

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
FINANCIAL SERVICES & MULTI-LINES ISSUES COMMITTEE
SCOTTSDALE, ARIZONA
NOVEMBER 18, 2021
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Financial Services & Multi-Lines Issues Committee met at The Westin Kierland Hotel in Scottsdale, Arizona on Thursday, November 18, 2021 at 1:45 p.m.

Louisiana Representative Edmond Jordan, Chair of the Committee, presided.

Other members of the Committee present were:

Sen. Keith Ingram (AR)	Asm. Ken Blankenbush (NY)
Sen. Mathew Pitsch (AR)	Sen. Bob Hackett (OH)
Sen. Jason Rapert (AR)	Rep. Tom Oliverson, M.D. (TX)
Asm. Ken Cooley (CA)	Del. Steve Westfall (WV)
Rep. Derek Lewis (KY)	
Rep. Brenda Carter (MI)	

Other legislators present were:

Rep. James Kaufman (AK)	Rep. Hank Zuber (MS)
Rep. Deborah Ferguson (AR)	Sen. Charles Younger (MS)
Rep. Stephen Meskers (CT)	Sen. Jim Burgin (NC)
Rep. Tammy Nuccio (CT)	Sen. George Lang (OH)
Rep. Rachel Roberts (KY)	Rep. Warren Kitzmiller (VT)
Rep. Bart Rowland (KY)	Del. Moore Capito (WV)
Sen. Lana Theis (MI)	Sen. Eric Nelson (WV)
Sen. Paul Utke (MN)	
Sen. Mike McLendon (MS)	
Sen. Walter Michel (MS)	

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO
Will Melofchik, NCOIL General Counsel

QUORUM

Upon a Motion made by Sen. Bob Hackett (OH), and seconded by Sen. Mathew Pitsch (AR), the Committee voted without objection by way of a voice vote to waive the quorum requirement.

MINUTES

Upon a Motion made by Del. Steve Westfall (WV), and seconded by Asm. Ken Blankenbush (NY), the Committee voted without objection by way of a voice vote to adopt the minutes of the Committee's July 16, 2021 meeting in Boston, MA.

CONSIDERATION OF NCOIL REMOTE NOTARIZATION MODEL ACT (Model)

Rep. Jordan, sponsor of the Model, stated that we first discussed this issue in our December meeting of last year an example of how certain ways of doing business have changed in light of the pandemic. And I'm proud to sponsor this Model as it simply provides states some guidance who are looking to enact remote notarization legislation. This Model appears in your binders on page 80 and there's been widespread support for this Model since it was first introduced. One change I made along the way is in section D regarding the number of years in which the recordings must be retained as it has been lowered from ten years to seven years. And for those of you who are familiar with this, I think this is in line with most states record retention requirements for attorneys.

So, we wanted to have it consistent with those requirements and it still follows the spirit of the Model. We've heard from a lot of interested persons on this issue including the National Notary Association and at our last meeting we were able to see a live demo of a remote notarization take place. Hearing no questions or comments no questions or comments, upon a Motion made by Rep. Tom Oliverson, M.D. (TX) and seconded by Del. Steve Westfall (WV), the Committee voted without objection by way of a voice vote to adopt the Model.

CONSIDERATION OF NCOIL UNIFORM CAPTIVE INSURER MODEL ACT (Model)

Rep. Jordan stated that I will now turn it over to Sen. Jason Rapert (AR), NCOIL Immediate Past President, who is the sponsor of the Model.

Sen. Rapert thanked Rep. Jordan and stated that I'll be brief as we've already discussed this issue at length in our previous meetings. As you all know, I'm a strong supporter of captive insurers in general and I'm proud that NCOIL has decided to take a stance and support them as well. We had great introductory discussions at our April meeting and then in our last meeting in July we heard from several representatives from Vermont and it's good to have Rep. Warren Kitzmiller (VT) here today for this discussion from Vermont as well. And obviously Vermont is very highly regarded in the captive insurance arena. They are first globally in captive premium written and I believe third in the number of active captive insurance companies that are domiciled there.

I'm very glad that we heard from them because as global leaders they were able to point out how the Model that we were discussing could be improved. And what I've decided to do after working with them and others is to provide a substituted version of the Model which is borrowing much of the language from what they've done in Vermont with their captive insurance statute. And that first version was really a compilation that we had put together for many of our different states as we got this started and it was really just to start the discussion. And as we got further on in discussions and listened to many of the stakeholders that are involved, all of them have told me that they seem pleased with where we're at in this position and we can reach some uniformity in all of this.

