

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
WORKERS' COMPENSATION INSURANCE COMMITTEE  
LITTLE ROCK, ARKANSAS  
FEBRUARY 27, 2016  
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) Workers' Compensation Insurance Committee met at the Little Rock Marriott in Little Rock, Arkansas on Saturday, February 27, 2016 at 1:00 p.m.

Sen. Jerry Klein of North Dakota, Chair of the Committee, presided.

Other members of the Committee present were:

Sen. Jason Rapert, AR  
Rep. Martin Carbaugh, IN  
Rep. Matt Lehman, IN

Rep. Steve Riggs, KY  
Rep. George Keiser, ND  
Rep. Bill Botzow, VT

Other legislators present were:

Rep. Deborah Ferguson, AR  
Sen. Gregory Standridge, AR  
Sen. Travis Holdman, IN  
Rep. Ken Goike, MI  
Rep. Henry Vaupel, MI

Sen. Ed Buttrey, MT  
Sen. Kevin Bacon, OH  
Sen. Gary Stanislawski, OK  
Rep. Spencer Hawley, SD

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 12, 2015 meeting in San Antonio, Texas.

## DISCUSSION OF PROFESSIONAL EMPLOYER ORGANIZATIONS (PEO)

Mona Carter of NCCI provided a brief update on PEOs. Ms. Carter noted that two years ago the Committee decided not to sunset the model act (Model Act Regarding Workers' Compensation Insurance Coverage in Professional Employer Organization (PEO) Relationships), but to take a look at questions raised and other things going on around the country. Ms. Carter stated that there has not been a lot of activity around the NCOIL model, and suggested that the Committee allow the model to continue without sunsetting it and see how things evolve around the country. At last count, no state has adopted this NCOIL model act.

## DISCUSSION OF OPT OUT WORKERS' COMPENSATION OPT OUT

Sen. Klein called the following panel to provide testimony:

- AJ Donelson, Association for Responsible Alternatives to Workers' Compensation (ARAWC)
- Superintendent Elizabeth Dwyer, RI Department of Banking & Insurance, NAIC representative
- Ron Jackson, American Insurance Association (AIA)
- Troy Gillespie, Property Casualty Insurers Association (PCI)
- Buddy Combs, Oklahoma Insurance Department

Sen. Klein requested the Oklahoma state perspective from Buddy Combs.

Mr. Combs advised that from the perspective of the state, the option has been positive. While there are some problems that need to be addressed, legislative fixes have been introduced to do so. Mr. Combs also noted that the Workers' Compensation Commission just ruled that the opt-out workers' compensation portion of their statute is unconstitutional. At this point, there are close to 60 employers who have chosen the option.

Mr. Donelson provided an overview of the Association for Responsible Alternatives to Workers' Compensation, and stated that the Association believes that all employers are obligated to provide employees with an occupational injury benefit system. Mr. Donelson further stated that the Association does not support employers being able to opt-out of this obligation.

Mr. Donelson went on to state that an option program complements, and does not replace, state efforts aimed at providing quality occupational injury benefit programs. Mr. Donelson said that by enacting the option, a state can build upon the progress of workers' compensation reforms to ensure a fair and much improved system for all employees and employers.

Sen. Rapert asked what kind of outcomes the state of Oklahoma has seen under the opt out provision. Mr. Combs responded that the state has seen significant benefits for employers. Mr. Combs noted that while he did not have the statistics in front of him, reports have shown that a number of employers have seen a 73% savings on their workers' compensation claims.

Rep. Botzow asked what makes the option program different than other workers' compensation programs.

Mr. Donelson responded that an option program really starts with improved communication with employees prior to any injury taking place so that they are aware of their rights and responsibilities before an injury. Additionally, prompt, faster access to medical care is resulting in a faster return to work for injured employees.

Troy Gillespie from the Property Casualty Insurers Association (PCI) stated that historically opt out programs in Texas and Oklahoma have proven not to be a responsible alternative to workers compensation. While there can be a debate about different models involved, they are all essentially the same model of allowing employers to leave the state mandated workers' compensation system and replace it with a system they've created on their own. The employee loses all contractual and statutory entitlement to benefits.

Mr. Gillespie further stated that current reports in Oklahoma indicated that the 60 employers who opted out have saved about 73%. But when you look at the plans themselves its easy to see where those cost savings take place. For instance, in Texas, the death benefits to spouses and children have been reduced by approximately 80%.

Mr. Gillespie stated that in the decision that came out yesterday from the Workers' Compensation Commission, they examined whether the benefits are equal to or better than traditional workers compensation, it was determined that they were "decidedly not." PCI does not believe that voluntary benefits under ERISA are adequate. The cost savings are extraordinary but the outcomes are not.

Sen. Rapert requested the NAIC position on this issue.

Superintendent Dwyer advised that the NAIC Workers' Compensation Task Force is reviewing the issue of op outs. NAIC's understanding is that Texas has always had a statute, and that Tennessee, South Carolina, and Georgia are considering possible opt outs. In general, workers' compensation is statutory, so it varies slightly in every state.

The NAIC is waiting for a report from the international Association of Industrial Accident Boards and Commissions, which is studying opt out. The results are due the beginning of this year. The NAIC staff has been in contact with the Department of Labor, and the federal government is concerned with opt out issues.

Ron Jackson from the American Insurance Association (AIA) stated that the AIA understands employers' interest in reducing costs, and expressed a willingness in working to address that issue. Mr. Jackson stated that AIA believes that the alternatives proposed do not offer benefits that are greater than or equal to those offered through traditional workers' compensation systems.

Mr. Jackson further stated that any alternative system needs to have uniform obligations for employers and employees. When you don't, you necessarily have a separate but unequal system. AIA welcomes a dialogue on different types of systems.

ADJOURNMENT

There being no other business, the Committee adjourned.