

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
FINANCIAL SERVICES & MULTI-LINES ISSUES COMMITTEE
INTERIM COMMITTEE MEETING – SEPTEMBER 29, 2023
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Financial Services & Multi-Lines Issues Committee held an interim meeting via Zoom on Friday, September 29, 2023 at 12:00 P.M. (EST)

Representative Forrest Bennett of Oklahoma, Chair of the Committee, presided.

Other members of the Committee present were:

Rep. Mike Meredith (KY)	Asm. David Weprin (NY)
Rep. Edmond Jordan (LA)	Sen. Bob Hackett (OH)
Sen. Paul Utke (MN)	Rep. Jim Dunnigan (UT)
Sen. Shawn Vedaa (ND)	

Other legislators present were:

Rep. Linda Chaney (FL)	Sen. Walter Michel (MS)
Rep. Deanna Frazier Gordon (KY)	Rep. Carl Anderson (SC)

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 Sen. Bob Hackett (OH) 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 BENNETT

Rep. Forrest Bennett (OK), Chair of the Committee, thanked everyone for joining this meeting today and stated that we're here today to continue discussion on some items that have been on this Committee's agenda since our meeting this past March in San Diego. We'll begin with discussing proposed amendments to the NCOIL Insurance E-Commerce Model Act, and we'll then discuss a 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. After this, for everyone's sake, I'll just refer to it as "the Independent Procurement Resolution." There won't be any votes on these items today but I hope that after today's meeting and the discussions that follow it, we'll be able to vote on these items at our next meeting in November.

CONTINUED DISCUSSION ON PROPOSED AMENDMENTS TO NCOIL INSURANCE E-COMMERCE MODEL ACT (Model)

Rep. Bennett turned it over to Rep. Edmond Jordan (LA), sponsor of the proposed amendments to the Model. Rep. Jordan thanked everyone who's been working on this issue and providing feedback as it's been very helpful. In 2020 as most of you know I've sponsored the underlying Model that we're discussing today with sets forth provisions on how certain insurance documents can be delivered to policyholders electronically. And since that time almost every state has adopted the Model in some manner. I'm proud to sponsor amendments to that Model which generally mirror the laws of several states that have enacted this, including my home state here in Louisiana, that permit health plan sponsors to consent on behalf of covered persons for e-delivery of certain health plan notices and disclosures. I think it's important for us to remember that these laws preserve a covered person's ability to opt back into the paper delivery system. So, if they don't want to stay with the e-delivery they can certainly go back into the paper delivery system if they so choose. But there is an attestation process involved that requires the confirmation that employees routinely use electronic communications doing that normal course of employment so you have to have that as well. I understand that there's some edits that have been made to these amendments that are being developed to clarify some of these issues and I look forward to reviewing them and hopefully getting this across the finish line in November.

Molly Zito, Deputy General Counsel at United Healthcare, thanked the Committee for the opportunity to speak and thanked Rep. Jordan for sponsoring these amendments. And I wanted to just give you an update as Rep. Jordan alluded to, we are working with the Independent Insurance Agents and Brokers of America (IIABA) on updating some of the language from the amendments and we're hoping to get that finished in the next couple weeks. We've been back and forth and we want to make sure that we have it finished well in advance of the 30 day materials and we'll do that and Rep. Jordan we'll certainly work with you before submitting the final product to NCOIL.

Hearing no further questions or comments from interested persons or legislators, Rep. Bennett stated please be sure to submit any thoughts or comments on this issue to Rep. Jordan, myself, or NCOIL staff.

CONTINUED DISCUSSION ON DRAFT 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

Next is the continued discussion on the Independent Procurement Resolution. The discussion on this started at the Spring Meeting this past March and it's generated a lot of feedback, a lot of which may be misguided just based on what I've gathered because it doesn't seem like there's much concerning to me. But I look forward to hearing from interested parties and other legislators. And that's why we're having this discussion so everyone can provide their comments and we can work towards addressing any issues. Of course, we want to focus on producing the best possible work and being transparent about the process. I look forward to hearing more feedback today in light of the revised version of the resolution which was recently distributed which I hope you've all looked at. I anticipate further revisions will be made. There is no sponsor yet to this Resolution. Rep. Tom Oliverson, M.D. (TX), NCOIL Vice President, is considering signing on to sponsor but he has wanted to wait before more of a consensus can be reached on some of the issues.