You all have the completed Model before you and one minor technical change that I want to make, and this has been discussed with the stakeholders before we started the meeting as well, is in section 11 titled Reinsurance, where it says in the parenthesis "state specific" that is meant to refer to each states credit for reinsurance statute. Accordingly, when this is adopted and finalized ultimately that technical drafting change will be made. So, I want to thank everyone for their time and reiterate that this Model can end up providing states guidance when they're looking to develop a captive insurer statute and can send a signal to those states that captive

insurance is something that NCOIL does support provided there is an appropriate statutory framework in place.

Hearing no comments or questions, upon a Motion made by Sen. Pitsch and seconded by Sen. Bob Hackett (OH), the Committee voted without objection by way of a voice vote to adopt the Model as amended during the meeting.

INTRODUCTION AND DISCUSSION OF NCOIL INSURANCE REGULATORY SANDBOX MODEL ACT (Model)

Rep. Jordan stated that I will now turn it over to Rep. Bart Rowland (KY), who is the sponsor of the Model, for brief remarks.

Rep. Rowland stated that as I noted at our last meeting in July I support the concept of insurance regulatory sandboxes. And as you'll hear from the speakers today, the main goal of such sandboxes is to reduce regulatory hurdles for companies that want to introduce new concepts and products at the same speed as insurance technology develops. My home state of Kentucky has an insurance regulatory sandbox that has been in effect since 2019. And I'm proud to sponsor the NCOIL Model alongside my colleague from Pennsylvania Rep. Wendi Thomas. The Model is in your binders and it's on page 98. As noted at the top of the Model, the first draft is based on the Kentucky sandbox law. But that is just a starting point and I'm certainly open to hearing suggestions as to what should be added or removed from the Model. We're actually having suggestions already in Kentucky on tweaks that may be needed to our Kentucky sandbox. I'm interested in hearing from the speakers we have here today to hear how they have interacted with other state sandboxes. And I also encourage anyone with suggested changes to the Model to reach out to myself and NCOIL staff.

The Honorable Evan Daniels, Director of the Arizona Department of Insurance and Financial Institutions, thanked the Committee for the opportunity to speak and stated that the reason I'm here is because before I was appointed Director, one of the jobs I had at the Arizona Attorney General's Office was to stand up and run the nation's first regulatory sandbox program for Fintech which is quite a bit different than insurance of course and the products that we saw and a lot of the ideas that we heard about going into it were not necessarily tailored for what ultimately became the Arizona sandbox. In fact, I was reminiscing with Wade Eyerly, Founder & CEO of Degree Insurance, who will speak after me, before this meeting about a conversation that we had about his product and whether that would be a fit for the Arizona sandbox.

Generally, I don't think that the subject matter necessarily is really what's important here. I am a proponent of the program and of sandboxes generally and really any programs that are designed to open up channels of communication between stakeholders and regulators I think are a positive thing. They don't necessarily have to be sandboxes. But in my experience the Arizona sandbox was a great way to facilitate that kind of open communication and bring new ideas to the forefront of the regulators mind to help us understand what was going on in the marketplace. One thing I will say in support of sandboxes is that as a regulator I often feel like I'm behind when I'm trying to understand what's going on in the marketplace. And I'm sure that's not all that different at times from what you as members of your respective state legislatures encounter. The marketplace moves a whole lot faster than we can respond to it and I think it behooves us to create structures that enable open communication. It's much better to understand what might be happening and the things that are developing in the marketplace so that we can be part of that development as policymakers, as regulators, whatever your role may be.

So, I'm generally supportive of sandbox ideas. I'm happy to address how it worked in Arizona. I think it's safe to say we're the most successful sandbox program in the country. By the time I left and was appointed to my current role we had approved 10 businesses doing various types of things, whether it was payment related or lending related. Obviously as I said earlier, those were very different things from what you might see in an insurance sandbox even if maybe there are some technical aspects and some technology platforms perhaps that would look very similar. But, all that said I'm very proud of the success that we had here in Arizona with the sandbox program. I know there are several places, Kentucky being one, where insurance sandboxes are now in effect and I'm interested to see what those programs produce and I'm happy to answer whatever questions you might have about our experience here in Arizona about how that worked and how we approached it from a regulatory perspective.

