

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
PROPERTY-CASUALTY INSURANCE COMMITTEE  
NEWPORT, RHODE ISLAND  
JULY 8, 2005  
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) Property-Casualty Insurance Committee met at the Hotel Viking in Newport, Rhode Island, on Friday, July 7, 2005, at 11:30 a.m.

Rep. George Keiser of North Dakota, chair of the Committee, presided.

Other members of the Committee present were:

Sen. Joe Crisco, CT	Sen. William J. Larkin, Jr., NY
Rep. Donald Brown, FL	Sen. James Seward, NY
Sen. Steven Geller, FL	Sen. Duane Mutch, ND
Sen. Bill Brady, IL	Sen. Harvey Tallackson, ND
Rep. Ronald Crimm, KY	Rep. Frank Wald, ND
Rep. Susan Westrom, KY	Rep. David Evans, OH
Rep. Shirley Bowler, LA	Sen. Jay Hottinger, OH
Rep. Ed Gaffney, MI	Rep. Geoffrey Smith, OH
Rep. Joe Hune, MI	Rep. Robert Godshall, PA
Rep. Scott Hummel, MI	Sen. Stewart Greenleaf, PA
Rep. Gabe Leland, MI	Rep. Tony Melio, PA
Rep. Leslie Mortimer, MI	Sen. David Bates, RI
Rep. David Robertson, MI	Rep. Brian Kennedy, RI
Sen. Alan Sanborn, MI	Sen. William Walaska, RI
Sen. Dean Kirby, MS	Rep. Craig Eiland, TX
Sen. Pam Redfield, NE	Rep. Gene Seaman, TX
Rep. Don Flanders, NH	Rep. Larry Taylor, TX
Sen. Carroll Leavell, NM	Del. Harvey Morgan, VA
Assem. Nancy Calhoun, NY	Rep. Virginia Milkey, VT
Assem. Ivan Lafayette, NY	Rep. Mark Young, VT

Other legislators present were:

Rep. John Coghill, Jr., AK	Rep. Will Barclay, NY
Rep. Steve Fontana, CT	Sen. Neil Breslin, NY
Sen. Mick Mines, NE	Rep. Edward Wojnaroski, PA

Also in attendance were:

Susan Nolan, Nolan Associates, NCOIL Executive Director  
Candace Thorson, NCOIL Director of Legislative Affairs & Education,  
Property-Casualty Insurance  
Paul Donohue, NCOIL Director of State-Federal Relations

## MINUTES

The Committee voted unanimously to approve the minutes of its March 4, 2005, meeting in Hilton Head, South Carolina.

## SUBCOMMITTEE ON NATURAL DISASTER INSURANCE LEGISLATION

Sen. Geller reported that legislators had discussed Florida's valued policy law and other Florida activity, as well as pending federal legislation regarding tax-deferred catastrophe reserves. He said the Subcommittee also had addressed state disaster planning and options for working with the NAIC to improve state natural disaster preparedness.

## PATIENT SAFETY

Ms. Thorson reported that at the 2005 Spring Meeting in March, the Committee, in conjunction with the Health Insurance Committee, had held a special session on a proposed *Patient Safety Model Act (working draft)* and that discussions on the model would resume at the 2005 Annual Meeting in November. She said that time constraints had prevented fuller discussion of the issue at the Summer Meeting. Among other things, she noted that the proposal would require the reporting of medical errors by hospitals, ambulatory surgical centers, and mental hospitals, as well as the reporting of hospital infection rates.

Ms. Thorson said that legislators in March had determined to 1) delete a proposed section of the model regarding establishing an effective state medical board; 2) reject a draft amendment that would have made medical-error reporting voluntary, rather than mandatory; 3) consider language regarding whistleblower protections that might replace what is currently in the draft model; and 4) consider revising the mandatory reporting system to include an initial, voluntary phase-in period.

