

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
PROPERTY & CASUALTY INSURANCE COMMITTEE
INTERIM COMMITTEE CONFERENCE CALL
JANUARY 29, 2018
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Property & Casualty Insurance Committee held an interim meeting via conference call on Monday, January 29, 2018 at 2:00 p.m. (EST).

Representative Richard Smith of Georgia, Chair of the Committee, presided.

Other members of the Committee present were:

Sen. Jason Rapert (AR)
Rep. Steve Riggs (KY)
Rep. Bob Foley (ME)
Rep. Michael Webber (MI)
Rep. Mark Noland (MT)
Rep. Lois Delmore (ND)

Sen. Bob Hackett (OH)
Rep. Michael Henne (OH)
Rep. Lewis Moore (OK)
Rep. Bill Botzow (VT)
Del. Steve Westfall (WV)

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

INTRODUCTORY REMARKS

Rep. Richard Smith (GA) stated that the purpose of this meeting is to further discuss proposed amendments to NCOIL's Model State Uniform Building Code that are sponsored by Rep. Lewis Moore (OK). Rep. Smith mentioned that the Committee had a good discussion on this issue at its last meeting in Phoenix where the Committee heard from interested parties on both sides of the issue. Rep. Smith stated that incentivizing homeowners to build or retrofit their homes in a stronger manner is an important and timely issue for NCOIL to be discussing considering the alarming frequency within which tornadoes, hurricanes and earthquakes seem to be occurring. Based on the discussion in Phoenix, Rep. Smith stated that everyone seems to agree that since these events are not going to stop happening, we need to do a better job of helping consumers prepare their homes for them. Rebuilding communities in the same places and in the same ways but expecting a different result is not the answer. Of course, there are disagreements as to how exactly that should occur, which is why the Committee is meeting to further discuss the issue and hopefully arrive at a workable solution.

CONTINUED DISCUSSION ON PROPOSED AMENDMENTS TO NCOIL MODEL STATE UNIFORM BUILDING CODE

Rep. Lewis Moore (OK) stated that the proposed amendments to the NCOIL Model State Uniform Building Code are based on legislation he sponsored in Oklahoma – Oklahoma HB 1720 – which was drafted and enacted largely in response to the tornadoes experienced in Oklahoma. The bill requires insurance companies to provide a

discount, rate reduction or other related adjustment for new insurable property built to resist loss due to tornado or catastrophic windstorm events. Rep. Moore stated that there has been pushback from the insurers on the concept as they oppose mandatory discounts or rate deductions as not being supportive of the free-market. Rep. Moore noted that the Fortified Home High Wind and Hail Standards developed by the Insurance Institute for Business & Home Safety (IBHS) make a significant difference in protecting homes, particularly from tornadoes in the F1, F2, and F3 classification. The standards prevent a large amount of debris and therefore save in cleanup costs. Rep. Moore noted that in Oklahoma, they did not mandate the discount but rather put something in place that stated if a discount is offered, the discount should be based on the best possible standards. Rep. Moore noted that one concern is that if you have a dominant insurer in one State or area, it could make it difficult for them since giving everyone a discount would affect their portfolio.

Rep. Smith asked if there is anything preventing insurers from putting stipulations in for the discounts that are not attainable for consumers. Rep. Moore stated that insurers should be incentivized to give the discounts because they should want to attract new business. Rep. Moore stated that if insurers are going to give a discount they should be encouraged to give a discount to those that are the best risk. In Oklahoma, they were surprised they got pushback on the concept but acknowledged insurer's concern about being mandated to give discounts and not letting the free-market decide.

Rep. Smith asked what kind of verification must the consumer provide to the insurer in order to obtain the discount. Commissioner Tom Considine, NCOIL CEO, clarified that the proposed amendments to the NCOIL Model Uniform State Building Code state that for homes that are built to the IBHS Standards, insurers must provide a discount as long as the discount is actuarially justified. Rep. Moore agreed and stated that the proposed amendments represent what Oklahoma originally wanted – rebuild or retrofit your home in accordance with the IBHS standards and you get the discount. In response to Rep. Smith's question, a homeowner shows verification through a certificate from the contractor used to build/retrofit their home in accordance with the IBHS Standards.

