

NATIONAL CONFERENCE OF INSURANCE
LEGISLATORS PROPERTY AND CASUALTY INSURANCE
COMMITTEE CHICAGO, ILLINOIS
JULY 14, 2017
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) Property & Casualty Insurance Committee met at the Chicago Intercontinental Magnificent Mile Hotel on Friday, July 14 2017, at 4:00 P.M.

Assemblyman Ken Cooley of California, Chair of the Committee, presided.

Other members of the Committees present were:

Sen. Jason Rapert, AR	Rep. Don Flanders, NH
Rep. Richard Smith, GA	Asw. Maggie Carlton, NV
Rep. Peggy Mayfield, IN	Sen. Neil Breslin, NY
Rep. Jeff Greer, KY	Asm. Kevin Cahill, NY
Rep. Steve Riggs, KY	Sen. Bob Hackett, OH
Sen. Joe Hune, MI	Rep. Marguerite Quinn, PA
Rep. Michael Webber, MI	Rep. Bill Botzow, VT
Rep. George Keiser, ND	Rep. Kathie Kennan, VT
Sen. Jerry Klein, ND	Del. Steve Westfall, WV

Other legislators present were:

Rep. Austin McCollum, AR	Rep. Willie Dove, KS
Rep. David Santiago, FL	Rep. Jim Gooch, KY
Rep. Dick Hamm, IN	Rep. Glen Mulready, OK
Sen. Travis Holdman, IN	Sen. Jonathan Casper, ND
Sen. Jeff Raatz, IN	Rep. Lois Delmore, ND
	Rep. Jeff Coody, OK

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO
Paul Penna, Executive Director, NCOIL Support Services, LLC
Will Melofchik, Legislative Director, NCOIL Support Services, LLC

MINUTES

Upon a Motion made and seconded, the Committee unanimously approved the minutes of its March 5, 2017 meeting in New Orleans, Louisiana, and the June 5, 2017 interim Committee meeting.

AMENDMENT TO NCOIL TRAVEL INSURANCE MODEL ACT

NCOIL Treasurer Rep. Matt Lehman (IN) stated that the recently adopted NCOIL Travel Insurance Model Act has a provision that permits the consumer to have a 10-day "free look" period in order to review their purchased materials. The way it was written allowed for the potential to have the materials delivered to the consumer after the 10-day period,

thereby making it too late for the consumer to take advantage of the free-look if they ended up wanting to get a refund. Accordingly, Rep. Lehman proposed an amendment to make it clear that the 10-day period begins on the later of the date of purchase of a Travel Protection Plan or the delivery of the Travel Protection Plan's fulfillment materials.

Rep. Jim Gooch (KY) asked how it can be proven a consumer actually received materials. Rep. Lehman stated that documentation confirming the purchase and providing the Travel Protection Plan's coverage and assistance details is typically dated and this is also an issue that can be further fleshed out in States when they adopt the Model. Commissioner Tom Considine, NCOIL CEO, stated that there is a "business process rule" so if a company can demonstrate its process that its mail goes out in a certain way to a certain amount of people and it only gets a certain number of returns, receipt is deemed to be, for example, 48 hours after sending.

Upon a Motion made and seconded, the Committee unanimously adopted the amendment.

DISCUSSION ON MODEL TOWING ACT

Rep. Lehman stated that he hopes to have a final draft of the Model Towing Act ready for the Committee to consider and vote upon at the November Annual Meeting in Phoenix. The Model seeks to provide a general regulatory framework and some level of uniformity to the towing industry which is largely unregulated. Rep. Lehman welcomed any comments between now and the 30-day materials deadline for Phoenix.

Sen. Bob Hackett (OH) stated that it was an uphill battle to get towing legislation passed in Ohio and asked how the Model compares to such legislation. Rep. Lehman stated that the Model is not as stringent as Ohio's legislation as the Model is more of a general legislative framework.

Joe Thesing from the National Association of Mutual Insurance Companies (NAMIC) stated that in many States, towing is unregulated which results in unsubstantiated fees for towing and storage for insurance customers. Some towing fees exceed the policy limits. The Model aims to create a logical regulatory scheme for the towing industry. Mr. Thesing also welcomed discussion between now and Phoenix on the issue of penalties in the Model.

Tim Lynch from the National Insurance Crime Bureau (NICB) stated that this is good timing for NCOIL to get involved in this issue as it is getting on the legislative radar of more States in the past few years. Abusive towing practices, specifically at accident scenes on highways, is a tremendous problem and is hurting consumers.

