

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
STATE-FEDERAL RELATIONS COMMITTEE
HILTON HEAD ISLAND, SOUTH CAROLINA
MARCH 4, 2005
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) State-Federal Committee met at Hilton Head Island, South Carolina, on Friday, March 4, 2005, at 2:30 p.m.

Sen. Neil Breslin of New York, acting chair of the Committee, presided:

Other members of the Committee present were:

Rep. Terry Parke, IL
Sen. Neil Breslin, NY
Sen. Bill Brady, IL
Rep. Shirley Bowler, LA
Rep. David Robertson, MI
Sen. Alan Sanborn, MI
Rep. Fulton Sheen, MI
Sen. Pam Redfield, NE
Sen. James Seward, NY
Rep. George Keiser, ND
Rep. Frank Wald, ND
Rep. David Evans, OH
Rep. Dan Tripp, SC
Rep. Mark Young, VT
Del. Harvey Morgan, VA

Others present were:

Susan Nolan, Nolan Associates, NCOIL Executive Director
Paul Donohue, NCOIL Director of State-Federal Affairs

MINUTES

Upon a motion duly made and seconded, the Committee voted unanimously to approve the minutes of the November 19 meeting in Duck Key, Florida.

STATE MODERNIZATION AND REGULATORY AND TRANSPARENCY (SMART) ACT

Sen. Breslin started the meeting by reciting the names of all those legislators who had sent letters to state officials in opposition to the SMART Act.

Rep. Eiland informed the legislators that NCOIL staff will be contacting a delegate from each state to give them a checklist of financial modernization initiatives that will indicate how each state is progressing in adopting NCOIL's model acts in the financial

modernization area. He said the survey information is necessary in the battle to fight the SMART Act. He asked all members to help by passing a resolution in their respective states opposing the SMART Act. He also pointed out that Rep. Taylor and he had passed a resolution in Texas that informed the legislators about the dangers of the SMART Act and stated the state's stand against it. He explained that the Texas House had passed it and the Texas Senate would soon pass it as well. He asked all legislators to do the same in their respective states to help battle the SMART Act.

IMPLEMENTATION OF THE NAIC INTERSTATE INSURANCE PRODUCT REGULATION COMPACT MODEL LEGISLATION

Eric Nordman of the National Association of Insurance Commissioners (NAIC), using a NAIC map, pointed out that nine states had adopted the NAIC Interstate Compact. He noted that since mid-February, seventeen other states had introduced the Interstate Compact for consideration. He then discussed the work now being done to prepare the Compact for implementation; which will occur after the necessary numbers of states have adopted it. He explained that NAIC has two groups working on the issue. He said the first group, the Interstate Compact National Standards Working Group, is working on product standards. He reported that as of the last working group meeting, thirty-three sets of product standards had been developed including sixteen life insurance standards, fifteen annuity standards, individual long term care products standards and individual disability income product standards.

Mr. Nordman said the other working group, the Interstate Compact Implementation Group, was charged with drafting bylaws for the Compact, which were adopted at the Working Group level in November 2004. He reported that while they had presented a report to the Speed to Market Task Force, they did not wish to have the bylaws adopted until the working group received legislative input. He said he hoped to receive such input from the legislators during the first half of this year. He noted that the Working Group was elevated to Task Force level this year and charged with drafting proposed rules and operating procedures, which are to be presented to the Interstate Insurance Product Regulation Commission for its consideration. He indicated the Task Force would initially focus on draft procedures for the product filing review process, access to commission information, and consumer and legislative participation.

Mr. Nordman said the Speed to Market Task Force would also consider a resolution urging the Compact Commission not to adopt any uniform standards for Long Term Care Rate Filings other than for filings of new business rates. He indicated this had been a matter of contention among states. He said to take that issue off the table, renewal rates for long term care products have been reserved for each state regulator to address, rather than being delegated to the compact. He advised that the resolution is supported by the insurance industry.

Mr. Nordman reported that nine states have adopted the Interstate Compact and filed an annual report. He indicated that the compacting states had also drafted a

letter documenting compact activities that they sent to their governors. He noted that a copy of the letter and the tracking chart were available for review.

Rep. Bowler said she is working to kill the Interstate Compact and the reasons for her opposition are delineated on her Web page. She indicated that the legal appeal process and the interstate compact commission meeting rules were two of the main reasons for her opposition.

