

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
LIFE INSURANCE & FINANCIAL PLANNING COMMITTEE
LITTLE ROCK, ARKANSAS
FEBRUARY 28, 2016
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) Life Insurance & Financial Planning Committee met at the Little Rock Marriott in Little Rock, Arkansas, on Sunday, February 28, 2016, at 8:00 a.m.

Rep. Jason Rapert of Arkansas, NCOIL Secretary and Member of the Committee, presided as Chairman *pro tem*.

Other members of the Committee present were:

Rep. Ronald Crimm, KY	Rep. Brian Kennedy, RI
Rep. George Keiser, ND	Sen. Robert Hayes, SC
Sen. Jerry Klein, ND	Rep. Bill Botzow, VT
Sen. James Seward, NY	

Other legislators present were:

Rep. Matt Lehman, IN	Sen. Kevin Bacon, OH
Rep. Steve Riggs, KY	Sen. Gary Stanislawski, OK

Also in attendance were:

Tom Considine, NCOIL CEO
Paul Penna, Executive Director, NCOIL Support Services
Christina Zuk, Legislative Director, NCOIL Support Services
Paulina Grabczak, Deputy Legislative Director, NCOIL Support Services

MINUTES

Upon a motion made and seconded, the Committee unanimously approved the minutes of its November 13, 2015, meeting in San Antonio, Texas.

BENEFICIARIES' BILL OF RIGHTS

Kate Kiernan of the American Council of Life Insurers (ACLI) respectfully asked that the model law not be re-approved. The Act mandates companies to not put money into a retained asset account until there is permission from the beneficiary. The issue is that sometimes this decision is a difficult one so the money should be there when the beneficiary needs it.

Birny Birnbaum of the Center for Economic Justice (CEJ) commented that he disagrees with the ACLI. Mr. Birnbaum said that he does not see anywhere in the model that permission is required before the insurer sets up the account. It does say that the insurer may not use the account unless there is disclosure, but it

does not require permission to set-up the account. The model does a good job at addressing the abuses that were found with retained asset accounts. The model says that (1) relevant information must be provided; (2) experience with retained asset accounts must be reported to regulators, which is useful for the regulators to monitor; and (3) the money must be paid out when the account is inactive. The third point is very important because one of the issues with retained asset accounts is that the accounts were set-up and they were in existence for many, many years. The money was not being given to the beneficiaries and it was not escheating to the states, which gave rise to issues in unclaimed benefits audits. The model is one of NCOIL's best models in terms of addressing the issues in an important way that does not interfere with the market, but supports consumer fairness.

Upon a motion made and seconded, the Committee re-adopted the Beneficiaries' Bill of Rights model law.

LIFE INSURANCE DISCLOSURE MODEL ACT

Darwin Bayston of the Life Insurance Settlement Association (LISA) strongly supports the model act and urged its re-adoption. It has been implemented in six states over the past few months. Additionally, two states have expressed interest in some type of consumer disclosure. The model act is serving a very good purpose. Mr. Bayston stated that life insurance is the core backbone of the American financial system. It is also personal property so it needs to be managed during one's life.

Mr. Bayston further said that each year more than \$100 billion of face value life insurance lapses by seniors over the age of sixty-five. It is believed that this is high because some of them do not have awareness of what options they may have available with their life insurance policy. The model act has a list of options available that are important to consider. Seniors with lapsed policies have indicated that if they had known of options, they would have considered them.

Birny Birnbaum of the Center for Economic Justice (CEJ) said that it makes a lot of sense to inform consumers about their options when they encounter certain life situations. It is also important that consumers are provided with all the options that are available and not limit that list. However, Mr. Birnbaum said giving consumers a laundry list of technical information does not empower them. There are new techniques that enable consumers to be empowered. If one were to give the list of information that the model act provides for the chances are that it will not empower the consumer. It is more likely that the consumer will be confused given the way the list is set-up. The good part of the model act, however, is that the Commissioner is to determine how to give notice. This allows the Commissioner to perform consumer testing to see if consumers understand the information. On the whole, the re-adoption of the model act is supported, but

moving forward the new insights when it comes to informing consumers effectively should be explored.