## AFTERMARKET CRASH PARTS

Rep. Keiser reported that the Committee had held a hearing the day before on a proposed *Certified Aftermarket Crash Parts Model Act*. He said that the model, which NCOIL first considered in 2001 and subsequently deferred in November 2002 in order to pursue other issues, would 1) endorse certification of aftermarket crash parts by third-party organizations, such as the Certified Automotive Parts Association (CAPA); 2) require disclosure as to the use of certified aftermarket crash parts; and 3) provide that a person leasing or financing a vehicle could not be penalized for using a certified part. Rep. Keiser said that a proposed substitute amendment, sponsored by him and offered in accordance with the NCOIL 30-day deadline rule, would, in part,

- replace the more general requirements for qualification as an independent third-party certifying entity with a number of specific accreditation requirements
- specify that certified aftermarket crash parts are not just suitable replacement parts, but are of like kind and quality to car-company parts and are in compliance with a state's Unfair Claim Settlement Practices Act
- revise the required disclosure included in a repair estimate to, among other things, add crash parts supplied by an independent manufacturer and recycled or salvaged parts as other possible parts used in a repair
- identify the act's purpose as creating a market incentive for the use of certified parts

Rep. Keiser said that following the hearing the Committee had voted 1) to have NCOIL President Rep. Craig Eiland (TX) appoint a subcommittee charged with further reviewing the draft model act and offering its recommendations to the full Committee at the Annual Meeting in November and 2) that interested parties should be given a 30-day timeframe to submit language-specific comments on the proposal for subcommittee consideration.

## NATIONAL FLOOD INSURANCE PROGRAM (NFIP)

Ed Pasterick of the Federal Emergency Management Agency (FEMA) reported, among other things, that FEMA would hold a Webcast later in July to educate regulators on the need to implement enhanced flood insurance training requirements for agents. He said that NCOIL President Rep. Eiland would be among those participating. Mr. Pasterick reminded legislators that Congress' 2004 reform of the National Flood Insurance Program (NFIP) required FEMA to develop improved insurance agent education and training standards, but he noted that FEMA had no authority to establish such state mandates. He said state legislators and regulators would be key to implementing the reforms.

## STATE GUARANTY FUNDS

Kevin Harris of the National Conference of Insurance Guaranty Funds (NCIGF) gave an update regarding property-casualty insurance guaranty funds and insurer insolvencies and overviewed new challenges facing the funds. Among other things, he said that exposure from insolvencies in the last four years surpassed \$15 billion, which outpaced what guaranty funds had paid out over the previous 30 years. Mr. Harris commented that the funds had weathered the insolvencies well. He said guaranty funds laws were drafted decades ago to address the kinds of company failures witnessed back then. Mr. Harris said that today, however, issues including the advent of new insurance products had contributed to different kinds of insolvencies. He noted that NCIGF had developed several proposals aimed at addressing the problem.

## CLAIMS HISTORY DATABASES

Rep. Keiser said the Committee would resume consideration of a draft *Model Act Regarding the Use of Insurance Claims History Information in Homeowners and Personal Lines Residential Property Insurance*, which he said represented consensus among certain interested parties and was the subject of a Committee hearing in March.

Rep. Keiser reported that members of the insurance industry had submitted last-minute amendments to the model. He said these amendments would 1) revise the language regarding claims without payments (CWOPs) so that an insurer could use such a claim if it affected the nature of the risk and was predictive of future loss, or if more than one such event occurred in the previous three years (**Amendment 1**); 2) revise requirements regarding notification to consumers so that an insurer would no longer have to explain the *specific* claims information that led to an adverse action but would more generally disclose, upon a consumer's request, the claims data that resulted in the adverse decision (**Amendment 2**); and 3) specify that a claim history report provider could not *knowingly* disclose info regarding consumer inquiries (**Amendment 3**).

Upon a motion made and seconded, the Committee voted by two-thirds to waive the 30-day deadline rule in order to consider the proposed amendments.

