

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
FINANCIAL SERVICES COMMITTEE
PHOENIX, ARIZONA
NOVEMBER 16, 2017
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Financial Services Committee met at the Sheraton Grand Phoenix Hotel on Thursday, November 16, 2017 at 4:15 p.m.

Senator Bob Hackett of Ohio, Chair of the Committee, presided.

Other members of the Committee present were:

Sen. Jason Rapert, AR	Rep. Lois Delmore, ND
Rep. David Livingston, AZ	Rep. George Keiser, ND
Rep. Martin Carbaugh, IN	Sen. Jerry Klein, ND
Rep. Joseph Fischer, KY	Sen. James Seward, NY
Rep. Jim Gooch, KY	Rep. Bill Botzow, VT
Rep. Steve Riggs, KY	

Other legislators present were:

Rep. Bryon Short, DE	Rep. Matt Lehman, IN
Rep. Park Cannon, GA	Rep. Jim Dunnigan, UT
Rep. Tom Oliverson, TX	

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 July 15, 2017 meeting in Chicago, Illinois.

DISCUSSION AND CONSIDERATION OF MODEL ACT TO SUPPORT STATE REGULATION OF INSURANCE BY REQUIRING COMPETITION AMONG INSURANCE RATING AGENCIES

NCOIL President Representative Steve Riggs (KY) stated that the Model seeks to embrace and expand competition in the insurance rating agency marketplace. Public entities over the years have been designating a single exclusive insurer rating requirement in statutes, regulations, and bulletins. Rep. Riggs stated the solution to that problem could be this Model law because it promotes competition among insurer rating agencies since it lists multiple, competent insurer rating agencies. From competition among rating agencies, insurance companies and the insurance marketplace will prosper.

Mike Stinziano from Demotech began by thanking the Committee for unanimously supporting a Resolution in 2015 which supported the states' authority as the primary regulator of insurance companies and encouraged state officials to promote competition among the agencies that rate

insurers. Currently, the interactive, responsive State regulatory framework in place is consistent with the intent of the U.S. Senator Joseph O'Mahoney, a principal architect of the McCarran-Ferguson Act. His vision of insurance regulation was "public regulation by public authority." Senator O'Mahoney rejected private sector regulation as "harmful to the public interest." Contrast his vision of "public regulation by public authority" with the November 12, 2015 testimony of Britt Newhouse heard by this Committee. Mr. Newhouse, Chairman of Guy Carpenter and Company, LLC, a member of the public traded Marsh family of companies and a thirty-eight year veteran of the insurance industry noted: "the rating opinion published a single, privately held rating service carries significant disproportionate weight. Urging each State to foster competition in insurer ratings to benefit consumers, duly licensed insurance companies, producers, and other third-party stakeholders by promulgating and embracing insurer rating requirements in laws and regulations that incorporate the enumeration of multiple, competent insurer ratings organizations is an important step forward."

Mr. Stinziano discussed the results of a recent survey of insurance professionals related to the important topic of state regulation of insurance and a requirement for competition among insurer rating agencies. More than 100 insurance professionals responded to the survey, providing testimonials that confirm that a single, exclusive insurer rating requirement adversely impacts consumers in addition to disadvantaging the duly licensed carriers that States regulate. Survey responses came from insurance carriers operating in every state and the District of Columbia – from insurers large and small and of every form of insurer – privately held, publicly traded, mutual, risk retention group, mutual protective association, reciprocal, and captive insurers, and from independent agents and brokers who market on their behalf. Mr. Stinziano stated that consumers and duly licensed insurance carriers would benefit from a response to the threat to public regulation of insurance. The breadth and scope of unintended consequences caused by naming a single insurer rating option in legislation, regulations, and bulletins can no longer be dismissed. Some have interpreted such legislative and administrative rule making activity as a transfer of regulatory authority from the states to the single, privately held rating agency name in the statute, regulation, or bulletin. The clout of a single, privately-held insurer rating organization – ironically viewed by some as a regulator – harms consumers, duly licensed insurers and other parties by minimizing the value of the critical, statutory role of state regulation, impeding competition that benefits consumers while adversely impacting duly licensed insurers in good standing.

