

NATIONAL CONFERENCE  
OF INSURANCE LEGISLATORS  
(NCOIL)

2016 SUMMER MEETING



JULY 14 – JULY 17, 2016  
PORTLAND MARRIOTT DOWNTOWN WATERFRONT  
PORTLAND, OREGON

**NATIONAL CONFERENCE OF INSURANCE LEGISLATORS (NCOIL)**  
2016 LEADERSHIP

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President:	Sen. Travis Holdman, IN
Vice President:	Rep. Steve Riggs, KY
Secretary:	Sen. Jason Rapert, AR
Treasurer:	Rep. Bill Botzow, VT

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**Committee Chairs & Vice Chairs**

Articles of Organization & Bylaws Revision:	Rep. Jerry Klein, ND, Co-Chair Rep. Ron Crimm, KY, Co-Chair
Audit (as per bylaws):	Rep. Steve Riggs, KY, Chair Rep. Don Flanders, NH, Vice Chair
Budget (as per bylaws):	Rep. Bill Botzow, VT, Chair Rep. Kathie Keenan, VT, Vice Chair
Business Planning:	Sen. Travis Holdman, IN, Chair Rep. Steve Riggs, KY, Vice Chair
Financial Services & Investment Products:	Rep. Bob Hackett, OH, Chair Rep. Don Flanders, NH, Vice Chair
Health, Long-Term Care & Retirement Issues:	Asm. Kevin Cahill, NY, Chair Rep. Ken Goike, MI, Vice Chair
International Insurance Issues:	Sen. Dan "Blade" Morrish, LA, Chair Rep. Joseph Fischer, KY, Vice Chair
Life Insurance & Financial Planning:	Sen. Mike Hall, WV, Chair Sen. David O'Connell, ND, Vice Chair
NCOIL-NAIC Dialogue:	Rep. Steve Riggs, KY, Chair Rep. George Keiser, ND, Vice Chair
Property-Casualty Insurance:	Rep. Matt Lehman, IN, Chair Asm. Will Barclay, NY, Vice Chair

State-Federal Relations:

Sen. Robert Hayes, SC, Chair  
Rep. Kurt Olson, AK, Vice Chair

Workers' Compensation Insurance:

Rep. Jerry Klein, ND, Chair  
Rep. Marguerite Quinn, PA, Vice Chair

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#### **Past Presidents**

2015 Sen. Neil Breslin, NY  
2012 Sen. Carroll Leavell, NM  
2011 Rep. George Keiser, ND  
2009 Sen. James Seward, NY

2008 Rep. Brian Kennedy, RI  
2003 Rep. Kathleen Kennan, VT  
2002 Sen. William J. Larkin, Jr., NY

**NCOIL SUMMER MEETING**  
**PORTLAND, OREGON**  
**JULY 14 – 17, 2016**

**THURSDAY, JULY 14TH**

Registration	7:00 a.m.	-	5:30 p.m.
<i>Exhibits Open: 8:00 a.m. – 5:30 p.m.</i>			
Welcome Breakfast/All Attendees/ Includes New Members	8:30 a.m.	-	11:00 a.m.
Special Executive Committee	11:00 a.m.	-	11:30 a.m.
Life Insurance & Financial Planning Committee	11:30 a.m.	-	1:00 p.m.
The Griffith Insurance Education Foundation Legislator Luncheon	1:10 p.m.	-	2:15 p.m.
Telematics: Use of technology and what does it mean for insurance, rates, and privacy?			
Workers Compensation Committee	2:30 p.m.	-	4:00 p.m.
Keynote Speaker – Governor Michael Leavitt	4:15 p.m.	-	5:30 p.m.
Adjournment			5:30 p.m.
Reception	6:00 p.m.	-	7:00 p.m.

**FRIDAY, JULY 15TH**

Registration	7:00 a.m.	-	1:30 p.m.
<i>Exhibits Open: 8:30 a.m. – 5:00 p.m.</i>			
Budget Committee	8:00 a.m.	-	9:00 a.m.
Financial Services & Investment Products Committee	9:00 a.m.	-	10:30 a.m.
Property and Casualty General Session – "Innovation and Disruption: What Does It Mean to the Marketplace and Insurance Industry, What Will it Mean?"	10:30 a.m.	-	12:15 p.m.
Luncheon	12:30 p.m.	-	2:00 p.m.

NCOIL – NAIC Dialogue	2:15 p.m.	-	3:30 p.m.
Health, Long Term Care and Retirement Issues Committee	3:30 p.m.	-	5:30 p.m.
IEC Board Meeting	5:30 p.m.	-	7:00 p.m.
Adjournment			5:30 p.m.
<b>SATURDAY, JULY 16TH</b>			
Registration <i>Exhibits Open: 8:30 a.m. – 1:00 p.m.</i>	8:00 a.m.	-	9:00 a.m.
Health General Session - Air Ambulances: Up, Up, and Away Too Costly?	9:00 a.m.	-	10:30 a.m.
Property and Casualty Committee	10:30 a.m.	-	12:00 p.m.
Joint State and Federal Relations Committee and International Issues Committee	12:00 p.m.	-	1:45 p.m.
ILF Board Meeting	1:45 p.m.	-	2:10 p.m.
Adjournment			2:10 p.m.
<b>SUNDAY, JULY 17TH</b>			
Registration <i>Exhibits Open: 8:30 a.m. – 10:00 a.m.</i>	8:00 a.m.	-	9:00 a.m.
Business Planning Committee	9:00 a.m.	-	9:45 a.m.
Executive Committee	9:45 a.m.	-	10:30 a.m.
Adjournment			10:30 a.m.

WELCOME BREAKFAST	<b>1</b>
SPECIAL EXECUTIVE COMMITTEE MEETING	<b>2</b>
LIFE INSURANCE & FINANCIAL PLANNING COMMITTEE	<b>3</b>
WORKERS COMPENSATION COMMITTEE	<b>4</b>
BUDGET COMMITTEE	<b>5</b>
FINANCIAL SERVICES & INVESTMENT PRODUCT COMMITTEE	<b>6</b>
GENERAL SESSION – INNOVATION AND DISRUPTION: WHAT DOES IT MEAN TO THE MARKETPLACE AND INSURANCE INDUSTRY, WHAT WILL IT MEAN?	<b>7</b>
NCOIL-NAIC DIALOGUE	<b>8</b>
HEALTH, LONG-TERM CARE & RETIREMENT ISSUES COMMITTEE	<b>9</b>
GENERAL SESSION – AIR AMBULANCES: UP, UP, AND AWAY TOO COSTLY?	<b>10</b>
PROPERTY & CASUALTY COMMITTEE	<b>11</b>
JOINT STATE-FEDERAL RELATIONS COMMITTEE AND INTERNATIONAL ISSUES COMMITTEE	<b>12</b>
BUSINESS PLANNING COMMITTEE	<b>13</b>
EXECUTIVE COMMITTEE	<b>14</b>

**TAB #1**



**Welcome Breakfast/All Attendees/Includes New Member Welcome**

NCOIL Summer Meeting, Portland, OR

Thursday, July 14, 2016

8:30 am – 11:00 am

*Chair: Sen. Travis Holdman, IN*

*\*Call to order/roll call*

1. President Welcome
2. New member welcome
3. Completion of SWOT exercise that began at Spring Conference in Little Rock.
4. Introduction of Innovation Sessions
5. Adjournment



Atlantic Corporate Center  
2317 Route 34, Suite 2B  
Manasquan, NJ 08736  
732-201-4133  
CHIEF EXECUTIVE OFFICER: Thomas B. Considine



PRESIDENT: Sen. Travis Holdman, IN  
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TREASURER: Rep. Bill Botzow, VT

TO: NCOIL Membership and Meeting Participants  
FROM: Sen. Travis Holdman, NCOIL President  
RE: NCOIL SWOT Analysis  
DATE: March 2, 2016

On behalf of the NCOIL Officers and Members, thank you for participating in our first ever Welcome Breakfast and SWOT exercise at the Little Rock Conference in February. Your insight is key to help us grow NCOIL. We should be proud of what this organization has accomplished over the past four-and-a-half decades and your ideas will help us in the future.

For your consideration, below are the shared ideas of NCOIL's strengths and weaknesses, condensed into a few categories to avoid duplication. We will review this information at our summer meeting in Portland, OR and complete the exercise by examining the organizations opportunities and weaknesses.

### **NCOIL STRENGTHS**

#### **PURPOSE DRIVEN ORGANIZATION**

Legislators that attend are engaged and accessible, often with deep public policy knowledge, or a willingness to learn a new subject matter

Ability to promote legislative uniformity and create best practices within the state-based regulatory framework.

Studiously non-partisan.

Meetings feature issue diversity across the insurance spectrum, generally with all sides represented on a given topic.

Serves as a counterbalance to regulators and is not a rubber stamp for interested parties.

#### **AFFILIATED ORGANIZATIONS**

Strong working relationship with the Industry Education Council and the Griffith Insurance Education Foundation to develop interesting and timely agenda items and general session topics.

#### **INTERACTION**

Regional interaction between and among legislators.

Networking.

Ability for interested parties to see and discuss issues with many legislators in one place.

Participate in conferences in interesting places, including smaller metro markets.

Meets on weekends.

### **NCOIL WEAKNESSES**

#### **LITTLE KNOWN SECTIONAL ORGANIZATION, NOT NATIONAL**

Meets in smaller metro markets, difficult for interested parties to access.

Sometimes meeting rooms are physically far apart and not easily accessible.

Larger states are not engaged.

Term limits have adversely affected membership and institutional knowledge.

Members are not engaged with congressional and federal authorities in a meaningful way.  
Not staying goal focused.  
No program/track for committee staff.  
Meets on weekends.  
Duration of time to resolve issues should be shorter.  
Stop punting issues down the road.

### **FUNDING**

Lacks a sustained funding mechanism and has to rely on thrice yearly meetings.

### **COMMUNICATION**

Lack of meeting materials available within a reasonable amount of time.  
Registration is cumbersome and difficult to get responses back.  
More timely notice of scholarships.  
Continuity of discussion.  
More defined recommendations from committee.

### **CLEAR VISION OF MISSION STATEMENT**

What is NCOIL?  
What does it strive to be?  
Why does it exist?

### **MEETINGS**

Some issues continue to appear on meeting schedules long after it is clear there is lack of consensus for NCOIL action.  
There are too many subjects on each individual agenda.  
Complexities of issues are not afforded the necessary time.  
No follow up between meetings so each meeting has a rehashing of previous meetings and then time runs out.  
Value of meeting three times a year. Spring meeting is least attended because so many legislatures are in session.

### **PROCEDURES & TIMING**

Font should be larger on name badges and speaker tent cards.  
Schedule should be included on back of name badge.  
Registration should be less cumbersome.  
Meeting materials easily available online prior to meetings.

### **RECOMMENDATION**

Host a memorable event at each host location.

### **CONCLUSION**

This exercise was a good first step toward examining what we think we are, what we are and what we can do better. Certainly there will be more to examine and discuss when we convene in Portland.

In the meantime, please do not hesitate to share your thoughts and ideas with NSS Executive Director Paul Penna at [ppenna@ncoil.org](mailto:ppenna@ncoil.org).

**TAB #2**



**Special Executive Committee Meeting**

NCOIL Summer Meeting, Portland, OR

Thursday, July 14, 2016

11:00 am – 11:30 am

*Chair: Senator Travis Holdman, IN*

*\*Call to order/roll call*

1. Special Presentation
2. Discussion of bylaw revisions for adoption
3. Adjournment

## **Articles of Organization & Bylaws Revision Committee**

Co-Chair: Sen. Jerry Klein, ND

Co-Chair: Rep. Ron Crimm, KY

Sen. Jason Rapert, AR

Rep. Steve Riggs, KY

Sen. Dan "Blade" Morrish, LA

Sen. Neil Breslin, NY

Sen. James Seward, NY

Del. Mike Hall, WV

## **Executive Committee**

President: Sen. Travis Holdman, IN

Vice President: Rep. Steven Riggs, KY

Secretary: Sen. Jason Rapert, AR

Treasurer: Rep. Bill Botzow, VT

Rep. Kurt Olson, AK

Sen. Joyce Elliott, AR

Rep. Deborah Ferguson, AR

Rep. Kelley Linck, AR

Sen. Joe Crisco, CT

Rep. Robert Megna, CT

Rep. Rich Golick, GA

Rep. Richard Smith, GA

Rep. Martin Carbaugh, IN

Rep. Matt Lehman, IN

Sen. Thomas Buford, KY

Rep. Jeff Greer, KY

Rep. Tommy Thompson, KY

Rep. Susan Westrom, KY

Rep. Greg Cromer, LA

Rep. Chuck Kleckley, LA

Sen. Dan "Blade" Morrish, LA

Sen. Joe Hune, MI

Rep. Don Gosen, MO

Sen. Freddie Videt Carmichael, MS

Sen. Buck Clarke, MS

Sen. Dean Kirby, MS

Rep. George Keiser, ND\*

Sen. Jerry Klein, ND

Sen. David O'Connell, ND

Rep. Don Flanders, NH

Sen. Carroll Leavell, NM\*

Asm. William Barclay, NY

Sen. Neil Breslin, NY\*

Asm. Kevin Cahill, NY

Sen. William J. Larkin, Jr. NY\*

Asm. Joseph Morelle, NY

Sen. James Seward, NY\*

Sen. Kevin Bacon, OH

Sen. Keith Faber, OH

Rep. Bob Hackett, OH

Rep. Jay Hottinger, OH

Rep. Michael Stinziano, OH\*\*

Sen. Jake Corman, PA

Rep. Anthony Deluca, PA

Rep. Robert Godshall, PA

Rep. Marguerite Quinn, PA

Rep. Brian Kennedy, RI\*

Sen. William Walaska, RI

Sen. Robert Hayes, SC

Rep. William Sandifer III, SC

Rep. Steve McManus, TN

Sen. Larry Taylor, TX

Rep. Hubert Vo, TX

Sen. Curtis Bramble, UT

Rep. Jim Dunnigan, UT

Sen. Ann Cummings, VT

Rep. Kathie Keenan, VT\*

Rep. Warren Kitzmiller, VT

Sen. Mike Hall, WV

Del. Harry Keith White, WV

\* Past Presidents and Members of Executive Committee

\*\* NCOIL Committee Chair (Member as per Bylaws)

*All state committee chairs responsible for insurance legislation in NCOIL contributing member states are automatically, per NCOIL bylaws, voting members of the Executive Committee at their first meeting.*

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## NATIONAL CONFERENCE OF INSURANCE LEGISLATORS ARTICLES OF ORGANIZATION AND BYLAWS REVIEW COMMITTEE

On May 9, 2016, NCOIL CEO Tom Considine initiated a conference call with the following members of the Articles of Organization and Bylaws Review Committee:

Committee Co-Chair Sen. Jerry Klein, ND  
Committee Co-Chair Rep. Ronald Crimm, KY  
Rep. Steve Riggs, KY  
Sen. Dan "Blade" Morrish, LA  
Sen. Mike Hall, WV

Also present were:

Paul Penna, Executive Director, NCOIL Support Services  
Will Melofchik, Legislative Director, NCOIL Support Services.

Commissioner Considine spoke as to his proposal to make certain amendments to NCOIL's Articles of Organization and Bylaws. Commissioner Considine first discussed the amendments to the Articles of Organization:

- 1.) In Section II., add the words "and proper" when discussing the primacy of the States in the regulation of insurance
- 2.) In Section III.B., remove the requirement that Contributing Member states "must pay all dues previously billed by the end of the calendar year, unless such Contributing Member State is approved to pay dues on a fiscal year basis" and instead require Contributing Member States to pay all dues by the end of that State's fiscal year
- 3.) In Section IV.A., as a matter of form, when discussing the NCOIL special meetings, have the section read "Special meetings may be called by the President and **also** shall be called if requested by ten or more members of the Executive Committee."
- 4.) In Section V.A., add the immediate Past President as an officer NCOIL, in addition to the current President, Vice President, Secretary and Treasurer.

-Commissioner Considine stated that this is a great way to add a wealth of specific NCOIL knowledge and experience that can assist the other officers in operating and strengthening NCOIL.

5.) In Section, V.B., change the number of officers in the Executive Committee from four (4) to five (5), to reflect the amendment in Section V.A. above.

6.) Add new letter "I" to Section V., to read as follows: "Each Executive Committee Member must attend in person at least one Executive Committee meeting annually, or be excused by the President for good cause shown, or his/her membership will terminate automatically. This provision shall be effective January 1, 2017."

-Commissioner Considine stated that this amendment will be an effort to encourage participation in Executive Committee meetings which are vitally important to NCOIL. This was met with support, however, it was proposed that it be changed to clarify that if the Executive Committee Member did not attend in person at least one Executive Committee meeting annually, his/her "**Executive Committee**" membership will terminate automatically. This was supported/will be changed at a later date.

7.) In Section VI.A., in describing the President's role and duties, change language to reflect the hiring of CEO.

8.) In Section VI.E., add language that authorizes the Executive Committee to appoint any individual or organization, at its discretion, as CEO or Executive Director.

9.) In Section VII., adding the CEO in addition to the Executive Director among those who must receive notice and text of any proposed amendments to the Articles of Organization at least thirty (30) days prior to the date of a meeting to amend/repeal anything in said Articles.

Commissioner Considine then discussed the proposed amendments to the bylaws:

1.) In Section I., Change the committee quorum standard to read: "A quorum for any meeting of any committee of NCOIL consists of **forty percent (40%) of such members of said committee's roster; however, those members of the committee present may reduce the required quorum percentage for good cause as long as they are meeting with twenty-four (24) hours notice to all members of the relevant committee with said notice setting forth the date, time and place of such meeting. This provision shall be effective January 1, 2017.**"

-Commissioner Considine stated that this amendment corrects the current situation where, because there is no quorum requirement, every committee is *de facto* constantly meeting. Instead, this amendment will allow the committee to reduce the quorum requirement at the time of the meeting but only after providing proper notice.

2.) In Section III., in order to maintain consistency, change "one-fifth of the members thereof" to "ten or more members thereof." Also, when notifying members of the Executive Committee of a meeting, add the time of such a meeting to the notification requirements in addition to the date and place of said meeting

3.) In Section IV.A.8., add "Chief Executive Officer" to maintain consistency with aforementioned amendments that account for the hiring of CEO

4.) In Section IV.A.10., add "Chief Executive Officer" to maintain consistency with aforementioned amendments that account for the hiring of CEO

5.) In Section IV.A.11, change the membership structure of the Nominating Committee to have it consist of "all NCOIL past presidents, **the current NCOIL president, and current standing committee chairs with one year or more of service as a standing committee chair** that shall interview potential officers for the upcoming year, report nominations for officers to the annual meeting of NCOIL, and reconvene when there becomes a vacancy among the officers in order to nominate a replacement. **A Nominating Committee member wishing to be a candidate for an officer shall recuse herself or himself from Nominating Committee participation.**"

-Overall, this proposal was met with support. There was some concern voiced regarding the "1 year of prior experience requirement," and it was discussed whether the experience requirement should be longer. A proposal was made to have the proposed amendment read as "all NCOIL past presidents, **the current NCOIL president, and current standing committee chairs with one year or more of service as a standing committee chair AND (X) YEARS OF MEMBERSHIP IN NCOIL/LEGISLATURE**

-this was also met with some support, however, it was agreed that it should be left as drafted and given time so the committee and Executive Committee can gauge its efficacy in operation.

6.) In Section IV.E., to further clarify committee membership, while preserving NCOIL open committee registration at the Annual Meeting:

-new Section E.1. "**Standing Committees shall be open to all NCOIL Member Legislators during an Open Registration period. At the Annual Meeting each year, Standing Committee Registration Forms for the upcoming year shall be available in the registration area, on which NCOIL Member Legislators shall register for the Standing Committees on which they will serve in the upcoming year, whether or not they currently serve on those committees.**"

-new Section E.2. "**Standing Committee Open Registration shall remain so until January 15th of the year of committee service. In the period after the Annual Meeting through January 15th NCOIL Member Legislators wishing to serve on Standing Committees but who had not registered during the Annual Meeting shall send an e-mail or letter to the NCOIL Chief Executive Officer or Executive Director stating the Standing Committee(s) on which she or he will serve.**"

-new Section E.3. "**From January 16th through the remainder of the year, NCOIL Member Legislators wishing to serve on Standing Committees shall send an e-mail or letter to the NCOIL Chief Executive Officer or Executive Director stating the Standing Committee(s) on which she or he wishes to serve, and the NCOIL Chief Executive Officer or Executive Director will present the request to either the Standing Committee Chair or the NCOIL President for Appointment**



- 7.) In Section IV.H., in an effort to further the goal of getting legislators to NCOIL's meetings and participating, allowing members of the committee responsible for insurance legislation in each legislative house of each contributing-member state to be a voting member at his or her **first** NCOIL Conference in meetings of standing committees rather than their second.
- 8.) In Section IV.I., to further the same goal mentioned above, allowing legislators from Contributing-Member states who are not members of state committees responsible for insurance legislation to vote on a standing committee at his or her second NCOIL Conference.
- 9.) In Section IV.J., adding the price of "professional" transactions to the list of NCOIL meeting discussions that are not open to the public.
- 10.) In Section V.A., add "Chief Executive Officer" to maintain consistency with aforementioned amendments that account for the hiring of CEO.
- 11.) In Section V.E., change the amount from \$500 to \$1,500 regarding checks drawn for expenditures that must be signed by the CEO or Executive Director who shall submit a monthly (previously quarterly) report of all such checks to the President of NCOIL. Also add CEO to those who are required to sign other checks drawn upon the funds of NCOIL. Additionally, in an effort to account for paperless financial transactions, allow for NCOIL Officers to approve a system **"they deem sufficiently secure whereby the NCOIL President approves in writing expenditures other than by the physical signing of a check. Such systems shall be endorsed by NCOIL's outside auditor."**
- 12.) In Section VII. add "Chief Executive Officer" to maintain consistency with aforementioned amendments that account for the hiring of CEO

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
ARTICLES OF ORGANIZATION  
AND  
BYLAWS

# ARTICLES OF ORGANIZATION

## PREAMBLE

We, duly elected representatives of the People to the Legislatures of our individual sovereign States, being concerned with the economic and social importance of insurance to our constituents, to the peoples of our respective States, to all Americans, and to the enterprises and economic resources of our nation and to its strength in world trade and commerce, and seeking a more effective exchange of insurance information among the legislatures of the States, consumers, and other concerned parties; and seeking to provide a forum for legislators to resolve and communicate their positions on insurance and related issues on a State-by-State basis, do hereby proclaim the need for creating and maintaining the resources and capacity of State legislatures to deal with insurance legislation and regulation.

### I. NAME

The name of the organization shall be the National Conference of Insurance Legislators (hereinafter "NCOIL.")

### II. PURPOSE

The general purpose of NCOIL is to advance the knowledge and effectiveness of legislators and legislatures when dealing with matters pertaining to insurance law, participate in the formulation of model legislation for the resolution of insurance problems by the States on a State-by-State basis, serve as a clearing house for information, reaffirm the traditional **and proper** primacy of the States in the regulation of insurance, prepare special studies on insurance or insurance legislation, disseminate educational materials, communicate positions adopted by NCOIL, and any other activities that will promote the general purposes of NCOIL.

### III. MEMBERSHIP

- A. General Membership shall be afforded to all States and territories of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.
- B. Contributing Membership shall be afforded to General Members who remit to NCOIL annual dues (which shall not be prorated) in an amount fixed by the Executive Committee. In order to remain in good standing as a Contributing Member, a member State must pay all dues previously billed by the end of ~~the calendar year, unless such Contributing Member State is approved to pay dues on a~~ **that State's** fiscal year basis. First year's dues for a new Contributing Member State shall be commensurate with the portion of the year spent in NCOIL membership.
- C. Each General and Contributing Member State shall be represented by its legislators who are permitted to attend NCOIL meetings and seminars.
- D. The Business Planning Committee shall review the dues structure every two years and report to the Executive Committee.
- E. The Executive Committee may, at any regular meeting, confer the title of "Honorary

Member” on any individual who has served in the legislature of a member State but is no longer a member, and who the Executive Committee wishes to recognize for outstanding service to NCOIL, and all registration fees shall be waived for a person so titled, with the exception of said person’s membership within the insurance industry.

F. The Executive Committee of NCOIL shall, in accord with the “Purpose” as stated in Section II of the Articles of Organization, offer affiliate non-voting memberships to comparable legislative organizations in non-United States jurisdictions.

#### IV. MEETINGS/VOTING

A. NCOIL shall meet at times and places designated by the Executive Committee. Special meetings may be called by the President and **also** shall be called if requested by ten or more members of the Executive Committee.

B. At any meeting of NCOIL, each Committee member from a Contributing Member State represented in good standing shall be entitled to vote on measures before their Committee.

C. A majority vote of those Committee members present and voting shall constitute the requisite vote necessary on measures before their Committee. D. Voting by proxies shall not be permitted.

#### V. OFFICERS/EXECUTIVE COMMITTEE

A. The officers of NCOIL shall consist of the following ~~four~~ **five (45)** officers: a President, Vice President, Secretary, ~~and~~ Treasurer, **and Immediate Past President**. No person shall be elected as an officer of the Conference who is not a member of the Executive Committee.

B. The Executive Committee shall consist of the ~~four~~ **five (45)** officers, (as stated in Article V, Section A) and at least one (1) and not more than four (4) representatives of each Contributing Member State of NCOIL. New members of NCOIL Contributing Member States shall be elected by a majority of the Executive Committee Members. Notwithstanding any other provision of the NCOIL Articles of Organization or Bylaws, the chair of the committee responsible for insurance legislation in each legislative house of each Contributing Member State shall automatically, by the nature of his or her office, be a voting member of the Executive Committee at his or her first meeting. A state committee chair from a Contributing Member State must attend the Executive Committee meeting at his or her first NCOIL conference to be recognized as a new Executive Committee member. Past Presidents who are still state legislators shall be voting, ex-officio members of the Executive Committee and shall not constitute a representative of a member State. The President shall not constitute a representative of his state during his term.

C. There may be a Parliamentarian appointed by the President.

D. In addition to the representatives of each Contributing Member State, the chairs of all standing committees, who are not members of the Executive Committee, shall become

members of the Executive Committee and shall continue to be members of the Executive Committee as long as they remain as chairs.

E. The officers of the Executive Committee shall be elected at the annual meeting of NCOIL. Members of the Executive Committee shall be elected at any meeting of the Executive Committee.

F. Persons elected as officers or members of the Executive Committee must be representatives of Contributing-Member States in good standing at the time of their election. The office of an officer or of an Executive Committee member shall be vacant if the member state of which such person is a Legislator ceases to be a Contributing Member State in good standing, or if the person shall no longer serve in the Legislature.

G. A majority vote of those present and voting at a meeting of the Executive Committee shall constitute the requisite vote necessary to decide any proposition except as otherwise specified in these Articles of Organization.

H. A representative of a Contributing Member State must attend two meetings prior to being considered for membership on the Executive Committee.

I. **Each Executive Committee Member must attend in person at least one Executive Committee meeting annually, or be excused by the President for good cause shown, or his/her executive committee membership will terminate automatically. This provision shall be effective January 1, 2017.**

## VI. DUTIES OF OFFICERS AND THE EXECUTIVE COMMITTEE

A. The President shall be the ~~Chief Executive Officer of NCOIL~~ **highest ranking officer in the NCOIL corporate structure. She or he** shall exercise direct charge and ~~the~~ general supervision of the business and affairs of NCOIL, see that all orders and resolutions of the Executive Committee are carried into effect, perform all duties incident to the office of ~~the Chief Executive Officer~~ **President**, perform the usual duties of the presiding officer at the meetings of NCOIL, preside over meetings of the Executive Committee, and appoint Chairpersons of all committees and members of committees in accordance with NCOIL Bylaws and perform such other duties as are provided in the Bylaws.

B. The Vice President shall chair committees and meetings chaired by the President in the absence of the President and shall perform such other duties as are assigned him/her by the President and the Bylaws.

C. The Secretary shall have charge of all correspondence to and from NCOIL, manage records of meetings including preparation of the minutes, provided, however, that if the Executive Committee shall appoint an Executive Director, the Secretary shall coordinate and work with the Executive Director in those duties.

D. The Treasurer shall be entrusted with the receipt, care and disbursement of funds of NCOIL, provided however, that if the Executive Committee shall appoint an Executive Director, the Treasurer shall coordinate and work with the Executive Director in those duties.

E. The Executive Committee shall have charge of the management of NCOIL and the direction of its activities. The President shall fill vacancies in the offices of Committee Chairs between annual meetings. The Executive Committee may appoint any individual or organization to function, **at its discretion**, as **Chief Executive Officer or** Executive Director. Pursuant to these duties, the Officers, in consultation with appropriate Committee Chairs as needed, shall have, between meetings of NCOIL, the ability to make temporary decisions on behalf of NCOIL pending Executive Committee approval.

## VII. AMENDMENTS

These Articles of Organization may be amended or repealed at any meeting of the Executive Committee by a favorable vote of two-thirds of the members present and voting, provided however, that notice and text of any proposed amendments shall be given in summary form to the NCOIL **Chief Executive Officer** or Executive Director at least thirty (30) days prior to the date of that meeting in accordance with the NCOIL 30-day rule for submission of documents to NCOIL for approval or disapproval, as stated in NCOIL Bylaws, Section IV. H. Amendments shall become effective immediately upon adoption unless otherwise provided therein.

*[Remainder of page intentionally left blank]*

## BYLAWS

### I. QUORUM

A quorum for any meeting of any committee of NCOIL consists of **forty percent (40%) of such members of said committee's roster; however, those members of the committee present **may reduce the required quorum percentage for good cause as long as they are meeting with twenty four (24) hours notice to all members with said notice setting forth the date, time and place of such meeting. This provision shall be effective January 1, 2017.****

### II. VOTING

Voting at meetings of the Executive Committee or any other Committee shall be by voice vote except that a roll call vote shall be taken at the direction of the Chair or upon the request of five members of that Committee.

### III. EXECUTIVE COMMITTEE MEETINGS

The Executive Committee shall meet at each of the three yearly NCOIL conferences or at the call of the President or upon the written request of ~~one-fifth~~ of the **ten or more** members thereof. Notice shall be given to each member of the Executive Committee setting forth the date, time and place of such meeting.

### IV. COMMITTEES

A There shall be Standing Committees, and such Special Committees, as may be established in the manner provided for by these Bylaws. B. Standing Committees of NCOIL shall be:

1. A State-Federal Relations Committee, consisting of a minimum of seven (7) members with responsibility for representing the Conference in matters respecting State-Federal relations and coordinating activities of NCOIL relating to Congressional or Federal agency action affecting insurance and the State regulation thereof.
2. A Workers' Compensation Insurance Committee, consisting of a minimum of seven (7) members with responsibility for representing NCOIL in matters respecting workers' compensation insurance.
3. A Property-Casualty Insurance Committee, consisting of a minimum of seven (7) members with responsibility for representing NCOIL in matters respecting property casualty insurance.