The Committee first discussed Amendment 3, which would amend Section 8(B) of the model act. In response to legislative concerns regarding the appropriate treatment of claims history information by claims history report providers, Wes Bissett of the Independent Insurance Agents & Brokers of America (IIABA) said that the prohibition against these providers knowingly distributing data related to consumer inquiries was really a second line of defense. He said that insurers would receive the inquiry information first and, under Section 8(A) of the Act, would be prohibited from disseminating it to report providers. He said the report providers themselves had no independent knowledge as to whether the data they received was related to a consumer inquiry.

After further discussion, the Committee voted to adopt Amendment 3, regarding disclosure of inquiries by claims history report providers.

Those in favor were:

Rep. Donald Brown, FL  
Sen. Bill Brady, IL  
Rep. Ronald Crimm, KY  
Rep. Susan Westrom, KY  
Rep. Shirley Bowler, LA  
Rep. Ed Gaffney, MI  
Rep. Joe Hune, MI  
Rep. Scott Hummel, MI  
Rep. Gabe Leland, MI  
Rep. David Robertson, MI  
Sen. Alan Sanborn, MI  
Sen. Dean Kirby, MS  
Sen. Pam Redfield, NE  
Rep. Don Flanders, NH  
Sen. Carroll Leavell, NM  
Assem. Nancy Calhoun, NY  
Sen. William J. Larkin, Jr., NY

Sen. James Seward, NY  
Sen. Duane Mutch, ND  
Sen. Harvey Tallackson, ND  
Rep. Frank Wald, ND  
Rep. David Evans, OH  
Sen. Jay Hottinger, OH  
Rep. Geoffrey Smith, OH  
Rep. Robert Godshall, PA  
Sen. Stewart Greenleaf, PA  
Rep. Tony Melio, PA  
Sen. David Bates, RI  
Rep. Brian Kennedy, RI  
Sen. William Walaska, RI  
Rep. Gene Seaman, TX  
Rep. Larry Taylor, TX  
Del. Harvey Morgan, VA

Those opposed were:

Sen. Joe Crisco, CT  
Sen. Steven Geller, FL  
Assem. Ivan Lafayette, NY

Rep. Craig Eiland, TX  
Rep. Virginia Milkey, VT  
Rep. Mark Young, VT

The Committee next considered Amendment 1, regarding the CWOP provisions in Section 5(B). Legislators discussed the fairness of basing an adverse action on a claim for which an insurer paid nothing. They also, among other things, deliberated on the predictive nature of CWOPs. Bob Zeman of the Property-Casualty Insurance Association of America (PCI) said that CWOPs, in the aggregate, were predictive of future loss but acknowledged that there was no single statistic that indicated exactly how predictive. He said that companies used CWOP information to a greater or lesser extent, and always in conjunction with state rating laws.

Assem. Calhoun made a motion to delete the provision in the proposed amendment that would prohibit an insurer from considering a CWOP until more than one such event occurred in the previous three years. She said that making the change would mean that a company could only use a CWOP if such a claim was predictive of future loss. Assem. Calhoun said that omitting the one-in-three-years provision meant that a consumer would not automatically initiate an adverse action if he/she made a second CWOP within three years.

Following legislative discussion, the Committee defeated Assem. Calhoun's motion via voice vote.

The Committee then voted to adopt Amendment 1 as originally submitted.

Those in favor were:

Rep. Donald Brown, FL  
Rep. Rich Golick, GA  
Sen. Bill Brady, IL  
Rep. Ronald Crimm, KY  
Rep. Susan Westrom, KY  
Rep. Shirley Bowler, LA  
Rep. Joe Hune, MI  
Rep. Scott Hummel, MI  
Rep. Gabe Leland, MI  
Sen. Alan Sanborn, MI  
Sen. Dean Kirby, MS  
Sen. Pam Redfield, NE  
Rep. Donald Flanders, NH  
Sen. James Seward, NY

