

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
EXECUTIVE COMMITTEE
NOVEMBER 21, 2003
SANTA FE, NEW MEXICO
MINUTES

The National Conference of Insurance Legislators (NCOIL) Executive Committee met at the Eldorado Hotel in Santa Fe, New Mexico, on Friday, November 21, 2003, at 5:00 p.m. Rep. Kathleen Keenan, NCOIL President, presided.

Other members of the Committee present were:

Sen. Steven Geller, FL
Rep. Rich Golick, GA
Rep. Bob Damron, KY
Rep. Shirley Bowler, LA
Rep. Larry Julian, MI
Rep. Mary Ann Middaugh, MI
Sen. Alan Sanborn, MI
Rep. Greg Davids, MN
Sen. Cal Larson, MN
Sen. Bob Dearing, MS
Sen. Billy Hewes, MS
Sen. Dean Kirby, MS
Rep. Dan Ward, MO
Rep. Don Flanders, NH
Assem. Clare Farragher, NJ
Rep. Dan Foley, NM
Sen. Neil Breslin, NY
Assem. Nancy Calhoun, NY
Sen. William Larkin, NY
Sen. James Seward, NY
Rep. George Keiser, ND
Rep. Frank Wald, ND
Sen. Jay Hottinger, OH
Rep. Geoff Smith, OH
Sen. Dave Bates, RI
Rep. Brian Kennedy, RI
Sen. Bill Walaska, RI
Rep. Craig Eiland, TX
Rep. Gene Seaman, TX
Rep. Larry Taylor, TX
Rep. Maureen Dakin, VT
Rep. Gini Milkey, VT
Rep. Mark Young, VT

Others present were:

Bob Mackin, Mackin & Company, NCOIL Executive Director
Susan Nolan, Mackin & Company, NCOIL Deputy Executive Director
Candace Frick, NCOIL Director of Legislative Affairs & Education
Timothy Tucker, NCOIL Director of State-Federal Relations

MINUTES

Upon a motion, duly made and seconded, the Committee voted unanimously to approve, as submitted, draft minutes of its last meeting, which was held on July 11, 2003.

GRIFFITH FOUNDATION SEMINAR REPORT

At the request of the Chair, Phil Stichter of the Griffith Foundation for Insurance Education reported on the preceding month's seminar entitled, "The Basics of Insurance and Risk Management," which NCOIL and the Griffith Foundation had cosponsored.

Mr. Stichter reported that the seminar, which was the second such seminar in 2003, had attracted 25 legislators from 20 states, as well as six prominent risk management and insurance professors, and the NAIC President.

Mr. Stichter thanked Rep. Keenan and the NCOIL staff for their support and efforts with regard to the joint seminar.

Rep. Keenan said that the seminar was very valuable, and encouraged legislators to participate in the next seminar, which would take place in 2005.

EXECUTIVE COMMITTEE NOMINATIONS

Rep. Milkey nominated Rep. Don Flanders of New Hampshire and Rep. Dan Foley of New Mexico to the Executive Committee. The motion was seconded and passed unanimously.

ADMINISTRATION

FINANCIALS

Upon a motion, duly made and seconded, the Committee voted unanimously to accept:

- June 30 and September 30, 2003, NCOIL financials
- June 30 and September 30, 2003, ILF financials
- September 30, 2003, Almanac financials

FUTURE SITE PRESENTATION

At the request of the Chair, Gary Hoover of Hawk's Cay Resort in Ducks Key, Florida, presented a proposed agreement for hosting the NCOIL 2004 Annual Meeting, which he had negotiated with Ms. Nolan.

Following the presentation, upon a motion, duly made and seconded, the Committee voted unanimously to hold the NCOIL 2004 Annual Meeting at Hawk's Cay.

UPPL SURVEY

Rep. Keenan reminded legislators that, if they had not already done so, they needed to turn in their UPPL surveys. She said that NCOIL was conducting the survey under a grant from the Robert Wood Johnson Foundation, and that NCOIL could take up similar grant-funded projects in the future.

