☞ **95hr_AC-ISCP_Misc_pt06b**

☞ Details: National Conference of Insurance Legislators (NCOIL) correspondence and documents

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

1995-96
(session year)

Assembly
(Assembly, Senate or Joint)

Committee on Insurance, Securities and Corporate Policy...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
  (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (October 2012)

MEMORANDUM

DD
File

DATE: August 31, 1995

TO: NCOIL Legislators

FROM: Bob Mackin

RE: Consumer Federation of America Report

Enclosed please find

-- A report by the Consumer Federation of America on State Legislators and Insurance Conflicts of Interest,

-- NCOIL's statement in response to the report by the Consumer Federation of America,

-- an American Insurance Association new release also in response to the report,

-- the Consumer Federation of America's press release; and,

-- a statement by Common Cause president Ann McBride in regard to the report.

Please let me know if you have any questions.

Consumer Federation of America

State Legislators and Insurance Conflicts of Interest

J. Robert Hunter & Miranda Sissons

August, 1995.

1424 16th Street, N.W., Suite 604 • Washington, D.C. 20036 • (202) 387-6121

Executive Summary:

As the nation considers reducing the federal role in various tasks, the capacity of the states to handle newly-delegated responsibilities deserves examination. This report looks at an aspect of the largest responsibility delegated to the states by Congress,[1] the regulation of insurance. Conflicts of interest have most often been discussed in terms of lobbying, direct financial benefits, and campaign contributions. This report focuses on a more serious type of conflict of interest -- that engendered by the professional ties of insurance legislators to the insurance industry.

Professional linkages between legislators and the insurance industry are inherently prone to conflict because they impair objectivity, create divided loyalties, and leave the legislative process open to improper influence. Both the appearance of and actual abuses caused by conflicts of interest have a high toll on the political system.

This report examines the professional affiliations of legislators who make up insurance committees in ten states: California, Massachusetts, Florida, Illinois, Missouri, New York, North Carolina, Ohio, Pennsylvania, and Texas. The report also examines links between the insurance industry and the leadership of the major inter-state organization on insurance legislation, the National Conference of Insurance Legislators (NCOIL).

Our research focused on two kinds of connection: legislators who were agents or derived income from insurance businesses, and legislators who were attorneys in law firms with substantial insurance practices.

After examining the insurance committees in ten different states, we found that:

- At least 52 of 278 insurance legislators (18.7%) have professional affiliations with the insurance industry.
- Of these, 40 are either owners or agents of insurance businesses, and 12 more are attorneys in law firms with substantial insurance practices.
- Conflicts are found much more frequently in some states than in others: for example, California and Massachusetts have no legislators with identifiable industry links, whereas 33.3% of all insurance legislators in Missouri are professionally affiliated to the insurance industry.
- These figures become more pronounced if broken down to the individual committee level. For example, 50% of insurance legislators in the Missouri House of Representatives and 45.5% of insurance legislators in the North Carolina House of Representatives have professional links with the insurance industry.
- 13 of 49 (26.5%) members of the NCOIL leadership and Executive Committee are active in the insurance industry; and 4 out of 5 (80%) previous NCOIL presidents have derived income from insurance businesses.

The report also found that the proportion of legislators with industry connections is strongly related to the strength and provisions of each state's conflict of interest laws. Particularly

---

[1] McCarran-Ferguson Act, 1945. 15 USC Sec 1011 et. seq.

important is whether a state obliges legislators to abstain from acting on matters where a conflict of interest exists, and how strongly this obligation is framed in law. These findings are summarized below. For further information on methodology and results, see Appendix B.

Industry Affiliations and State laws:

State	Minimum % of Insurance Legislators with conflicts of interest*	Strength of conflict of interest law.	Strength of Abstention Provision.
California	0	Strong	Strong
Massachusetts	0	Strong	Strong
New York	8.6	Weak	-
Pennsylvania	14.7	Medium	Medium
Illinois	15.2	Weak	-
Ohio	21.2	Weak	Weak
Texas	25.0	Medium	Weak
Florida	30.6	Weak	-
North Carolina	36.0	Weak	-
Missouri	33.3	Medium	-

* This is minimum because 73 members of the legislative committee dealing with insurance (26.3%) have unknown employment connections.

Those states that do not oblige legislators to refrain from matters in which they have an interest have the highest number of insurance legislators with professional links to the insurance industry. One example of this is North Carolina. States which have strong abstention provisions and strong conflict of interest laws have the lowest number of legislators with professional links, such as Massachusetts.

Conflict of interest legislation is the best means by which conflicts of interest can be prevented and, if necessary, punished. It must be more than a guide to conduct: it must be a well-defined and enforceable set of law under the jurisdiction of an independent and non-partisan Ethics Commission. Such legislation must include:

- a ban on legislators acting on any matter in which they have an interest
- the thorough disclosure of all sources of income and assets, as well as any kind of affiliation with business and not-for-profit organizations. This is particularly important for legislators who are also lawyers;

- a ban on forms of outside employment and income which may conflict with the public interest. This should also include the strict regulation of honoraria;
- a ban on compensated representation of clients before state agencies, and strong limits on uncompensated representation; and
- restriction of the kinds of matters that legislators can become involved in immediately after leaving office.

These and other provisions have already been enacted in Massachusetts and California, and other substantial model legislation has been published by both Common Cause and the Council on Governmental Ethics Laws (COGEL). A sensible, flexible, and workable means already exists to prevent the kinds of problems revealed in this report; the data indicates that these protections should be required in all states.

1. Introduction

Conflicts of interest can be roughly defined as competition between an individual's private interests, and the duties they hold while occupying a position of public trust. Such competition results from conflicting loyalties, obligations, or financial interests.

Both the presence and the appearance of conflicts of interest breach the conditions of healthy government. The cost of the first is distorted and inefficient public policy that may pander to specific interests, rather than serving the public good. The cost of the second is the erosion of public faith in legislative actions, a problem which exacts high social and policy costs.

Over the last few years, considerable attention has been paid to conflicts resulting from campaign financing and legislative corruption. This scrutiny has often meant that strong frameworks have been enacted which regulate activities in these areas and has exposed them to the public gaze. Professional representation on a legislative committee which writes the laws that regulate that profession is a clear example of a conflict of interest.

This report uses the example of insurance regulation in ten selected states in order to examine the nature and degree of professional linkages between insurance legislators, and the industry they regulate. Insurance is one of the largest private industries in the United States, controls assets of at least $1 trillion, and is regulated almost completely at the state level under the McCarran-Ferguson Act of 1945. In 1991 the insurance industry generated $128 billion of GDP and employed over 2 million Americans. In 1993, the industry collected over $500 billion in premiums.[2]

2. Methodology:

This report uses data derived from ten large states: California, Florida, Illinois, Massachusetts, Missouri, New York, North Carolina, Ohio, Pennsylvania and Texas. Together they make up more than half of the US population.[3]

First, state legislatures were asked to provide lists of the current members of committees with jurisdiction over insurance matters in each house.[4] This study did not look at the make-up of appropriations committees, but only at the committees that write the regulatory authorities for insurance within the state studies. Conflicts of interest could also occur on "purse-string" appropriations committees, but the nexus is more difficult to see.[5] Legislators' professions were then identified by using data contained in legislative guides, state manuals, and other official

---

[2] US Department of Commerce: Statistical Abstract of the United States 1994. 114th Edition, Washington DC.

[3] Ibid.

[4] Each state except Massachusetts has a committee with jurisdiction over insurance in each house. Massachusetts has a joint Insurance Committee made up of members from both houses.

[5] CFA believes that further research should be undertaken on this subject.

sources. Information on the firms of legislators who practice as attorneys was taken from the Martindale-Hubbell professional directory.

Links with the insurance industry were defined to be

1) professional activity or employment as an insurance agent, or as the owner of an insurance agency;
2) direct income derived from insurance activities; and
3) an attorney employed by a firm which either
   a. includes insurance as a specialty in its firm profile, or
   b. lists a substantial proportion of insurance organizations as a part of its client list.[6]

Difficulties with the data included both accuracy and completeness. Information on newly-elected legislators was occasionally difficult to obtain, and in some states, legislators have not publicly identified their professions. No ambiguous or uncertain data has been used in the compilation of this report, nor are any professional links that have not been made public taken into consideration. Given the many kinds of links that legislators may enjoy with the insurance industry, **it is likely that the actual number of connections between legislators and the industry they write the laws to regulate is greater than indicated in this report.**

3. Findings:

In the ten states researched for this report, insurance legislation was written by either an insurance committee in each house, or committees dedicated to banking, insurance and financial matters. The size of committees responsible for writing insurance legislation at the house of representatives level was between 9 - 24 members, and between 9-16 members in the Senate.

Out of a total of 19 committees, 16 included legislators with direct links to the insurance industry. Three of these had one member with direct links, with the 13 other committees having between 2 and 6 such members. Of the 16 committees with insurance connections, 5 were chaired by insurance agents and 1 more was chaired by a legislator in a fiduciary relationship to an insurance company. A full breakdown of findings is presented in Appendix A. Table 3.1 ranks state insurance committees in order of the degree of industry linkage they possess.

The highest proportion of insurance legislators with direct professional involvement is displayed at the House of Representatives level in Texas, North Carolina and Missouri, as well as in the Florida Senate. In each state, the percentage of legislators who have actual or potential conflicts of interest because of their professional involvement is over 38% of each committee. The number of legislators who derive direct income from insurance is so high that, if these members declared conflicts of interest and were to abstain from committee activities on insurance regulation, it is unclear how the committee would be able execute its business - or even reach quorum.

---

[6] Substantial in this case is taken to mean insurance companies making up more than 15% of the firm's publicized client list.

For example, with about 25% of legislators having professional links with the insurance industry, the insurance committees of the Florida House and North Carolina Senate are at the middle of the range found in this study in terms of industry connection.

3.1 State connection with Industry in Rank Order:

Committee by State, Level	% of legislators with link.
0%:	
California Assembly	0.0
California Senate	0.0
Massachusetts Joint Committee	0.0
1-25%	
New York General Assembly	4.7
Texas Senate	9.1
Missouri Senate	11
Pennsylvania House of Representatives	12.5
Illinois House of Representatives	13
New York Senate	14.3
Ohio Senate	18.2
Illinois Senate	20
Pennsylvania Senate	20
Ohio House of Representatives	22.7
North Carolina Senate	25
25-50%	
Florida House of Representatives	26
Florida Senate	38.5
Texas House of Representatives	44.4
North Carolina House of Representatives	45.5
Missouri House of Representatives	50
Average % of conflicts across all states	18.7
Average % of conflicts for states with strict conflict of interest laws	0
Average % excluding states with strict conflict of interest laws.	21.3

Taking a look at Florida, full information was available for 17 out of 23 members of the House Insurance Committee. Of these, 5 were insurance agents, 1 derived income from insurance agencies while listing his occupation as a farmer, and 11 had no link.

At the Florida Senate level, there were more attorneys with industry contacts on the committee than there were agents. Of 13 committee members, 3 were attorneys with whose firms' conducted substantial insurance business, and 2 others were insurance agents deriving income from their businesses. That means that 38.5% of committee members have a financial link with the industry they are writing the laws to regulate. The professional activities of 2 other committee members were not identified, and 6 more had no insurance connection.

While Florida represents the middle of the range, New York State has one of the lowest indicators of conflict-of-interest in its insurance committees -- although this is not to say that even low industry representation is healthy on a committee which frames laws to regulate that industry. At the Senate level, 2 of 14 committee members were attorneys whose firms included substantial insurance business, and 3 were attorneys whose business profiles could not be traced. Information was unavailable for 2 out of the 9 remaining committee members; the rest did not have any public link with the insurance industry. In the General Assembly, 1 of 21 committee members is an insurance agent; 13 more are attorneys whose client lists were not available, and the rest show no professional link.

No direct professional links between committee members and the insurance committee exist in 3 out of 19 cases since neither California nor Massachusetts were shown to have insurance legislators with industry links. Both states have had recent scandals involving insurance companies' close financial connection to legislators, and both have strong conflict-of interest laws.

In 1990, California's most powerful insurance lobbyist (and the most powerful lobbyist overall) was indicted on 10 felony counts as a result of an FBI probe. This compromised a number of insurance legislators and triggering a successful citizen's initiative that strengthened the state ethics law.[7] Massachusetts' strong conflict-of-interest law is the cumulative result of a series of public scandals from the late 1950s and early 1970s. The law was then clarified and strengthened in the 1980s. The Massachusetts Ethics Commission has recently prosecuted 14 present and former legislators in connection with violations of state conflict-of-interest laws for accepting gratuities from insurance lobbyists.[8]

To summarize: in 8 out of 10 states examined, insurance committees include legislators who have both direct and indirect interests in the effects of the legislation they create. This figure is

---

[7] Weintraub, M "Will Probe Put Capitol's Top Lobbyist on the Shelf?" *Los Angeles Times*, Nov 30 1991, p. A1 ; Boyarsky, B "A Proposition They Could Refuse" *"Los Angeles Times* (Magazine), Nov 7 1993, p. 18.

