

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
EXECUTIVE COMMITTEE
NEWPORT, RHODE ISLAND
JULY 8, 2005
DRAFT MINUTES

The Executive Committee of the National Conference of Insurance Legislators (NCOIL) met at the Hotel Viking in Newport, Rhode Island, on July 8, 2005, at 5:15 p.m.

Rep. Craig Eiland of Texas, NCOIL President, presided.

Other members of the Committee present were:

Sen. Joseph Crisco, CT
Rep. Donald Brown, FL
Rep. Pat Patterson, FL
Sen. Steven Geller, FL
Sen. Bill Brady, IL
Rep. Terry Parke, IL
Sen. Thomas Buford, KY
Rep. Robert Damron, KY
Rep. Steven Riggs, KY
Rep. Shirley Bowler, LA
Rep. Joe Hune, MI
Sen. Bob Dearing, MS
Sen. Dean Kirby, MS
Rep. George Keiser, ND
Sen. Harvey Tallackson, ND
Rep. Frank Wald, ND
Sen. Pamela Redfield, NE
Rep. Don Flanders, NH
Sen. Carroll Leavell, NM
Sen. Neil Breslin, NY
Assem. Nancy Calhoun, NY
Assem. Ivan Lafayette, NY
Sen. William J. Larkin, Jr., NY
Rep. David Evans, OH
Rep. Geoff Smith, OH
Rep. Anthony Melio, PA
Rep. Robert Godshall, PA
Sen. Dave Bates, RI
Rep. Brian Kennedy, RI
Sen. William Walaska, RI
Rep. Gene Seaman, TX
Rep. Larry Taylor, TX
Del. Harvey Morgan, VA

Rep. Virginia Milkey, VT
Rep. Mark Young, VT

Other legislators present were:

Sen. Alan Sanborn, MI
Rep. Fulton Sheen, MI
Sen. George Onorato, NY

Others present were:

Susan Nolan, NCOIL Executive Director
Paul Donohue, NCOIL Director of State-Federal Relations
Erik Olson, NCOIL Director of Legislative Affairs and Education,
Health, Life, and Workers' Compensation Insurance
Candace Thorson, NCOIL Director of Legislative Affairs and Education,
Property-Casualty Insurance

MINUTES

Upon a motion duly made and seconded, the Committee voted unanimously to adopt the minutes of its March 4, 2005, meeting in Hilton Head, South Carolina.

EXECUTIVE COMMITTEE NOMINATIONS

Rep. Melio nominated Sen. Jake Corman of Pennsylvania 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:

- March 30, 2005, unaudited NCOIL financials
- March 30, 2005, unaudited Insurance Legislators Foundation financials
- March 30, 2005, unaudited Almanac financials
- Audited 2004 year-end NCOIL financials
- Audited 2004 year-end Insurance Legislators Foundation financials

Ms. Nolan reported that the financials reflect the overall good financial standing of NCOIL and the ILF. Rep. Eiland noted that NCOIL's financial strength has improved as a result of the tradition begun by Sen. Leavell, where legislators from a host state find sponsors for conference receptions. He thanked industry members for their support.

NON-CONTROVERSIAL CALENDAR

Rep. Eiland presented the non-controversial calendar as follows:

Property-Casualty Insurance Committee:

- NCOIL *Model Anti-Runners Fraud Bill*
- NCOIL *Property & Casualty Domestic Violence Model Act*
- NCOIL *Natural Disaster Catastrophe Fund Model Act*

Upon a motion made and seconded, the Committee voted unanimously to approve the non-controversial calendar.

COMMITTEE REPORTS

FINANCIAL SERVICES & INVESTMENT PRODUCTS COMMITTEE

Rep. Hune, chair of the Financial Services & Investment Products Committee, reported that the Committee had:

- heard a report on Social Security reform efforts
- heard a report on the *Community Choice in Real Estate Act* (H.R.111/S.98)
- heard a report on how “functional regulation” works with mixed financial products
- discussed NAIC’s proposal to apply Sarbanes-Oxley to non-public insurance companies
- discussed a proposed payday lending model bill

HEALTH INSURANCE COMMITTEE

Rep. Smith, chair of the Health Insurance Committee, reported that the Committee had:

- heard an update on a proposed *Patient Safety Model Act*
- discussed interstate health insurance sales legislation
- discussed federal association health plans legislation
- discussed health insurance reimbursement transparency issues
- heard an update on Medicare issues
- discussed a proposal regarding drug patents

Rep. Eiland referred to three models developed by the American Medical Association, which staff had circulated to members of the Executive Committee. He said that the proposals would be discussed at the next NCOIL conference.