Mr. Stinziano closed by stating that the observations of those responding to the survey are clear – an unintended consequence of designating a single, exclusive insurer rating requirement in laws, statutes, bulletins or other public material has been the erosion of state regulatory authority and the misperception that one private sector insurance rating agency supersedes the state regulatory process that oversees duly licensed insurers. To remedy this situation, competition among competent insurer rating alternatives will benefit consumers, the third parties relying on the protection provided by insurance as well as the duly licensed insurers that states regulate. Most important, the utilization of multiple, competent insurer rating alternatives reinforces "public regulation by public authority."

Tina Bukow from Kroll Bond Rating Agency stated that Kroll believes ratings come along with tremendous social responsibility and embraces competition from other regulated rating agencies. Kroll believes that by encouraging competition, NCOIL will ensure higher working standards which will provide more accurate rating outcomes for all users of ratings, particularly policyholders.

Jay Neal, President of the Florida Association for Insurance Reform (FAIR), stated that competition among insurer rating agencies is a critical component of establishing and sustaining a healthy private insurance market. Without such competition, and without the primacy of state-based insurance regulation, a single, for-profit rating agency could remain the de-facto regulator and authoritative opinion to consumers within the insurance marketplace. Florida has benefited from such competition, and as a result, Mr. Neal stated that he believes Florida has the most robust and competitive property insurance market in the country. Mr. Neal stated that he believes that proposed Model Act is a big step towards the revitalization of the primacy of state-based insurance regulation and that it benefits consumers.

Matthew Mosher, Executive Vice President and Chief Operating Officer of A.M. Best, stated that A.M. Best supports and agrees with the “findings” of the Model Act. A.M. Best has never advocated for its ratings to be the sole rating to be used or even for its ratings to be listed in legislation. A.M. Best believes that its ratings being listed in statutes and regulations is a reflection of A.M. Best’s 118-year history and for many of those years being the only rating agency that rated insurance companies. Ratings add value because they take a complex financial analysis and break it down to a scale that people can understand. However, because of that complex financial analysis, the evaluation needs to be something that is regulated and examined from a government entity in some way to ensure there is consistency and no conflict of interest. One such conflict could be a rating agency that provides consulting advice. For that reason, A.M. Best has concerns with the proposed Model in terms of the Model’s definition of “competent rating agency.” A.M. Best believes that the Model should establish specific approval or certification standards when defining a “competent rating agency.” The Dodd-Frank Act and the Credit Rating Agency Reform Act establish clear standards that most rating agencies are held to. Mr. Mosher stated that the rating agencies listed in the definition of “competent rating agency” are not held to the same standards so it could be misleading to consumers.

Rep. George Keiser (ND) stated that it is unusual to provide advertisements in statutes and asked why are the rating agencies specifically named instead of saying “a competent rating agency is a rating agency certified or approved by a national entity that engages in such a process?” Mr. Mosher agreed that the names of the rating agencies should not be listed and again stated that the most important thing is to set a standard for what a “competent” rating agency is. Mr. Stinziano stated that as the language for the Model Act was being developed, the idea of whether to specify Nationally Recognized Statistical Rating Organizations (NRSRO’s) was ultimately rejected because the SEC - the entity that issues an NRSRO designation – is a federal entity and states should not defer any authority to the federal government in the area of insurance regulation pursuant to the McCarran-Ferguson Act. At the same time, there was concern when drafting the Model of simply leaving it to the States to decide what a “competent rating agency” is. Accordingly, the language “...a national entity that engages in such a process” anticipates that perhaps an organization like the NAIC, perhaps working with the SVO office, might decide it is an appropriate responsibility for them to undertake a national evaluation of insurance rating agency organizations that aren’t NRSRO’s.

Mr. Neal stated that after Hurricane Andrew in Florida, the problem was that state regulators stated that insurance companies had to have a rating from a company recognized by Fannie Mae and Freddie Mac – there are only 3 that meet that standard (A.M. Best, S&P, Demotech). The problem with requiring a rating agency to be an NRSRO is that it erodes the primacy of states in insurance regulation.

