ISSUE
8
2021

NCOIL NEWSLETTER

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NCOIL Annual Meeting
November 17-20, 2021
[REGISTER NOW]

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President

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NCOIL CEO

Asm. Ken Cooley, CA
Vice President

Capital Corner

By Will Melofchik – NCOIL General Counsel

Greetings -

Welcome to the latest installment of Capital Corner, a column that aims to update you on some of the issues that NCOIL is following. Below are updates on some issues that were recently discussed at the NCOIL Summer National Meeting.

Coming Soon – Risk Rating 2.0: Equity in Action

During the recent NCOIL Summer National Meeting in Boston, MA, the NCOIL Joint State-Federal Relations & International Insurance Issues Committee heard from Tony Hake, Director of National Flood Insurance Program (NFIP) Transformation, regarding updates to the NFIP's pricing methodology called "Risk Rating 2.0: Equity in Action."

As you may know, the NFIP, administered by The Federal Emergency Management Agency (FEMA), is the primary source of flood insurance coverage for residential properties in the United States, with more than five million policies in 22,500 communities in 56 states and jurisdictions. The program, long troubled by financial difficulties, collects about $4.6 billion in annual revenue from policyholders' premiums, fees and surcharges, but provides over $1.3 trillion in coverage.

Risk Rating 2.0 represents the biggest change to the way the NFIP calculates flood insurance premiums since its inception, with premium rates for new NFIP policyholders scheduled to go into effect on October 1, 2021, and rates for existing NFIP policyholders are to take effect on April 1, 2022.

Generally, the existing pricing methodology bases premium rates on static data such as a structure's flood zone location on a Flood Insurance Rate Map (FIRM), occupancy type, the elevation of the structure relative to the Base Flood Elevation (BFE), and estimates for the expenses of the NFIP, including servicing of policies. This methodology has resulted in certain problems including individual policies not necessarily reflecting topographical features that affect flood risk, and properties in the same flood zone being charged the same rate, regardless of their location within the zone.

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1 https://www.congress.gov/congressional-report/116th-congress/senate-report/249/1?overview=closed
2 Id.

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Asm. Kevin Cahill, NY
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Sen. Jason Rapert, AR
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Sen. Travis Holdman, IN
Immediate Past President

Matching Rate-to-Risk for Private Passenger Auto Policyholders: A Case Study*

By: Andrew Kirkner, Regional Vice President – Ohio Valley / Mid-Atlantic, NAMIC

Tony Cotto, Director of Auto and Underwriting Policy, NAMIC

Risk is a reality of life. Insurers are in the business of buying the risk of specified losses, then paying if those losses occur. Because not all risks are the same, insurers use a variety of tools and processes to evaluate, underwrite, and rate risks to end up at an actuarially sound price, with riskier consumers paying more and less risky consumers paying less. This principle – "risk-based pricing" – underlies the entirety of the modern U.S. insurance market, including the $250 billion private passenger auto (PPA) insurance market. The principle of risk-based pricing, however, has come under unprecedented attack from state legislators and regulators in the past year, with critics focused on issues of equity and allegations of unfair treatment of consumers based on race and income, especially with PPA insurance. As debate around the validity and fairness of individual rating factors continues, it will be more important than ever for policymakers to be informed by sound data and facts.

To better explain some dynamics of the modern PPA market, the National Association of Mutual Insurance Companies (NAMIC) partnered with Robert Klein, Ph.D., retired associate professor of risk management and insurance and director of the Center of Risk Management and Insurance Research at Georgia State University, on an in-depth study of data published by the National Association of Insurance Commissioners in its 2020 PPA report, a work more than eight years in the making. Using the data provided by the regulators, Dr. Klein conducted a detailed analysis of average premiums, pure premiums, and loss ratios by income quartile across the country to evaluate claims that insurers are unfairly discriminating against consumers, particularly on the basis of income. This study reaffirms the insurance industry's ongoing effort and incentives to properly price all products and fairly and appropriately match rate to risk. Critical findings from the study include:

- Competition compels insurers to use rating factors that are as accurate as reasonably possible;
- Insurers have strong motives to price risk accurately and not engage in unfair discrimination. Unfair discrimination is irrational for a business in that erroneous biases would hurt an insurer financially/reputationally and undermine its business objectives;
- If insurers did overcharge low-income drivers, it would be clearly demonstrated by that group having lower loss ratios than the group of high-income drivers. This study indicates the opposite is much more likely. Loss ratios tend to vary inversely with income, indicating low-income drivers actually receive ***more insurance benefits in relation to the premiums they pay*** than higher-income drivers;

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*This column is a submission of the Industry Education Council (IEC) and reflects the IEC's perspective on the issue(s) discussed. The views, thoughts, and opinions expressed in the column do not necessarily reflect those of NCOIL.

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NCOIL Summer Meeting Minutes Available Now

Future NCOIL Meetings:

Annual 2021
November 17—20
Scottsdale, AZ

Spring 2022
March 3—6
Las Vegas, NV

Summer 2022
July 13—16
Jersey City, NJ

Annual 2022
November 16—19
New Orleans, LA

Spring 2023
March 9 –12
San Diego, CA

REGISTRATION FOR NCOIL ANNUAL MEETING IS OPEN

Registration for the 2021 NCOIL Annual Meeting at the Westin Kierland in Scottsdale, AZ from November 17th—20th is open.

2021 ANNUAL MEETING
SCOTTSDALE ★ ARIZONA

See a tentative schedule on page 7 or view at the NCOIL website here

DON'T FORGET TO BOOK YOUR HOTEL!!!

The hotel block closes on October 25th

Legislators book here:

General Participants book here:

***Please note that there will be a resort fee of $25 per day for all corporate rooms**

2021 ANNUAL MEETING
SCOTTSDALE ★ ARIZONA

REGISTER NOW

CLICK HERE

Reminder that Contributing States are eligible for two legislator stipends per National Meeting to help underwrite the cost of participating.
Click below for more information
Please call the NCOIL National office at 732-201-4133 with any questions.

LEGISLATOR STIPENDS NOW AVAILABLE FOR CONTRIBUTING STATES

CLICK HERE FOR MORE INFORMATION

NCOIL One on One

Our next segment of NCOIL One on One with ND Senator Jerry Klein is out now, click on the link here to learn more about your fellow NCOIL Member.

If you haven't had a chance to watch previous interviews with NCOIL President, IN Representative Matt Lehman, NY Assemblywoman Pam Hunter, OH Sen. Bob Hackett, and AR Rep. Deborah Ferguson, please visit our YouTube channel here.

Thank you to everyone who has participated so far!

Don’t Miss the NCOIL YouTube Channel: Subscribe Today

Weren’t able to attend our past meetings? Good news– you can visit our YouTube channel for recordings of past meetings. Sessions from the Summer Meeting in Boston are posted on our YouTube channel now.

Visit the link below to subscribe to view past meetings, watch our NCOIL One-on-One episodes to get to know NCOIL legislators better, and to keep up to date on all things NCOIL!

https://www.youtube.com/channel/UCe09Z77z4q6HG1kv3fDG7Bg

Capital Corner Cont'd

Risk Rating 2.0 aims to take a more nuanced approach to calculating premiums, doing so based on the value of the policyholder's home and individual property's flood risk, incorporating existing FEMA mapping data and NFIP policy and claims data, and blending that with catastrophic models sourced from both governments and commercial entities. Overall, the goal is to deliver rates that better reflect a property's individual flood risk.

Sounds great, right? Well, not everyone agrees. In recent months, several Members of Congress, mainly those who represent coastal states, have expressed concern with Risk Rating 2.0 and what it could mean in terms of price increases for their constituents. Indeed, the Congressional Research Service (CRS), a nonpartisan shared staff service for congressional committees and Members of Congress, stated that "Risk Rating 2.0 is projected to lead to premium increases for the majority of NFIP policyholders, which could raise questions of affordability."