Before I open up the discussion now, I do want to note one thing that I think has persisted throughout the conversations I've had and others have had about this. And that is that it deals with creating a mechanism by which states can collect unpaid tax revenue. That seems like an issue that everybody should be able to agree on no matter who you represent. I'm a Democrat in Oklahoma and I'd love to be able to bring in more tax revenue without having to raise taxes but it seems like an issue that we can all agree on. I look forward to hearing from anybody who may disagree but anyone who wants to be speaking today I'd like them to address that issue specifically, especially if they've got an issue with it and why they think there might be problems with having an NCOIL Resolution related to it. And lastly, I want to point out that some issues have been raised with respect to this impacting the surplus lines market but the revised version strikes all references to surplus lines and if you read this resolution and disagree with that please let us know. We can make further edits to make sure that surplus lines are not mentioned. As I noted in the beginning, we're not going to be voting on this but I did anticipate this topic being the one that we would have more conversation around so I'm hopeful that starting today we can kind of get to pointing towards the consensus on the issue so that we can have a vote on it one way or another in November.

Alex Gonzalez, representing Providence Insurance Company which is one of the proponents of this Resolution, thanked the Committee for the opportunity to speak and stated that I was a former Deputy Insurance Commissioner and Acting Commissioner at the Texas Department of Insurance (TDI) but that was many years ago. After TDI I went to a major law firm and in that time my favorite client was the Surplus Lines Stamping Office of Texas for 30 years so I'm fairly familiar with surplus lines and I see a lot of my surplus lines colleagues on this call. Now because I was the Surplus Lines Stamping Office general counsel I did not represent surplus lines agents or eligible surplus lines carriers and I didn't represent insureds that were adverse to those entities. However, I did represent, and I am currently representing, several large insurance brokers, carriers, major policyholder corporations, and international non-admitted direct placement transactions.

Now the reason I was able to do this and not run into a conflict is because surplus lines insurance is distinctly different from independent procured, it's two different concepts. I'm glad Rep. Bennett raised that issue right off the bat. Surplus lines is very complicated. That's why we have so many specialists around the country and the Stamping Offices provide valuable service to their insureds. Independent procured is not quite as complicated. There are some specialists, not as many as in surplus lines. But there's two basic requirements for independent procured and then there's a third implicit requirement and I'm going to through this real quickly but I think you need to know this so you'll see the intent of the Resolution. The first is that the transaction has to be principally negotiated outside the insured state. So, if the insured is in Oklahoma there cannot be an insurance broker in the state of Oklahoma. The insurance company cannot show up in Oklahoma. It has to be principally negotiated and placed outside the state. That's important to understand. The second is that the insured have to pay the direct placement premium tax. And then there's a third requirement which is typically implicit and is also kind of a driving influence here is that you can't have an insurance agent or other representative of the insurer of the insurance company in the state. So basically your insured is left on its own to pay the tax. The insurance company cannot help. The insurance company can encourage them to pay the tax but the insured is on its own. They can have an attorney or they can have an accountant but there's a lot of folks that know surplus lines but not that many that know independent procure tax.