Sen. Duane Mutch, ND  
Sen. Harvey Tallackson, ND  
Rep. Frank Wald, ND  
Rep. David Evans, OH  
Sen. Jay Hottinger, OH  
Rep. Geoffrey Smith, OH  
Rep. Robert Godshall, PA  
Sen. David Bates, RI  
Sen. William Walaska, RI  
Rep. Gene Seaman, TX  
Rep. Larry Taylor, TX  
Del. Harvey Morgan, VA  
Rep. Mark Young, VT

Those opposed were:

Sen. Joe Crisco, CT  
Sen. Steven Geller, FL  
Rep. Ed Gaffney, MI  
Rep. David Robertson, MI  
Sen. Carroll Leavell, NM  
Assem. Nancy Calhoun, NY

Assem. Ivan Lafayette, NY  
Sen. William J. Larkin, Jr., NY  
Sen. Stewart Greenleaf, PA  
Rep. Tony Melio, PA  
Rep. Brian Kennedy, RI  
Rep. Virginia Milkey, VT

The Committee next considered Amendment 2, regarding the consumer notification requirements in Section 7(B)(2). Rep. Eiland suggested deleting the words “upon request” from the proposed amendment. He commented that doing so would take the burden of proof regarding identifying the reasons for an adverse action off a consumer. He said that many consumers may not know that they have the right to request such information.

After much discussion, the Committee voted against deleting the words “upon request” from Amendment 2.

Those in favor of deleting the language were:

Sen. Joe Crisco, CT  
Sen. Steven Geller, FL  
Sen. Pam Redfield, NE  
Sen. Carroll Leavell, NM

Rep. Tony Melio, PA  
Rep. Craig Eiland, TX  
Rep. Virginia Milkey, VT

Those opposed were:

Rep. Don Brown, FL  
Rep. Rich Golick, GA  
Sen. Bill Brady, IL  
Rep. Ronald Crimm, KY  
Rep. Susan Westrom, KY  
Rep. Shirley Bowler, LA

Sen. James Seward, NY  
Sen. Duane Mutch, ND  
Sen. Harvey Tallackson, ND  
Rep. Frank Wald, ND  
Rep. David Evans, OH  
Sen. Jay Hottinger, OH

Rep. Ed Gaffney, MI  
Rep. Joe Hune, MI  
Rep. Scott Hummel, MI  
Rep. Gabe Leland, MI  
Rep. David Robertson, MI  
Sen. Alan Sanborn, MI  
Sen. Dean Kirby, MS  
Rep. Don Flanders, NH  
Assem. Nancy Calhoun, NY  
Assem. Ivan Lafayette, NY  
Sen. William J. Larkin, Jr., NY

Rep. Geoffrey Smith, OH  
Rep. Robert Godshall, PA  
Sen. Stewart Greenleaf, PA  
Sen. David Bates, RI  
Rep. Brian Kennedy, RI  
Sen. William Walaska, RI  
Rep. Gene Seaman, TX  
Rep. Larry Taylor, TX  
Del. Harvey Morgan, VA  
Rep. Mark Young, VT

Sen. Greenleaf proposed requiring that an insurer disclose in a denial notice the fact that a consumer has the right to request additional information regarding the claims data that led to the adverse decision. He commented that this would eliminate concerns as to how knowledgeable a consumer might be.

The Committee voted against revising Amendment 2 as proposed by Sen. Greenleaf.

Those in favor of revising the amendment were:

Sen. Joe Crisco, CT  
Sen. Steven Geller, FL  
Rep. Susan Westrom, KY  
Rep. Scott Hummel, MI  
Sen. Pam Redfield, NE  
Sen. Carroll Leavell, NM  
Assem. Ivan Lafayette, NY  
Sen. James Seward, NY

Sen. Jay Hottinger, OH  
Rep. Robert Godshall, PA  
Sen. Stewart Greenleaf, PA  
Rep. Tony Melio, PA  
Rep. Brian Kennedy, RI  
Rep. Craig Eiland, TX  
Del. Harvey Morgan, VA  
Rep. Virginia Milkey, VT