JOINT NCOIL-NAIC MARKET CONDUCT SURVEILLANCE MODEL LAW

Sen. Breslin reported that during 2005 the NCOIL-NAIC Market Conduct Surveillance model law had been introduced in five states.

Rep. Larkin explained that the model act was first adopted by NCOIL in February of 2004, modifications were made in July and in September the NAIC endorsed and became co-sponsor of the act. He insisted that despite lingering concerns there is a real need to move for adoption of the act at the state level. He reported that he introduced the act in New York State. He also indicated that Rep. Eiland had sent out letters to state legislators advising them to introduce the model act in their respective legislatures.

Sen. Redfield said that she had had problems passing the model act in Nebraska. She stated she introduced the model act but changes adopted by NCOIL in Chicago had caused a loss of support from both legislature and industry so she did not reintroduce the bill in January of 2005. She indicated she will monitor the evolution of the model act as changes are made.

Rep. Eiland said he had introduced the model act in Texas and will have a hearing on it in two weeks. He informed NCOIL members that Sen. Brady will monitor what is happening with the member states. Rep. Parke asked if the group Sen. Brady was in charge of was a committee or a subcommittee and was told that it was a subcommittee with Sen. Brady as Chairman. Rep. Eiland said legislators that were interested should contact him if they wished to join the committee.

Nancy Davenport from the American Council of Life Insurers (ACLI) discussed industry's opinion of the model act. She indicated that market conduct is very important to industry and while they liked the original model act, they do not feel the same about the modifications made in Chicago and therefore are not supporting it. She expressed her hope that all involved will look back to the original model act and will try to strengthen it in the future.

Bob Zeman from the Property Casualty Insurers Association of America (PCI) agreed that modernization is important but after changes made last summer, industry had concerns, especially in the area of due process. He indicated that significant refinements were necessary to gain industry support. Specifically, he hoped changes would be made to the market analysis language.

Neil Alldredge from the National Association of Mutual Insurance Companies (NAMIC) explained that the model act goes a long way but is not strong enough in its current form. He pointed out there is an industry effort currently underway to find a consensus on what changes should be made.

Rep. Eiland said that unlike industry the NAIC believes the model act is too strong.

SUTA DUMPING

Tim Tucker of the National Association of Professional Employer Organizations (NAPEO) gave a brief update on SUTA dumping. Mr. Tucker explained that in August, President Bush signed into law the SUTA Act. He said the Act closed a loophole that allowed businesses to use an exception in the unemployment tax law to move payroll around and/or create shell companies. He explained that the companies then moved the payroll to the new shell company, which allowed it to avoid unemployment tax liability. Mr. Tucker added that NAPEO supported the SUTA Act.

Mr. Tucker revealed that after the Act became law the Department of Labor put out guidance language for the states to follow. He pointed out that to date 40 states have either introduced or passed anti-SUTA legislation. He indicated that the majority track the federal language but that a few have not, which is permitted under the act. He said those states that have not complied with the act will within the next six months. He noted the enforcement side of the legislation not only applies to employers but consultants to employers. He explained that many SUTA problems were perpetrated by tax advisers during client counseling.

Mr. Tucker pointed out the two issues that have come up involve solvency of the state funds and the treatment of PEOs. He said states do not have to change anything with regard to PEOs to comply. He said he expects to see that state trust funds that were in the red because of this practice will soon be in the black.

Rep. Keiser said that at this time all states should already have submitted their SUTA bill to their legislators. He explained that the only question left for states is whether to adopt the bill as is or expand it. He explained that the unemployment reserve fund is an experience fund and therefore an employer's premium increases as its workers make claims. He indicated the problem with PEOs was that some were transferring financial responsibility away from their company through shell companies. He pointed out that in some cases those transfers amounted to hundreds of millions of dollars.

OTHER BUSINESS

EXHAUSTION OF ADMINISTRATIVE REMEDIES MODEL LEGISLATION

Rep. Eiland discussed readoption of the NCOIL Exhaustion of Administrative Remedies Act. He pointed out that much covered under this act was preempted by the Federal Class Action Preemption Act, which covers any class action suit involving 100 or more plaintiffs.

Dave Snyder of the American Insurance Association said that NCOIL's model act is still an important adjunct to the new federal law. He pointed out that despite the new federal law limiting class action lawsuits, if a preponderant number of people in a class reside in one state, the federal law does not apply.

A motion was made by Rep. Parke to readopt, seconded by Rep. Evans. The motion passed.

ADJOURNMENT

There being no further business, the meeting adjourned at 3:45 p.m.

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