[8] Commonwealth of Massachusetts State Ethics Commission, "Ethics Commission Fines Rep. Michael P. Walsh for Accepting Gratuities from Lobbyists." Media Release, November 16, 1994.

calculated assuming that those with no public signs of linkage do not have any industry ties. At least 18.7% of insurance legislators are directly linked to the insurance industry.[9]

4. Discussion

Assuming that this sample is representative of the nation, about one in five legislators writing the laws controlling insurance in America is earning income from the very industry that the laws they write are supposed to regulate. When legislators are active in devising legislation regarding their own profession, then a conflict of interest clearly exists for several reasons. The first is that of financial benefit. In regulating their own profession, or an industry from which they derive income, legislators who are connected with the insurance industry have a financial interest in the outcome of their legislation. This interest is often immediate, as with those who draw income from insurance activities. At least 40 out of a total of 278 legislators have such an interest: they are either owners or agents of insurance businesses.[10]

Financial interests are not always immediately apparent, as with legislators who are attorneys in firms which have a high proportion of insurance clients. This was found to be the case with 12 out of 278 legislators, concentrated particularly in Florida.[11] Given the fact that legislators who are attorneys rarely are required or voluntarily provide enough information to identify their practices, this figure in all likelihood understates the actual degree of attorney-insurance linkage.

Legislators who are practicing attorneys also face another kind of conflict situation: the representation of private clients before state agencies. Attorneys in this situation are in a direct situation of conflict because they are acting as an advocate for their private clients, against the interests of the state body or legislation with which they themselves oversee. In at least one state in this study, an insurance legislator has represented insurance clients before the state agency responsible for insurance regulation; whether paid or unpaid, such practices are a breach of good public policy.

---

[9] 52 of 278 legislators have been classified as being linked to the insurance industry, that is, 18.7%. If legislators from California and Massachusetts are dropped from the total number of legislators, the proportion then becomes 52 of 239, which is 21.75%.

[10] 278 is the number of legislators across all 10 states; 14.4% of the total have direct financial interests. If this is expressed as a proportion of legislators in states where conflicts of interest exist, then the figure rises to 17.4%. Conflict may also arise as the result of a legislator's future income or employment. This 'revolving door' is a separate problem which should be subject of future research.

[11] For example, one legislator in this report is also an attorney at a large city law firm in Florida. Although the legislator may not specialize in insurance matters himself, the business profile of his firm includes both casualty and surety insurance, as well as reinsurance litigation. The firm serves as local counsel for 29 insurance companies, thereby comprising 74.5% of their total local client list. The firm also names two clients for which it serves as an approved attorney, and both of these are insurance companies. The insurance legislation that this legislator frames will have a direct, material impact upon both the firm's clients, and also the practice itself. With these kinds of relationships involved, it is easy to see how objectivity may be compromised and professional loyalties impact upon industry regulation.

Professional relationships are by their very nature financial. However, we should not overlook the importance of the relationships between private professional loyalties and public duties. Fiduciary duties (such as being a member of a board of directors) also compromise the objectivity of legislative decision-making, and such relationships exist for at least 2 of the 278 legislators.

If these states constitute a representative sample of the situation across the United States, then it seems reasonable to conclude that the legislative oversight of one of America's largest industries is significantly compromised by its close affiliation with industry interests. The efficacy of state legislatures in guaranteeing an impartial and trustworthy public policy process is sorely lacking. This benefits neither consumers, nor the general public, nor the long-term health of the industry itself. It also raises serious concerns in an era of federalization and decentralization of political authority.

5. Inter-State Conflicts: The Special Example of NCOIL.

No review of state insurance legislative oversight would be complete without a look at the role of the National Conference of Insurance Legislators (NCOIL). It is the national body for legislators dealing with insurance matters across more than 30 states.

Aims and Activities:

NCOIL was founded in 1969 by a group of insurance legislators who "wanted an opportunity to exchange information about insurance legislation".[12] Membership is organized at state level; currently, 31 states are members of NCOIL.[13] NCOIL describes its aims as being:

- to educate and inform state legislators on insurance issues;
- to help state legislators "interface effectively" with the executive branch initiating and resolving issues of public policy and insurance;
- to improve the quality of state insurance regulation; to make insurance more affordable and available; and,
- to "step up to fight federal initiatives aimed at encroaching upon state regulation of insurance." [14]

These activities are carried out at an annual meeting and at least two conferences per year. Over the last two years, NCOIL has been particularly active in ongoing struggle with the National Association of Insurance Commissioners (NAIC). It maintains that the NAIC has usurped

---

[12] *Industry Advisory Committee to the National Conference of Insurance Legislators"* Pamphlet, NCOIL. Membership is not always confined to legislators who are current insurance committee members, but this is usually the case.

[13] Of the 10 states studied in this report, only California does not have a member of NCOIL on its committees.

[14] *The History and Purposes of NCOIL:* NCOIL, 1995, p. 1.

legislative authority in regulating state insurance practices.[15] NCOIL has lobbied Congress extensively on the dual regulation of insurance, and has also discussed the enactment of national disaster insurance legislation. Observers note that NCOIL rarely, if ever, disagrees with the insurance industry position in matters federal.

The organization is governed by an Executive Committee, with a number of permanent and ad-hoc committees which conduct inquiries and hold hearings on relevant insurance issues.[16] There is also an "Industry Advisory Committee", which is not listed in the Articles of Organization and By-Laws, and which will be discussed further below.

Information on NCOIL is restricted to reports in the industry press and the limited information given out by the organization itself. It is therefore difficult to gather complete information about NCOIL's structure and membership. An analysis of professional activity by NCOIL Executive Committee members, however, reveals a strong correspondence between professional interests and NCOIL's legislative/lobbying activity.

Professional Links of the NCOIL Leadership:

Of the five leadership positions in the 1995 NCOIL Executive Committee, at least four (80%) are held by legislators who are also members of the insurance industry.[17] The President, State Senator Leo Fraser, is head of his own claims auditing firm. The President-elect is a former underwriter and has owned his own insurance agency: it is not clear if he continues to derive income from the agency. The NCOIL secretary also owns an insurance agency; and the Chair of the Executive Committee is an insurance and real estate broker. The fifth executive officer is an attorney whose firm profile could not be traced.

A summary of the professional connections of the 4 previous NCOIL Presidents is given in Table 5.1.

---

[15] e.g., "NAIC Accreditation program Slammed on Sanctions", *National Underwriter* (Life & Health/Financial Services Ed.), October 10, 1994, p. 8.

[16] For example: the State-Federal Relations Committee; the NAIC Liaison Committee, and the Property-Casualty Insurance Committee.

[17] Sources conflict as to the 1995 composition of the committee; this report uses the list published in the NCOIL *Insurance Legislative Fact Book and Almanac*, published by NCOIL in April 1995.

Table 5.1: NCOIL Presidents.

Year	President	Affiliations
Current	Leo Fraser (Sen, NH)	Consulting Examiner: head of own insurance claims auditing company.
1994/5	Dennis Smith (Sen, MO) (did not complete term)	Currently President and CEO of the Missouri Employers' Mutual Insurance Co. Formerly., previously head of Dennis Smith & Associates, insurance agents.
1993/4	Richard Worman, (Sen, IN)	Insurance Management Consultant. Currently, Vice-President of Securancy Inc. (Insurance Agency). Member, Chartered Life Underwriters' Association. Formerly owner, Worman & Associates; employee. Nationwide insurance Co.
1992/3	Glyn Clarkston Shea (Rep, TX)	Unknown.
1991/2	Harold W Burns (Rep. OH)	Currently, Chmn of Burns Insurance Agency Inc.,; Member, National Association of Mutual Insurance Agents.

These close professional associations at the leadership level have led to problems of revolving-door practices at NCOIL. The immediate past president, State Senator Dennis Smith (MO), left before the end of his term in order to become President and CEO of the newly-formed Missouri Employers' Mutual Insurance Co. One industry newspaper states that Smith was the third president to leave NCOIL within a year [18]

Of the 44 other Executive Committee members, 9 have direct links with the insurance industry (20.5%). 7 of these are insurance agents (15.9%), and 2 are lawyers whose firms include considerable insurance business (4.5%). 9 more are lawyers whose firm profiles could not be obtained. Out of a total of 49 members of the NCOIL leadership more than one quarter have strong insurance connections (26.5%). There is no information available as to other kinds of members.

Industry Advisory Committee

The Industry Advisory Committee (IAC) is an NCOIL committee founded in 1975. It is made up of "insurance companies, trade associations and related organization. all involved in the insurance industry and keenly aware of the need for understanding and cooperation with

[18] "Move Questioned to Expand RBC in Accreditation", *The Insurance Accountant*. July 18, 1994, p. 3

legislators and legislatures."[19] Despite the IAC's commitment to NCOIL, it is not mentioned in the Articles of Organization, nor in any of NCOIL's official descriptions or membership lists. Membership is by written application, which must be approved by the IAC Executive Board. The members of that board, and their relationship with NCOIL itself, could not be identified. Nor are there any by-laws of the organization.

The purpose of the IAC is to "improve understanding between State Legislatures and the insurance community." To this end, it funds NCOIL through dues and by funding NCOIL's seminars. Special IAC committees also meet with NCOIL officers on "specific programs and background material."[20] Membership Fees for the IAC range from between $500 for non-Insurance companies and state associations. $1,000 for national trade associations, to $750 for insurance companies with less than a $50 million turnover to $1,500 for insurance companies with a turnover of more than $50 million.

One of the few references to the IAC put out by NCOIL is that 'An Insurance Industry Advisory Committee provides grants which pay for speaker travel and lodging, and administration at NCOIL seminars."[21] These seminars (held twice yearly, plus an annual meeting) are the major means by which NCOIL briefs and works with its membership. Seminar participation fees for the 1995 Spring Seminar included $400 for IAC members, $650 for industry non-members, and $250 for legislators and staff. This fact, in conjunction with NCOIL's own emphasis on its role as a clearinghouse for information, means that the majority of public activities organized by NCOIL are in fact paid for by the insurance industry.

While input from the industry is necessary in policy-making, that input should be provided through formal hearings. For industry to be the primary source of funding for inter-state discussions of insurance legislation is not appropriate. Since NCOIL is the major network through which insurance legislators communicate, current and previous industry ties become doubly reinforced at the inter-state level. Given the overlap between industry professionals and NCOIL leadership, the entire scenario gives rise to serious doubts as to the integrity, objectivity, and openness of NCOIL proceedings.

One example of this structural bias in action is the NCOIL hearing on insurance redlining, held in April at the most recent NCOIL meeting. Billed both as a "Report on Anti-Redlining Legislation" and an "open discussion", [22] the NCOIL Property-Casualty Insurance Committee dropped the issue after hearing only one testimony, that of the director of state affairs in the

---

[19] *Industry Advisory Committee to the National Conference of Insurance Legislators*, NCOIL. (Note: this pamphlet is not included in the NCOIL information packets that NCOIL distributes, nor does it exist in general circulation.)

[20] Ibid.

[21] *The History and Purposes of NCOIL* NCOIL, p. 4.

[22] *NCOIL '95 Spring Seminar*, Orlando, Florida, March 24-26. (Registration form and flyer).

Skokie, Ill., office of the American Insurance Association.[23] According to the *National Underwriter*, the committee chairman then noted that the AIA official had provided material indicating that redlining "is just a perception and not a real problem", and dropped the issue. This hardly constitutes a thorough-going examination of what has been an extremely heated issue.[24]

NCOIL seminars have also been sites for more direct legislative-industry contact than simply strong influence over debate. The lobbying conducted by insurance companies at NCOIL seminars has led to a string of prosecutions in Massachusetts under that state's conflict of interest laws. Both at NCOIL conferences in Savannah, Georgia (1991) and Amelia Island, Florida (1993), state legislators and their guests received free meals and golf fees from lobbyists representing the Life Insurance Association of Massachusetts.[25] Fourteen present and former legislators as well as two insurance companies were fined in connection with this investigation. The nation's sixth-largest life insurer admitted in March 1994 that it had provided more than $30,000 in illegal gratuities to state legislators between August 1, 1987 and May 30, 1993. John Hancock Mutual Life Insurance Company had used the attendance of its legislative agents at NCOIL events in order to develop strong relationships with, and thereby gain access to, members of the Massachusetts Joint Committee on Insurance.[26]

6. Comments Regarding NCOIL

NCOIL is important in building relationships and disseminating information among legislators, and also between legislators and industry. Because it operates across state boundaries and is a private organization, NCOIL's activities are significantly shielded from public scrutiny. There is, however, strong evidence to suggest that NCOIL is an organization where industry interests have the potential to control information and use these relationships for their own benefit.

This is indicated by a variety of circumstances. First and foremost is the high concentration of insurance professionals in the NCOIL leadership, in terms of both executive officers and executive committee members. The second is the revolving door that has ushered state legislators who have served in NCOIL leadership positions into lucrative professional positions. Given the rapid turnover in NCOIL presidents over the last few years, the incidence of this

---

[23] Otis, L.H. "NCOIL Drops Redlining From Consideration on Its Agenda", *National Underwriter*, April 17, 1995, p. 43.

[24] In fact, in the same National Underwriter (April 17, 1995), an article on the American Family settlement with the federal government of a redlining charge appeared, as well as an article on discussions between HUD and State Farm on redlining problems. Anti-redlining efforts in Atlanta, Houston, Philadelphia and Chicago have been reported recently. NCOIL's whitewash of the redlining issue is more likely to do with its conflicts of interest than any real finding of no redlining.

[25] "Ethics Commission Fines Rep. Michael P. Walsh for Accepting Gratuities from Lobbyists", The Commonwealth of Massachusetts State Ethics Commission, Boston,, Nov. 16, 1994.

