

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
EXECUTIVE COMMITTEE
CHICAGO, ILLINOIS
JULY 16, 2004
DRAFT MINUTES

The Executive Committee of the National Conference of Insurance Legislators met at the Hotel Intercontinental, Chicago, Illinois, on July 16, 2004 at 5 P.M.

Senator Steven Geller of Florida, NCOIL President, presided.

Other members of the Committee present were:

Rep. Donald Brown, FL
Rep. Pat Patterson, FL
Rep. Rich Golick, GA
Sen. Thomas Buford, KY
Rep. Robert Damron, KY
Rep. Steven Riggs, KY
Rep. Mary Ann Middaugh, MI
Sen. Alan Sanborn, MI
Rep. Gregory Davids, MN
Rep. Donald Flanders, NH
Sen. Carroll Leavell, NM
Sen. Neil Breslin, NY
Sen. William J. Larkin, Jr., NY
Sen. James Seward, NY
Rep. George Keiser, ND
Sen. Harvey Tallackson, ND
Rep. David Evans, OH
Sen. Jay Hottinger, OH
Rep. Geoffrey Smith, OH
Rep. Brian Kennedy, RI
Rep. Dan Tripp, SC
Rep. Craig Eiland, TX
Rep. Larry Taylor, TX
Rep. Kathleen Keenan, VT
Rep. Virginia Milkey, VT

Other legislators present were:

Rep. Robert Godshall, PA
Del. Harvey Morgan, VA

Others present were:

Robert Mackin, NCOIL Executive Director
Susan Nolan, Mackin & Company, NCOIL Deputy Executive Director

Candace Frick, NCOIL Director of Legislative Affairs and Education,
Property-Casualty and Workers' Compensation Insurance
Fran Liebich, NCOIL Director of Legislative Affairs and Education, Health and
Life Insurance
Timothy Tucker, NCOIL Director of State-Federal Relations

MINUTES

Upon a motion by Rep. Kennedy and duly seconded, the Committee voted unanimously to adopt, as submitted, the draft minutes of its last meeting held on February 27, 2004.

CONDUCT OF MEETING

Sen. Geller indicated that due to several factors the Executive Committee's agenda would not be considered in the order in which it was originally outlined.

COMMISSIONERS RECOGNIZED

Sen. Geller recognized the presence of four NAIC Commissioners: Commissioners Ernest Csiszar (SC), James Poolman (ND), Joel Ario (OR), and John Oxendine (GA).

ELECTION OF NEW EXECUTIVE COMMITTEE MEMBERS

Upon a nomination by Rep. Damron and seconded by Rep. Tripp, Del. Morgan and Rep. Godshall were unanimously elected to the NCOIL Executive Committee.

NEW BUSINESS

PROPOSED APPROVED LIST OF REINSURERS MODEL ACT

Commissioner Jim Poolman (ND) reported that the NAIC had attempted to bring interested parties together to reach agreements related to collateralization of reinsurers and related matters. He said that the NAIC at its March meeting had passed a resolution to take the collateralization issue off the table in an effort to promote the process outside of the NAIC and gain consensus from the interested parties, with some regulator involvement. He said that this process has been ongoing. Commissioner Poolman identified several issues that the NAIC would be looking at when the interested parties had concluded their review.

Sen. Geller noted that NCOIL had previously voted to take action on this matter at the current meeting but suggested (in light of Commissioner Poolman's report) that NCOIL postpone action until the next meeting.

Upon a motion by Rep. Keiser, seconded by Rep. Eiland, the Committee voted unanimously to postpone action on the proposed NCOIL *Approved List of Reinsurers Model Act* until its next meeting.

GRIFFITH FOUNDATION

Mr. Philip Stichter, executive director of the Griffith Foundation for Insurance Education, discussed the Foundation's sponsorship, along with NCOIL, of the insurance committee chairs' seminar. He asked that NCOIL again endorse the Foundation's program.

Sen. Geller noted that a motion to endorse the program was not necessary because NCOIL had previously voted to endorse the Griffith Foundation's program on a continuing basis.

FINANCIAL REPORT

Ms. Nolan addressed the Committee. She briefly noted that the NCOIL and Insurance Legislators Foundation (ILF) first quarter financials were not indicative of the health of the respective funds and closed her report.