INTERNATIONAL INSURANCE ISSUES COMMITTEE

Rep. Young, vice chair of the International Insurance Issues Committee, reported that the Committee had:

- participated in an EU/US dialogue
- heard an update on IAIS/NAIC international activity
- heard an update on insurance issues related to NAFTA
- heard a report on finite insurance and reinsurance arrangements
- discussed international accounting standards

Rep. Young moved to postpone consideration of a *Proposed Approved List of Reinsurers Model Act*, which legislators had discussed at the preceding Special Executive Committee meeting. The Committee voted unanimously to postpone consideration of the model.

Rep. Eiland noted that NCOIL had become an “other governmental observer” of the International Association of Insurance Supervisors (IAIS). He observed that NCOIL members will be attending the IAIS annual meetings in the future.

LIFE INSURANCE COMMITTEE

Sen. Crisco, vice chair of the Life Insurance Committee, reported that the Committee had:

- postponed consideration of the *Model Act Enabling State Partnership for Long-Term Care Programs* and the *Model Act Implementing State Partnership for Long-Term Care Programs* in order to monitor related federal activity
- heard an update on the life and viatical settlements market
- discussed limited term life insurance licensure issues
- passed a substitute draft of a proposed *Resolution to Improve Access to Underserved Life Insurance Markets*

Rep. Bowler explained that the substitute resolution contained substantially the same content as the original proposal, except that the substitute did not contain language that suggested limited life insurance licenses were a solution. She observed that the resolution acknowledges that an underserved life insurance market exists and that NCOIL would participate with the NAIC, industry groups, and other interested parties in researching a solution.

The Executive Committee voted to adopt the proposed substitute resolution.

PROPERTY-CASUALTY INSURANCE COMMITTEE

Rep. Keiser, chair of the Property-Casualty Insurance Committee, reported that the Committee had held a hearing on a proposed *Certified Aftermarket Crash Parts Model Act*, which he said legislators had deferred in 2002 in order to consider other issues. Among other things, Rep. Keiser said the Committee voted to have Rep. Eiland form a subcommittee charged with further reviewing the model act and offering its recommendations to the full Committee at the Annual Meeting in November. He added that interested parties had been given a 30-day timeframe to submit language-specific comments on the proposal for subcommittee consideration.

Rep. Keiser said that during the regularly scheduled Committee meeting, legislators heard reports on patient safety, the National Flood Insurance Program, and state guaranty funds and readopted the NCOIL model acts listed on the non-controversial calendar. He said that, due to time constraints, the Committee voted to defer until November its bylaws-required review of an NCOIL *Model Act Regarding Use of Credit Information in Personal Insurance*.

Rep. Keiser said the Committee had adopted a proposed *Model Act Regarding Use of Claims History Information in Personal Lines Insurance* after adopting amendments regarding the disclosure of inquiry information by claims history report providers; insurer treatment of claims without payments (CWOPs); and notification to consumers of the claims information that led to an adverse action. He said that the model act would:

- prohibit taking an adverse action based solely on claims data of a previous property owner, or based on consumer inquiries
- prohibit using claims experience of the property/new applicant more than five years old
- largely prohibit using claims experience to underwrite coverage more than 30 days from when an insurer issued a coverage binder
- require an insurer to re-underwrite and re-rate an insured within 30 days notice that claims information was incorrect or incomplete, and then return any overpayment
- mandate filings by claims-history report providers
- allow that, upon request of a consumer, an insurance company must identify the claim information that led to an adverse action
- prohibit insurer use of CWOPs unless 1) more than one such event occurred within the previous three years or 2) such a claim affected the nature of the risk and was predictive of future loss

The Executive Committee then discussed provisions of the model act. Rep. Eiland moved to delete the words “or losses” from Section 5(B), regarding how an insurer could treat a CWOP. Among other things, he said that a loss in itself was not a claim and that inclusion of “loss” was inappropriate. The Committee voted via voice vote to delete “or losses.”

Assem. Lafayette moved to delete the word “knowingly” from Section 9(B), regarding prohibiting a claims history report provider from disclosing inquiry-related information. He said that he objected to the P-C Committee’s inclusion of the word earlier in the day and commented, in part, that the provision as drafted did not sufficiently protect consumers. The motion failed via voice vote.

Legislators addressed Section 8, regarding disclosure to a homebuyer of the claims experience of a previous property owner. Among other things, certain Committee members expressed concern as to the responsibilities that such a requirement would place on the seller of a home, including any penalties a seller might incur for not reporting minor losses on a disclosure statement. Ms. Thorson clarified that a claims history report would only show the losses for which an insurer paid a claim. She said that a potential buyer and his/her representatives would have no way of knowing whether a seller experienced a loss that he/she remedied without insurer involvement. She said a seller could incur no penalties for failing to disclose such incidents.

