NCOILETTER

March 2005 www.ncoil.org

NCOIL ADOPTS REVISION TO NAIC COMPENSATION MODEL

Lawmakers voted overwhelmingly on March 5 to adopt a revised version of an NAIC proposed amendment to its *Producer Licensing Model Act* at a special meeting of the NCOIL Executive and State-Federal Relations Committees held during the NCOIL Spring Meeting.

The NCOIL revision builds upon the NAIC December 29 *Compensation Disclosure Amendment to the Producer Licensing Model Act*, which relies on disclosure and transparency. Key NCOIL revisions would narrow the focus of disclosure and acknowledgement requirements to transactions with an inherent conflict of interest.

NCOIL President Rep. Craig Eiland (TX), upon the Executive Committees' adoption of the NCOIL language, said, "The NCOIL revision focuses on real areas of potential conflict of interest—on situations where a producer is compensated by both client and insurer—and establishes clear guidelines for those covered by its provisions. NCOIL adoption of this proposal will offer meaningful guidance to states that have substantive or political needs to legislate in this arena."

Rep. Eiland testified before the NAIC Executive Committee regarding the NCOIL broker disclosure language in Salt Lake City on March 14. Rep. Eiland said, "NCOIL feels its language offers broker disclosure requirements that provide needed consumer protections while at the same time do not penalize responsible producers in their normal course of business."

The NCOIL revisions to the NAIC amendment, sponsored by Rep. Eiland, were supported by various interested parties and would 1) impose new disclosure and acknowledgement requirements on any producer who is compensated for an insurance placement by both a client and an insurer in the same transaction; 2) require a covered producer to disclose the method and factors utilized for calculating the producer's compensation; 3) provide that disclosure and acknowledgement requirements are not triggered by an insurance placement *(continued on page 2)*

NCOIL IN ACTION

During the March 3 through 6 NCOIL Spring Meeting in Hilton Head, South Carolina, legislators took the following public policy actions:

* Adopted a revised version of an NAIC proposed amendment to the NAIC *Producer Licensing Model Act*
* Voted to send a letter to the NAIC opposing its efforts to apply Sarbanes-Oxley requirements to privately held companies
* Adopted a resolution opposing expansion of state insurable interest laws
* Adopted a resolution supporting OSHA ergonomic guidelines for nursing homes
* Readopted the NCOIL *Long-Term Care Tax Credit Model Act*
* Readopted the NCOIL *Exhaustion of Administrative Remedies Model Legislation*
* Moved to renew consideration of a draft *Certified Aftermarket Crash Parts Model Act*
* Moved for further consideration a proposed claims database model act
* Moved for further consideration proposed models laws regarding long-term care partnership programs
* Moved for further consideration a proposed patient safety model act

Details regarding action taken at the Spring Meeting is available at www.ncoil.org.

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS

Preserving State Insurance Regulation...

- By interacting with Congress on issues of critical importance to insurance public policy
- By educating state lawmakers on the solutions to their insurance-market crises
- By fostering relationships between state legislators
- By asserting the primacy of state insurance regulation under the McCarran-Ferguson Act of 1945

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BROKER

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in a secondary or residual market; and 4) enable an affiliate of a producer to provide the required disclosures.

The NCOIL revisions also would add new disclosure and acknowledgement requirements to any duties and obligations imposed under existing state law and would suggest, by drafting note, that states review their common law on a broker's fiduciary or other legal duty to determine if statutory standards are necessary. The NCOIL changes would not conflict with Marsh and AON settlement agreements.

The NCOIL Executive and State-Federal Relations Committee special meeting followed an NCOIL hearing, in which interested parties testified regarding proposals aimed at addressing the broker antitrust and fraud violations exposed when NYS Attorney General Eliot Spitzer began investigating broker compensation practices last year.

NCOIL delayed action on its November 2004 proposed model in order to monitor NAIC activity in hopes of addressing the issue uniformly. Prior to the NCOIL Spring Meeting, a Steering Committee, comprised of NCOIL officers and committee chairs, said the NAIC amendment represented a good start, but that more focus was needed.

Those supporting the NCOIL language included a wide variety of insurance industry and agent representatives from health, life, and p-c insurance lines.