DISCUSSION ON FLOOD INSURANCE MARKET AND NFIP REAUTHORIZATION

Louis Hobson, CEO of Aon National Flood Services (Aon NFS), stated that Aon NFS is one of the largest servicers of the National Flood Insurance Program (NFIP). Mr. Hobson stated that simplification and increased adoption is needed from a policyholder perspective. There is a realization now of the under penetration of flood insurance in the U.S. – only about 6% of structures are covered by flood insurance. From a private market perspective, there has been and will continue to be a lot of activity. The NFIP has a set of gaps that needs to be covered – that is a good opportunity for the private

market. The challenge is to make sure there is an appreciation for the NFIP and private market. There is a view that they cannot co-exist, but Mr. Hobson does not agree with that. The reason for a lack of penetration is that the risk is truly underappreciated.

Floods are the most common catastrophic event in our country but yet it seems to be a secret known by only those effected. The risk is real and the problem is consumer complacency which can be combatted when there is a stable regulatory environment and frequent catastrophic activity. Meeting FEMA Director Roy Wright's goal of doubling the amount of policyholders will require a collective effort across Congress, FEMA, and agent education. Mr. Hobson stated that the main priority is a long-term, on-time reauthorization of the NFIP, along with engaging the private market's involvement.

Don Griffin from the Property Casualty Insurance Association of American (PCIAA) stated that PCI has several key goals, some of which are: a.) long-term reauthorization of the NFIP, which will encourage private market involvement; b.) simplify the NFIP, as it is too complicated compared to other insurance lines. Mr. Griffin urged NCOIL and its members to support pending legislation that allows lenders to more easily accept private flood insurance products.

Rep. David Santiago (FL) asked for Mr. Griffin's opinion on Congressman Luetkemeyer's proposals regarding the NFIP and: a.) insure to value; b.) buying out repetitive losses; and c.) allowing FEMA to purchase reinsurance. Mr. Griffin stated that PCI supports all of those proposals. Repetitive losses have been one of the biggest problems of the NFIP. As to reinsurance, the federal government is already buying reinsurance – Rep. Luetkemeyer's bill encourages even more purchasing. Insurance to value is very important – something the industry repeatedly sees is that there is always a number of properties that are underinsured. Rep. Santiago then asked for comments on the proposed changes to the commission structure. Mr. Griffin stated that the federal government pays the same rate that the private market does for expenses – the companies get a reimbursement allowance, and they get to that by averaging expenses for five property lines of business, plus 1 point because they know they program is difficult to administer.

John Doak, Oklahoma Insurance Commissioner, stated that the NAIC supports NFIP reauthorization and is working hard to ensure proper legislation is passed.

Rep. George Keiser (ND) asked if the private market can truly enter the market in an effective way, or will it enter and cherry-pick the low-risk market. Mr. Griffin stated that if the risk is paying the right premium, it won't matter whether it is low or high risk. However, certain regulatory changes need to be made such as allowing lenders to accept private policies in all circumstances.

PRESENTATION FROM UNITED POLICYHOLDERS AND RUTGERS CENTER FOR RISK AND RESPONSIBILITY AT RUTGERS LAW SCHOOL: ESSENTIAL PROTECTIONS FOR POLICYHOLDERS

Professor Jay Feinman from Rutgers Law School stated that Essential Protections for Policyholders project is about making the regulation of homeowner's insurance work better. The project began several years ago with the goal of determining what states were doing with regards to homeowner's insurance – a set of issues was identified and a 50-state survey was done. The results of the survey were then matched up against the

experience of United Policyholders. The end result is the 50-page report which starts with a set of principles that are generally non-controversial, and then takes those principles and looks at more specific applications of them to make recommendations for changes to State's statutes and regulations.

Prof. Feinman stated the report focuses on four main areas of recommendations, and cited some examples from the report: 1.) Essential protections when buying insurance: a.) Insurance departments should make available online residential property policy forms of all insurance companies doing business in the state, or at least those companies that have a significant market share based on direct premiums written; b.) Insurance departments should prepare and post online a policy comparison tool that enables consumers easily to compare key terms of insurance policies; c.) Insurance departments should publish online on an annual basis data about individual insurance companies' claim practices and tools for comparing information about different companies; d.) Insurance departments should post online information about non-renewals, consumer complaints, market conduct examinations, and other regulatory actions.

