

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
FINANCIAL SERVICES & MULTI-LINES ISSUES COMMITTEE
2023 NCOIL SUMMER MEETING – MINNEAPOLIS, MN
JULY 20, 2023
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Financial Services & Multi-Lines Issues Committee met at the Minneapolis Marriott City Center Hotel in Minneapolis, MN on Thursday, July 20, 2023 at 4:00 PM.

Representative Forrest Bennett (OK), Chair of the Committee, presided.

Other members of the Committee Present:

Rep. Tammy Nuccio (CT)
Rep. Rod Furniss (ID)
Rep. Matt Lehman (IN)
Sen. Jerry Klein (ND)
Sen. Pam Helming (NY)
Rep. Tim Barhorst (OH)

Sen. Bob Hackett (OH)
Sen. George Lang (OH)
Del. Steve Westfall (WV)

Other legislators present were:

Rep. Deborah Ferguson, DDS (AR)
Rep. Stephen Meskers (CT)
Rep. Cara Pavalock-D'Amato (CT)
Rep. Kerry Wood (CT)
Rep. Linda Chaney (FL)
Rep. Brian Lohse (IA)
Sen. Michael Fagg (KS)
Sen. Pam Beidle (MD)
Sen. Arthur Ellis (MD)
Sen. Lana Theis (MI)

Sen. Paul Utke (MN)
Sen. Walter (MS)
Asm. David Weprin (NY)
Rep. Bob Peterson (OH)
Rep. Ellyn Hefner (OK)
Del. John Paul Hott (WV)

Also in attendance were:

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

QUORUM

Upon a Motion made by Rep. Tammy Nuccio (CT) and seconded by Sen. George Lang (OH), the Committee voted without objection by way of a voice vote to waive the quorum requirement.

MINUTES

Upon a Motion made by Sen. Bob Hackett (OH) and seconded by Sen. Jerry Klein (ND), the Committee voted without objection by way of a voice vote to adopt the minutes of the Committee's March 11, 2023 meeting in San Diego, CA.

DISCUSSION ON PROPOSED AMENDMENTS TO NCOIL INSURANCE E-COMMERCE MODEL ACT

Rep. Bennett stated that we'll start today with a discussion on proposed amendments to the NCOIL Insurance E-commerce Model Act (Model). The amendments are sponsored by Louisiana Representative Edmond Jordan, who unfortunately isn't here today, but he'll be arriving tomorrow. You can view the amendments on page 139 through 141 in your binders and they're on the website and app as well. We won't be voting today on these amendments, but I think it's likely that we will probably vote on this in November after today's discussion. With us here today are Molly Zito, Deputy General Counsel at United Healthcare, and Wes Bissett, Senior Counsel at the Independent Insurance Agents and Brokers of America (IIABA) who can provide some background on this issue and the amendments and speak to their respective positions.

Ms. Zito thanked the Committee for the opportunity to speak and thanked Rep. Jordan for putting forth these amendments to NCOIL's Insurance E-commerce Model Act. Beneficiaries of employer sponsored health benefit plans are digital savvy, and they're very familiar with e-delivering in many facets of their lives. Utility bills come that way along with credit card bills and even personal line insurance. And people have come to expect that they can access their documents easily on their phones and their computers. So what these amendments do is it mirrors an Employee Retirement Income and Security Act of 1974 (ERISA) safe harbor that allows employers to attest that their employees are digital savvy and wired at work. And then they will be defaulted into electronic delivery of their health benefit plans. Although the amendments allow for default electronic delivery of health benefit plans, it does allow an individual to opt out to receive paper copies. And again, this mirrors an ERISA safe harbor that is currently in place but that safe harbor is more administratively burdensome in that it requires the employer to determine who's opting in and out and what this one does is it has the insurer actually keeping track of that. So again, thank you to Rep. Jordan and we hope that the Committee can support these amendments when they come up for consideration.