Mr. Eyerly stated that Degree Insurance (Degree) is licensed in nine states now. We have created a novel type of insurance where we guarantee the salary that a student earns five years after they graduate college. So, we think it's an important product but what's important about it for this audience is that's a type of insurance that was never considered when the regulations were written. So, we're going to guarantee a student's salary for five years after they finish. A school's going to buy that product to cover their students, and then that student's going to go to school for three to six years, finish their degree and then for five years send us their tax returns which means we don't pay a claim for eight years. So, as an example of the type of regulatory hurdles we run against, the way that seasoning is interpreted matters a lot to us. If seasoning starts when we file and become licensed in your state, then we're going to be fine. If it doesn't work until we pay claims, I'm eight years away from paying the first claim. What a sandbox lets us do is open up opportunities for us to begin to innovate with products like ours in small ways in states where the current regulatory framework just frankly didn't consider a product like ours before. So, it unlocks the opportunity for us to try things in a very small targeted way, prove that it works, prove that it's safe, and then expand from there.

So, we haven't used a regulatory sandbox but we would love to. We'd love to see one that worked that addresses the specific challenges that we have, things like seasoning, things like statutory requirements that on a micro-level may exceed what's reasonable, that's so far beyond a risk based capital requirement that again, things like what we're doing just likely weren't considered when those regulations were written. So, the sandbox gives a state the free hand to help promote innovation in very important ways and we're big fans of the concept.

Jeff Klein, Esq., stated that you usually see me here with McIntyre & Lemon, PLLC, representing the American Bankers Association, but I wanted to contribute to this effort in my personal capacity. I live in Charlotte, North Carolina, and thanks to Sen. Jim Burgin (NC) who is here today along with many others from NC, we passed what probably is the latest regulatory sandbox. It was a three-year effort, I handled it pro bono. For those of us that've done property-casualty work and done auto and homeowners and workers comp for so many years, this is a fresh start. It's very forward looking and it's great that NCOIL is considering this. So, I wanted to share some quick thoughts with you about the North Carolina law. And in conjunction with other innovative efforts that the National Association of Insurance Commissioners (NAIC) and you are looking at such as rebating reform and the like, it's really helping put the insurance industry, and the banking industry in the twenty-first century.

The bill was North Carolina House Bill 624, it was enacted and signed by Governor Cooper on October 15th, 2021 and it was passed by the Republican led House 111-0 with similar margins in the Senate. It creates the North Carolina Financial Services sandbox covering both insurance and banking. We thought it was important in our state, as in Arizona and others, where North

Carolina is kind of at the cross section of financial services and technology industries to make sure our state was not left behind. And we hope it'll contribute to economic development. We wanted to make a couple of points about this. It covers both Insurtech and Fintech. We preserve many consumer protection laws, as I'll say later in the presentation. There are references to several North Carolina statutes on lending and mortgage that have been controversial in the past. And some insurance statutes as well. We wanted to allay everyone's concerns that those consumer protection principles were adhered to. So, that's something you want to look at in adopting any legislation.

We created an Innovation Council which is fairly unique, composed of representatives of the Insurance Department, Office of Commissioner of Banks, Secretary of State, Attorney General and public members. There were two reasons for that. In Arizona, the Attorney General runs the program. In North Carolina we have the Democratic Attorney General and Republican General Assembly, so we didn't want to house it in just one individual. And there's something about economies of scale. By having different agencies sitting together on a fairly new and controversial area, there's kind of safety in numbers. And as we speak, there are nominations being proposed by the Senate President, the Governor, and others for the Council.

It has two key roles, one is to assign an application that comes in from a participant to the relevant state agency. In this case, it's initially the Office of Commissioner of Banking or the Insurance Department. The other role is to issue guidelines, prompt trends and help promote innovation on a larger scale, although it does not have regulatory authority per se. Another key feature is that there are several non-profits in North Carolina, such as the North Carolina Block Chain Initiative and the Carolina Fintech Hub that I've done work for and they have a role in helping participants navigate through the regulatory process and giving them technical assistance to design products and services. And we thought having an express reference to them in the legislation would be fair and helpful.

