

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
WORKERS' COMPENSATION INSURANCE COMMITTEE
NASHVILLE, TENNESSEE
NOVEMBER 21, 2013
MINUTES

The National Conference of Insurance Legislators (NCOIL) Workers' Compensation Insurance Committee met at the Hilton Nashville Downtown in Nashville, Tennessee, on Thursday, November 21, 2013, at 1:15 p.m.

Rep. Bill Botzow of Vermont, chair of the Committee, presided.

Other members of the Committee present were:

Rep. Lindsey Holmes, AK	Sen. William J. Larkin, Jr., NY
Rep. Kurt Olson, AK	Rep. Michael Stinziano, OH
Rep. Matt Lehman, IN	Rep. Sarah Copeland Hanzas, VT
Rep. Steve Riggs, KY	Rep. Kathie Keenan, VT
Rep. Bart Rowland, KY	Rep. Warren Kitzmiller, VT
Rep. George Keiser, ND	Rep. Michele Kupersmith, VT
Sen. Jerry Klein, ND	Sen. Mike Hall, WV
Sen. David O'Connell, ND	

Other legislators present were:

Sen. Jason Rapert, AR	Assem. Paul Aizley, NV
Rep. Romy Cachola, HI	Rep. Dan Kirby, OK
Rep. Martin Carbaugh, IN	Rep. Brian Kennedy, RI
Rep. Peggy Mayfield, IN	Sen. Phil Jensen, SD
Rep. Jim Gooch, KY	Sen. Curt Bramble, UT
Rep. Mike Huval, LA	Sen. Steve Urquhart, UT
Rep. Ken Goike, MI	Sen. Ann Cummings, VT
Rep. Paul Wieland, MO	Rep. Michael Marcotte, VT

Also in attendance were:

Susan Nolan, Nolan Associates, NCOIL Executive Director
Candace Thorson, Nolan Associates, NCOIL Deputy Executive Director
Jennifer Webb, Nolan Associates, NCOIL Director of Legislative Affairs—DC
Eric Ewing, Nolan Associates, NCOIL Director of Legislative Affairs

MINUTES

Upon a motion made and seconded, the Committee unanimously approved the minutes of its July 12, 2013, meeting in Philadelphia, Pennsylvania.

PROPOSED VOLUNTEER FIREFIGHTER COVERAGE MODEL ACT

Rep. Botzow reported that the Committee had considered a proposed *Model Act on Workers' Compensation Coverage for Volunteer Firefighters* for several NCOIL conferences. He said that the model, which offered a definition of "public employment," required reporting of rosters and hours worked, and required review of the basis for determining minimum payroll, which was based in part on Vermont law. He pointed out that a proposed drafting note identified ways that states might fund workers' compensation for volunteer firefighters.

Mona Carter of the National Council on Compensation Insurance (NCCI) commented that the proposed model, including the drafting note, did a good job of pointing out key issues and options.

Following brief discussion, and upon a motion made by Sen. O'Connell and seconded by Rep. Keenan, the Committee unanimously adopted the proposed model act and drafting note.

TENNESSEE WORKERS' COMPENSATION REFORMS

Abbie Hudgens, Administrator of the Tennessee Division of Workers' Compensation, reported on 2013 reforms that she said tried to improve the system for both employees and employers.

Regarding employees, she said, the reforms aimed to:

- curb lengthy litigation by requiring use of an ombudsman and mediation
- promote faster access to court by creating an Administrative Court
- encourage quicker access to medical care
- encourage a quicker return to pre-injury employment

Ms. Hudgens commented that the reforms aided employers by:

- promoting a quicker, simpler resolution of claims
- emphasizing dispute resolution
- establishing greater predictability
- requiring that cases are heard by judges specializing in workers' compensation

Ms. Hudgens also said, among other things, that Tennessee officials felt it was important that an employee continue to receive wage replacement rather than have to wait years and years for the court system to resolve his or her claim. She noted that the reforms would apply prospectively to injuries that occur during or after 2014.

In response to a question from Rep. Botzow regarding how Tennessee reforms were modeled, particularly their emphasis on back-to-work, Ms. Hudgens said that the reforms were developed by the Division of Workers' Compensation after consulting for six months with employers and injured employees. Also contributing to development of the laws, she said, was her own experience as a risk manager for a self-insurer program that included workers' comp, as well as the input of consultants with knowledge of workers' compensation systems in other states. She concluded by commenting that states should frequently reevaluate their laws to identify necessary improvements.