Upon a motion by Rep. Keiser, seconded by Rep. Damron, the Committee voted unanimously to approve the financial report.

NON-CONTROVERSIAL CALENDAR

Sen. Geller presented the non-controversial calendar, which included:

- an amendment to the NCOIL Articles of Incorporation & Bylaws that would make insurance committee chairs in NCOIL member states automatic voting members of the NCOIL Executive Committee at their first NCOIL meeting and would allow each state to have a maximum of five (5) Executive Committee members
- an amended NCOIL *Life Settlements Model Act*
- a *Resolution in Support of the Extension of the Terrorism Risk Insurance Act of 2002*
- a clarifying amendment to the NCOIL *Model Act Regarding Use of Credit Information in Personal Insurance*
- a *Resolution Regarding Natural Disaster Insurance Issues*
- a *Drug Retail Price Disclosure Model Act*

The Committee noted that the Health Insurance Committee did not unanimously adopt the *Drug Retail Price Disclosure Model Act* and so removed it from the non-controversial calendar.

Upon a motion made by Assem. Calhoun and seconded by Rep. Kennedy, the Committee voted unanimously to adopt the non-controversial calendar.

STATE/FEDERAL RELATIONS COMMITTEE

Sen. Seward, chairman of the State/Federal Relations Committee, presented the Committee report. He said that the Committee was given an update on Congressional hearings concerning the regulation of insurance and the NAIC *Interstate Insurance Product Regulation Compact* model legislation. Sen. Seward further reported on the Committee's receipt of a report from its Financial Services Subcommittee, chaired by Rep. Damron, which indicated that the

subject of where consumer complaints are directed was the primary focus of the Subcommittee's efforts.

Sen. Seward then reported that the major item on the State/Federal Relations Committee agenda concerned the proposed NAIC amendments to the NCOIL *Market Conduct Surveillance Model Law*. He noted that the Committee voted to report the bill, with amendments, to the Executive Committee.

Senator Seward then discussed a presentation made to the Committee by Mr. Philip O'Connor, former Director of the Illinois Insurance Department, on historic and prospective insurance regulatory matters at the state level.

He concluded his summary of the Committee's activities, in response to a question from Sen. Geller, by noting that the only item requiring action by the Executive Committee would be approval of the *Market Conduct Surveillance Model Law*, with amendments.

Sen. Geller gave a brief overview of events surrounding the development of proposed amendments to the market conduct model since its initial adoption by NCOIL in February, 2004. He said that the NAIC, along with industry interests and consumer groups, had worked to develop changes that could be endorsed by the NAIC and emphasized that it was important to show a unanimous NCOIL/NAIC consensus on the model to support the state-based insurance regulatory system, in light of efforts in Congress to establish a federal insurance regulatory system. Sen. Geller noted that the amendments before the Committee were the product of this dialogue and that, while not necessarily in receipt of the full support of all parties, were not the subject of objection at this time.

Sen. Geller indicated that an issue which had arisen concerned what course NCOIL would take in the event the amendments were adopted, but then rejected by the NAIC at its upcoming meeting. He noted that both NAIC President Csiszar and Chairman of Market Conduct (D) Committee Joel Ario were present and promised they would attempt to ensure the matter would receive a straight up or down vote at an upcoming NAIC meeting.

Rep. Tripp offered an amendment which provides that if the NAIC does not take an affirmative vote on the NCOIL model, as amended, by the end of its September meeting then the NCOIL model bill's language would revert to its originally adopted version. The motion was seconded by Sen. Seward. The amendment was adopted by a unanimous vote.

Sen. Geller then reminded the Committee that the issue now before it was whether to adopt the model bill, with amendments, as reported from the State/Federal Relations Committee and with the "reverter clause" amendment just adopted by the Executive Committee.

Rep. Godshall indicated reluctance to support the amended bill because he was unsure where the domestic industry in his state stood on the matter. He said this uncertainty would cause him to vote in the negative on the proposal.

Sen. Geller responded that at this time there was no objection and explained that industry representatives gathered at the NCOIL meeting would have to vet the subject with their trade group membership. He re-emphasized that there was no opposition at this point in time.

Sen. Leavell stated his support for the model bill, as amended, but indicated that he felt there was opposition by the industry.

Rep. Eiland noted that there was a general dislike of the current system of market conduct, provided a brief history of the development of the market conduct model, and urged its passage.