NONCONTROVERSIAL CALENDAR

Rep. Keenan presented the noncontroversial calendar as follows:

From the Property-Casualty Insurance Committee:

- *Resolution Regarding the Need for Effective Asbestos Reform*

From the Bylaws Committee:

- Deletion of section IV.D. of the Articles of Organization. The section reads: NCOIL Officers shall be ex-officio non-voting members of all committees.

From the State-Federal Relations Committee:

- *Resolution in Support of Federal Legislation to Protect American Investors*

From the Financial Services Subcommittee:

- *Identity Theft Protection Model Act*

Rep. Keenan added the Property-Casualty Insurance Committee's *Resolution in Support of Flex-Rating as an Interim Step toward Rate Regulation Based More on Open Competition* to the noncontroversial calendar.

Rep. Damron moved that the Bylaws Committee item be deleted from the noncontroversial calendar. The motion, duly seconded, was unanimously approved by the Committee.

Upon a motion, duly made and seconded, the Committee voted unanimously to approve, as amended, the noncontroversial calendar.

COMMITTEE REPORTS

HEALTH

Rep. Kennedy, Chair of the Health Insurance Committee, reported that the Committee had heard reports on

- association health plan legislation
- healthcare best practices in the states
- Congressional initiatives re Medicaid and prescription drug costs
- direct marketing of pharmaceuticals
- fraud issues
- pharmacy benefit managers

Rep. Kennedy said that the Committee had also adopted its 2004 Committee charges, and had collected several UPPL surveys. He said that the Committee had also heard a report on the UPPL study.

INTERNATIONAL

Rep. Young, Chair of the International Insurance Issues Committee, said that the Committee had heard a report on European Union regulatory developments from David Matcham of the International Underwriting Association. Rep. Young said that the Committee learned that European Union members were working toward uniformity in their accounting systems, and that the International Accounting Standards Board (IASB) was making progress in this area. He said that U.S. and European regulatory systems each had great strengths, and that legislators and regulators in the U.S. and abroad should work together to take the best of both sets of systems to modernize regulation of insurance in international markets.

LIFE

Sen. Seward, Chair of the Life Insurance Committee, reported that the Committee had heard a report from its Life Settlements Subcommittee, which Rep. Young chairs. He said that the Subcommittee had met several times and was working on updating the *NCOIL Life Settlements Model Act*.

Sen. Seward also said that the Committee had considered a working draft of a proposed *NCOIL Genetic Discrimination Model Act*. He said that the Committee was particularly focused on questions relating to the proposed creation of a catastrophic disease list.

Sen. Seward said that the Committee had

- adopted its Committee charges

- deferred its sunset review of the *NCOIL Life Settlements Model Act* until the Subcommittee finished its work
- readopted the *NCOIL Position Statement in Opposition to the Federal Deferred Acquisition Cost (DAC) Tax Increase*
- heard an update on long-term care incentives

STATE-FEDERAL RELATIONS

Sen. Breslin, Chair of the State-Federal Relations Committee, reported that the Committee had held a special meeting on an *NCOIL Proposed Market Conduct Surveillance Model Act* in addition to its regular meeting.

Sen. Breslin said that the special market conduct meeting had helped the Committee move toward a final product, which, he said, should be ready for a vote at the NCOIL Spring Meeting in February 2004. He said that, following the Annual Meeting, NCOIL would communicate with the NAIC, industry representatives, and consumer representatives to get their input on the proposed model.

Sen. Breslin also said that the Committee had heard reports on Congressional hearings and meetings, including a Capital Markets Subcommittee hearing on state regulation, and a Senate Commerce Committee hearing on federal involvement in the regulation of insurance.

Sen. Breslin said that the Committee also heard reports on Congressional initiatives relating to

- optional federal chartering
- the National Flood Insurance Program (NFIP)
- Fair Credit Reporting Act (FCRA) reauthorization

Sen. Breslin said that the Committee had adopted

- the *Resolution in Support of Federal Legislation to Protect American Investors*
- the *Identity Theft Protection Model Act*
- 2004 Committee charges

NCOIL-NAIC DIALOGUE

Rep. Keenan reported that the NCOIL-NAIC Dialogue had been fruitful. She said that legislators and regulators present had discussed the compact and market conduct. She said that NCOIL and the NAIC were working together on the Interstate Insurance Product Regulation Compact, and that NCOIL appreciated the NAIC's help with regard to market conduct.

