

NATIONAL COUNCIL OF INSURANCE LEGISLATORS  
SPECIAL COMMITTEE ON RACE IN INSURANCE UNDERWRITING  
BOSTON, MASSACHUSETTS  
JULY 15, 2021  
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Special Committee on Race in Insurance Underwriting met at the Westin Boston Waterfront Hotel on Thursday, July 15, 2021 at 1:30 P.M. (EST)

Senator Neil Breslin (NY), Chair of the Committee, presided.

Other members of the Committee present were (\* indicates virtual attendance via Zoom):

Sen. Travis Holdman (IN)	Rep. Brenda Carter (MI)
Rep. Matt Lehman (IN)	Asm. Kevin Cahill (NY)
Rep. Joe Fischer (KY)	Asw. Pam Hunter (NY)
Rep. Bart Rowland (KY)	Sen. Bob Hackett (OH)*
Rep. Edmond Jordan (LA)*	

Other legislators present were:

Rep. Deborah Ferguson (AR)	Sen. Randy Burckhard (ND)
Sen. Keith Ingram (AR)	Sen. Jerry Klein (ND)
Rep. Steve Meskers (CT)	Sen. Shawn Vedaas (ND)
Rep. Tammy Nuccio (CT)	Sen. Pam Helming (NY)
Sen. Spiros Mantzavinou (DE)	Rep. Forrest Bennett (OK)
Rep. Roy Takumi (HI)	Rep. Brad Witt (OR)
Del. Courtney Watson (MD)	Sen. Sandy Senn (SC)
Rep. Carlie Kotyza-Witthuhn (MN)	Del. Steve Westfall (WV)
Sen. Paul Utke (MN)	

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO  
Will Melofchik, NCOIL General Counsel  
Tess Badenhausen, Assistant Director of Administration, NCOIL Support Services, LLC

## MINUTES

Upon a motion made by Asw. Pam Hunter (NY) and seconded by Rep. Joe Fischer (KY), NCOIL Secretary, the Committee voted without objection by way of a voice vote to adopt the minutes of the Committee's December 9, 2020, March 5, 2021, April 15, 2021, and June 18, 2021 meetings.

## INTRODUCTORY REMARKS

Sen. Breslin stated that he would like to begin by first thanking the industry for being so cooperative and participating and supplying information to the Committee, and also to various states and their Commissioners and their staff for submitting information. Sen. Breslin stated

that it has been an arduous and sometimes difficult role to come up with proper and acceptable conclusions and recommendations but I believe the Committee has done an excellent job to get to that point. Rep. Matt Lehman (IN), NCOIL President, will go into a bit more detail but today's meeting will be the time to look at Resolutions and pass them. I believe the Resolutions listed for consideration during today's meeting, represent a strong, effective, and fair approach to "land this plane" so to speak. The original versions of the Resolutions are in the binders starting on page 180 but since the binder was printed Representative Lehman and I, as sponsors, have revised two of the three Resolutions. A redlined version of the amended Resolutions are before the Committee and the changes are based on consideration of comments we received from colleagues and interested parties. We thank everyone for their input.

The first Resolution (Resolution Regarding the Use of Certain Rating Factors) focuses on rating factors and states that NCOIL "views as contrary to public policy and unfairly discriminatory the use of all data in the underwriting of private, non-commercial insurance that is: related to non-pending arrests, charges and indictments that do not result in conviction; related to convictions that do not relate in any way to fraud; or are not related to the insurability of a prospective or existing policyholder, and urges state legislatures to prohibit its use. Some may ask why we didn't include other factors in the Resolution and the answer is that we do not believe the record is as clear on additional factors and that they are not ripe for action. However, we made it a point in the Resolution to note that other factors could be potentially unfairly discriminatory and NCOIL believes the review of underwriting fairness is one that States should conduct on an annual basis.

That leads into the second Resolution (Resolution Regarding the Use of Artificial Intelligence in Underwriting) which deals with the use of artificial intelligence in underwriting. This is something that has been discussed extensively even before the Committee's formation and the conversations have only grown in importance and relevancy. While the issue falls beyond the Committee's charges, the Resolution puts NCOIL on record as believing that the use of Artificial Intelligence will surpass the use of individual factors in insurance underwriting; and therefore finds that NCOIL should undertake a review of the use of Artificial Intelligence in insurance underwriting through the committees of jurisdiction over each line of insurance to ensure that such use is not unfairly discriminatory. In other words – the issue of the use of artificial intelligence in underwriting will be something that NCOIL standing policy committees will examine and discuss, on a timeline to be set by the leadership of those committees.

Lastly, the third Resolution (Resolution Regarding Insurance Score Transparency) relates to insurance score transparency. Throughout this process it has become clear that consumers not only want, but deserve transparency regarding their insurance premiums. Accordingly, the Resolution calls for parity in the transparency for insurance scores with the transparency in the development and usage by lenders & credit bureaus of credit scores. Lenders and/or credit bureaus provide consumers, or make available to them, with the factors used in the calculation of a consumer's credit score, the weight given to each factor, and when a change in a factor results in a change to the consumer's credit score – we think the same, or a substantially similar process, should be followed with insurance scores. Both we legislators and consumers believe we can understand the credit side of an insurance score, because that adjusts in the same ways that our credit score does, but the non-credit side of an insurance score remains a complete mystery to us. We need equal transparency there. Again, this issue also falls beyond the scope of this Committee but many of the discussions before this Committee have highlighted the opacity of these factors. The Resolution refers this issue to the NCOIL Property & Casualty Insurance Committee for further action, including the possible development of a model law.

