

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
FINANCIAL SERVICES AND INVESTMENTS PRODUCTS COMMITTEE
INDIANAPOLIS, INDIANA
JULY 16, 2015
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) Financial Services and Investment Products Committee met at the Indianapolis Hilton Hotel & Suites in Indianapolis, Indiana, on Thursday, July 16, 2015, at 10:30 a.m.

Rep. Bob Hackett of Ohio, Chair of the Committee, presided.

Other members of the Committee present were:

Sen. Jason Rapert, AR	Sen. Jerry Klein, ND
Sen. Travis Holdman, IN	Sen. David O'Connell, ND
Rep. Joseph Fischer, KY	Rep. Brian Kennedy, RI
Rep. George Keiser, ND	Rep. Bill Botzow, VT

Other legislators present were:

Rep. Deborah Ferguson, AR	Rep. Gary Chism, MS
Rep. Steve Riggs, KY	Sen. Kevin Bacon, OH
Rep. Bart Rowland, KY	Rep. Mark Pody, TN
Sen. Dan "Blade" Morrish, LA	Rep. Kathleen Keenan, VT
Rep. Lana Theis, MI	

Also in attendance were:

Susan Nolan, Nolan Associates, NCOIL Executive Director
Candace Thorson, Nolan Associates, NCOIL Deputy Executive Director
Molly Dillman, Nolan Associates, NCOIL Director of Legislative Affairs
Andrew Williamson, Nolan Associates, NCOIL Director of Legislative Affairs

MINUTES

Upon a motion made and seconded, the Committee unanimously approved the minutes of the February 28, 2015, meeting in Charleston, South Carolina.

CYBER-SECURITY AND CYBER-INSURANCE

Commissioner Stephen Robertson of Indiana said that the NAIC works to ensure that brokers, agents, insurers, and adjusters adequately protect consumer financial and health information. He said that an *NAIC Standards for Safeguarding Customer Information Model Regulation* established the minimum standards that the insurance industry must meet to comply with the Gramm-Leach-Bliley Act. He noted that NAIC financial examiners and market regulation staff provide guidance to insurance departments on how to examine IT controls. Commissioner Robertson said that the NAIC had created a Cyber-Security Task Force, chaired by Commissioner Adam Hamm of North Dakota, to monitor emerging cyber-risks on the insurance industry and to decide whether additional regulatory action is necessary. He noted that the Task Force recently released guidelines for effective cyber-security insurance regulation so that insurance agents and brokers know what is expected from them. Commissioner Robertson said he was one of the many people affected by the Anthem breach and said that the company has been extremely

cooperative in responding to it. He said the NAIC has been tasked to decide whether the safeguards Anthem is providing to victims of its security breach are adequate. He said that the examiners investigating the Anthem breach are expected to come out with a draft report in the near future that the NAIC will review. He said that in the wake of numerous recent cyber-attacks, the NAIC has been proactive in deciding what actions can and will take place to bring perpetrators to justice.

In response to a question from Rep. Hackett as to if federal agencies are working together on issues involving cyber-security, Commissioner Robertson replied that he presumes they are cooperating, as all federal agencies are taking cyber-attacks very seriously.

Rep. Keiser asked if the NAIC is considering the adequacy of cyber-security insurance as it relates to the solvency of a company, and Commissioner Robertson said that the Task Force continues to look at this issue.

In response to a question from Sen. Holdman as to if the industry can be helped in its efforts to protect against breaches, Commissioner Robertson said the insurance industry already has begun recruiting people with government security experience to help protect sensitive data against further attacks.

Kevin McKechnie of the American Bankers Association (ABA) said the challenge isn't alerting people that their information has been breached. He said the challenge is preventing the breaches in the first place. He said the main problem with security breaches is that most software used is manufactured with open-source components. He noted that the United States maintains a database of all the known vulnerabilities of these components. He said there is a bill in Congress sponsored by Representative Ed Royce of California that would ensure all contractors of software, firmware, or products used by the federal government identify all third-party and open-source components and demonstrate that those component versions have no known vulnerabilities. Mr. McKechnie said that this would help hold accountable those who are responsible for the software vulnerabilities that make the breaches possible.