PROPERTY-CASUALTY

Rep. Keiser, Chair of the Property-Casualty Insurance Committee, said the Committee had heard reports on:

- state activity with regard to insurance scoring
- asbestos reform efforts
- medical liability reform

Rep. Keiser said that the Committee had adopted a resolution regarding flex-rating, which was on the noncontroversial calendar. He said that the Committee had also adopted its 2004 Committee charges, including an additional charge to examine the Claims Loss Underwriting Exchange (CLUE) and possibly consider model legislation on the issue.

FLOOD INSURANCE

Rep. Keiser said that the Committee had also heard a report from its Subcommittee on Natural Disaster Insurance Legislation, which Rep. Golick chairs. He said that the Subcommittee was working to identify stakeholders with respect to natural disaster insurance, and to sort out what their respective roles and responsibilities should be.

Rep. Keiser said that the Committee had considered and adopted a proposed *State Flood Disaster Mitigation and Relief Model Act*. He thanked Ed Pasterick of the Federal Emergency Management Agency (FEMA) and Sam Burr of the Vermont Legislative Council for their assistance in developing the model.

Rep. Bowler said that she disagreed with the model, noting that state banks were free to require flood insurance if they chose, but that requiring such insurance would impede home ownership.

Upon a motion, duly made and seconded, the Executive Committee, in a roll-call vote, adopted the proposed *State Flood Disaster Mitigation and Relief Model Act*. Rep. Bowler cast the only vote in opposition.

SMALL HOMEBUILDER LIABILITY

Rep. Keiser said that the Committee had deferred action on its *Proposed Notice and Opportunity to Cure Model Act*, regarding small homebuilder liability, until the NCOIL Spring Meeting in February 2004. This, he said, would give the National Association of Small Homebuilders (NAHB) time to work with legislators and to draft amendments to the proposed model.

RATE MODERNIZATION

Rep. Keiser said that the Committee had heard reports on state regulatory modernization efforts, specifically in Illinois and South Carolina. He said that the Committee had amended the NCOIL *Property/Casualty Insurance Modernization Act*, which had been scheduled for review,

in order to delete the provision exempting insurers from other, non-insurance–related laws. The Committee also had adopted several technical amendments, he said, and had rejected several other substantive amendments.

Rep. Eiland said that he would propose two amendments to the model in the form of drafting notes, which were before the Executive Committee in writing. He said that the amendments had been among those that the Property-Casualty Insurance Committee had not adopted during its meeting. He said that, in his view, the amendments were worth discussion, particularly since the P-C Committee had not discussed them individually, having “bundled” and rejected many of the proposals.

Rep. Eiland said that the first drafting note would specify that states could consider whether they wanted to authorize their insurance commissioners to require insurers to repay premiums deemed “excessive” to their policyholders in noncompetitive markets.

During the discussion that followed, legislators made the following points:

- It was unusual for NCOIL to bundle amendments and not consider them individually.
- It was unusual for the Executive Committee to take up substantive issues that had been “resolved” in one of NCOIL’s substantive committees.
- NCOIL needed to decide whether it wanted to promote use-and-file.
- The proposed amendment related only to noncompetitive markets.

Upon a motion, duly made and seconded, the Executive Committee voted on the question of whether it should waive the 30-day deadline rule and consider Rep. Eiland’s proposed amendment. In a roll-call vote of 18 to 11, the motion failed.

Rep. Eiland withdrew his second proposed amendment.

Sen. Geller said that he planned to propose a drafting note that would give insurance commissioners special powers in case of an emergency, such as a hurricane. Upon receiving indications that the Executive Committee would not vote to waive the 30-day rule for this amendment, Sen. Geller withdrew the motion.

Upon a motion, duly made and seconded, the Committee, in a roll-call vote of 26 to five, with one abstention, adopted the model, as amended by the Property-Casualty Insurance Committee. Rep. Eiland abstained.