After further discussion, Sen. Brady moved to delete Section 8 in its entirety. The motion passed via voice vote.

Upon a motion made and seconded, the Committee voted 31 to 7 to adopt the proposed model act.

Those in favor were:

Rep. Brown
 Rep. Patterson
 Sen. Brady
 Rep. Parke
 Sen. Buford
 Rep. Riggs
 Rep. Bowler

Assem. Calhoun
 Sen. Larkin
 Sen. Seward
 Rep. Keiser
 Sen. Tallackson
 Rep. Wald
 Rep. Evans

Rep. Hune
Sen. Sanborn
Rep. Sheen
Sen. Kirby
Sen. Dearing
Sen. Redfield
Rep. Flanders
Sen. Leavell
Sen. Breslin

Rep. Smith
Rep. Godshall
Rep. Melio
Sen. Bates
Sen. Walaska
Rep. Seaman
Rep. Taylor
Del. Morgan

Those opposed were:

Sen. Crisco
Sen. Geller
Rep. Damron
Assem. Lafayette

Rep. Kennedy
Rep. Milkey
Rep. Young

Rep. Keiser continued that the P-C Committee also adopted a proposed *Resolution in Support of the Confidentiality of Risk-Based Capital Information*. He said the resolution opposed using RBC data for insurance rate-making, as well as opposed pending state bills that would do so with regard to medical liability coverage. He said the resolution asserted that use of RBC for rate-making would expose RBC laws to abuse and could lead to insolvencies, inadequate rates, and destabilized and constricted markets.

After some discussion, the Committee adopted the risk-based capital resolution via voice vote.

STATE-FEDERAL RELATIONS COMMITTEE

Rep. Damron, chair of the State-Federal Relations Committee, reported that the Committee had:

- discussed activities regarding the new Optional Federal Charter Coalition
- heard an update on optional federal charter initiatives and the State Modernization and Regulatory Transparency (SMART) Act
- heard an update on implementation of NAIC Interstate Insurance Product Regulation Compact Model legislation and market conduct regulatory reform efforts
- discussed activity of an NCOIL Market Conduct Subcommittee, including its consideration prior to the Annual Meeting of proposed amendments to the NCOIL-NAIC model

Rep. Eiland explained to the Committee that it was important for NCOIL legislators to complete surveys regarding the financial modernization initiatives that their states have enacted, particularly those laws based on NCOIL model acts.

WORKERS' COMPENSATION INSURANCE COMMITTEE

Sen. Leavell, chair of the Workers' Compensation Insurance Committee, reported that the Committee had:

- heard a report on reform of the Rhode Island workers' compensation insurance system
- heard an update on the state of the workers' compensation market
- discussed issues related to professional employer organizations
- heard an update on fraud issues in workers' compensation insurance

TASK FORCE ON TERRORISM

Assem. Lafayette, chair of the Task Force on Terrorism, reported that the Task Force had:

- discussed the newly released Department of Treasury report on TRIA
- heard a report on a hearing held by the U. S. Senate Committee on Banking, Housing, and Urban Affairs regarding TRIA extension
- heard an update regarding NAIC support for a TRIA extension, including a recently adopted NAIC resolution supporting the inclusion of group life
- discussed possible long-term solutions to replace TRIA

OTHER BUSINESS

Sen. Sanborn recommended that the Executive Committee form a past presidents' club to continue to utilize the skills of past NCOIL presidents. He noted that, because of term limits, some presidents would otherwise be unable to remain a part of NCOIL. He also recommended the creation of a committee, composed of him, Rep. Keiser, and Rep. Kennedy, to investigate the possibility of such a club. Upon a motion made and seconded, the Committee directed the creation of an exploratory committee.

Wes Bissett of the Independent Insurance Agents & Brokers of America reported that the Risk Management Agency (RMA), a part of the U.S. Department of Agriculture that oversees the Federal Crop Insurance Corporation, is about to unveil a draft rule that will direct the operation of the program for years to come. He said that the new proposed rule addresses the premium reduction plan, a very controversial aspect of the crop insurance program, because it has often run afoul of state law. He explained that the rule would create a dividend program and noted that several NCOIL member states have statutes that dictate how dividend programs must operate. He asked NCOIL to make an affirmative statement that premium reduction plans must comply with existing state law. He acknowledged that one NCOIL resolution is somewhat on point but asked whether NCOIL would submit a statement to the RMA asserting that state law must be followed.

Rep. Young moved for the issue to be tabled and for the NCOIL steering committee to address it. The motion passed unanimously.

ADJOURNMENT

There being no further business, the meeting adjourned at 6:30 p.m.