[26] "Ethics Commission Fines John Hancock Mutual Life Insurance for Illegal Gratuities to State Legislators", The Commonwealth of Massachusetts State Ethics Commission, Boston, March 22, 1994, p. 1.

problem may be higher than the few instances cited here. Revolving door situations may be limited by conflict-of-interest laws, which view them as a means by which legislators derive undue personal profit from their public duties. These facts, coupled with the role and financial importance of NCOIL's Industry Advisory Committee, cannot help but cause considerable doubts as to the objectivity and openness of NCOIL itself.

NCOIL's cozy relationships with the insurance industry embodied in the aptly-named Industry Advisory Committee and joint meetings, exacerbated significantly by the great number of NCOIL members who are also industry employees or agents, makes NCOIL's public policy statements suspect. The fact that the NCOIL positions rarely are at odds with those of industry is hardly surprising under these circumstances.

NCOIL is an organization constituted (at least nominally) by and on behalf of state legislators, and is designed to have an affect on state insurance regulation. Concerns regarding the nature of NCOIL must also give rise to concerns regarding its effect on state insurance regulation. If industry has so many means by which to affect legislation, then where is there protection for consumer or taxpayer interests? And where is there reason not to believe that insurance regulation is unduly influenced by industry interests? This is a matter of democratic protections and effective public policy: as it stands, state legislative control over the insurance industry has neither.

7. Remedies

This report has shown that a high proportion of insurance legislators are subject to actual or potential conflicts of interest because of professional relationships - roughly one fifth of the entire group. The number of such legislators is concentrated in particular states, and is even more concentrated at the leadership level of NCOIL.

The particular problems in this report have been those of divided loyalties and financial interest. They include:

- conflicts caused by direct financial interests: income, honoraria, gifts.
- conflicts caused by indirect financial interests: foreseeable income and benefits, interests of legislators who are attorneys in firms with substantial insurance practice.
- divided loyalties: professional loyalties and affiliations which impair objectivity, as well as fiduciary duties to organizations directly affected by state insurance committee activity.

The first and most basic remedy to conflict of interest problems is for states to enact clear-cut and enforceable conflict of interest laws. Very few of the states in this study have such laws.

The traditional means of avoiding conflicts of interest has been by using codes of ethics and disclosure systems which focus on the ability (and willingness) of an individual to decide

whether s/he has a conflict. One example of this kind of mechanism is the current code of legislative ethics in Illinois. It is merely a guide to action, a series of suggestions as to ideal legislative behavior. Such codes are infamous for their vague construction and therefore weak effects. Even when backed by penalties, they are notoriously difficult to enforce.

Recently, however, government scandals and community activism have caused some states to play a more active role in defining and enforcing measures against legislative conflicts of interest. However, conflict of interest laws and their enforcement still vary considerably from state to state. The table on page 2 of the Executive Summary compares the total proportion of legislators with professional conflicts with the strength of conflict of interest laws in each state. The strength of state laws was assessed according to the strength of their provisions with regard to six key elements.[27] It also shows the strength of any provision in state law that requires legislators to abstain from voting when conflicts of interest occur. For a more detailed summary of legal provisions across the ten states, see Appendix B.

Those states with strong conflict of interest laws have the lowest proportion of legislators with conflicts. These are Massachusetts and California. Those states with the highest proportion of conflict have relatively weak preventative frameworks: Florida, North Carolina, and Missouri. Although there are many factors which no doubt influence the proportion of legislative conflicts in each state, one of the most important is undoubtedly whether or not legislators are obliged to abstain from matters in which they have an interest. The exceptions to this pattern in Table 5.1 are New York and Illinois, and this may reflect the relatively high rate of missing professional information mentioned in Section 2 of this report.

While there is no one perfect solution to tensions caused by the financial and professional links of legislators, conflict of interest legislation is an important and efficient remedy. The forms and emphases of such legislation may differ according to the needs of different state, however, the most fundamental elements of a strong conflict of interest law are simple.

First, clear and thorough disclosure laws should be put into place to identify conflicts that otherwise might be obscure[28]. Legislators are obliged to file financial disclosure forms in all states in this study, although the detail and nature of such forms varies considerably from state to state. Financial disclosure forms alert legislators and citizens to conflicts of interest which may exist; they are imperative for both the appearance and substance of open. clean government. In terms of conflicts as a result of professional activities, it is particularly important that financial disclosure forms include all associations with any kind of organization, whether business or not-for-profit; all sources of income and forms of employment; and all assets and investments,

---

[27] Whether they serve as a basis for discipline: obligation to abstain on matters of conflict; limits on representation before state agencies; limits on post-employment activity; financial disclosure; and the presence of an independent ethics commission with enforcement powers over legislators. For further details on methodology, see Appendix B.

[28] Particular attention should be paid to attorneys and their client list. Disclosure of clients and fees is essential to protect the public.

whether beneficial or not. The ultimate safeguard of good government is public outcry against acts and situations which are seen to contravene the public trust.

Second, legislators must be required to refrain from participating in matters where even the potential of a conflict of interest exists. This kind of requirement is enforceable, requires no extra resources, and prevents one of the most direct means by which a legislator's outside interests may affect public policy. To be truly effective, this must also encompass situations of foreseeable interest and the appearance of interest.

"Interest" should be defined to include the presence of a link regardless of the likelihood of benefit: tensions caused by fiduciary duties and professional obligations do not necessarily involve personal financial benefit. In many states, conflicts of interest are defined in such a manner as to allow members of an industry to vote on legislation affecting that industry, since their interest is no greater than that of a specific subsection of the population. In order to prevent egregious industry influence over legislative activities, this exception should not be made.

There are a host of other elements that make up sound conflict of interest laws. In terms of a specific focus on professional conflicts of interest, however, there are 4 key elements in addition to those mentioned above. These are:

- a ban on forms of outside employment and income which may conflict with the public interest. This should also include the banning or strict regulation of honoraria;
- a ban on compensated representation of clients before state agencies, and strong limits on uncompensated representation.
- restriction of the kinds of matters that legislators can become involved in after leaving office;
- an independent ethics commission with enforcement powers and meaningful penalties.

Employment:

Clear provisions should be enacted to prevent legislatures from deriving income or employment from activities which conflict with their public duties. For example, in Massachusetts legislators are prohibited from accepting pay from private parties in matters that are of direct and substantial interest to the state. Such a provision would ideally include a prohibition on employment which creates an ongoing interest in, or conflict with, the activities of a legislator's own committee.

For example, although Florida sets down a standard of conduct which forbids legislators from creating a "continuing or frequently recurring conflict between his private interest and the performance of his public duties",[29] employment of legislators in a field which regulation is "exercised strictly through enactment of laws" is specifically exempted. Such exemptions should

[29] Florida - Sunshine Amendment and Code of Ethics, S.112.313 (7.1) (a)

be removed, and the definitions and penalties for conflicts as a result of employment should be clarified.

Likewise, neither should a legislator be allowed to receive honoraria, nor possess fiduciary duties in bodies which come under the jurisdiction of his or her committee. This is in order to prevent influence-peddling, divided loyalties, and the possibility that legislative actions are compromised by professional gain.

Limits on Representation:

When legislators represent clients before state agencies, two major problems arise. The first is of undue leverage that might be gained from a legislator's public position, and the second is the inherent conflict between the legislators public role and private actions. In order to prevent this, states should ban the compensated representation of clients by legislators before any state agency except the courts. To be truly effective, such a provision should also encompass restrictions on the unpaid representation of clients as well. That is, legislators should not be prevented from representing normal constituent interests - but they should not be allowed to lobby before state governments on behalf of business colleagues or professional bodies, even if such actions are not directly compensated.

Post-Employment Restrictions:

Restrictions on what kinds of activities a legislator may undertake after leaving office are crucial in preventing 'revolving door' situations, as well as the use of legislative privilege to secure unwarranted leverage as a lobbyist. In order to be effective, such provisions require two elements. The first is a time limit (usually two years) in which former legislators may not engage in compensated representation before a state body. The second is a perpetual ban on former legislators being paid to act on matters with which they were directly involved while in office. This kind of legislation is vital in lessening the attraction of revolving-door activities, whereby legislators leave office to take up employment in the field they have just been regulating. It limits unwarranted benefits to legislators, as well as any influence the offer of post-legislative employment may have over a legislator still in office.

Enforcement:

None of the above-mentioned provisions are of any use without a clear and impartial means with which to enforce them. Strong ethics laws require the presence of an independent and non-partisan ethics commission. Too often, however, these do not have jurisdiction over state legislators. Such commissions must be able to both investigate complaints and enforce some kinds penalties against legislators, rather than merely issuing findings and referring them to other bodies for discipline. They must be administratively and financially independent from the legislature, as well as non-partisan in composition. The penalties which exist for breaches of conflict of interest laws must also signal the serious nature of such violations, as well as a meaningful deterrent. Both civil and criminal penalties should apply, and ethics commissions should also be responsible for educating legislators and state officials as to their requirements under law.

Existing Models:

This report cannot describe in detail the many appropriate forms that conflict of interest laws might take. Despite the disparate nature of current conflict-of-interest laws, however, there is no shortage of models from which strong and workable laws can be taken. Both California and Massachusetts have enacted a comprehensive series of laws and have strong independent commissions to implement them. Each includes provisions based on the elements outlined above, as well as a ban on legislators acting upon matters where conflicts of interest exist.

The law in Massachusetts was developed over several decades of government scandals, and represents one of the clearest-cut pieces of legislation in the United States. It pays considerable attention to conflicts as a result of professional activities or loyalties, and is unusual because it eradicates the loophole of legislators being able to vote for legislation if they are affected as much as a general class of the population, mentioned earlier above. Legislators are also obliged to refrain from any kind of participation on a matter where they have an interest. Interest is defined as being both actual or reasonably foreseeable, regardless of whether it results in benefit to the legislator. Legislators are also obliged to take care regarding any appearance of a conflict of interest.

The California legislation was developed in a series of reforms and citizen-initiated measures, with the last legislative ethics reform package passing in 1990. Among other things, the California law bans honoraria, strictly limits gifts, and restricts outside income. Conflicts of interest are now regulated by a series of comprehensive and meaningful statutes, including the creation of a Citizens' Compensation Commission to set levels of legislative remuneration. Legislators are required to attend ethics orientation courses, and educational activities and enforcement is carried out by the California Fair Political Practices Commission. There are a variety of other resources that outline comprehensive and well-considered conflict of interest laws. The models proposed by Common Cause and the Council on Governmental Ethics Laws (COGEL) are particularly important,[30] and have been framed specifically to provide a flexible but coherent legislative framework that allows for diversity between states without compromising legislative intent.

The situation described in insurance industry representation across the ten states in this study is by no means confined to the insurance industry alone. Instead, it highlights the degree to which professional affiliations compromise the objectivity of the legislative process. Conflict of interest legislation is a basic and effective means of preventing this. Such protections should be required in all states.

---

[30] Common Cause A Model Ethics Law for State Government. Common Cause, Washington DC., Jan 1989: COGEL A Model Law for Campaign Finance, Ethics, and Lobbying Regulation. Council of State Governments, KY 1991.

Appendix A: Breakdown of State Insurance Legislators and Professional Links.

State	Relevant Committee	Ctee Size	With Professional Links:			No link	Lack info. (**)	Overall % of committee members with link.
			Agent	Att'y linked via firm	Other (*)			
California	Assembly Insurance Committee	16	-	-	-	12	4	0
	Senate Insurance Claims & Corporations Ctee	9	-	-	-	6	3	0
Florida	House of Representatives Insurance Ctee	23	5	-	1	11	6	26
	Senate Banking and Insurance Ctee	13	2	3	-	6	2	38.5
Illinois	House Insurance Ctee	23	3	-	-	18	2	13
	Senate Ctee on Insurance, Pensions & Licensed Activity	10	-	1	1	3	5	20
Massachusetts	Joint Committee on Insurance	14	-	-	-	11	3	0
Missouri	House Insurance Committee	12	6	-	-	5	1	50
	Senate Ctee on Insurance & Housing	9	1	-	-	6	2	11
New York	General Assembly Ctee on Insurance	21	1	-	-	7	13	4.7
	Senate Insurance Committee	14	-	2	-	7	5	14.3
North Carolina	House of Representatives Insurance Ctee	11	5	-	-	3	3	45.5
	Senate Committee on Pensions & Retirement/Insurance/State Personnel.	16	2	2	-	9	3	25
Ohio	House of Representatives Insurance Committee	22	2	2	1	11	6	22.7
	Senate Financial Institutions, Insurance & Commerce Committee.	11	1	-	1	7	2	18.2
Pennsylvania	House of Representatives Insurance Committee	24	3	-	-	19	2	12.5
	Senate Banking & Insurance Ctee	10	2	-	-	3	5	20
Texas	House of Representatives Insurance Committee	9	2	2	-	4	1	44.4
	Senate Economic Development Committee	11	1	-	-	5	5	9.1
	Totals:	278	36	12	4	153	73	average 18.7

* Derives income without professional involvement.
** Insufficient information to evaluate linkages

Appendix B: Comparison of Conflict of Interest Laws Across States

Table B.1: Standards of Conduct and Conflict of Interest Provisions:

Conflict-of-Interest Provisions.	CA	FL	IL	MA	MO	NY	NC	OH	PA	TX
• Rules are Basis for Discipline	✓	✓		✓	✓	✓	✓ (some)	✓	✓	✓
• Bribes	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓	✓	✓	✓✓	✓
• Honoraria	✓✓			✓✓				✓	✓✓	
• Abstention obligatory	✓✓			✓✓				✓	✓	✓
• Any kind of action prohibited if interest exists				✓✓						
• Forseeable interest				✓✓						
• Appearance of interest				✓✓		✓				
• Restrictions after-hours employment	✓	✓		✓✓		✓				✓
• Paid representation before government agencies	✓	✓✓	✓	✓✓	✓✓	✓				✓
• Unpaid representation before govt agencies				✓						
• Disclosure of confidential information	✓	✓	✓	✓✓	✓		✓	✓	✓✓	✓
• Use of position to secure benefit	✓✓	✓✓		✓✓	✓	✓		✓		✓
• Restrictions on Gifts.	✓✓	✓ over $100	✓	✓✓	✓	✓ over $75		✓ over $75	✓✓	✓ if infl.
Post-Employment Activity:										
• Perpetual ban on some kinds of involvement				✓✓	✓✓					
• Time limit in which former legislators may not engage in compensated representation.	✓✓	✓✓		✓✓	✓	✓		✓	✓✓	✓

Key: ✓ = some limits
✓✓ = banned

Table B.2: Enforcement Mechanisms and Penalties:

Enforcement Procedures	CA	FL	IL	MA	MO	NY	NC	OH	PA	TX
• Independent Ethics Commission with jurisdiction over legislators	✓✓	✓		✓✓	✓			✓	✓	✓
• Structure ensures non-partisan	✓✓	✓		✓✓					✓	✓
• Enforcement Powers over legislators	✓✓			✓✓						✓
• Civil Penalties	✓✓	✓	✓	✓✓	✓	✓	✓	✓	✓	✓✓
• Ciminal Criminal Penalties	✓✓	✓		✓✓	✓	✓	✓	✓	✓	✓✓

Key: ✓ = exists
✓✓ = strong

Table B.3: Personal Financial Disclosure Requirements:

Disclosure Requirements:	CA	FL	IL	MA	MO	NY	NC	OH	PA	TX
• Obliged to file report	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
• Assets: securities, investments, trusts, real estate, business ownership and equity	✓	✓ real estate only	✓	✓✓	✓ over$ 10000	✓	✓ some	✓	✓	✓
• Source and value of gifts	✓✓ > $50	✓ > $100		✓✓	✓ >$100	✓ > $1000		✓ > $75	✓ > $200	✓ > $250
• Debtors and creditors	✓					✓			✓	✓
• Sources of income & employment	✓	✓ > 5%	✓ > $1200	✓	✓ > $1000	✓	✓	✓	✓	✓ > $500
• Associations with for-profit entities	✓	✓	✓	✓	✓	✓		✓	✓	✓
• Associations with not-for-profit entities				✓	✓	✓				
• Information regarding family members				✓	✓	✓	✓			

Key: ✓ = some
✓✓ = all

Sources: Conflict of Interest Laws and Ethics Laws of all states.

Methodological Note on Table 5.1:

Conflict of interest laws in each state were rated according the strength and complexity of each of 6 elements: whether they serve as a basis for discipline; obligation to abstain on matters of conflict; limits on representation before state agencies; limits on post-employment activity; financial disclosure provisions; and htepresence of an independent ethics commission with enforcement powers over legislators.

States which did not have conflict laws that could be used as a basis for discipline were automatically classified as weak. Those states that were not disqualified by this measure had the strength of the other 5 provisions rated out of 3. For example, a limit on some forms of paid representation = 1, a ban on all paid representation = 2, and a ban plus limits on unpaid representation = 3. The value of a requirement to abstain on matters of conflict was doubled (to 6) because of its critical importance in conflict laws.

These scores were then added for each state, out of a total of 18. States disqualified by the first step, or with a total score of 0-6 were classified as "weak", scores of 7-12 were rated "medium", and scores of 13-18 were rated as "strong". Results are shown on the table below.

Key Provisions	CA	FL	IL	MA	MO	NY	NC	OH	PA	TX
Rules are basis for discipline	✓	✓	No	✓	✓	✓	No	✓	✓	✓
Obliged to Abstain	3			3				1	2	1
Limits on Representation	2	2		2	2	1				1
Post-Legislative Activity	2	1		3	2	2		2	1	1
Enforcement (Ethics Commission, etc)	3	2		3	1				2	3
Disclosure	2	1.5		3	3	3		2	2	2
Raw Score	12	6.5		14	8	6		5	7	8
With weighted abstention value	15	6.5		17	8	6		6	8	9
Overall classification	**Str.**	**Weak**	**Weak**	**Str**	**Med**	**Weak**	**Weak**	**Weak**	**Med**	**Med**

NCOIL STATEMENT
RE: CONSUMER FEDERATION OF AMERICA/COMMON CAUSE REPORT DATED AUGUST 31, 1995

The report is an old and erroneous yawn that has gained no credence over the years.

It fails to understand that one great value in the state legislative process is that it brings together many different interests from the economic mainstream -- lawyers, small business owners, professional women, nurses, doctors, insurance agents, farmers, realtors, retirees and others, all of whom contribute to economic growth, job development, and consumer protection. Insurance chairs seek the participation of insurance agents on their committees because they represent the interests of their consumer-customers. The same goes for lawyers, who can offer their knowledge as attorneys representing a range of clients -- school boards, family-owned businesses, accident victims. These legislators bring knowledge and know-how to the table. The legislative process is better because they are there. Indeed, all legislators are consumers of insurance and insurance services.

It is up to the legislatures and the legislative houses in each state to set their own rules regarding the affiliations of their members.

NEWS

American Insurance Association
1130 Connecticut Avenue, NW
Suite 1000
Washington, DC 20036

FOR IMMEDIATE RELEASE

CONTACT: Damon Thompson
202-828-7149

AIA QUESTIONS CONCLUSIONS OF CFA STUDY ON STATE LEGISLATORS, INSURANCE INDUSTRY

WASHINGTON -- The American Insurance Association Thursday questioned the conclusions of a study by the Consumer Federation of America that criticized "professional linkages" between state legislators and the insurance industry.

In the report released Thursday, the CFA cited the supposed "linkages" in recommending "a ban on legislators acting on any matter in which they have an interest." It rated 10 states according to their existing conflict of interest laws and the percentage of insurance-related professionals who serve in their legislatures.

"The CFA's conclusions don't hold water," said AIA President Robert E. Vagley. "They praise the ethical standards of legislatures in Massachusetts and California, whose citizens pay the 4th- and 8th-highest average combined automobile insurance premiums in the country. But they lambaste the ethical standards in Missouri and North Carolina, where the average premiums rank 34th and 45th, respectively."

"If anything, this makes the case that states like Massachusetts and California could use a little expertise from the insurance industry within its legislatures," he said. "I doubt that people in North Carolina or Missouri would trade their insurance rates for those in California or Massachusetts."

Vagley said it was unfair to single out the insurance industry in a study of

-more-

supposed "professional linkages."

"How in the world can the CFA keep a straight face and single out insurance professionals, who account for a mere 3.2 percent of the state legislative posts nationwide, while lawyers make up 15.5 percent, business owners comprise 12.3 percent, farmers constitute nearly 8 percent, and teachers account for nearly 6 percent?" he asked, citing figures from the National Council of State Legislatures.

Vagley said insurance consumers could be adversely affected if legislators with professional backgrounds in insurance aren't allowed to vote on insurance matters while trial lawyers are still permitted to vote on them.

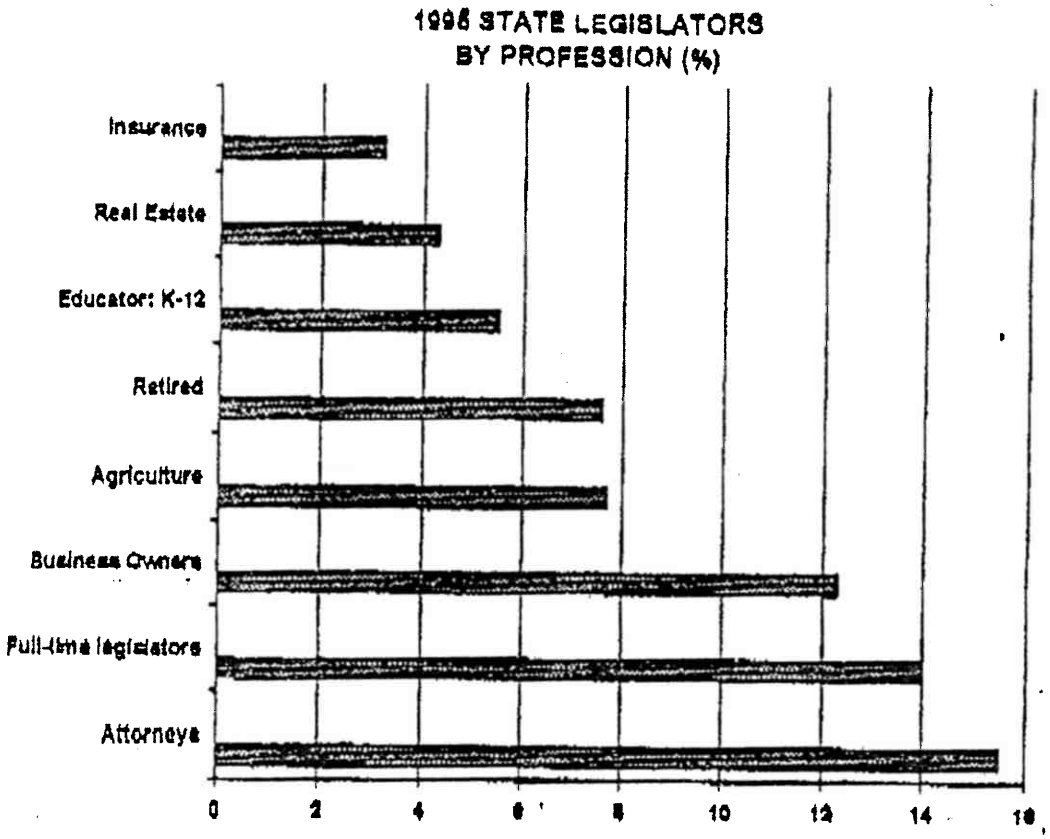
"Letting trial lawyers vote on issues concerning liability and punitive damages without any representation from the insurance industry is like putting Dracula in charge of the blood bank," Vagley said.

He questioned why the CFA and Common Cause, who also took part in a news conference Thursday to unveil the CFA study, didn't go one step further and look into legislators who receive campaign contributions from political action committees who share the same professional background as the legislators. He said trial lawyer PACs in California, Illinois, and Texas in 1994 gave a total of nearly $1.4 million in campaign contributions to legislative races in those states. AIA's PAC gave only about $77,000 in the same three states in 1994.

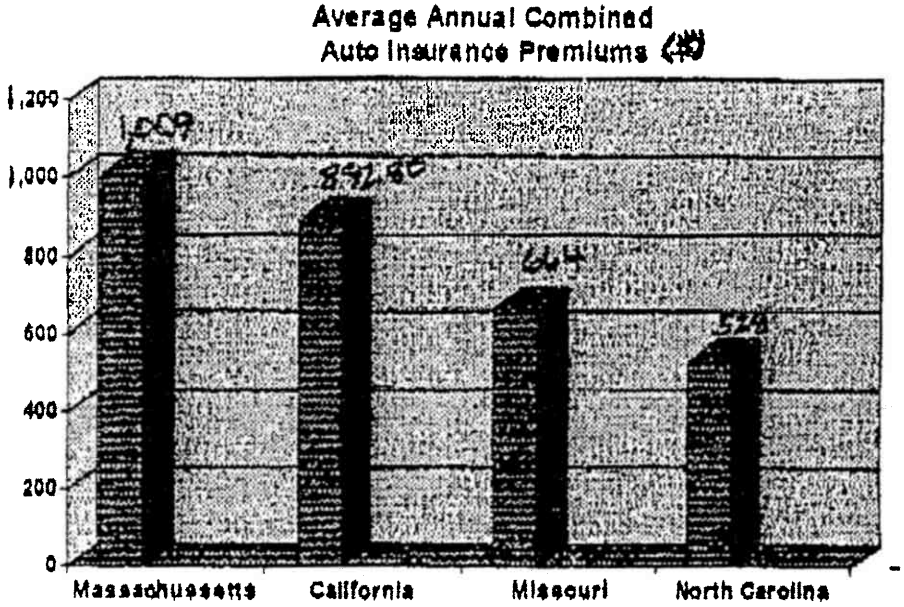
"The AIA supports reasonable and effective ethics legislation for members of our state legislatures," Vagley said. "But any ethical restrictions should be applied across-the-board to all legislators, not by singling out one particular group."

# # #

The American Insurance Association represents more than 270 property-casualty insurance companies. Nationally, AIA companies employ more than 150,000 people, write $60 billion in premiums, and pay nearly $2.2 billion in state taxes and licensing fees each year.



[1]



[2]

---

[1] SOURCE: NATIONAL CONFERENCE OF STATE LEGISLATURES
[2] AMERICAN INSURANCE ASSOCIATION, 1993

Consumer Federation of America

For Immediate Release
August 31, 1995

Contacts
Scott Beatty, 202-737-0766
Lori Shinseki, 202-736-5770

MANY STATE LEGISLATORS ON INSURANCE COMMITTEES WORK FOR INSURANCE INDUSTRY

Need For Conflict-of-Interest Laws Documented

Washington, DC -- A study of state legislators serving on committees that write laws regulating the insurance industry finds that nearly one in five receive income from the insurance industry. The report was released at a press conference held here today by the Consumer Federation of America (CFA) and Common Cause.