Rep. Joseph Fischer (KY) stated that it is hard to argue against promoting competition among insurance rating agencies but that the language “...or another rating agency certified or

approved by a national entity that engages in such a process” is vague. Rep. Fischer also noted a spelling error in Section 2.7 (“unintended”) and that in Section 4, the word “agency” was missing.

Rep. Riggs stated that he did not want to refer to the NRSRO designation in the Model because doing so would be detrimental to the state-based system of insurance regulation and that the NRSRO designation is bank-centric. However, in response to Mr. Mosher’s statements about setting standards for what a “competent” rating agency is, and in response to Rep. Fischer’s concerns about vagueness, Rep. Riggs proposed including the requirements that the Dodd-Frank Act lists for rating agencies to be recognized as an NRSRO in the Model’s definition of “competent rating agency.” Rep. Fischer agreed that listing standards in the Model would be an improvement. Sen. James Seward (NY) also agreed and asked Rep. Riggs if he would consider removing the names of the rating agencies from the Model’s definition of “competent rating agency.” In response to Sen. Seward’s question, Mr. Stinziano stated that NCOIL debated that issue when it considered the Model Act to Regulate Insurance Requirements for Transportation Network Companies and Transportation Network Drivers in 2015 – that Model does specifically list rating agencies, namely A.M. Best and Demotech.

Mr. Mosher stated that A.M. Best would support not naming any specific rating agencies in any legislation or regulation – the standards that the rating agencies must meet are what matter most. Additionally, as a minor note, Mr. Mosher stated that A.M. Best Rating Services, Inc. is the legal entity that issues ratings, not A.M. Best Company which is listed in the Model. Rep. Riggs and Sen. Hackett stated that they appreciate the desire to not list the names of rating agencies in the Model but that to best promote competition, the better method is to list the rating agencies and then include the language “...or another rating agency certified or approved by a national entity that engages in such a process.” Mr. Mosher also noted that he was not sure how states would determine if the rating agencies met the standards that Rep. Riggs proposed adding, and stated that the issue of state-regulation of insurance in this arena is a red-herring because the NRSRO designation is simply a way that states can know a rating agency meets a certain standard. Joe Petrelli from Demotech stated that the NRSRO designation came into existence around 1975 and was not developed or initiated to review insurance company claims paying ability or insurer financial strength.

Sen. Hackett then asked Rep. Riggs how he would like to proceed regarding the proposed adoption of the Model. Rep. Riggs stated that he would like to proceed with adoption, knowing that between now and the Executive Committee meeting on Sunday, NCOIL staff would amend the Model to include the specific requirements that the Dodd-Frank Act lists for rating agencies to be recognized as an NRSRO in the Model’s definition of “competent rating agency.” Rep. Riggs made a Motion to proceed in that manner; Rep. Bill Botzow (VT) seconded the Motion. Rep. Keiser opposed the Motion and stated that the names of the rating agencies should not be listed in the Model.

Sen. Hackett then announced a Motion was needed to waive the quorum requirement in order to proceed with a vote on the Model. Rep. Keiser made said Motion; Rep. Riggs seconded the Motion. Sen. Seward then asked Rep. Riggs to clarify whether the specific requirements would be included in the Model’s definition of “competent rating agency.” Rep. Riggs replied “yes.” Sen. Seward then asked if all the rating agencies listed in the Model meet those requirements. Mr. Mosher replied “no.” Mr. Petrelli replied “yes.” Mr. Mosher stated that one of the Model’s listed rating agencies has consultancy offerings on its website which could be a problem when meeting one of the proposed standards - no conflict of interest. Mr. Petrelli acknowledged that Demotech is the rating agency with consultancy offerings on its website and stated that he is a

credentialed actuary bound by the American Academy of Actuaries' Board for Counseling and Discipline. Accordingly, Demotech will either rate or consult and was told by the Academy's Board to disclose that on their website and to their clients. Mr. Mosher stated that if A.M. Best had consultancy offerings on its website there would be a problem with the SEC and its NRSRO designation. Rep. Riggs stated that when listing the requirements in the Model, the language "but not necessarily limited to" will be included so that States could modify the certification process as they see fit. Mr. Petrelli noted that he and Demotech are bound by what the Academy's Board told them what is acceptable, not by what a competitor has said.