Those opposed were:

Rep. Donald Brown, FL  
Rep. Rich Golick, GA  
Sen. Bill Brady, IL  
Rep. Ronald Crimm, KY  
Rep. Shirley Bowler, LA  
Rep. Ed Gaffney, MI  
Rep. Joe Hune, MI  
Rep. Gabe Leland, MI  
Rep. David Robertson, MI  
Sen. Alan Sanborn, MI  
Sen. Dean Kirby, MS  
Rep. Donald Flanders, NH

Assem. Nancy Calhoun, NY  
Sen. William J. Larkin, Jr., NY  
Sen. Duane Mutch, ND  
Sen. Harvey Tallackson, ND  
Rep. Frank Wald, ND  
Rep. David Evans, OH  
Rep. Geoffrey Smith, OH  
Sen. David Bates, RI  
Sen. William Walaska, RI  
Rep. Gene Seaman, TX  
Rep. Larry Taylor, TX  
Rep. Mark Young, VT

The Committee then voted via voice vote to adopt Amendment 2, as originally submitted.

The Committee subsequently voted to adopt the proposed claims database model act, as amended.

Those in favor of adoption were:

Rep. Donald Brown, FL  
Rep. Rich Golick, GA  
Sen. Bill Brady, IL  
Rep. Ronald Crimm, KY  
Rep. Susan Westrom, KY  
Rep. Shirley Bowler, LA  
Rep. Ed Gaffney, MI  
Rep. Joe Hune, MI  
Rep. Scott Hummel, MI  
Rep. Gabe Leland, MI  
Rep. Leslie Mortimer, MI  
Sen. Alan Sanborn, MI  
Sen. Dean Kirby, MS  
Sen. Pam Redfield, NE  
Rep. Don Flanders, NH  
Sen. Carroll Leavell, NM  
Assem. Nancy Calhoun, NY

Sen. William J. Larkin, Jr., NY  
Sen. James Seward, NY  
Sen. Duane Mutch, ND  
Sen. Harvey Tallackson, ND  
Rep. Frank Wald, ND  
Rep. David Evans, OH  
Sen. Jay Hottinger, OH  
Rep. Geoffrey Smith, OH  
Rep. Robert Godshall, PA  
Sen. Stewart Greenleaf, PA  
Rep. Tony Melio, PA  
Sen. David Bates, RI  
Sen. William Walaska, RI  
Rep. Craig Eiland, TX  
Rep. Gene Seaman, TX  
Rep. Larry Taylor, TX  
Del. Harvey Morgan, VA

Those opposed were:

Sen. Joe Crisco, CT  
Sen. Steven Geller, FL  
Rep. David Robertson, MI  
Assem. Ivan Lafayette, NY

Rep. Brian Kennedy, RI  
Rep. Virginia Milkey, VT  
Rep. Mark Young, VT

Rep. Keiser referred the model act to the Executive Committee for its consideration later that day. He said the model act as amended would, among other things:

- prohibit taking an adverse action based solely on claims data of a previous property owner
- prohibit taking an adverse action based on consumer inquiries
- prohibit using claims experience of the property/new applicant that is more than five years old
- largely prohibit using claims experience to underwrite coverage more than 30 days from when an insurer issued a coverage binder
- require an insurer to re-underwrite and re-rate an insured within 30 days notice that claims information was incorrect or incomplete, and then return any overpayment
- mandate filings by claims-history report providers
- allow that, upon request of a consumer, an insurance company must identify the claim information that led to an adverse action
- prohibit insurer use of CWOPs unless 1) more than one such event occurred within the previous three years or 2) such a claim affected the nature of the risk and was predictive of future loss

## RISK-BASED CAPITAL

Rep. Keiser said that a proposed *Resolution in Support of the Confidentiality of Risk-Based Capital Information* opposed using RBC data for insurance rate-making, as well as opposed pending state bills that would do so with regard to medical liability coverage. He said the resolution asserted that use of RBC for

rate-making would expose RBC laws to abuse and could lead to insolvencies, inadequate rates, and destabilized and constricted markets.