4. A Health, Long-Term Care & Health Retirement Issues Committee, consisting of a minimum of seven (7) members with responsibility for representing NCOIL in matters respecting health insurance, long-term care, and health retirement issues.
5. A Life Insurance & Financial Planning Committee, consisting of a minimum of seven (7) members with responsibility for representing NCOIL in matters respecting life insurance and financial planning.
6. A Financial Services & Investment Products Committee, consisting of a minimum of seven (7) members with responsibility for representing NCOIL in matters respecting financial services and investment products.
7. An International Insurance Issues Committee, consisting of a minimum of seven (7) members with responsibility for representing NCOIL in matters respecting international issues related to insurance.
8. An Audit Committee, consisting of a minimum of three (3) members and chaired by the Vice President with the responsibility for arranging for and reviewing the audits of NCOIL funds and making recommendations to the Executive Committee with respect to procedures relating thereto. The Treasurer shall be a non-voting, ex-officio member. The Treasurer may vote if the Executive Committee appoints an **Chief Executive Officer or** Executive Director under Articles VI, D and E.
9. An Articles of Organization and Bylaws Revision Committee, consisting of at least seven (7) members appointed by the President, to whom proposed resolutions, but not resolutions relating to the administration of NCOIL, shall be referred prior to each meeting of the Executive Committee and which shall report recommendations at each meeting to the Executive Committee and the member States assembled for action in accordance with other paragraphs of these Bylaws and Articles of Organization; provided, however, other Committees of NCOIL may refer resolutions to the Executive Committee and to member states, and resolutions relating to the administration of NCOIL may be presented directly to the Executive Committee by any member thereof. The Committee shall review the Articles of Organization and Bylaws of NCOIL at each annual meeting.
10. A Budget Committee, consisting of a minimum of seven (7) members appointed by the President and chaired by the Treasurer with the responsibility of developing annual budget proposals pursuant to the process enumerated in these Bylaws. The Treasurer may vote if the Executive Committee appoints an **Chief Executive Officer or** Executive Director under Articles VI, D and E.
11. A Nominating Committee, consisting of all NCOIL past presidents, **the current NCOIL president, and current standing committee chairs with one year or more of service as a standing committee chair** that shall interview potential officers for the upcoming year, report nominations for officers to the annual meeting of NCOIL, and reconvene

when there becomes a vacancy among the officers in order to nominate a replacement. **A Nominating Committee member wishing to be a candidate for an officer shall recuse herself or himself from Nominating Committee participation.**

12. A Business Planning Committee, consisting of a minimum of seven (7) members appointed by the President with responsibility for membership, site selection, revenue and legislator participation in NCOIL activities and programs.

C. The Chair and Vice Chair of any standing or special committee shall be appointed by the

President and shall serve at the will of the President. Only members of Contributing Member States in good standing are eligible to be Chairs, Vice Chairs, or members of any standing or special committee. Legislators from Contributing Member States may sign up for Committees one (1) through seven (7) listed above.

D. The Chair of any Committee with the approval of the President may appoint a chair and members of task forces and subcommittees to assist in the work of NCOIL. Only members of Contributing Member States in good standing are eligible for appointment as a chair or member of a task force or subcommittee.

E. All Standing Committees, except the Nominating Committee, shall be continuing committees and the members thereof shall serve one year terms or until their successors are appointed.

- 1 **Standing Committees shall be open to all NCOIL Member Legislators during an Open Registration period. At the Annual Meeting each year, Standing Committee Registration Forms for the upcoming year shall be available in the registration area, on which NCOIL Member Legislators shall register for the Standing Committees on which they will serve in the upcoming year, whether or not they currently serve on those committees.**
- 2 **Standing Committee Open Registration shall remain so until January 15<sup>th</sup> of the year of committee service. In the period after the Annual Meeting through January 15<sup>th</sup> NCOIL Member Legislators wishing to serve on Standing Committees but who had not registered during the Annual Meeting shall send an e-mail or letter to the NCOIL Chief Executive Officer or Executive Director stating the Standing Committee(s) on which she or he will serve.**
- 3 **From January 16<sup>th</sup> through the remainder of the year, NCOIL Member Legislators wishing to serve on Standing Committees shall send an e-mail or letter to the NCOIL Chief Executive Officer or Executive Director stating the Standing Committee(s) on which she or he wishes to serve, and the**

**NCOIL Chief Executive Officer or Executive Director will present the request to either the Standing Committee Chair or the NCOIL President for Appointment.**

F. Special Committees may be created by NCOIL at the annual meeting of NCOIL, by the Executive Committee at any meeting of the Executive Committee, or by the President between meetings of the Executive Committee and of NCOIL. Any action creating a Special Committee shall specify its size and duties, and may specify the manner of appointment of members thereof. A Special Committee shall continue in existence until it has accomplished the purposes for which it was created or until the next annual meeting of NCOIL, whichever occurs earlier.

G. Any resolution or other document submitted to NCOIL for its approval or disapproval shall be submitted and sponsored by a legislator to NCOIL at least 30 days prior to the next scheduled meeting of that Committee. If a document or amendment to a document is not submitted prior to the 30-day deadline, it shall be subject to a two-thirds vote for Committee consideration and a separate two-thirds vote for adoption. Notwithstanding the existence of the requirement that any resolutions or documents be submitted to NCOIL at least 30 days prior to a scheduled committee meeting, such documents may pass through committees to the Executive Committee at a meeting duly called by the Executive Committee.

H. ~~The chair~~ **Members** of the committee responsible for insurance legislation in each legislative house of each Contributing-Member state shall be a voting member at his or her ~~second~~ **first** NCOIL conference in meetings of standing committees that he or she has joined, ~~or at his or her first conference if the chair has joined the Committee prior.~~

I. Legislators from Contributing-Member states who are not ~~chairs~~ **members** of state committees responsible for insurance legislation shall be eligible to vote on a standing committee **at her or his second NCOIL conference.** ~~if the legislators have joined the committee at least 60 days prior to the conference. Legislators who join fewer than 60 days prior shall wait one meeting before being eligible.~~

J. NCOIL meetings are open meetings except those involving discussions of the general reputation and character or professional competence of an individual; the legal ramifications of threatened or pending litigation; security issues; price of real estate **or professional** transactions; and matters involving a trade secret.

## V. FINANCES

The fiscal year of NCOIL shall commence on January 1 of each year and end on December 31 of the same year.

A. The **Chief Executive Officer or** Executive Director shall submit to the Executive Committee a proposed budget for the ensuing fiscal year 10

days before the annual meeting of NCOIL. The Executive Committee shall have the power to approve, modify or reject, in whole or in part, the budget.

B. The Executive Committee at the annual meeting of NCOIL shall adopt a budget for the ensuing fiscal year.

C. During the fiscal year, the Executive Committee may provide for an increase or decrease of an appropriation. Such increase or decrease shall only be upon the certification by the Committee of the need thereof.

D. The moneys budgeted pursuant to these Bylaws may include money for the retention of staff, the reimbursement of expenses of staff, and the expenses of Legislators for activities on behalf of NCOIL other than expenses of attending regularly scheduled NCOIL meetings.

E. Checks drawn for expenditures of less than **one thousand**, five hundred (\$1,500) dollars shall be signed by the **Chief Executive Officer or Executive Director** who shall submit a ~~quarterly~~ **monthly** report of all such checks to the President of NCOIL. No more than one such check shall be paid for any one purpose without the prior express written consent of the President. All other checks drawn upon the funds of NCOIL shall be signed by both the **Chief Executive Officer or Executive Director** and either the President or Vice President. **Notwithstanding the foregoing sentence, the NCOIL Officers may approve a system they deem sufficiently secure whereby the NCOIL President approves in writing expenditures other than by the physical signing of the check. Such system shall be endorsed by NCOIL's outside auditor.**

F. The Executive Committee shall, at the annual meeting of NCOIL, select an independent auditor who shall review NCOIL's books and accounts for the current fiscal year. The auditor shall submit its report to the Audit Committee by June 30 of the next calendar year. The Audit Committee shall submit its report at the next succeeding meeting of the Executive Committee.

G. In the event that NCOIL shall, for any reason, discontinue its activities and cease to function, any monies remaining in its possession or to its credit after the payment of outstanding debts and obligations shall be distributed in equal shares to the Contributing-Member States of NCOIL in good standing at the time of distribution.

## VI. RULES OF PROCEDURE

A. Each model act adopted by NCOIL shall be reviewed by the Committee of original reference every five (5) years. The respective Committee shall vote to readopt the model act, amend and readopt the model act, or allow the model act to “sunset.” Readopted models shall be sent to the Executive Committee for final adoption.

B. The NCOIL committees shall review previously adopted NCOIL model laws in order to provide an appropriate sunset schedule. Such documents shall be reviewed in the following manner: Spring Meeting shall be Life Insurance & Financial Planning Committee and the Health, Long-Term Care & Health Retirement Issues Committee. Summer Meeting shall be Workers’ Compensation Insurance Committee and Property-Casualty Insurance Committee.

The Annual Meeting shall be the State-Federal Relations Committee, Financial Services & Investment Products Committee, and Executive Committee. Model laws shall sunset every five (5) years within the Committee. Committees shall have the authority to extend the model laws from meeting to meeting.

C. In any issue not covered by the Articles or Bylaws, Robert’s Rules of Order shall be the standard authority.

## VII. AMENDMENTS

These Bylaws may be amended or repealed at any meeting of the Executive Committee by a favorable vote of two-thirds of the members present and voting, provided however, that notice and text of any proposed amendments shall be given in summary form to the NCOIL **Chief Executive Officer or** Executive Director at least thirty (30) days prior to the date of that meeting in accordance with the NCOIL 30-day rule for submission of documents to NCOIL for approval or disapproval, as stated in Section IV.H of the Bylaws. Amendments shall become effective immediately upon adoption unless otherwise provided therein.

## ARTICLES OF ORGANIZATION/BYLAWS AMENDMENTS

Adopted 4th Annual Meeting, San Francisco, November 28, 1972;

Amended 10th Annual Meeting, Detroit, November 14, 1978;  
Amended 11th Annual Meeting, Charleston, November 14, 1979;  
Amended 12th Annual Meeting, San Antonio, November 22, 1980;  
Amended 16th Annual Meeting, Little Rock, November 17, 1984;  
Amended 17th Annual Meeting, Phoenix, November 24, 1985;  
Amended 18th Annual Meeting, Nashville, November 16, 1986;

Amended 19th Annual Meeting, Palm Springs, November 18, 1987;  
Amended 23rd Annual Meeting, Scottsdale, November 20, 1991;  
Amended 24th Annual Meeting, Charleston, November 18, 1992;  
Amended 26th Annual Meeting, New York City, November 13, 1994;  
Amended 27th Annual Meeting, San Francisco, November 11, 1995;  
Amended 28th Annual Meeting, Austin, Texas, November 20, 1996;  
Amended 30th Annual Meeting, San Diego, California, November 21, 1998;  
Amended 31<sup>st</sup> Annual Meeting, Orlando, Florida, November 19, 1999;  
Amended Spring Meeting, San Francisco, California, February 25, 2000;  
Amended 32<sup>nd</sup> Annual Meeting, New Orleans, Louisiana, November 16, 2000;  
Amended Summer Meeting, Williamsburg, Virginia, July 11, 2003;  
Amended Summer Meeting, Chicago, Illinois, July 16, 2004;  
Amended Annual Meeting, San Diego, California, November 19, 2005;  
Amended Summer Meeting, Boston, Massachusetts, July 21, 2006;  
Amended Annual Meeting, Napa Valley, California, November 10, 2006;  
Amended Summer Meeting, Seattle, Washington, July 21, 2007;  
Amended Annual Meeting, Las Vegas, Nevada, November 17, 2007;  
Amended Spring Meeting, Washington, DC, March 1, 2008;  
Amended Summer Meeting, New York, New York, July 11, 2008;  
Amended Annual Meeting, Duck Key, Florida, November 20, 2008;  
Amended Spring Meeting, Isle of Palms, South Carolina, March 7, 2010;  
Amended Summer Meeting, Newport, Rhode Island, July 17, 2011;  
Amended Annual Meeting, Santa Fe, New Mexico, November 20, 2011;  
Amended Summer Meeting, Philadelphia, Pennsylvania, July 14, 2013;  
Amended Annual Meeting, Nashville, Tennessee, November 24, 2013;  
Amended Summer Meeting, Boston, Massachusetts, July 13, 2014;  
Amended Annual Meeting, San Francisco, California, November 20, 2014;  
Amended Spring Meeting, Charleston, South Carolina, March 1, 2015.

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
ARTICLES OF ORGANIZATION  
AND  
BYLAWS

ARTICLES OF ORGANIZATION

PREAMBLE

We, duly elected representatives of the People to the Legislatures of our individual sovereign States, being concerned with the economic and social importance of insurance to our constituents, to the peoples of our respective States, to all Americans, and to the enterprises and economic resources of our nation and to its strength in world trade and commerce, and seeking a more effective exchange of insurance information among the legislatures of the States, consumers, and other concerned parties; and seeking to provide a forum for legislators to resolve and communicate their positions on insurance and related issues on a State-by-State basis, do hereby proclaim the need for creating and maintaining the resources and capacity of State legislatures to deal with insurance legislation and regulation.

I. NAME

The name of the organization shall be the National Conference of Insurance Legislators (hereinafter "NCOIL.")

II. PURPOSE

The general purpose of NCOIL is to advance the knowledge and effectiveness of legislators and legislatures when dealing with matters pertaining to insurance law, participate in the formulation of model legislation for the resolution of insurance problems by the States on a State-by-State basis, serve as a clearing house for information, reaffirm the traditional primacy of the States in the regulation of insurance, prepare special studies on insurance or insurance legislation, disseminate educational materials, communicate positions adopted by NCOIL, and any other activities that will promote the general purposes of NCOIL.

III. MEMBERSHIP

A. General Membership shall be afforded to all States and territories of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

B. Contributing Membership shall be afforded to General Members who remit to NCOIL annual dues (which shall not be prorated) in an amount fixed by the Executive Committee. In order to remain in good standing as a Contributing Member, a member State must pay all dues previously billed by the end of the calendar year, unless such Contributing Member State is approved to pay dues on a fiscal year basis. First year's

dues for a new Contributing Member State shall be commensurate with the portion of the year spent in NCOIL membership.

C. Each General and Contributing Member State shall be represented by its legislators who are permitted to attend NCOIL meetings and seminars.

D. The Business Planning Committee shall review the dues structure every two years and report to the Executive Committee.

E. The Executive Committee may, at any regular meeting, confer the title of “Honorary Member” on any individual who has served in the legislature of a member State but is no longer a member, and who the Executive Committee wishes to recognize for outstanding service to NCOIL, and all registration fees shall be waived for a person so titled, with the exception of said person’s membership within the insurance industry.

F. The Executive Committee of NCOIL shall, in accord with the “Purpose” as stated in Section II of the Articles of Organization, offer affiliate non-voting memberships to comparable legislative organizations in non-United States jurisdictions.

#### IV. MEETINGS/VOTING

A. NCOIL shall meet at times and places designated by the Executive Committee. Special meetings may be called by the President and shall be called if requested by ten or more members of the Executive Committee.

B. At any meeting of NCOIL, each Committee member from a Contributing Member State represented in good standing shall be entitled to vote on measures before their Committee.

C. A majority vote of those Committee members present and voting shall constitute the requisite vote necessary on measures before their Committee.

D. Voting by proxies shall not be permitted.

#### V. OFFICERS/EXECUTIVE COMMITTEE

A. The officers of NCOIL shall consist of the following four (4) officers: a President, Vice President, Secretary, and Treasurer. No person shall be elected as an officer of the Conference who is not a member of the Executive Committee.

B. The Executive Committee shall consist of the four (4) officers, (as stated in Article V, Section A) and at least one (1) and not more than four (4) representatives of each Contributing Member State of NCOIL. New members of NCOIL Contributing Member States shall be elected by a majority of the Executive Committee Members. Notwithstanding any other provision of the NCOIL Articles of Organization or Bylaws, the chair of the committee responsible for insurance legislation in each legislative house



of each Contributing Member State shall automatically, by the nature of his or her office, be a voting member of the Executive Committee at his or her first meeting. A state committee chair from a Contributing Member State must attend the Executive Committee meeting at his or her first NCOIL conference to be recognized as a new Executive Committee member. Past Presidents who are still state legislators shall be voting, ex-officio members of the Executive Committee and shall not constitute a representative of a member State. The President shall not constitute a representative of his state during his term.

C. There may be a Parliamentarian appointed by the President.

D. In addition to the representatives of each Contributing Member State, the chairs of all standing committees, who are not members of the Executive Committee, shall become members of the Executive Committee and shall continue to be members of the Executive Committee as long as they remain as chairs.

E. The officers of the Executive Committee shall be elected at the annual meeting of NCOIL. Members of the Executive Committee shall be elected at any meeting of the Executive Committee.

F. Persons elected as officers or members of the Executive Committee must be representatives of Contributing-Member States in good standing at the time of their election. The office of an officer or of an Executive Committee member shall be vacant if the member state of which such person is a Legislator ceases to be a Contributing Member State in good standing, or if the person shall no longer serve in the Legislature.

G. A majority vote of those present and voting at a meeting of the Executive Committee shall constitute the requisite vote necessary to decide any proposition except as otherwise specified in these Articles of Organization.

H. A representative of a Contributing Member State must attend two meetings prior to being considered for membership on the Executive Committee.

## VI. DUTIES OF OFFICERS AND THE EXECUTIVE COMMITTEE

A. The President shall be the Chief Executive Officer of NCOIL and shall exercise direct charge and general supervision of the business and affairs of NCOIL, see that all orders and resolutions of the Executive Committee are carried into effect, perform all duties incident to the office of the Chief Executive Officer, perform the usual duties of the presiding officer at the meetings of NCOIL, preside over meetings of the Executive Committee, and appoint Chairpersons of all committees and members of committees in accordance with NCOIL Bylaws and perform such other duties as are provided in the Bylaws.

B. The Vice President shall chair committees and meetings chaired by the President in the absence of the President and shall perform such other duties as are assigned him/her by the President and the Bylaws.

C. The Secretary shall have charge of all correspondence to and from NCOIL, manage records of meetings including preparation of the minutes, provided, however, that if the Executive Committee shall appoint an Executive Director, the Secretary shall coordinate and work with the Executive Director in those duties.

D. The Treasurer shall be entrusted with the receipt, care and disbursement of funds of NCOIL, provided however, that if the Executive Committee shall appoint an Executive Director, the Treasurer shall coordinate and work with the Executive Director in those duties.

E. The Executive Committee shall have charge of the management of NCOIL and the direction of its activities. The President shall fill vacancies in the offices of Committee Chairs between annual meetings. The Executive Committee may appoint any individual or organization to function as Executive Director. Pursuant to these duties, the Officers, in consultation with appropriate Committee Chairs as needed, shall have, between meetings of NCOIL, the ability to make temporary decisions on behalf of NCOIL pending Executive Committee approval.

## VII. AMENDMENTS

These Articles of Organization may be amended or repealed at any meeting of the Executive Committee by a favorable vote of two-thirds of the members present and voting, provided however, that notice and text of any proposed amendments shall be given in summary form to the NCOIL Executive Director at least thirty (30) days prior to the date of that meeting in accordance with the NCOIL 30-day rule for submission of documents to NCOIL for approval or disapproval, as stated in NCOIL Bylaws, Section

IV. H. Amendments shall become effective immediately upon adoption unless otherwise provided therein.

## BYLAWS

### I. QUORUM

A quorum for any meeting of any committee of NCOIL consists of those members of the committee present.

### II. VOTING

Voting at meetings of the Executive Committee or any other Committee shall be by voice vote except that a roll call vote shall be taken at the direction of the Chair or upon the request of five members of that Committee.

### III. EXECUTIVE COMMITTEE MEETINGS

The Executive Committee shall meet at each of the three yearly NCOIL conferences or at the call of the President or upon the written request of one-fifth of the members thereof. Notice shall be given to each member of the Executive Committee setting forth the date and place of such meeting.

### IV. COMMITTEES

A. There shall be Standing Committees, and such Special Committees, as may be established in the manner provided for by these Bylaws.

B. Standing Committees of NCOIL shall be:

1. A State-Federal Relations Committee, consisting of a minimum of seven (7) members with responsibility for representing the Conference in matters respecting State-Federal relations and coordinating activities of NCOIL relating to Congressional or Federal agency action affecting insurance and the State regulation thereof.
2. A Workers' Compensation Insurance Committee, consisting of a minimum of seven (7) members with responsibility for representing NCOIL in matters respecting workers' compensation insurance.
3. A Property-Casualty Insurance Committee, consisting of a minimum of seven (7) members with responsibility for representing NCOIL in matters respecting property- casualty insurance.
4. A Health, Long-Term Care & Health Retirement Issues Committee, consisting of a minimum of seven (7) members with responsibility for representing NCOIL in matters respecting health insurance, long-term care, and health retirement issues.
5. A Life Insurance & Financial Planning Committee, consisting of a minimum of seven (7) members with responsibility for representing NCOIL in matters respecting life insurance and financial planning.
6. A Financial Services & Investment Products Committee, consisting of a minimum of seven (7) members with responsibility for representing NCOIL in matters respecting financial services and investment products.
7. An International Insurance Issues Committee, consisting of a minimum of seven (7) members with responsibility for representing NCOIL in matters respecting international issues related to insurance.

8. An Audit Committee, consisting of a minimum of three (3) members and chaired by the Vice President with the responsibility for arranging for and reviewing the audits of NCOIL funds and making recommendations to the Executive Committee with respect to procedures relating thereto. The Treasurer shall be a non-voting, ex-officio member. The Treasurer may vote if the Executive Committee appoints an Executive Director under Articles VI, D and E.
  9. An Articles of Organization and Bylaws Revision Committee, consisting of at least seven (7) members appointed by the President, to whom proposed resolutions, but not resolutions relating to the administration of NCOIL, shall be referred prior to each meeting of the Executive Committee and which shall report recommendations at each meeting to the Executive Committee and the member States assembled for action in accordance with other paragraphs of these Bylaws and Articles of Organization; provided, however, other Committees of NCOIL may refer resolutions to the Executive Committee and to member states, and resolutions relating to the administration of NCOIL may be presented directly to the Executive Committee by any member thereof. The Committee shall review the Articles of Organization and Bylaws of NCOIL at each annual meeting.
  10. A Budget Committee, consisting of a minimum of seven (7) members appointed by the President and chaired by the Treasurer with the responsibility of developing annual budget proposals pursuant to the process enumerated in these Bylaws. The Treasurer may vote if the Executive Committee appoints an Executive Director under Articles VI, D and E.
  11. A Nominating Committee, consisting of all NCOIL past presidents, that shall interview potential officers for the upcoming year, report nominations for officers to the annual meeting of NCOIL, and reconvene when there becomes a vacancy among the officers in order to nominate a replacement.
  12. A Business Planning Committee, consisting of a minimum of seven (7) members appointed by the President with responsibility for membership, site selection, revenue and legislator participation in NCOIL activities and programs.
- C. The Chair and Vice Chair of any standing or special committee shall be appointed by the President and shall serve at the will of the President. Only members of Contributing Member States in good standing are eligible to be Chairs, Vice Chairs, or members of any standing or special committee. Legislators from Contributing Member States may sign up for Committees one (1) through seven (7) listed above.
- D. The Chair of any Committee with the approval of the President may appoint a chair and members of task forces and subcommittees to assist in the work of NCOIL. Only members of Contributing Member States in good standing are eligible for appointment as a chair or member of a task force or subcommittee. E. All Standing Committees, except the Nominating Committee, shall be continuing committees and the members thereof shall serve one year terms or until their successors are appointed.

F. Special Committees may be created by NCOIL at the annual meeting of NCOIL, by the Executive Committee at any meeting of the Executive Committee, or by the President between meetings of the Executive Committee and of NCOIL. Any action creating a Special Committee shall specify its size and duties, and may specify the manner of appointment of members thereof. A Special Committee shall continue in existence until it has accomplished the purposes for which it was created or until the next annual meeting of NCOIL, whichever occurs earlier.

G. Any resolution or other document submitted to NCOIL for its approval or disapproval shall be submitted and sponsored by a legislator to NCOIL at least 30 days prior to the next scheduled meeting of that Committee. If a document or amendment to a document is not submitted prior to the 30-day deadline, it shall be subject to a two-thirds vote for Committee consideration and a separate two-thirds vote for adoption. Notwithstanding the existence of the requirement that any resolutions or documents be submitted to NCOIL at least 30 days prior to a scheduled committee meeting, such documents may pass through committees to the Executive Committee at a meeting duly called by the Executive Committee.

H. The chair of the committee responsible for insurance legislation in each legislative house of each Contributing-Member state shall be a voting member at his or her second NCOIL conference in meetings of standing committees that he or she has joined, or at his or her first conference if the chair has joined the Committee prior.

I. Legislators from Contributing-Member states who are not chairs of state committees responsible for insurance legislation shall be eligible to vote on a standing committee if the legislators have joined the committee at least 60 days prior to the conference. Legislators who join fewer than 60 days prior shall wait one meeting before being eligible.

J. NCOIL meetings are open meetings except those involving discussions of the general reputation and character or professional competence of an individual; the legal ramifications of threatened or pending litigation; security issues; price of real estate transactions; and matters involving a trade secret.

## V. FINANCES

The fiscal year of NCOIL shall commence on January 1 of each year and end on December 31 of the same year.

A. The Executive Director shall submit to the Executive Committee a proposed budget for the ensuing fiscal year 10 days before the annual meeting of NCOIL. The Executive Committee shall have the power to approve, modify or reject, in whole or in part, the budget.

B. The Executive Committee at the annual meeting of NCOIL shall adopt a budget for the ensuing fiscal year.

C. During the fiscal year, the Executive Committee may provide for an increase or decrease of an appropriation. Such increase or decrease shall only be upon the certification by the Committee of the need thereof.

D. The moneys budgeted pursuant to these Bylaws may include money for the retention of staff, the reimbursement of expenses of staff, and the expenses of Legislators for activities on behalf of NCOIL other than expenses of attending regularly scheduled NCOIL meetings.

E. Checks drawn for expenditures of less than five hundred (\$500) dollars shall be signed by the Executive Director who shall submit a quarterly report of all such checks to the President of NCOIL. No more than one such check shall be paid for any one purpose without the prior express written consent of the President. All other checks drawn upon the funds of NCOIL shall be signed by both the Executive Director and either the President or Vice President.

F. The Executive Committee shall, at the annual meeting of NCOIL, select an independent auditor who shall review NCOIL's books and accounts for the current fiscal year. The auditor shall submit its report to the Audit Committee by June 30 of the next calendar year. The Audit Committee shall submit its report at the next succeeding meeting of the Executive Committee.

G. In the event that NCOIL shall, for any reason, discontinue its activities and cease to function, any monies remaining in its possession or to its credit after the payment of outstanding debts and obligations shall be distributed in equal shares to the Contributing-Member States of NCOIL in good standing at the time of distribution.

## VI. RULES OF PROCEDURE

A. Each model act adopted by NCOIL shall be reviewed by the Committee of original reference every five (5) years. The respective Committee shall vote to readopt the model act, amend and readopt the model act, or allow the model act to "sunset." Readopted models shall be sent to the Executive Committee for final adoption.

B. The NCOIL committees shall review previously adopted NCOIL model laws in order to provide an appropriate sunset schedule. Such documents shall be reviewed in the following manner:

Spring Meeting shall be Life Insurance & Financial Planning Committee and the Health, Long-Term Care & Health Retirement Issues Committee.

Summer Meeting shall be Workers' Compensation Insurance Committee and Property-Casualty Insurance Committee.

The Annual Meeting shall be the State-Federal Relations Committee, Financial Services & Investment Products Committee, and Executive Committee. Model laws shall sunset every five (5) years within the Committee. Committees shall have the authority to extend the model laws from meeting to meeting.

C. In any issue not covered by the Articles or Bylaws, Robert's Rules of Order shall be the standard authority.

## VII. AMENDMENTS

These Bylaws may be amended or repealed at any meeting of the Executive Committee by a favorable vote of two-thirds of the members present and voting, provided however, that notice and text of any proposed amendments shall be given in summary form to the NCOIL Executive Director at least thirty (30) days prior to the date of that meeting in accordance with the NCOIL 30-day rule for submission of documents to NCOIL for approval or disapproval, as stated in Section IV.H of the Bylaws. Amendments shall become effective immediately upon adoption unless otherwise provided therein.

### ARTICLES OF ORGANIZATION/BYLAWS AMENDMENTS

Adopted 4th Annual Meeting, San Francisco, November 28, 1972;  
Amended 10th Annual Meeting, Detroit, November 14, 1978;  
Amended 11th Annual Meeting, Charleston, November 14, 1979;  
Amended 12th Annual Meeting, San Antonio, November 22, 1980;  
Amended 16th Annual Meeting, Little Rock, November 17, 1984;  
Amended 17th Annual Meeting, Phoenix, November 24, 1985;  
Amended 18th Annual Meeting, Nashville, November 16, 1986;  
Amended 19th Annual Meeting, Palm Springs, November 18, 1987;  
Amended 23rd Annual Meeting, Scottsdale, November 20, 1991;  
Amended 24th Annual Meeting, Charleston, November 18, 1992;  
Amended 26th Annual Meeting, New York City, November 13, 1994;  
Amended 27th Annual Meeting, San Francisco, November 11, 1995;  
Amended 28th Annual Meeting, Austin, Texas, November 20, 1996;  
Amended 30th Annual Meeting, San Diego, California, November 21, 1998;  
Amended 31st Annual Meeting, Orlando, Florida, November 19, 1999;  
Amended Spring Meeting, San Francisco, California, February 25, 2000;  
Amended 32nd Annual Meeting, New Orleans, Louisiana, November 16, 2000;  
Amended Summer Meeting, Williamsburg, Virginia, July 11, 2003;  
Amended Summer Meeting, Chicago, Illinois, July 16, 2004;  
Amended Annual Meeting, San Diego, California, November 19, 2005;  
Amended Summer Meeting, Boston, Massachusetts, July 21, 2006;  
Amended Annual Meeting, Napa Valley, California, November 10, 2006;  
Amended Summer Meeting, Seattle, Washington, July 21, 2007;  
Amended Annual Meeting, Las Vegas, Nevada, November 17, 2007;  
Amended Spring Meeting, Washington, DC, March 1, 2008;  
Amended Summer Meeting, New York, New York, July 11, 2008;  
Amended Annual Meeting, Duck Key, Florida, November 20, 2008;  
Amended Spring Meeting, Isle of Palms, South Carolina, March 7, 2010;  
Amended Summer Meeting, Newport, Rhode Island, July 17, 2011;  
Amended Annual Meeting, Santa Fe, New Mexico, November 20, 2011;  
Amended Summer Meeting, Philadelphia, Pennsylvania, July 14, 2013;

Amended Annual Meeting, Nashville, Tennessee, November 24, 2013;  
Amended Summer Meeting, Boston, Massachusetts, July 13, 2014;  
Amended Annual Meeting, San Francisco, California, November 20, 2014;  
Amended Spring Meeting, Charleston, South Carolina, March 1, 2015.  
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K:/NCOIL/Organization/BYLAWS



**TAB #3**



**Life Insurance & Financial Planning**  
NCOIL Summer Meeting, Portland, OR  
Thursday, July 14, 2016  
11:30 am – 1:00 pm

*Chair, Sen. Mike Hall, WV*

*\*Call to order/roll call/approval of February 28, 2016 committee meeting minutes*

1. Discussion of Indexed Annuities
2. Discussion of Products that rely on policyholder behavior (e.g. bundled annuities)
3. Discussion of Contingent Deferred Annuities
4. Consideration of resolution urging Department of Labor to repeal its Fiduciary Standard Rule
5. Adjournment

## **Life Insurance & Financial Planning Committee**

Chair: Sen. Mike Hall, WV

Vice Chair: Sen. David O'Connell

Sen. Jason Rapert, AR

Rep. Richard Smith, GA

Rep. Martin Carbaugh, IN

Rep. Ronald Crimm, KY

Rep. Joseph Fischer, KY

Rep. Jim Gooch, KY

Rep. Jeff Greer, KY

Rep. Bart Rowland, KY

Rep. Tommy Thompson, KY

Sen. Dan "Blade" Morrish, LA

Rep. Michael Webber, MI

Rep. Don Gosen, MO

Rep. George Keiser, ND

Sen. Jerry Klein, ND

Rep. Don Flanders, NH

Sen. James Seward, NY

Rep. Robert Hackett, OH

Rep. Brian Kennedy, RI

Sen. Roger Picard, RI

Sen. Robert Hayes, SC

Rep. Bill Botzow, VT

Rep. Kathie Keenan, VT

Del. Steve Westfall, WV

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
LIFE INSURANCE & FINANCIAL PLANNING COMMITTEE  
LITTLE ROCK, ARKANSAS  
FEBRUARY 28, 2016  
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) Life Insurance & Financial Planning Committee met at the Little Rock Marriott in Little Rock, Arkansas, on Sunday, February 28, 2016, at 8:00 a.m.

Sen. Jason Rapert of Arkansas, NCOIL Secretary and Member of the Committee, presided as Chairman pro tem.