2.) Essential protections for coverage: a.) States should require that every homeowner's insurance policy contain essential terms and coverage and that insurance companies at the time of purchase or renewal offer additional coverage. These terms include: i.) Minimum coverage for Additional Living Expense and the opportunity to purchase greater coverage; ii.) In a Replacement Cost policy, the opportunity to purchase coverage for Extended Replacement Cost, or the cost of replacement beyond the stated policy limit; iii.) In a Replacement Cost policy, Law and Ordinance coverage, or coverage for repair or replacement upgrades required by law; iv.) In an Actual Cash Value policy, the opportunity to purchase Law and Ordinance coverage, or coverage for repair or replacement upgrades required by law; b.) States should prohibit insurance companies from refusing to issue, cancelling, surcharging increasing premiums, or refusing to renew policies because policyholders have made inquiries about coverage or potential claims or have filed one or a small number of claims.

3.) Essential protections in the claims process: a.) States should require insurance companies to provide policyholders full information about the claim process and information developed about claims; b.) States should require insurance companies to give policyholders adequate time to file claims and, in case of a dispute, to file litigation against the company; c.) States should adopt the National Association of Insurance Commissioner's Model Unfair Claims Settlement Practices Act and the accompanying Unfair Property/Casualty Claims Settlement Model Regulation, without the limitation that an unreasonable action is only a violation if committed intentionally or as a general business practice; d.) States should mandate reasonable standards for determining the value of losses.

4.) Essential protections for disaster victims: a.) States should adopt statutes that extend the time for additional living expense and for filing claims after a disaster and that authorize insurance departments to extend other time limits. Insurance departments should exercise the authority granted to make sure that policyholders have adequate time to pursue claims after disasters; States should ensure that losses due to covered causes are covered by limiting the scope of anti-concurrent causation clauses; States should limit the ability of insurance companies to cause temporary dislocations in the market by failing to write or renew policies or imposing higher costs after a major disaster.

Prof. Feinman stated that he hopes States can adopt some of those recommendations, and also offered to share with those who are interested the results of the extensive 50-state survey that was done.

DISCUSSION ON BUILDING CODES

Cmsr. Doak stated that Oklahoma recently passed a bill, HB 1720, sponsored by Rep. Lewis Moore (OK), that allows insurance companies to provide certain discounts and rate reductions for fortified homes. In the spirit of collaboration between NCOIL and the NAIC, Cmsr. Doak requested that NCOIL look to its Model State Uniform Building Code to see if language similar to that in HB 1720 could be incorporated into the NCOIL Model. Cmsr. Doak stated that there is an opportunity for people to build their homes to a higher standard and receive certain insurance discounts, and the more people that do so, the better.

Rep. Moore stated in drafting HB 1720, it was important to not interfere with the free market and to refrain from issuing mandates to the P&C industry. Rather, HB 1720 encourages insurers to give the best discounts possible to the very best construction techniques and materials to protect against the broadest type of damage from tornadoes and high winds. Rep. Moore joined Cmsr. Doak's request to table the NCOIL Model State Uniform Building Code until the November Annual Meeting in an effort to work on amendments to it. Upon a Motion and seconded, the Committee unanimously agreed to do so.

DISCUSSION ON THE USE OF BIG DATA AND AUTONOMOUS VEHICLES

Tomi Gerber from Enterprise Holdings stated that the industry believes that the debate around in-vehicle generated data and how it is accessed and controlled will be a vigorous in the coming years. The insurance industry has dealt with telematics-based insurance for usage-based insurance models – those models are dependent on having access to in-vehicle generated data. It is not certain what the access will look like in the future. A robust industry of vehicle services, vehicle products and vehicle offerings has formed through the rich data-set available through the on-board diagnostics (OBD-II) port. A “dongle” can be plugged into the OBD-II port that can be used for a multitude of things - some insurance companies can provide it to monitor your driving habits.

Ms. Gerber stated that it is important to look to Europe when discussing these issues. At the end of 2016, the European Vehicle Manufacturer's Association put out a position paper titled “Access to Vehicle Data for Third-Party Servicers.” The Association calls for “extended vehicle” – which closes down all of the data that comes through an OBD-II port and suggests that manufactures of vehicles have the right to control all of the data that the vehicle generates. Just like in the U.S., the only data required to be available is emissions data. The concept is that all the data will be routed to cloud servers that the manufacturers or independent servers will control and if any owner or third-party service provider wants access to the vehicle generated data, they will be required to enter into commercial contracts with manufacturers. Essentially, manufacturers are saying even after they sell a car, they have the right to control access to the data, decide who has access to the data, what quality data is accessed, and at what cost. Ms. Gerber stated that this is very controversial in Europe.

Ms. Gerber stated that a 50-state patchwork of laws on these issues is not desirable, but it is time for State legislators to take the issues under consideration. Some basic principles to start with are: vehicle ownership should convey the following rights of access and control to the vehicle owner and owners' designee(s) – a.) real-time access to vehicle-generated data; b.) a secure means of interfacing with the vehicle; c.) authenticated, remote command and control (excluding in-motion control.)