Senator John Kennedy (LA) has introduced the "Flood Insurance Fairness Act," which would effectively delay Risk Rating 2.0 by requiring congressional approval before FEMA could make any changes to the NFIP, including implementing Risk Rating 2.0. The bill would also freeze premiums at the date of the bill's enactment until Congress agrees to change them.

In the House of Representatives, Reps. Kathleen Rice (NY) and longtime NCOIL participant, Andrew Garbarino (NY), introduced the "National Flood Insurance Program Reporting on Impact to Seaboards and Counties Act." This legislation would also effectively delay the implementation of Risk Rating 2.0 by requiring FEMA to release a comprehensive impact analysis of new flood insurance rates at least six months before any changes can be made to the NFIP.

However, during the NCOIL Summer Meeting, Mr. Hake noted that Risk Rating 2.0 will address the "inequality" in the NFIP that has 'inadvertently developed over time and must be corrected - policyholders with lower value homes are paying more than they should and policyholders with higher value homes are paying less than they should." In addition, Mr. Hake noted that because the NFIP's rating methodology hasn't been updated in over 40 years "it's not financially sustainable in its present form to withstand the frequency and intensity of recent events and the storms that we know will strike in the months and years ahead due to climate change." Mr. Hake stressed that the "current system is just fundamentally not working for the program or our policyholders and must be revamped. While difficult, now is the time."

What do you think about Risk Rating 2.0: Equity in Action? Is the pricing methodology truly equitable? Should it be delayed to further study its impacts or is now the time to implement reforms before things get worse? NCOIL will continue to monitor these issues very closely and will weigh in if necessary.

Use of Dog Breed in Insurance Underwriting Garners National Attention

During the recent NCOIL National Summer Meting in Boston, MA, you may have interacted with some of the great exhibitors we had outside the main meeting room. Two of those exhibitors, The Best Friends Animal Society and The American Kennel Club, were there to educate attendees on what they view as a serious problem: insurers dropping coverage, denying coverage, and/or charging a higher premium based on a dog's breed — regardless of that dog's actual behavior.

Legislation focusing on this issue has been appearing across the country. For example, New York S4254, currently awaiting the Governor's signature, prohibits insurers from refusing to issue or renew, cancel, or charge or impose an increased premium for certain policies based solely on the breed of dog owned. Nevada SB 103, signed into law on June 2, 2021, prohibits certain insurers from discriminating based on the breed of a dog at the property. Illinois SB 1672, signed into law on August 6, 2021, amends the Illinois Insurance Code requiring certain information to be collected for dog-related incidents.

3 https://crsreports.congress.gov/product/pdf/R/R45999
4 http://ncoil.org/wp-content/uploads/2021/08/Joint-Cmte-Minutes-7-15-21.pdf
5 Id.
6 Id.

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Proponents of such legislation assert that "[D]og breed lists are a collection of breeds considered by an insurance company to be uninsurable based on behavior assumed to be intrinsic to a breed (e.g., biting behavior). Insurance companies create these lists without any reliable actuarial data showing a difference in behavior, yet they rely on the lists as if breed assumptions create a risk that is valid across the board. Consideration of a specific dog's bite history or behavior is irrelevant if the dog's breed is listed."

However, certain insurers have opposed saying "[C]ommon sense would tell us that, while any dog may attack and while any dog may be as gentle as a lamb, dogs of certain breeds may be more dangerous than others" and a 2000 joint study by the Center for Disease Control, the American Veterinary Medical Association and the Humane Society on breeds involved in fatal human attacks "not surprisingly" had Pit Bulls and Pit Bull mixes "far and away" atop the list." Further, "[I]f insurers were not permitted to utilize dog breed in underwriting, all insurers would be required to insure pit bulls or other breeds which statistically pose a high risk of potentially catastrophic loss. As previously mentioned, with certain very strong breeds, an incident can be very severe. Some insurers may not be comfortable being forced to insure a high risk breed."