A couple of words to the wise, as you look at this in your states, this is a new and emerging issue. We wanted to make sure that we engage with a number of interested parties and partners and not leave anybody out of the discussion because that would have been fatal. So, we had meetings on several occasions with the North Carolina Department of Insurance, the Center for Responsible Lending and the North Carolina Justice Center, two of the more active consumer groups in Raleigh. The Commissioner of Banks, The Secretary of State and last but not least the North Carolina Bankers Association and the Insurance Federation were also involved to make sure that they didn't feel that the sandbox would create competitive problems. I note that there are some provisions in the North Carolina Act that we think would be helpful in the Model. There are some extensive consumer disclosures, such as the fact that the product is not covered by the Guaranty Association, and that the state doesn't necessarily, or any agency, endorse the product.

A consumer can go to the Attorney General as they can now with any complaints. We have an extended beta test period. The North Carolina law like some of the others that it's modeled on has a two-year pilot project – a period for testing a product with a one year extension. I think the Model's a little shorter than that. So, you might want to consider that. As I mentioned before, there's a direct reference to non-governmental partners and also to future use of blockchain technology, which is kind of a shared general ledger that both states and private entities could use to share data. Maybe most importantly of any of these provisions, we drafted reciprocity provisions so that someone entering a sandbox in another state could operate in North Carolina, and the state could enter into agreements with federal agencies and there would be all sorts of

reciprocal protections to make sure that this wasn't just a one domicile organization. Thank you for your time, and please don't hesitate to reach out with any questions.

J.P. Weiske, representing the American InsurTech Council, stated that I am a recovered regulator from Wisconsin who actually dealt directly with a number of Insurtech entities and we ran through a similar sandbox process. Wisconsin's law actually dates back to the 1970's allowing the Insurance Commissioner with a finding to waive any insurance law and any insurance regulation. And I think the practices that you're looking at inside this proposed Model, and we'll have some specific comments later, reflect the actual day to day work that we did in Wisconsin when we formalized that process. The idea is that you're looking at a company who has a unique and innovative idea. You have a conversation with the entity, look at the issues that they want to waive. In a number of cases, when we met with companies, we found they in fact did not need a waiver to do what they wanted to do. So, they were able to go through the normal process. In other cases, they certainly did, and we had a conversation. A lot of those dealt with filing inexperience around the filing issues. So, for example, we had a company that wanted to use slider technology to adjust deductibles and coverages all the way through. And they needed to experiment with the consumer experience to make sure that functionally worked. And in another cases, we had some new products similar to Degree that were coming in the marketplace and they wanted to see whether or not there was in fact a market for it. In one case, they found there was no market for it – apparently people wouldn't buy that type of travel insurance. In other cases, they certainly did, and those products are out and available in the market now.

So, there are some products that went through that process and got priced. And you go through it by hand, you make an agreement, and again I think the key thing about this version of the Model is that it reflects a good consistent process that companies can go through to understand what they need to do and what needs to be waived. And in a number of cases there are pieces that will remain confidential. If there's a requirement from a consumer protection standpoint, that the money be returned at the end, it's not useful from a marketing standpoint for the consumer to know that they're going to the money back as that upsets your market experiment. So, a number of cases are confidential pieces, which this provides for as well.

Hearing no comments or questions, Rep. Jordan thanked everyone and stated that he looks forward to further discussing this at future meetings.

DISCUSSION ON UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA) DEVELOPMENTS STEMMING FROM COVID-19

Karen Melchert, Regional Vice President of State Relations at the American Council of Life Insurers (ACLI), thanked the Committee for the opportunity to speak and stated I just wanted to take a couple minutes to update you on what's happening mostly on the regulatory side with respect to regulatory accommodations following what we discovered during COVID-19 and what accommodations needed to be made stemming really from stuff we had been doing prior to the pandemic. In 2017, the NAIC created the Innovation and Technology Taskforce to address technological advances and the innovative use of technology across all lines of insurance to really take a look at what regulatory changes might need to be made. Following the pandemic, they created an E-commerce Working Group to see what was done that could be made permanent. Most of these accommodations were done on an emergency basis and were tied to the declaration of an emergency related to COVID-19. Some have been made permanent, others have not. And that's something that industry collectively, not just the life insurance industry, but others, have been looking at and talking to the NAIC about.

