of the required premium, an insurance agent or broker (or if there is no insurance agent or broker, then the insurer) must deliver proof of insurance in the form of an insurance binder as defined in this Act to both the insured and the lender within five business days following a request from either the insured or the lender.
- E. Notwithstanding any language on the document to the contrary, proof of insurance in the form of an insurance binder as defined in this Act shall be valid and may be relied upon by the insured or lender, including as proof of coverage in any civil action or administrative proceeding, until delivery of the insurance policy to such party or the cancellation pursuant to state law.

Rep. Hyde said it was important to consider the MBA proposals because the binder model, as adopted, may not effectively address lender concerns.

#### *LENDER COMMENTS AND Q&A*

Ms. Wright of Prudential Financial, speaking on behalf of the lending industry, said that the draft amendment to the NCOIL *Model Act Regarding Use of Insurance Binders as Evidence of Coverage* to exclude residential property from the model responded to Committee discussion at the Summer Meeting. She said that the specific “one to four family” wording is consistent with the lending industry’s definition of “residential property.” Ms. Wright also said that the Section 4 revisions aimed to create a reasonable timeframe for delivery of a binder as evidence of coverage, among other things.

Rep. Botzow asked for clarification on how the Subsection C and D timeframes would play out. According to the language, he said, an insurer could not issue a binder in order to comply with the Act unless a lender or borrower specifically asked for one. Mr. Becquer of Wells Fargo and Ms. Wright acknowledged that some wordsmithing might be appropriate to clarify lenders’ intent. Following discussion, Rep. Botzow moved to add “or an insurance binder” after “deliver an insurance policy” in Line 1 of proposed Subsection D. The Committee unanimously approved Rep. Botzow’s revision.

In response to a comment from Rep. Lehman regarding potential redundancy in Subsections C and D, Ms. Wright said that lenders wrote the language to be consistent with how other pieces of legislation are drafted. She said, however, that lenders were not wedded to the drafting style.

#### *P-C INSURER/AGENT COMMENTS AND Q&A*

Mr. Goldberg of AIA said that the purpose of the NCOIL certificates of insurance and insurance binder models is to clarify what certificates and binders are and what they are not. He said that while the NCOIL binder model may not fully address lenders’ needs, it would be inappropriate to amend it when lenders have other options at their disposal. Mr. Goldberg said that a lender, for instance, could ask a borrower for proof of coverage and could buy lender-placed insurance if the borrower fails to provide it.

Mr. Goldberg said that discussions were under way at the Association for Cooperative Operations Research & Development (ACORD) to produce an enhanced binder form. He opined that the most effective solution being considered, though, could be creation of an electronic platform that would let insurers and producers directly and easily communicate policies and endorsements to lenders.

Mr. Eppstein and Mr. Harris of PIA echoed support for the development of an enhanced binder, creation of an electronic platform to deliver policies, and opposition to the draft MBA amendments. Mr. Harris commented that it “is very much to the advantage of the carrier” to issue a policy quickly.

Mr. Gilliam of Cincinnati Insurance then expressed concern with the 30-day delivery requirement in proposed Subsection C. He said that an insurer often cannot deliver a policy in that timeframe because the insured has not supplied all necessary information. Mr. Gilliam suggested revising the amendment so that the 30 days would begin once the insured provided all documentation. He also said that Cincinnati Insurance opposed draft Subsection E.

Mr. Bissett of IIABA then suggested looking at how other state laws work and possibly considering best practices rather than pursuing the draft amendments. He commented that the issuance of binders does not appear to be a problem, that the proposed amendments need clarity, and that the amendments could conflict with agent-insurer contracts. He said that p-c industry representatives were willing to work to promote speedier issuance of policies.

#### *OTHER COMMENTS/DISCUSSION*

Sen. Leavell expressed concern with Subsection B, adopted in July, because it would tie the cancellation of a binder to minimum cancellation requirements in a policy that does not yet exist. In response, Mr. Gilliam suggested deleting a Subsection B reference to minimum cancellation requirements, so that the language would read: "An insurer shall only cancel an insurance binder in accordance with appropriate state law on insurance policy cancellations." Sen. Leavell expressed initial support for the proposed change.

Rep. Keiser questioned why the p-c industry does not already have the ability to deliver policies electronically and also questioned the extent to which the certificate of insurance and insurance binder models, as adopted, advantage or disadvantage lenders as opposed to the p-c industry.

Lender and p-c agent/insurer representatives discussed development of the enhanced ACORD binder form, known as ACORD 875, that would combine an ACORD 28 evidence of insurance certificate with an ACORD 75 binder. Among other things, interested parties debated the degree to which each side has been able to influence the ACORD process.

Upon a motion made by Sen. Leavell, the Committee unanimously deferred the proposed insurance binder amendments until the 2013 Spring Meeting, due to time constraints.

#### **ADJOURNMENT**

There being no further business, the meeting adjourned at 9:00 a.m.