Other members of the Committee present were:

Rep. Ronald Crimm, KY	Rep. Brian Kennedy, RI
Rep. George Keiser, ND	Sen. Robert Hayes, SC
Sen. Jerry Klein, ND	Rep. Bill Botzow, VT
Sen. James Seward, NY	

Other legislators present were:

Rep. Matt Lehman, IN	Sen. Kevin Bacon, OH
Rep. Steve Riggs, KY	Sen. Gary Stanislawski, OK

Also in attendance were:

Tom Considine, NCOIL CEO  
Paul Penna, Executive Director, NCOIL Support Services  
Christina Zuk, Legislative Director, NCOIL Support Services  
Paulina Grabczak, Deputy Legislative Director, NCOIL Support Services

## MINUTES

Upon a motion made and seconded, the Committee unanimously approved the minutes of its November 13, 2015, meeting in San Antonio, Texas.

## BENEFICIARIES' BILL OF RIGHTS

Kate Kiernan of the American Council of Life Insurers (ACLI) respectfully asked that the model law not be re-approved. The Act mandates companies to not put money into a retained asset account until there is permission from the beneficiary. The issue is that sometimes this decision is a difficult one so the money should be there when the beneficiary needs it.

Birny Birnbaum of the Center for Economic Justice (CEJ) commented that he disagrees with the ACLI. Mr. Birnbaum said that he does not see anywhere in the model that permission is required before the insurer sets up the account. It does say that the insurer may not use the account unless there is disclosure, but it does not require permission to set-up the account. The model does a good job at addressing the abuses that were found with retained asset accounts. The model says that (1) relevant information must be provided; (2) experience with retained asset accounts must be reported to regulators, which is useful for the regulators to monitor; and (3) the money must be paid out when the account is inactive. The third point is

very important because one of the issues with retained asset accounts is that the accounts were set-up and they were in existence for many, many years. The money was not being given to the beneficiaries and it was not escheating to the states, which gave rise to issues in unclaimed benefits audits. The model is one of NCOIL's best models in terms of addressing the issues in an important way that does not interfere with the market, but supports consumer fairness.

Upon a motion made and seconded, the Committee re-adopted the Beneficiaries' Bill of Rights model law.

#### LIFE INSURANCE DISCLOSURE MODEL ACT

Darwin Bayston of the Life Insurance Settlement Association (LISA) strongly supports the model act and urged its re-adoption. It has been implemented in six states over the past few months. Additionally, two states have expressed interest in some type of consumer disclosure. The model act is serving a very good purpose. Mr. Bayston stated that life insurance is the core backbone of the American financial system. It is also personal property so it needs to be managed during one's life.

Mr. Bayston further said that each year more than \$100 billion of face value life insurance lapses by seniors over the age of sixty-five. It is believed that this is high because some of them do not have awareness of what options they may have available with their life insurance policy. The model act has a list of options available that are important to consider. Seniors with lapsed policies have indicated that if they had known of options, they would have considered them.

Birny Birnbaum of the Center for Economic Justice (CEJ) said that it makes a lot of sense to inform consumers about their options when they encounter certain life situations. It is also important that consumers are provided with all the options that are available and not limit that list. However, Mr. Birnbaum said giving consumers a laundry list of technical information does not empower them. There are new techniques that enable consumers to be empowered. If one were to give the list of information that the model act provides for the chances are that it will not empower the consumer. It is more likely that the consumer will be confused given the way the list is set-up. The good part of the model act, however, is that the Commissioner is to determine how to give notice. This allows the Commissioner to perform consumer testing to see if consumers understand the information. On the whole, the re-adoption of the model act is supported, but moving forward the new insights when it comes to informing consumers effectively should be explored.

Kate Kiernan of the American Council of Life Insurers (ACLI) respectfully asked to retire the model act. The main objection is that the insurer is required to provide the notification. It is not appropriate to have agents discuss options that they don't sell because they may not have all the information.

Upon a motion made and seconded, the Committee re-adopted the Life Insurance Disclosure Model Act.

#### LONG-TERM CARE TAX CREDIT MODEL ACT

Kate Kiernan of the American Council of Life Insurers (ACLI) is in support of the re-adoption of the model act. This is a very important and simple model act. The states have slight variations on it, but the model should be continued.

Birny Birnbaum of the Center for Economic Justice (CEJ) noted that no one disagrees with the premise that there is a retirement income long-term care crisis in the country and there is a need to finance it. Additionally, there is tremendous pressure on state budgets to deal with the associated costs. The question is what the best way is for a state to use its limited resources. One approach is that a state can spend money through a tax credit to subsidize long-term care. It would be great if this were to lead to more consumers purchasing long-term care. However, it is unclear if the tax credit does this. Mr. Birnbaum stated that he could not take a position on this because he is unsure if the tax credit is effective or not. If it is effective then Mr. Birnbaum would be supportive, but if it is not effective then state budget dollars should be used in a better way.

Sen. Stanislawski asked about the partnership programs for long-term care and how effective they are. Kate Kiernan said that they are very effective. There are a number of states that have very active programs, which were re-built in the mid- 2000s. In response to a follow-up question by Sen. Stanislawski, Kate Kiernan said that she does believe they encourage consumers to buy long-term care because of the partnership program and the offsets at the end of the program.

Sen. Stanislawski asked if the partnership program is already a great incentive then what makes the tax credit something that will also incentivize people to buy long-term care. Kate Kiernan said that the 15% tax credit is a large incentive for certain populations that might otherwise not utilize the partnership program. Additionally, there are states where there is no partnership program.

Rep. Keiser said that he does not believe there is any evidence to support stating that the tax credit has significantly impacted the purchase of long-term care insurance. The people who were going to buy it have bought it and the tax credit is an added benefit. One can't definitely say that this is an incentive.

Rep. Botzow said that almost all of NCOIL's models are policy focused and not fiscal. Rep. Botzow commented that he wonders if there are a lot of NCOIL model acts that deal with fiscal policy as opposed to good government policy. Rep. Botzow believes that it may make sense to step back if this is really important because there is no necessity to do this now without getting it right. Sen. Rapert noted that he has a slightly different opinion on this. The strain will be placed on state budgets as people retire so there is a great need for people to have long-term care insurance. Sen. Rapert believes that a tax credit is a much better idea. The model is good and the intent to encourage the purchase of longterm care insurance is important.

Upon a motion made and seconded, the Committee re-adopted the Long-Term Care Tax Credit Model Act.

#### UPDATE ON UNCLAIMED LIFE INSURANCE BENEFITS ACTIVITY

Superintendent Beth Dwyer of Rhode Island said that there is a working group at the NAIC, which is taking the NCOIL model act on unclaimed benefits and comparing it on a section-to-section basis to states that have their own statutes. The working group has been holding weekly calls. They did a chart comparing the sections and they had many discussions with interested parties. They released a draft model for comment. They hope to have an updated model by the NAIC Spring meeting for further discussion.

Superintendent Dwyer said that the Life Insurance and Claims Settlement Practices Task Force has been looking at insurers that have used the death master file in an asymmetrical

manner. The Task Force has looked at seventeen of the largest insurance companies representing 66% of the national market. They have entered into agreements with fifteen of those companies that were found to be using the death master file in an asymmetrical manner. Two companies were found to not to be using the death master file in an asymmetrical manner. Statements were issued stating that no further action would be taken with those two companies.

Kate Kiernan of the American Council of Life Insurers (ACLI) commended NCOIL for the life insurance benefits model act that was passed. Nineteen states have passed variations of the model. It is one of the most successful models that NCOIL has adopted. Over the passed ten years, life insurers have paid \$600 billion for life insurance policies. These policies are typically paid within thirty days. This represents 99% of claims paid. Thirteen Departments have adopted a lost policy search system and the ACLI is in support of this. The systems are a bit different so the NAIC is working to unify that so it is easier for customers.

Kate Kiernan said that there are eight states with unclaimed property legislation being considered this session. One of the significant issues that everyone is aware of and it has been debated at NCOIL before is whether or not the policy should apply prospectively or retroactively. Eleven states have prospective application and eight states apply the policy to all enforced policies. The discussions on this in the states revolves around each state's constitutional stance on the matter as well as taking into consideration the financial impact that retroactive application may have on smaller companies.

Rep. Crimm said he would work on an amendment for the upcoming NCOIL meeting. In Kentucky, the word "reasonable" is used in several places in the model act and Rep. Crimm does not like this because the meaning of the word can change. There should be an actual time limit in the model act as it is too important to leave up to discretion to define what reasonable is.

#### REPORT ON PRINCIPLE-BASED RESERVING (PBR) ACTIVITY

Superintendent Beth Dwyer of Rhode Island said that in 2009 the NAIC membership introduced a new method for calculating life insurance policy reserves to more easily adopt the reserving requirements for changing products—known as principle-based reserving (PBR). The hope is that this is going to reduce the incentive for life insurance companies to use work-arounds, which were used to get rid of redundant reserves from the life insurance companies' perspective.

Superintendent Dwyer said that once forty-two states adopt the revisions then PBR will be operationalized. Currently, thirty-nine states have adopted the revisions. Three states have PBR legislation introduced this year so once this is done then PBR will be effective. If legislation does not go through in all of these three states it is fine because there are six other states expected to introduce PBR legislation in the current legislative session. The NAIC is currently developing a regulatory review system to ensure effective and consistent implementation of PBR once it becomes effective. Once the regulatory review process is built, there will be a PBR pilot to identify changes that are needed.

Kate Kiernan of the American Council of Life Insurers (ACLI) said that many members of the Committee have already passed the legislation in their states.

Birny Birnbaum of the Center for Economic Justice (CEJ) said that the way that state insurance regulators monitor the financial condition of life insurance companies and the reserves, historically, was a formula. The NAIC would say that for certain types of insurance

there is a specific formula. The problem with this approach is that as policies get all sorts of new features and new complicated policies are made the rules need to be updated and the rules can get tricky. PBR is trying to do on the life insurance side what is already done on the property-casualty insurance side. That is to say, it is left up to the company to use actuarial judgment to determine what the reserves are based on the best actuarial science. The problem is that states simply don't have the capability to do this. They are geared up on the life insurance side to be auditors on the financial conditions of the reserves. PBR is now saying that states must develop this detailed actuarial expertise so states can look at the stochastic modeling, the statistical techniques, that are employed by the insurers and the states don't have this capability. What is happening is that the NAIC is developing that capability—they are adding five actuaries. The NAIC will become the mechanism to assist states in a way that has never happened before. Mr. Birnbaum supports this. This makes a lot of sense in terms of consistency. This means, however, that the NAIC budget must increase.

Mr. Birnbaum said that the reason for doing this is that it is a better way for companies to establish reserves. It is not a way to stop the abusive use of captives because this will be continued unless it is specifically prohibited. Lastly, just as PBR is creating a level of complexity for regulators that is beyond what their capabilities have been historically, the same is happening on the propertycasualty side with the rate making models. If proposals come before anyone to enhance the NAIC ability to help the states, there is a hope that this will be supported.

Rep. Keiser said smaller states can't afford the actuarial services and there is recognition that the NAIC should develop it, but that it should not be a profit center. There has been a repeated guarantee that it will not be. Kate Kiernan noted that she believes this endeavor will actually cost the NAIC money and certainly not generate money. The services will be provided to states that do not have actuaries on staff.

#### ADJOURNMENT

There being no further business, the Committee adjourned at 9:00 a.m.



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CHIEF EXECUTIVE OFFICER: Thomas B. Considine



PRESIDENT: Sen. Travis Holdman, IN  
VICE PRESIDENT: Rep. Steve Riggs, KY  
SECRETARY: Sen. Jason Rapert, AR  
TREASURER: Rep. Bill Botzow, VT

## **National Conference of Insurance Legislators (NCOIL)**

### **Resolution in Opposition to the United States Department of Labor (DOL) Fiduciary Rule**

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*Sponsored by Sen. Jason Rapert (AR)*

**WHEREAS**, the DOL has recently promulgated its final “Fiduciary Rule” (Rule), published at 81 Fed. Reg. 20946 on April 8, 2016; and

**WHEREAS**, the Rule redefines the circumstances under which providing “investment advice” could give rise to “fiduciary” status under the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (Code); and

**WHEREAS**, NCOIL strongly supports the States’ rights to regulate their own insurance markets and products, including retirement related financial products; and

**WHEREAS**, Congress has affirmed the primary role of State regulators over the business of insurance through various legislative acts, including the McCarran-Ferguson Act and most recently the Dodd-Frank Act; and

**WHEREAS**, the state-based regulatory structure governing the manufacture, distribution, and sale of retirement related financial products is effective and proven; and

**WHEREAS**, state insurance regulation has in place on-going substantive procedures, processes and protocols to license, regulate and supervise insurance agents of retirement related financial products; and

**WHEREAS**, under the proven State-based legislative and regulatory structure, tens of millions of Americans have been able to receive sound retirement assistance, products and services from financial professionals who have consistently served the best interests of customers; and

**WHEREAS**, the Rule promulgated by the DOL would threaten the proven State-based legislative and regulatory structure by imposing a vague and burdensome fiduciary standard on non-fiduciary sales relationships, thereby upending the retirement savings marketplace; and

**WHEREAS**, the Rule will prevent consumer access to crucial retirement education and services, ultimately harming the very people it seeks to aid; and

**WHEREAS**, NCOIL believes in protecting the interests of consumers against excessive government regulation that will only hurt average working Americans trying to save for retirement; and

**WHEREAS**, Congress has opposed the Rule by passing a Joint Resolution of Disapproval (H.J. Res. 88); and

**NOW, THEREFORE, BE IT RESOLVED**, that NCOIL urges the DOL to repeal its Rule; and

**NOW, THEREFORE, BE IT FURTHER RESOLVED**, that NCOIL urges state legislators and other interested stakeholders to join in opposition to the Rule;

**AND, BE IT FINALLY RESOLVED**, that a copy of this resolution will be distributed to the DOL, state legislative leadership, committee chairs and members, state regulators, and other interested parties.

**TAB #4**



**Workers Compensation Committee**  
NCOIL Summer Meeting, Portland, OR  
Thursday, July 14, 2016  
2:30 pm – 4:00 pm

*Chair, Rep. Jerry Klein, ND*

*\*Call to order/roll call/approval of February 27, 2016 committee meeting minutes*

1. Continue discussion of Workers' Comp alternatives
2. Discussion of Workers' Compensation Summit
  - *Bob Wilson, President & CEO of WorkersCompensation.com*
3. Consider re-adoption of model laws:
  - a. Trucking and Messenger Courier Industries Workers' Compensation Model Act
  - b. Model State Structured Settlement Protection Act
  - c. Model Agreement Between Jurisdictions to Govern Coordination of Claims and Coverage
4. Adjournment

**Workers' Compensation Insurance Committee**

Chair: Sen. Jerry Klein, ND

Vice Chair: Rep. Marguerite Quinn, PA

Sen. Jason Rapert, AR

Rep. Martin Carbaugh, IN

Rep. Matt Lehman, IN

Rep. Peggy Mayfield, IN

Rep. Joseph Fischer, KY

Rep. Steve Riggs, KY

Rep. Bart Rowland, KY

Rep. Michael Webber, MI

Rep. Don Gosen, MO

Rep. George Keiser, ND

Sen. David O'Connell, ND

Rep. Don Flanders, NH

Asm. Maggie Carlton, NV

Sen. James Seward, NY

Rep. Michael Henne, OH

Rep. Bill Botzow, VT

Rep. Sarah Copeland Hanzas, VT

Rep. Kathie Keenan, VT

Rep. Warren Kitzmiller, VT

Sen. Mike Hall, WV

Del. Steve Westfall, WV

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
WORKERS' COMPENSATION INSURANCE COMMITTEE  
LITTLE ROCK, ARKANSAS  
FEBRUARY 27, 2016  
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) Workers' Compensation Insurance Committee met at the Little Rock Marriott in Little Rock, Arkansas on Saturday, February 27, 2016 at 1:00 p.m.

Sen. Jerry Klein of North Dakota, Chair of the Committee, presided.

Other members of the Committee present were:

Sen. Jason Rapert, AR  
Rep. Martin Carbaugh, IN  
Rep. Matt Lehman, IN

Rep. Steve Riggs, KY  
Rep. George Keiser, ND  
Rep. Bill Botzow, VT

Other legislators present were:

Rep. Deborah Ferguson, AR  
Sen. Gregory Standridge, AR  
Sen. Travis Holdman, IN  
Rep. Ken Goike, MI  
Rep. Henry Vaupel, MI

Sen. Ed Buttrey, MT  
Sen. Kevin Bacon, OH  
Sen. Gary Stanislawski, OK  
Rep. Spencer Hawley, SD

Also in attendance were:

Tom Considine, NCOIL CEO  
Paul Penna, Executive Director, NCOIL Support Services  
Christina Zuk, Legislative Director, NCOIL Support Services  
Paulina Grabczak, Deputy Legislative Director, NCOIL Support Services

## MINUTES

Upon a motion made and seconded, the Committee unanimously approved the minutes of its November 12, 2015 meeting in San Antonio, Texas.

## DISCUSSION OF PROFESSIONAL EMPLOYER ORGANIZATIONS (PEO)

Mona Carter of NCCI provided a brief update on PEOs. Ms. Carter noted that two years ago the Committee decided not to sunset the model act (Model Act Regarding Workers' Compensation Insurance Coverage in Professional Employer Organization (PEO) Relationships), but to take a look at questions raised and other things going on around the country. Ms. Carter stated that there has not been a lot of activity around the NCOIL model, and suggested that the Committee allow the model to continue without sunseting it and see how things evolve around the country. At last count, no state has adopted this NCOIL model act.

## DISCUSSION OF OPT OUT WORKERS' COMPENSATION OPT OUT

- Sen. Klein called the following panel to provide testimony:

- AJ Donelson, Association for Responsible Alternatives to Workers' Compensation (ARAWC)
- Superintendent Elizabeth Dwyer, RI Department of Banking & Insurance, NAIC representative
- Ron Jackson, American Insurance Association (AIA)
- Troy Gillespie, Property Casualty Insurers Association (PCI)
- Buddy Combs, Oklahoma Insurance Department

Sen. Klein requested the Oklahoma state perspective from Buddy Combs.

Mr. Combs advised that from the perspective of the state, the option has been positive. While there are some problems that need to be addressed, legislative fixes have been introduced to do so. Mr. Combs also noted that the Workers' Compensation Commission just ruled that the opt-out workers' compensation portion of their statute is unconstitutional. At this point, there are close to 60 employers who have chosen the option.

Mr. Donelson provided an overview of the Association for Responsible Alternatives to Workers' Compensation, and stated that the Association believes that all employers are obligated to provide employees with an occupational injury benefit system. Mr. Donelson further stated that the Association does not support employers being able to opt-out of this obligation.

Mr. Donelson went on to state that an option program complements, and does not replace, state efforts aimed at providing quality occupational injury benefit programs. Mr. Donelson said that by enacting the option, a state can build upon the progress of workers' compensation reforms to ensure a fair and much improved system for all employees and employers.

Sen. Rapert asked what kind of outcomes the state of Oklahoma has seen under the opt out provision. Mr. Combs responded that the state has seen significant benefits for employers. Mr. Combs noted that while he did not have the statistics in front of him, reports have shown that a number of employers have seen a 73% savings on their workers' compensation claims.

Rep. Botzow asked what makes the option program different than other workers' compensation programs.

Mr. Donelson responded that an option program really starts with improved communication with employees prior to any injury taking place so that they are aware of their rights and responsibilities before an injury. Additionally, prompt, faster access to medical care is resulting in a faster return to work for injured employees.

Troy Gillespie from the Property Casualty Insurers Association (PCI) stated that historically opt out programs in Texas and Oklahoma have proven not to be a responsible alternative to workers compensation. While there can be a debate about different models involved, they are all essentially the same model of allowing employers to leave the state mandated workers' compensation system and replace it with a system they've created on their own. The employee loses all contractual and statutory entitlement to benefits.

Mr. Gillespie further stated that current reports in Oklahoma indicated that the 60 employers who opted out have saved about 73%. But when you look at the plans themselves its easy to see where those cost savings take place. For instance, in Texas, the death benefits to spouses and children have been reduced by approximately 80%.

Mr. Gillespie stated that in the decision that came out yesterday from the Workers' Compensation Commission, they examined whether the benefits are equal to or better than traditional workers compensation, it was determined that they were "decidedly not." PCI does not believe that voluntary benefits under ERISA are adequate. The cost savings are extraordinary but the outcomes are not.

Sen. Rapert requested the NAIC position on this issue.

Superintendent Dwyer advised that the NAIC Workers' Compensation Task Force is reviewing the issue of opt outs. NAIC's understanding is that Texas has always had a statute, and that Tennessee, South Carolina, and Georgia are considering possible opt outs. In general, workers' compensation is statutory, so it varies slightly in every state.

The NAIC is waiting for a report from the international Association of Industrial Accident Boards and Commissions, which is studying opt out. The results are due the beginning of this year. The NAIC staff has been in contact with the Department of Labor, and the federal government is concerned with opt out issues.

Ron Jackson from the American Insurance Association (AIA) stated that the AIA understands employers' interest in reducing costs, and expressed a willingness in working to address that issue. Mr. Jackson stated that AIA believes that the alternatives proposed do not offer benefits that are greater than or equal to those offered through traditional workers' compensation systems.

Mr. Jackson further stated that any alternative system needs to have uniform obligations for employers and employees. When you don't, you necessarily have a separate but unequal system. AIA welcomes a dialogue on different types of systems.

#### ADJOURNMENT

There being no other business, the Committee adjourned.



**NATIONAL CONFERENCE OF INSURANCE LEGISLATORS (NCOIL)**  
**Trucking and Messenger Courier Industries Workers' Compensation Model Act**

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*To be reviewed by the NCOIL Workers' Compensation Committee on July 15, 2016. Adopted by the NCOIL Executive Committee on March 6, 2011 and the Workers' Compensation Insurance Committee on March 4, 2011.*

**Section 1. Purpose**

The purpose of this Act is to establish clear criteria to determine employee and independent contractor status for workers' compensation coverage purposes.

**Section 2. Definitions**

Definitions for this Section will track definitions in *[Insert Workers' Compensation Statute]*.

**Section 3. Independent Contractors in the Trucking and Messenger Courier Industries**

In the trucking and messenger courier industries, an operator of a vehicle or vessel is an employee and subject to state workers' compensation laws unless each of the following factors is present, and if each factor is present the operator is an independent contractor:

1. the individual owns the equipment or holds it under a bona fide lease arrangement. Any lease arrangement, loan or loan guarantee cannot be with the hiring entity or any affiliate of the hiring entity. This would not apply in temporary replacement lease agreements;
2. the individual is responsible for substantially all of the principal operating costs of the vehicle or vessel and equipment, including maintenance, fuel, repairs, supplies, vehicle insurance, and personal expenses. The individual may be paid the carrier's fuel surcharge and incidental costs by the contracting entity, including, but not limited to, tolls, permits, and lump sum fees;
3. the individual is responsible for supplying the necessary services to operate the equipment;
4. the individual's compensation is based on factors related to the work performed, such as mileage-based rates or a percentage of any schedule of rates, and not solely on the basis of the hours or time expended;
5. the individual substantially controls the means and manner of performing services, in conformance with regulatory requirements and specifications of a shipper; and

6. there must be a certification statement affirming that the individual whose services are being acquired meets each of the factors in Section 3(1) through (5) and that the relationship is understood to be that of an independent contractor and not that of an employee. The statement must be signed and dated by the individual supplying the service and the hiring entity. The statement must be supplied on demand to an insurance premium auditor or *[Insert Applicable State Agency]*

**Section 4. Penalties**

Penalties for non-compliance will be levied in accordance with *[Insert Workers' Compensation Statute]*.

**Section 5. Enforcement**

The *[Insert Applicable State Agency]* shall have enforcement authority as provided under *[Insert Workers' Compensation Statute]*.

**Section 6. Effective Date**

This Act shall take effect immediately.

# MODEL STATE STRUCTURED SETTLEMENT PROTECTION ACT

*Supported by the NCOIL Executive Committee on February 27, 2004, July 22, 2006, and again on July 17, 2011.*

**Sponsored by Sen. Carroll Leavell (NM)**

**SECTION 1. TITLE.** This Act shall be known and referred to as the “Structured Settlement Protection Act.”

**SECTION 2. DEFINITIONS.** For purposes of this Act--

(a) “annuity issuer” means an insurer that has issued a contract to fund periodic payments under a structured settlement;

(b) “dependents” include a payee’s spouse and minor children and all other persons for whom the payee is legally obligated to provide support, including alimony;

(c) “discounted present value” means the present value of future payments determined by discounting such payments to the present using the most recently published Applicable Federal Rate for determining the present value of an annuity, as issued by the United States Internal Revenue Service;

(d) “gross advance amount” means the sum payable to the payee or for the payee’s account as consideration for a transfer of structured settlement payment rights before any reductions for transfer expenses or other deductions to be made from such consideration;

(e) “independent professional advice” means advice of an attorney, certified public accountant, actuary or other licensed professional adviser;

(f) “interested parties” means, with respect to any structured settlement, the payee, any beneficiary irrevocably designated under the annuity contract to receive payments following the payee’s death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under such structured settlement;

(g) “net advance amount” means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under Section 3(e) of this Act;

(h) “payee” means an individual who is receiving tax free payments under a structured settlement and proposes to make a transfer of payment rights thereunder;

(i) “periodic payments” includes both recurring payments and scheduled future lump sum payments;

(j) “qualified assignment agreement” means an agreement providing for a qualified assignment within the meaning of section 130 of the United States Internal Revenue Code, United States Code Title 26, as amended from time to time;

(k) “responsible administrative authority” means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by such structured settlement;

(l) “settled claim” means the original tort claim or workers’ compensation claim resolved by a structured settlement;

(m) “structured settlement” means an arrangement for periodic payment of damages for personal injuries or sickness established by settlement or judgment in resolution of a tort claim or for periodic payments in settlement of a workers’ compensation claim;

(n) “structured settlement agreement” means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement;

(o) “structured settlement obligor” means, with respect to any structured settlement, the party that has the continuing obligation to make periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement;

(p) “structured settlement payment rights” means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, where –

(i) the payee is domiciled in, or the domicile or principal place of business of the structured settlement obligor or the annuity issuer is located in, this State; or

(ii) the structured settlement agreement was approved by a court or responsible administrative authority in this State; or

(iii) the structured settlement agreement is expressly governed by the laws of this State;

(q) “terms of the structured settlement” include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement and any order or other approval of any court or responsible administrative authority or other government authority that authorized or approved such structured settlement;

(r) “transfer” means any sale, assignment, pledge, hypothecation or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration; provided that the term “transfer” does not include the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution, in the absence of any action to redirect the structured settlement payments to such insured depository institution, or an agent or successor in interest thereof, or otherwise to enforce such blanket security interest against the structured settlement payment rights;

(s) “transfer agreement” means the agreement providing for a transfer of structured settlement payment rights.

(t) “transfer expenses” means all expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the gross advance amount, including, without limitation, court filing fees, attorneys fees, escrow fees, lien recordation fees, judgment and lien search fees, finders’ fees, commissions, and other payments to a broker or other intermediary; “transfer expenses” do not include preexisting obligations of the payee payable for the payee’s account from the proceeds of a transfer;

(u) “transferee” means a party acquiring or proposing to acquire structured settlement payment rights through a transfer;

**SECTION 3. REQUIRED DISCLOSURES TO PAYEE.** Not less than three (3) days prior to the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type no smaller than 14 points, setting forth —

(a) the amounts and due dates of the structured settlement payments to be transferred;

(b) the aggregate amount of such payments;

(c) the discounted present value of the payments to be transferred, which shall be identified as the "calculation of current value of the transferred structured settlement payments under federal standards for valuing annuities", and the amount of the Applicable Federal Rate used in calculating such discounted present value;

(d) the gross advance amount;

(e) an itemized listing of all applicable transfer expenses, other than attorneys' fees and related disbursements payable in connection with the transferee's application for approval of the transfer, and the transferee's best estimate of the amount of any such fees and disbursements;

(f) the net advance amount;

(g) the amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee; and

(h) a statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the third business day after the date the agreement is signed by the payee.

#### **SECTION 4. APPROVAL OF TRANSFERS OF STRUCTURED SETTLEMENT PAYMENT RIGHTS.**

(a) No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order or order of a responsible administrative authority based on express findings by such court or responsible administrative authority that —

(i) the transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents;

(ii) the payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received such advice or knowingly waived such advice in writing; and

(iii) the transfer does not contravene any applicable statute or the order of any court or other government authority;

**SECTION 5. EFFECTS OF TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS.** Following a transfer of structured settlement payment rights under this Act:

(a) The structured settlement obligor and the annuity issuer shall, as to all parties except the transferee, be discharged and released from any and all liability for the transferred payments;

(b) The transferee shall be liable to the structured settlement obligor and the annuity issuer:

(i) if the transfer contravenes the terms of the structured settlement, for any taxes incurred by such parties as a consequence of the transfer; and

(ii) for any other liabilities or costs, including reasonable costs and attorneys' fees, arising from compliance by such parties with the order of the court or responsible administrative authority or arising as a consequence of the transferee's failure to comply with this Act;

(c) Neither the annuity issuer nor the structured settlement obligor may be required to divide any periodic payment between the payee and any transferee or assignee or between two (or more) transferees or assignees; and

(d) Any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this Act.

**SECTION 6. PROCEDURE FOR APPROVAL OF TRANSFERS.**

(a) An application under this Act for approval of a transfer of structured settlement payment rights shall be made by the transferee and may be brought in the [county] in which the payee resides, in the [county] in which the structured settlement obligor or the annuity issuer maintains its principal place of business, or in any court or before any responsible administrative authority which approved the structured settlement agreement.

(b) Not less than twenty (20) days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under Section 4 of this Act, the transferee shall file with the court or responsible administrative authority and serve on all interested parties a notice of the proposed transfer and the application for its authorization, including with such notice:

(i) a copy of the transferee's application;

- (ii) a copy of the transfer agreement;
- (iii) a copy of the disclosure statement required under Section 3 of this Act;
- (iv) a listing of each of the payee's dependents, together with each dependent's age;
- (v) notification that any interested party is entitled to support, oppose or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing; and
- (vi) notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed (which shall be not less than [fifteen (15)] days after service of the transferee's notice) in order to be considered by the court or responsible administrative authority.

## **SECTION 7. GENERAL PROVISIONS; CONSTRUCTION.**

- (a) The provisions of this Act may not be waived by any payee.
- (b) Any transfer agreement entered into on or after the effective date of this Act by a payee who resides in this state shall provide that disputes under such transfer agreement, including any claim that the payee has breached the agreement, shall be determined in and under the laws of this State. No such transfer agreement shall authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.
- (c) No transfer of structured settlement payment rights shall extend to any payments that are life-contingent unless, prior to the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for (i) periodically confirming the payee's survival, and (ii) giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.



(d) No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee or any assignee based on any failure of such transfer to satisfy the conditions of this Act.

(e) Nothing contained in this Act shall be construed to authorize any transfer of structured settlement payment rights in contravention of any law or to imply that any transfer under a transfer agreement entered into prior to the effective date of this Act is valid or invalid.

(f) Compliance with the requirements set forth in Section 3 of this Act and fulfillment of the conditions set forth in Section 4 of this Act shall be solely the responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer shall bear any responsibility for, or any liability arising from, non-compliance with such requirements or failure to fulfill such conditions.

**EFFECTIVE DATE.** This Act shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after the [thirtieth (30th)] day after the date of enactment of this Act; provided, however, that nothing contained herein shall imply that any transfer under a transfer agreement reached prior to such date is either effective or ineffective.

**International Association of Industrial Accident Boards and Commissions  
Model Agreement Between Jurisdictions to Govern Coordination of Claims and  
Coverage<sup>1</sup>  
July 29, 2005**

*Supported by the NCOIL Executive Committee on July 22, 2006, and again on July 17, 2011.*

## **Background and Uses**

The purpose of this model is provide a useful overview of the experience of states in negotiating and administering reciprocal agreements to coordinate employer insurance requirements and claims in cases where “temporary” employment occurs in one of the states that are parties to a reciprocal agreement. The model presented here distills the structure and language commonly found in existing agreements.

