

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
FINANCIAL SERVICES & INVESTMENT PRODUCTS COMMITTEE  
PORTLAND, OREGON  
JULY 15, 2016  
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) Financial Services & Investment Products Committee met at the Portland Marriott Waterfront Downtown on Friday, July 15, 2016, at 9:00 a.m.

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

Other members of the Committee present were:

Rep. Matt Lehman, IN	Sen. Jerry Klein, ND
Rep. Bart Rowland, KY	Rep. Don Flanders, NH
Rep. Joseph Fischer, KY	Rep. Kathleen Keenan, VT
Rep. George Keiser, ND	Rep. Bill Botzow, VT
Rep. David O'Connell, ND	Sen. Mike Hall, WV

Other legislators present:

Sen. Gary Stanislawski, OK

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO  
Paul Penna, Executive Director, NCOIL Support Services, LLC  
Will Melofchik, Legislative Director, NCOIL Support Services, LLC

## MINUTES

Upon a motion made and seconded, the Committee unanimously approved the minutes of its February 26, 2016, meeting in Little Rock, Arkansas.

### DISCUSSION OF FIDUCIARY STANDARDS FOR LIFE INSURANCE & ANNUITY SALES TO CREATE UNIFORMITY

John Gerni of the American Council for Life Insurers (ACLI) stated that the idea of uniformity could have been interpreted when the DOL Rule was first published but the DOL stated that was not its intention – it is limited to investment related products. Incorporating other products into the Rule would set forth another obstacle to providing financial security to individuals that the Rule attempts to protect. Therefore, we should pause when thinking about expanding the Rule. ACLI is actually part of litigation to repeal the Rule and supports the Resolution adopted yesterday by the Life Insurance & Financial Planning Committee that urged the DOL to repeal the Rule.

Neil Finestone, CEO of Finestone Partners stated that with regards to group benefits, it is a very competitive and efficient marketplace and largely self-regulates. Mr. Finestone is not sure what the DOL Rule would offer in that marketplace besides more litigation. In the individual market, the life insurance market is also competitive and efficient and has responded to technological advances. Mr. Finestone stated that he also supports the

Resolution adopted yesterday regarding the DOL Rule. If we want to protect the lesser-sophisticated people and those on the bottom half of the income spectrum from complex products due to incentives the agents have to sell said products, he would encourage better/specific training in those products. Also, due to the perceived problem of compensation/commissions, if there is a 6.5% front-end load on the commission, cap it at 2% per year and have a 2% charge-back to the broker. That will: a.) make the product more competitive with other products, b.) by having a surrender charge/charge-back to the agent, it puts the agent in a position where he/she will have a strong incentive to service the client. Mr. Finestone's concern with the DOL Rule applied to other products is that it creates an opportunity for litigation and the people whom the Rule is intended to help will end up paying for said for litigation. Ultimately, Mr. Finestone made clear that regardless of whether there is a DOL Rule or suitability standards, if someone has ethics they will work in the best interests of the client.

Birny Birnbaum of the Center for Economic Justice (CEJ) stated that with regards to the Resolution adopted yesterday, it would be a more powerful statement for NCOIL to say we realize there is a problem and we propose things such as Mr. Finestone's proposal of aligning the agent's interests with the clients, rather than just saying we are opposed to it and it encroaches upon States' rights.

#### REVIEW OF "BUYER'S GUIDE" REGARDING CYBER SECURITY PUBLISHED BY THE FSSCC

Kevin McKechnie of the American Bankers Association (ABA) spoke on the recently published "Buyers Guide" from the Financial Services Sector Coordinating Council (FSSCC). Mr. McKechnie stated that the Guide concerns cyber insurance, not cyber security because it is important to tell people how to buy it in a way that leads to greater cyber-maturity. It provides an overview of the cyber insurance market and identifies key questions that a prospective policyholder should ask itself, its broker or agent, and its insurer when considering purchasing cyber insurance. Mr. McKechnie also stated that it is extremely important to come up with procedures on how to deal with a breach before it occurs, not afterwards.

Rep. Lehman stated that it is concerning that legislation concerning cyber-risk is leaning towards "who do we blame?" rather than "how do we mitigate the problem?" Mr. McKechnie stated that any legislation that leaves someone "holding the bag" is dating itself because the new path forward is community-management in that before something happens, everyone knows their rights and responsibilities before something happens.

Rep. Keiser stated that he thinks the Buyers Guide is a great document and thinks it would be beneficial to have someone come to a future NCOIL meeting to further brief the Committee on the specifics of it.