The issue is that the procedures to pay the tax are not uniform and they're not clear. So, in some states like my home state of Texas we have procedures and forms that are easily found on the Texas Comptroller's webpage. You can just go on the web page type in "independently procure tax" and you can find the form and it's easily paid. But you have to know that you don't go to the Surplus Lines Stamping Office, you don't go to TDI, you have to go to the Comptroller. And you have to know that. Somebody has to know that. But in other states it's vague and it's ambiguous. I went to one state and I was trying to help this client. I went to one state and I've been doing this for 40 years and I couldn't find the form. I finally found it and I found a Google archive version of it. I know there's probably some specialists and some other folks that know how to find it easier but I'm just saying that's what it took me. So, you can imagine one of your insureds trying to find this. Independent procured insurance is not suitable for homeowners, auto - personal lines. This is basically commercial businesses, typically large ones like Exxon, who used to be my client. But sometimes it's smaller companies that have 100 employees or something like that. It's not for everyone. It's not for every transaction. But if it is appropriate and they want to pay the tax they ought to be able to find a way to pay the tax and that's the issue now. Florida has developed a surplus lines insurance portal. In Florida and in the 10 states that use this particular software, you pay the independent procure tax through that portal so you have to know that that's where you pay the independently procured tax.

So in Florida it's very transparent. It's their program and there's another state I went to visit with the Commissioner and we told them about it and it turned out they didn't have it on their web page. They immediately put it on their web page. They tripled the reported independent premium tax within two months just by a simple change by letting folks know that you pay the independently procured tax through the portal. Turning to the Resolution, the first draft was ambiguous. It had problems. The reference of surplus lines was misleading and shouldn't have been there. We're going to take it out. The reference to non-admitted carriers paying and reporting the tax was a good idea but bad result. We're going to take it out. We're working on a new version of the Resolution that is very streamlined and we're going to meet with some interested parties soon and we're hopeful that what we produce will be acceptable to all.

John Meetz, Director of Gov't Relations at the Wholesale Specialty Insurance Association (WSIA), thanked the Committee for the opportunity to speak and stated that we appreciate the fact that staff took some time to make some revisions on this. We appreciate NCOIL for hearing our concerns and frankly we are in full agreement with the stated goal of the Resolution which is collecting uncollected tax revenue. Nobody disagrees with that and I think there are certainly some processes among individual states where that can be improved. I think we talked a little bit about how the Resolution does not affect surplus lines insurance. WSIA represents both surplus lines brokers who place surplus lines insurance and the non-admitted carriers who underwrite those transactions. Those non-admitted carriers also underwrite the independently procured transactions. So that's part of why we're involved in this discussion here and we really appreciate Mr. Gonzalez for laying out some of the potential amendments to the Resolution, specifically the part that would require insurers to report premium taxes. It sounds like that may be coming out but it's still in the most recent draft that I saw so just a couple of notes on that. That is problematic for a couple of reasons.

The responsibility for filing and paying taxes in a non-admitted insurance transaction falls on the surplus lines broker or in the case of independent procurement on the insured themselves. And that's not a loophole or an accident, it's intentional public policy and it's designed to facilitate non-admitted insurance as a safety net for the admitted market. Non-admitted insurers do not have access to the data necessary to determine the home state of the insured as defined by the federal Non-Admitted and Reinsurance Reform Act (NRRA). So, we're very pleased to hear that may be coming out. But we would not support any Resolution that includes that. And real briefly one more comment, you know, we do have some lingering concerns with maybe the underlying intent of the Resolution itself and that's just because independent procurement is extremely rare. There are certain assumptions that are made about the entities that seek insurance without the assistance of a licensed agent or surplus lines broker. They are large entities. They are sophisticated companies. So much so that they're aware of and capable of navigating their regulatory and tax obligations for procuring their own insurance. To the extent that the Resolution is seeking to make that process more accessible to your average Joe, I think NCOIL needs to seriously contemplate that question. To the extent that we need to have discussions with states to make it so that your sophisticated entities can find a form on their website, we're all for that. I think that's an admirable goal and I think that those discussions can be had. What we want to avoid is a situation where we're trying to proliferate independent procurement to non-sophisticated entities. I think that's more of a philosophical question but just wanted to pose that to the group and mention that which is part of our lingering concern. We're very pleased to continue ongoing discussions with that.