Reciprocal agreements to coordinate interstate insurance requirements and claims handling are practiced by at least 10 states, dating back as early as 1968 (Washington). The benefits of such agreements are:

- For employers, they reduce requirements to purchase insurance coverage in multiple or numerous jurisdictions when an employer sends employees to work for short periods outside the state of hire and normal employment
- For workers, they eliminate any possible questions with regard to the employee’s right to obtain workers’ compensation benefits from the state of hire and normal employment, usually the home state of the worker with medical providers close to home.
- For state WC agencies, they ease the enforcement investigations and sanctions required to maintain the scope of workers’ compensation coverage desired.
- For insurers/payers they reduce ambiguity in claims handling by insurance adjusters and minimize the need to deal with duplicate claims and offsets.
- For all parties, they reduce the costs of litigation for benefits when the applicable coverage by two states is ambiguous.

By way of background, it should be understood that most states do allow claims that occur in the course of temporary employment outside of the “home” state of operations to be processed under the laws of the home state where the worker regularly works. However, employers are often exposed to the need to purchase multiple policies (especially when state-specific assigned risk plans are involved), which may result in them paying twice for the same workers’ payroll. Disputes and litigation are most likely to arise when the claim is serious (major permanent injury or death) and the indemnity benefits are greatly different between states.

In addition to the requirements of law from each jurisdiction, agreements should be approached with a clear understanding of the consequences to employers and injured workers. Among the issues to consider are:

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<sup>1</sup> The special ad hoc committee of the IAIABC that contributed to this draft includes Richard Thomas (Chair of special committee and Kansas WC Division), Pamela Cohen, (WorksafeBC), Reg Gregory (Oregon Dept. of Labor and Industry), Robert Aurbach (Principal, Uncommon Approach), Brandon Miller (consultant). We would also like to thank Tammy Turner (Washington Industrial Commission) and Alan Wickman (Nebraska Insurance Commission) for their insightful comments.

- If benefit levels are greatly different between the states, the state with the lower benefit level is constraining access to higher benefits for its workers that may be injured outside the state.
- If one state has a much lower workers' compensation insurance rate (especially for mobile employment like construction trades), employers in the low rate state may have a competitive advantage in winning bids as compared to employers in the other party to the agreement (hence the common use of construction exceptions, given below).

*[Note that the term "state" used below should be construed to include province, territory, or any sub-national jurisdiction having authority to govern workers' compensation.]*

### **Model Reciprocal Agreement**

The State of \_\_\_"A"\_\_\_, acting by and through the Department of \_\_\_\_\_ and the State of \_\_\_"B"\_\_\_, acting by and through its Department of \_\_\_\_\_, desiring to resolve jurisdictional issues that arise when workers from one state temporarily work in another, enter into the following agreement (the "Agreement"):

*[Note: the signing authority in most of the existing laws is an agency head. As an exception, North Dakota agreements are signed by the Governor as well as agency representatives.]*

### **Who Is Affected By This Agreement**

This Agreement affects the rights of workers and the responsibilities of their employers when a contract of employment arises in "A" to work in "A" and the worker is temporarily working in B, or when the contract of employment arises in "B" to work in "B" and the worker is temporarily working in A. To be covered by this Agreement: 1) an employer must be considered an employer under both A's and B's workers' compensation laws, 2) an employer must have a workers' compensation insurance policy unless they are a licensed [insert the term that is appropriate under state law] self insurer, and 3) workers must be considered workers under both A's and B's workers' compensation laws. In the event that the employer or worker is not covered in one of the states that are signatories to this agreement, the existence of this agreement does not affect or alter the rights a worker may have against the employer under the laws of either state.

Note: If the employer is illegally uninsured, the employee may have the right of choice of venue to file the claim against an uninsured employer fund, assuming such funds exist in both states. You may want to make this explicit.

### **Basic Rule**

When a worker employed in "A" and subject to "A" workers' compensation law is temporarily working in "B", or when a worker employed in "B" and subject to "B" workers' compensation law is temporarily working in "A":

1. Employers must secure the payment of workers' compensation benefits under the workers' compensation law of the worker's state of usual employment, and pay

premiums or be self-insured in that state for the work performed while in the other state; and

2. Workers' compensation benefits for injuries and occupational diseases arising out of the temporary employment in the other state shall be payable under the workers' compensation law of the worker's state of usual employment, and that state's law provides the exclusive remedy available to the injured worker.

This agreement covers only employees whose place of usual employment is in one of the jurisdictions party to this agreement. In determining the place of usual employment, the jurisdiction in which the employee has spent the majority of paid work days over the past 12 months shall be the dominant factor in locating the nexus of employment. If there is no single jurisdiction with the majority of paid work days, the jurisdiction of hire will determine the place of usual employment for purposes of this agreement.

Note: If there is ambiguity about the nexus of employment, e.g., worker usually works in State B, but was hired in State C and occasionally reports for work in C, then this agreement may not apply even if the employment in A is temporary within the meaning of this agreement.

**Drafting Note: States may wish to consider including language that would extend the definition of temporary employment to apply to emergency situations.**

*[Option 1 for determining Temporary employment]*

In determining whether a worker is temporarily working in another state, "A" and "B" agree to consider:

1. The extent to which the worker's work within the state is of a temporary duration;
2. The intent of the employer in regard to the worker's employment status;
3. The understanding of the worker in regard to the employment status with the employer;
4. The permanent location of the employer and its permanent facilities;
5. The extent to which the employer's work in the state is of a temporary duration, established by a beginning date and expected ending date of the employer's work;
6. The circumstances and directives surrounding the worker's work assignment;
7. The state laws and regulations to which the employer is otherwise subject;
8. The residence of the worker;
9. The provisions of any contract, written policy manual or other written agreement concerning the terms and conditions of employment; and
10. Other information relevant to the determination.

*[Drafting Note – Option 2 for determining “Temporary”. The above open-ended criteria may lead to burdensome litigation and delays in determination and notice of extraterritorial coverage requirements. Thus, more objective triggers may be desirable.]*

The employee's presence in the state of the temporary work assignment for purposes of conducting employment activities does not exceed any of the following periods:

- (1) [ ] days in any 30-day period; or
- (2) [ ] days in any 360-day period.

*[Additional optional conditions on application of this agreement]*

- A. The employee was not hired to work specifically in the state of temporary work assignment;
- B. The employer does not have a permanent place of business in the state of the temporary work assignment, and;
- C. This Agreement does not apply to employees of an employer working in the State of the temporary work assignment *[options: in construction, on public service contracts, or whatever other areas the law prescribes]* .

Within 30 days of the effective date of a law change, the parties agree to notify the other state in writing or via email of any changes to their statutory or decisional law that may affect this Agreement.

#### **Exclusion From The Basic Rule**

This Agreement does not apply to any "A" worker of a "B" employer while working in the State of "A" nor to any "B" worker of a "A" employer while working in the State of "B." It is understood that an employer from either "B" or "A" may have work in the other state where they may have both "B" and "A" workers not on temporary assignment. This circumstance would require the employer to obtain coverage in both states to cover the subject workers of their respective states.

#### **Certificates Of Coverage**

Upon request, a duly authorized official of the workers' compensation board or similar agency in each state will issue certificates of extraterritorial coverage to the other when appropriate. It shall certify that an employer is insured in that other state for which extraterritorial coverage for the employer's subject workers while working within the state of temporary assignment on a temporary basis is being provided, as defined above. When issued, the certificate is prima facie evidence that the employer carries such compensation insurance.

#### **Effective Date**

This Agreement shall take effect immediately upon execution by both parties and public notification in compliance with the laws of "A" and "B". This agreement will remain in effect unless terminated, modified, amended or replaced in writing between the parties.

**Termination**

Either party may terminate the Agreement, without cause, by giving at least 60 days written notice to the other party to this agreement.

**Notice**

This Agreement creates no rights or remedies, causes of action, or claims on behalf of any third person or entity against "A" or "B", and is executed expressly and solely for the purpose of coordinating issues of workers' compensation coverage between the states

*Drafting option:*

*It would be useful to offer a specific dispute resolution process. In Canada, the Boards submit interjurisdictional disputes to a third Board for arbitration. In the US, it may be difficult to enlist a third-party state to arbitrate a dispute under this agreement. An alternative dispute resolution process might be to submit the claim dispute to the review body that normally receives appeals to hearings regarding disputed workers' compensation claims. It seems logical to submit the dispute to the jurisdiction in which the extraterritorial claim is being made, i.e., the jurisdiction of temporary employment.*

**TAB #5**



**Budget Committee**

NCOIL Summer Meeting, Portland, OR

Friday, July 15, 2016

8:00 a.m. – 9:00 a.m.

*Chair: Rep. Bill Botzow, VT*

1. 2017 Budget Planning
2. Adjournment



## **Budget Committee**

Chair: Rep. Bill Botzow, VT

Vice Chair: Rep. Kathie Keenan, VT

Sen. Jason Rapert, AR

Rep. Ron Crimm, KY

Rep. Steve Riggs, KY

Sen. Dan "Blade" Morrish, LA

Rep. George Keiser, ND

Sen. Neil Breslin, NY

Rep. Brian Kennedy, RI

**TAB #6**



**Financial Services & Investment Product Committee**

NCOIL Summer Meeting, Portland, OR

Friday, July 15, 2016

9:00 am – 10:30 am

*Chair, Sen. Bob Hackett, OH*

*\*Call to order/roll call/approval of February 26, 2016 committee meeting minutes*

1. Discussion of Fiduciary Standards for Life Insurance & Annuity Sales to create uniformity
  - *Neil Finestone, CEO Finestone Partners*
2. Review "Buyers Guide" regarding cyber security published by FSSCC
3. NCOIL input on NAIC Model Law regarding cyber security
4. Adjournment

## **Financial Services & Investment Products Committee**

Chair: Rep. Bob Hackett, OH

Vice Chair: Rep. Don Flanders, NH

Sen. Jason Rapert, AR

Rep. Martin Carbaugh, IN

Rep. Joseph Fischer, KY

Rep. Jim Gooch, KY

Rep. Jeff Greer, KY

Rep. Bart Rowland, KY

Rep. Tommy Thompson, KY

Rep. George Keiser, ND

Sen. Jerry Klein, ND

Sen. David O'Connell, ND

Sen. James Seward, NY

Rep. Brian Kennedy, RI

Sen. Robert Hayes, SC

Rep. Bill Botzow, VT

Rep. Kathie Keenan, VT

Sen. Mike Hall, WV

Del. Steve Westfall, WV

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
STATE-FEDERAL RELATIONS AND  
FINANCIAL SERVICES & INVESTMENT PRODUCTS MEETING  
LITTLE ROCK, ARKANSAS  
FEBRUARY 26, 2016  
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) State-Federal Relations and Financial Services & Investment Products Joint Committee met at the Little Rock Marriott in Little Rock, Arkansas on Friday, February 26, 2016 at 2:00 p.m.

Sen. Robert Hayes, Jr. of South Carolina, chair of the State-Federal Relations Committee, presided.

Other members of the Committee present were:

Sen. Jason Rapert, AR	Sen. Jerry Klein, ND
Rep. Martin Carbaugh, IN	Sen. Neil Breslin, NY
Rep. Matt Lehman, IN	Sen. James Seward, NY
Rep. Joseph Fischer, KY	Rep. Brian Kennedy, RI
Rep. Steve Riggs, KY	Rep. Bill Botzow, VT
Rep. George Keiser, ND	Rep. Kathie Keenan

Other legislators present were:

Sen. Gregory Standridge, AR	Sen. Ed Buttrey, MT
Sen. Travis Holdman, IN	Asm. William Barclay, NY
Rep. Ken Goike, MI	Sen. Kevin Bacon, Oh
Rep. Henry Vaupel, MI	

Also in attendance were:

Tom Considine, NCOIL CEO  
Paul Penna, Executive Director, NCOIL Support Services  
Christina Zuk, Legislative Director, NCOIL Support Services  
Paulina Grabczak, Deputy Legislative Director, NCOIL Support Services

## MINUTES

Upon a motion made and seconded, the Committee unanimously approved the minutes of its November 13, 2015 meeting in San Antonio, Texas.

## SPECIAL DISCUSSION OF THE IMPACT OF THE DODD-FRANK ACT ON INSURANCE

Chairman Hayes called the following panelists to testify:

- Sam Proctor, Debevoise & Plimpton
- Julie Gackenbach, Confrere Strategies
- Kevin McKechnie, American Bankers Association (ABA)

Julie Gackenbach of Confrere Strategies spoke first. Ms. Gackenbach stated that we are now in year six of the Dodd-Frank Act, and we continue to work through a number of issues. It has changed the way we look at insurance. For instance, where the traditional system

used to look more toward the protection of policy holders, now we are thinking about whether we should be doing standards that affect the industry and the economy as a whole.

We also have a number of entities that are in regulatory competition. As a result, there's almost a sense of "we are going to out-regulate the regulators." We've moved beyond the traditional regulatory system for insurance that we've seen in the states. We're duplicating efforts in many ways – for instance, we've set up the FIO and the Office of Financial Research at the federal level that spend time analyzing and gathering information in many cases where the state is already gathering that information.

Ms. Gackenbach further stated that the regulatory and legal environment has become much more complex, and that there are many more threats to the state regulation of insurance.

Kevin McKechnie from the American Bankers Association (ABA) stated that at its conception the idea was that the Consumer Financial Protection Bureau (CFPB) would be barred from regulating the business of insurance. So our goal today is to measure to what degree that injunction has been undermined.

Mr. McKechnie further stated that we are getting dangerously close to a point where NCOIL should consider having sessions on dual regulation on the horizon – something we were trying to specifically avoid ten years ago.

Two years ago, Mr. McKechnie circulated a memo to the Committee outlining the various authorities in Dodd-Frank. That memo has since been refreshed, but is not ready for distribution yet, but will be available at the NCOIL's next meeting in Portland.

Samuel E. Proctor of Debevoise & Plimpton stated that the international and domestic insurance regulatory landscape is undergoing significant changes as part of a systemwide response to the global economic crisis.

Mr. Proctor stated that the International Association of Insurance Supervisors is implementing stricter capital and supervisory standards for large insurers at the international level. In the United States, we see insurers subject to increasing federal regulation in a fairly complex set of ways. For instance, the Financial Stability Oversight Council has designated three insurers as "systemically important financial institutions (or "SIFIs"): AIG, MetLife, and Prudential. This designation subjects them to Federal Reserve supervision and enhanced prudential standards.

Mr. Proctor stated that while Dodd-Frank generally preserves the U.S. insurance regulatory framework as it existed pre-crisis, in areas where it impinges on existing arrangements, the impact is pronounced. Those impacts predominantly fall on larger and more complex insurance groups. However, several of the key impacts have yet to fully manifest themselves and there are additional changes on the horizon.

Sen. Hayes asked if there is anything that any of the states are doing in response to Dodd-Frank. Mr. Proctor responded that New York always occupies a unique place in terms of insurance and regulation generally, but that most of the activity is happening at the NAIC level. Ms. Gackenbach stated that states may be a little more involved when you see what the actual parameters are, particularly if they pre-empt state law. Ms. Gackenbach further stated that there may be a time when the states will have to say, "we still maintain ultimate regulatory control" in this space.

DISCUSSION OF INITIATIVES TO PROMOTE CYBER-SECURITY/INSURANCE

Sen. Hayes called the following panel to testify:

- Kevin McKechnie, American Bankers Association (ABA)
- Tim Nagel, Prudential
- Wes Bissett, Independent Insurance Agents and Brokers of America (IIABA)

Mr. McKechnie stated that he wanted to bring attention to a study released by the Financial Services Sector Coordinating Council (FSSCC) for Homeland Security and the American Bankers' Association (ABA) to address the issue of cyber security being poorly understood. As a result, there is now a "buyers' guide" linking a number of tips with a number of technologies in this space. Mr. McKechnie would be happy to make this buyers' guide available to NCOIL.

Mr. Nagel stated that he agreed with the lunchtime comments of Governor Hutchinson that cyber security should be on everyone's mind. For cyber security, there's generally three things we focus on:

- Confidentiality: Is the information safe and protected?
- Integrity: Can we trust and rely upon the data?
- Availability: Do I have the platform to use the data?

Mr. Nagel stated that we should be focusing more closely on the integrity and availability of data.

Mr. Nagel further stated that the information of interest in cyber-security is shifting. The Office of Personnel Management was hacked for personal information, not for money. This information is used to build identities.

Mr. Bissett stated when the Committee last met in November, he spoke about a document that the NAIC was working on framed as a Cyber Security Bill of Rights. Since that time, a re-fashioned document called the "Road Map for Cyber Security Consumer Protections" was adopted in December by the NAIC. It outlines a number of standards that the NAIC felt consumers were entitled to, and operates as a bill of rights. The NAIC is also working on a cyber security model law, though Mr. Bissett has not yet seen a copy of it.

Mr. Bissett has a concern that while we may hope that the NAIC model law process would result in uniformity, he suspects that that may not be the case. The NAIC is expected to release a draft of the model law in the coming weeks.

Mr. Bissett stated that while they are awaiting a first draft from NAIC, the IIABA is concerned about some of the ideas that have been floated. The IIABA does not want to see all data treated the same, without a recognition that different entities have different types of resources. They also do not want to see prescriptive, narrow types of requirements that do not take into account future changes in the marketplace.

Kate Kiernan from the American Council of Life Insurers (ACLI) stated that they are looking forward to the NAIC's model law helping to provide uniformity on laws regarding cyber security breaches. Ms. Kiernan stated that at the present moment, there are 47 different state requirements on this issue.

Chara Bradstreet from NAIC stated that the intent of the coming model act will be to minimize confusion over expectations with respect to data held by insurers. She further stated that NAIC has engaged with the Administration and federal authorities on this issue and would welcome NCOIL's input.

## UPDATE ON IIPRC DEVELOPMENTS

Sen. Hayes called Karen Schutter from the Interstate Insurance Product Regulation Commission to provide an update on the Interstate Insurance Product Regulation Compact (IIPRC). Ms. Schutter provided a map with all of the compacting states, which at present time is 44 states. Ms. Schutter noted that Connecticut is considering joining the compact this year.

The next meeting of the IIPRC will be Saturday April 2, 2016 at 12:30 central time in New Orleans, Louisiana in conjunction with the NAIC Spring Meeting. NCOIL members are encouraged to attend.

## ADJOURNMENT

There being no further business, the Committee adjourned.



# FINANCIAL SERVICES SECTOR COORDINATING COUNCIL

## for Critical Infrastructure Protection and Homeland Security

### *Purchasers' Guide to Cyber Insurance Products*

#### **Introduction**

Seeking improved cybersecurity in the face of ever-evolving cyber threats is one of the great challenges of our time. There are numerous tools and frameworks that can assist organizations attempting to identify cyber vulnerabilities and improve cybersecurity. However, little assistance is available for an organization that wants to not only mitigate the risks of cyber incidents, but also transfer those risks through the purchase of insurance products. As a result, some organizations are unaware of or intimidated by cyber insurance products.

This document, a Purchasers' Guide to Cyber Insurance Products, is intended to provide resources and advice to organizations—particularly small and medium-sized enterprises—that are considering the purchase of cyber insurance. It provides an overview of the cyber insurance market and identifies key questions that a prospective policyholder should ask itself, its broker or agent, and its insurer when considering the purchase of cyber insurance. A Glossary is included as Appendix A.

Please note that this guide provides only limited background on cyber insurance, and, in all cases, organizations should consult with knowledgeable professionals before placing coverage.

#### **Cyber Risk and Cyber Insurance**

In its December 2014 paper, *Cyber Resilience: The cyber risk challenge and the role of insurance*, the CRO (Chief Risk Officers) Forum explained that “cyber risk covers the risks of doing business, including managing and controlling data, in a digital or ‘cyber’ environment.”<sup>1</sup> More specifically, “cyber risk” refers to “any risks that emanate from the use of electronic data and its transmission, including technology tools such as the internet and telecommunications networks. It also encompasses physical damage that can be caused by cyber attacks, fraud committed by misuse of data, any liability arising from data storage, and the availability, integrity, and confidentiality of electronic information – be it related to individuals, companies, or governments.”<sup>2</sup> The level of threat that such attacks pose was highlighted recently when the World Economic Forum identified technological risks, in the form of data fraud, cyber-attacks, or infrastructure breakdown, as one of its top 10 risks facing the global economy in its 2015 Global Risk Report.<sup>3</sup>

These risks are real and widespread. In the fall of 2014, PricewaterhouseCoopers' (PwC's) annual global information security survey of corporate executives, which included 9,700 participants, reported that almost 43 million cybersecurity incidents were detected during the past year, a 48 percent increase over 2013.<sup>4</sup> The number of cybersecurity incidents reported to the 2015 PwC survey increased by another 38 percent.<sup>5</sup> The costs associated with cybersecurity incidents often include disruption of business, erosion of customers, loss of revenue, forensic investigations, customer notification, regulatory fines, legal penalties, attorney fees, brand and reputational damage, loss of intellectual property, and the exposure of sensitive or confidential personal and business information. Data breaches can cost businesses millions of dollars.<sup>6</sup>

The insurance industry has responded to these risks with a variety of products collectively

referred to as “cyber insurance.” Such insurance is offered as an endorsement to existing policies or as a stand-alone policy, and may include a variety of different coverages. Most cyber insurance carriers provide data privacy coverage, which generally includes liability coverage for loss or breach of data, coverage for the remediation costs associated with loss or breach of data (e.g., customer notification and forensic investigations), and coverage for regulatory fines and/or penalties associated with data breaches. Policyholders can also purchase coverage for, among other things, costs and liability arising out of cybersecurity incidents not involving data breaches, business interruption, contingent business interruption, cyber extortion, and media liability. These products will be discussed in further detail below.

### **Cyber Insurance Market**

The U.S. cyber insurance market is growing, with most industry analysts estimating that the market reached \$2 billion in premium in 2014.<sup>7</sup> The market has over sixty carriers, but only a small number of these insurers write aggregate premiums in excess of \$100 million. Brokers help policyholders construct “towers” of coverage by placing a primary layer of insurance and then adding excess layers of coverage to reach a desired limit; even the largest of these towers generally provide no more than \$400 million in coverage.<sup>8</sup> Although these towers often cover a variety of cyber risks, coverage limits vary by type of claim. For example, while some policies cover contingent business interruption (i.e., a cyber incident at a third party causes a business interruption for the policyholder), the sublimit for such coverage usually is very limited. Due to recently paid claim activity, cyber risk insurance premiums generally have grown more expensive, though this increase depends upon the particular coverage. At the same time that cyber-specific insurance products have developed, many traditional policies have begun explicitly excluding coverage for losses arising from cyber incidents. Additionally, some courts have found that traditional policies do not cover cyber losses.

Prospective policyholders have the opportunity to negotiate policy terms with most cyber insurance carriers. The vast majority of cyber risk insurance policies are sold by nonadmitted insurers (i.e., insurers, usually subsidiaries of larger insurance groups, licensed only in the state or country of the insurer’s domicile) or by admitted carriers through deregulation exceptions for sophisticated buyers, both of which are subject to less regulation and are not legally tied to specific policy forms. Consequently, most cyber risk insurers have more freedom to negotiate with prospective policyholders, modify underwriting standards and rates, and adopt new policy provisions than do carriers of other insurance products.

While a variety of cyber insurance products are available in the U.S. market, the large majority of cyber insurance is for data privacy coverage. This focus on data breach coverage is largely due to U.S. regulatory complexity, which includes federal laws regarding health records and data breach notification laws in 47 states.<sup>9</sup>

The European market for cyber insurance products is also growing,<sup>10</sup> although differently from the U.S. market. Lloyds of London experienced a 50 percent increase in demand for cyber insurance products during the first quarter of 2015 as compared to the first quarter of 2014.<sup>11</sup> Cyber insurance demand in Europe has not been focused on data privacy coverage, as the European Union lacks the type of data notification laws that many U.S. states have. However, proposed EU General Data Protection Regulation (GDPR) legislation, which is focused on empowering national data commissioners by providing them with powers to fine companies who violate EU data rules up to 4% of global annual turnover.<sup>12</sup>

### **The Value Proposition for Cyber Insurance**

As cyber risks grow, the senior management and boards of directors of companies have increasingly focused on a holistic response to cyber threats that includes risk mitigation, risk transfer, and response/recovery. This holistic approach necessarily includes insurance. For example, 74% of respondents of a recent survey on cyber-related issues that did not have cyber coverage in place stated that they are considering purchasing coverage in the next 1-2 years.<sup>13</sup> In addition, regulators may also focus increasingly on cyber insurance as a key facet of a regulated entity's operational resilience. Indeed, the SEC has issued guidance noting that cybersecurity risk disclosures must "adequately describe the nature of the material risks and specify how each risk affects the registrant" and that appropriate risk factors related to cybersecurity include a "[d]escription of the relevant insurance coverage."<sup>14</sup> However, as evidenced by the low take-up rates for cyber insurance products, many organizations – particularly small and medium size entities – lack awareness that cyber insurance is a viable risk transfer option for companies of all sizes. In fact, not only can cyber insurance products help transfer some of the risks associated with cyber threats, but the insurance underwriting process can also help identify cybersecurity vulnerabilities and improve cybersecurity.

### **Three Reasons to Consider Cyber Insurance**

1. Insurance places a dollar value on an organization's cyber risk. This metric is useful when discussing security budgets with senior management. A nontechnical CFO may not be fully versed in the performance of Denial of Service (DoS) mitigation services, but will understand the cost of the organization being unable to serve customers due to a DoS Attack.
2. The underwriting process can help organizations identify cybersecurity gaps and opportunities for improvement. In the same way property insurance has helped create safer buildings, cyber insurance can help create safer cybersecurity practices and policies. During the underwriting process, an organization must be able to adequately describe and maintain its administrative, technical, and physical controls (i.e., its cyber hygiene profile). The insurers provide a third party assessment of that profile and can then assist in identifying areas of improvement or adjustment that may help to bring down insurance costs.
3. In addition to providing the traditional risk transfer function, many cyber insurance policies bring supplemental value through the inclusion of risk mitigation tools, as well as significant incident response assistance following a cyber incident. Such assistance can be essential, particularly for smaller organizations that lack experience with or the manpower to respond to these issues, when faced with reputational damage or regulatory enforcement. With respect to regulatory enforcement, organizations face heightened scrutiny in both the EU and the U.S. From an EU perspective, the proposed GDPR will also add to the value proposition of cyber insurance due to the high level of fines allowed for in the legislation. A regulatory fine of 4% of global turnover could cripple a company and is arguably a risk too big for the balance sheet of small- to medium-sized enterprises to carry. The prospect of such a fine should give companies a compelling reason to move into the cyber risk market. Additionally, in the U.S., the SEC recently announced it will be increasing its focus on investment advisors to ensure they have appropriate procedures in place to keep customers' information private, following a cyber attack in 2013.<sup>15</sup>

### **Where and How to Begin**

As with any risk, the first step in determining whether or not to purchase insurance is to evaluate the potential risk exposure. What kind of information does the organization have (i.e., credit card numbers and passwords, health records, trade secrets, patents, etc.)? What are the potential ramifications to the organization if this information is compromised or exposed (reputational damage, regulatory actions, litigation, inability to continue operations, repairs to network, etc.)? What steps (if any!) has the company taken to protect this information?

There are a number of framework and assessment tools that have been developed to help aggregate and determine the risk posture and level of risk an organization is managing. The United States government has publicly released two tools, discussed below, that are useful for businesses assessing cyber risks and cybersecurity risk management. These tools help an organization determine the level of risk it is managing and identify steps to meet those risks.

The first tool, released in 2014 by the National Institute for Standards and Technology (NIST), is the Framework for Improving Critical Infrastructure Cybersecurity (or NIST Cybersecurity Framework), which is a voluntary framework, based on existing standards, guidelines and practices, to help reduce cyber risks. While intended for critical infrastructure, the Cybersecurity Framework can be used by any organization.<sup>16</sup>

In 2015, the Federal Financial Institutions Examination Council (FFIEC) released its Cybersecurity Assessment Tool (Assessment). This tool is intended to help institutions identify their risks and determine their cybersecurity preparedness in a repeatable, measurable way. To do so, the Assessment allows an organization to analyze its Inherent Risk Profile (based on factors like technology and connection types and delivery channels) and its Cybersecurity Maturity (based on compliance with a series of declarative statements regarding cybersecurity risk). Although the Assessment was created for financial institutions, aspects of it – particularly its approach to matching risk profile to cybersecurity maturity – may be useful across other sectors as well.<sup>17</sup>

The NIST and FFIEC framework categories have been mapped against each other and provide as comprehensive a roadmap as exists to cyber maturity. Together with pre-assessment underwriting tools, following these guides enhances the chances of receiving an offer of insurance for greater limits at less premium cost. See the NIST/FFIEC map here.<sup>18</sup>

These protocols are also helpful when negotiating coverage for residual risk after loss. Once a breach has occurred and remediation techniques have been applied, it is unwise to assume risk has been eliminated; but the character of the remediation may be rigorous enough to improve the organization's over-all cyber hygiene profile.

**Tip:** If your company increases its cyber maturity through application of the NIST/FFIEC frameworks, request re-underwriting based upon the new risk profile.

### **How Much Insurance Should be Purchased?**

While there is some information on how much cyber insurance different sized organizations purchase, most numbers are proprietary and cannot be used to create an accurate picture of any one sector.<sup>19</sup> The top ten U.S. banks purchase between \$0-\$400MM+ of specific cyber insurance. Some organizations choose to integrate cyber insurance into existing policies, while others use a combination of incorporation and cyber specific policies to outsource risk. Ranking risk is an internal process, too, although agreement that cyber risk is a high priority is consistent throughout the private sector and government.<sup>20</sup> While there

is some regulatory guidance, much of the determination is dependent upon an organization's risk appetite. This space is still developing, and currently there is no authoritative schematic for cyber insurance purchasing. 21

### **What Coverage is Available?**

As data breaches or cyber attacks can cause different types of losses, both to the organization itself (first-party or direct losses) and/or to its customers (third-party loss), it is important that purchasers obtain coverage for both types of loss. Below are examples of the first and third-party coverages available.

#### **First-Party Coverage:**

- **Crisis Management & Identity Theft Response:** Expenses for communications to notify affected customers, provide credit monitoring services, conduct forensic investigations, and for expenses incurred in retaining a crisis management or public relations firm for the purpose of protecting/restoring the organization's reputation.
- **Cyber Extortion:** Expenses to pay ransom or investigate a threat to release, divulge, disseminate, destroy, steal, or use confidential information; introduce malicious code into a computer system; corrupt, damage, or destroy a computer system, or restrict or hinder access to a computer system.
- **Data Asset Protection:** Recovery of your costs and expenses incurred to restore, recreate, or regain access to any software or electronic data from back-ups or from originals, or to gather, assemble, and recreate such software or electronic data from other sources to the level or condition in which it existed immediately prior to its alteration, corruption, destruction, deletion, or damage.
- **Network Business Interruption:** Reimbursement for loss of income and/or extra expense resulting from an interruption or suspension of systems.

#### **Third-Party Coverage:**

- **Network Security Liability:** Covers claims from third parties arising from a breach in network security or transmission of malware/viruses to third-party computers and systems.
- **Privacy Liability:** Covers claims from third parties as a result of a failure to properly handle, manage, store, or otherwise protect personally-identifiable information, confidential corporate information, and unintentional violation of privacy regulations.

### **Are These Exposures Already Covered Under Existing Policies?**

Unfortunately, there are many gaps in coverage provided by traditional insurance products where the policy will not cover loss or costs associated with a data breach or liability claims made by third parties resulting from a data breach. In addition to the gaps already present in traditional products, due to recent loss developments and evolving case law, Insurers are now adding cyber-specific exclusions to traditional insurance products. 22

For example, a typical commercial general liability (CGL) policy would likely include coverage for personal and advertising injury resulting from the publication of material that violates a person's right of privacy. This would seem to cover costs associated with claims by third

parties for privacy liability as described above. However, many CGL insurers have now added exclusions specifically removing coverage for the disclosure of personal or confidential information. The exclusion essentially negates the personal and advertising injury coverage and purchasers should read their CGL and Umbrella forms carefully to determine whether this exclusion has been added.