#### NCOIL INPUT ON NAIC MODEL LAW REGARDING CYBER SECURITY

Ray Farmer, NAIC, Director of South Carolina Department of Insurance spoke first. Dir. Farmer stated that 2 years ago NAIC developed a cyber security Task Force comprising of about 40 members – the Task Force developed guiding principles on how to protect consumers from breaches; developed a road map on how to deal with a breach after it occurs; upgraded the training of examiners; developed a supplement to NAIC financial

statement to see what type of cyber coverage is being written and how much of it. The Model Law is the latest effort and there will be a new draft coming soon implementing the comments NAIC received from the industry and others. NCOIL CEO Tom Considine stated that NCOIL hopes to be involved in the process of providing comments on the next draft in order to avoid drafting a model on its own. Dir. Farmer said NCOIL will certainly be involved and NAIC wants its input.

Wes Bisset from the Independent Insurance Agents and Brokers of America (IIABA) stated that there are some concerns with the current draft of the NAIC Model and recognizes that it is not a final product. The Model has 2 main components: a.) data security requirements imposed on businesses on how they protect information; b.) what happens when you have been breached/think you have been breached. A concern is that there are Federal data security requirements and they will obviously not go away so there could be duplicative regulations. The Model is broad in that it applies equally to every insurance company and insurance agent. But it is narrow in that it imposes data requirements to the insurance industry – those requirements are different from other industries. Also, the definition of personal information is very broad. Also, requirements should be placed on third-parties, not on licensees to tell the third-parties what to do. Another concern is section 8 in that it gives regulators authority to unilaterally determine the sanctions that can be imposed on an entity that has been breached – that is viewed as violating due process. Moreover, the Model can be interpreted as holding the agent responsible for certain compliance requirements if the company is breached – that is concerning. Lastly, IIABA is opposed to having the Model being an NAIC accreditation standard. Mr. Bisset urged NCOIL to be involved in commenting on the next draft of the Model.

John Mangan of the American Council of Life Insurers (ACLI) stated that ACLI supports a uniform approach to this topic. Many of the elements of the Model have been developed and debated in numerous States.

Rachel Jensen from the American Insurance Association (AIA) stated that the main objective of AIA is to establish a clear path to compliance with achievable, flexible and meaningful requirements, which can be adopted uniformly while avoiding duplication with existing laws. AIA is committed to working with regulators and legislators on this topic and requests NCOIL work with NAIC on the next draft and not draft a model of its own. A lack of uniformity is inefficient and cost-prohibitive. AIA also believes that there should be no private right of action in the Model – licensees will have to divert resources to fight lawsuits rather than focusing on cyber protection. AIA is neutral on the issue of the accreditation-standard and believes it needs to be further examined.

Frank O'Brien of the Property Casualty Insurers Association of America (PCIAA) stated that it is important to maintain consumer expectations - if they don't think their information will be protected, insurers will not get the information necessary to properly manage risk. Mr. O'Brien does not think that the Model should be included as an accreditation standard.

Joe Thesing of the National Association of Mutual Insurance Companies (NAMIC) stated that it is important to note that 47 States have adopted cyber breach and notification laws and that the Model is huge departure from those laws. Therefore, NAMIC urges

NAIC to be cautious and thoughtful when moving forward on the next draft. Also, the first draft is too punitive and needs to strike a balance between consumer protection and the interests of the insurer. With regards to accreditation, Mr. Thesing stated traditionally, solvency Models are reserved for accreditation and NAMIC has concerns that this non-solvency type of Model would be included in the accreditation standard

Lauren Pachman of the National Association of Professional Insurance Agents (PIA) stated that PIA is concerned about overlap between existing State laws and the NAIC Model. Also, there is concern about the definition of licensee, it is very broad; and the relationship of licensees and third-party vendors. PIA also agrees that a competing NCOIL Model would not be beneficial and also agrees with others that the Model should not be an accreditation standard.

Rep. Lehman wondered if this risk is too big for the industry to respond to and asked if Congress is active in the arena. Mr. Bisset stated that last year the House Financial Services Committee addressed legislation regarding data-breach notification but there has not really been significant support on the issue overall. Dir. Farmer stated that this issue is best left to State regulators and legislators – Congressional action is not needed.

Rep. Keiser stated that despite the criticism voiced today on the Model, there is a lot of common ground on the issue and looks forward to NCOIL working with NAIC on the next draft.

Matt Wulf of the Reinsurance Association of America stated that this issue is constantly evolving and thinks it is appropriate to call for Congressional action.

ADJOURNMENT

There being no further business, the Committee adjourned at 10:30 a.m.