Kate Kiernan of the American Council of Life Insurers (ACLI) respectfully asked to retire the model act. The main objection is that the insurer is required to provide the notification. It is not appropriate to have agents discuss options that they don't sell because they may not have all the information.

Upon a motion made and seconded, the Committee re-adopted the Life Insurance Disclosure Model Act.

LONG-TERM CARE TAX CREDIT MODEL ACT

Kate Kiernan of the American Council of Life Insurers (ACLI) is in support of the re-adoption of the model act. This is a very important and simple model act. The states have slight variations on it, but the model should be continued.

Birny Birnbaum of the Center for Economic Justice (CEJ) noted that no one disagrees with the premise that there is a retirement income long-term care crisis in the country and there is a need to finance it. Additionally, there is tremendous pressure on state budgets to deal with the associated costs. The question is what the best way is for a state to use its limited resources. One approach is that a state can spend money through a tax credit to subsidize long-term care. It would be great if this were to lead to more consumers purchasing long-term care. However, it is unclear if the tax credit does this. Mr. Birnbaum stated that he could not take a position on this because he is unsure if the tax credit is effective or not. If it is effective then Mr. Birnbaum would be supportive, but if it is not effective then state budget dollars should be used in a better way.

Sen. Stanislawski asked about the partnership programs for long-term care and how effective they are. Kate Kiernan said that they are very effective. There are a number of states that have very active programs, which were re-built in the mid-2000s. In response to a follow-up question by Sen. Stanislawski, Kate Kiernan said that she does believe they encourage consumers to buy long-term care because of the partnership program and the offsets at the end of the program.

Sen. Stanislawski asked if the partnership program is already a great incentive then what makes the tax credit something that will also incentivize people to buy long-term care. Kate Kiernan said that the 15% tax credit is a large incentive for certain populations that might otherwise not utilize the partnership program. Additionally, there are states where there is no partnership program.

Rep. Keiser said that he does not believe there is any evidence to support stating that the tax credit has significantly impacted the purchase of long-term care insurance. The people who were going to buy it have bought it and the tax credit is an added benefit. One can't definitely say that this is an incentive.

Rep. Botzow said that almost all of NCOIL's models are policy focused and not fiscal. Rep. Botzow commented that he wonders if there are a lot of NCOIL model acts that deal with fiscal policy as opposed to good government policy. Rep. Botzow believes that it may make sense to step back if this is really important because there is no necessity to do this now without getting it right. Rep. Rapert noted that he has a slightly different opinion on this. The strain will be placed on state budgets as people retire so there is a great need for people to have long-term care insurance. Rep. Rapert believes that a tax credit is a much better idea. The model is good and the intent to encourage the purchase of long-term care insurance is important.

Upon a motion made and seconded, the Committee re-adopted the Long-Term Care Tax Credit Model Act.

UPDATE ON UNCLAIMED LIFE INSURANCE BENEFITS ACTIVITY

Superintendent Beth Dwyer of Rhode Island said that there is a working group at the NAIC, which is taking the NCOIL model act on unclaimed benefits and comparing it on a section-to-section basis to states that have their own statutes. The working group has been holding weekly calls. They did a chart comparing the sections and they had many discussions with interested parties. They released a draft model for comment. They hope to have an updated model by the NAIC Spring meeting for further discussion.

Superintendent Dwyer said that the Life Insurance and Claims Settlement Practices Task Force has been looking at insurers that have used the death master file in an asymmetrical manner. The Task Force has looked at seventeen of the largest insurance companies representing 66% of the national market. They have entered into agreements with fifteen of those companies that were found to be using the death master file in an asymmetrical manner. Two companies were found to not be using the death master file in an asymmetrical manner. Statements were issued stating that no further action would be taken with those two companies.