WORKERS’ COMPENSATION

Assem. Nancy Calhoun, Chair of the Workers’ Compensation Insurance Committee, reported that the Committee had heard reports on:

- workers' compensation insurance markets in the states
- recent California workers' compensation insurance reforms
- fraud, during which Howard Goldblatt of the Coalition Against Insurance Fraud reported that the 19 states with fraud monitoring in place experienced lower incidents of fraud

Assem. Calhoun said that the Committee had deferred indefinitely action on a proposed *Resolution Calling on the States to Prohibit State Funds from Writing Outside their States of Domicile*. She said that the Committee had also adopted its 2004 Committee charges.

Assem. Calhoun said that the Committee had considered amendments to the *NCOIL Structured Settlements Transfers Protection Model Act*. She said that the Committee had accepted some of the amendments. She said that, at the NCOIL Spring Meeting, the Committee would review differences between the NCOIL model and a compromise model that the National Structured Settlements Trade Association (NSSTA) supported. She said that the Committee would reconsider the NCOIL model at that time.

BUSINESS PLANNING

Rep. Keenan, Chair of the Business Planning Committee, said that the Committee had received a membership report.

Rep. Keenan said that NCOIL had contracts in place for the following future meetings:

- Spring 2004, February 26 through 29, Hyatt-Regency on the Riverwalk, San Antonio, Texas
- Summer 2004, July 15 through 18, Hotel Inter-Continental, Chicago, Illinois

Rep. Keenan said that the Executive Committee had just approved the 2004 Annual Meeting for November 18 through 21 at Hawk's Cay Resort in Ducks Key, Florida.

Rep. Keenan said that NCOIL was also negotiating contracts on the following tentative meeting sites:

- Spring 2005, March 3 through 6, Hilton Oceanfront Resort, Hilton Head, South Carolina
- Summer 2005, July 7 through 10, Hotel Viking, Newport, Rhode Island

At Rep. Keenan's request, Rep. Eiland reported on the Committee's consumer representation proposal. He said that the proposal authorized the NCOIL President to waive meeting registration fees for as many as three representatives of consumer groups, including those funded by the NAIC. He said that one criterion for the fee waiver was the financial need of the organization.

In response to a friendly suggestion from Rep. Julian that the proposal's reference to financial need be reinstated in the proposal, Rep. Eiland said that the Business Planning Committee had decided to give the President total discretion in choosing consumer representatives.

Following discussion of the financial need question, Rep. Keiser proposed an amendment that would sunset the proposal at the end of one year, which would give the Executive Committee the ability and impetus to review the success of the proposal.

Upon a motion, duly made and seconded, the Committee voted to waive the 30-day deadline rule and to consider Rep. Keiser's proposed amendment.

Upon a motion, duly made and seconded, in a voice vote, the Committee voted to approve the proposal, as amended by Rep. Keiser's suggestion. Rep. Young was the only vote in opposition.

INSURANCE LEGISLATORS FOUNDATION BOARD REPORT

Rep. Keenan reported that the Insurance Legislators Foundation (ILF) Board had elected new officers as follows:

Sen. Geller, President
Rep. Eiland, Vice President
Rep. Wald, Secretary/Treasurer

Rep. Keenan said that the State-Federal Relations Committee was working on the market conduct model, which had arisen from an ILF project. She said that the Property-Casualty Committee was working on a flood model, which had also arisen from an ILF project.

Upon a motion, duly made and seconded, the Committee voted unanimously to approve, as submitted, the committee reports.

NEW BUSINESS

PROPOSED RESOLUTION REGARDING REINSURANCE COLLATERAL REQUIREMENTS

Rep. Young said that two main issues in NCOIL's deliberations on reinsurance collateral were enforceability of judgments and disparities between European accounting systems.

Rep. Young said that the NAIC was working toward resolving these issues.

Rep. Young said that the Reinsurance Association of America (RAA) had proposed several changes to the proposed *Resolution Regarding Reinsurance Collateral Requirements*, which were indicated on the draft that legislators had before them. He said that he had not

accepted all of the proposed changes for the Committee's review. He said that several of the changes that he had accepted simply moved material around within the resolution.

