

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
PROPERTY & CASUALTY INSURANCE COMMITTEE
INTERIM COMMITTEE MEETING – FEBRUARY 17, 2023
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Property & Casualty Insurance Committee held an interim meeting via Zoom on Friday, February 17, 2023 at 2:30 P.M. (EST)

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

Other members of the Committee present were:

Rep. Deborah Ferguson, DDS (AR)	Sen. Vickie Sawyer (NC)
Rep. Matt Lehman (IN)	Sen. Bob Hackett (OH)
Sen. Robert Mills (LA)	Rep. Carl Anderson (SC)
Rep. Brenda Carter (MI)	Del. Steve Westfall (WV)
Sen. Paul Utke (MN)	

Other legislators present were:

Rep. Darlene Taylor (GA)
Rep. Jennifer Ladisch Douglass (IL)
Rep. Jim Gooch (KY)

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO
Will Melofchik, NCOIL General Counsel
Pat Gilbert, Manager, Administration & Member Services, NCOIL Support Services, LLC

QUORUM

Upon a Motion made by Rep. Matt Lehman (IN), NCOIL Immediate Past President, and seconded by Sen. Paul Utke (MN), NCOIL Secretary, the Committee voted without objection by way of a voice vote to waive the quorum requirement.

INTRODUCTORY REMARKS: CHAIR JORDAN

Rep. Edmond Jordan (LA), Chair of the Committee, thanked everyone for joining the meeting and thanked former Kentucky Representative Bart Rowland for all of the great work he did as Chair of this Committee the past few years. I look forward to continuing that great work. I really enjoyed my time as Chair of the Multi-Lines Committee at NCOIL and I'm very pleased to preside over this Committee again.

The purpose of today's meeting is for the Committee to conduct some business in advance of its March meeting in San Diego so that the Committee is able to handle all of the issues on its San Diego agenda in a timely manner. Specifically, we'll continue discussion on Rep. Lehman's Insurance Underwriting Transparency Model Act (Model) with the goal of voting on the Model in San Diego. I'll just note that I hope support Rep. Lehman's work on this issue and I look forward to hopefully supporting the Model and

getting it across the finish line. Also, as you may know, Rep. Lehman is also sponsoring a bill in his home state of Indiana that is based on the Model. That bill was voted out of the Indiana House Insurance Committee earlier this week and some changes were made to it which Rep. Lehman will discuss today.

CONTINUED DISCUSSION ON NCOIL INSURANCE UNDERWRITING TRANSPARENCY MODEL ACT

Rep. Lehman thanked everyone for joining today and thanked everyone for their patience as this Model is somewhat of a culmination of the issues we've been discussing the past couple of years. What I'm going to do today is walk through how we got here and then get to the Indiana bill. First, as I've said many times, I believe NCOIL's role is to build good Models and foundations for good laws and I think that this Model gets us there and there has been a lot of attention to this issue as many industries including the insurance industry get deeper into artificial intelligence (AI) and with the insurance industry wanting to be competitive they are driving a lot of their rating models to AI. What that's done is that it's put us as agents in a position as people who deliver the product to situations where our clients don't know why they are seeing rate changes so the genesis of this bill was us as public policymakers trying to protect consumers while keeping a competitive insurance market and I think both of those things are served here.

When we left New Orleans in November we said we were getting very close to the Model being finished and that we would work on this and my promise was that whatever came out of Indiana is what I would bring back to San Diego and that is where we are at. I believe NCOIL staff provided you all with the latest version of IN HB 1329 which is the omnibus insurance bill and I'll focus on the transparency piece which is pages 14-17 of the bill. I'll also reference the last version of the model we discussed in New Orleans. While the latest Indiana language is not everything I wanted, after multiple meetings with agents, carriers, consumers and the Department of Insurance (DOI), I do believe this is a good foundation. One of the first things we changed in Indiana is in the definitions section – in the Model we use the term “adverse action” but in Indiana that has been modified to “material change.”

Also, one of the things we discussed in New Orleans was whether or not this should apply to declinations and in talking with the DOI and carriers the feeling was that declinations needed to come out as there was no agreement of terms and no contractual obligation for me to do anything if I say I don't want to write your insurance. So, “material change” applies to nonrenewal or cancellation of, an increase of more than 10% over the expiring premium, a reduction in coverage, or another adverse or unfavorable change in the terms of coverage or amount of insurance in connection with a personal automobile or homeowners policy. The Model has that percentage at 9.9% and I changed it to 10% in Indiana.

Because we are removing declinations, the term “applicant” in the definitions section is removed. And then we removed the term “policyholder initiated change” in Indiana but included language to account for situations where I have agreed to participate in programs knowing that it could in fact change my rate negatively such as usage based or telematics programs. There was some discussion around including more language there regarding data verification programs and property inspections that might result in changes but that's not in the bill but as it moves to the Senate there may be more tweaks.

Next are the transparency requirements and the Model and the bill are similar there. The Model language requiring the notice to be “sufficiently clear” stayed in the bill because my core goal of this was I wanted to make sure that the people getting the notices can understand what and why changes were made. The issue really came down to the number of factors to include in the notice and we ended up settling on simply taking out the number – it was 10, then 5, and then 10 again and now the bill says that the “principal factors most heavily weighed” by the insurer must be disclosed. That I think gets us to where we want to be on making sure that you’re not telling me five or six things you might use but rather those things that seriously dove the decision and were the most heavily weighed.