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NCOIL OPPOSES SARBANES-OXLEY APPLICATION TO PRIVATELY HELD COMPANIES, SENDS LETTER TO NAIC

NCOIL took a stand against applying Sarbanes-Oxley requirements to privately held insurance companies in a March 10 letter sent to the NAIC by NCOIL President Rep. Craig Eiland (TX). Rep. Eiland, acting on behalf of the full NCOIL Executive Committee, encouraged regulators to reconsider their efforts to amend the NAIC Model Audit Rule (MAR) in order to accommodate Sarbanes-Oxley (SOX).

The letter objects to the plans being developed by NAIC's AICPA Working Group on both substantive and procedural grounds. First, the letter notes that SOX was enacted to protect shareholders of publicly traded companies and says that "NCOIL believes its provisions are not designed to address non-public companies already regulated by existing state solvency laws." Rep. Eiland said that those laws are the "same or very similar" to SOX criteria for public companies. Another regulatory burden on non-public carriers, he said, "will greatly increase the cost and burden of regulatory compliance…, a cost that ultimately will be passed on to policyholders."

Procedurally, NCOIL opposes adding SOX-friendly amendments to MAR as revisions to the NAIC Annual Statement Instructions. Rep. Eiland's letter notes that addressing the issue in this way would mean that the NAIC revisions "would automatically be incorporated into the laws of states that integrate the Instructions into their state law by reference through either statute or regulation." As stated in the letter, "NCOIL believes that the creation of new corporate structures and audits certifying adequate internal controls represent non-delegable, substantive public policy judgments. The process proposed by NAIC improperly infringes on the rights of state legislatures to establish public policy in each jurisdiction."

The letter, sent to NAIC President Diane Koken (PA) and AICPA Working Group Chair Alfred Gross (VA), concludes by saying that SOX requirements "do not track well with the purpose of or the existing basic structure of existing financial regulation found in the state insurance codes." A representative of the AICPA Working Group has been invited to speak at the July NCOIL Summer Meeting.

During the NCOIL Spring Meeting, the NCOIL Executive Committee unanimously voted to have Rep. Eiland send a letter to NAIC, on behalf of the Committee, in order to protest regulators' efforts to extend SOX to privately held insurers.

NCOIL MOVES TOWARD VOTE ON CLAIMS DATABASE MODEL ACT, FOCUSES ON FEW REMAINING ISSUES

Model legislation that would restrict how insurers could use claims information when underwriting p-c insurance coverage moved several steps closer to a vote on March 3, when NCOIL's Property-Casualty Insurance Committee held a hearing on a proposed claims database model law during the NCOIL Spring Meeting.

In part, the current model would prohibit taking an adverse action based solely on claims/loss history of a previous property owner and would prohibit taking an adverse action based on consumer inquiries or claims without payments, unless the insurer could prove that such claims would impact the carrier's risk. The Act also would prohibit an insurer from using claims experience of a property or consumer that is more than five (5) years old.

The draft model would restrict an insurer from using claims/loss experience to underwrite more than 30 days after that insurer issued a coverage binder. The Act further would require an insurer to re-underwrite and re-rate an insured within 30 days notice that claims information was incorrect or incomplete, and return any overpayment. The proposal would require various disclosures to consumers, as well as filings by claims-history report providers.

Key items that remain to be resolved include 1) the number of claims without payments (CWOPs) that would be allowed before a CWOP could be used to take an adverse action and 2) the timeframe from when an insurer issues a coverage binder and when that carrier could no longer use claims information to underwrite. The Committee has asked for interested party comments on these issues by April 1, at which time legislators will actively pursue consideration of the draft.

Testimony at the March hearing expressed concern that the CWOP provisions in the current NCOIL model might be too similar to certain rate-filing requirements submitted, among other times, at renewal, including those related to insurance credit scores. Insurers say that claims history reports are not used at renewal and are almost exclusively an initial underwriting tool. Earlier versions of the NCOIL model offered more specific language on this issue; it appears likely that a revision of the current draft might head back in that direction, perhaps allowing an adverse action based on a CWOP if more than one such loss occurred during the prior three years.

Regarding how long an insurer would have to act on claims information, some of those testifying commented that NCOIL's establishment of a 30-day window—from the date a carrier issued a binder to the last day that the insurer could act on loss data—would conflict with current state laws that provide a 60 or 90-day period. The NCOIL draft does allow a carrier to exceed 30 days if it already had initiated an investigation or similar process that was not completed within the 30-day time frame. It currently is unclear how a revised NCOIL model might address the issue.