The Committee then returned to the pending Motion to waive the quorum requirement and unanimously approved said Motion. Before the Committee voted on the Model, Rep. Botzow asked Rep. Riggs to clarify the process going forward regarding amendments to the Model. Rep. Riggs stated that his Motion was and is to adopt the Model with the expectation that before the Executive Committee meets on Sunday, the Model would be amended to include the specific requirements that the Dodd-Frank Act lists for rating agencies to be recognized as an NRSRO in the Model's definition of "competent rating agency." And the language "The process shall include, but not necessarily be limited to, the following requirements:" will precede the listing of the requirements. The Committee then voted to adopt the Model with the expectation of those amendments by a vote of 9-3.

CONSIDERATION OF MODEL ACT PROHIBITING CONSUMER REPORTING AGENCIES FROM CHARGING FEES RELATED TO SECURITY FREEZES; AND AMENDMENTS TO NCOIL CREDIT REPORT PROTECTION FOR MINORS MODEL ACT

Rep. Riggs stated that identity and financial theft has been the atop the Federal Trade Commission's (FTC) complaint list for the past decade, and it has been getting worse, particularly with minors. Since the Committee passed the Credit Report Protection for Minors Model Act (Minors Model Act), there has been an epidemic of more identity theft. Thirty-eight Attorneys General wrote to the CEO's of Equifax, Transunion and Experian, urging them to not charge any security-freeze related fees. Rep. Riggs stated that those credit bureaus should not be able to profit from consumers requesting security freezes.

Wes Bissett from the Independent Insurance Agents and Brokers of America (IIABA) thanked Rep. Riggs for discussing these issues and stated that IIABA supports both the proposed new Model Act and amendments to the Minors Model Act. Mr. Bissett stated that this is a topic that NCOIL can provide leadership and guidance in. Security freezes are very important to consumers because they are essentially the only way of preventing a thief from opening a new line of credit in the victim's name. Victims of identity theft can also temporarily lift a security freeze if they need access to credit. The fees that credit bureaus charge for placing or lifting security freezes have been shown to be a barrier for some consumers, particularly because for a security freeze to be meaningful, a consumer should place one on their credit with each credit bureau. Mr. Bissett stated that the idea of free security freezes is starting to catch on – at least 8 States provide for that: Colorado, Indiana, Maine, Maryland, New Jersey, New York, North Carolina, and South Carolina. Additionally, such legislation has been introduced in other States and before Congress.

Rep. Keiser stated that as a business owner, he is amazed how often people want him to do something for free and asked Mr. Bissett if he knows how much it costs the credit bureaus to place and/or remove a security freeze. Mr. Bissett said that he did not know, but stated that the context is different for the credit bureaus as compared to other business owners because consumers don't have the ability to tell the credit bureaus to not collect their personal

information. Essentially, consumers are not really customers, in the true sense of the word, of the credit bureaus as they are with other businesses. Rep. Keiser asked if any States allow credit bureaus to charge only nominal fees, such as \$2. Mr. Bissett stated that the fees range from \$2 to \$12 but a consumer would have to pay that three times – once for each credit bureau. Rep. Riggs appreciated Rep. Keiser’s view as a business owner but stressed the fact that we are all not customers of the credit bureaus.

Rep. Park Cannon (GA) asked Rep. Riggs why “minor” was defined in the Credit Minors Model as an individual under the age of 16, and not 18. Rep. Riggs stated that his understanding is that 16 is the age the credit bureaus use for determining who can establish credit. Rep. Botzow noted that in Vermont, the House passed the NCOIL Credit Minors Act with “minor” defined as an individual under the age of 18, and that the credit bureaus have been lobbying the Senate to change the definition to 16. Rep. Botzow then noted that the issue of providing free security freezes is just the tip of the iceberg and urged the Committee to continue discussing the problems associated with identity and financial theft.