The study surveyed ten states comprising more than half of the nation's population. It found that at least 52 of the 278 legislators (19%) have professional affiliations with the insurance industry. 38 of these legislators were insurance agents, 12 were attorneys in law firms with a substantial insurance practice, and two had other fiduciary relationships with insurance companies. The report likely understates the number of legislators with industry affiliations since employment information was not available for many of the 278.

The percentage of legislators with conflicts ranged as follows:

California	0.0%	Ohio	21.2%
Massachusetts	0.0	Texas	25.0
New York	8.6	Florida	30.6
Pennsylvania	14.7	No. Carolina	36.0
Illinois	15.2	Missouri	36.8

"Legislators who are employed by an industry should not be writing the laws to regulate that industry, that's plain common sense," said J. Robert Hunter, Director of Insurance for CFA. "The massive conflict-of-interest finding casts doubt on the entire insurance regulatory process and must be redressed."

Hunter, who previously served as Federal Insurance Administrator and Texas Insurance Commissioner, has personally observed the effects of these conflicts. "I have seen conflicted legislators introduce and push bills supplied to them by companies they represent. I have also seen them lobby other legislative bodies without disclosing their conflicts."

-more-

Reforms Advanced

CFA and Common Cause will be pursuing opportunities in state legislatures to pass conflict-of-interest laws. "Conflicts of interest by legislators compromise the legislative process and erode public confidence in government," said Ann McBride, President of Common Cause. "But as this new study of insurance legislators confirms, strong conflict-of-interest laws can make a difference and provide models for the rest of the nation."

Key elements of model legislation that CFA and Common Cause are pursuing are clear disclosure by government officials of their economic interests and sources of income, requirements for legislators to abstain from participating in any official action on specific matters affecting their personal financial standing, prohibitions on legislators receiving compensation for representing certain groups before state agencies they oversee, and independent enforcement requirements with stiff penalties.

NCOIL Criticized

The report also criticized a group of legislators known as the National Conference of Insurance Legislators (NCOIL) as being tightly connected to and dependent on the insurance industry for financial support. It revealed that four out of five recent presidents of NCOIL had insurance industry ties, that one-quarter of the total NCOIL leadership was connected financially to the industry, and that an Industry Advisory Committee exists that consists of insurance companies and other industry affiliates that participates in seminars and raises funds for NCOIL.

"NCOIL is so intertwined with the industry and so apt to support every industry position that it is a classic wolf in sheep's clothing whose statements should be viewed with caution," said Hunter, who co-authored the study with Miranda Sissons.

Study Has Broader Implications

"Our report raises important questions about the ability of some state legislators to make disinterested public policy," said Stephen Brobeck, CFA Executive Director. "Not just insurance agents, but also real estate agents, trial lawyers, and attorneys representing private interests should recuse themselves from legislative matters affecting their interests."

In the future, CFA will examine state legislator conflicts of interest involving industries other than insurance.

CFA is a non-profit association of some 240 pro-consumer groups that was founded in 1968 to advance the consumer interest through advocacy and education. Common Cause is a 250,000-member nonpartisan citizens' lobbying group which believes in open, accountable government and the right of all citizens to be involved in helping to shape our nation's public policies.

Common

FOR IMMEDIATE RELEASE:
Thursday, August 31, 1995

CONTACT: Jackie G. Howell
Lori Shinseki

STATEMENT OF COMMON CAUSE PRESIDENT ANN MCBRIDE ON CONSUMER FEDERATION OF AMERICA STUDY OF STATE LEGISLATORS AND INSURANCE CONFLICTS OF INTEREST

On behalf of Common Cause, I am pleased to join Bob Hunter and Stephen Brobeck as the Consumer Federation of America releases this important new study of conflicts of interest – a study which focuses on state legislators who serve on insurance committees while working as insurance agents or attorneys for insurance companies.

This is a time of profound crisis of public confidence in government. Conflicts of interest on the part of public officials as well as corrupt campaign finance systems have played central roles in undermining public trust in government officials and institutions. Too many Americans believe that public officials operate not in the interest of the public, but on behalf of special interests and for their own personal financial gain.

At the state level in particular, where legislators frequently hold outside positions in the private sector, their outside activities often conflict with their public duties. Without comprehensive conflict-of-interest laws, legislators are free to act in matters involving their personal interests, compromising the legislative process and eroding public confidence in government.

But as this important new study confirms, strong conflict-of-interest laws can make a difference and provide useful models for the rest of the nation.

This report concludes that the proportion of legislators with industry connections is related to the strength and provisions of each state's conflict-of-interest laws. Those states with stronger conflict-of-interest laws have the lowest proportion of legislators with conflicts. Those states with the highest proportion of conflict have relatively weak laws. Although there are many factors which influence the proportion of legislative conflicts in each state, among the most important are strong financial disclosure requirements and requirements for legislators to abstain from participating in particular matters where they have a financial interest.

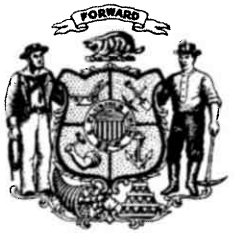
These provisions are detailed in our model conflict-of-interest bill which can play an effective role in laying out a clear, enforceable conflict-of-interest statute, administered by an effective and impartial body and reinforced by a range of stringent penalties. Common Cause organizations have been deeply involved for many years in state efforts across the country to strengthen ethics laws and to enact strong conflict-of-interest statutes.

The fundamental goal of any conflict-of-interest statute is to prevent public officials from abusing -- or appearing to abuse -- the power and status of public office for private gain. As former Watergate Special Prosecutor and Common Cause Chair Archibald Cox stated, "A free society depends upon a high degree of mutual trust. The public will not give that trust to officials who are not seen to be impartially dedicated to the general public interest ... nor will it give trust to those who present government as the place where one feathers his own nest, exchanges favors with friends and former associates, and takes good care of those who provide the campaign contributions for the next election."

We commend the Consumer Federation of America for this outstanding study and look forward to working with the CFA in states across the nation to enact strong ethics and campaign finance laws.

# # #


WISCONSIN STATE LEGISLATURE


FORWARD

State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Tommy G. Thompson
Governor

Josephine W. Musser
Commissioner

121 East Wilson Street
P.O. Box 7873
Madison, Wisconsin 53707-7873
(608) 266-3585

September 14, 1995

SEP 15 1995

The Honorable C. Robert Brawley
Chair, AFI Commerce and Commun. Committee
1020 Oak Ridge Farm Road
Mooresville, NC 28115

FILE

Dear Representative Brawley:

Thank you for your recent letter discussing the NCSL resolution regarding the National Association of Insurance Commissioners (NAIC). As you may know, I have been an active proponent in encouraging an open dialogue and a constructive review of NAIC activities.

Your letter mentioned a point that I feel is key to our discussions on the NAIC. That point is the goal of strengthening state-based insurance regulation. The NAIC was founded to serve as a vehicle to *assist* state-based regulation, and that remains my goal for the organization.

During my tenure, I have encouraged further public openness and understanding of the NAIC budget process and other meetings.

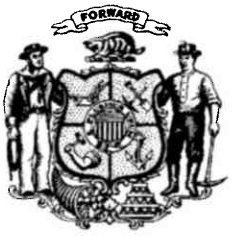
I look forward to continued communication between NSCL, NCOIL, NAIC and other interested parties and the establishment of a legislative advisory committee.

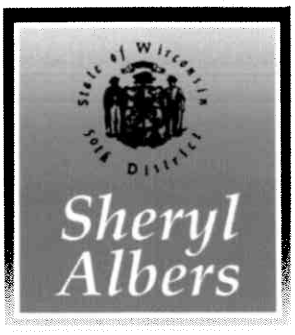
Best Regards,

Josephine W. Musser
Commissioner of Insurance

cc: Honorable Lee Douglas, Arkansas Commissioner of Insurance
Honorable Brian Atchinson, Maine Superintendent of Insurance
David B. Simmons, NAIC Executive Vice President
Honorable State Senator Peggy Rosenzweig, Chair, Senate Committee on Insurance
Honorable State Senator Dale Schultz
Honorable State Representative Sheryl Albers, Chair, Assembly Committee on Insurance Securities and Corporate Policy


WISCONSIN STATE LEGISLATURE


FORWARD



TO: Assembly Insurance, Securities and Corporate Policy Committee Members

FROM: Representative Sheryl Albers

RE: NCOIL-Chicago July 28-30, 1995

DATE: October 11, 1995

Attached please find a copy of a sample letter regarding the topics addressed at the National Conference of Insurance Legislators in Chicago July 28-30.

I am sending you this letter for your information.

Office: P.O. Box 8952 • State Capitol • Madison, WI 53708–8952 • (608) 266–8531
Message Hotline: (800) 362–9472

Home: S6896 Seeley Creek Rd.• Loganville, WI 53943 • (608) 727–5084

DRAFT

(date)

Dear (Speaker/Majority Leader/Chairman):

This will report to you on the NCOIL seminar and meeting which I attended in Chicago on the weekend of July 28-30.

More than 200 state legislators, legislative staff persons and insurance industry representatives, representing 33 states from Hawaii to Florida, attended the three-day weekend meeting.

The topics addressed at committee meetings and general sessions included

- domestic violence as a consideration in life insurance underwriting;
- genetic testing issues in life insurance;
- proposed federal initiatives to eliminate barriers that separate insurance from banks;
- the draft proposed National Association of Insurance Commissioners (NAIC) Model Stop-Loss Act;
- interstate compacts as a means of strengthening state insurance regulation;
- the draft proposed NAIC model investment law;
- a comprehensive state insurance anti-fraud model law;
- a proposed state model natural disaster insurance law which could cover earthquakes, hurricanes and other natural disasters;

- the NAIC - what it is and how it works: the NAIC's accreditation program, its budget and proposed state government oversight of the NAIC;

- "pure no-fault" auto insurance;

- managed care applications in auto and workers' compensation insurance; and

- crop insurance.

LIFE INSURANCE ISSUES

The NCOIL Life Insurance Committee heard a presentation by a representative of the American Council of Life Insurance (ACLI) on domestic violence as a consideration in life insurance underwriting. The representative said ACLI policy was that life underwriters consider only the physical or mental condition of prospective insureds, regardless of whether or not the condition may or may not have resulted from domestic violence.

Legislators also heard an in-depth panel discussion of critical and serious issues related to genetic testing. Genetic testing has the potential of predicting an individual's likelihood for contracting specific terminal illnesses. With this subject comes large questions relating to life and health insurance underwriting and individual privacy rights. NCOIL will cover this issue on an ongoing basis.

BANKS IN INSURANCE ISSUES

The NCOIL State-Federal Relations Committee reaffirmed an earlier statement made in a letter to the U. S. Comptroller of the Currency, regarding the pre-emption rule on insurance activities of national banks. The statement was presented in a letter forwarded to the Comptroller on March 26 asking that the Comptroller not issue a preemptive rule relating to a national bank's insurance related activities.

The Committee also heard a report relating to the bill introduced in Congress by Representative Leach of Iowa to repeal the long-standing Glass-Steagall Act which established barriers between banks and securities.

HEALTH INSURANCE -- THE NAIC MODEL STOP-LOSS ACT

The NCOIL Health Insurance Committee heard a presentation stating that regulation of so-called "attachment points" or "stop-loss" needs to be considered in the context of all the health care insurance reform being enacted by states. More than 20 states have enacted measures to implement a minimum attachment level. It was argued that a minimum $20,000 attachment point, as proposed by the draft NAIC Stop-Loss Model Act,

would be out of the reach of medium and smaller size employers. At the same meeting, the Vermont Insurance Commissioner argued that the $20,000 attachment point was appropriate. She said that the level was based on actuarial studies.

INTERSTATE COMPACTS

Momentum is building for the adoption by more states of the NAIC Midwest Zone-NCOIL Insurance Receivership Compact. The NCOIL Task Force on Interstate Compacts reported that Nebraska, New Hampshire and Illinois have already enacted the Compact. The same legislation awaits the Governor's signature in California and is up for active consideration in Indiana, Louisiana, and Texas.

At the same meeting, the Task Force agreed to support a Congressional Resolution introduced by Representative Moorhead of California, encouraging the states to adopt interstate compacts as a means of coordinating state regulatory efforts in those areas and as a way to make state regulation stronger, thereby precluding Congressional initiatives aimed at increased federal regulation.

NAIC MODEL INVESTMENT LAW

A special NCOIL Task Force heard a detailed presentation on the developing draft NAIC Model Investment Law which would be aimed at establishing a uniform state law governing insurer held investments. Legislators learned that several issues related to the model remain unresolved, including those relating to real estate and mortgages, securities and lending and sales of mutual funds. The proposed model would offer billions in investments.

The same legislators received a document tracking comments made on the developing draft model bill by state officials outside the NAIC working group, insurance industry representatives and members of the public. (It is designed to be read with the August 17, 1994 version of the Model.)

Legislators learned that the NAIC intended to adopt the Model at its meeting this December. Insurance industry representatives expressed concern over the cost impact of the Model.

