

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
PROPERTY-CASUALTY INSURANCE COMMITTEE  
INTERIM MEETING  
SEPTEMBER 29, 2016  
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) Property-Casualty Insurance Committee held an interim meeting via phone conference on Thursday, September 29, 2016, at 2:00 p.m.

Representative Matt Lehman of Indiana, Chair of the Committee, presided.

Other members of the Committee present were:

Rep. Steve Riggs, KY	Asm. Kevin Cahill, NY
Rep. Michael Henne, OH	Asm. Will Barclay, NY
Rep. George Keiser, ND	Sen. Bob Hackett, OH
Rep. Bill Botzow, VT	Sen. James Seward, NY
Sen. Neil Breslin, NY	

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

### DISCUSSION OF THE USE OF BIG DATA IN INSURANCE UNDERWRITING: TELEMATICS AND BEYOND

Before the discussion began, a motion was made and seconded to waive the quorum requirement for the committee.

Rep. Lehman began by stating that the issue of big data in insurance underwriting has been around for some time now and the committee needs to start narrowing the discussion down in an effort to start drafting a model law. Rep. Lehman noted that it is important to ask before the committee begins serious discussions whether this issue is worth pursuing or will the technology being used soon be surpassed thus rendering the issues moot.

Rep. Lehman then made brief remarks about each of the categories under this agenda item: a.) data ownership, b.) consumer rights to experience information for shopping, c.) privacy concerns, d.) will carriers begin to require certain technology to be used?, e.) will carriers fully disclose what information they are gathering?, f.) who is ultimately responsible if this technology fails?

Rep. Riggs stated that category "f" needed clarity - does it refer to the data/data program being breached, or the data program not reaching the correct conclusion? Rep. Lehman stated that it could refer to both situations but that he thinks it deals more with the data/data program being breached. Rep. Riggs replied that either 48 or 49 States have laws in place that tell corporations and other entities what to do if a breach in data

security occurs. Therefore, Rep. Riggs stated he is not sure if a Model on that issue would need to address that. Rep. Lehman agreed and stated that category “f” actually ties into category “c” in that consumers need to know how their data is secure. Rep. Lehman noted that a fundamental question is whether data such as how many times a driver turned right or when they stop home should be public or private.

Rep. Keiser stated that the committee should absolutely continue working on these issues. Autonomous vehicles are rapidly becoming more prevalent and they are giving insight into some problems that can arise with big data. Rep. Keiser also noted that the use of big data has really been around for years – different individuals who subscribe to Sports Illustrated will have advertisements placed in the magazine depending on certain data. Rep. Keiser noted that if the committee does not get ahead on this issue, we will be in the same position we were in with Uber where the technology got ahead of us and we had to play catch-up. Rep. Keiser further noted that he strongly supports a Model that states the data collected belongs to the individual and that the individual has to opt-in in order for insurers to collect certain information. It is also important that a reasonable approach be reached so that consumers and the industry can benefit alike.

Asm. Cahill stated that the technology of data collection is already being used for accident reconstruction by pulling a black box out of a car. He also stated that he is not sure if it is only available through a court order or for only administrative purposes. He further stated that the over-arching question is who owns the data but the other important question is for what purpose is the data being used. Rep. Keiser stated he has no problem with a provision in a Model stating that data may be accessed through a court order if there is a legal case pending – but outside of that circumstance, the use of data to benefit the company to the exclusion of consumer benefits needs to be guarded against.

Rep. Riggs asked whether there are companies who use personal data that consumers don’t have access to such as banks, finance companies, retailers, marketers, credit card companies, etc. Sen. Hackett stated he talked to someone recently who stated that they had a 100% increase in their homeowners’ insurance policy because of data collected relating to missed credit card payments. Rep. Kesier noted that there is a provision in Dodd-Frank that allows States to opt-out of such data sharing/collecting efforts.

Rep. Riggs then asked whether there are any State laws we can look to onto this issue. Rep. Lehman recalled that the NAIC has a big data working group – NCOIL CEO Commissioner Tom Considine confirmed that and stated that staff can obtain some of their working material.

Asm. Cahill noted that he was currently attending a cybersecurity conference and the point was made that if a State makes a cybersecurity standard and other states adopt something different, different computer systems may need to be developed. Accordingly, it is important that if a Model is developed on this issue, the committee needs to come up with a uniform standard that works state to state.