Rep. Bennett asked for more information regarding the position on a requirement that insurance regulators and tax regulators having all the information about taxes due. Mr. Meetz stated that the regulatory and tax obligations legally in the U.S. on non-admitted transactions fall on either the surplus lines broker or the insured. And so they are the responsible entities in this case and we think they should continue to be held responsible for all of their tax obligations and all of their regulatory obligations in those cases. The non-admitted insurer is not necessarily privy to the information. I know it seems weird but they're not actually privy to the information that's required for submitting the taxes because they don't necessarily know in a multi-state transaction what the "legal home state" of the insured is. So, it's a very complicated situation. Non-admitted insurers do submit their premium information but that is for solvency purposes. So, they do that on the Schedule T to their state of domicile. They are regulated in that way. But the responsibility for paying the taxes falls on the insured in independent procurement and on the surplus lines broker in a surplus lines transaction.

Janet Pane, Executive Director of the Excess Line Association of New York (ELANY), thanked the Committee for the opportunity to speak and stated that we appreciate the edits to the Resolution but we remain a little bit unclear on exactly what the Resolution solves for in its current state. So, maybe just a little bit of my background for those of you who don't know me. In my previous role which was 24 years at Willis Towers Watson and the last role running the Global Services and Solutions Network for the multinational clients seeking insurance coverage for global risks, I have a lot of experience with independent procurement. And my experience with this particular type of placement is that they are largely and meant to be used by large, sophisticated buyers who have large tax teams who understand their tax obligations and they are placed with largely insurers located in the Caribbean, Bermuda, the U.K., and Puerto Rico who is the client that Mr. Gonzalez is representing with this piece of this Resolution. So, those

insurers are not located in the U.S. and would not be subject to the additional reporting requirements suggested by the Resolution. So, any subsequent laws proposed by the state represented here would also not be applicable to where most of these independent procurement transactions are being placed.

And in the case of Mr. Gonzalez's client, it is a Puerto Rico insurance carrier so I reiterate that I'm not sure that the Resolution is solving the problem you wish to solve. And we firmly stand behind and we absolutely believe that the state should be seeing their taxes but I think our other concern is that we don't want to expand independent procurement to consumers because consumer protection is something that the regulators are very concerned with and we don't believe they want to see a growth in independent procurement in this consumer segment as the buyers really benefit from having a licensed broker or agent advocate for them in the event of a claim and that claims advocacy role doesn't exist in independent procurement. So, I think that's really the thrust of it is we don't think that this is targeting the right solution. I'm all for upgrading the websites so that we get the admirable goal of tax payments more clear for those good citizens who wish to pay it and we support that wholeheartedly. But that's not addressed in the Resolution. So, with that we still have some concerns around the Resolution.

Rep. Bennett stated that as explained to me the purpose of the Resolution is to facilitate the payment of insurance premium tax payments. Is that how you see it? Ms. Pane stated that it's not how it's written. I think that's what we've heard the intention of it is but let me ask you how will these buyers who don't know how to pay their taxes today be found by these entities who wish to have the rights assigned to them? We're not sure how this independent procurement is working. If there's no one soliciting the business which is not allowed by independent procurement, who's advising that insured on how to pay the tax? So, I think there's just some confusion in the way it's written. Rep. Bennett stated that I'm hoping that with some more work we'll get this a little bit more cleared up.

Cari Lee, representing the Council of Insurance Agents and Brokers (CIAB), thanked the Committee for the opportunity to speak and stated that we would echo some of the comments that Mr. Meetz made and we'll work with our members to submit some formal comments on this Resolution but I would definitely agree with some of the other speakers who said that independent procurement is associated with Microsoft and very large companies who are making those types of procurements or they're going out searching on their own and they're very sophisticated buyers. This is not your personal lines you and me going out to get homeowners on our own without an agent and I think from a regulatory standpoint in those cases you really do need that licensed agent. So, we'll put our comments together and get those into you and work with the rest of the parties to hopefully reach a consensus for the Resolution.

Hearing no other comments or questions from legislators or interested parties, Rep. Bennett stated please submit any thoughts or comments to me and to NCOIL staff.

ADJOURNMENT

Heating no further business, upon a Motion made by Sen. Hackett and seconded by Sen. Utke, the Committee adjourned at 1:00 p.m.