INSURANCE FRAUD

The NCOIL Executive Committee adopted, as an NCOIL model, a comprehensive state insurance anti-fraud model act proposed by the Coalition Against Insurance Fraud. Among its unique features are provisions which would:

-- cover all forms of insurance fraud, including those relating to claims, underwriting, premium finance, and insider dealings;

- expand the definition of fraud in most states to include attempted fraud as a crime;

- provide for both criminal and civil remedies;

- include sham operators within the definition of an insurer in order to facilitate their prosecution;

- aim at the leaders of fraud rings who shield themselves from prosecution and civil suits for their scams;

- increase penalties for repeat offenders;

- provide for review and revocation of licenses of doctors and other professionals convicted of insurance fraud;

- grant broad immunity to allow for an exchange of information between insurers and law enforcement, as well as between insurers themselves;

- establish a state funding mechanism for the investigation and prosecution of insurance fraud, as well as for educating consumers on fraud;

- establish regulatory requirements for insurers to establish anti-fraud plans that would include fraud warnings and funds for hiring anti-fraud professionals; and

- cover frauds whether generated through written documents, by computer or the spoken word.

The NCOIL Insurance Fraud Committee heard a comprehensive report on title branding -- the recording of descriptive terms on a title which indicate whether a vehicle sustained serious damage or was stolen. According to the National Insurance Crime Bureau (NICB), loopholes in titling and branding laws allow unscrupulous rebuilders and dismantlers to "wash" titles, obtain clean titles and then sell rebuilt vehicles. One analysis showed that vehicles registered in California, Florida, Indiana, Massachusetts, Michigan, Texas, and Virginia had in fact been reported as salvage, stolen or exported. The NICB solution: a national database. According to the NICB, inquiries to the database could determine if out-of-state vehicles involved in a title transfer had been declared salvage or stolen.

The same Committee also heard extensive reports of workers' compensation insurance fraud legislation in Illinois and California.

PROPOSED STATE NATURAL CATASTROPHE MODEL ACT

The NCOIL Property-Casualty Insurance Committee adopted a proposed model law which would establish a reinsurance catastrophe fund to cover insured losses from natural disasters. The model would allow a state to set up the fund to cover the kind of natural disasters most likely to occur within its state or region, e.g., the California version of the model could cover earthquakes; the Florida version could cover hurricanes. The proposal would require all insurers writing non-commercial residential coverage in the state to participate in the fund. The proposal is based on a Florida statute enacted in the wake of Hurricane Andrew and revised this year. One unique feature of the Florida Fund: premiums paid to the fund are exempt from U.S. income taxes. States enacting the model could apply for a similar exemption.

NAIC

The NCOIL Executive Committee put over consideration of a report entitled: "The NAIC Accreditation Process: A Background Review." The report had been adopted by the NCOIL Task Force on Insurer Solvency at its meeting in Orlando in March. The report was prepared under the auspices of the Insurance Legislators Foundation. The Executive Committee deferred consideration of the report to allow the Committee time to consider comments and recommendations for changes in the report in response to a point-by-point critique forwarded to NCOIL by the NAIC President. At the same time, the Task Force and Executive Committee adopted a resolution memorializing the findings of the report and accompanying recommendations. The same document resolved, among other things, that

- the Executive Committee of the National Conference of Insurance Legislators call upon the NAIC to continue efforts aimed at reform of its policies and practices, especially those found to be usurpative of constitutional guarantees,

- the NAIC amend the sanctions provision of its Model Law on Examinations,

- the NAIC make full public account as to the sources and disbursements of all its funds as of January 1, 1996,

- the NCOIL Task Force on Insurer Solvency consider active support of

  - state laws to review and oversee the budget and activities of the NAIC,

  - establishment of a multistate legislative commission to review the budget, accreditation and other specific activities of the NAIC, and

- establishment of an interstate compact to implement the work of the legislative commission and for the general review of NAIC's activities; and

- the NCOIL Task Force direct the preparation of exposure draft documents relating to the establishment of such a commission and such an interstate compact.

AUTOMOBILE INSURANCE

Legislators heard a report on the Hawaii "pure no-fault" bill which passed both houses but was vetoed by Governor Cayetano. The bill would have barred law suits except in cases involving drunk driving or the commission of a felony. The bill was the focal point of a major public relations battle. According to Hawaii lawmakers, the battle will be fought again next year.

A full forum on no-fault, managed care and other issues affecting what motorists pay for car insurance will be aired at the next NCOIL meeting scheduled for San Francisco on November 11-15. The plan is to have interested parties, including those representing the views of the trial bar, doctors, and consumers, participate in the program.

Also heard was a report on a study showing how the relationship between property damage and personal injury claims can vary from state to state. The study showed that every 100 property damage claims produce 75 personal injury claims in Philadelphia while the same number of property damage claims produced 99 personal injury claims in Los Angeles. Also presented was a Rand survey on auto insurance claims and their relationship to insurance rates.

The savings from managed care and peer review were also presented in a brief report.

WORKERS' COMPENSATION

The NCOIL Workers' Compensation Insurance Committee adopted a resolution calling on the states to eliminate statutory and administrative barriers to workers' compensation managed care arrangements. The Committee also decided to consider if legislation is necessary to address workers' compensation coverage of so-called "second injuries."

CROP INSURANCE

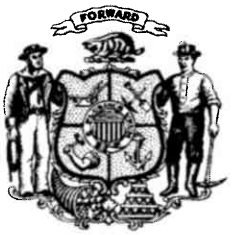
Legislators heard executives of crop insurance organizations complain about unfair competition by federal government employees. The complaints focus on new U.S.

Department of Agriculture rules requiring farmers to insure crops against catastrophic loss in order to qualify for loans or price supports. The new rules allow USDA employees to sell crop insurance in competition with private insurance agents. Previously crop losses were paid directly by the federal government. The USDA allowed its employees to sell the insurance because it feared there were not enough licensed insurance agents to sell the coverage. Insurance people say they can handle it.

NCOIL will pursue coverage of these and other issues at upcoming meetings. Up for discussion at NCOIL's next meeting are viatical settlements, earthquake, hurricane and other natural disaster insurance programs, health insurance reform initiatives and topics sure to be on the legislative agendas in 1996. A program and brochure for that meeting are enclosed.

2000951.doc


WISCONSIN STATE LEGISLATURE


FORWARD

MEMORANDUM

DATE: December 7, 1995

TO: NCOIL Legislators

FROM: Bob Mackin

RE: Recent News Clippings

Enclosed are several news clippings emanating from the recent NCOIL Annual Meeting in San Francisco.

Please let me know if you have any questions.

Legislators Not Waiting for US Disaster Bill

Ncoil Panel Drafts State-Based Model Measure

By MARGO D. BELLER
Journal of Commerce Staff

State insurance legislators, concerned that a federal disaster bill won't pass Congress before the year is out, were expected to approve their own state-based model disaster bill Sunday.

The executive committee of the National Council of Insurance Legislators was scheduled to approve the model bill at the beginning of Ncoil's annual meeting in San Francisco this week.

The proposed law, the Multi-state Catastrophic Fund Act, would allow each state to create a catastrophe reinsurance entity funded by insurance companies. In return, insurers hit by large catastrophe losses could then turn to the state fund for reimbursement of claims paid.

The model law is broadly written to allow states to tailor their funds to cover the different types of catastrophes endemic to their areas. It would have to be approved by each legislature to become effective. The proposal is modeled after the Hurricane Catastrophe Fund created in Florida, which is still reeling from the $15 billion effect of 1992's Hurricane Andrew.

Robert Mackin, a spokesman for Ncoil, said state legislators in disaster-prone areas, pressured by constituents unable to buy insurance at reasonable rates, if at all, could not wait for Congress to act.

"We're not going to turn away federal help," he said. "But at the same time, we just can't sit and wait for the federal government to act. We are still supportive of the concept of a federal disaster bill, but not as the bill exists now."

> 'We're not going to turn away federal help. But at the same time, we just can't sit and wait for the federal government to act. We are still supportive of the concept of a federal disaster bill, but not as the bill exists now.'
>
> -- Robert Mackin, Spokesman for Ncoil

However, under the model bill, once Congress passes the federal plan, states would be expected to recommend to their legislatures ways to either coordinate the state program to the federal one, or close down the state program.

State-picked actuaries would set premium rates for insurers interested in the catastrophe reinsurance coverage. If the fund is inadequate to cover the catastrophe losses after an event, the state would have the power to enter into agreements with local governments to issue revenue bonds to cover the difference.

Unlike the proposed model, which leaves the states in control, the Natural Disaster Act creates a privately funded Natural Disaster Insurance Corp. The NDIC would provide reinsurance to insurers of businesses and multifamily residential structures, and catastrophic-insurance coverage to homeowners.

However, it would then be able to turn to the federal government for loans if there is a shortfall. Insurance and reinsurance rates would be set by an independent group of federally appointed private actuaries.

Jack Weber, executive director of the Natural Disaster Coalition in Washington, who has been spearheading the federal disaster effort, said the federal bill is being modified to give state regulators more of an oversight role over the NDIC. The bill will be the subject of hearings this year before the Senate Commerce Committee and the House Transportation and Infrastructure Committee.

"In general, the question out there is whether states are going to go ahead and pass these types of things," Mr. Weber said. "We've seen that except when almost at death's door, you feel you don't have to deal with this problem. It's great to have a model bill, but a model bill not enacted is nothing more than a piece of paper."

NAIC Secret Meeting Eyes Participation By Legislators

BY L.H. OTIS

SAN FRANCISCO—The National Association of Insurance Commissioners' leadership met in private with representatives of two legislative organizations to discuss creating a formal role for legislative participation in the NAIC policy-making process.

NCOIL, NCSL Reps Meet With Regulators In San Francisco

The meeting was held during the annual meeting of the National Conference of Insurance Legislators.

According to several of those in attendance, attendees at the little-discussed luncheon meeting included: the NAIC's president, vice president, secretary, Washington counsel and several other NAIC members; about 10 members of NCOIL, along with NCOIL's executive director and another staffer; and the National Conference of State Legislatures staffer in charge of insurance affairs.

No individual representing the American Legislative Exchange Council was present, although several legislators in attendance are active in ALEC affairs.

"The meeting was excellent, and something we needed to do," said Neal Osten, NCSL committee director for commerce and communications, which handles insurance.

NCSL, NCOIL and ALEC have all passed resolutions calling for the NAIC to establish a legislative participation or advisory board, and the NAIC has itself committed to giving legislators a more formal participatory role in its process, Mr. Osten said.

The meeting here was an attempt to move forward on the goal of avoiding "a situation where we are, as legislators, at war with another state body," he said.

Although the conversations were preliminary, Mr. Osten said, he believes the parties are "moving more towards a group that meets one or two times a year." The group would "basically talk about where we are going" with insurance legislation and NAIC models, he said.

NAIC Has Committed To Giving Lawmakers A More Formal Role

Another option would be to "bring 15 people to every [NAIC] meeting" but this would be expensive and logistically difficult, he said.

"Obviously it needs to be fleshed out, and that is what we will be working on for the next few weeks," Mr. Osten said. An attempt will be made to get a rough sketch of an advisory board mechanism by mid-December, when both NCSL and ALEC meet in Washington, he said.

Future meetings will be open and announced, Mr. Osten said. The joint meeting was not listed on the NCOIL meeting program or publicly referred to by any speaker during the five-day NCOIL meeting. (At a luncheon speech, Brian Atchinson, NAIC vice president, noted in general terms that he was "happy that plans for a legislative board are going forward.")

Plans for a NAIC-legislative gathering were confirmed only shortly before the NCOIL meeting, Mr. Osten said.

Outgoing NCOIL president, New Hampshire state Sen. Leo Fraser, R-Pittsfield, said "it was just a rap session, that's all it was." Incoming NCOIL president, Florida state Rep. Stan Bainter, R-Tallahassee, said "all kinds of things were thrown out" at the meeting.

Lee Douglass, NAIC president and Arkansas insurance commissioner, called the meeting "impromptu" and "informal." Mr. Atchinson, Maine insurance superintendent, said the meeting was "very informal" with the parties discussing "exactly the sort of things we should be partnering in."

Of future meetings being held in public, he said, "my personal perception is that, yes, it would be a public process."

At least some NCOIL members were unhappy with the secrecy under which the luncheon meeting was conducted.

"I didn't know about it until after the fact," said Vermont state Rep. Virginia Milkey, D-Brattleboro. "I would hope that any future meetings would include all interested parties," said Vermont state Rep. Kathleen Keenan, D-Franklin, chair of the house commerce committee.

Rep. Keenan suggested the reason no Vermont legislators were invited to the closed meeting might be that "we're still making trouble." Vermont still intends to complete NAIC oversight legislation early next year, she said. ◊

To.. Dan Urakas
From: Sheryl Albers

WORKERS' COMP EXECUTIVE

November 20, 1995

National Insurance Lawmakers Group Debates 2nd Injury Funds, Managed Care Resolution

SAN FRANCISCO — More than 200 insurance legislators and industry representatives from across the nation tackled several workers' comp problems during the five-day annual meeting of the National Conference of Insurance Legislators (NCOIL) here last week.

NCOIL's largest of 17 committees, the Workers' Compensation Insurance Committee, examined developments in second injury funds and workers' comp managed care.

Second injury funds, those state-monitored funds intended to aid second-time, permanently injured employees in getting jobs with skittish employers, have become financial black holes for states where the coverage of the funds has been broadened beyond the original intent.

The funds were designed to deal with successive injuries so that, in a worst case scenario, if an employee who is blind in one eye were to lose the other, the employer would be responsible only for the second injury and the fund would pay the remaining benefits. Without such funds, acording to conventional theory, employers would be reluctant to hire anyone with a disability.