Rep. Lehman then stated that when referencing data, should the legislature specifically state what can and can’t be collected, such as micromanaging the %’s or should guardrails be set in place similar to what NCOIL did with the credit scoring model by saying you cannot use medical delinquencies in the scoring matrix. Rep. Lehman stated

that it is probably best to set up guardrails rather than to trying to interpret the data sets and set specific rules within them. Rep. Keiser agreed.

Wes Bissett from IIABA spoke and compared these issues to what's happened in recent years with EDR's (event data recorders). Some States took action to establish a basic framework for what type of data can be collected which prompted Congress to act. Mr. Bissett stated that telematics technology can be very valuable and has the potential to increase competition, prevent fraud and more accurately price risk. He went on to say that it is important that consumers understand and provide informed consent before any data is collected and used by insurers. He further stated that the data collected should be portable and standardized. In ways that insurers can access MBR's and credit reports, the same outcome should occur with telematics data. Consumers should be able to take their data set and use it with other insurers – this would ultimately allow for consumers to get the best price and prevent a locked in effect of benefiting only 1 company to the detriment of others. Mr. Bissett noted that Europe is looking at this issue and is looking to require data be accessible to multiple companies but at the same time not prescribe specific technology that's used.

Frank O'Brien from PCI spoke and stated that it is important to recognize the importance of consumer expectations – they are evolving. Mr. O'Brien stated that PCI prefers guardrails be set up rather than specific mandates because the pace of technology could render such mandates obsolete very quickly. With regards to Europe, Mr. O'Brien stated that it would be controversial to look there for guidance due to the number of barriers that need to be overcome to provide products in a cost-effective manner. What needs to take place is a balancing act relative to consumer expectations with privacy, what data is used and if they get the product and price they want.

Larry Eckhouse from AIA spoke and stated that insurers have always used data to underwrite risk. There are currently in place statutes and regulations addressing what factors can be used in underwriting.

A representative from NAMIC spoke and stated that the use of large quantities of information used in underwriting is nothing new. Ultimately, the new technology is part of the overall constant innovation of the industry and it needs to ultimately benefit the consumer. That frame of mind needs to be in place when drafting a Model.

John Ashenfelter from State Farm spoke and recommended looking to California legislation on this issue. With regards to Europe, their regulatory system is much different from ours and cautioned looking there for guidance. Mr. Ashenfelter also offered to supply the committee with consent forms State Farm uses regarding telematics.

Birny Birnbaum from the Center for Economic Justice (CEJ) spoke and stated that we are in an entirely new situation from 20 years ago with regards to insurer's use of data. Mr. Birnbaum cautioned against the potential for discrimination against valued customers. Mr. Birnbaum also noted that the guardrails set in place do need to strike a balance between recognizing the benefits of big data to insurers while also protecting consumers – just like NCOIL did with credit scoring. Most importantly, consumers need some level of control regarding understanding how their data is being used and being provided the option to do something if they don't like the way it's being used.

Commissioner Considine then asked Mr. Birnbaum whether the notes he provided the committee with advocated for 3 separate models on 3 different issues. Mr. Birnbaum stated that CEJ had no preference, rather, the notes split the issues up to make clear they are conceptually different issues.

ISA spoke and asked whether the committee was open to written comments to the thoughts and ideas that were offered during this call and asked whether there would be a collaborative effort in drafting a model. Rep. Lehman said yes and that the next step is to gather specific information for Las Vegas so the committee can leave there with a narrower focus.

#### DISCUSSION REGARDING POSSIBLE MODEL TOWING ACT

Rep. Lehman stated that this issue has been discussed before and he has recently heard of problems with uniformity. He asked those on the call if they had heard of any problems. Sen. Hackett stated that he has heard of problems in Ohio. Rep. Lehman suggested posting a Model for consideration at the Las Vegas Meeting. State Farm endorsed the effort along with NAMIC. Rep. Riggs stated that he has also heard of problems with uniformity. Rep. Lehman also asked if anyone knew of any requirements for towing companies to be licensed. Asm. Cahill stated that NY City does require licensure but NY State does not.

#### ADJOURNMENT

There being no further business, the Committee adjourned at 3:00 p.m.