Below are some additional examples of gaps in traditional coverage:

- **Directors and Officers (D&O):** Many D&O policies contain a standard privacy exclusion that would negate coverage for D&O's faced with lawsuits alleging privacy violations.
- **Errors and Omissions (E&O):** Even broadly worded E&O policies remain tied to "professional services" and often further tied to a requirement that there be an act of negligence.
- **Property:** Courts have consistently held that data is not "property"— "direct physical loss" requirement not satisfied.
- **Crime:** Requires intent and only covers money, securities, and tangible property.
- **Kidnap and Ransom (K&R):** One may not have coverage without specific amendment for "cyber-extortion."

**Tip:** Work with a broker or insurance agent to analyze gaps in current traditional coverage and available cyber insurance coverage.

### **The Underwriting Process - Get Your Data House In Order Before Seeking Coverage**

Prior to placing coverage, the insurer will engage in an underwriting process. Companies can do a lot to shore up their information security policies and practices to increase the availability of coverage and reduce the cost of coverage.

Even before seeking cyber coverage and engaging in the underwriting process, businesses should work to get their data house in order. During the process, underwriters will ask for information related to the cyber security maturity of a business. The answers and the level of comfort the business can provide will greatly impact the amount of coverage available and the terms and cost of the coverage. Below are some of the general categories of information that insurers typically ask for before offering coverage:

Dedicated Information Security Resources: Underwriters will want to know whether the company has a Chief Information Officer (CIO) or a Chief Information Security Officer (CISO) and whether that individual has other responsibilities outside of information security. They are typically interested in the amount of resources a company spends on information security and the number of employees dedicated to information security.

Information Security Policies and Procedures: Underwriters will want information related to policies and procedures. It is important to have a comprehensive written information security program that covers the technical, administrative, and physical measures taken to protect data. They will also want to know the cyber security

maturity of an organization and whether the organization follows national cyber standards, such as the NIST Cybersecurity Framework, FFIEC Cybersecurity Assessment Tool, and ISO standards.

Employee Education: With the increase in targeted phishing campaigns and user errors resulting in security breaches, underwriters are looking to insurance applicants to provide security awareness programs for employees and may specifically ask whether the organization conducts regular phishing tests on employees and what the consequences are to employees who repeatedly fail the tests.

Incident Response Planning: The underwriters will want to know whether the business has a formal incident response plan in place and will also inquire regarding regular testing, through tabletops or simulation exercises.

Security Measures: Underwriters are typically interested in data retention, network segmentation, data classification, log monitoring, penetration testing, patch management, and business interruption planning. They will also want to know whether the business has an encryption strategy and the technologies used to encrypt or otherwise protect sensitive data.

Vendor Management: As many recent data breaches have occurred through third party relationships, underwriters are concerned with third-party vendor management. It will be important to describe whether the business has a formal third-party management process, due diligence, and ongoing oversight performed on third parties, and the contractual obligations required of third parties.<sup>23</sup>

Board Oversight: Underwriters will also likely ask how frequently cyber security risk issues are reported to the Board and whether there is Board-level approval or oversight of the information security program.

Keep in mind that the underwriting process and communications with your insurance broker and/or agent are not privileged communications and could be discoverable in litigation, so it is important to think about what you put in writing to your underwriters, brokers, or agent. In addition, information security measures and security risks are often sensitive, and the organization may feel more comfortable providing verbal answers to underwriter questions. Underwriters are generally amenable to a verbal question and answer session to discuss the security posture of the organization. It is best to receive a list of questions from the underwriters prior to the discussion so the organization can appropriately prepare and make sure the correct individuals are present to respond to the questions.

## **What to be Aware of when Shopping for a Cyber Policy?**

### **I. Policy Construction – Insuring Agreements**

#### When is coverage triggered?

The insuring agreement in a CGL policy reads something like the following:

“With respect to Claims firm made against an Insured during the Policy Period, the Insurer shall pay all Loss in excess of the applicable Retention that the insured is legally obligated to pay resulting from a Claim alleging or relating to any cyber event.”

The definition of Claim in a standard CGL policy is usually defined as:

“A written demand for money, services, non-monetary relief, or injunctive relief, or a lawsuit or regulatory action.”

Under a standard CGL, the policy is triggered when a Claim is first made against the Insured (in the form of a demand letter, lawsuit, or other document) that their product, service, or property has caused a third party some type of harm, loss, or damage. In the context of a slip and fall scenario, this is straightforward. A customer comes in, slips on a wet floor and breaks a leg. The customer notifies the company in writing of the incident and demands their medical bills be paid or threatens further action or litigation. The organization notifies its insurer and the Policy is triggered.

In the context of a data breach, the issue of when the policy is triggered is much less straightforward. Often, a third party or customer will likely not know their information has been breached until the company notifies them. Only after the organization notifies the customer, does it receive an actual demand or lawsuit constituting a Claim that would trigger the Policy. Unfortunately, the costs incurred by the company to notify customers or third parties of the data breach, which typically include legal costs, credit monitoring services, postage, etc., may not be covered as the Insurer is likely to say those costs were incurred before a Claim (as defined in the policy) was made and thus coverage under the Policy had not yet been triggered. Additionally, costs to conduct forensic investigations into how a breach occurred, expenses of providing credit monitoring services, or public relations expenses may also not be covered to the extent those costs were incurred before coverage was triggered.<sup>24</sup>

Contrasted with the way a data breach typically works, the standard liability policy wording would cover only those costs incurred after a Claim was made, leaving the insured organization to pay for many costs associated with a cyber breach they may have thought were covered.

**Tip:** To resolve this situation, look closely at how the policy is constructed, especially the insuring agreement. The element of time is critical to ensuring coverage is triggered appropriately. A policy requiring a “Claim” to be made before coverage applies may not be in line with the expectations of the insured. Rather, a policy that is triggered upon the “discovery” of a data breach may be more appropriate to cyber risks. Additionally, an all-risk construction (where all losses are covered, except those which are specifically excluded) is preferable to peril-specific coverage (where only the specifically listed perils or causes of loss are covered).

**Tip:** Only buy coverage you need. If multiple insuring agreements are used in an “off-the-shelf” policy, discuss customizing a product that covers your company’s risks, while not paying for unnecessary coverage.

#### When is notice to the insurers required?

Notice is another issue that must be considered when looking at how a cyber policy is constructed. Typically, notice to the insurers is required at a very early stage of potential breach identification, and consent from the insurers is often required for many expenditures following a breach, including retaining breach vendors, incurring breach notification costs, and settling any claims. As noted above, if a policy is not structured properly, there could be no opportunity to provide the carrier “notice” of a Claim before significant costs are incurred. It is important to ensure compliance with these requirements are met as it could result in loss of coverage.



**Tip:** Include key notification requirements in the incident response plan and pinpoint a key stakeholder to make sure those notification obligations are appropriately satisfied.

#### How are breach counsel and vendors selected?

In the critical moments of responding to a potential data breach, the last thing an organization should be worried about is whether their insurance provider will approve their selected breach counsel and forensics firm. Typically, cyber insurance policies require underwriter approval of the use of breach vendors. It is prudent to select these vendors in advance of a breach and get any contractual and conflict measures resolved with these vendors prior to a breach, but it is also important to make sure your insurance provider approves of the use of the vendors. The vendors are typically written into the organization's incident response plans, and the response plans should also trigger a notification to the insurance companies of a potential claim and notify them of the use of breach vendors.

**Tip:** Include selected breach counsel and vendors (e.g., forensics firm, public relations, crisis management firms, etc.) in the incident response plan. Discuss your selected breach vendors with the insurers prior to policy purchase to ensure they will approve the use of those vendors if there is an incident. Remember to include a step in your incident response plan to notify the insurers of the use of the vendors after a breach.

## **II. Key Exclusions/Sublimits**

Below are several key exclusions to be mindful of when examining a cyber insurance policy.

#### Portable electronic device exclusion

If the device leading to a cyber breach is portable, many policies could exclude coverage completely for any resulting loss.

**Tip:** Request removal of the exclusion from the policy. If insurer will not remove, request an exception to the exclusion, to cover losses involving portable devices if the data is encrypted.<sup>25</sup>

#### Intentional acts exclusion

Again, the gap here is best outlined in a scenario that contrasts different types of insurance products, namely a liability product against a crime product. A crime or fidelity policy generally covers first-party loss to the Insured even where such loss is caused by the Insured, while liability policies generally provide for damages or losses the Insured causes to a third party. Most cyber insurance policies do not adequately provide for both first-party and third-party loss.

For example, liability policies typically exclude coverage for damages or losses intentionally caused by an Insured. Thus, if an employee accidentally caused a cyber breach, the resulting loss would be covered (either under a general liability or umbrella policy that does not exclude cyber perils or under a stand-alone cyber policy). However, if a different employee caused the exact same cyber breach intentionally, the resulting loss would be denied under a general liability policy if this exclusion is present.

**Tip:** Request that exclusion apply only to the company's highest ranking directors or officers. This is especially important as many IT experts agree that one of the biggest cyber threats to companies today is their own employees.<sup>26</sup> In addition, make sure the exclusion applies

only after a finding of intentionality has been fully adjudicated on the merits in a court of law. Often if a claim of intentionality is settled, insurers may claim there is no coverage for the claimed intentional act.

#### Nation/state, terrorism, cyber terrorism exclusions/acts of God

Similar to the previous scenario, where coverage was precluded simply based on whether the breach was caused intentionally or unintentionally, nation/state and terrorism, as well as Acts of God exclusions, can result in coverage being precluded simply based on who or what caused the breach to occur. For example, if a terrorist attack resulted in an explosion at an organization's facility or a tornado caused massive damage to an organization's power source, the resulting losses may not be covered under a standard cyber policy.

Fundamentally, companies expect cyber insurance to cover their losses whenever a cyber breach happens, regardless of who caused it or why.<sup>27</sup>

**Tip:** Limit Nation/State exclusions to those recognized by the U.S. Government or United Nations. Clearly define Act of Terrorism or Cyber Terrorism and limit any exclusion so it only applies where the U.S. Government officially declares an incident as an act of Terrorism or Cyber Terrorism. Review "Acts of God" exclusions carefully in Cyber policies, negotiate to limit exclusions as much as possible. Discuss and clarify with brokers/insurers whether certain elements of loss (i.e., actual damaged property, loss of use of network, extra costs associated with restoring network connectivity, etc.) would be better covered under Property or Cyber policy, explicitly stating where coverage applies.

#### Negligent computer security exclusion

Some policies exclude coverage if data is unencrypted or if the Insured has failed to appropriately install software updates or security patches.

**Tip:** Review policy terms to see if/when data is to be encrypted and what duties exist to install updates, security patches or take other security measures to protect confidential information.<sup>28</sup>

#### Sublimits

Many policies also have sublimits that may apply for things such as breach notification costs, forensic expenses, credit monitoring costs, business or network interruption, and extra expense. In addition, business or network interruption coverage may have a larger deductible or include a time element component (i.e., business or network must be down for a certain number of hours before business interruption coverage will be triggered).

**Tip:** Request removal of sublimits from the policy. If sublimits cannot be removed, negotiate highest sublimit possible for least associated cost.

#### Post-breach services

Some insurers are starting to partner with cybersecurity specialists to assist customers who experience a cyber breach with forensic investigations, proactive incident response strategies, and training, as they realize the benefit both to the customer and themselves in responding as quickly and efficiently as possible to a cyber breach to keep resulting costs, claims, and damages as low as possible.<sup>29</sup>

**Tip:** Companies should examine the services offered and negotiate coverage for services the Insurer may offer. (Consequently, there should be no reason why an Insurer should refuse to pay for such costs once a cyber breach occurs.) By working together with their customers, Insurers will gain valuable loss information and further establish cyber insurance as a viable product that offers real benefit to customers.

#### Vicarious liability/vendors

Many standard Cyber policies exclude coverage for data an organization has entrusted to a third-party vendor that is breached.

**Tip:** Institute and maintain thorough vendor network review requirements when employing third parties to handle confidential, sensitive, or personally identifiable information. Ensure all third-party vendors with which business is conducted maintain Cyber insurance policies of their own.

### **III. Other Policy Considerations**

Carefully review the terms of your policy. If you do not understand what something means, that often means it is not clear and could lead to coverage denial or litigation over the terms. It is important to understand the terms of the policy, and underwriters will typically explain their position, so just ask. Below are some other items to consider while reviewing the terms of your policy:

Insider threats. Does your coverage include incidents of insider malfeasance?

Data on unencrypted devices or BYOD. Some policies do not cover devices that are unencrypted or non-company-owned devices.

Information maintained and stored by third parties. Understand whether your policy will extend coverage if there is a breach at one of the organization's vendors.

Costs to replace, upgrade, update, improve, or maintain a computer system. Often, coverage is not available to replace or upgrade systems that have vulnerabilities, and the coverage only provides replacement costs for the existing infrastructure.

Coverage for potential regulatory investigations and fines. Ensure that any potential regulatory investigation is covered. As more government agencies become involved in cyber issues, it is important to make sure you are not leaving any gaps in coverage. For example, an organization should make clear in its policy that investigations by the SEC related to cyber issues are covered, even though SEC securities-related issues are typically excluded.

Damages to corporate clients. Often cyber coverage extends only to individual consumers and not to third-party corporate clients. It is important to understand whether your other insurance coverage would kick in for these damages.

Territorial limits. Some coverage is limited only to incidents that occur in the United States, and an organization may need additional coverage depending on where data is stored.

Credit monitoring costs. Cyber insurance policies typically provide for the offering of

one year of credit monitoring to affected consumers, but some state attorneys general have announced that two years is expected.

## **Conclusion**

As insurers attempt to gather enough frequency and severity data to move to an actuarial model for cyber insurance, it is essential that companies seek cyber insurance with coverage sufficiently high and broad and present themselves to a potential insurer in the best possible cyber risk management posture.

Companies with a proactive approach to cybersecurity will take the time to examine their networks, cybersecurity practices, train their employees, maintain rigorous self and vendor testing, and promptly remediate issues.

## **Appendix A**

### **GLOSSARY**

CIAO: Critical Infrastructure Assurance Office.

Cyberattack: Includes a wide range of technical and social methods to pursue an ultimate goal – the propagation, extraction, denial, or manipulation of information.

Cybercrime: Includes a wide swath of activities that affect both the individual citizen directly (e.g., identity theft) and corporations (e.g., the theft of intellectual property).

Cyber insurance: An insurance market covering first- and third-party risk relating to cybersecurity.

Cyber risk: Any risks that emanate from the use of electronic data and its transmission, including technology tools such as the internet and telecommunications networks.

Cyber terrorism: Criminal acts that involve the use of electronic means.

Claim: The process by which the insured activates a policy.

Data confidentiality: The protection of communications or stored data against interception and reading by unauthorized persons. The property that information is not made available or disclosed to unauthorized individuals, entities, or processes.

Data integrity: The confirmation that data which has been sent, received, or stored are complete and unchanged. The property that data has not been altered or destroyed in an unauthorized manner.

Deductible: The amount of a claim the insured is responsible for, before the insurance company will start paying its share of costs.

Disaster recovery: The process of restoring a system to full operation after an interruption in service, including equipment repair/replacement and file recovery/restoration.

Exclusion: Those risks excluded from an insurance policy.

Exposure: The potential loss to an area due to the occurrence of an adverse event.

Gap analysis: A comparison that identifies the difference between the actual and the expected/specified system status.

Impact analysis: The identification of critical business processes, and the potential damage or loss that may be caused to the organization resulting from a disruption to those processes. Business impact analysis identifies: the form the loss or damage will take; how that degree of damage or loss is likely to escalate with time following an incident; the minimum staffing, facilities, and services needed to enable business processes to continue to operate at a minimally acceptable level; and the time for full recovery of the business processes.

Insurance carrier: The company holding and supporting the insurance policy purchased from it. The company issues and upholds the risk associated with an insurance policy  
Insurance policy: The document defining what risks or perils are insured along with exclusions

Insured: The party having taken out or likely to acquire or renew an insurance product

Liability: The state of being legally obliged and responsible under the terms of a policy

Mitigation: Limitation of any negative consequence of a particular event.

Monitor and review: A process for measuring the efficiency and effectiveness of the organization's Risk Management processes is the establishment of an ongoing monitor and review process. This process makes sure that the specified management action plans remain relevant and updated. This process also implements control activities, including reevaluation of the scope and compliance with decisions.

Premium: The fee paid by the insured to the insurer for assuming the risk

Risk assessment: A scientific and technologically-based process consisting of three steps, risk identification, risk analysis, and risk evaluation.

Risk avoidance: Decision not to become involved in, or action to withdraw from, a risk situation.

Risk management: The process, distinct from risk assessment, of weighing policy alternatives in consultation with interested parties, considering risk assessments and other legitimate factors, and selecting appropriate prevention and control options.

Risk optimization: A process, related to a risk, to minimize the negative and to maximize the positive consequences and their respective probabilities. Risk optimization depends upon risk criteria, including costs and legal requirements.

Risk perception: Way in which a stakeholder views a risk, based on a set of values or concerns. Risk perception depends on the stakeholder's needs, issues, and knowledge. Risk perception can differ from objective data.

Risk reduction: Actions taken to lessen the probability, negative consequences, or both, associated with a risk.

Risk retention: Acceptance of the burden of loss, or benefit of gain, from a particular risk. Risk retention includes the acceptance of risks that have not been identified. Risk retention

does not include treatments involving insurance, or transfer by other means.

**Risk transfer:** Sharing with another party the burden of loss or benefit of gain, for a risk. Legal or statutory requirements can limit, prohibit, or mandate the transfer of certain risks. Risk transfer can be carried out through insurance or other agreements. Risk transfer can create new risks or modify existing risk.

**Risk treatment:** Process of selecting and implementing measures to modify risk. Risk treatment measures can include avoiding, optimizing, transferring, or retaining risk

**Security:** All aspects related to defining, achieving, and maintaining data confidentiality, integrity, availability, accountability, authenticity, and reliability. A product, system, or service is considered to be secure to the extent that its users can rely on the expectation that it functions (or will function) in the intended way.

**Threat:** Any circumstance or event with the potential to adversely impact an asset through unauthorized access, destruction, disclosure, modification of data, and/or denial of service.

**Vulnerability:** The existence of a weakness, design, or implementation error that can lead to an unexpected, undesirable event compromising the security of the computer system, network, application, or protocol involved.

## **Appendix B**

### **Supply Chain Cyber Assurance – Procurement Requirements**

#### **Introduction**

To give some practical detail with regards to assessments of a supplier, enclosed is specific language and steps to take with your organization to determine if a supplier is in line with your company's guidelines. These model procurement policies are recommended to be in place when companies purchase software and hardware. Companies that implement these procurement policies should find themselves more insurable in the market, both in terms of the dollar amount of the insurance and scope of coverage.

This document serves as a minimal set of requirements for any supplier providing network connectable software, systems, or devices as part of a contractual bid to [FULL NAME OF ORGANIZATION]. A description of the required methods by which features and functions of network-connectable devices are expected to be evaluated at the product level and tested for known vulnerabilities and software security weaknesses, while also establishing a minimum set of verification activities intended to reduce the likelihood of exploitable weaknesses that could be vectors of zero-day exploits that may affect the device, are articulated throughout this document. While this document serves as a minimal set of requirements, [FULL NAME OF ORGANIZATION] expects that suppliers will remain conscious of the dynamic nature of cybersecurity and provide incremental improvements as needed, which [FULL NAME OF ORGANIZATION] shall consider for inclusion in future versions of this document. Suppliers shall be required to provide [FULL NAME OF ORGANIZATION] with any and all requested artifacts as evidence that the supplier is in compliance with stated requirements.

#### **Scope**

These requirements apply to (but are not limited to) the following:

- Application software
- Embedded software
- Firmware
- Drivers
- Middleware
- Operating Systems

The requirements in this document are derived from various industry standards, guidelines, and other documents, including, but not limited to:

- IEC 62443
- ISO 27001
- NIST SP 800-53
- NIST SP 800-82
- DHS Cyber Security Procurement Language for Control Systems
- ISA EDSA
- FIPS 140-2
- Common Criteria Smartcard IC Platform Protection Profile
- Mayo Clinic Technology and Security Requirements Procurement Language
- UL 2900

The requirements in this document apply to devices, software, or software services that will be referred to as “product” throughout this document. The product can be connected to a network (public or private) and may be used as part of a system. These requirements are applicable to products that contain software where unauthorized access or operation, either intentional or through misuse, of the product can impact safety, privacy, loss of data, and compromise operational risks.

## Requirements

The requirements portion of this section will be broken out into the following components:

- 1. Product Development Specification and Policy**
- 2. Security Program**
- 3. System Protection and Access Control**
- 4. Product Testing and Verification**
- 5. Deployment and Maintenance**

1. The word “shall” precedes all requirements to indicate that they are normative.  
**Product Development Specification and Policy** - Supplier shall represent and warrant that it has established and implements security standards and processes that must be adhered to during all equipment and product development activities, with such security standards being designed to address potential security incidents, product vulnerability to unauthorized access, loss of functions, malware intrusion, or any other compromise to confidentiality, integrity, or availability. Supplier shall represent that its security standards practices include testing procedures and tools designed to ensure the security and non-vulnerability of all products and equipment. Supplier shall warrant that it will, for all products and equipment, implement failsafe features that protect the product’s critical functionality, even when the product’s security has been compromised. Supplier shall provide [FULL NAME OF ORGANIZATION] with a written copy of its Development Security Standards upon

request and shall allow [ORGANIZATION NAME] personnel, or a third party identified by [FULL NAME OF ORGANIZATION], to view and assess the standards. Supplier represents and warrants that, with respect to all of its Products (as applicable), it meets and complies with all cybersecurity guidelines and similar requirements and standards promulgated by any applicable regulatory body, where present. Supplier can provide a third-party assessment of organization's product development as a validation of the process employed.

**2. Security Program** - Supplier shall represent and warrant that it has developed and continues to maintain a comprehensive written security program that contains administrative, technical, and physical safeguards to ensure the confidentiality, integrity, and availability of all of [FULL NAME OF ORGANIZATION]'s systems and data. Supplier represents and warrants that all audits and reports, produced as part of its written security program and all reports required to be produced or made available to [ORGANIZATION NAME] are able to be exported and delivered in electronic format. The supplier's written security program shall include, but not be limited to:

a. Identifying and assessing reasonably foreseeable internal and external risks to the availability, security, confidentiality, and/or integrity of any and all supplier products, systems, servers, equipment, software, electronic, paper or other records. The written security policy shall include means of evaluating and improving, where necessary, the effectiveness of the current safeguards for limiting such supplied product(s)' vulnerability and risks, including but not limited to:

- i. Ongoing employee (including temporary and contract employee) training;
- ii. Employee compliance with policies and procedures; and
- iii. Means for testing for, detecting, and preventing security system failures on an ongoing basis.

b. Regular monitoring to ensure that the written security policy is operating in a manner reasonably calculated to prevent unauthorized access to or unauthorized use of [FULL NAME OF ORGANIZATION]'s systems and data, or any compromise in confidentiality, integrity, or availability of [FULL NAME OF ORGANIZATION]'s systems and data.

c. Reviewing the scope of the security measures at least annually or whenever there is a material change in business practices that may reasonably implicate the security or integrity of supplier's products containing or which may access or be used to access [FULL NAME OF ORGANIZATION]'s networks, systems, and data, or compromise the confidentiality, integrity, or availability of [FULL NAME OF ORGANIZATION]'s systems and data.

d. Documenting responsive actions taken in connection with any incident involving a breach of security, and mandatory post-incident review of events and actions taken, if any, to make changes in business practices relating to protection of [FULL NAME OF ORGANIZATION].



e. Supplier can provide a third-party assessment of organization's security program as a validation of the process employed.

**3. System Protection and Access Control** - Supplier shall demonstrate that [FULL NAME OF ORGANIZATION]'s systems and [FULL NAME OF ORGANIZATION]'s data are protected by appropriate network security controls that prevent unauthorized access by providing [FULL NAME OF ORGANIZATION] with network diagrams of supplier's environment used to provide products, equipment, maintenance, and services to [FULL NAME OF ORGANIZATION].

a. Supplier infrastructure - Supplier shall warrant that an incident response mechanism is in place for unauthorized access to or disclosure of technology and assets on the supplier's infrastructure. Supplier shall have an approved C-level process for notification to [FULL NAME OF ORGANIZATION] of unauthorized access or disclosure of technology and assets on the supplier infrastructure that may impact business operations of products and services delivered to [FULL NAME OF ORGANIZATION].

b. Supplier shall provide [FULL NAME OF ORGANIZATION] with a standard operating procedure for securing supplier's technology assets with independent evaluation and assessment where applicable and a management audit of said standard operating procedure annually.

c. Communications between Supplier and [FULL NAME OF ORGANIZATION] shall be performed with a secure mechanism. Supplier shall provide operating procedures for the secure mechanism to ensure that there is no unauthorized access or disclosure of technology and assets.

d. All supplier products and services that have the capability to perform remote system maintenance, software upgrades, troubleshooting, and diagnostics shall provide technical documentation on these capabilities, which shall have the following at a minimum:

i. Strong authentication mechanisms for access to products and services.

ii. Mechanism to perform any remote software downloads are:

- i. Validated as an uncompromised supplier deliverable;
- ii. Validated as an unaltered supplier deliverable;
- iii. Validated that only that action is performed; and
- iv. Validated that it does not provide access to any other systems except for the purpose of updating the software to a supplier deliverable.

iii. Ability to prevent the introduction of any unwanted activity unauthorized by the supplier.

e. Supplier agrees that no external access to its internal networks and systems, will be permitted unless strong authentication and encryption is used for such access. Supplier represents and warrants that all internet and network communications will be encrypted and authenticated. Any necessary external communications for purposes of service or maintenance functions to

be performed by supplier will be encrypted and will utilize multi-factor authentication to access any and all devices, equipment, and/or applications. Supplier shall maintain an access control list for all access to the internal network from an external network and supplier agrees that any of its servers exposed to the internet that contain [FULL NAME OF ORGANIZATION] data or access [FULL NAME OF ORGANIZATION] systems run on a hardened operation system.

**4. Product Testing and Verification** - Supplier shall perform a vulnerability assessment for any or all products that will be provided to [FULL NAME OF ORGANIZATION] as part of a contractual agreement, including scanning and penetration testing by a tester of [FULL NAME OF ORGANIZATION]'s choosing (or a tester selected by supplier and approved by [FULL NAME OF ORGANIZATION]) or, in [FULL NAME OF ORGANIZATION]'s discretion, [FULL NAME OF ORGANIZATION] personnel may perform such vulnerability assessment, all at no cost to [FULL NAME OF ORGANIZATION]. Supplier represents and warrants that it performs security testing and validation for all of its products, and that all security testing performed by supplier covers all issues noted in the "SANS/CWE Top 25" and "OWASP Top 10" documentation, and shall include a vulnerability scan encompassing all ports and protocols. Supplier shall provide [FULL NAME OF ORGANIZATION] with a test plan for all tests performed for review and approval by [FULL NAME OF ORGANIZATION]. The testing shall include, but not be limited to:

**a. Communication Robustness Testing** – This shall include, at a minimum, communication protocol fuzz testing to determine the ability to properly handle malformed and invalid messages for all identified communication protocols in the supplier product, as well as data resource exhaustion tests (i.e., aka “load testing” and “DoS testing”). Communication robustness testing shall be performed using tools that are approved by [FULL NAME OF ORGANIZATION], and that produce machine-readable data.

**b. Software Composition Analysis** – This shall include, at a minimum, an analysis of all compiled code found in the supplier product and shall identify all third-party open source components, and shall, at a minimum, identify all known vulnerabilities found in the Common Vulnerabilities and Exposures (CVE™) in publicly-available databases. Software composition analysis shall be performed using tools that are approved by [FULL NAME OF ORGANIZATION], and that produce machine-readable data.

**c. Static Source Code Analysis** – This shall include, at a minimum, an analysis of all available source code found in the supplier product and shall identify weaknesses enumerated by Common Weakness Enumeration (CWE™). Static source code analysis shall be performed using tools that are approved by [FULL NAME OF ORGANIZATION] and that produce machine-readable data. All CWE Top 25 and OWASP Top 10 issues that have not been remediated must be clearly documented as an exception.

**d. Dynamic Runtime Analysis** – This shall include, at a minimum, an analysis of how the supplier-provided software behaves during operation and whether such behavior introduces potential security vulnerabilities that could negatively impact confidentiality, integrity, and availability.

**e. Known Malware Analysis** – This shall include, at a minimum, a scan of

supplier-provided software to determine if any known malware exists in the supplier-provided software and a risk assessment on mitigation controls or value of risk.

**f. Bill of Materials** – The supplier shall provide [FULL NAME OF ORGANIZATION] a bill of materials that clearly identifies all known third-party software components contained in the supplier product. This shall be provided in a machine-readable format.

**g. Validation of Security Measures** – This shall ensure that all security measures described in the product's design documentation are properly implemented and mitigate the risks associated with use of the component or device.

**h. Third-Party Penetration Test** – The supplier shall provide [FULL NAME OF ORGANIZATION] with the results of a penetration test performed by a thirdparty penetration tester. [FULL NAME OF ORGANIZATION] may, at its discretion, recommend a penetration tester of its choosing. The third-party penetration test shall, at a minimum, but not limited to, determine the following:

- i. All ports and interfaces that the product has enabled and disabled for all configurations.
- ii. All services that are external to the product for all configurations of the product. The test shall determine operational, service, test, and non-functional services of the product.
- iii. Measures implemented to prevent denial of service attacks on all ports, interfaces, and services.
- iv. That all ports, interfaces, and services are documented and that there exists no undocumented port, interface, or service.
- v. All ports, interfaces, and services that require authentication shall meet the requirements of the authentication section in the companion standard for the product ecosystem.
- vi. Probing for vulnerabilities in the product and providing conceptual exploits to attack the vulnerability.
- vii. Software and hardware weaknesses that are identified in the product that are in "SANS WE Top 25" and "OWASP Top 10" and/or otherwise negatively impact confidentiality, availability, and integrity of the supplier's product.

**i. Risk Assessment** – The supplier shall provide [FULL NAME OF ORGANIZATION] with a threat model and subsequent risk assessment that includes, at a minimum, but not limited to:

- i. Risk criteria used to evaluate the significance of risk, including the level at which risk becomes acceptable;

- ii. Risk identification, including (but not limited to) all known vulnerabilities identified through testing and all software weaknesses per "SANS WE Top 25" and "OWASP Top 10" publicly available lists;
- iii. Risk analysis, including consideration of the causes and sources of the risks and their consequences;
- iv. Risk evaluation, comparing the level of risk found during the analysis process with the established risk criteria to determine the acceptability of the risks; and
- v. Additional risk control measures shall be implemented to address all known vulnerabilities and software weaknesses that have been determined to present an unacceptable level of risk.

5. Deployment and Maintenance – Supplier shall provide [FULL NAME OF ORGANIZATION] with detailed installation, deployment, and configuration instructions, and, at the request of [FULL NAME OF ORGANIZATION], assistance in installation, deployment, and configuration that supplier warrants meets the expected security context resulting from meeting the requirements in this document. All supplied software products shall be authenticated through code signing. Supplier shall provide [FULL NAME OF ORGANIZATION] with a stated lifecycle of supplied product and shall provide [FULL NAME OF ORGANIZATION] with a maintenance plan that addresses both current and legacy products provided to [FULL NAME OF ORGANIZATION]. Supplier shall provide, at a minimum, but not be limited to, the following:

**a. Ongoing Vulnerability Assessment** – Supplier shall periodically apply all previously listed vulnerability assessment testing to the supplied products at a frequency of no less than once annually, and report any newly discovered vulnerabilities to [FULL NAME OF ORGANIZATION] within 15 days of being discovered.

