

DRAFT Minutes
Conference call on NCOIL Independent Contractor Model
Held August 24, 2009

Participants at beginning of call (others on later were not indentified):

Working Group Members:

Bill Lacy (NAIC AR)
Walter Horn (NAIC MA)
Bob Wake (NAIC ME)
Alan Wickman (NAIC NE)
Janice Moskowitz (NAIC NV)
Greg Krohm (IAIABC)
Alan McClain (IAIABC AR)
Richard Thomas (IAIABC KS)
Liz Crum (IAIABC PA)

Interested Regulators:

Ryan Sims (WV)
Robin Coombs (NAIC KY)
Bruce Patton (NAIC CT)

Greg Krohm offered a brief background on the origin of the model law and the apparent timetable for NCOIL redrafting.

To begin the call, the question was raised about why the WC and UI definitions of independent contractors could not be coordinated. Ideally, this would be true of coordination with other taxation issues as well. Krohm mentioned that the NAIC/IAIABC Working Group white paper recommended such harmonization of criteria and enforcement efforts. This concept seemed to have a consensus agreement.

Sec 2

- A2 is not consistent with A1. A2 may not be needed.
- Term affiliated is poorly defined
- The carve out of construction for special coverage consideration is appropriate, but creating this exception makes some complex drafting language; this is a major goal that should be stated in the summary
- Three officer exception could “swallow the rule”; coverage should be more universal
- The homeowner exemption for construction needs to be better defined. A clearer exemption for “real” family homeowners, e.g. owner occupied 1-2 unit building.
- Definition of employer needs clarification
- Nine point test should allow for anticipatory filing of FEIN or Schedule C (in the case of start up firms)

- Equipment ownership may not be a good test in those employment contexts where it is customary
- Noted that for some professions payment by the hour of service is standard; the per hour payment should not be construed as proof of employee status

Sec 3

- What is “express liability”? (Seems like a typo)

Sec. 4

- Sworn statements and signatures may not be needed sub C. Insurers use electronic communications to reduce cost; this should be permitted.

Sec 5

- May be no need to force this specific task on carriers in just this way
- Sub D in particular is of dubious value in today’s insurance market

Sec 6

- Too prescriptive and should allow some flexibility to skip an audit if the carrier has good basis for skipping it (business need); after all the carrier is not protected from claims from uncovered workers if they are deemed to be employees
- This is not to protect workers but to level the playing field between employers in the same industry

Sec 7

- Keep the penalties simple function of coverage period illegally avoided; 2x premium seemed to be accepted
- The strong power given to the insurer to issue penalties to their policyholders is not desirable public policy, nor wanted by insurers
- Criminal and civil procedures should not be intermingled; drafting note that criminal penalties may be needed in a separate section.
- \$500 penalty to defray cost of audit deficiencies should be authorized in the rate filing, not in this law.
- Not having to go to court for stop work order is a good idea.

Secs 8, 9, and 10

No comments.

General: Good idea to have such a model. But, not ready for prime time – needs drafting work.

Minutes taken by Greg Krohm