Legislators in March resolved a number of other concerns, including 1) revising the Act so that it would no longer apply to renewal business, 2) omitting restrictions on the number of natural disaster/water damage claims that might be considered, 3) eliminating filing requirements for insurers, and 4) amending the filing requirements for claims-history report providers to prevent them from *knowingly* reporting data regarding consumer inquiries.

The current NCOIL draft reflects consensus between several interested parties. Those groups that support the draft model include the Independent Insurance Agents & Brokers of America, the American Insurance Association, the Property Casualty Insurance Association of America, and the National Association of Mutual Insurance Companies. Consideration of proposed claims database model legislation responds to a Committee charge to develop a claims database model law.

Key items that remain to be resolved include the number of claims without payments (CWOPs) that would be allowed and the timeframe from when an insurer issues a coverage binder and when that carrier could no longer use claims information to underwrite.

SAVE THE DATE

The NCOIL Summer Meeting

July 7-10, 2005

Newport, Rhode Island

NCOILetter

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NCOIL

NCOIL TO RENEW AFTERMARKET CRASH PARTS DISCUSSION, HOLD HEARING

In a unanimous decision, the NCOIL Property-Casualty Insurance Committee voted on March 4 to renew NCOIL's consideration of a proposed *Certified Aftermarket Crash Parts Model Act* and to hold a special hearing on the matter during the July 7 through 10 NCOIL Summer Meeting in Newport, Rhode Island. The action came during the NCOIL Spring Meeting.

The proposed model law, which provoked intense controversy during its initial NCOIL consideration several years ago, would endorse certification of aftermarket crash parts by third-party organizations and would require disclosure as to the use of such parts. After more than a year of discussion, in November 2002 legislators deferred further review of the draft model until the 2005 NCOIL Spring Meeting. Lawmakers at the time cited a need to address other issues.

Key points of contention debated during the earlier NCOIL discussions featured 1) the safety of certified aftermarket versus original equipment manufacturer (OEM) crash parts; 2) who should be responsible for paying the difference between less expensive aftermarkets and OEMs; 3) how leasing arrangements should be treated; 4) the ability of states to enforce legislation based on the proposed model; and 5) whether state laws would be appropriate vehicles for addressing the issue.

The current Committee membership includes many legislators who were not present during the 2002 discussions and are interested in examining the major concerns surrounding certified aftermarket crash parts.

Details of the July hearing will be available in the coming months.

LEGISLATORS OPPOSE EXPANSION OF STATE INSURABLE INTEREST LAWS

After a lively debate among legislators and interested parties, the NCOIL Life Insurance Committee on March 3 voted unanimously to adopt a proposed *Resolution Opposing the Expansion of State Insurable Interest Laws to Permit Private Investors to Purchase Life Insurance on the Lives of Unrelated Individuals.*

The sponsor of the NCOIL resolution, Texas State Representative Larry Taylor, said, "IOLI proposals are contrary to sound public policy and erode the integrity of long-standing insurable interest principles designed to ensure that life insurance is used only by those with a relationship to the insured. State laws should not be modified to permit charities, which otherwise have a legitimate insurable interest in donors, to allow their interest to be used by investor groups primarily for private investment purposes. When third-party entities are permitted to purchase life insurance insuring the lives of unrelated individuals, the life insurance becomes nothing more than a funding vehicle."

IOLI transactions are promoted as a way to provide "free" money to charities, where charities may end up with a small percentage of between five and seven percent of the net death benefits. Investors receive most of the benefits.

Representatives of the American Council of Life Insurers (ACLI) and the National Association of Insurance and Financial Advisors (NAIFA), in support of the resolution, said that charities that participated in IOLI transactions are not guaranteed the percentage of the net death benefit and may also be risking their federal tax-exempt status.

Representatives of LILAC Capital, a New York-based investment group that opposed the resolution, said donors and benefactors have long-standing relationships with the charities and may choose the charity that would profit from the net death benefit. LILAC argued that IOLI transactions would not compromise a charity's federal tax-exempt status.

The Committee's decision to oppose expansion of state insurable interest laws followed more than a year of examination into IOLIs.