

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
NCOIL- NAIC DIALOGUE
CHICAGO, ILLINOIS
JULY 14, 2017
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) NCOIL -NAIC Dialogue Committee met at the Chicago Intercontinental Magnificent Mile Hotel on Thursday, July 14 2017, at 11:15 A.M.

NCOIL Vice President Senator Jason Rapert of Arkansas, Chair of the Committee, presided.

Other members of the Committees present were:

Rep. Sam Kito, AK	Rep. Lana Theis, MI
Asm. Ken Cooley, CA	Rep. George Keiser, ND
Sen. Travis Holdman, IN	Sen. Bob Hackett, OH
Rep. Matt Lehman, IN	Rep. Glen Mulready, OK
Rep. Joseph Fischer, KY	Rep. Bill Botzow, VT
Rep. Bart Rowland, KY	

Other legislators present were:

Rep. Deborah Ferguson, AR	Rep. Steve Riggs, KY
Rep. Austin McCollum, AR	Rep. Michael Webber, MI
Rep. David Santiago, FL	Sen. Jonathan Casper, ND
Rep. Martin Carbaugh, IN	Rep. Lois Delmore, ND
Rep. Dick Hamm, IN	Rep. Don Flanders, NH
Rep. Peggy Mayfield, IN	Asw. Maggie Carlton, NV
Rep. Willie Dove, KS	Sen. Jay Hottinger, OH
Rep. Jim Gooch, KY	Del. Steve Westfall, WV

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 3, 2017 meeting in New Orleans, Louisiana.

INTRODUCTORY REMARKS

NCOIL Vice President Senator Jason Rapert of Arkansas, Chair of the Committee, first asked Ken Selzer, Kansas State Insurance Commissioner, to introduce himself and provide some background on the Kansas Insurance Department. Cmsr. Selzer stated that there are three main priorities within the Kansas Insurance Department: a.) educate and advocate for consumers; b.) regulate insurance companies; and c.) license

insurance agents. Notably, the number of non-resident agents in Kansas has skyrocketed with the growth of call centers. Cmsr. Selzer also stated that, specifically, educating and advocating for senior citizens is extremely important.

Sen. Rapert then asked Cmsr. Selzer about the recent news regarding the Kansas Insurance Department's decision to integrate the securities Commissioner into its Department. Cmsr. Selzer stated there is a lot of overlap between the two and Kansas joined the growing trend of such consolidation – there are now approximately 15 States that have done such and it shows how States are trying to be more efficient.

DISCUSSION ON NAIC INNOVATION AND TECHNOLOGY TASK FORCE

John Doak, Oklahoma Insurance Commissioner, stated that technology advancements drive change in every industry and insurance is no exception. Insuretech incorporates the growth of the technology in the insurance sector. Annual investments in Insuretech increased by more than \$2.5 billion in 2016 and continued growth is expected. The very nature of the business of insurance is transforming, driven by technological advancements and social economic trends. Emerging technologies like big data and blockchain are revolutionizing the insurance industry, as well as consumer expectations, preferences, and habits. The NAIC is taking the lead in addressing these issues by creating the Innovation and Technology Task Force, led by Patrick McPharlin, Director of the Michigan Department of Insurance and Financial Services.

Cmsr. Doak stated that the Task Force's mission is to provide a forum for discussion of innovation and technology in the insurance sector, to monitor technology and developments impacting states' insurance regulatory framework, and to develop regulatory guidance. The Task Force will develop a large constituency of state insurance regulators and interested parties with an interest to learn about the latest innovations in an attempt to assess how the innovations will impact current business models. Three existing NAIC working groups will report to the Task Force: Cybersecurity; Big Data; and Speed to Market.

As regulators, Cmsr Doak continued, there is a desire to have new technologies come to market, and if they can improve the insurance sector by more accurately pricing risk, more efficiently meeting consumer's needs, or by bringing insurance products to the broader sector of consumers, regulators must work with the companies so that they understand the regulated nature of the industry. State insurance regulators are exploring new approaches that will enable and facilitate such a dialogue earlier in the development of the idea. There are several ways and opportunities to collaborate for the benefit of the consumer. For example, setting up regulatory sandboxes that provide innovators with a forum to run their ideas past state insurance regulators who can provide valuable feedback can help the innovators identify problems before they find them by accident. Cmsr. Doak closed by stating that in Oklahoma, the Insurance Department just held its first Health Innovative Insurance forum that is available on YouTube and can be distributed to NCOIL members – it is fascinating to see the new ideas that are out there.

Sen. Rapert stated that he hopes NCOIL and NAIC can work together on these issues because with innovation comes challenges regarding how to incorporate them into the legislative and regulatory schemes. Cmsr. Doak agreed.