Mr. Bissett thanked the Committee for the opportunity to speak and stated that I would echo the very positive things that Ms. Zito said about Rep. Jordan. He was the original sponsor of the underlying Model and of these particular amendments. I thought we heard some very good testimony from Ms. Zito just now and from her and her colleagues in San Diego talking about how these amendments and these changes in law ought to mirror what a number of states have already done in the existing 20 plus years in place now regarding the ERISA wired at work safe harbor. We don't object in any way whatsoever to the purpose and objective of these amendments, and strongly agree with the other interested party testimony that we've heard in San Diego and today that these changes really ought to mirror what the ERISA wired at work safe harbor looks like and what a number of states have done. The only thing we note is that some of the elements in that ERISA safe harbor and in the state laws that have passed recently that we view as important are not yet in the amendments and so we are looking forward to working with Ms. Zito and other interested parties and Rep. Jordan. I'll give you the one particular issue that we're focused – states that have addressed this topic typically require that a covered person be provided with a notice as part of that opt out opportunity that informs them of things like the types of notices and documents that would be provided pursuant to this, and that the employee have an ability to obtain a paper copy of any notice and withdraw their consent and also importantly, if they don't want their work email address to be the one where they're receiving these documents, to be able to provide an alternative email. I don't think that those are objectionable and I suspect we'll all be working together going forward on these issues and

we hope to have a product developed well in advance of the November meeting that can hopefully be voted on and approved by this group.

Rep. Bennett thanked Ms. Zito and Mr. Bissett and stated that I think we'll be ready to vote on this in November and if you have any questions or comments please reach out to me or Rep. Jordan.

DISCUSSION ON NCOIL RESOLUTION IN SUPPORT OF EXISTING LAW EXEMPTIONS FOR NEW DATA PRIVACY LAWS

Rep. Bennett stated that next on our agenda is a discussion of a Resolution in Support of Existing Law Exemptions for New Data Privacy Laws (Resolution), a Resolution which I am sponsoring. You can view the Resolution in your binders on page 145 and it is also on the website and app. We had a productive conversation on this issue at our meeting this past March in San Diego, and I think this Resolution is a positive step forward in those discussions. The Resolution is fairly straightforward. Essentially, it recognizes that many states have been and are continuing to develop data privacy laws, Oklahoma included, and it calls for states that are considering such legislation to incorporate certain exemptions that recognize the requirements that clinical researchers must already comply with. And I want to reiterate that this is about requirements that clinical researchers must already comply with, so that there aren't duplicative and conflicting data privacy mandates. Depending on how the discussion goes today, we could vote today, or we could wait until November. One minor change I'd like to make to the Resolution is really just shifting some existing language around. If you look on the second page of the Resolution where it says "be it now further resolved..." - the language "not already subject to such framework" is proposed to be deleted and then a bullet point below would be added that would read "entities or information already subject to existing legislative data privacy regimes." So it's not a substantive change, it's really just moving existing language around.

JP Wieske, VP of State Affairs at Horizon Government Affairs thanked the Committee for the opportunity to speak and thanked Rep. Bennett for sponsoring the Resolution. We really appreciate this work. Specifically, with the issue that we're facing in the states, the Resolution is meant to be guidance to the legislators as you're looking at data privacy frameworks and just as an example - my understanding is unless late amendments are offered to a Montana bill, the result will be Montanans not being able to be eligible for clinical trial data going forward and there will be no clinical trials in Montana. And those are sort of the problems that we're facing in the states. The member companies that we work with have a number of issue in the states where they had to fix this ad nauseam on a state by state basis as data privacy comes up and so our hope is this language will serve as some guidance inside states that are looking to do data privacy frameworks. And this Resolution went out to all the interested parties we could find to see if there's any concerns and I think we addressed them all. I would be happy to answer any questions and would appreciate your support.

Rep. Bennett then opened the discussion up to legislators. Hearing no comments or questions from any legislators, Rep. Bennett stated that since we have been discussing this issue since last November and since there appears to be no concerns, I will entertain a Motion to adopt the Resolution with the change in language I mentioned. Upon a Motion made by Rep. Tammy Nuccio (CT), Vice Chair of the Committee, and seconded by Sen. Bob Hackett (OH), the Committee voted without objection to adopt the Resolution as amended by Rep. Bennett. Rep. Bennett thanked the Committee and stated that the Resolution will be placed on the Executive Committee's agenda for final ratification.