Rep. Martin Carbaugh (IN) then made a Motion to adopt the Model Act Prohibiting Consumer Reporting Agencies from Charging Fees Related to Security Freezes. Rep. David Livingston (AZ) seconded the Motion. The Committee then voted without objection by way of a voice vote to adopt the Model.

Rep. Martin Carbaugh (IN) then made a Motion to adopt the amendments to the Credit Report Protection for Minors Model Act. Rep. Botzow seconded the Motion. The Committee then voted without objection by way of a voice vote to adopt the amendments.

DISCUSSION/CONSIDERATION OF RESOLUTION ENCOURAGING THE ADOPTION OF VOLUNTARY DATA CALL PRINCIPLES

Frank O’Brien from the Property Casualty Insurance Association of America (PCI) stated that this Resolution is aimed at trying to establish best practices in the types of data calls that State Insurance Departments are either contemplating or seeking to execute. There are a number of States that have gone forward and put out a significant number of data calls, some of which can be unusual in that they deal with issues or terms that are not what data calls typically deal with. The proposed Resolution does not seek to eliminate an Insurance Department’s ability to issue a data call. Rather, the Resolution aims to put some parameters around the data calls and ask that an Insurance Department consider the mechanisms for a data call, including how they are executed.

Joe Thesing from the National Association of Mutual Insurance Companies (NAMIC) agreed with Mr. O’Brien and stated that NAMIC supports the Resolution. Sen. Hackett also agreed with Mr. O’Brien and stated that the data calls are becoming an increased cost to insurance companies.

Rep. Keiser stated that about two years ago, the NAIC made a conscious decision to move as much as possible away from general market conduct exams and to do more specific targeting with data calls. Rep. Keiser asked if that has taken place. Mr. Thesing stated that he believes there has not been fewer market conduct exams and stressed that a lot of the data calls being conducted have nothing to do with solvency or consumer protection. The data calls are outside the scope of the core functions of the State Insurance Department and that is what the Resolution seeks to address. Sen. Seward stated that he has heard about these problems in New York and it is important to establish some guardrails around the data calls.

Rep. Keiser made a Motion to adopt the Resolution. Sen. Jerry Klein (ND) seconded the Motion. The Committee then voted without objection by way of a voice vote to adopt the Resolution.

DISCUSSION ON NAIC INSURANCE DATA SECURITY MODEL LAW

Ray Farmer, Director of the South Carolina Department of Insurance, stated that the NAIC recently adopted its Insurance Data Security Model Law. Since that time, the U.S. Treasury Report that examines the current regulatory framework for the asset management and insurance industries encouraged States to adopt the Model Law. Director Farmer stated that the Model will be introduced during the upcoming South Carolina legislative session and that it is his understanding that it will be introduced in other States as well. Director Farmer urged the Committee to introduce the Model in their respective States.

Frank O'Brien stated that PCI supports the Model but still has some concerns with it in the areas of exclusivity, confidentiality, and annual certification requirements. Mr. O'Brien applauded Director Farmer's efforts throughout the drafting process and stated that he expects the Model to be introduced in several States soon.

Joe Thesing thanked Director Farmer for his efforts throughout the drafting process and stated that fortunately, the final Model, as compared to previous versions, focuses on data security programs and not on specific protocols for consumer notification. However, NAMIC will not be actively supporting the Model and is concerned that the Model will be submitted as a requirement for NAIC accreditation. NAMIC shares PCI's concerns regarding exclusivity and confidentiality.

RE-ADOPTION OF CREDIT DEFAULT INSURANCE MODEL LEGISLATION

Rep. Keiser made a Motion to re-adopt the NCOIL Credit Default Insurance Model Legislation. Rep. Carbaugh seconded the Motion. The Committee then voted without objection by way of a voice vote to adopt the Model.

ADJOURNMENT

There being no further business, the Committee adjourned at 5:30 p.m.