**b. Patch Management and Deployment** – Supplier shall design all products with the ability to apply patches when needed and shall provide [FULL NAME OF ORGANIZATION] with the patch management plan. Supplier shall provide [FULL NAME OF ORGANIZATION] with tested, verified, and validated patches in a timely manner, to not exceed 90 days for any vulnerabilities found in "SANS WE Top 25" and "OWASP Top 10", or any vulnerabilities deemed critical by [FULL NAME OF ORGANIZATION]. All patches and provided updates shall be authenticated through code signing.

**c. Updates to Bill of Materials** – Supplier shall provide [FULL NAME OF ORGANIZATION] with an updated bill of materials per the previously-stated requirement for any changes resulting from product updates, patches, etc.

**d. End of Life** – Supplier shall provide [FULL NAME OF ORGANIZATION] with a disposition plan for all software that has reached the supplier-stated end of life. This plan shall include, at a minimum, but not be limited to:

- i. Uninstallation instructions;
- ii. Removing of confidential information (e.g., data and keys);

- iii. Transition plan to updated version of supplier product; and
- iv. Supplier warrants that expected security context remains intact.

**6. Security Incidents and Responses** – Any and all security issues (or potential security issues) associated with any Product or any of supplier's, networks, systems, or services ("Security Incident"), whether identified by supplier, or another entity or customer of Supplier, shall be reported by supplier within thirty (30) days of the issue identification.

- a. The notification shall include supplier's intended Security Incident mitigation and response plan, along with the timeframe during which mitigation will occur.
- b. Supplier will implement and maintain a process to document, report, and track identified and/or reported Security Incidents.
- c. In the case of a suspected or confirmed Security Incident, the supplier will take all such actions as may be necessary to assist [FULL NAME OF ORGANIZATION] and its delegates in an investigation of the Security Incident in order to determine the nature and impact of the Security Incident upon [FULL NAME OF ORGANIZATION], its facilities and affiliates, and will work with [FULL NAME OF ORGANIZATION] to mitigate any adverse impact.
- d. In the event that supplier fails to respond or take action to mitigate the Security Incident (regardless of how or by whom the Security Incident arose or was identified), supplier shall:
  - i. indemnify and hold harmless [FULL NAME OF ORGANIZATION] from and against any and all damage, fines, penalties, harm, liability, costs, suites, actions, claims, or losses that arise from or are related to the Security Incident.
  - ii. be responsible for any and all costs and expenses incurred by [FULL NAME OF ORGANIZATION] in its mitigation of the Security Incident and any resulting damages or issues, and
  - iii. pay [FULL NAME OF ORGANIZATION] a penalty in the amount of \_\_\_% of the total purchase price of all Products purchased by [FULL NAME OF ORGANIZATION] under this Agreement. In the event that [FULL NAME OF ORGANIZATION] (or supplier) modifies or alters any product to address or mitigate a Security Incident, such action shall not serve to negate or amend the warranty associated with the product, or negate or reduce supplier's obligations hereunder.

5. **Accountability and Responsibilities** – Business relationships between entities that have electronic access to the other's systems should define their relationship and responsibilities to create accountability and responsibilities for each party, as well as limit liability via written agreements. Further, such relationships should agree upon a defined level of cyber security for them all, and a trusted third party to inspect and audit each connected entity for the good of all contracted and connected parties.

PRELIMINARY WORKING AND DISCUSSION DRAFT  
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Draft: 3/2/2016  
Draft of New Cybersecurity Model Law  
Cybersecurity (EX) Task Force

INSURANCE DATA SECURITY MODEL LAW

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Section 1. Purpose and Intent

The purpose and intent of this Act is to establish the exclusive standards for data security and investigation and notification of a breach of data security applicable to licensees in this state.

Section 2. Applicability and Scope

Consistent with authority to regulate the business of insurance pursuant to the McCarran Ferguson Act, 15 U.S.C. § 1011 et seq. and the laws of this state, this Act is intended to regulate the business of insurance. No other provision of state or federal law or regulation regarding data security or investigation or notification of a breach of data security shall apply to licensees subject to the provisions of this Act.

Section 3. Definitions

As used in this Act, the following terms shall have these meanings:

A. "Breach of data security," "breach," "data breach," or "security breach" means the unauthorized acquisition of personal information.

The term “breach of data security” does not include the unauthorized acquisition of personal information that is encrypted, redacted, or otherwise protected by another method that renders the information unreadable and unusable if the encryption, redaction, or protection process or key is not also acquired without authorization.

B. “Consumer” means an individual or entity, including but not limited to policyholders and their family members.

C. “Consumer reporting agency” has the same meaning as “consumer reporting agency that compiles and maintains files on consumers on a nationwide basis” in section 603(p) of the Fair Credit Reporting Act (15 U.S.C. 1681a(p)).

D. “Encrypted” means rendered unusable, unreadable, or indecipherable to an unauthorized person through a security technology or methodology generally accepted in the field of information security.

E. “Information security program” means the administrative, technical, or physical safeguards that a licensee uses to access, collect, distribute, process, protect, store, use, transmit, dispose of, or otherwise handle personal information.

F. “Licensee” means all licensed insurers, producers and other persons licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered pursuant to the Insurance Law of this state.

G. “Personal Information” means

(1) A financial account number relating to a consumer, including a credit card number or debit card number, in combination with any security code, access code, password, or other personal identification information required to access the financial account;  
or

(2) Information including:

The first name or first initial and last name of a consumer in combination with:

(a) The consumer’s non-truncated social security number;

(b) The consumer’s driver’s license number, passport number, military identification number, or other similar number issued on a government document used to verify identity;

(c) A user name or e-mail address, in combination with a password or security question and answer that would permit access to an online or financial account of the consumer;

(d) Biometric data of the consumer used to gain access to financial accounts of the consumer;

(e) Health information of the consumer;

(f) Information that the consumer provides to a licensee to obtain an insurance product or service used primarily for personal, family, or household purposes from the licensee;

(g) Information about the consumer resulting from a transaction involving an insurance product or service used primarily for personal, family, or household purposes between a licensee and the consumer;

(h) Information the licensee obtains about the consumer in connection with providing an insurance product or service used primarily for personal, family, or household purposes to the consumer; or

(i) A list, description, or other grouping of consumers (and publicly available information pertaining to them), that is derived using the information described in [Subparagraphs (f) through (h), information provided to licensees] that is not publicly available.

(3) Any information or data except age or gender, that relates to:

(a) The past, present or future physical, mental or behavioral health or condition of a consumer;

(b) The provision of health care to a consumer; or

(c) Payment for the provision of health care to a consumer.

The term “personal information” does not include publicly available information that is lawfully made available to the general public and obtained from federal, state, or local government records; or widely distributed media.

H. “Substantial harm or inconvenience” means

(1) Identity theft; or

(2) Fraudulent transactions on financial accounts.

I. “Third-party service provider” or “service provider” means a person or entity that maintains, processes or otherwise is permitted access to personal information through its provision of services directly to the licensee.

#### Section 4. Information Security Program

##### A. Implementation of an Information Security Program

Each licensee shall develop, implement, and maintain a comprehensive written information security program that contains administrative, technical, and physical safeguards for the protection of personal information.

##### B. Objectives of Information Security Program

A licensee’s information security program shall be designed to:

(1) Ensure the security and confidentiality of personal information;

(2) Protect against any anticipated threats or hazards to the security or integrity of the information; and



(3) Protect against unauthorized access to or use of the information that could result in substantial harm or inconvenience to any customer.

#### C. Appropriateness of Information Security Program

The scale and scope of a licensee's information security program shall be appropriate to:

- (1) The size and complexity of the licensee;
- (2) The nature and scope of the activities of the licensee; and
- (3) The sensitivity of the consumer information to be protected.

#### D. Risk Assessment

The licensee shall:

- (1) Designate an employee or employees to coordinate the information security program;
- (2) Identify reasonably foreseeable internal or external threats that could result in unauthorized disclosure, misuse, alteration or destruction of personal information or personal information systems;
- (3) Assess the likelihood and potential damage of these threats, taking into consideration the sensitivity of the personal information;
- (4) Assess the sufficiency of policies, procedures, personal information systems and other safeguards in place to control these risks, including consideration of risks in each relevant area of the licensee's operations, including:
  - (a) Employee training and management;
  - (b) Information systems, including network and software design, as well as information processing, storage, transmission, and disposal; and
  - (c) Detecting, preventing, and responding to attacks, intrusions, or other systems failures; and
- (5) Design and implement information safeguards to control the risks identified in its risk assessment, and regularly assess the effectiveness of the safeguards' key controls, systems, and procedures.

#### E. Risk Management

The licensee shall:

- (1) Design its information security program to control the identified risks, commensurate with the sensitivity of the information, as well as the complexity and scope of the licensee's activities, using as a guide, the Framework for Improving Critical Infrastructure Cybersecurity developed by the National Institute of Standards and Technology (NIST), including adopting the following security measures:

- (a) Place access controls on information systems, including controls to authenticate and permit access only to authorized individuals and controls to prevent employees from providing personal information to unauthorized individuals who may seek to obtain this information through fraudulent means;
- (b) Restrict access at physical locations containing personal information, such as buildings, computer facilities, and records storage facilities, to permit access only to authorized individuals;
- (c) Encrypt electronic personal information, including while in transit or in storage on networks or systems to which unauthorized individuals may have access;
- (d) Design procedures to ensure that information system modifications are consistent with the licensee's information security program;
- (e) Utilize multi-factor authentication procedures, segregation of duties, and employee background checks for employees with responsibilities for, or access to, personal information;
- (f) Regularly test or monitor systems and procedures to detect actual and attempted attacks on, or intrusions into, information systems;
- (g) Implement response programs that specify actions to be taken when the licensee suspects or detects that unauthorized individuals have gained access to information systems;
- (h) Implement measures to protect against destruction, loss, or damage of personal information due to potential environmental hazards, such as fire and water damage or technological failures; and
- (i) Develop, implement, and maintain appropriate measures to properly dispose of personal information;
  - (2) Address cybersecurity risks into the licensee's enterprise risk management process; and
  - (3) Use an Information Sharing and Analysis Organization (ISAO) to share information and stay informed regarding emerging threats or vulnerabilities.

#### F. Oversight by Board of Directors

- (1) If the licensee has a board of directors, the board or an appropriate committee of the board shall:
  - (a) Approve the licensee's written information security program; and
  - (b) Oversee the development, implementation, and maintenance of the licensee's information security program, including assigning specific responsibility for its implementation and reviewing reports from management.

(2) If the licensee has a board of directors, the licensee shall report to its board or an appropriate committee of the board at least annually, the following information:

(a) The overall status of the information security program and the licensee's compliance with this Act; and

(b) Material matters related to its program, addressing issues such as risk assessment, risk management and control decisions, service provider arrangements, results of testing, security breaches or violations and management's responses, and recommendations for changes in the information security program.

#### G. Oversight of Third-Party Service Provider Arrangements

The licensee shall:

(1) Select and retain third-party service providers that are capable of maintaining appropriate safeguards for the personal information at issue;

(2) Require the third-party service providers to do the following, by contract:

(a) Implement and maintain appropriate safeguards for the personal information at issue, including those security measures listed in [Section 4E(1), Risk Management].

(b) Notify licensee within three (3) calendar days of a discovery of a breach of data security in a system maintained by the third-party service provider that has been contracted to maintain, store, or process data containing personal information on behalf of a licensee;

(c) Indemnify licensee in the event of a cybersecurity incident that results in loss;

(d) Allow licensee or its agents to perform cybersecurity audits of the third-party service provider; and

(e) Represent and warrant its compliance with all requirements; and

(3) Oversee or obtain an assessment of the third-party service provider's compliance with contractual obligations, where appropriate in light of the licensee's risk assessment.

#### H. Program Adjustments

The licensee shall monitor, evaluate and adjust, as appropriate, the information security program in light of any relevant changes in technology, the sensitivity of its personal information, internal or external threats to information, and the licensee's own changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements and changes to personal information systems.

#### Section 5. Consumer Rights Before a Breach of Data Security

A. The licensee shall provide consumers with information regarding the types of personal information collected and stored by licensee or any third-party service providers it contracts with.

B. The licensee shall post its privacy policy on its websites and make it available to consumers in hard copy, upon request. The privacy policy shall explain what type of personal information licensee collects, what options consumers have about their data, how consumers can review and change or correct their data if needed, how the data is stored and protected, and what consumers can do if the licensee does not follow its privacy policy.

#### Section 6. Investigation of a Breach of Data Security

A. If a licensee believes that a breach of data security has or may have occurred in relation to personal information that is maintained, communicated, or otherwise handled by, or on behalf of, the licensee, the licensee shall conduct an investigation.

B. During the investigation, the licensee shall:

(1) Assess the nature and scope of the incident;

(2) Identify any personal information that may have been involved in the incident;

(3) Determine if the personal information has been acquired without authorization; and

(4) Take reasonable measures to restore the security and confidentiality of the systems compromised in the breach.

#### Section 7. Notification of a Breach of Data Security

A. If the licensee determines under [Section 6, Investigation of a Breach of Data Security] that the unauthorized acquisition of personal information involved in a breach of data security is reasonably likely to cause substantial harm or inconvenience to the consumers to whom the information relates, the licensee, or a third party acting on behalf of the licensee, shall notify, without unreasonable delay:

(1) An appropriate Federal and state law enforcement agency;

(2) The insurance commissioner;

(3) Any relevant payment card network, if the breach involves a breach of payment card numbers;

(4) Each consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, if the breach involves personal information relating to 1,000 or more consumers; and

(5) All consumers to whom the personal information relates.

#### B. Providing Notice to the Commissioner

No later than five (5) calendar days of identifying a data breach, the licensee shall notify the commissioner, providing as much of the following information as is known to the licensee:

- (1) Date of the breach;
- (2) Description of the breach, including how the information was lost, stolen, or breached;
- (3) How the breach was discovered;
- (4) Whether any lost, stolen, or breached information has been recovered and if so, how this was done;
- (5) Whether any individuals involved in the incident (both internal and external) have been identified;
- (6) Whether a police report has been filed;
- (7) Description of the type of information lost, stolen, or breached (equipment, paper, electronic, claims, applications, underwriting forms, medical records etc.);
- (8) Whether the information was encrypted;
- (9) The time period covered by the information that was lost, stolen or breached;
- (10) Number of residents of the state affected by the breach;
- (11) Results of any internal review identifying either a lapse in internal procedures or confirmation that all procedures were followed;
- (12) Identification of remedial efforts being undertaken to cure the situation which permitted the information security incident to occur;
- (13) Copies of the licensee's privacy policies and data breach policy;
- (14) Name of a contact person who is both familiar with the details and able to authorize actions for the licensee; and
- (15) Other regulatory or law enforcement agencies that have been notified and when notification was provided.

#### C. Providing Notice to Consumer Reporting Agencies

No later than sixty (60) calendar days of identifying a data breach, the licensee shall notify each consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, if the breach involves personal information relating to [1000] or more consumers.

#### D. Providing Notice to Consumers

- (1) No later than sixty (60) calendar days of identifying a data breach, the licensee shall notify all affected consumers.

(2) Licensee will provide the notification in writing by first-class mail, unless the consumer has agreed to be contacted through e-mail.

(3) No later than forty-five (45) calendar days of identifying a data breach, the licensee shall provide to the commissioner, a draft of the proposed written communication to consumers. The commissioner shall have the right to edit the proposed communication before the licensee sends it to consumers. This proposed notification shall be written in plain English and include the following information:

- (a) A description of the type of information involved in the data breach;
- (b) A description of the action that the licensee or business it contracts with has taken to safeguard the information;
- (c) A summary of rights of victims of identity theft prepared under § 609(d) of the Fair Credit Reporting Act (15 U.S.C. 1681g(d));
- (d) The steps consumers can take to protect themselves from identity theft or fraud, which shall include an explanation that consumers shall have a right to do the following:
  - (i) Put a 90-day initial fraud alert on their credit reports;
  - (ii) Put a seven-year extended fraud alert on their credit reports;
  - (iii) Put a credit freeze on their credit report;
  - (iv) Get a free copy of their credit report from each credit bureau;
  - (v) Get fraudulent information related to the data breach removed (or “blocked”) from their credit reports;
  - (vi) Dispute fraudulent or wrong information on their credit reports;
  - (vii) Stop creditors and debt collectors from reporting fraudulent accounts related to the data breach;
  - (viii) Get copies of documents related to the identity theft; and
  - (ix) Stop a debt collector from contacting them;
- (e) Contact information for the three nationwide consumer reporting agencies;
- (f) Contact information for the licensee or its designated call center; and
- (g) An offer from the licensee to the consumer to provide appropriate identity theft protection services free of cost to the consumer for a period of not less than twelve (12) months.

#### E. Providing Notice Regarding Breaches of Third-Party Service Providers

Licensee shall comply with [Subsections B and D] by notifying the commissioner and consumers in the event of a breach of data security in a system maintained by a third-party service provider. The computation of licensee's deadlines shall begin on the day the third-party service provider provides notice to licensee.

F. Notwithstanding the requirements of [Subsections C, D, and E], notice may be delayed where requested by an appropriate state or federal law enforcement agency. The commissioner shall be notified of any such request.

#### Section 8. Consumer Protections Following a Breach of Data Security

After reviewing the licensee's data breach notification, the commissioner shall prescribe the appropriate level of consumer protection required following the data breach and for what period of time that protection will be provided. At a minimum, the licensee will offer to pay for at least twelve (12) months of identity theft protection for affected consumers.

#### Section 9. Power of Commissioner

The commissioner shall have power to examine and investigate into the affairs of any licensee to determine whether the licensee has been or is engaged in any conduct in violation of this Act. This power is in addition to the powers which the commissioner has under [insert applicable statutes governing the examination of insurers]. Any such examination shall be conducted pursuant to [insert applicable statutes governing the examination of insurers].

#### Section 10. Hearings, Witnesses, Appearances, Production of Books and Service of Process

A. Whenever the commissioner has reason to believe that a licensee has been or is engaged in conduct in this state which violates this Act, the commissioner shall issue and serve upon such licensee a statement of charges and notice of hearing to be held at a time and place fixed in the notice. The date for such hearing shall be not less than [insert number] days after the date of service.

B. At the time and place fixed for such hearing the licensee charged shall have an opportunity to answer the charges against it and present evidence on its behalf. Upon good cause shown, the commissioner shall permit any adversely affected person to intervene, appear and be heard at such hearing by counsel or in person.

C. At any hearing conducted pursuant to this section, the commissioner may administer oaths, examine and cross-examine witnesses and receive oral and documentary evidence. The commissioner shall have the power to subpoena witnesses, compel their attendance and require the production of books, papers, records, correspondence and other documents which are relevant to the hearing. A stenographic record of the hearing shall be made upon the request of any party or at the discretion of the commissioner. If no stenographic record is made and if judicial review is sought, the commissioner shall prepare a statement of the evidence for use on the review. Hearings conducted under this section shall be governed by the same rules of evidence and procedure applicable to administrative proceedings conducted under the laws of this state.

D. Statements of charges, notices, orders and other processes of the commissioner under this Act may be served by anyone duly authorized to act on behalf of the commissioner. Service of process may be completed in the manner provided by law for service of process in civil actions or by registered mail. A copy of the statement of charges, notice, order or other

process shall be provided to the person or persons whose rights under this Act have been allegedly violated. A verified return setting forth the manner of service, or return postcard receipt in the case of registered mail, shall be sufficient proof of service.

#### Section 11. Confidentiality

A. Any documents, materials or other information in the control or possession of the department of insurance that is furnished by a licensee or an employee or agent thereof acting on behalf of licensee, or obtained by the insurance commissioner in an investigation pursuant to this Act shall be confidential by law and privileged, shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the insurance commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the insurance commissioner's duties.

B. Neither the insurance commissioner nor any person who received documents, materials or other information while acting under the authority of the insurance commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to [Subsection A].

C. In order to assist in the performance of the insurance commissioner's duties under this Act, the insurance commissioner:

(1) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to [Subsection A], with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates or subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information;

(2) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the National Association of Insurance Commissioners, its affiliates or subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(3) [OPTIONAL] May enter into agreements governing sharing and use of information consistent with this subsection.

D. No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in [Subsection C].

E. Nothing in this Act shall prohibit the insurance commissioner from releasing final, adjudicated actions including for cause terminations that are open to public



inspection pursuant to [insert appropriate reference to state law] to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries of the National Association of Insurance Commissioners.

## Section 12. Cease and Desist Orders and Reports

A. If, after a hearing pursuant to Section [section on hearings], the commissioner determines that the licensee charged has engaged in conduct or practices in violation of this Act, the commissioner shall reduce his or her findings to writing and shall issue and cause to be served upon such licensee a copy of such findings and an order requiring such licensee to cease and desist from the conduct or practices constituting a violation of this Act.

B. If, after a hearing pursuant to Section [section on hearings], the commissioner determines that the licensee charged has not engaged in conduct or practices in violation of this Act, the commissioner shall prepare a written report which sets forth findings of fact and conclusions of law. Such report shall be served upon the licensee charged and upon the person or persons, if any, whose rights under this Act were allegedly violated.

C. Until the expiration of the time allowed under Section [section on judicial review] of this Act for filing a petition for review or until such petition is actually filed, whichever occurs first, the commissioner may modify or set aside any order or report issued under this section. After the expiration of the time allowed under Section [section on judicial review] of this Act for filing a petition for review, if no such petition has been duly filed, the commissioner may, after notice and opportunity for hearing, alter, modify or set aside, in whole or in part, any order or report issued under this section whenever conditions of fact or law warrant such action or if the public interest so requires.

## Section 13. Penalties

A. In any case where a hearing pursuant to Section [section on hearings] results in the finding of a knowing violation of this Act, the commissioner may, in addition to the issuance of a cease and desist order as prescribed in Section [section on cease and desist orders], order payment of a monetary penalty of not more than [\$500] for each violation but not to exceed [\$10,000] in the aggregate for multiple violations.

B. Any person who violates a cease and desist order of the commissioner under Section [section on cease and desist orders] of this Act may, after notice and hearing and upon order of the commissioner, be subject to one or more of the following penalties, at the discretion of the commissioner:

- (1) A monetary fine of not more than [\$10,000] for each violation;
- (2) A monetary fine of not more than [\$50,000] if the commissioner finds that violations have occurred with such frequency as to constitute a general business practice; or
- (3) Suspension or revocation of an insurance institution's or agent's license.

C. Notwithstanding the foregoing, nothing in this Act shall be construed to limit the commissioner's authority under [insert citation to Unfair Trade Practices Act].

#### Section 14. Judicial Review of Orders and Reports

A. Any licensee subject to an order of the commissioner under Section [section on cease and desist orders] or Section [section on penalties] or any licensee whose rights under this Act were allegedly violated may obtain a review of any order or report of the commissioner by filing in the [insert title] Court of [insert county] County, within [insert number] days from the date of the service of such order or report, a written petition requesting that the order or report of the commissioner be set aside. A copy of such petition shall be simultaneously served upon the commissioner, who shall forthwith certify and file in such court a transcript of the entire record of the proceeding giving rise to the order or report which is the subject of the petition. Upon filing of the petition and transcript the [insert title] Court shall have jurisdiction to make and enter a decree modifying, affirming or reversing any order or report of the commissioner, in whole or in part. The findings of the commissioner as to the facts supporting any order or report, if supported by clear and convincing evidence, shall be conclusive.

B. To the extent an order or report of the commissioner is affirmed, the court shall issue its own order commanding obedience to the terms of the order or report of the commissioner. If any party affected by an order or report of the commissioner shall apply to the court for leave to produce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there are reasonable grounds for the failure to produce such evidence in prior proceedings, the court may order such additional evidence to be taken before the commissioner in such manner and upon such terms and conditions as the court may deem proper. The commissioner may modify his or her findings of fact or make new findings by reason of the additional evidence so taken and shall file such modified or new findings along with any recommendation, if any, for the modification or revocation of a previous order or report. If supported by clear and convincing evidence, the modified or new findings shall be conclusive as to the matters contained therein.

C. An order or report issued by the commissioner under Section [section on cease and desist orders] or [section on penalties] shall become final:

(1) Upon the expiration of the time allowed for the filing of a petition for review, if no such petition has been duly filed; except that the commissioner may modify or set aside an order or report to the extent provided in Section [section on cease and desist orders]; or

(2) Upon a final decision of the [insert title] Court if the court directs that the order or report of the commissioner be affirmed or the petition for review dismissed.

D. No order or report of the commissioner under this Act or order of a court to enforce the same shall in any way relieve or absolve any licensee affected by such order or report from any liability under any law of this state.

#### Section 15. Individual Remedies

A. If any licensee fails to comply with Section [insert section(s) addressing consumer rights] of this Act with respect to the rights granted under those sections, any person whose rights are violated may apply to the [insert title] Court of this state, or any other court of competent jurisdiction, for appropriate equitable relief.

B. In any action brought pursuant to this section, the court may award the cost of the action and reasonable attorney's fees to the prevailing party.

C. An action under this section must be brought within two (2) years from the date the alleged violation is or should have been discovered.

D. Except as specifically provided in this Act, there shall be no remedy or recovery available to consumers, in law or in equity, for occurrences constituting a violation of any provisions of this Act.

#### Section 16. Immunity

No cause of action in the nature of defamation, invasion of privacy or negligence shall arise against any person for disclosing personal or privileged information in accordance with this Act, nor shall such a cause of action arise against any person for furnishing personal or privileged information to a licensee; provided, however, this section shall provide no immunity for disclosing or furnishing false information with malice or willful intent to injure any person.

#### Section 17. Obtaining Information Under False Pretenses

Any person who knowingly and willfully obtains information about a consumer from a licensee under false pretenses shall be fined not more than [\$10,000] or imprisoned for not more than one year, or both.

#### Section 18. Rules and Regulations

The commissioner may, upon notice and opportunity for all interested persons to be heard, issue such rules, regulations and orders as shall be necessary to carry out the provisions of this Act.

#### Section 19. Severability

If any provisions of this Act or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

#### Section 20. Effective Date

This Act shall take effect on [insert a date which allows at least a one year interval between the date of enactment and the effective date].

**TAB #7**



## **Property & Casualty General Session**

NCOIL Summer Meeting, Portland, OR

Friday, July 15, 2016

10:30 am – 12:15 pm

**Innovation and Disruption:** What Does It Mean to the Marketplace and Insurance Industry, What Will it Mean?

### **10:30 - 10:50 – Overview: Historic Impact of Innovation/Disruption on Insurance**

**Faith R. Neale, PhD**

The Griffith Insurance Education Foundation

Associate Professor at the University of North Carolina at Charlotte

\*In keeping with the non-partisan, non-advocative mission of The Griffith Foundation, Professor Neale's view will be unbiased and purely educational\*

### **10:50 - 11:00 – Regulatory Perspective**

**Eric A. Cioppa**

Superintendent – Maine Bureau of Insurance

NAIC Secretary-Treasurer

### **11:00 - 11:50 – Autonomous Vehicles and Disruption**

**Jerry Albright**

KPMG

Actuarial and Insurance Risk Principal

**Joe Schneider**

KPMG

Managing Director, Corporate Finance

KPMG Autonomous Vehicles and Insurance Task Force – Co-Leader

### **11:50 - 12:00 – Q & A**

**TAB #8**



**NCOIL – NAIC Dialogue**  
NCOIL Summer Meeting, Portland, OR  
Friday, July 15, 2016  
2:15 pm – 3:30 pm

*Chair, Rep. Steve Riggs, KY*

*\*Call to order/roll call/approval of February 26, 2016 committee meeting minutes (2:15-2:20)*

1. Discussion of NCOIL participation at NAIC Kansas City Summit
2. Repeal of Federal exemption of air ambulance regulation
3. Discussion of Federal efforts of private flood insurance
4. NAIC unclaimed property initiative
5. Regulatory efforts regarding cyber-risk & insurance
6. Price optimization
7. Adjournment

**NCOIL-NAIC Dialogue Committee**

Chair: Rep. Steve Riggs, KY  
Vice Chair: Rep. George Keiser, ND

Sen. Jason Rapert, AR  
Rep. Matt Lehman, IN  
Rep. Joseph Fischer, KY  
Sen. Dan "Blade" Morrish, LA  
Rep. Don Gosen, MO  
Sen. Jerry Klein, ND  
Sen. David O'Connell, ND  
Sen. Neil Breslin, NY

Sen. James Seward, NY  
Rep. Robert Hackett, OH  
Rep. Brian Kennedy, RI  
Sen. Roger Picard, RI  
Sen. Robert Hayes, SC  
Rep. Bill Botzow, VT  
Rep. Kathie Keenan, VT  
Rep. Warren Kitzmiller, VT



NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
NCOIL-NAIC DIALOGUE  
LITTLE ROCK, ARKANSAS  
FEBRUARY 26, 2016  
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) NCOIL-NAIC Dialogue Committee met at the Little Rock Marriott in Little Rock, Arkansas, on Friday, February 26, 2016, at 11:30 a.m.

Rep. Steve Riggs of Kentucky, Chair of the Committee, presided.

Other members of the Committee present were:

Sen. Jason Rapert, AR	Rep. Brian Kennedy, RI
Rep. Joe Fischer, KY	Sen. Robert Hayes, SC
Rep. George Keiser, ND	Rep. Bill Botzow, VT
Sen. James Seward, NY	

Other legislators present were:

Sen. Greg Standridge, AR	Rep. Henry Vaupel, MI
Sen. Travis Holdman, IN	Sen. Ed Buttrey, MT
Rep. Ronald Crimm, KY	Sen. Kevin Bacon, OH
Rep. Ken Goike, MI	Rep. Michael Henne, OH

Also in attendance were:

Tom Considine, NCOIL CEO  
Paul Penna, Executive Director, NCOIL Support Services  
Christina Zuk, Legislative Director, NCOIL Support Services  
Paulina Grabczak, Deputy Legislative Director, NCOIL Support Services

FIO (Federal Insurance Office) / FACI (Federal Advisory Committee on Insurance)  
ONGOING ACTIVITY

Commissioner Jim Ridling of Alabama said that there is meaningful dialogue going on between the United States and other countries. When dealing with other countries, it is important to understand the culture of the people one is dealing with and it is also important to recognize the players. The countries in Europe are very independent and this makes it difficult to deal on a consolidated basis as the United States does. Outside of Europe, there are many items the NAIC is working on other than the agreement on reinsurance with Europe. Latin America looks at the United States almost exclusively to learn, understand, and develop the insurance industry. The NAIC has a very good working relationship with most of the Latin American and South American countries when it comes to insurance. There is also a good dialogue with some of the Asian countries that are developing markets on the one hand and have well-developed markets in parts of other countries and we could learn from this.

Commissioner Ridling continued that he is not a believer of a common capital standard. The Commissioner is a believer in negotiating with the Europeans on some issues while letting them know that other issues are non-negotiable.

Rep. Riggs asked if others find the United States system unusual. Commissioner Ridling said that it takes a while for people who have not been here to understand the scheme

behind the regulation. Once they do, they look at it similarly to the way they view the differences between their countries in Europe. They understand this philosophy. Commissioner Ridling said that the United States may be the only nation in the world that has a lot of state run regulation, but we look to a central government. If this is placed in a European environment where there is no central federal government it is extremely different.

## COVERED AGREEMENTS

The discussion then turned to covered agreements. Commissioner Mike Chaney of Mississippi stated that it is important to understand what a covered agreement is. A covered agreement is a bilateral or multilateral agreement between or among the United States and either one or more foreign jurisdictions. The danger for state regulators is very simple. The worry is that the federal law and that covered agreement would preempt state laws and their regulatory authority to regulate the subject of that covered agreement, including capital. The danger of a covered agreement is that if it is not done correctly it can damage the state based regulatory scheme used in this country.

Rep. Riggs asked if anyone attended the meeting in Brussels recently. Commissioner Chaney said that the NAIC has designated people who attend these meetings whether it is the International Association of Insurance Supervisors (IAIS) or others. These are the people who are charged in developing capital standards for the various schemes that are used in this country. The difference between the United States and the Europeans is that the United States may have a different capital set-up requirement versus what the European sector may have.