Julie Gackenbach of Confrere Strategies said there is a lot of activity at the federal level on cyber-security. She said that the United States Office of Personnel Management (OPM) has dominated federal-level conversation, along with discussion of cyber-warfare. She said that the government is desperately trying to protect critical infrastructure so that there won't be an attack with the potential to take down the power grid. She also noted that there has been discussion about how laws deal with prosecuting those who use cyber-warfare, as many attacks originate overseas. She said additionally that the issue of the "Internet of Things" and device interconnectedness as it relates to hacking has been of interest to the Federal Trade Commission (FTC). She also said that the Department of Homeland Security (DHS) is working on creating a federal repository for losses.

INSURER-SPECIFIC RATING AGENCY

Michael Stinziano, Sr., of Demotech said that widespread, in-depth familiarity with the state insurance regulatory process and associated consumer safety nets does not exist. He said that more than 100 insurance professionals from all areas of insurance responded to a Demotech survey and provided testimonials indicating that a single insurer-rating requirement may adversely impact consumers. He said there has been an erosion of state regulatory authority

and an inappropriate reliance on using a specific rating approach. Mr. Stinziano suggested that NCOIL could help to foster competition.

CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)

Julie Gackenbach of Confrere Strategies reported that CFPB regulatory practices are an ongoing issue with the House and Senate. She said there is a dispute over the degree to which CFPB is cooperating with Congress and noted that provisions were added to appropriations bills that would change the structure and funding of the Bureau. She said that the changes recommended would make the CFPB a commission-like structure as opposed to operating with a single director. She said that recommended changes also would make the CFPB subject to annual appropriations. She added that the CFPB has said it will continue moving forward to address arbitration clauses, which appropriations bills aim to stop.

Birny Birnbaum of the Center for Economic Justice (CEJ) reported that in light of CFPB activity, the Supreme Court's recent decision that disparate impact is a recognizable claim under the Federal Fair Housing Act is an important one. He noted that the Court said that the fair housing law prohibited intentional discrimination against protected classes and practices that have the same unintended result. He said that just showing protected classes are adversely affected by a housing or insurance policy doesn't mean that the lender or insurer is in violation of the law. Mr. Birnbaum said that insurers have been opposed to any kind of disparate impact standard for homeowners insurance and have argued that it prevents them from risk-based pricing, with which he disagreed. He said that as insurers attempt to weaken risk-based pricing statutory requirements, it is important that legislators keep disparate impact in mind and it is equally important that legislators be in active communication with federal agencies on this topic.

PENSION INITIATIVES

Michael Rowden of the American Council of Life Insurers (ACLI) reported that there have been three pension-related bills introduced in 2015 in Connecticut, New Hampshire, and Massachusetts. He said the bill in Connecticut, recently signed by the Governor, will protect certain allocated and unallocated group annuity contract proceeds from creditors. He said that a bill introduced in Massachusetts in March would create certain requirements for disclosure. Finally, he said that a bill in New York would require mandatory disclosure that payments are exempt from creditor claims, notice provisions regarding risk protections, and the superintendent's confirmation of de-risking transactions. Mr. Rowden also noted that Massachusetts and New Hampshire have updated their annuity coverage limits since NCOIL adopted the *Resolution Concerning Best Practices for Pension De-Risking through Private Annuitization*.

DODD-FRANK IMPLEMENTATION

Dave Snyder of the Property Casualty Insurers Association of America (PCI) reported that there has been an effort to bring state regulators, the Federal Reserve, and the Treasury to an agreement on a proposed domestic capital standard and an international capital standard that would be applicable to internationally active insurance groups. He noted that "Team USA" held a meeting in June and heard from insurance company CEOs about the need for higher capital requirements. He said the Federal Insurance Office (FIO) issued its second notice in regards to the authority it has under Dodd-Frank to monitor affordability and availability of insurance products in underserved territories, and he suggested that NCOIL follow these developments.

Mr. Snyder said that Dodd-Frank was intended to preserve and maintain state-based regulation and that subsequent public policy should not intrude on this. He noted that numerous efforts were being made to infringe on the state-based regulatory system by federal agencies acting in connection with international developments, and that NCOIL's active engagement is fundamentally important in protecting consumers.

ADJOURNMENT

There being no further business, the Committee adjourned at 11:30 a.m.