Notably, this does not affect in any way the NCOIL Model Act Regarding the Use of Credit Information in Personal Insurance and the Resolution was intentionally crafted that way. The Resolution is solely focused on transparency. I'll now turn things over to Rep. Lehman.

Rep. Lehman thanked Sen. Breslin and thanked everyone for being here. Rep. Lehman stated that he must start with thanking and congratulating Chair Breslin – when the Committee was formed we knew we needed someone at the helm with a steady hand. He was tasked with a very difficult job, but he really has done a remarkable job in Chairing this Committee while it has discussed emotional and important issues. Rep. Lehman also thanked the industry members for participating as it's been an open process throughout the past year and a lot of good dialogue has occurred. Rep. Lehman also thanked all of the legislators for the good and respective discussions. Lastly, Rep. Lehman thanked NCOIL staff for pulling everything together.

Rep. Lehman stated that he thinks all of these discussions point towards one thing and that is that the world of insurance is continuing to change. I've been in this industry for 30 years and what's changed in the last five years mirrors what's changed in the past 25 years. It is a changing world and I think these Resolutions keep NCOIL relevant, and focused on the right path and moving forward. I look forward to discussion and adoption.

## DISCUSSION AND CONSIDERATION OF RESOLUTIONS

Before discussing the Resolutions, Sen. Breslin noted that because the Resolutions were submitted past the 30 day deadline, pursuant to NCOIL bylaws, they shall be subject to a two-thirds vote for Committee consideration and a separate two-thirds vote for adoption. Upon a Motion made by Rep. Brenda Carter (MI) and seconded by Rep. Lehman, the Committee voted without objection by way of a voice vote to allow consideration of the Resolutions.

Erin Collins, VP of State Affairs of the National Association of Mutual Insurance Companies (NAMIC) stated that NAMIC really appreciates the work of the Committee and the process as outlined by Rep. Lehman. With respect to the Resolutions we also appreciate the sponsors and the Committee being open to our concerns that we have expressed and although we do continue to have some concerns and think the language could be improved in some places we do understand the will of the Committee to move forward to the Committee work that is outlined in the Resolutions. We look forward to engaging with you on that important work on the transparency model and we are happy to continue to engage in any conversations that the Committee wishes to either have here or further down into the committee structure.

The Hon. Nat Shapo, Partner at Katten Muchin Rosenmann, LLP and former Director of the Illinois Insurance Department, thanked the Committee for their leadership on these important issues. The Committee has worked very hard and covered a lot of ground with a broad spectrum of political viewpoints and the positions expressed have been expressed in a detailed and thorough process. I also echo Rep. Lehman's words about NCOIL staff – it's a small group which has given strong support to the Committee while not missing a beat with respect to supporting the rest of the organization. I'll be very brief and requested to speak because I submitted a comment letter with proposed language on the first Resolution. The Committee crafted its own language regarding unfair discrimination and the language put together used in the final version of the Resolution finds I believe an understandable middle ground and I commend the Chair and the Committee for its in depth study and the open process and tangible work product produced.

Karen Melchert, Regional VP of State Relations at the American Council of Life Insurers (ACLI) stated that she will reiterate the comments made about the Committee's leadership on the important issues it has worked on and it has been a very robust process with great input and a lot of time spent and I appreciate the special dedication given to these important issues. I believe it is the Committee's intention to move these Resolutions today and unfortunately I cannot take a position on them at this point because we have not had time to vet them adequately through our process which takes a little longer and we recognize that and we look forward to a continued dialogue. One point I would like to say is that we would welcome the opportunity to have a further discussion about the use of criminal history – we from our perspective have not yet presented that and we do have an extensive approach that we have been working on internally at ACLI so that may be something we want to consider at the Life Insurance Committee at a future date. I also want to say we greatly appreciate the AI Resolution to direct that to each line of business and take it from a perspective of that line of business as opposed to a collective approach because one of the things I think we've reiterated through the many presentations we've given is that life insurance is very different from other lines of business with the way we underwrite and the position from which we come. I appreciate the decision on that and look forward to continuing the work that will be forthcoming.

Hearing no comments or questions from any legislators, upon a Motion made by Rep. Lehman and seconded by Rep. Fischer, the Committee voted without objection by way of a voice vote to adopt the Resolutions.

Sen. Breslin noted that this will not be the final discussion on these issues as we will be discussing these issues that affect the industry on an ongoing basis and I think this will be looked at as a model to look at on a continuing basis to review the conduct and changes in the industry to make sure we have a preeminent position and recognize our consumers first. The Committee has now concluded its work.

Asm. Kevin Cahill (NY), NCOIL Treasurer, stated that I would first like to compliment Sen. Breslin and sympathize with the challenge he took on. When this was first introduced to NCOIL there was a sense that this was a one and done but I think what we've learned with this process is that this is an extremely complex issue and one that warrants continued consideration and perhaps even more aggressive action on the part of NCOIL and I would urge that consideration be given by you and Rep. Lehman to make this a permanent committee and one that we would continue to look for best practices and look to our colleagues including this time maybe favorably to the National Association of Insurance Commissioners (NAIC) and some of the other things that have been done to recognize that not only are we uncovering the insidiousness of discrimination in so many aspects of society but that the emergence of new technologies carries with it the opportunity for even more discrimination and an opportunity to correct that discrimination. For those reasons I would simply urge that we continue and seek opportunities to be more assertive in this area. Sen. Breslin thanked Asm. Cahill for his comments.

#### ADJOURNMENT

Hearing no further business, upon a motion made by Rep. Fischer and seconded by Asw. Hunter, the Committee adjourned at 1:45 p.m.