Interested parties in favor of the proposed resolution said, among other things, 1) that RBC was a method of determining the minimum capital that an insurer would need to remain solvent and that state law actually said that capital in excess of the minimum was desirable and 2) that the drafters of an NAIC model law on the issue specifically noted in the model that RBC was not intended as a rate-making tool.

In response to legislative concern that an insurer might be allowed to maintain an unreasonable excess of the minimum RBC level—indicating, perhaps, that rates were too high—Rhode Island Insurance Commissioner Joseph Torte said that a commissioner would be hard pressed to approve substantial rate increases when an insurer had such significant surplus. He said that in such instances the minimum RBC level would prevail.

Jay Angoff of the Association of Trial Lawyers of America (ATLA) urged legislators to reject the resolution. Among other things, he said that the issue came down to concern either for insurer solvency (in which case sizeable insurer capital was desirable) or rate-setting (in which case excessive surplus was a consumer protection issue). He said that the proposed resolution misstated what bills pending in several states would do. He said that the proposed laws only would allow a commissioner to consider RBC for rate-setting if 1) an insurer's capital level was above the NAIC minimum adequacy standard and 2) if following a hearing the regulator determined that the insurer's surplus was unreasonably large. Mr. Angoff commented that the tone of the resolution assumed that solvency was paramount.

The Committee adopted the proposed resolution via voice vote. Rep. Keiser referred it to the Executive Committee for its consideration later that day.

## OTHER BUSINESS

### REVIEW OF NCOIL MODEL LAWS, AS PER BYLAWS

Rep. Keiser said that NCOIL bylaws required the Committee to review four previously adopted model acts, including an NCOIL *Model Anti-Runner Fraud Bill*, originally adopted on July 13, 2003. Rep. Keiser said the model would make it a felony to commits acts aimed at fraudulently obtaining auto insurance benefits through the use of false claims for provider services. He said it was based on model legislation adopted by the Coalition Against Insurance Fraud.

Rep. Keiser said that an NCOIL *Model Act Regarding Use of Credit Information in Personal Insurance*, originally adopted on November 22, 2002, and amended on July 16, 2004, would prohibit an insurer from denying, canceling, or non-renewing a policy based solely on credit information. He said that it would, in part, 1) require an insurer to re-underwrite and re-rate an insured whose credit report was corrected; 2) require an insurer to notify an applicant that credit information would be used, as well as notify when an adverse action was based on credit data and what the four primary credit-related factors were; 3) indemnify insurance producers obtaining credit information and/or insurance scores according to an insurer's procedures and according to applicable law and regulation; and 4) restrict a consumer reporting agency's ability to provide or sell information submitted in conjunction with an insurance inquiry.

Rep. Keiser reported that an NCOIL *Property and Casualty Insurance Domestic Violence Model Act*, originally adopted on March 1, 1998, and readopted on July 13, 2001, would prohibit unfair discrimination by property-casualty insurers on the basis of domestic violence.



An NCOIL *Natural Disaster Catastrophe Fund Model Act*, Rep. Keiser said, would create a natural disaster catastrophe fund aimed at helping a state maintain a viable and orderly insurance market in the event of a major natural disaster. He said that the Committee originally adopted the model on November 12, 1995, and readopted it on July 13, 2001.

The Committee unanimously voted to readopt the *Model Anti-Runners Fraud Bill*, the *Property and Casualty Insurance Domestic Violence Model Act*, and the *Natural Disaster Catastrophe Fund Model Act* and to defer, due to time constraints, further review of the *Model Act Regarding Use of Credit Information in Personal Insurance* until the Annual Meeting in November. Rep. Keiser referred the readopted model acts to the Executive Committee for its consideration later that day.

#### ADJOURNMENT

There being no further business, the meeting adjourned at 12:45 p.m.