Brad Nail from Uber Technologies stated that it is important to try and define the word "data." In the autonomous vehicle perspective, data is much different from the data typically gathered from other vehicles. Therefore, it is important to be specific when discussing these issues. Mr. Nail stated that State legislators have to find the right balance among competing issues in this arena of big data and vehicles: a.) privacy – consumers demand privacy, no matter the potential perceived benefits to public/private organizations from the transmission and sharing of data. Attempts to mandate such disclosure is likely to be met with significant concerns; b.) property rights – much of the data within autonomous vehicle systems is generated by and contributes to the functioning of those systems. Thus, any mandate to share such data undermines the rights of those that create those systems – it is not open data/coding, it is private property just as insurer considers its pricing models private and proprietary; c.) desire of insurers to obtain data for underwriting or claims investigating – it is an interest that has merit and is resolved today through contract. As an individual vehicle owner today, I can contract with my insurer to share with them usage-data related to my premium. From the autonomous perspective, we can expect to see, absent government intervention, contractual arrangements between the manufacturer and the purchaser over the types of data that each retains right to; and contractual arrangements between the purchaser and insurer over the types of data they are willing to share to lower premiums.

Frank O'Brien from the Property Casualty Insurers Association of America (PCIAA) stated that legislation on these issues is expected to come quickly over the next couple of years. From PCI's perspective, four main questions have emerged regarding the debate over the proper level of regulation of automated driving systems: a.) what guidelines, standard or requirements should be put in place for testing and deployment to make sure the vehicles are safe to operate on public roads without constraining the developing technology; b.) does our current system of determining liability for accidents and compensating victims need to change, and if so, how; c.) who should have ownership of or access to the data that automated vehicles produce and how can the privacy of users and the intellectual property rights of developers be protected; d.) do financial responsibility laws need to be changed to reflect the increasing role of technology in driving.

Mr. Thesing stated that we are already seeing a large amount of legislation being introduced on these issues. Safety needs to be a priority as legislation on the testing of autonomous vehicles is considered. NAMIC is in favor of the development of autonomous vehicles, assuming they enhance safety. Lastly, in terms of data access, as a legislative and regulatory framework starts to develop, NAMIC wants to ensure that crash accident and incident information that is available to insurers is timely, complete, and useful.

Ron Jackson of the American Insurance Association (AIA) stated that AIA urges caution and patience from all involved in these issues as experience data is critical.

Rep. Marguerite Quinn (PA) asked what can consumers expect in terms of the portability of data to shop around or to self-analyze. Ms. Gerber stated that under the European model, unless you subscribed and paid for the right to access the data, you would not be allowed to access it. Mr. Nail stated that the default position in the U.S. is that the owner of the vehicle owns the data and can do what they want with it, but in the future with autonomous vehicles, there will probably be some type of bifurcation in that the manufacturers will own the data required to operate certain systems. Ms. Gerber stated that Mr. Nail is technically correct but there is nothing currently stated in law to make that so.

UPDATE ON AMERICAN LAW INSTITUTE RESTATEMENT OF THE LAW ON LIABILITY INSURANCE

NCOIL CEO Commissioner Tom Considine stated that the American Law Institute (ALI) issues Restatements which are supposed to be documents of settled law, and have a separate approach when they want to take an advocative approach called "principles" projects. The Restatement of the Law on Liability Insurance (Proposed Restatement) started out as a principles project but along the way, switched to a Restatement. When NCOIL learned that the proposed Restatement contained several departures from settled law, it wrote to the ALI requesting that its adoption of the Proposed Restatement be delayed. The ALI did in fact delay the adoption and NCOIL has invited the ALI to have an open dialogue on these issues.

Mr. Jackson thanked NCOIL for the letter it sent to ALI and urged NCOIL to remain involved in these issues. The Proposed Restatement is on the agenda for adoption at the next ALI national meeting. AIA shares NCOIL's concern that the Proposed Restatement is a departure from settled law, made by the ALI which itself recognizes that as an unelected body, it has no special authority to make major innovations in matters of public policy.

Mr. Thesing also thanked NCOIL for its letter to the ALI but it is concerning that there have been recent court cases which have cited to the Proposed Restatement.

RE-ADOPTION OF MODEL LAWS

Upon a Motion made and seconded, the Committee unanimously approved the re-adoption of the a.) Certificates of Insurance Model Act; b.) Model Act Regarding Use of Insurance Binders as Evidence of Coverage; and c.) Auto Insurance Fraud Model Act.

ADJOURNMENT

There being no further business, the Committee adjourned at 6:00 P.M.