

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
LIFE INSURANCE AND FINANCIAL PLANNING COMMITTEE  
SAN FRANCISCO, CALIFORNIA  
NOVEMBER 21, 2014  
MINUTES

The National Conference of Insurance Legislators (NCOIL) Life Insurance and Financial Planning Committee met at the Grand Hyatt in San Francisco, California, on Friday, November 21, 2014, at 9:30 a.m.

Sen. Mike Hall of West Virginia, Chair of the Committee, presided.

Other members of the Committee present were:

Sen. Jason Rapert, AR	Sen. Carroll Leavell, NM
Rep. Robert Damron, KY	Assem. William Barclay, NY
Rep. Tommy Thompson, KY	Assem. Kevin Cahill, NY
Rep. Pete Lund, MI	Sen. James Seward, NY
Rep. George Keiser, ND	Rep. Bob Hackett, OH
Sen. Jerry Klein, ND	Rep. Marguerite Quinn, PA
Sen. David O'Connell, ND	Rep. Steve McManus, TN
Rep. Don Flanders, NH	Rep. Bill Botzow, VT

Other legislators present were:

Sen. Joyce Elliot, AR	Sen. Mike Parson, MO
Rep. David Livingston, AZ	Sen. Joe Hardy, NV
Sen. Matt McCoy, IA	Sen. Neil Breslin, NY
Rep. Peggy Mayfield, IN	Sen. Kevin Bacon, OH
Rep. Pete DeGraaf, KS	Sen. Ronnie Cromer, SC
Rep. Joe Fischer, KY	Rep. Mike Gambrell, SC
Rep. Janice Cooper, ME	Rep. Harry Keith White, WV
Rep. Ken Goike, MI	
Rep. Ken Yonker, MI	
Rep. Don Gosen, MO	

Also in attendance were:

Susan Nolan, Nolan Associates, NCOIL Executive Director  
Candace Thorson, Nolan Associates, NCOIL Deputy Executive Director  
Molly Dillman, Nolan Associates, NCOIL Director of Legislative Affairs  
Andrew Williamson, Nolan Associates, NCOIL Director of Legislative Affairs

MINUTES

Upon a motion made and seconded, the Committee unanimously approved the minutes of its July 11, 2014, meeting in Boston.

## CAPTIVE INSURANCE REGULATION

Utah Insurance Commissioner Kiser, speaking on behalf of the National Association of Insurance Commissioners (NAIC), provided background information on captive insurance, explaining they are self-insured policies to benefit parent corporations and non-profit organizations. He stated that corporations and non-profits in Utah have found captives to be quite valuable and that over the past several years there has been a 26 percent annual growth in the number of captive insurance companies in Utah.

Commissioner Kiser noted that these policies do come with some risk. When first created in the 1950s, they were built outside the normal regulatory environment because they were handling self-insured risk, he added. He said, however, that over time, regulations governing this type of insurance have increased, leading to rules that are not necessarily the same for captives as they are for traditional carriers. He stated that captives can keep their financial statements and other information confidential from state regulators, whereas traditional insurers cannot. He noted that there is also a difference in accounting practices between the two types of entities. He said that traditional companies are required to use statutory accounting, which is more conservative than the generally-accepted accounting principles that captives can use. Commissioner Kiser stated that this creates an uneven playing field between the two.

Commissioner Kiser reported that most recently, traditional insurers have created captives that reinsure policies sold by the traditional insurer. This allows traditional insurers to operate as captives and may allow them to circumvent some of the financial regulations and accounting standards applicable to traditional insurers, he said.

Commissioner Kiser stated that NAIC is working to establish minimum regulatory requirements for captives. He said that the NAIC is also considering best practices for addressing the lack of consistent regulation of captive reserves.

## PRINCIPLE-BASED RESERVING (PBR)

Commissioner Kiser then provided an update on PBR, noting that PBR was first proposed in 2009 and at that time the NAIC realized that products had been and would continue to change. He said PBR will replace a current formulaic reserving method for life insurers with one that more accurately reflects complex products now on the market. He noted that PBR will minimize incentives for companies to reduce reserves through means like captives. He said that implementing PBR requires some changes that the NAIC has already adopted. He noted that a revised standard non forfeiture law was adopted in 2012 along with an evaluation manual.