PROPOSED FARM LABORER COVERAGE MODEL ACT

Rep. Botzow reported that a proposed *Model Act Regarding Workers' Compensation Coverage for Agricultural Laborers* had been submitted after the Annual Meeting 30-day deadline and so would require a two-thirds Committee vote for consideration. The Committee waived the 30-day rule via unanimous voice vote.

Rep. Riggs, sponsor of the draft model, said that states lack consistency in their approaches to farm laborer workers' compensation. He said that many states exclude agricultural employers from workers' compensation requirements due to concern regarding possible impacts on small farms. He noted that the agricultural industry was more commercialized than in previous decades and that now such an exemption may be unwarranted.

Rep. Riggs expressed interest in developing for the Spring Meeting a more finalized version of his proposed model, based on an initial vetting at the current meeting. He overviewed provisions in the current draft, noting that it would, among other things:

- apply to a wide variety of agricultural enterprises

- require an agricultural employer to provide workers' compensation in cases when the employer, during the preceding calendar year, had aggregate payroll of \$50,000 or more and paid hourly wages or salaries to (and not on a piecework basis) five or more regular, non-seasonal employees
- establish that workers' comp would be offered only to such regular, non-seasonal laborers
- establish a way to calculate the average weekly wage of a laborer prior to his or her injury
- exclude from the definition of "employee" any of the agricultural employer's family members who reside in the home or on the premises of the employer

Rep. Riggs noted that although seasonal farm laborers often are excluded from workers' compensation requirements, there are no such exclusions for seasonal workers in retail industries.

Rep. Botzow agreed that it was important to evaluate how states address farm laborer workers' compensation issues, particularly since agriculture is an important industry in many states.

In response to a question from Rep. Lehman, Rep. Riggs said that prior to the Spring Meeting he would explore the potential impact of his proposed model on availability of coverage.

Ms. Thorson, in response to legislator discussion regarding state-by-state requirements, noted that the draft NCOIL model was based on certain provisions in Michigan, Rhode Island, and Vermont law.

REVIEW OF NCOIL PEO MODEL ACT, AS PER BYLAWS

Ms. Thorson noted that as per NCOIL bylaws, which require committees to review their model acts every five years, the Committee was due to reconsider its *Model Act Regarding Workers' Compensation Insurance Coverage in Professional Employer Organization (PEO) Relationships*. She explained that the purpose of the model, which she said had been developed for over more than one year, was to require the registration of PEOs and, among other things, to establish that workers' compensation insurance premiums are determined using a PEO client's risk exposure and claims experience.

Ms. Carter of NCCI reported that approximately five states had enacted PEO legislation following NCOIL adoption of its model but that the laws deviated from the NCOIL language. She said that NCCI was working with a joint group of insurer and PEO representatives to try to create a "workable system" that would address remaining compliance and coverage concerns. In response to a question from Rep. Keiser, she specified that a new approach would establish additional definitions to better clarify coverage between employers, employees, and PEOs, as well as would address the role of the insurance carrier and how data is submitted for compliance purposes.

Rep. Keiser moved that the Committee readopt the NCOIL PEO model for one year and consult during that time with the insurer-PEO working group to consider proposed modifications to the NCOIL language, which the Committee would consider at the 2014 Annual Meeting. The motion was seconded, and the Committee adopted it via unanimous voice vote.

PROPOSED 2014 COMMITTEE CHARGES

Upon a motion made and seconded, the Committee unanimously adopted the following proposed 2014 Committee charges:

- Consider issues regarding employer experience ratings and costs, and identify reform opportunities, such as workplace safety and timeliness of return-to-work best practices

- Investigate impacts of the Affordable Care Act (ACA) on workers' compensation medical care, and guide states as appropriate
- Continue efforts to educate states pursuing opioid-related insurance reforms, i.e., NCOIL best practices (*in conjunction with the Health, LTC & Health Retirement Issues Committee*)
- Further consider proposed standards for farm laborer workers' compensation
- Explore issues regarding the regulation of professional employer organizations (PEOs) and consider possible amendments to NCOIL model, as warranted

ADJOURNMENT

There being no other business, the Committee adjourned at 2:10 p.m.