What do you think about this issue? Is it an issue that NCOIL should discuss and perhaps develop model legislation? Should a hearing be conducted during the NCOIL Property & Casualty Insurance Committee's next meeting?

Please submit any thoughts or comments on this issue to wmelofchik@ncoil.org.

Reminder: Please Comment on the Problem of Uninsured Motorists Knowingly Driving Uninsured

As noted in the previous volume of Capital Corner, in 2014, NCOIL adopted a Resolution "In Support of 'No Pay, No Play' Laws to Address the Problem of Uninsured Motorists Knowingly Driving Uninsured." During the NCOIL Spring National Meeting in Charleston, SC, the Property & Casualty Insurance Committee discussed the first draft of the NCOIL Fairness for Responsible Drivers Model Act (Model), sponsored by Senator Shawn Vedaa (ND).

Although named differently, the Model is intended as the next step in support of "no pay, no play laws." The Model, and the laws in the approximately 10 states that have similar laws, prohibits uninsured drivers from collecting the benefits of a system in which they do not participate. Specifically, the Model - subject to certain exceptions - prohibits a person, or personal representative of a person, who was an uninsured motorist and who sustained bodily injury or property damage as the result of a motor vehicle accident from recovering noneconomic damages for the person's bodily injury or property damage or death.

The discussion of the Model in Charleston generated a vigorous dialogue among Committee members which indicated to Sen. Vedaa that the Committee was far from reaching the level of consensus needed to move the Model forward in a meaningful way. Accordingly, following that meeting, Sen. Vedaa directed NCOIL staff to research the relationship between the level of penalties for driving uninsured with a state's uninsured motorist population, as well as the cost of those penalties versus the cost of compliance, with an eye towards taking a step back and examining the overall issue of uninsured motorists knowingly driving uninsured.

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7 https://support.bestfriends.org/site/DocServer/NAIC_Paper-Final01-12-20.pdf?utm_source=vanity&utm_medium=redirect&utm_campaign=ncoil&_ga=2.221726622.786635008.1629916125-1539548944.1629916125

8 https://www.cga.ct.gov/2020/insdata/tmy/2020HB-05368-R000310-Baldwin,%20Kristina,%20Vice%20President-APCIA-Oppose-TMY.PDF

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During the recent NCOIL Summer National Meeting in Boston, MA, Sen. Vedda presented that research to the Committee and asked the Committee members to consider that if the problem sought to be addressed is reducing the percentage of the uninsured motorist population, should the statutory penalties for driving uninsured simply be increased?

The research showed that the top five states with the highest average annual car insurance premiums were: Louisiana, Michigan, Florida, California, and Missouri. The top five states with the highest uninsured motorist population were: Mississippi, Michigan, Tennessee, New Mexico, and Washington.

The severity of penalties in those states did not vary tremendously, but it should be noted that the state with the lowest uninsured motorist population, New Jersey, has one of the most severe penalties in the nation for repeat offenders – "a fine of up to $5,000 and shall be subject to imprisonment for a term of 14 days and shall be ordered by the court to perform community service for a period of 30 days, which shall be of a form and on terms as the court shall deem appropriate under the circumstances, and the court, in its discretion, may suspend the person's right to operate a motor vehicle over the highways of this State for a period of up to two years from the date of the conviction."

Please respond to Sen. Vedaa's question by reaching out to wmelofchik@ncoil.org. Sen. Vedaa will be providing the Committee with an update during the NCOIL Annual Meeting in November in Scottsdale as to what the next best steps are for the Model based upon the feedback received between now and then.

We hope to see you in Scottsdale, and hear from you in the interim.