DISCUSSION AND POSSIBLE CONSIDERATION OF NCOIL FEDERAL HOME LOAN BANK (FHLB) INSURER-MEMBER MODEL ACT

Rep. Bennett stated that next on our agenda is a discussion and likely consideration of the NCOIL Federal Home Loan Bank (FHLB) Insurer Member Model Act (Model), which is sponsored by Sen. Travis Holdman (IN), NCOIL Immediate Past President, and co-sponsored by Sen. Walter Michel (MS). You can see the Model on page 150 in your binders and on the website and app. It is likely that we'll be voting on this Model today as we have received no comments in opposition on this issue since we began discussing it in November of last year. Unfortunately, Sen. Holdman couldn't be here today, but he asked his colleague Rep. Matt Lehman (IN), NCOIL Immediate Past President, to speak on his behalf.

Rep. Lehman stated that the Model deals with a fairly straightforward issue that's received no opposition in the states that have already dealt with this. It's good that that we're bringing this now as for Model development. The speakers we have here today can provide you with a bit more detail but essentially the laws passed in over 20 states allow the FHLB to more efficiently access insurance company collateral in certain situations which results in those banks being able to lend insurers money on more favorable terms in the states that have those laws. So I think it's just bringing some great parity and when states have dealt with this issue these types of laws have been passed without opposition and it seems like something ripe for NCOIL to take up as a national Model.

Derek Akin, VP and Assistant General Counsel at the FHLB of Dallas thanked the Committee for the opportunity to speak and stated this topic has been discussed at prior meetings but for those unfamiliar with the FHLB system, we were created by Congress in response to the Great Depression, and our mission is to provide liquidity to financial institutions, banks, credit unions, and insurance companies. We do that by lending money and taking in return collateral that is often housing based. Under the Federal Deposit Insurance Act, home loan banks have exemptions from both stay and voidable preferences. Those are not afforded to our insurance company members so this legislation is designed to give our insurance company members parity with banks. We have passed this now in 25 states with Mississippi being the most recent going into effect July 1st of this year. We view this as beneficial to insurance companies in the states that have passed it as they're able to have more favorable terms on their collateral, which opens up additional liquidity for those insurance companies. Melissa Dallas, FVP, Corporate Secretary and Counsel at the FHLB of Cincinnati thanked the Committee for its work on this issue and stated that if anyone has any questions on the Model, I'm happy to answer those.

Sen. Michel stated that I Chair the Senate Insurance Committee in Mississippi and we passed very similar legislation this past session and we found that it improved the loan process for our insurance companies, which provided additional liquidity for catastrophic events like tornadoes or hurricanes or hail storms and it offered more favorable loan terms to our member insurers. We had great support on the legislation and our insurance Commissioner was very much on board and I support this Model and encourage Committee members to consider introducing it in their own states as well.

Hearing no further comments or questions, upon a Motion made by Del. Steve Westfall (WV) and seconded by Sen. Pam Helming (NY), the Committee voted without objection by way of a voice vote to adopt the Model. Rep. Bennett thanked the Committee and stated that the Model will be placed on the Executive Committee's agenda for final ratification.

DISCUSSION ON RESOLUTION IN SUPPORT OF ESTABLISHING NATIONAL STANDARDS AND PROCEDURES FOR THE REPORTING AND PAYMENT OF PREMIUM TAXES DUE AS A RESULT OF INTERSTATE INSURANCE TRANSACTIONS

Rep. Bennett stated that last on our agenda is a discussion on a Resolution in Support of Establishing National Standards and Procedures for the Reporting and Payment of Premium Taxes as a Result of Interstate Insurance Transactions (Resolution). You can view the Resolution on page 147 in your binders and it's on the website and app.

