

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
Resolution in Support of the Confidentiality of
Risk-Based Capital Information

Adopted by the NCOIL Property-Casualty Insurance and Executive Committees on July 8, 2005.

Sponsor: Rep. George Keiser (ND), Committee Chair

Cosponsors:

Rep. Tony Melio (PA), Committee Vice Chair	Rep. Joe Hune (MI)	Sen. Harvey Tallackson (ND)
Sen. Pam Redfield (NE), Committee Vice Chair	Rep. Don Flanders (NH)	Rep. Frank Wald (ND)
Rep. Jay Bradford (AR)	Sen. Carroll Leavell (NM)	Sen. David Bates (RI)
Rep. Ron Crimm (KY)	Assem. Nancy Calhoun (NY)	Rep. Kathleen Keenan (VT)
	Sen. William Larkin (NY)	Rep. Mark Young (VT)
	Sen. James Seward, NY	Del. Harvey Morgan (VA)

WHEREAS, a fundamental goal of NCOIL is the maintenance of effective state regulation of insurance; and

WHEREAS, the monitoring of the financial condition of insurers is essential to that goal; and

WHEREAS, in response to Congressional criticism resulting from several insurer insolvencies in the early 1990s, states enacted stringent laws that strengthened insurer solvency monitoring; and

WHEREAS, a mainstay of those laws is the NAIC Risk Based Capital (RBC) Model Act; and

WHEREAS, enactment of the RBC Model Act is fundamental to the NAIC's solvency accreditation program; and

WHEREAS, 49 states have enacted the provisions of that model act applicable to property-casualty insurers; and

WHEREAS, RBC laws establish capital levels for measuring insurers' financial health and instruct regulators as to when they need to take corrective action to protect policyholders and claimants; and

WHEREAS, state legislatures foresaw the potential for abuse of RBC information; and

WHEREAS, in enacting those laws state legislatures declared in no uncertain terms that "it is the judgment of the Legislature" that RBC information was strictly meant for use by regulators in monitoring insurer solvency; and

WHEREAS, the RBC laws specifically bar use of such information in ratemaking; and

WHEREAS, bills have been introduced in several states, e.g., Arkansas, Kentucky, and Rhode Island,¹ that would misuse RBC laws by allowing use of RBC levels in insurance ratemaking; and

WHEREAS, those initiatives would link RBC rules to ratemaking by preventing a regulator from approving rate increases for a medical malpractice insurer that he or she has determined to have capital in excess of minimum RBC requirements; and

WHEREAS, the initiatives in question would repeal the important prohibition against linking solvency monitoring and ratemaking; and

WHEREAS, the initiatives would leave, as a practical matter, RBC laws open to abuse; and

WHEREAS, existing state insurance rating laws and regulations already provide regulators with authority to gather information necessary for ratemaking purposes; and

WHEREAS, solvency and ratemaking laws and regulations have separate functions; and

WHEREAS, solvency laws and regulations are aimed at ensuring that insurers have adequate claims-paying resources, and ratemaking laws and regulations are aimed at ensuring that policyholders do not pay excessive, inadequate, or unfairly discriminatory insurance rates; and

WHEREAS, the above-referenced initiatives, which link ratemaking and solvency monitoring, could lead to increased insolvencies, inadequate rates, and destabilized and constricted markets; and

WHEREAS, this resolution is consistent with the resolution adopted by the NCOIL Property-Casualty Insurance and Executive Committees in February 2004, which expressed NCOIL's strong support for state efforts to stabilize the medical malpractice insurance market;

NOW, THEREFORE, BE IT RESOLVED that NCOIL undertake to educate state legislators on the limitations on the use of RBC information; and

BE IT FURTHER RESOLVED that NCOIL urges the NAIC, state insurance commissioners, and state legislatures to be alert to the introduction of such legislation and to study it in the context of the importance of RBC as an effective instrument in monitoring for solvency, and as a fundamental component of the NAIC Solvency Accreditation program; and

BE IT FURTHER RESOLVED that NCOIL urges the NAIC, state insurance commissioners and state legislatures to guard aggressively against any abuse of RBC information; and

BE IT FURTHER RESOLVED that NCOIL will distribute this resolution as appropriate to state legislative leaders.

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¹ Specifically, those bills are Arkansas HB 2075, Kentucky HB 482, and Rhode Island SB 415/HB 5437.