A lot of this is based on UETA and e-sign which had already been adopted in most states. I think there's three states that adopted their own version of UETA, but across the country some form of UETA is in place. And the four pillars of UETA include: a record or signature may not be denied legal effect or enforceability simply because it's an electronic form; a contract cannot be denied legal effect just because part of it included an electronic transaction; if a law requires a record to be in writing, an electronic record satisfies; and conversely, if a law requires a signature, an electronic signature satisfies. So, even with that though there are certain non-electronic delivery requirements that remain in insurance and we discovered that during the pandemic. For example, a lot of our laws require first class mail delivery of documentation. Obviously, you can't do that electronically. That was waived under a few accommodations that were issued by departments mostly relating to filings that companies are required to make. You're supposed to make quarterly filings with NAIC and then you're supposed to deliver paper copies of those to your regulator. Many states allowed those to be filed electronically provided you kept the paper form and then submitted them as soon as you were able to get back into the office and create those records.

Some states are looking to make that more permanent. So, other accommodations include signature requirements were waived; remote notarization, which led to the recently adopted NCOIL Model; and remote regulatory exams and remote proctor producer examinations. These and other accommodations actually enhanced consumer experience and in fact we're seeing consumers are increasingly showing a preference for electronic access to records in lieu of paper mailings. Benefits to that include flexibility, speed, simplicity, cost sharing, mobility and expanded access. The experience that we had during the pandemic illustrates that regulatory accommodations worked extremely well and they should be made permanent. One example is the producer licensing requirements, including continuing education and examinations, not necessarily having to be in person but can be proctored remotely. And also online continuing education classes - a lot of states have requirements that the continuing education portion of producer licensing has to be live and in person. And we're seeing changes to that and several states have adopted changes to that since the pandemic when we realized that wasn't particularly necessary anymore.

There may be some clarification around e-delivery that is needed but right now it's not clear that we need any statutory changes. And what we have been focused on is developing a handbook for the NAIC Innovation and Technology Taskforce that will look at the regulations that need to be updated and give guideline for that. There may come a time where we're going to have to come back to the legislature for changes such as with e-signature for opt-in for paper delivery versus opt-out for paper delivery. Right now, to receive something electronically you have to opt into that, as opposed to making that the norm that you get electronic delivery, and you have to opt out of that to receive a paper communication. So, that may be something that needs to be changed in state laws. I think 28 to 30 states have taken the e-sign statute and baked it into the insurance code separate and apart from e-sign which applies to all industries. So that may be something we'll need to address down the line to do the opt-in versus the opt-out for paper delivery.

The other thing I think that's important to note as we continue to develop these things is we just really wanted to keep you up to speed on what we were doing. We appreciate the partnership that NCOIL and NAIC have and I think you're going to hear tomorrow about the creation of a new letter committee at NAIC, the H Committee, which will include focus on innovation, artificial intelligence and cybersecurity. We have been told that the Innovation Technology Task Force and the subsequent working group that was formed after, they'll be folded into that Committee as

well. And in a way that's great because there's been a lot of different work streams at the NAIC and it'd be better if it's all under one committee so that we can share information and make sure we're not going against each other and what we're saying and how we're developing things going forward.

It's important that regulatory and legislative efforts are continued to make sure that our state based system keeps pace with technology advances and our evolving insurance systems. We're a little slow when it comes to advances in technology in the insurance industry. We've never been quick to embrace those but that seems to be changing and it's certainly changed a lot during the last year and during the pandemic. So, we just really appreciate the ability to come to you with what we're doing and just put a place marker in case we need to come back and ask for support for legislative action on your behalf and to keep an eye out as you see proposals come before you in the next session or two. If there's anything related to electronic delivery or the like, make sure that the insurance industry is included so that we're brought up to speed like everyone else.

CONSIDERATION OF RE-ADOPTION OF MODEL LAW

Rep. Jordan stated that, lastly, we'll consider the readoption of the NCOIL Identity Theft Protection Model Act. This was originally adopted back in 2003 and has been readopted three times, the last time being in November of 2016.

Upon a Motion made by Rep. Rowland and seconded by Del. Westfall, the Committee voted without objection by way of a voice vote to re-adopt the Model.

ADJOURNMENT

Hearing no further business, upon a motion made by Sen. Rapert and seconded by Sen. Hackett, the Committee adjourned at 3:00 p.m.