Kate Kiernan of the American Council of Life Insurers (ACLI) commended NCOIL for the life insurance benefits model act that was passed. Nineteen states have passed variations of the model. It is one of the most successful models that NCOIL has adopted. Over the past ten years, life insurers have paid \$600 billion for life insurance policies. These policies are typically paid within thirty days. This represents 99% of claims paid. Thirteen Departments have adopted a lost policy search system and the ACLI is in support of this. The systems are a bit different so the NAIC is working to unify that so it is easier for customers.

Kate Kiernan said that there are eight states with unclaimed property legislation being considered this session. One of the significant issues that everyone is

aware of and it has been debated at NCOIL before is whether or not the policy should apply prospectively or retroactively. Eleven states have prospective application and eight states apply the policy to all enforced policies. The discussions on this in the states revolves around each state's constitutional stance on the matter as well as taking into consideration the financial impact that retroactive application may have on smaller companies.

Rep. Crimm said he would work on an amendment for the upcoming NCOIL meeting. In Kentucky, the word "reasonable" is used in several places in the model act and Rep. Crimm does not like this because the meaning of the word can change. There should be an actual time limit in the model act as it is too important to leave up to discretion to define what reasonable is.

REPORT ON PRINCIPLE-BASED RESERVING (PBR) ACTIVITY

Superintendent Beth Dwyer of Rhode Island said that in 2009 the NAIC membership introduced a new method for calculating life insurance policy reserves to more easily adopt the reserving requirements for changing products—known as principle-based reserving (PBR). The hope is that this is going to reduce the incentive for life insurance companies to use work-arounds, which were used to get rid of redundant reserves from the life insurance companies' perspective.

Superintendent Dwyer said that once forty-two states adopt the revisions then PBR will be operationalized. Currently, thirty-nine states have adopted the revisions. Three states have PBR legislation introduced this year so once this is done then PBR will be effective. If legislation does not go through in all of these three states it is fine because there are six other states expected to introduce PBR legislation in the current legislative session. The NAIC is currently developing a regulatory review system to ensure effective and consistent implementation of PBR once it becomes effective. Once the regulatory review process is built, there will be a PBR pilot to identify changes that are needed.

Kate Kiernan of the American Council of Life Insurers (ACLI) said that many members of the Committee have already passed the legislation in their states.

Birny Birnbaum of the Center for Economic Justice (CEJ) said that the way that state insurance regulators monitor the financial condition of life insurance companies and the reserves, historically, was a formula. The NAIC would say that for certain types of insurance there is a specific formula. The problem with this approach is that as policies get all sorts of new features and new complicated policies are made the rules need to be updated and the rules can get tricky. PBR is trying to do on the life insurance side what is already done on the property-casualty insurance side. That is to say, it is left up to the company to use actuarial judgment to determine what the reserves are based on the best actuarial science. The problem is that states simply don't have the capability to

do this. They are geared up on the life insurance side to be auditors on the financial conditions of the reserves. PBR is now saying that states must develop this detailed actuarial expertise so states can look at the stochastic modeling, the statistical techniques, that are employed by the insurers and the states don't have this capability. What is happening is that the NAIC is developing that capability—they are adding five actuaries. The NAIC will become the mechanism to assist states in a way that has never happened before. Mr. Birnbaum supports this. This makes a lot of sense in terms of consistency. This means, however, that the NAIC budget must increase.

Mr. Birnbaum said that the reason for doing this is that it is a better way for companies to establish reserves. It is not a way to stop the abusive use of captives because this will be continued unless it is specifically prohibited. Lastly, just as PBR is creating a level of complexity for regulators that is beyond what their capabilities have been historically, the same is happening on the property-casualty side with the rate making models. If proposals come before anyone to enhance the NAIC ability to help the states, there is a hope that this will be supported.

Rep. Keiser said smaller states can't afford the actuarial services and there is recognition that the NAIC should develop it, but that it should not be a profit center. There has been a repeated guarantee that it will not be. Kate Kiernan noted that she believes this endeavor will actually cost the NAIC money and certainly not generate money. The services will be provided to states that do not have actuaries on staff.

ADJOURNMENT

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