Rep. Tripp said he felt there were two issues. First, he noted the importance of presenting a unified front, along with the NAIC, to Congress in order to demonstrate the viability of state regulation of insurance. Second, he expressed concerns that the bill was being rushed and indicated that he would support the bill now but reserve the right to raise this issue at the next NCOIL meeting pending the outcome of comments he might receive subsequent to this vote.

Rep. Golick spoke on the matter. He indicated first that he associated himself with the comments of Rep. Tripp and reiterated that he felt the process was rushed but would vote for the bill while reserving the right to offer changes. He cautioned the NCOIL leadership to go slower and contemplate a more probative process.

Assem. Calhoun noted that the model bill was the product of a four-year process and suggested that the lack of vehement opposition by interested parties constituted tacit approval of the measure.

Sen. Geller reiterated that the bill has been the product of a four-year process and opined that last minute negotiations would take place no matter when the bill was ready for final action. He said that the issue would be dealt with again in the near future and that the bill before the Committee was a good beginning.

A roll call on the bill was held and the Committee voted to adopt the bill, as amended, by a vote of 19-9.

Sen. Geller thanked many of those who worked on the market conduct model bill, including Sen. Seward, Bob Mackin, Sue Nolan, and Tim Tucker. Sen. Seward acknowledged the work of Sen. Breslin, his immediate predecessor as chairman of the State/Federal Relations Committee.

Sen. Geller thanked Commissioner Ario and the NAIC membership for their cooperation on development of the model. He also extended his thanks to the industry representatives for their cooperation.

HEALTH INSURANCE COMMITTEE

Rep. Keenan, chair of the Health Insurance Committee, presented the Committee report. She reported that the Committee received an update on the congressional association health plan (AHP) legislation and received reports on the Medicare Modernization Act, legislative activity concerning managed care, health insurance best practices laws and the uninsured population. She said the Committee held a discussion on prescription drug issues, including importation issues. She further indicated the Committee had received an update on the uniform accident and sickness policy provision law (UPPL).

Rep. Keenan then discussed the Committee's efforts to adopt a drug retail prescription price disclosure model act, which had received opposition from some members of the Committee when considered.

Rep. Keenan provided an overview of the model and moved its adoption. The motion was seconded by Sen. Breslin.

Rep. Damron said that NCOIL should first have the opportunity to hear from pharmacists on the matter and suggested consideration of the bill be deferred until November to obtain testimony from pharmacist interests.

He offered a motion that the bill be re-referred to Committee until November. The motion was seconded by Sen. Buford.

Rep. Keenan said she would like the bill to pass and noted that New York did not appear to have a problem with its enactment. She also said that Vermont had recently enacted a similar law.

Rep. Riggs noted that the retail price of a prescription drug could vary widely depending on the HMO or medical plan involved.

Rep. Godshall inquired about how mail order pharmaceuticals would be affected by the terms of the bill.

It was noted by Sen. Geller that under the terms of the bill the state's health commissioner would address mail order concerns.

Rep. Tripp inquired whether pharmacist interests were contacted on the bill.

Ms. Liebich indicated that pharmaceutical care management associations and PhRMA were notified and had testified at the Health Insurance Committee meeting. She acknowledged that pharmacist interests were not contacted directly.

Rep. Keiser supported the motion to re-refer the bill to the Health Insurance Committee and indicated that a lack of data on New York's law made him question why NCOIL would move ahead with the model.

Rep. Milkey expressed opposition to re-committing the bill, arguing that all points were made on the subject. She discussed the importance of getting this model out both for those with insurance and those without.

Del. Morgan noted that more data from New York might be needed. He indicated that pharmacist organizations were not notified of the bill's consideration and suggested that the subject of the bill was not necessarily an insurance issue. He recalled that Virginia had in place about 15 years ago a price posting list that fell into disuse and voiced his support of carrying the debate on this issue over to the next meeting.

Sen. Geller called for a vote on the motion to re-refer the bill to the Health Insurance Committee and re-visit it at the November meeting. The motion passed on a voice vote.

Rep. Keenan moved the Health Committee report, which was accepted.