Tyler Laughlin, Oklahoma Deputy Insurance Commissioner, stated that the concept set forth in the proposed amendments is very simple: if a consumer goes through all the steps necessary to fortify their home to withstand certain high wind events in accordance with the IBHS Standards, insurers are then required to crunch the numbers and see if a discount is "actuarially justified" and there is sufficient and credible evidence of cost savings, which can be attributed to the IBHS Standards. Insurers are not required to give a discount if said discount is not "actuarially justified." Mr. Laughlin stated that the Oklahoma Insurance Department has already had several insurers file their discounts and noted that the proposed amendments before the Committee today are identical to the law passed in Oklahoma.

Rep. Smith asked about the proposed amendment's applicability to community buildings. Rep. Steve Riggs (KY) noted that Section 3 of the proposed amendments states that: "for purposes of this act, the term 'insurable property' includes single-family residential property....and also includes modular homes satisfying the codes, standards or techniques as provided in Section 1 or 2 of the act. Manufactured homes or mobile homes are excluded, except as expressly provided in subsection B of Section 2 of this act." Rep. Riggs asked why apartments are not eligible for the discounts. Rep. Riggs also asked if there are statutes or regulations in existence that require insurers to give

discounts if sprinkler or alarm systems are installed. Rep. Moore stated that he is not aware of any such statutes or regulations.

Josh Ashenfelter from State Farm stated that he could provide the Committee with the answer to that question prior to meeting in Atlanta and noted that such discounts, if voluntary, are a great opportunity for insurers to compete against each other. State Farm has been very competitive with providing discounts for installation of security systems.

Rep. Riggs then asked if the proposed amendments apply to both retrofitting and new construction. Mr. Laughlin stated that Section 1A. applies to new construction and Section 2A. applies to retrofitting.

Rep. Moore noted that the examples of sprinkler and alarm systems are different in that they are indoor features and generally only limit protection to that structure. With tornadoes and hurricanes, limiting debris is a major motivation for building to the IBHS Standards. Rep. Moore noted his resistance to impose any mandates on insurers, but stated that the public safety aspect of the proposed amendments, and Oklahoma HB 1720, makes this issue much different from alarm and sprinkler discounts. Rep. Riggs agreed and stated that supporting a free-market approach is generally not a problem until the markets start acting in ways that are harming consumers – that is sometimes why statutes and regulations are modified.

Rep. Smith asked if new IBHS Standards are implemented, how would that impact the consumers who have already built or retrofitted their homes to the old standards. Rep. Moore stated that it is a good question and that he would have to look into it. Cmsr. Considine stated that with regard to a free-market approach, the proposed amendments are intentionally silent as to the amount of the discount. By requiring the discount only when “actuarially justified”, the approach encourages competition as to the amount of the discount. Cmsr. Considine stated that under the concept stated in the proposed amendments, as an Insurance Commissioner in a State that followed the same approach such as Oklahoma, if the State’s largest homeowner’s carrier decided not to give the discount, he could require them to submit what their actuarial justification is for not providing the discount. If the carrier could not provide any such justification, as Commissioner, he could require them to provide some discount since that is the law of that particular State. That carrier could then provide a .10% discount, while other carriers offer a 10% discount – thereby encouraging competition as to the amount of the discount. The size of the discount rest with the insurer.

Mr. Laughlin stated that Cmsr. Considine is correct and that it is important to remember that when the insurer provides a discount, it means their risk has been reduced – it is not as if the insurer is simply taking a loss. The discount should correlate fairly close with the offset in risk. Rep. Smith agreed and noted a State such as North Dakota isn’t going to have to deal with a hurricane, so if a consumer built or retrofit their home to meet the IBHS Standards, the insurer would more than likely be able to show that a discount is not actuarially justified.