Bill Bryan, Director of Providence Insurance Partners, LLC, thanked the Committee for the opportunity to speak and stated that the Resolution before you needs some more work and it was submitted pretty close to this meeting such that everyone didn't really have a chance to review and provide feedback. The feedback that we have received asked some good questions and raised some issues as to clarity and to the intent and ultimate impact of the Resolution. So everyone has agreed to make some revisions that will not only clarify, but I think also narrow the intent of the Resolution down to what we really were trying to accomplish in the first place and then that will be ready for presentation at the November meeting.

Rep. Bennett asked Mr. Bryan to summarize what the Resolution seeks to accomplish. Mr. Bryan stated that first of all, let me let me just say what the Resolution isn't and then I'll say what it is. What it's not is any attempt to change in any way, shape or form how insurance may be obtained or how the drug procurement rules work - that's all subject to state statutes and there's legal decisions and we have no intention or hope of ever doing anything different about that. Taxation is also quite clear. There's established rules on that. And I think there may have been some suggestion or some implication in the Resolution that there was going to be some impact in terms of more reporting requirements or compelling reporting that some parties who raised objections were not comfortable with. The core purpose of this effort is to facilitate the payment of direct procurement taxes by insureds when they are owed in an efficient and easily determined manner. There is not currently a uniform national standard for that. In some states it's quite simple and easy and in those states the insureds that we have encouraged to report and pay those taxes have had an easy time doing so. In other states, it is less so and we are hoping that NCOIL can help lead the effort to standardize those things. Again, it's not going to change anything legally as to anyone's obligation - those obligations exist. If you directly procure insurance, you, the insured party, are responsible for paying the procurement tax to your state of domicile. We just want to make it clearer, simpler and easier to do that so that people can be in compliance.

Sen. Hackett stated that Ohio Treasurer Robert Sprague was here yesterday and I discussed this issue with him. In Ohio we pay premium taxes and the companies pay it and they pass it on to the consumer on their products. And so can you explain a little how it would change in Ohio? Mr. Bryan stated that the obligation for the reporting and collection of premium taxes is different depending on the way that insurance is placed. In the most conventional way with conventional placement of insurance through a registered licensed insurer in a state, that's clear how that's done. The companies report and pay. In surplus lines it's quite similar and in that case the brokers collect and remit. In independent procurement, which is the third and least known method of obtaining insurance, that is not the method because the actual burden for payment falls upon the insured and not on anybody else and so it's a self-reporting, self-paying function and again there are some tools that are quite useful and sophisticated. Florida developed a piece of software called the Surplus Lines Information Portal (SLIP) and the software works for both surplus lines and direct procurement. In Florida and Georgia and other states that are using that, it's pretty straightforward and useful. But as an example of some issues, Georgia

licensed the software and had it in place but didn't have anything on their Department of Insurance website to explain how to access it and use it so it took us a while to interact with them and to get that cleaned up. And now it's working very well in both of those states as well as in others that have other systems that are effective. And thank you for mentioning Treasurer Sprague as he is somebody who is charged with the balancing of books in Ohio and he is eager to participate in something that's going to make tax collection more regular and efficient.

Rep. Bennett thanked everyone for their comments and stated that I understand that the Resolution needs some more work and hopefully we will have something prepared for discussion at the November meeting.

ANY OTHER BUSINESS

Rep. Bennett stated that I would like to raise an issue for potential consideration by this Committee going forward - the earned wage access provider market. You may have heard about this issue in your state, but essentially these are providers who grant workers access to wages that have already been earned before their scheduled payday. You may have seen ads for these products. But they are not well regulated yet and a few states have taken action and enacted laws with licensing and other provisions and I think since this Committee is the NCOIL Committee with jurisdiction over banking issues, this could be something worthwhile to discuss and consider developing some sort of Model or Resolution. If you have any questions or comments, please reach out to me or NCOIL staff.

ADJOURNMENT

Hearing no further business, upon a motion made by Rep. Nuccio and seconded by Del. Westfall, the Committee adjourned at 5:15 PM