NCOIL legislator members from Florida placed the subject on the agenda because "there are those in Florida who have concerns about it ... and there are different groups wanting to do away with it." They wanted to know what was going on in other states and "understood that some states had already done away with their second injury funds."

One Florida state representative addressed the committee and industry representatives at the packed meeting, "We want to know your experience. Was it effective in empowering those who were critically injured? Florida still has it. (But it may not for long.) My opinion is that it has worked well for those who use it. It doesn't work very well for those who don't know how to use it."

He said that the state's larger self-insured employers seem inclined to want to do away with the fund. Most of the smaller employers would rather keep it, he indicated and then asked, "Is there anyone in the room (from a state) where it's been repealed?"

Representative Mary Eberle said, "Connecticut hasn't closed it down completely, but they closed it for all but the true second injury person."

She said that the state left it open "for workers whose employers carry insurance and for workers who work for multiple employers, and the second injury fund would contribute with the employer... We only did it at the end of the last session so it's a little early to tell exactly the influence of it."

Representative Eberle said the lawmakers took action because "we didn't feel it was doing what it was originally intended to do." She admitted that lawmakers had a study showing the fund had a 50-year unfunded liability of $6 billion. "It shocked everyone," she added gratuitously. It also shocked committee members who at first thought she had said $6 million. When she repeated the B word, as in billion, the packed hearing room gave a collective groan.

Buoyed by the increased attention, Representative Eberle continued, "We've aggressively tried to manage those claims. We brought in attorneys to help go after the claims, to identify fraud, to negotiate settlements, to manage cases and to get costs down."

Another Connecticut lawmaker added that he "was involved in pricing the liabilities of the second injury fund. The numbers we saw were $800 million to $2 billion."

The Florida Department of Labor has commissioned Milliman and Robertson to study the state's second injury fund, one Florida man said, and it is due December 15. He added, "So I would ex-

(1)

pect legislation coming in January from both the house and senate side."

A member of the audience volunteered, "Some states are currently looking to do away with second injury funds by running them off, with the idea that with ADA (Americans with Disabilities Act), there really isn't the need for them."

The ADA does prohibit discrimination in hiring, treatment and termination of employees on the basis of disability. It also restricts potential employers in inquiring about existing disabilities prior to making a job offer. In addition, the ADA requires employers to make reasonable accommodations in the workplace.

A member of the committee suggested the subject be explored in more detail at NCOIL's March 14-17, 1996 meeting in Washington, DC. "It may just be," he said, "that they (second injury funds) are being rendered unnecessary today by the ADA. If the ADA says you have to hire somebody anyhow, then do you need a second injury fund at all?"

The committee agreed that each member should submit questions about ADA and second injury funds to NCOIL Executive Director Robert Mackin 45 days before the March meeting in Washington, DC.

The committee also discussed inviting noninsurance types to participate at meetings including organized labor, the trial bar and the business community. Adrienne Fleming of Special Agents in Florida recommended that the committee hear from agents as well as business, labor and lawyers. "There are a lot of employers," she said, "as agents well know, who avoid hiring people with disabilities."

NCOIL's Mackin suggested that the committee hold its next session on second injury funds at the Minnesota meeting (July 18-21). "Maybe Washington would not be the place to have a workers' comp discussion. Washington is a place for discussions on health insurance, Super Fund and subjects like that."

At the end of last week, while in his Albany, NY, office Mackin advised the *Executive* that the second injury funds are "bound to be discussed in some depth in Washington, DC, but a fuller (discussion) may be held in Minnesota because of all the interest in workers' comp out there."

The committee also briefly discussed a draft resolution on workers' comp managed care that had been in process for some time. One committee member was concerned about how the resolution would affect a "state that had its own subsidized system?"

The short response was that it would in no way affect any state, that it was only a resolution.

The long version was given by a Kentucky legislator:

"What we're doing here is...we're saying if you pass legislation dealing with managed care, here are the principles you should look at in adopting managed care. And that if you do adopt managed care in your state, then you are going to be able to affect one of the major cost drivers in the system. It's a very generic type statement. It doesn't get into anything statutory that you would need to pass."

The version of the resolution presented to the committee last week follows:

NCOIL Proposed Discussion And Exposure Draft Resolution On Workers' Compensation Managed Care

WHEREAS, state workers' compensation laws are a critically important form of social insurance, and

WHEREAS, workers' compensation covers all reasonable and necessary medical treatment for injured workers on a no-fault basis, and

WHEREAS, the availability of affordable workers' compensation insurance coverage for employers is threatened unless medical costs can be controlled, and

WHEREAS, managed care approaches such as expert medical provider networks, utilization review, case management, treatment protocols, pre-authorization, and second opinions are proven and accepted techniques for providing workers high quality care at an affordable price under other medical payment systems and under many state workers' compensation laws, and

WHEREAS, workers' compensation managed care programs which offer workers a choice of physicians without requiring workers to pay deductibles or co-payments or imposing dollar or time limits on medical coverages coupled with return to work and enhanced safety programs can maintain high levels of patient satisfaction while significantly reducing costs.

NOW, THEREFORE, BE IT RESOLVED THAT the National Conference of Insurance Legislators calls upon state legislatures to eliminate needless statutory and administrative barriers to workers' compensation managed care arrangements.

The committee passed the resolution without a dissenting vote. After the meeting Representative Steven Geller (D), Ft. Lauderdale, Florida was named the new chairman of the Workers' Compensation Insurance Committee. ▲

(2)

WORKERS' COMP
EXECUTIVE™
A SEMIMONTHLY PUBLICATION FOR THE WORKERS' COMP EXECUTIVE

Predicts More Change In W/C Next 5 Yrs Than Last 80

Pasqualetto Shares Marketplace Realities With NCOIL

SAN FRANCISCO — John Pasqualetto, CEO of Great States Insurance Company, recently shared a bit of reality about 24-hour coverage with more than 200 state insurance legislators attending a general session at the annual meeting of the National Conference of Insurance Legislators.

Participating on a panel on emerging issues, Pasqualetto said, "The reality is we're a long way from any kind of 24-hour program, and I speak to you as a practitioner of that." Pasqualetto's company, one of the smaller writers of workers comp in California, is a member of what he termed an economic family" that includes an HMO (FHP) and a life insurer. "And what we do is called a coordinated approach."

He continued, "The theory is that the integration of workers' compensation with group health will produce administrative efficiencies. It will also act ... as a promoter and a funder of universal health care."

The real key issue of the 24-hour program, he declared, has to do with integrating both the on-the-job and the off-the-job illnesses and injuries. It has to do with integrating the off-the-job and on-the-job disability, and providing a seamless network under which employers provide a sound package for their employees in promoting their overall wellbeing.

The issues of interest to legislators and regulators should not only be what is going on in the contract, but also what the costs are related to that, he said.

"The real key issue in my mind," he emphasized, "is what in fact happens on the productivity side? Because when an injured worker is off - or when a worker is off because of a nonoccupational injury, the injured worker is not on the job. The employer does not have that individual around to do the work that they were trained to do, and consequently there is a loss of productivity.

"So one of the theoretical benefits of 24-hour," he suggested, "is that when you start thinking about group health and workers' comp together, your whole dynamic changes. Your paradigm changes. You start thinking about productivity as a total, not whether a lack of productivity results rather from being an on-the-job injury which is a legal concept or an off-the-job injury."

In looking at the reality of the integration, Pasqualetto said that the value at this time is in the coordinated coverage. He says that does work. The coordination between group health and workers' compensation being done through a "managed care UR nurse or a managed care occupational nurse who manages the overall medical costs of the claim but does not do so in isolation."

He said that nine states have some form of pilot program going on 24-hour and the NAIC (National Association of Insurance Commissioners) has a model act which deals with 24-hour in a very specific fashion.

"But don't forget, and I support what the NAIC has done, the NAIC is taking a phased approach," he explained. "They require the data be separated. They require that the individual approach both for work comp and group health be maintained so that we can measure the results.

"In our experience in combining the products in a coordinated way, and we certainly recognized that the medical dynamic is different, workers' compensation is a disability system first and a health care system second. There are definite dynamics that are different. There are different occupational providers in a real sense."

He said that the marketplace has responded, and in a sense it responded to the customers. There appears to be an intuitive attraction to 24-hour which he does not feel will go away.

Pasqualetto stressed that he does not favor "carving out medical under workers' compensation and dropping it into the medical side, because I think that you (make a mistake when you) separate disability management from medical recovery and after all the direction of the workers' comp system is return to work.

Managed Care

The carrier CEO switched topics to another emerging issue, managed care in workers' comp, which he said is here to stay. He added that there are "a tremendous amount of techniques that have long been practiced on the group health side that can be inboarded to the workers' comp side."

He stressed that workers' comp "is the last gold card in fee-for-service medicine, and it's about time that we addressed that. The real key issue in controlling the cost of workers' comp is controlling utilization review. And a major plus in producing that utilization review has to do with improving the quality of the care. I honestly believe that the managed care option does provide an opportunity to reduce costs and improve quality."

He said that the public policy question with respect to managed care is very similar to what it is on the health side and that is: How much choice do you allow in the system?

Generally, labor is opposed to the company doctor, he suggested, because it tends to limit the medical services to which they feel entitled. And, of course, employers want to have control and be able to use managed care techniques.

He introduced the subject managed care organizations or MCOs which have had their best success, in his opinion, in Oregon. California has its counterpart, the Health Care Organization or HCO. They are essentially HMOs "in work clothes" in that they provide credentialing and provide the kind of counseling and review that has "oversight by the regulators on the claim side but also allows employers enhanced control."

In California, the law allows the HCO, he said, to provide the employer with as much as 365 days worth of medical control from the date of the injury. "Actually about 180 days of medical control probably would suffice," he said.

De-regulation

"Finally, I would like to talk about the trend in open rating," Pasqualetto added. "Or you could refer to it as de-regulation in workers' compensation's long history of social insurance. And the regulators of that social insurance have been loathe to allow the free market to set the price.

"I think open rating is quite an event, but I also believe that it has some substantial imports that need to be dealt with. First of all in California we see the advent of rates dropped as much as 40 to 60 percent since January 1, 1995. I think those rates are probably not responsive to the underlying costs. As a matter of fact we know that rates are down to 1986 levels."

On the other hand he said with respect to the discipline in the system, once the carriers learn how to deal with open rating, "I think it is going to be a better mousetrap."

there is no evidence suggesting that de-regulation has resulted in a lower workers' compensation cost

For regulators, he said, it represents solvency challenges. "For competitors it represents a need to be disciplined, not to go marketshare crazy just because you know that's the price to beat." One message he wanted to stress about open rating was that, according to one study, there is no evidence suggesting that de-regulation has resulted in a lower workers' compensation cost."

He said "there is in fact considerable evidence that de-regulation has little impact on cost indicating that state's should not use pricing regulation over the workers' compensation insurance market or lack thereof as a major influence in the cost of workers' comp."

Pasqualetto said that simply says is that you still have to deal with the underlying cost drivers. You can't simply deal only with the pricing model.

In concluding, he said that "the HMOs, the health care sector of this country do represent a tremendous opportunity for additional capital to the business, (as well as) a lot of creativity..., and I pose to you that you will see more change in workers' comp in the next five years than you saw in the last 80 years...and a lot of that change will be driven by the health care sector." ▲

NCOIL Pres. Seeking March On D.C.

BY L.H. OTIS

Streamlining the structure of the National Conference of Insurance Legislators, continuing a constructive dialogue with the National Association of Insurance Commissioners and taking NCOIL priorities directly to legislators on Capitol Hill this spring are all key components of the hit-the-ground-running plan being implemented by newly-elected NCOIL President Stan Bainter.

Florida state Representative Bainter, R-Lake, has already instituted a simplified NCOIL committee structure in hopes that the organization can concentrate its limited resources more effectively.

The next several months will then be taken up with organizing a "march on Washington" by NCOIL members, to coincide with NCOIL's spring meeting in the capital on March 14-17, he said.

Rep. Bainter has been a member of the Florida House of Representatives since 1986, and now serves as Republican Floor Whip and on the House Insurance Committee. Before becoming a legislator, he was chief executive of the Lake County Agency of Farm Bureau Ins. Cos. in Florida.

Rep. Bainter outlined some of his plans in remarks made at the recent annual meeting of NCOIL in San Francisco and in an interview with the *National Underwriter*.

Of the spring meeting in Washington, Rep. Bainter said "the main emphasis will be on NCOIL members taking our programs to the Hill," including a federal catastrophe fund and various health care issues.

"...we're going to attempt, and I have a good feeling that it'll work, to do this jointly with the NAIC," he said.

"We want every state represented with their [insurance] commissioners and with at least a legislator," he added, noting NCOIL intends to reach out to states which have no NCOIL members to participate in the "march."

Rep. Bainter's ambition for this Capitol Hill lobbying campaign is exemplified by his comparison of NCOIL's effort to the recent "Million Man March" by African-Americans on Washington.

Calling it "the NCOIL-NAIC march," he sees it as a forum for state legislators and regulators to gather en masse in Washington and highlight their interests for insurance legislation and regulation to federal legislators.

Rep. Bainter said he has yet to formally approach the NAIC about such a collaboration. He said he will contact NAIC Vice President Brian Atchinson, who is in line to be elected NAIC president, to obtain his approval.

But noting a very upbeat lunch speech on NAIC/NCOIL relations Mr. Atchinson delivered at the NCOIL meeting, Rep. Bainter said: "I can't imagine after his talk he can turn us down."