## AFFORDABLE CARE ACT (ACA) IMPLEMENTATION

Superintendent Beth Dwyer of Rhode Island said that as far as network adequacy goes, the NAIC is working on a model and does strongly oppose the federal proposal to set one benchmark because the preferred route would be to give the states the ability to set their own standards.

Commissioner Chaney said that the problem with risk corridor and risk adjustment is the fact that there is not enough money to pay everyone what they are due. If the money is not paid, the rates can't be equalized. This is a big issue. Commissioner Ridling said that some of the law was well thought out in structure and not well thought out in procedure and how it would work. Rep. Riggs asked for clarification, stating that it was good in structure, but the delivery is a concern and the Commissioner agreed.

Commissioner Ridling said that risk adjustment was put in to grade people as they are admitted to an insurance program based on health. This would result in the healthier people subsidizing those who are less healthy. What this is doing, however, is it is driving out the smaller health carriers out of the State. No new carriers will come into the State because they are under the same pressure. In short, this structure is resulting in the opposite of what was intended.

Superintendent Dwyer said that on March 31, 2016 the HHS is having an open meeting in Baltimore, Maryland to consider changes to the risk adjustment formula for 2018 and beyond.

Superintendent Dwyer said that there has been trouble with co-ops. Rep. Riggs said that in his state of Kentucky the co-ops lost their funding so they declared insolvency. Superintendent Dwyer said that out of the 23 co-ops, 12 were declared insolvent. It was just

announced that 9 out of the remaining 11 are in financial trouble. This leaves 2 that are not in some financial distress. The NAIC has created a new sub-group—the Co-Op Solvency and Receivership SubGroup—specifically to address this issue. Of primary concern for the sub-group are the federal loans foreclosed co-ops that have been terminated by HHS and sent to the Department of Justice for collection. The issue is what is the priority as far as the various creditors. There will be a lot of dialogue in the sub-group so any state involved in that can get more information from the sub-group. There is also a question if the federal government can off-set outstanding reinsurance risk adjustment or tax credit payments to collect on the loans given to the various coops. There have also been several Congressional Committees on co-ops.

Commissioner Allen Kerr of Arkansas in response to a question from Rep. Riggs said that there are problems with the risk corridors, but there are no co-ops in Arkansas.

Sen. Seward said that Health Republic in New York, the co-op there, went bellyup last fall. There is probably an excess of \$200 million in unpaid claims still outstanding. Sen. Seward asked if some on the federal level are looking to recoup the loans or federal money that went into the co-ops. Superintendent Dwyer said yes. This is something that comes up whenever there is an insolvency—the issue of the priority of distribution of the assets of the insolvent entity. The question is what is the priority—is it the claimants or the federal government. Sen. Seward asked if those that have survived were given some rate relief. The problem in New York was that the Health Republic premiums were set so low that there was just no way they could make it. Superintendent Dwyer said that there would be an analysis in the coming years. It was reiterated that of the remaining 11 co-ops that were not insolvent 9 were declared to be in hazardous financial conditions, which only leaves 2 financially sound co-ops. The Superintendent is sure that the various factors that resulted in this will be looked at and rate relief may be one of them, but at this point there are no conclusions.

Superintendent Dwyer is working on a network adequacy model act. The draft model act will be designed to protect consumers from surprise bills when they go in-network. If the consumer chooses an in-network facility and are not told that they will be receiving care from a non-network provider then the consumer will be held harmless in any balance-billing situation. The provider payment will be worked out between the carrier and the provider. The model does not say how the final payment will be set in such cases as it leaves it for the states to decide.

Commissioner Chaney said that there is a disparity between providers' costs. This is a big issue. Rep. Riggs asked how network adequacy could be improved. Commissioner Ridling noted that it all depends on the states. The states need to handle the issue on a state-level and he does not believe this could be done by doing a one-size-fits-all network adequacy model. Commissioner Ridling noted that telemedicine will be the way to reach a lot of people in rural America, particularly where the population is spread across large areas. Commissioner Chaney added that telemedicine works. The Commissioner predicts that this will work well for Mississippi. There is a difference between telemedicine and telehealth and they are doing telehealth.

Commissioner Kerr said that network adequacy was never thought through on the federal level. NCOIL and NAIC working together will be the ones to make it happen.

Commissioner Chaney said that in terms of what NAIC is doing on the Affordable Care Act, there is an effort to try to repeal premium taxes in places like Puerto Rico and the Virgin Islands. Additionally, there is a trend of hospitals closing emergency rooms and instead transporting people to another hospital by air ambulance. Additionally, NAIC's limited benefit

plan models have been revised. This must be addressed. There are pharmacy issues that the NAIC is addressing.

Commissioner Ridling said that long-term care pressure is building. There aren't a lot of active providers anymore. Life expectancy has expanded and the cost of medical care and procedures is expanding. Hospitals are procedure driven and this will drive the long-term care up even more so.

Rep. Keiser said that NCOIL left it up to the NAIC to negotiate on the partnership Act for long-term care. The entire focus of that Act was portability. The portability has not worked because states are not honoring it for a variety of reasons. In order to make long-term care insurance effective, young people need to buy into it. Superintendent Dwyer agreed that this is a hard sell for young people and the young people must get into it. Other products can also be looked at such as annuities.

#### NAIC UNCLAIMED PROPERTY INITIATIVE

Superintendent Dwyer said that the NCOIL model came out a few years ago and about 20 states adopted it. The NAIC formed a working group to look at all the information. A lot of work has been done to look at every section of the NCOIL model act and statutes in other states and come to an unclaimed model that marries the two. This sub-group is still working, but they will be able to present the differences between other states and the NCOIL model.

Rep. Kennedy said that one of the issues that came up was prospective versus retrospective. In Rhode Island it was decided that all of the policies should be covered regardless of when they were purchased. Superintendent Dwyer said that there are other states that have different opinions. The NAIC's current draft of the model gives the option for either prospective or retrospective application. A lot of states have adopted the model where one can contact the insurance company when a relative has died and the family is not sure if he or she had insurance. There are about 15-16 states with different approaches to this so the NAIC is looking at a uniform way to do this. Commissioner Ridling noted that retrospective application was a nonstarter in Alabama, and further said that the search system is the key.

#### "TEAM USA" ACTIVITIES

Commissioner Ridling said that he is not sure if the NAIC representative and FOI have ever voted the same way on any issue, so that "Team USA" is more myth than reality.

#### PRICE OPTIMIZATION

Commissioner Ridling said that it is important to understand what price optimization is. It identifies how high you can go before you lose clients. The bad side is that it is done with individuals rather than groups of people. The issue is that other knowledge is used to stretch the premium as far as it can go before the individual chooses not to pay it anymore.

Commissioner Chaney said that there is a white paper on price optimization on the NAIC website. The Commissioner said that some states have declared that price optimization can't be used. The Commissioner personally believes that this is premature.

#### REGULATORY EFFORTS REGARDING CYBER-RISK & INSURANCE

Rep. Riggs asked if all the Commissioners and the Superintendent are opposed to H.R. 2205 the Data Security Act of 2015 and if they want NCOIL to be opposed as well. It was noted that this is correct.

Commissioner Kerr said that this is a widely publicized issue and one that is extremely serious. The NAIC has a task force that is addressing the issue. This is a serious problem that may seem like a relatively new issue, but it is not. Insurance companies have been in charge of very sensitive information from their customers for decades and have always been in charge of safeguarding that information. This should remain at the state level because each state and each regulator has his or her own issues on cyber security. The Commissioner hopes that NCOIL's involvement can be counted on to stop H.R. 2205.

#### ADJOURNMENT

There being no further business, the Committee adjourned at 12:36 p.m.

PRELIMINARY WORKING AND DISCUSSION DRAFT  
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Draft: 3/2/2016  
Draft of New Cybersecurity Model Law  
Cybersecurity (EX) Task Force

INSURANCE DATA SECURITY MODEL LAW

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Section 1. Purpose and Intent

The purpose and intent of this Act is to establish the exclusive standards for data security and investigation and notification of a breach of data security applicable to licensees in this state.

Section 2. Applicability and Scope

Consistent with authority to regulate the business of insurance pursuant to the McCarran Ferguson Act, 15 U.S.C. § 1011 et seq. and the laws of this state, this Act is intended to regulate the business of insurance. No other provision of state or federal law or regulation regarding data security or investigation or notification of a breach of data security shall apply to licensees subject to the provisions of this Act.

Section 3. Definitions

As used in this Act, the following terms shall have these meanings:

A. "Breach of data security," "breach," "data breach," or "security breach" means the unauthorized acquisition of personal information.

The term “breach of data security” does not include the unauthorized acquisition of personal information that is encrypted, redacted, or otherwise protected by another method that renders the information unreadable and unusable if the encryption, redaction, or protection process or key is not also acquired without authorization.

B. “Consumer” means an individual or entity, including but not limited to policyholders and their family members.

C. “Consumer reporting agency” has the same meaning as “consumer reporting agency that compiles and maintains files on consumers on a nationwide basis” in section 603(p) of the Fair Credit Reporting Act (15 U.S.C. 1681a(p)).

D. “Encrypted” means rendered unusable, unreadable, or indecipherable to an unauthorized person through a security technology or methodology generally accepted in the field of information security.

E. “Information security program” means the administrative, technical, or physical safeguards that a licensee uses to access, collect, distribute, process, protect, store, use, transmit, dispose of, or otherwise handle personal information.

F. “Licensee” means all licensed insurers, producers and other persons licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered pursuant to the Insurance Law of this state.

G. “Personal Information” means

(1) A financial account number relating to a consumer, including a credit card number or debit card number, in combination with any security code, access code, password, or other personal identification information required to access the financial account;  
or

(2) Information including:

The first name or first initial and last name of a consumer in combination with:

(a) The consumer’s non-truncated social security number;

(b) The consumer’s driver’s license number, passport number, military identification number, or other similar number issued on a government document used to verify identity;

(c) A user name or e-mail address, in combination with a password or security question and answer that would permit access to an online or financial account of the consumer;

(d) Biometric data of the consumer used to gain access to financial accounts of the consumer;

(e) Health information of the consumer;

(f) Information that the consumer provides to a licensee to obtain an insurance product or service used primarily for personal, family, or household purposes from the licensee;

(g) Information about the consumer resulting from a transaction involving an insurance product or service used primarily for personal, family, or household purposes between a licensee and the consumer;

(h) Information the licensee obtains about the consumer in connection with providing an insurance product or service used primarily for personal, family, or household purposes to the consumer; or

(i) A list, description, or other grouping of consumers (and publicly available information pertaining to them), that is derived using the information described in [Subparagraphs (f) through (h), information provided to licensees] that is not publicly available.

(3) Any information or data except age or gender, that relates to:

(a) The past, present or future physical, mental or behavioral health or condition of a consumer;

(b) The provision of health care to a consumer; or

(c) Payment for the provision of health care to a consumer.

The term “personal information” does not include publicly available information that is lawfully made available to the general public and obtained from federal, state, or local government records; or widely distributed media.

H. “Substantial harm or inconvenience” means

(1) Identity theft; or

(2) Fraudulent transactions on financial accounts.

I. “Third-party service provider” or “service provider” means a person or entity that maintains, processes or otherwise is permitted access to personal information through its provision of services directly to the licensee.

#### Section 4. Information Security Program

##### A. Implementation of an Information Security Program

Each licensee shall develop, implement, and maintain a comprehensive written information security program that contains administrative, technical, and physical safeguards for the protection of personal information.

##### B. Objectives of Information Security Program

A licensee’s information security program shall be designed to:

(1) Ensure the security and confidentiality of personal information;

(2) Protect against any anticipated threats or hazards to the security or integrity of the information; and



(3) Protect against unauthorized access to or use of the information that could result in substantial harm or inconvenience to any customer.

#### C. Appropriateness of Information Security Program

The scale and scope of a licensee's information security program shall be appropriate to:

- (1) The size and complexity of the licensee;
- (2) The nature and scope of the activities of the licensee; and
- (3) The sensitivity of the consumer information to be protected.

#### D. Risk Assessment

The licensee shall:

- (1) Designate an employee or employees to coordinate the information security program;
- (2) Identify reasonably foreseeable internal or external threats that could result in unauthorized disclosure, misuse, alteration or destruction of personal information or personal information systems;
- (3) Assess the likelihood and potential damage of these threats, taking into consideration the sensitivity of the personal information;
- (4) Assess the sufficiency of policies, procedures, personal information systems and other safeguards in place to control these risks, including consideration of risks in each relevant area of the licensee's operations, including:
  - (a) Employee training and management;
  - (b) Information systems, including network and software design, as well as information processing, storage, transmission, and disposal; and
  - (c) Detecting, preventing, and responding to attacks, intrusions, or other systems failures; and
- (5) Design and implement information safeguards to control the risks identified in its risk assessment, and regularly assess the effectiveness of the safeguards' key controls, systems, and procedures.

#### E. Risk Management

The licensee shall:

- (1) Design its information security program to control the identified risks, commensurate with the sensitivity of the information, as well as the complexity and scope of the licensee's activities, using as a guide, the Framework for Improving Critical Infrastructure Cybersecurity developed by the National Institute of Standards and Technology (NIST), including adopting the following security measures:

- (a) Place access controls on information systems, including controls to authenticate and permit access only to authorized individuals and controls to prevent employees from providing personal information to unauthorized individuals who may seek to obtain this information through fraudulent means;
- (b) Restrict access at physical locations containing personal information, such as buildings, computer facilities, and records storage facilities, to permit access only to authorized individuals;
- (c) Encrypt electronic personal information, including while in transit or in storage on networks or systems to which unauthorized individuals may have access;
- (d) Design procedures to ensure that information system modifications are consistent with the licensee's information security program;
- (e) Utilize multi-factor authentication procedures, segregation of duties, and employee background checks for employees with responsibilities for, or access to, personal information;
- (f) Regularly test or monitor systems and procedures to detect actual and attempted attacks on, or intrusions into, information systems;
- (g) Implement response programs that specify actions to be taken when the licensee suspects or detects that unauthorized individuals have gained access to information systems;
- (h) Implement measures to protect against destruction, loss, or damage of personal information due to potential environmental hazards, such as fire and water damage or technological failures; and
- (i) Develop, implement, and maintain appropriate measures to properly dispose of personal information;
  - (2) Address cybersecurity risks into the licensee's enterprise risk management process; and
  - (3) Use an Information Sharing and Analysis Organization (ISAO) to share information and stay informed regarding emerging threats or vulnerabilities.

#### F. Oversight by Board of Directors

- (1) If the licensee has a board of directors, the board or an appropriate committee of the board shall:
  - (a) Approve the licensee's written information security program; and
  - (b) Oversee the development, implementation, and maintenance of the licensee's information security program, including assigning specific responsibility for its implementation and reviewing reports from management.

(2) If the licensee has a board of directors, the licensee shall report to its board or an appropriate committee of the board at least annually, the following information:

(a) The overall status of the information security program and the licensee's compliance with this Act; and

(b) Material matters related to its program, addressing issues such as risk assessment, risk management and control decisions, service provider arrangements, results of testing, security breaches or violations and management's responses, and recommendations for changes in the information security program.

#### G. Oversight of Third-Party Service Provider Arrangements

The licensee shall:

(1) Select and retain third-party service providers that are capable of maintaining appropriate safeguards for the personal information at issue;

(2) Require the third-party service providers to do the following, by contract:

(a) Implement and maintain appropriate safeguards for the personal information at issue, including those security measures listed in [Section 4E(1), Risk Management].

(b) Notify licensee within three (3) calendar days of a discovery of a breach of data security in a system maintained by the third-party service provider that has been contracted to maintain, store, or process data containing personal information on behalf of a licensee;

(c) Indemnify licensee in the event of a cybersecurity incident that results in loss;

(d) Allow licensee or its agents to perform cybersecurity audits of the third-party service provider; and

(e) Represent and warrant its compliance with all requirements; and

(3) Oversee or obtain an assessment of the third-party service provider's compliance with contractual obligations, where appropriate in light of the licensee's risk assessment.

#### H. Program Adjustments

The licensee shall monitor, evaluate and adjust, as appropriate, the information security program in light of any relevant changes in technology, the sensitivity of its personal information, internal or external threats to information, and the licensee's own changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements and changes to personal information systems.

#### Section 5. Consumer Rights Before a Breach of Data Security

A. The licensee shall provide consumers with information regarding the types of personal information collected and stored by licensee or any third-party service providers it contracts with.

B. The licensee shall post its privacy policy on its websites and make it available to consumers in hard copy, upon request. The privacy policy shall explain what type of personal information licensee collects, what options consumers have about their data, how consumers can review and change or correct their data if needed, how the data is stored and protected, and what consumers can do if the licensee does not follow its privacy policy.

#### Section 6. Investigation of a Breach of Data Security

A. If a licensee believes that a breach of data security has or may have occurred in relation to personal information that is maintained, communicated, or otherwise handled by, or on behalf of, the licensee, the licensee shall conduct an investigation.

B. During the investigation, the licensee shall:

- (1) Assess the nature and scope of the incident;
- (2) Identify any personal information that may have been involved in the incident;
- (3) Determine if the personal information has been acquired without authorization; and
- (4) Take reasonable measures to restore the security and confidentiality of the systems compromised in the breach.

#### Section 7. Notification of a Breach of Data Security

A. If the licensee determines under [Section 6, Investigation of a Breach of Data Security] that the unauthorized acquisition of personal information involved in a breach of data security is reasonably likely to cause substantial harm or inconvenience to the consumers to whom the information relates, the licensee, or a third party acting on behalf of the licensee, shall notify, without unreasonable delay:

- (1) An appropriate Federal and state law enforcement agency;
- (2) The insurance commissioner;
- (3) Any relevant payment card network, if the breach involves a breach of payment card numbers;
- (4) Each consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, if the breach involves personal information relating to 1,000 or more consumers; and
- (5) All consumers to whom the personal information relates.

B. Providing Notice to the Commissioner

No later than five (5) calendar days of identifying a data breach, the licensee shall notify the commissioner, providing as much of the following information as is known to the licensee:

- (1) Date of the breach;
- (2) Description of the breach, including how the information was lost, stolen, or breached;
- (3) How the breach was discovered;
- (4) Whether any lost, stolen, or breached information has been recovered and if so, how this was done;
- (5) Whether any individuals involved in the incident (both internal and external) have been identified;
- (6) Whether a police report has been filed;
- (7) Description of the type of information lost, stolen, or breached (equipment, paper, electronic, claims, applications, underwriting forms, medical records etc.);
- (8) Whether the information was encrypted;
- (9) The time period covered by the information that was lost, stolen or breached;
- (10) Number of residents of the state affected by the breach;
- (11) Results of any internal review identifying either a lapse in internal procedures or confirmation that all procedures were followed;
- (12) Identification of remedial efforts being undertaken to cure the situation which permitted the information security incident to occur;
- (13) Copies of the licensee's privacy policies and data breach policy;
- (14) Name of a contact person who is both familiar with the details and able to authorize actions for the licensee; and
- (15) Other regulatory or law enforcement agencies that have been notified and when notification was provided.

#### C. Providing Notice to Consumer Reporting Agencies

No later than sixty (60) calendar days of identifying a data breach, the licensee shall notify each consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, if the breach involves personal information relating to [1000] or more consumers.

#### D. Providing Notice to Consumers

- (1) No later than sixty (60) calendar days of identifying a data breach, the licensee shall notify all affected consumers.

(2) Licensee will provide the notification in writing by first-class mail, unless the consumer has agreed to be contacted through e-mail.

(3) No later than forty-five (45) calendar days of identifying a data breach, the licensee shall provide to the commissioner, a draft of the proposed written communication to consumers. The commissioner shall have the right to edit the proposed communication before the licensee sends it to consumers. This proposed notification shall be written in plain English and include the following information:

- (a) A description of the type of information involved in the data breach;
- (b) A description of the action that the licensee or business it contracts with has taken to safeguard the information;
- (c) A summary of rights of victims of identity theft prepared under § 609(d) of the Fair Credit Reporting Act (15 U.S.C. 1681g(d));
- (d) The steps consumers can take to protect themselves from identity theft or fraud, which shall include an explanation that consumers shall have a right to do the following:
  - (i) Put a 90-day initial fraud alert on their credit reports;
  - (ii) Put a seven-year extended fraud alert on their credit reports;
  - (iii) Put a credit freeze on their credit report;
  - (iv) Get a free copy of their credit report from each credit bureau;
  - (v) Get fraudulent information related to the data breach removed (or “blocked”) from their credit reports;
  - (vi) Dispute fraudulent or wrong information on their credit reports;
  - (vii) Stop creditors and debt collectors from reporting fraudulent accounts related to the data breach;
  - (viii) Get copies of documents related to the identity theft; and
  - (ix) Stop a debt collector from contacting them;
- (e) Contact information for the three nationwide consumer reporting agencies;
- (f) Contact information for the licensee or its designated call center; and
- (g) An offer from the licensee to the consumer to provide appropriate identity theft protection services free of cost to the consumer for a period of not less than twelve (12) months.

#### E. Providing Notice Regarding Breaches of Third-Party Service Providers

Licensee shall comply with [Subsections B and D] by notifying the commissioner and consumers in the event of a breach of data security in a system maintained by a third-party service provider. The computation of licensee's deadlines shall begin on the day the third-party service provider provides notice to licensee.

F. Notwithstanding the requirements of [Subsections C, D, and E], notice may be delayed where requested by an appropriate state or federal law enforcement agency. The commissioner shall be notified of any such request.

#### Section 8. Consumer Protections Following a Breach of Data Security

After reviewing the licensee's data breach notification, the commissioner shall prescribe the appropriate level of consumer protection required following the data breach and for what period of time that protection will be provided. At a minimum, the licensee will offer to pay for at least twelve (12) months of identity theft protection for affected consumers.

#### Section 9. Power of Commissioner

The commissioner shall have power to examine and investigate into the affairs of any licensee to determine whether the licensee has been or is engaged in any conduct in violation of this Act. This power is in addition to the powers which the commissioner has under [insert applicable statutes governing the examination of insurers]. Any such examination shall be conducted pursuant to [insert applicable statutes governing the examination of insurers].

#### Section 10. Hearings, Witnesses, Appearances, Production of Books and Service of Process

A. Whenever the commissioner has reason to believe that a licensee has been or is engaged in conduct in this state which violates this Act, the commissioner shall issue and serve upon such licensee a statement of charges and notice of hearing to be held at a time and place fixed in the notice. The date for such hearing shall be not less than [insert number] days after the date of service.

B. At the time and place fixed for such hearing the licensee charged shall have an opportunity to answer the charges against it and present evidence on its behalf. Upon good cause shown, the commissioner shall permit any adversely affected person to intervene, appear and be heard at such hearing by counsel or in person.

C. At any hearing conducted pursuant to this section, the commissioner may administer oaths, examine and cross-examine witnesses and receive oral and documentary evidence. The commissioner shall have the power to subpoena witnesses, compel their attendance and require the production of books, papers, records, correspondence and other documents which are relevant to the hearing. A stenographic record of the hearing shall be made upon the request of any party or at the discretion of the commissioner. If no stenographic record is made and if judicial review is sought, the commissioner shall prepare a statement of the evidence for use on the review. Hearings conducted under this section shall be governed by the same rules of evidence and procedure applicable to administrative proceedings conducted under the laws of this state.

D. Statements of charges, notices, orders and other processes of the commissioner under this Act may be served by anyone duly authorized to act on behalf of the commissioner. Service of process may be completed in the manner provided by law for service of process in civil actions or by registered mail. A copy of the statement of charges, notice, order or other

process shall be provided to the person or persons whose rights under this Act have been allegedly violated. A verified return setting forth the manner of service, or return postcard receipt in the case of registered mail, shall be sufficient proof of service.

#### Section 11. Confidentiality

A. Any documents, materials or other information in the control or possession of the department of insurance that is furnished by a licensee or an employee or agent thereof acting on behalf of licensee, or obtained by the insurance commissioner in an investigation pursuant to this Act shall be confidential by law and privileged, shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the insurance commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the insurance commissioner's duties.

B. Neither the insurance commissioner nor any person who received documents, materials or other information while acting under the authority of the insurance commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to [Subsection A].

C. In order to assist in the performance of the insurance commissioner's duties under this Act, the insurance commissioner:

(1) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to [Subsection A], with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates or subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information;

(2) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the National Association of Insurance Commissioners, its affiliates or subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(3) [OPTIONAL] May enter into agreements governing sharing and use of information consistent with this subsection.

D. No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in [Subsection C].

E. Nothing in this Act shall prohibit the insurance commissioner from releasing final, adjudicated actions including for cause terminations that are open to public



inspection pursuant to [insert appropriate reference to state law] to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries of the National Association of Insurance Commissioners.

## Section 12. Cease and Desist Orders and Reports

A. If, after a hearing pursuant to Section [section on hearings], the commissioner determines that the licensee charged has engaged in conduct or practices in violation of this Act, the commissioner shall reduce his or her findings to writing and shall issue and cause to be served upon such licensee a copy of such findings and an order requiring such licensee to cease and desist from the conduct or practices constituting a violation of this Act.

B. If, after a hearing pursuant to Section [section on hearings], the commissioner determines that the licensee charged has not engaged in conduct or practices in violation of this Act, the commissioner shall prepare a written report which sets forth findings of fact and conclusions of law. Such report shall be served upon the licensee charged and upon the person or persons, if any, whose rights under this Act were allegedly violated.

C. Until the expiration of the time allowed under Section [section on judicial review] of this Act for filing a petition for review or until such petition is actually filed, whichever occurs first, the commissioner may modify or set aside any order or report issued under this section. After the expiration of the time allowed under Section [section on judicial review] of this Act for filing a petition for review, if no such petition has been duly filed, the commissioner may, after notice and opportunity for hearing, alter, modify or set aside, in whole or in part, any order or report issued under this section whenever conditions of fact or law warrant such action or if the public interest so requires.

## Section 13. Penalties

A. In any case where a hearing pursuant to Section [section on hearings] results in the finding of a knowing violation of this Act, the commissioner may, in addition to the issuance of a cease and desist order as prescribed in Section [section on cease and desist orders], order payment of a monetary penalty of not more than [\$500] for each violation but not to exceed [\$10,000] in the aggregate for multiple violations.

B. Any person who violates a cease and desist order of the commissioner under Section [section on cease and desist orders] of this Act may, after notice and hearing and upon order of the commissioner, be subject to one or more of the following penalties, at the discretion of the commissioner:

- (1) A monetary fine of not more than [\$10,000] for each violation;
- (2) A monetary fine of not more than [\$50,000] if the commissioner finds that violations have occurred with such frequency as to constitute a general business practice; or
- (3) Suspension or revocation of an insurance institution's or agent's license.

C. Notwithstanding the foregoing, nothing in this Act shall be construed to limit the commissioner's authority under [insert citation to Unfair Trade Practices Act].

#### Section 14. Judicial Review of Orders and Reports

A. Any licensee subject to an order of the commissioner under Section [section on cease and desist orders] or Section [section on penalties] or any licensee whose rights under this Act were allegedly violated may obtain a review of any order or report of the commissioner by filing in the [insert title] Court of [insert county] County, within [insert number] days from the date of the service of such order or report, a written petition requesting that the order or report of the commissioner be set aside. A copy of such petition shall be simultaneously served upon the commissioner, who shall forthwith certify and file in such court a transcript of the entire record of the proceeding giving rise to the order or report which is the subject of the petition. Upon filing of the petition and transcript the [insert title] Court shall have jurisdiction to make and enter a decree modifying, affirming or reversing any order or report of the commissioner, in whole or in part. The findings of the commissioner as to the facts supporting any order or report, if supported by clear and convincing evidence, shall be conclusive.

B. To the extent an order or report of the commissioner is affirmed, the court shall issue its own order commanding obedience to the terms of the order or report of the commissioner. If any party affected by an order or report of the commissioner shall apply to the court for leave to produce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there are reasonable grounds for the failure to produce such evidence in prior proceedings, the court may order such additional evidence to be taken before the commissioner in such manner and upon such terms and conditions as the court may deem proper. The commissioner may modify his or her findings of fact or make new findings by reason of the additional evidence so taken and shall file such modified or new findings along with any recommendation, if any, for the modification or revocation of a previous order or report. If supported by clear and convincing evidence, the modified or new findings shall be conclusive as to the matters contained therein.

C. An order or report issued by the commissioner under Section [section on cease and desist orders] or [section on penalties] shall become final:

(1) Upon the expiration of the time allowed for the filing of a petition for review, if no such petition has been duly filed; except that the commissioner may modify or set aside an order or report to the extent provided in Section [section on cease and desist orders]; or

(2) Upon a final decision of the [insert title] Court if the court directs that the order or report of the commissioner be affirmed or the petition for review dismissed.

D. No order or report of the commissioner under this Act or order of a court to enforce the same shall in any way relieve or absolve any licensee affected by such order or report from any liability under any law of this state.

#### Section 15. Individual Remedies

A. If any licensee fails to comply with Section [insert section(s) addressing consumer rights] of this Act with respect to the rights granted under those sections, any person whose rights are violated may apply to the [insert title] Court of this state, or any other court of competent jurisdiction, for appropriate equitable relief.

B. In any action brought pursuant to this section, the court may award the cost of the action and reasonable attorney's fees to the prevailing party.

C. An action under this section must be brought within two (2) years from the date the alleged violation is or should have been discovered.

D. Except as specifically provided in this Act, there shall be no remedy or recovery available to consumers, in law or in equity, for occurrences constituting a violation of any provisions of this Act.

#### Section 16. Immunity

No cause of action in the nature of defamation, invasion of privacy or negligence shall arise against any person for disclosing personal or privileged information in accordance with this Act, nor shall such a cause of action arise against any person for furnishing personal or privileged information to a licensee; provided, however, this section shall provide no immunity for disclosing or furnishing false information with malice or willful intent to injure any person.

#### Section 17. Obtaining Information Under False Pretenses

Any person who knowingly and willfully obtains information about a consumer from a licensee under false pretenses shall be fined not more than [\$10,000] or imprisoned for not more than one year, or both.

#### Section 18. Rules and Regulations

The commissioner may, upon notice and opportunity for all interested persons to be heard, issue such rules, regulations and orders as shall be necessary to carry out the provisions of this Act.

#### Section 19. Severability

If any provisions of this Act or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

#### Section 20. Effective Date

This Act shall take effect on [insert a date which allows at least a one year interval between the date of enactment and the effective date].

JACQUELINE K. CUNNINGHAM  
COMMISSIONER OF INSURANCE  
STATE CORPORATION COMMISSION  
BUREAU OF INSURANCE

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April 15, 2016

Administrative Letter 2016-03

To: All Insurers and Rate Service Organizations Licensed to Write Property and Casualty Insurance in Virginia

Re: Compliance with Statutory Rate Standards in File-and-Use Lines of Insurance

The purpose of this Administrative Letter is to remind insurers to review the rate standards outlined in Virginia Code § 38.2-1904 for filings subject to the provisions of Chapter 19 of Title 38.2 of the Code of Virginia.

In recent years, Virginia has received rates and supplementary rating information in filings that utilize increasingly complex pricing mechanisms, such as predictive models. Some filings have included pricing mechanisms that are inconsistent with the rate standards outlined in § 38.2-1904, particularly subsection A 3. In order to comply with the rate standards, any rate differentials for the same coverage must be based on differences between expected losses and/or expenses. Examples of practices that have been determined to be inconsistent with the provisions of § 38.2-1904 A 3 include, but are not limited to, the use of:

- Characteristics specific to a particular policyholder to predict and assign pricing components unrelated to losses or expenses incurred during the policy period.
- Pricing components related to an insured's predicted long-term profitability over time, based on an insured's likelihood to renew.
- Price optimization techniques intended to maximize overall retention, profitability, written premium or market share based on how much of a premium increase an individual policyholder is likely to tolerate before seeking coverage with other carriers.

Questions pertaining to Administrative Letter 2016-03 can be directed to the Property and Casualty Division, Rates and Forms Sections at 804 371 9965 or [BOIRRF@scc.virginia.gov](mailto:BOIRRF@scc.virginia.gov).