We kept the bulk of the notice provisions in Indiana and made a couple of changes regarding including certain types of agents, if there is one, in the notice. The rules and penalties sections in Indiana stayed the same as those in the Model as we are giving the insurance commissioner authority to promulgate rules and set penalties consistent with those violations. So, that is where the Indiana bill has gone and probably the biggest issue of discussion has been around the number of factors to include, if any. I think the bill is in a good place and in Indiana it came down to looking at it as a good start of transparency discussions which is an issue we’ll be looking at far into the future.

Frank O’Brien, VP of State Gov’t Relations at the American Property Casualty Insurance Association (APCIA) thanked the committee for the opportunity to speak and stated that he would like to thank Rep. Lehman as when we left New Orleans, Rep. Lehman asked the industry to engage with him on this issue over the course of the upcoming months and we have done so and continue to do so. We appreciate his engagement with us and his honest and forthright responses to some of the materials we presented. This is a good product and we look forward to continuing the discussion in San Diego.

Jon Schnautz, Assistant VP of State Affairs at the National Association of Mutual Insurance Companies (NAMIC) thanked the committee for the opportunity to speak and stated that he wanted to acknowledge the major changes that have been made since November to what was first in the Indiana bill, and thank Rep. Lehman for that as we think it’s a great improvement and we had a number of concerns and I’m happy to report that those have been addressed in many cases. The bill as amended is out of committee and we’re still looking at it and distributing it to our members, in particular the notice requirements in the bill, but I hope and think we can get to a point where we state in San Diego that our concerns have been addressed and we’re looking forward to continuing discussions.

Wes Bissett, Senior Counsel at the Independent Insurance Agents and Brokers of America (IIABA) thanked the Committee for the opportunity to speak and stated that IIABA were big fans of the original version of the Model and at the same time we don’t want to make the perfect the enemy of the good. I’ve heard my carrier colleague say that there has been improvement so hopefully that means the Model will be adopted without controversy in San Diego. We’ll continue to vet the Model with our members and hopefully we can support it. Even though the language regarding the number of factors to be disclosed has been removed, a state can take that up on its own.

There are lots of important reasons to adopt this Model, particularly to have a legislative response on this issue, and the one before you is reasonable and narrowly crafted and

the reality is that the National Association of Insurance Commissioners (NAIC) and individual departments of insurance are already starting to act and Washington State is one of those examples and those departments are doing it unilaterally without statutory authorization so its incredibly important to have a model law that states can take up. And this may not be one that you bring back to your state but there are a sufficient number of states that need to have a meaningful model on this issue even though it may not be your particular state so we urge you to act upon this with urgency in San Diego and we appreciate Rep. Lehman's work on this and look forward to adoption in San Diego.

Sen. Bob Hackett (OH) stated that Rep. Lehman has been working on this for a long time and it's a difficult issue and he's always worked on legislation that is good for the company, the producer and the consumer and this is very difficult to work on and I appreciate all of his work.

Rep. Carl Anderson (SC) thanked Rep. Lehman for all of his work, and thanked the insurance industry for coming together and making changes and looking at things from a different perspective from when we left New Orleans. I think everyone is on board now which is a good thing and we'll be ready for San Diego.

Rep. Jordan thanked Rep. Lehman for all his hard work and for being a man of his word in trying to work with stakeholders to try and get something done. I do have a little heartburn about removing declinations from the Model. Rep. Jordan asked Rep. Lehman if he could please further address that. Rep. Lehman stated I think it's something can be further debated in states but it came down to the idea that if I simply ask someone for something and they decline to offer it, can I bind them to a contractual obligation to tell me why. I paid them no money and no contract was signed. I went to some of our legal people and there are valid arguments on both sides. Again, I would say I really thought we had a foundation with solid walls and now it may not be as solid but this is going to be in states and we want them to have the debates on these issues. I'll stop there because I do have some closing comments but I hope that answers your question. Rep. Jordan thanked Rep. Lehman and stated that his counter to that is that we have other examples like the Fair Credit Reporting Act (FCRA) where no contractual obligation exists but if you are declined credit they have to respond and tell you why. I agree that this is a starting point and we can have that debate at the state level so I understand that.

Rep. Lehman stated that I think we're on the cusp of what's going to be a very difficult path. I think Mr. Bissett made some good comments regarding what the NAIC is doing. I have had some conversations with them and my department of insurance and we're hearing that there is such a rapid rush into the artificial intelligence world and departments may not have the skill level actuarially to deal with these issues. And some people are saying its coming fast and furious so I think this is a good start. In Indiana we have a Senate bill that came over to the House and it deals with just the use of your data the privacy around it and we're focused here on underwriting but it's all going to merge together eventually in the world of artificial intelligence and I think we're on a collision course of privacy and data on the state level and the national level as well.

So I think this will get out of San Diego but it wont be the last time we discuss these broader issues. I want to thank the industry as we've been on opposite ends and some have been kicking and screaming but I think we got to a place where I think we have a

good Model and I encourage you to take it back to your states and see how it fits in your state especially as the NAIC moves with their models. If we don't get something on the books legislatively then I think we'll defer to regulators on terms and I don't think that ends well when regulators jump in versus those of us who have a better view of what's good for our constituents. Thanks for the opportunity and I look forward to San Diego and moving the Model forward.

ADJOURNMENT

Heating no further business, upon a Motion made by Rep. Lehman and seconded by Rep. Ferguson, the Committee adjourned at 3:00 p.m.