Commissioner Kiser reported that PBR will become operative once a supermajority of states (42 states or 75 percent of total U.S. life premium) have adopted the revision of the *Standard Valuation Law*. He said that, to date, 18 states have enacted PBR and legislation is being considered by ten to 20 other states. He explained that legislative support is necessary to obtain this supermajority. He encouraged the legislators to meet with their insurance commissioners to obtain a full understanding of all aspects of PBR.

Commissioner Kiser reported that the NAIC is developing a regulatory review system that will work to ensure that the PBR framework will be implemented consistently and effectively. He reported that NAIC has retained actuaries to create an actuarial review process for PBR. Once

the regulatory review process has been completed, a PBR pilot will be established to help the NAIC create training courses and programs for regulators, he said.

Commissioner Kiser noted that NAIC is working with American Council of Life Insurers (ACLI) to write a plan to provide exemptions for small companies. He said that the exemptions will be risk-sensitive and will consider the products that the companies write, as well as company solvency. He asserted that companies that receive an exemption will need to meet specified criteria.

Rep. Keiser raised a question regarding whether the exemption for small companies would create an uneven playing field in their favor. Commissioner Kiser responded that the answer to this question was somewhat unclear at this point. He did note that in Utah, which has a number of small pure captives, there is only one life insurance company. He noted that he favored the small company exemption because in the absence of such an exception, a number of Utah's small companies would likely relocate to Bermuda.

#### FEDERAL CERTIFICATION FOR COMMERCIAL DMF ACCESS

Kate Kiernan of ACLI provided an update on federal certification for commercial Death Master File (DMF) access. She expressed thanks to NCOIL for support provided last spring when difficulty was encountered with the Social Security Administration because access to DMF files was being restricted to certain entities. She noted that NCOIL was able to quickly respond to the problem by sending a letter to the federal government, which, was successful in having the process marginally opened for those companies using DMF.

Ms. Kiernan reported that following passage of the NCOIL unclaimed property model, 15 states have adopted the model, which requires use of the DMF. She noted that the use of DMF is becoming somewhat more difficult for companies, but that the certification process is proceeding smoothly at this point. Given the status of matters, Ms. Kiernan said she did not anticipate further assistance from NCOIL at this time, but observed that help might again be needed if DMF access were to again be threatened with restrictions.

#### UNCLAIMED PROPERTY TASK FORCE

Rep. Keiser reported that the Task Force met the previous day to address the unclaimed property model act, passed by NCOIL approximately three years ago. He advised that the Task Force had adopted a series of amendments that met the 30-day guidelines and amendments yesterday, with suspension of the 30-day rule.

Rep. Damron moved that the Committee adopt the report of the Task Force and forward that report onto the Executive Committee for action on Sunday morning. After a motion and a second, the Committee unanimously adopted the report.

#### PROPOSED 2015 COMMITTEE CHARGES

Sen. Hall read the proposed Committee charges for 2015 as follows:

- continue to foster effective regulation of unclaimed life insurance death benefits (i.e., the NCOIL model act) and work with interested parties to achieve reform
- continue to evaluate impacts and progress of principle-based reserving (PBR)

- explore role of captive insurance transactions and consider opportunities to offer guidance
- monitor and respond as appropriate to efforts regarding the Social Security Death Master File (DMF)
- continue to monitor activity regarding annuities and other life insurance products

Sen. Hall suggested that the Committee also explore suitability issues regarding the marketing of indexed annuities.

Rep. Keiser moved that this item be added to the Committee charges for 2015. After a motion was made and seconded, the Committee adopted the 2015 charges as amended.

Upon a motion made and seconded, the Committee unanimously adopted the above Committee charges.

#### ADJOURNMENT

There being no further business, the Committee adjourned at 9:55 a.m.