Commissioner Oxendine of Georgia updated the Committee on the efforts of the NAIC Reinsurance Task Force, which was addressing issues relating to reinsurance collateral. He said that the Task Force had formed two new subgroups to address the enforceability of judgments and accounting issues.

Commissioner Oxendine said that he was not sure that the NAIC would have completed its work in this area in time for the Committee to review it at its July 2004 meeting, as specified in the proposed resolution.

Following discussion, Assem. Calhoun suggested that the final RESOLVED clause of the resolution include the words "if available." As amended, the final RESOLVED clause would read, "NCOIL intends to further its consideration of the Approved List of Reinsurers Model Act taking into account the findings of the NAIC review, if available, no later than its 2004 July Summer Meeting."

Upon a motion, duly made and seconded, the Committee voted unanimously to accept the amendment.

Upon a motion, duly made and seconded, the Committee voted unanimously to adopt the resolution.

RECOGNITION OF ASSEM. FARRAGHER

Rep. Keenan said that Assem. Farragher was attending her last NCOIL meeting as a legislator. She commended Assem. Farragher for her dedication and loyalty to the organization. She said that Assem. Farragher had been a mentor to several legislators, including herself.

The Executive Committee presented Assem. Farragher a plaque in honor of her years of service to NCOIL.

NCOIL EXECUTIVE DIRECTORSHIP

Rep. Keenan said that Bob Mackin had submitted a letter indicating that Mackin & Company would not seek renewal of its contract with NCOIL for 2005. She read the letter¹, which referenced his 20-year history with the organization, cited the firm's desire to expand its private-sector clientele, and which indicated confidence in Susan Nolan's ability to take NCOIL into the future, along with the dedicated NCOIL staff currently in place.

Rep. Keenan thanked Mr. Mackin for his many years of service to the organization.

¹ The letter is attached to these minutes.

ADJOURNMENT

There being no further business, the meeting adjourned at 7:00 p.m.

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November 22, 2003

Hon. Kathleen Keenan
President
National Conference of Insurance Legislators
8 Thorpe Avenue
St. Albans, VT 05478

Dear Kathleen:

I write with a great deal of emotion, and with respect for you and your legislative colleagues, to inform you that Mackin & Company will not seek renewal of its contracts with NCOIL and the Insurance Legislators Foundation, which will be up for renewal at the Annual Meeting in November 2004.

After that date, Mackin & Company will actively continue to serve and develop its private sector clientele.

This letter begins the conclusion of my 20-plus year relationship with NCOIL, first as a staff person in the New York Senate, later as NCOIL's representative in Washington, and, since 1993, as Executive Director. It is now time for both NCOIL and Mackin & Company to move on.

NCOIL has grown and remains financially strong despite recent pressures on state budgets.

NCOIL reports, model laws, and resolutions are on the cutting edge in efforts to reform and modernize state insurance regulation. Many NCOIL models now serve as the guiding prototype for state enactments.

NCOIL has a strong Washington presence. It has earned its seat at the table among those who will decide the future of insurance regulation in the states and in Washington.

Most important, NCOIL now brings together many strong citizen legislators who know their constituents' needs, and who bring economic and social reality to public policy decisions that relate to insurance.

NCOIL's staff, with the support and leadership that you and your state legislative colleagues have provided, is, person-for-person, the best there is in the field of professional government association work today.

Right now NCOIL has a full agenda aimed to bringing about needed modernization of state based insurance regulation. Please be assured that I will work actively for the completion of that agenda in the next 12 months.

I look forward to assisting you and others in NCOIL leadership in effecting a seamless transition to new management. Susan Nolan, the present Deputy Executive Director of NCOIL, merits much of the credit for NCOIL's accomplishments. So do Tim Tucker in Washington and Candace Frick in the NCOIL National Office in Albany. Susan Nolan could assume my responsibilities as Executive Director at the conclusion of the 2004 Annual Meeting. They can move NCOIL on to its greatest accomplishments in the years just ahead.

Most sincerely yours,

Bob Mackin