-Will

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9 https://www.insure.com/car-insurance/car-insurance-rates.html#average-cost-of-car-insurance-by-state
10 https://www.iii.org/fact-statistic/facts-statistics-uninsured-motorists
https://www.insurance-research.org/sites/default/files/downloads/UM%20NR%20032221.pdf

Industry Education Council Column Cont'd

- If insurers did overcharge low-income drivers, it would be clearly demonstrated by that group having lower loss ratios than the group of high-income drivers. This study indicates the opposite is much more likely. Loss ratios tend to vary inversely with income, indicating low-income drivers actually receive ***more insurance benefits in relation to the premiums they pay*** than higher-income drivers;

- The study results do not support the allegations that low-income drivers are overcharged in what they pay for coverage. The results do indicate that loss ratios vary inversely with income, suggesting that:
  - Drivers in low-income ZIP codes tend to have higher claims costs (i.e., receive greater benefits) ***in relation to the premiums they pay*** than drivers in higher-income ZIP codes; and
  - Insurers earn lower, not higher, profits on policies sold to low-income drivers.

- Arbitrary regulatory or legislative restrictions on rating factors and/or rate differentials can cause market distortions: Insurers will choose to leave markets or only offer coverage to drivers for whom they are allowed to charge adequate rates. This means less insurance is available to high-risk drivers, forcing them into the residual market and increasing moral hazard in the process;

- If certain rating factors are banned or restricted, insurers will be compelled to place greater weight on the factors they are allowed to use. Attempts by regulators to constrain rating factors they believe are unfair or because of political pressure will lead to inequities in insurers' pricing because limiting factors means less accurate predictions of risk; and

- The results of this analysis are consistent with previous studies that have not found evidence that insurers engage in unfair discrimination against low-income drivers or the areas where they live when what is considered "fair" is based on economic, insurance, and actuarial principles.

Dr. Klein's full study and analysis is available at: https://www.namic.org/pdf/publicpolicy/210202_naic_study.pdf.

Consistent with Dr. Klein's findings, NAMIC remains committed to the fair treatment of all policyholders, and the association firmly believes that the continued freedom to use a multitude of underwriting factors is the fairest possible system to accurately price the risk of parties involved in the PPA market. NAMIC also remains committed to the continued development of sound research opportunities and academic studies to affirm the value and consumer benefits inherent to risk-based pricing.

For more information, please contact Andrew Kirkner at akirkner@namic.org or Tony Cotto at acotto@namic.org

NCOIL 2021 ANNUAL MEETING TENTATIVE SCHEDULE

WEDNESDAY, NOVEMBER 17TH

Budget Committee	5:30 PM	-	6:00 PM
Welcome Reception	6:00 PM	-	7:00 PM

THURSDAY, NOVEMBER 18TH

Welcome Breakfast	8:15 AM	-	9:45 AM
The Welcome Breakfast is an important opening session. The Committee meetings/general sessions for Thursday, November 18 will start at approximately 10:00 a.m. and end at approximately 5:00 p.m.	10:00 AM	-	5:00 PM
There will also be a luncheon for public policymakers at approximately 1:00 p.m. Specific committee meetings/general sessions will be listed inthe next draft of the schedule	1:00 PM	-	2:00 PM
Nominating Committee (Members Only)	5:15 PM	-	5:45 PM
CIP Member & Sponsor Reception	5:45 PM	-	6:45 PM

FRIDAY, NOVEMBER 19TH

Committee meetings/general sessions for Friday, November 19 will start at approximately 9:00 a.m. and end at approximately 5:00 p.m. There will also be a luncheon for all attendees at approximately 1:00 p.m. Specific committee meetings/general sessions will be listed in the next draft of the schedule	9:00 AM	-	5:00 PM

SATURDAY, NOVEMBER 20TH

Committee meetings/general sessions for Saturday, November 20 will start at approximately 9:00 a.m. and end at approximately 1 p.m. Specific committee meetings/general sessions will be listed in the next draft of the schedule	9:00 AM	-	12:00 PM
Business Planning Committee & Executive Committee	12:00 PM	-	1:00 PM