LIFE INSURANCE COMMITTEE

Rep. Davids, chairman of the Life Insurance Committee, presented the Committee report, which included: a report on the NCOIL *Life Settlements Model Act* from Subcommittee on Life Settlements; the failure of the Committee to advance the genetic discrimination model (a motion to report the bill was not seconded) and its removal from future agendas; an update on long-term care issues; a discussion on investor-owned life insurance; and an update on fraud issues.

Rep. Davids moved the adoption of the Committee report. The report was adopted.

INTERNATIONAL INSURANCE ISSUES COMMITTEE

Rep. Kennedy, acting chair of the International Insurance Issues Committee, presented the Committee report, which included a presentation from Christian Pierotti of the Comité Européen des Assurances on U.S./E.U. relations and a presentation from Alabama Insurance Commissioner Walter Bell on NAIC/IAIS international activity and related accounting standards issues.

Rep. Kennedy moved the adoption of the Committee report. The report was adopted.

PROPERTY-CASUALTY INSURANCE COMMITTEE

Rep. Keiser, chair of the Property-Casualty Insurance Committee, presented the Committee report, which included an update on state insurance scoring activity and adoption of a clarifying amendment to the NCOIL *Model Act Regarding Use of Credit Information in Personal Insurance*. He said that this amendment would specify that insurers who use minimum thresholds for evaluating insurance scores would violate provisions in the NCOIL model act.

Rep. Keiser continued that the Committee had addressed NAIC insurance scoring activity, the status of federal asbestos reform efforts, flood insurance claims related to Hurricane Isabel, and state activity regarding rate modernization. He said the Committee had adopted a

resolution that committed legislators to investigate various approaches to natural disaster insurance legislation. He then concluded that the Committee had held a special meeting on medical malpractice and patient safety, which he said the Committee would consider in more detail during the November Annual Meeting.

Rep. Keiser moved the adoption of the Committee report. The report was adopted.

WORKERS' COMPENSATION INSURANCE COMMITTEE

Rep. Leavell, chair of the Workers' Compensation Insurance Committee, presented the Committee's report, which included reports on the Illinois workers' compensation insurance system and on second injury trust funds. He said the Committee had discussed the Occupational Safety and Health Administration's (OSHA) ergonomics guidelines for nursing homes and would take a position on the issue during the November Annual Meeting. Sen. Leavell concluded that the Committee also had addressed fraud issues and legislation.

Sen. Leavell moved the adoption of the Committee report. The report was adopted.

BUSINESS PLANNING COMMITTEE

Sen. Geller presented the report of the Business Planning Committee, which included a report from the Web Site Subcommittee, chaired by Rep. Eiland. Rep. Eiland said the Subcommittee had addressed issues of access to NCOIL's Web site and had proposed a fee scale that staff would use to field requests from parties interested in NCOIL documents.

Sen. Geller asked whether there were any objections to accepting the report of this Subcommittee. There being none, the report was accepted.

Sen. Geller then spoke of discussions held by the Committee concerning NCOIL membership dues and cautioned those in attendance who are planning to attend the upcoming NCOIL meeting in Hawk's Cay (Florida Keys) that they should register in a timely fashion.

TERRORISM TASK FORCE

Assem. Calhoun, chair of the Task Force on Terrorism, presented the Task Force's report, which included discussion of the continuation of the Terrorism Risk Insurance Act (TRIA) and a panel discussion on the TRIA issue. She stated that, subsequent to this discussion, the Task Force passed (with a minor amendment) a resolution urging Congress to renew TRIA prior to its expiration.

TRANSITION COMMITTEE

Rep. Eiland presented a report on activities of this Committee, formed to address issues raised by the transition of the position of NCOIL Executive Director from Robert Mackin to Susan Nolan. He discussed issues relating to office space, shared equipment, contracts and allocation of staff. He asked for input from NCOIL members.

Rep. Eiland reminded those present that NCOIL was endeavoring to cut meeting expense costs and gain revenues via exhibition space rental in an effort to accommodate anticipated overhead expenses. He also noted that the actual move was contemplated for September to take advantage of warmer weather.

Sen. Geller asked if there were any objections to the adoption of the report of the Transition Committee. There being none, the report was adopted.

OTHER BUSINESS

Rep. Eiland advised those present that NCOIL was contemplating San Diego, CA, for its November, 2005, meeting and said that site discussions were underway.

ADJOURNMENT

There being no further business to consider, the Executive Committee adjourned at 6:25 p.m.