UPDATE ON NAIC RETIREMENT SECURITY INITIATIVE

Eric Cioppa, Superintendent of the Maine Bureau of Insurance, stated that there are three prongs to the NAIC Retirement Security Initiative (Initiative): consumer education; consumer protection; and innovation. Consumer education is paramount – the days of defined benefit pension plans are gone, it's now defined contributions, and there are now several issues regarding annuity suitability and long-term care. Empowering and educating consumers is a must - the NAIC has established "Insure U", and in several states there is extensive outreach to Senior Centers. Regarding consumer protection, the NAIC takes its responsibility to protect elderly consumers very seriously and is working on updating its annuity suitability Model. It is also important to make sure that agents are properly trained, and when there is agent malfeasance found, you must act aggressively on it. Regarding innovation, figuring out ways to reach out to millennials and educate them on the importance of insurance is essential. It is also important to set up a structure that allows States to innovate. Supt. Cioppa stated that some statistics are frightening: 40% of baby-boomers have \$0 saved for retirement. Lastly, on August 8th at the NAIC Summer National Meeting, the NAIC Center for Insurance Policy and Research (CIPR) is holding an event titled "Enhancing Protections and Empowering Consumers for a Secure Retirement" and Supt. Cioppa urged all NCOIL members to attend.

Sen. Rapert noted that, regarding millennials, it is extremely troubling that the statistics show they are not saving money for retirement and also not purchasing life insurance – that has serious implications on all of society. Supt. Cioppa agreed and stated that the regulatory role there is to work with innovators to ensure they can effectively reach out to millennials. Sen. Rapert further noted that NCOIL is in the process of working with the NAIC to post a link on the NCOIL website to the NAIC Retirement Security Initiative.

FIDUCIARY RULE

Sen. Bob Hackett (OH) asked if there were any comments on the status of the DOL Fiduciary Rule. Supt. Cioppa stated that it is his understanding that the DOL is moving forward with the Rule and the NAIC is in the process of working with the industry to make sure they are prepared and compliant.

DISCUSSION ON NAIC TRAVEL INSURANCE WORKING GROUP EFFORTS

Sen. Rapert stated that NCOIL applauded the initial news that the Working Group would be using the recently adopted NCOIL Travel Insurance Model Law (NCOIL Model) as a template for its own Travel Insurance Model Law efforts. It was NCOIL's understanding that any work product from the Working Group, whether statutory or regulatory in form, would serve to fill in any gaps that the NCOIL Model does not address. However, the Working Group's initial meetings indicate otherwise. Sen. Rapert asked if it was necessary for the NAIC to develop its own Model Law on these issues?

Cmsr. Doak provided some background on the Working Group – it was formed in 2015 and is currently charged with considering the development of a Model Law or guidelines to establish appropriate regulatory standards for the travel and tourism insurance industry. On its first call last June, the Working Group members agreed that it would be helpful to get more information regarding the travel product itself. The members wanted to better understand what products are typically offered, what the business and

distribution models look like, and what part of the product is considered insurance and what is not. Various stakeholders including the industry, industry trade organizations, and consumer representatives presented on subsequent calls and during NAIC National Meetings. After NCOIL amended its Limited Lines Travel Insurance Model Act, the Working Group met at the NAIC Spring National Meeting in Denver, CO, and has held several calls.

Cmsr. Doak stated that some issues being discussed by the Working Group relate to bundling travel insurance with travel assistance services, competitive market provisions, classifying travel insurance under inland marine, whether terrorism exclusions should be allowed, coordination of benefits provisions, licensing of travel administrators, and how commissions and premium taxes should be handled. The Working Group has agreed that the NCOIL Model will serve as a good basis for drafting the NAIC Travel Insurance Model Law and the NAIC Property and Casualty Insurance Committee and Executive Committee has approved a Model Law request from the Working Group, allowing it to move forward and start drafting efforts. The Working Group welcomes collaboration with NCOIL.

Sen. Rapert stated that some NCOIL members have concerns that it would be a better use of resources for the Working Group to draft and adopt a Travel Insurance Model Regulation that uses the NCOIL Model as its legislative authorization and guiding template. Cmsr. Doak stated that the Working Group wants to collaboratively work with NCOIL in an effort to figure out what is best for consumers on these issues.