Rep. Moore also noted that in Oklahoma, research showed that the value of a home that was built or retrofitted to the IBHS Standards increased the home’s value by 6%.

Rep. Riggs stated that there could be a time when insurers go in the opposite direction

and provide a discount, but one that is very large and does not meet the standard of actuarial justification. Perhaps the proposed amendments should be worded differently. Cmsr. Considine stated that he understood Rep. Riggs' point, but clarified that the requirement for the discount needs to be actuarially justified – there does not need to be a specific mathematical correlation. NCOIL models are not intended to arrive at that level of specificity – that would be better left to the regulatory community.

Rep. Moore then stated that another option could be to apply the discount to the home's deductible. Cmsr. Considine opined that the legislative level is not the proper forum to determine what kind of deductibles insurers can offer. Rep. Smith agreed and stated that he thinks the intent of the proposed amendments is to let the insurers decide what level and what kind of discount to offer.

Professor Jay Feinman from Rutgers Law School stated that in response to earlier comments, there does not appear to be anything in the proposed amendments requiring an insurer to explain their actuarial justification for not providing a discount. Therefore, it would be up to aggressive regulators monitoring the ratings and/or receiving consumer complaints to require an explanation from the insurer. Prof. Feinman suggested that, whether or not the insurers offer the discount, the insurers should be required to either include it in their rating plan or give notice to the Insurance Commissioner explaining why.

Birny Birnbaum from the Center for Economic Justice stated that the proposed amendments deal with insurance rating and may be more appropriately placed in a rating statute rather than building codes. Mr. Birnbaum also stated that every state has statutory requirements for rates - rates can't be excessive, inadequate or unfairly discriminatory which means rates have to properly reflect risk being insured. The reason such laws exist is to prevent companies pricing on an arbitrary basis. Mr. Birnbaum stated that he is mentioning that information to point out that there are laws in place that require insurers price risk accordingly if they have identified a difference of risk between two different groups of consumers. Therefore, in this instance, if the IBHS Standards are shown to lower risk, there should accordingly be a discount provided to the consumer who builds or retrofits their home to those standards.

Mr. Birnbaum also suggested that there is no reason to limit the required discount to residential properties. Commercial property owners or mobile home owners should also be encouraged to invest in - and be rewarded with a premium discount for – construction or retrofit to the IBHS Standards. Mr. Birnbaum stated that the concept of the proposed amendments are also a great benefit to States and local governments who can avoid tremendous amounts of disaster relief costs. CEJ is strongly in favor of the types of concepts that the proposed amendments set forth.

Mr. Ashenfelter then referred the Committee to the IBHS' statements in which they oppose mandatory discounts or rate reductions for homes built to the IBHS standards. Buddy Combs, Oklahoma Deputy Insurance Commissioner, stated that it is important for the Committee to note that the IBHS is an insurance industry funded entity.

Mr. Ashenfelter stated that there is a great deal of competition relating to voluntarily discounts such as home security systems. If such discounts are mandated, that takes away the incentive to compete.

Mr. Laughlin stated that home security system discounts are much different than the discounts associated with IBHS Standards. The consumers that decide to make an investment in their homes to build or retrofit to those Standards have to document everything from start to finish and it is a rigorous process, as opposed to simply installing a security system. That is why there should be an incentive at the front-end of the process, so the consumer will have reassurance when investing in their home to make it stronger.

Larry Eckhouse from the American Insurance Association (AIA) stated that insurers have long supported strong building codes to protect property owners and accordingly support the IBHS Standards. However, AIA opposes counterproductive requirements such as mandated discounts. Such discounts do nothing to encourage additional capital investment on those markets. Market freedom often encourages new entrants, increasing competition to the benefit of consumers. Insurers often offer different types of incentives including premium discounts to policyholders who may prefer choosing from multiple options presented in the market like the opportunity to receive smaller deductibles. AIA does not support the proposed amendments but looks forward to discussing other ways to encourage mitigation.

ADJOURNMENT

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