For his one-year tenure as NCOIL president, Rep. Bainter intends to focus on both specific and broad issues pertaining to insurance governance. As an example of the former he cited the need to examine the practices and oversight of viatical companies, noting that NCOIL intends to hold a public hearing on viatical practices (in which life insurance policyholders with catastrophic or life-threatening illnesses, most often AIDS or cancer, get lump sum payments from a company in return for signing over their life insurance death benefit).

Rep. Bainter said he also wants to approach insurance oversight in general with a fresh eye, with NCOIL considering questions such as "how much regulation is enough?" and how to keep state regulation small and efficient.

"Conceptually, this is what NAIC should play the biggest role in, is holding down the necessity for large state [insurance] departments," Rep. Bainter said.

When asked wasn't this the "bargain" to the states the NAIC has presented itself as, Rep. Bainter replied, "but you see here again now, that gets dangerous to have all of that power in one place without any oversight."

While noting that "certainly there hasn't been a marriage yet," Rep. Bainter said significant strides continue to be made in repairing NCOIL's formerly strained relationship with the NAIC.

The NAIC has "offered the olive branch" to NCOIL and "you'd have to be out of your mind not to recognize their willingness to have us join in" their process, he said.

"I believe the NAIC has recognized that they have been cranking out too much stuff for any state to try to keep up to date with," he said.

If Mr. Atchinson, Maine's insurance superintendent, becomes the NAIC's president later this month, Rep. Bainter said he would be heartened because Mr. Atchinson has shown a real willingness to discuss and bridge differences with state legislators.

Rep. Bainter said he also intends to push NCOIL to coordinate more with other organizations of state legislators, such as the National Conference of State Legislatures and the American Legislative Exchange Council.

"We've just not done a good enough job of letting them know what we are doing. We haven't been interested enough to see what they are doing," he said.

At NCOIL, Rep. Bainter said he had eliminated all task forces and has consolidated NCOIL's committee structure, including one State-Federal Committee which will contain all NAIC related issues such as NCOIL-NAIC liaison, solvency regulation, interstate compacts and the model investment law.

Other NCOIL committees will oversee property-casualty insurance, workers' compensation, health insurance, life insurance, as well as NCOIL internal affairs, he said.

To improve productivity at these committees, Rep. Bainter has also instituted a structure where each committee will have a chair, a vice-chair and a committee coordinator, who will be one of the five NCOIL officers. Under this oversight structure there is a better chance that one of the three committee officers will be present at every NCOIL meeting, ensuring continuity and more in-depth examination of the issues the committee is responsible for, Rep. Bainter said.

By concentrating on the immediate issues before it, Rep. Bainter feels that NCOIL's path will be easily laid out for it in the coming year. "We are going to take this one game at a time," he said. ◊

Stan Bainter

Insurance Lawmakers Seek Collaboration With NAIC Officials

NAIC seeks to mend fences with lawmakers

Regulators and legislators move closer to a partnership, though differences remain

By RODD ZOLKOS

SAN FRANCISCO—At a midyear meeting in Chicago, the National Conference of Insurance Legislators left little doubt about its differences with the National Assn. of Insurance Commissioners and its intention to seek legislative remedies.

At NCOIL's annual meeting last month in San Francisco, state insurance regulators in attendance made a clear statement of their own: They got the message.

As NCOIL members discussed resolutions related to the NAIC's model investment law and proposals for greater state oversight of the NAIC, insurance commissioners spoke in terms of partnership and an eagerness to receive legislators' input on issues deliberated by the NAIC.

"We have taken a number of significant steps over the past year which we think are responses to some of the concerns NCOIL has raised, as well as concerns others have raised," said Maine Insurance Superintendent Brian Atchinson.

Mr. Atchinson, NAIC vp, noted that the regulators' organization has made efforts to be more open—including opening its budget process—and has undertaken an examination of its accreditation process.

"It is an ongoing process," he said of the NAIC reforms. "We know the job isn't over yet."

Later, in a luncheon address at the NCOIL meeting, Mr. Atchinson noted that the room was considerably "warmer" than at its July meeting, leaving little doubt that he wasn't talking about the temperature. "It's amazing what some dialogue can do," he added.

"If there's one word I would look to today following these last few days of discussion it would be 'partnership,' " he said.

"As plainly as I know how to put it, the NAIC and its members. . .value our relationship with NCOIL. Please don't ever believe otherwise," said Mr. Atchinson. "The NCOIL-NAIC link is a crucial link for state insurance regulation."

"We as state insurance regulators need to communicate with our legislative counterparts," he said.

To that end, Mr. Atchinson said he is optimistic that within the next few months the NAIC will develop some sort of guidelines for maintaining that communication.

The new spirit of partnership cited by the NAIC official didn't stop NCOIL members from passing a resolution at the meeting related to the NAIC's model investment law. The resolution approved by NCOIL's Task Force on the Model Investment Law cites a lack of legislative input into the model's development, and calls on state legislatures to scrutinize it closely before passing it.

"Basically, this resolution, as all the members know, is telling the legislators we have not had any input, we've been handed something," said New York Sen. Martin Solomon, D-Brooklyn, the task force chairman. "I think what our resolution is saying is that the legislators would like to participate more in the process in the future," Mr. Solomon said.

New Hampshire Sen. Leo Fraser Jr., R-Pittsfield, the outgoing NCOIL president, described the resolution as "a red flag, that should a model investment law be introduced to any state, that state should be very careful about not adopting it without a hearing."

But Arkansas Commissioner and NAIC President Lee Douglass told the task force that, as with any model the NAIC puts forth, the organization's next step will be to put out an exposure draft of the model investment law, then take comment for at least three or four months.

The earliest a model investment law possibly could be adopted would be March, said Mr. Douglass, who noted it probably would actually be June before the full NAIC membership votes on it.

He also said that the model investment law, if approved, would not be a factor in state accreditation decisions—at least not for the time being.

The NAIC president said he doesn't see the NCOIL resolution as a threat, however.

"I would encourage every legislature to look at everything that's put before them and consider the ramifications of it," he said.

The NAIC president also said that someone from the NAIC would attend NCOIL meeting spring meeting to discuss the draft model investment law and encourage legislators to comment.

"We'd welcome any comment," Mr. Douglass said. "It's premature here to say we'd accept everything you might say, but we'd certainly consider those comments."

Maine's Mr. Atchinson said he was pleased with the "recognition" reached at the November NCOIL meeting that "the model law process is just that. It is a model and it is a process."

Meanwhile, NCOIL's Task Force on Insurer Solvency also continues to weigh the issue of legislative accountability over the NAIC, though the group tabled action on model NAIC oversight legislation.

Vermont Rep. Kathleen Keenan, D-Franklin County, a co-sponsor of NAIC oversight legislation pending in her state (*BI*, Jan. 30), said Vermont will make a presentation on the issue at NCOIL's spring meeting in Washington, D.C., in March.

Rep. Keenan and others suggested that a key stumbling block for now is how to fund state NAIC oversight activities. She suggested, however, that she believes it would be appropriate to spend public money on overseeing the NAIC. "I think oversight expenditures are legitimate public expenditures."

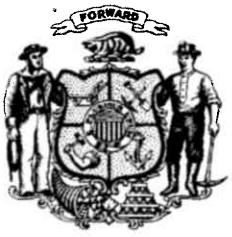
And N.J. Assemblywoman Clare Farragher, R-Monmouth County, chairwoman of NCOIL's insurer solvency task force, said she intends in 1996 to press for passage of the NAIC oversight bill she introduced in her state during the 1995 session.

On the issue of NAIC accountability, Mr. Atchinson told legislators, "I am pleased to tell you we've come a long way. Your criticisms in this area have been largely constructive and we have responded."

Among the other steps it has taken, the NAIC is considering creation of a secretary/treasurer position, he said. "This will put added emphasis on getting information about our financial affairs to our members and to the public."

He also said the NAIC appreciates "continued interest" in the NAIC's accreditation program, and said NAIC membership is looking at making accreditation more "results oriented," and has authorized an operational audit of the program. BI


WISCONSIN STATE LEGISLATURE


FORWARD

State of Wisconsin / Office of the Commissioner of Insurance

Tommy G. Thompson
Governor

Josephine W. Musser
Commissioner

121 East Wilson Street
P.O. Box 7873
Madison, WI 53707-7873
phone: (608) 266-3585
fax: (608) 266-9935

MEMORANDUM

DATE: April 4, 1996

TO: Senate Insurance Committee members
Assembly Insurance Committee members

FROM: Josephine W. Musser, commissioner of insurance

RE: NAIC Spring Quarterly Meeting

The National Association of Insurance Commissioners (NAIC) held its Spring Quarterly Meeting in Detroit, Michigan on March 22–27, 1996. At the spring meeting, approximately 165 meetings were held involving insurance commissioners, legislators, and insurer and consumer representatives from across the nation.

As you know, the NAIC continues to examine not only the issues affecting the various lines of insurance but also its internal administration. The spring meeting provided participants with a forum to review, analyze and discuss the issues at hand.

I am pleased to provide you with the following informational highlights:

NAIC-specific issues

Accreditation

The NAIC accreditation process was created as a means of raising the level of solvency oversight in insurance departments nationwide. At the spring meeting, Arkansas was accredited, bringing the total of accredited states to forty-eight. The NAIC members continue to pursue a comprehensive review of the accreditation program and have postponed the effective dates for eight new accreditation standards until this review is completed.

Organizational Mission

As the face of insurance regulation and the needs of departments, insurers, consumers, and others change, the NAIC remains committed to serving its members – the states. The NAIC members gave final approval to the constitutional change amending the organization's mission statement. The new mission statement is as follows:

> The mission of the NAIC is to assist state insurance regulators, individually and collectively, in serving the public interest and achieving the following fundamental insurance regulatory goals:
>
> 1) protect the public interest, encourage competitive markets and facilitate the fair, just, and equitable treatment of insurance consumers;
> 2) promote the reliability, solvency, and financial solidity of insurance institutions; and
> 3) support and improve state regulation of insurance in a responsive, efficient and cost effective manner, consistent with the wishes of its members.

Health Insurance – specific issues

Individual Health Insurance Market Reforms

The Accident and Health Insurance Committee approved the Individual Health Insurance Portability Model Act. This model:

- provides for the development of "basic" and "standard" health benefit plans for individuals,
- limits the use of preexisting condition exclusions,
- establishes rules regarding renewability of coverage, and
- assures fair access to health plans.

This model act was developed as a companion model act for the Small Employer and Individual Health Insurance Availability Model Act that was approved by the committee last year.

Medical Savings Accounts

Medical savings accounts (MSAs) have gained prominence in recent years and become a tempting option for many employers, employes, and health care providers. The MSA White Paper, which was adopted by the NAIC membership, discusses the issue of whether MSAs keep costs down while providing some choice as to the type of care provided and examines whether MSAs could reduce coverage for those most in need by eliminating the ability to spread the risk.

Health Plan Accountability Standards

Health plan accountability standards are designed to provide state regulators with a means of governing the growing spectrum of managed care organizations. The Accident and Health Insurance Committee approved two new standards:

- the Quality Assessment and Improvement model – requiring all health carriers to develop systems to evaluate the quality of services they provide to their customers,
- the Health Care Professional Credentialling Model – ensures that participating health care professionals meet specific qualifications

Another model returned to the Committee for further public comment and modification: the Provider Network Adequacy and Contracting model, which establishes requirements outlining how doctors, hospitals, and other providers will serve those coverage by managed care plans.

Medicaid Managed Care

With the rapid enrollment of many Medicaid beneficiaries in managed care plans, fierce competition has developed and an enormous new market has emerged. The NAIC membership adopted the Medicaid Managed Care White Paper, which identifies areas of appropriate oversight, such as mechanisms that limit the risk of insolvency, plan selection, and reinsurance or stop loss coverage.

Life Insurance – specific issues

Viatical Settlements

The Viatical Settlements Working Group heard testimony to many states' experiences with viatical settlements during the spring meeting. The NAIC Viatical Settlements Working Group will undertake an actuarial study to determine appropriate minimum payouts for viatical settlements and will consider whether the current model law requires amending.

Insurance – general issues

Insurance Availability and Affordability

The Insurance Availability and Affordability Task Force discussed issues surrounding private passenger auto insurance in urban markets. These discussions will be included in the task force's final report addressing the issues of urban insurance markets. The task force has agreed that market-based solutions should be given first priority and adjusted to meet the different needs of different communities.

Title Insurance

NAIC members approved a new model act designed to promote the solvency of title insurers and to help consumers better understand the extent of coverage provided by a property owner's title insurance policy. The Title Insurance Model Act enhances disclosure requirements, provides limits and definitions for single risks, and contains sections on admitted asset standards and reserves, and has provisions governing minimum capital and surplus requirements.

Other Activity

Information Systems

Discussions continued on the progress of two key initiatives: the System for Electronic Rate and Form Filing (SERFF) and the Producer Information Network (PIN). The SERFF Working Group discussed plans for SERFF pilot program, which will be formally recommended to the NAIC membership at the Summer National Meeting. In addition, the PIN/SERFF Oversight Working Group discussed the status of issues surrounding the establishment of a new entity to manage the two initiatives. Interim meetings were scheduled and decisions on the futures of the two initiatives will be decided at the Summer National Meeting.

If you would like more information on the NAIC or the issues discussed at the NAIC, please contact either Peter Farrow at 608/264-6239 or Melanie Paulsrud at 608/267-9336.