NCOIL Immediate Past President Senator Travis Holdman of Indiana, stated that there needs to be a better relationship between NCOIL and NAIC regarding Model Law drafting efforts. The NAIC should come to NCOIL when NCOIL is working on Model legislation with suggestions to make it the most complete and effective work product. Sen. Holdman stated that perhaps NCOIL also needs to be a better job reaching out to the NAIC. It is frustrating when there are duplicative Models from NCOIL and NAIC and State legislators have to decide what to do with them in their respective States. It is a systemic problem and Sen. Holdman stated that he hopes it can be solved. Cmsr. Doak stated that he thought Sen. Holdman made good points and that in his opinion, the NAIC and NCOIL should be working more closely together. Supt. Cioppa agreed and stated that avoiding competing Models is in everyone's interest. Sen. Rapert agreed and welcomed a further conversation on these issues at the upcoming NAIC Summer National Meeting.

NCOIL President Steve Riggs of Kentucky stated that the NAIC should come to NCOIL with suggested amendments to any NCOIL Models, rather than drafting their own Models. Rep. Riggs asked how that process would be received by NAIC leadership. Supt. Cioppa stated that he would have to discuss that internally at the NAIC but reiterated that it is in everyone's interest to not have competing Model Laws from NCOIL and the NAIC. Cmsr. Doak agreed and suggested that it might be a good idea to have Commissioner Tom Considine, NCOIL CEO, to memorialize any duplicative existing Models/drafts, and send to him so he could distribute to NAIC leadership – it is in everyone's interest to not do things twice. Sen. Rapert agreed.

DISCUSSION ON NAIC INCORPORATION BY REFERENCE

Supt. Cioppa stated that the intent of the IBR process was to incorporate very technical matters like the Accounting Practices and Procedures Manual (AAPM) into State law. Supt. Cioppa stated that it is important to differentiate things like Own Risk and Solvency Assessment (ORSA) and Corporate Governance – those are Model Laws that the NAIC gets statutory authority to implement Model Regulations on, which go through a rulemaking process. The fallout from that are things like statutory accounting principles which the NAIC feels are very technical. Supt. Cioppa stated that there is not complete agreement on whether that is constitutional and noted the recent Pennsylvania Supreme Court case on the issue of the non-delegation doctrine (Protz v. Workers' Compensation Appeal Board). Sen. Rapert noted that in the Protz case, the Pennsylvania Supreme Court struck down the state's impairment rating evaluation process as unconstitutional because the Pennsylvania legislature unconstitutionally delegated to the American Medical Association the authority to established criteria for evaluating permanent impairment. Supt. Cioppa stated he believes that a New Mexico court found differently and that regulators are not trying to usurp any legislative authority with IBR. Supt. Cioppa stated that the constitutional line on IBR is perhaps not as clear as everyone would like but at the end of the day it is up to State legislators to decide how they want to approach the IBR process.

Sen. Rapert asked how can NCOIL and the NAIC work together to improve the IBR process. Supt. Cioppa stated that the NAIC should do a better job of educating NCOIL and its members on what it exactly does with the IBR process and how it functions. Cmsr. Doak agreed and suggested that at NAIC National Meetings, the NAIC could hold workshops on the IBR process. Cmsr. Doak also noted that he thinks the IBR process is a State-specific issue and believes that it is very well-defined in Oklahoma.

Sen. Rapert then stated that it was recently brought to his attention that the NAIC is creating a group that would review all Models and data and asked if any of the NAIC Representatives had any knowledge or information on it. Cmsr. Doak stated that he would like to clarify a couple of things before answering and noted that Oregon Insurance Commissioner Laura Cali Robison is the Chair of the NAIC Big Data Working Group – some of the Working Group's recent charges might be relevant to answering Sen. Rapert's question.

UPDATE ON NAIC INSURANCE DATA SECURITY MODEL LAW

Washington Insurance Commissioner Mike Kreidler stated that the Cybersecurity Working Group recently issued its fifth draft of the Model and is hoping to finalize it by the end of the Summer. Cmsr. Kreidler stated that he understands industry's concern regarding uniformity of cybersecurity requirements but at the same time, States have different expectations and the goal is to come up with something that builds upon those expectations in a workable manner. The most recent draft is based on the recently promulgated New York Department of Financial Services (NY DFS) cybersecurity regulations. Cmsr. Kreidler stated that the drafting process has been a challenge but he is optimistic that the final product will be effective for all and protect consumers.

COVERED AGREEMENT STATUS UPDATE

Sen. Rapert noted that yesterday, Treasury announced its intention to sign the Covered Agreement and asked if any NAIC representatives had any comments. Supt. Cioppa stated that the NAIC requested, at the very least, clarification of some of the

Agreement's provisions. The NAIC has some heavy lifting in front of it in working with States on their implementation of the Agreement's requirements. Supt. Cioppa stated that in light of the announcement from Treasury, it is a good idea to have a thorough briefing on the Agreement's provisions at the next NCOIL Meeting in November.

ADJOURNMENT

There being no further business, the Committee adjourned at 12:45 P.M.