Sincerely,

Jacqueline K. Cunningham  
Commissioner of Insurance

JKC/rn

**TAB #9**



## **Health, Long-Term Care and Retirement**

NCOIL Summer Meeting, Portland, OR

Friday, July 15, 2016

3:30 pm – 5:30 pm

*Chair, Assemblyman Kevin Cahill, NY*

*\*Call to order/roll call/approval of February 26, 2016 committee meeting minutes*

1. Discussion of ACA Health Insurance Co-ops
  - *Sabrina Corlette, J.D., Research Professor, Center on Health Insurance Reforms, Georgetown University Health Policy Institute*
  - *Chris Condeluci, CC Law & Policy PLLC*
  - *Eric Cioppa, NAIC, Superintendent, Maine Bureau of Insurance*
  
2. Discussion of Essential Health Benefits Cap and the Use of Waivers under the Affordable Care Act
  - *Chris Condeluci, CC Law & Policy PLLC*
  
3. Discuss remedy for Long Term Care lapsed policies: Non Forfeiture Care Credit
  - *Mike Kreidler, NAIC, Washington Insurance Commissioner*
  - *John Mangan, ACLI*
  
4. The “Shkreli Effect” in Drug Pricing - Fact or Fiction
  - *Rep. Mitch Greenlick, OR*
  - *Jim Gardner, Vice President Gardner & Gardner; Former Oregon State Senator*
  
5. Old Business
  - a. HHS Response to Catch-22 Letter
  - b. Review/Approve June 22, 2016 interim committee call minutes
  - c. Network adequacy standards discussion
  
6. Adjournment

**Health, Long-Term Care & Health Retirement Issues Committee**

Chair: Asm. Kevin Cahill, NY

Vice Chair: Rep. Ken Goike, MI

Sen. Jason Rapert, AR

Rep. Martin Carbaugh, IN

Rep. Ronald Crimm, KY

Rep. Joseph Fischer, KY

Rep. Jim Gooch, KY

Rep. Jeff Greer, KY

Rep. Tommy Thompson, KY

Sen. Dan "Blade" Morrish, LA

Rep. Don Gosen, MO

Rep. George Keiser, ND

Sen. Jerry Klein, ND

Sen. David O'Connell, ND

Rep. Don Flanders, NH

Asm. Maggie Carlton, NV

Sen. James Seward, NY

Rep. Robert Hackett, OH

Rep. Brian Kennedy, RI

Sen. Robert Hayes, SC

Rep. Bill Botzow, VT

Rep. Sarah Copeland Hanzas, VT

Rep. Kathie Keenan, VT

Sen. Mike Hall, WV

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
HEALTH, LONG-TERM CARE & HEALTH RETIREMENT ISSUES COMMITTEE  
LITTLE ROCK, ARKANSAS  
FEBRUARY 26, 2016

The National Conference of Insurance Legislators (NCOIL) Health, Long-Term Care & Health Retirement Issues Committee met at the Little Rock Marriott in Little Rock, Arkansas on Friday, February 26, 2016 at 3:30 p.m.

Asm. Kevin Cahill of New York, Chair of the Committee, presided.

Other members of the Committee present were:

Rep. Deborah Ferguson, AR	Sen. James Seward, NY
Rep. Martin Carbaugh, IN	Rep. Kevin Bacon, OH
Rep. Ronald Crimm, KY	Rep. Brian Kennedy, RI
Rep. George Keiser, ND	Rep. Bill Botzow, VT
Sen. Jerry Klein, ND	

Other legislators present were:

Michael Henne, OH  
Sen. Gary Stanislawski, OK

Also in attendance were:

Tom Considine, NCOIL CEO  
Paul Penna, Executive Director, NCOIL Support Services  
Christina Zuk, Legislative Director, NCOIL Support Services  
Paulina Grabczak, Deputy Legislative Director, NCOIL Support Services

## MINUTES

Upon a motion made and seconded, the Committee unanimously approved the minutes of its November 12, 2015 meeting in San Antonio, Texas.

### DISCUSSION OF PROPOSED MODEL LAW TO REGULATE PROVIDER DIRECTORIES & PROPOSED OUT-OF-NETWORK/NETWORK ADEQUACY PROVIDER MODEL

Asm. Cahill advised that the Committee would consider the first two agenda items together, and the last two items together. The first two agenda items listed – provider directories and network adequacy/out-of-network – were discussed first.

Representative Deborah Ferguson discussed her model legislation regarding provider directories and the need for insurance companies to keep provider directories up to date. Rep. Ferguson stated that failure to do so causes confusion for patients who are unsure which providers are in and out of network, which can lead to surprise billing.

Senator Seward discussed his out-of-network proposal and provided an overview of the model act. It deals with three different areas 1.) network adequacy; 2.) disclosure and transparency; and 3.) denials and appeals.



Senator Seward noted that there was some discussion on this issue at the previous meeting of the Committee. Unlike the New York law, this proposed model act does not include language for a process to address a dispute with respect to cost. That was done because at the time there was an NCOIL balance billing model act that was being considered. Senator Seward is open to reviewing and potentially including cost dispute language in his out-of-network model act.

Emily Carroll from the American Medical Association (AMA) thanked Rep. Ferguson for bringing the provider directory model before the committee. Ms. Carroll stated that these directories have to be accurate and reliable, but unfortunately consumers regularly find erroneous information when searching for an in-network provider. Ms. Carroll further stated that states should consider stronger regulations of the directories.

With respect to the out-of-network model legislation, Ms. Carroll stated that there are a lot of elements in the bill that the AMA supports, and highlighted some of the key components. For instance, bill's insistence on transparency in out-of-network coverage is critical in making sure patients are not receiving unexpected bills.

Ms. Carroll stated that the AMA supports that the model act seeks to standardize out of network care, particularly when defining with usual, customary, and reasonable charges. Ms. Carroll requested that NCOIL look at stronger network adequacy requirements.

Asm. Cahill asked Ms. Carroll how the AMA would define "usual, customary, and reasonable" charges. Ms. Carroll responded that it should be defined using regional charge-based data from an independent, external source.

Asm. Cahill also inquired what objective measurements of adequacy there should be. Ms. Carroll responded that the more measurements there are, the better. A network should not be considered adequate if you cannot access in-network providers at innetwork hospitals. Ms. Carroll stated that there is room for development of those standards, and she would be happy to submit written suggestions on what those standards should be.

Asm. Cahill also inquired as to whether telehealth and telemedicine should be included in determining network adequacy. Ms. Carroll stated that the AMA is supportive of telehealth but that it should not be used in determining network adequacy.

Rhode Island Superintendent Elizabeth Dwyer spoke to the NAIC model. Superintendent Dwyer provided an overview of the NAIC model and stated that it addresses the issue raised in the discussion of provider directories. She further stated that disclosure and transparency requirements are also included in the model, as well as limits on balance billing.

Senator Seward inquired about the NAIC point of view on leaving a great deal of discretion to the states to determine whether a network is adequate. Superintendent Dwyer stated that you have to leave it to the discretion of the states.

Dianne Bricker from America's Health Insurance Plans (AHIP) stated that accurate and timely provider directories are absolutely essential. The NAIC model on provider directors is a good place to start for consideration and possibly even end on a model for NCOIL. The NAIC model reflects the input of multiple stakeholders over the course of many months, and provides a great deal of flexibility for the states. In mid-March, AHIP will be unveiling a state-based pilot on provider directories in three states. Over the course of the next six months, AHIP will look at what works and what does not work.

Ms. Bricker stated that network adequacy and balance billing has been a high priority for AHIP. Ms. Bricker encouraged the committee to take a look at the current NCOIL model and update it with some of the provisions of the NAIC model discussed today.

#### DISCUSSION OF PROPOSED AMA TELEMEDICINE REIMBURSEMENT ACT AND TELEMEDICINE LICENSURE MODEL ACT

Asm. Cahill called Kristin Schleiter from the American Medical Association (AMA) and David Korsh from the Blue Cross Blue Shield Association to testify.

Rep. Kennedy opened the discussion on the Telemedicine Reimbursement Act, noting the need for a model act to help provide uniformity among states that are looking to authorize and encourage the practice of telemedicine.

Ms. Schleiter provided an overview of the AMA model legislation, noting that there is a state-based approach to licensure. Ms. Schleiter also noted that there is a state-based licensure compact, of which twelve states have become members.

Asm. Cahill questioned the cost apparatus for telemedicine services, and Ms. Schleiter responded that the ceiling for the cost of telemedicine services would be the cost of the in person rate, but that telemedicine services would likely be less expensive.

Mr. Korsh stated that the Blue plans have different approaches toward telehealth but do believe that there is quite a bit of opportunity here. The issue of parity itself is an open question.

On the two models that the AMA presents, Mr. Korsh stated that one of the concerns of the Blue plans is that there should not be a hard and fast requirement for reimbursement parity.

Mr. Korsh advised that the National Conference of State Legislatures (NCSL) put together a white paper on telehealth and offered to provide that information to the Committee.

#### DISCUSSION OF HEALTH INSURANCE COOPERATIVES

Asm. Cahill brought the issue of health insurance cooperatives before the Committee during the "other business" portion of the agenda. Asm. Cahill stated that twenty-four states have health insurance co-ops, and that problems continue to emerge. The Assemblyman encouraged the Committee to think about what happens when a health plan fails, and to consider discussing this issue at the next Committee meeting. Asm. Cahill further requested that NCOIL become a repository for information, and Senator Seward suggested that the Committee discuss the issue at the upcoming summer meeting.

#### ADJOURNMENT

There being no further business, the Committee adjourned.

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
HEALTH, LONG-TERM CARE & HEALTH RETIREMENT ISSUES COMMITTEE  
INTERIM MEETING  
JUNE 22, 2016

The National Conference of Insurance Legislators (NCOIL) Health, Long-Term Care & Retirement Issues Committee held an interim meeting via a phone conference on June 22, 2016 at 12:00 p.m.

Asm. Kevin Cahill of New York, Chair of the Committee, called into the conference and presided

Other members of the Committee who called into the conference were:

Rep. Deborah Ferguson, AR	Sen. James Seward, NY
Rep. Bill Botzow, VT	Sen. Bob Hackett, OH
Rep. Tommy Thompson, KY	Rep. Joseph Fischer, KY
Rep. Ken Goike, MI (Vice Chair)	

Also in attendance were:

Tom Considine, NCOIL CEO  
Paul Penna, Executive Director, NCOIL Support Services  
Will Melofchik, Legislative Director, NCOIL Support Services

## MINUTES

### DISCUSSION OF AHIP STATE-BASED PILOT ON PROVIDER DIRECTORIES

Asm. Cahill first advised that the Committee would discuss agenda item #1: AHIP state-based pilot on provider directories. Dianne Bricker from AHIP announced herself and turned the discussion over to Jeanette Thornton from AHIP. Ms. Thornton stated that AHIP was very pleased with how its pilot program was progressing and stressed that the accuracy of provider directories is extremely important. Ms. Thornton mentioned that there are also new Federal regulations regarding provider directories and that they require “at least quarterly” to make sure said directories are accurate.

Ms. Thornton further stated that a challenge in making sure the directories are accurate is that information such as the office’s hours can change frequently. Ms. Thornton said that a main goal of the pilot-program is to see how the health insurance industry can work together to make the directories as accurate as possible in the most efficient way. Ms. Thornton stated that 3 states are part of the pilot program: Florida, Indiana and California.

Rep. Goike then asked Ms. Thornton a question as to whether AHIP was getting good information from those States. Ms. Thornton said that they are using an independent evaluator to gather data from the States and the results will be available this Fall.

Asm. Cahill then asked Ms. Thornton how the pilot-program interfaces with Medicare Fee for Service. Ms. Thornton said that Medicare Fee for Service is not part of the pilot-program but that AHIP briefed CMS about the pilot-program. Ms. Thornton said that CMS was very interested to see how the program would turn out and said it would like to it for future help.

Sen. Hackett then states that part of the problem is the reduction in size of the networks and asked whether the program was focusing on those numbers. Ms. Thornton stated that the program was not necessarily focusing on those numbers but agreed with Sen. Hackett that the size of the network is an issue and when the network becomes smaller, accuracy of data is even more important.

#### DISCUSSION OF HHS' CATCH-22: FORCING CONSUMERS TO CHOOSE BETWEEN HSAs AND ACA-COMPLIANT HEALTH PLANS

Tom Considine offered some background on this issue. Cmsnr. Considine stated that regulations promulgated by HHS and CMS in March 2016, will effectively eliminate HAS qualified health plans from the insurance exchanges next year. Under the regulation, consumers can either choose an ACA Qualified Health Plan (QHP) or an Internal Revenue Service (IRS) qualified HAS; they would be precluded from selecting a plan that qualifies as both, as they can currently. This is because the out-of-pocket limits and deductible requirements for qualified exchange-based plans set by HHS will conflict with those set by the IRS for HSAs. For example, the new mandated deductible is \$100 too high for Bronze plans, and \$50 too low for Gold plans. For Silver plans, the out-of-pocket maximum is \$600 too high.

Additionally, the regulation requires plans to cover numerous services below the deductible such as a limited number of primary-care visits, specialty care visits, mental-health and substance-use-disorder outpatient services, urgent care visits and drug benefits. However, IRS qualified HSA plans are not permitted to cover any services below the deductible except for preventive services. Cmsnr. Considine stated that as a result of those conflicts, the millions of Americans who currently finance their present and future health care needs through HSAs will face a "catch-22": keep their HSAs, which will result in them being advised they are losing coverage within 6 months of the expiration of their current plan year; or choose a "qualified" plan on the exchange and forego the opportunity to have an HAS, and thus be left with a plan that will not best meet their unique health care and financial needs.

Asm. Cahill asked Cmsnr. Considine if the regulations effect of eliminating HSAs was intentional or accidental. Cmsnr. Considine stated that some people think that it is an unwritten policy of the current administration that they don't like HSAs but he believes that this could be a matter of miscommunication between the drafters of the rule and policy experts who assisted them.

Asm. Cahill then commented that HSAs are becoming increasingly important to which Mr. Considine agreed and stated that HSAs make high-deductibles more attractive and that the HHS-CMS regulation is anti-consumer.

Asm. Cahill asked whether NCOIL received a response to the letter it wrote to HHS-CMS about the regulation. Cmsnr. Considine stated that no response was received and that NCOIL will follow up.

#### MEANINGFUL ACCESS TO ACCURATE PROVIDER DIRECTORIES MODEL ACT

Asm. Cahill stated that he believes it best to not adopt this Model Act because due to other efforts on this issue being implemented, such as AHIP's pilot-program, NCOIL should see what information can be learned and then discuss the issue at a later meeting. Rep. Goike and Sen. Seward concurred. Rep. Ferguson also concurred and stated that there was recently an NAIC Model Act introduced on this issue and its very detailed and long. Accordingly, Rep. Ferguson agreed that its best to examine the NAIC Model Act and the AHIP program to see what NCOIL can learn.

Asm. Cahill made a motion to not adopt/table the Meaningful Access to Accurate Provider Directories Model Act. Rep. Goinke seconded the motion. No one opposed.

#### TELEMEDICINE REIMBURSEMENT AND TELEMEDICINE LICENSURE MODEL ACTS

Asm. Cahill stated the issue of telemedicine is very complex and that he thinks it can be divided into 3 sub-categories:a.) rural and remote healthcare in places that are underserved; b.) use of centers of excellence to bolster otherwise unsuitable health care environments and; c.) minute clinics. Asm. Cahill stated that he believes each of those categories deserves their own separate consideration and therefore recommended that more work be done to research the issues and not to adopt this Model Act. Rep. Goike agreed with Asm. Cahill and stated that Michigan is also working to develop more information on how best to deal with these issues.

Rep. Ferguson stated that she does not believe these Model Acts are controversial but rather thinks the issue of determining when the doctor-patient relationship being is controversial and complex. Rep. Ferguson stated she therefore wishes to adopt these Model Acts.

Sen. Seward stated that many states have now passed Telemedicine bills and it would be best to examine those approaches and continue discussions on these issues at a later meeting. Asm. Cahill then stated that he thinks it would be best to shift away from the AMA approach and to examine what the states have done on these issues, and then to possibly sub-divide those issues unto the categories he mentioned earlier.

Rep. Botzow stated that there are many issues to look at now with telemedicine that each deserve their own time and consideration.

Rep. Ferguson then made a motion to adopt the model acts but then withdrew said motion. Asm. Cahill then made a motion to not adopt these model acts and to have a brief discussion at either Portland or Las Vegas as to how to proceed with Telemedicine issues. No one opposed.

#### PREVIEW OF PORTLAND AGENDA

Asm. Cahill then announced the agenda for the committee at the upcoming Summer Meeting in Portland, OR. Asm. Cahill asked whether anyone wanted to include anything or remove anything. Several people responded that the agenda looked good. Asm. Cahill then proposed that a new agenda item be included titled “old business” which will include a discussion on a.) a response from HHS-CMS regarding NCOIL’s letter about their regulations’ effect on HSAs and, b.) review/approval of the minutes of today’s meeting.

#### ADJOURNMENT

There being no further business, the Committee adjourned.

Atlantic Corporate Center  
2317 Route 34, Suite 2B  
Manasquan, NJ 08736  
732-201-4133  
CHIEF EXECUTIVE OFFICER: Thomas B. Considine



PRESIDENT: Sen. Travis Holdman, IN  
VICE PRESIDENT: Rep. Steve Riggs, KY  
SECRETARY: Sen. Jason Rapert, AR  
TREASURER: Rep. Bill Botzow, VT

May 27, 2016

The Honorable Sylvia Mathews Burwell  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Mr. Andy Slavitt  
Acting Administrator  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Secretary Burwell & Administrator Slavitt:

On behalf of the National Conference of Insurance Legislators (NCOIL), I write to you expressing concern over the March 2016 regulation issued by the Department of Health and Human Services (HHS) & Centers for Medicare & Medicaid Services (CMS), particularly the effect of that regulation on Health Savings Accounts (HSAs).

NCOIL is a legislative organization comprised principally of legislators serving on state insurance and financial institutions committees around the nation. NCOIL writes Model Laws in insurance, works to both preserve the state jurisdiction over insurance as established by the McCarran-Ferguson Act seventy years ago and to serve as an educational forum for public policy makers and interested parties. Founded in 1969, NCOIL works to assert the prerogative of legislators in making state policy when it comes to insurance and educate state legislators on current and perennial insurance issues.

As you know, HSAs are an important consumer-directed health plan that have helped drive down health costs. In 2015, enrollment in HSA plans climbed 13% to almost 20 million, raising the total amount of assets in HSA accounts to over \$28 billion. Those numbers reflect the growing popularity of HSAs, which is the result of entrusting consumers to make decisions about their own health care and finances.

However, based upon our analysis of the regulation, it will effectively eliminate HSA qualified health plans from the insurance exchanges next year. Under the regulation, consumers can either choose an ACA Qualified Health Plan (QHP) or an Internal Revenue Service (IRS) qualified HSA; they would be precluded from selecting a plan that qualifies as both, as they can currently. This is because the out-of-pocket limits and deductible requirements for qualified exchange-based plans set by HHS will conflict with those set by the IRS for HSAs. For example, the new mandated deductible is \$100 too high for Bronze plans, and \$50 too low for Gold plans. For Silver plans, the out-of-pocket maximum is \$600 too high.

Additionally, the regulation requires plans to cover numerous services below the deductible such as a limited number of primary-care visits, specialty-care visits, mental-health and substance-use-disorder outpatient services, urgent-care visits and drug benefits. However, IRS qualified HSA health plans are not permitted to cover any services below the deductible except for preventive services.

As a result of those conflicts, the millions of Americans who currently finance their present and future health care needs through HSAs will face a "Catch-22": keep their HSAs, which will result in them being advised they are losing coverage within six months of the expiration of their current plan year; or choose a "qualified" plan on the exchange and forego the opportunity to have an HSA, and thus be left with a plan that will not best meet their unique health care and financial needs.

NCOIL does not believe that depriving individuals of choices relating to a critical issue such as their health is a prudent regulatory practice. As the former Commissioner of the New Jersey Department of Banking and Insurance, I participated actively in the regulatory work delegated to the NAIC by Congress in the ACA, and oversaw regulation of numerous aspects of health-care plans in one of the largest markets in the nation. I know that ensuring individuals have access to coverage that meets their individual needs is a paramount priority. The HHS regulation will have the opposite effect: reducing individuals' coverage choices, and thereby eliminating competition and innovation in health plans.

NCOIL urges that HHS and CMS adopt a solution that will keep HSAs in the marketplace, thus preserving consumer choice, thereby allowing those consumers to select plans that best meet their needs. Please know that I am available to discuss this with you should you wish, or if I can be of further assistance in achieving a resolution.

With appreciation for your consideration and kind regards, I am,

Very truly yours,



Thomas B. Considine



DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
Center for Consumer Information and Insurance Oversight  
200 Independence Avenue SW Washington, DC 20201

CMS  
CENTERS FOR MEDICARE & MEDICAID SERVICES  
CENTER FOR CONSUMER INFORMATION  
& INSURANCE OVERSIGHT

June 17, 2016

Mr. Thomas B. Considine  
Chief Executive Officer  
Atlantic Corporate Center 2317 Route 34, Suite 2B Manasquan, NJ 08736

Dear Mr. Considine:

Thank you for your letter regarding the use of health savings accounts (HSAs) in Marketplace coverage. I appreciate the time you took to write about this important issue.

In the HHS Notice of Benefit and Payment Parameters for 2017, published on March 8, 2016, 1 we finalized six standardized plan options that issuers in Federally-facilitated Marketplaces (FFMs) may choose to offer in the individual market starting in plan year 2017 to further simplify the consumer plan selection process. We specifically designed plans that would allow enrollees to access some nonpreventive services before meeting the plan's deductible. However, we recognize that these costsharing structures may not be appropriate for all consumers. CMS believes that high deductive health plans (HDHPs) and HSAs are important options for many consumers. As such, our rules do not require issuers to offer standardized options, nor are we limiting issuers' ability to offer other QHPs, such as HSA-eligible HDHPs. With this flexibility for issuers, we do not anticipate that this new option will make it more difficult for consumers to obtain HSA-compliant plans through the Marketplaces.

We are committed to working with you to continue to improve the Marketplaces and affordable coverage. Please do not hesitate to contact us with any further thoughts or concerns.

Sincerely,



Kevin J. Counihan

Chief Executive Officer, Health Insurance Marketplaces  
Director, Center for Consumer Information & Insurance Oversight

**TAB #10**



**Health General Session**  
NCOIL Summer Meeting, Portland, OR  
Saturday, July 16, 2016  
9:00 am – 10:30 am

**Air Ambulances: Up, Up, and Away Too Costly?**

**Timothy R. Pickering**

Chair, Government Relations/Advocacy  
Association of Air Medical Services  
[tim.pickering@air-evac.com](mailto:tim.pickering@air-evac.com)

**Julie Mix McPeak**

Commissioner – Tennessee Department of & Insurance  
NAIC Vice President

**Megan Houn**

Director of Government Relations  
Blue Cross Blue Shield of North Dakota  
[Megan.Houn@bcbsnd.com](mailto:Megan.Houn@bcbsnd.com)

**Betsy Imholz**

Special Projects Director  
Consumers Union  
[bimholz@consumer.org](mailto:bimholz@consumer.org)

**TAB #11**



### **Property & Casualty Committee**

NCOIL Summer Meeting, Portland, OR

Saturday, July 16, 2016

10:30 am – 12:00 pm

*Chair, Rep. Matt Lehman, IN*

*\*Call to order/roll call/approval of February 27, 2016 committee meeting minutes*

1. Update on flood insurance affordability efforts and related state, federal issues
  - a. Flood Insurance Market Parity and Modernization Act (H.R. 2901)
    - *Amy Bach, Executive Director, United Policyholders*
    - *Frank O'Brien, PCI*
  
2. Discussion of the use of big data in insurance underwriting
  - *Eric Cioppa, NAIC, Superintendent, Maine Bureau of Insurance*
  - *AIA Representative*
  - *NAMIC Representative*
  
3. Follow-up Discussion generated by P & C General Session
  - *Alliance of Automobile Manufacturers*
  
4. Re-adoption of Flex-Rating Regulatory Improvement Model Act (re-adopted on 11/20/11)
  - *NAMIC Representative*
  
5. Adjournment

## **Property-Casualty Insurance Committee**

Chair: Rep. Matt Lehman, IN

Vice Chair: Asm. Will Barclay, NY

Sen. Jason Rapert, AR

Rep. Martin Carbaugh, IN

Rep. Peggy Mayfield, IN

Rep. Ronald Crimm, KY

Rep. Joseph Fischer, KY

Rep. Jeff Greer, KY

Rep. Steve Riggs, KY

Rep. Bart Rowland, KY

Sen. Dan "Blade" Morrish, LA

Rep. Michael Webber, MI

Rep. Don Gosen, MO

Rep. George Keiser, ND

Sen. Jerry Klein, ND

Sen. David O'Connell, ND

Rep. Don Flanders, NH

Asm. Maggie Carlton, NV

Sen. Neil Breslin, NY

Asm. Kevin Cahill, NY

Sen. James Seward, NY

Rep. Robert Hackett, OH

Rep. Michael Henne, OH

Rep. Brian Kennedy, RI

Sen. Robert Hayes, SC

Rep. Bill Botzow, VT

Rep. Kathie Keenan, VT

Rep. Warren Kitzmiller, VT

Del. Steve Westfall, WV

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
PROPERTY-CASUALTY INSURANCE COMMITTEE  
LITTLE ROCK, ARKANSAS  
FEBRUARY 27, 2016  
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) Property-Casualty Insurance Committee met at the Little Rock Marriott in Little Rock, Arkansas, on Saturday, February 27, 2016, at 8:00 a.m.

Rep. Matt Lehman of Indiana, Chair of the Committee, presided.

Other members of the Committee present were:

Sen. Jason Rapert, AR	Sen. Jerry Klein, ND
Rep. Martin Carbaugh, IN	Asm. William Barclay, NY
Rep. Ron Crimm, KY	Sen. Neil Breslin, NY
Rep. Steve Riggs, KY	Sen. James Seward, NY
Rep. Joseph Fischer, KY	Rep. Michael Henne, OH
Sen. Joe Hune, MI	Rep. Brian Kennedy, RI
Rep. George Keiser, ND	Rep. Bill Botzow, VT

Other legislators present were:

Rep. Deborah Ferguson, AR	Sen. Ed Buttrey, MT
Sen. Greg Standridge, AR	Sen. Kevin Bacon, OH
Sen. Travis Holdman, IN	Sen. Gary Stanislawski, OK
Rep. Ken Goike, MI	Sen. Robert Hayes, SC
Rep. Henry Vaupel, MI	Rep. Spencer Hawley, SD

Also in attendance were:

Tom Considine, NCOIL CEO  
Paul Penna, Executive Director, NCOIL Support Services  
Christina Zuk, Legislative Director, NCOIL Support Services  
Paulina Grabczak, Deputy Legislative Director, NCOIL Support Services

## MINUTES

Upon a motion made and seconded, the Committee unanimously approved the minutes of its November 14, 2015, meeting in San Antonio, Texas.

### BEGIN CONVERSATION OF INSURER USE OF "BIG DATA" IN UNDERWRITING AND RATING, IN LIGHT OF POSSIBLE MODEL LAW BASED ON NCOIL INSURANCE SCORING MODEL ACT

Rep. Lehman said that technology is being used as a driver of the underwriting process. When Rep. Lehman thinks of technology it is not just big data, it is telematics, predictive modeling, drone technology, driver-less cars, and ride-sharing issues for example. Many questions come up such as what data is being looked at and is it portable carrier to carrier.

Joe Thesing of the National Association of Mutual Insurance Companies (NAMIC) said that on the Property-Casualty side there is a competitive market and customers have more choices than ever. In regard to technology based underwriting, the rule of large numbers has

always ruled the insurance industry and continues to do so. It is a function of matching rate to risk accurately. Some have suggested that the industry is moving to individualized rating. However, Mr. Thesing does not believe that is the case because the actuarial data would not be accurate.

Mark Smith of the Insurance Services Office (ISO) said that new data is created every second. The largest driver of this is the millennial generation. By the year 2020, one out of every three constituents will be from the millennial generation. For the insurance industry, this generation represents \$1.3 trillion in purchasing power over their lifetimes. The generation embraces big data and most of them understand that data that is collected on them. Millennials are 2.5X more likely to be early adopters of new technology than earlier generations.

Mr. Smith said that for the mature markets like auto and homeowners, big data allows companies to better segment risk. An example of this is that many more risks that used to be written in the residual markets are now covered through the voluntary markets because of better segmentation and pricing. Telematics is a great example of technology that has revolutionized the auto insurance industry. ISO has signed a contract with General Motors to create the world's first telematics data exchange. It allows policyholders to share their online data through GM's On Star device with any insurance company of their choice. This allows the policyholders to own and control their data and take it from insurance company to insurance company. Mark Smith asked that the focus be on productive and reasonable use of precision data sets that encourage innovation, drive and spur competition, and allow the industry to create new attractive products to the generations that have embraced this technology.

Rachel Jensen of the American Insurance Association (AIA) said that big data is a very broad term and it can have different meanings for different industries. Big data is not unique to insurers and all insurers do not use it in the same way. The threshold question over any big data discussion should be one that sets the parameters of what is big data. Additionally, the concept of big data should be viewed no differently than other technological advances that improve efficiency and operations. A January 2016 Federal Trade Commission report Big Data: A Tool for Inclusion or Exclusion stated that big data can create opportunities for low-income and under served communities. Jensen went on to state that the collective challenge is to make sure big data continues to provide benefits and opportunities for consumers while adhering to core consumer protection values and principles. Lastly, the recommendation is that conversations continue, but that they continue with a focus on specific types of big data usage.

Frank O'Brien of the Property Casualty Insurers Association of America (PCI) said that insurance is a data driven industry and has been since before it was known as "big" data. The industry has been dealing with concerns from consumers and regulators from the very beginning. The advances in technology are coming in and fundamentally changing the insurance mechanisms that many are comfortable with and this will continue to be dealt with in a rapidly changing environment. The fair balance and consumer expectations are the key. At a high level, consumers expect that information that is needed will be gathered, it will be used appropriately, and the information will be protected going forward, otherwise it won't be provided again in the future. Mr. O'Brien said that this discussion will continue and it is likely not a discussion that is ever going to end.

Birny Birnbaum of the Center for Economic Justice (CEJ) commented that the consumers have different views on the balance of big data use than what has been presented thus far. There are massive databases with information from millions of consumers, associated data



mining and predictive analytics applied to that data, and then scoring models produced from those analytics. These scoring models can encompass basically every aspect of an insurer's business. The growing use of non-insurance data for all these purposes raises issues on fairness and consumer access as well as other issues. The January 2016 FTC report's purpose was to raise concerns about big data's use as a discriminatory tool for exclusion as opposed to inclusion.

Mr. Birnbaum said that many types of data are used with no disclosure and no accountability today. The takeaways on the examples are as follows: (1) market forces cannot and will not protect consumers without some guardrails; (2) innovation without guardrails will lead to unfair outcomes and this has been seen in the past; (3) regulators must be proactive to stop unfair and abusive practices or practices inconsistent with public policy; (4) oversight and limited regulatory intervention can promote more competitive markets and faster adoption of innovative technologies that benefit consumers and fulfill public policy goals; and (5) the potential for harming competition through exclusive agreements between data providers and large insurers is real. As a model law or any other action is considered, the suggestion is that there is a requirement for insurers to initially submit a list of all sources of data, disclose the aspect of the business the data is used for, require the insurer to update the list when new data or sources are used, and publish a report to the Legislature summarizing the types of data used and the sources and any recommendations for legislative activity. This would be a public document so that members of the public the ability to weigh in on the matter.

Wes Bissett of the Independent Insurance Agents & Brokers of America (IIABA) said that it sounds like a work plan will be developed on the issue of big data, but it should be on specific topics. On the issue of telematics, the use of telematics is not limited strictly to auto insurance. There is, however, a need for legislators to look at telematics so that it can be embraced more. There are some discussion points such as what do the consumers know, if there is consent, and who owns the data and who has access to it. All these issues should be explored if there is to be a model act. Another issue is how portable and standardized the data is. In today's world, data cannot be moved from one carrier to another and the consumer is "stuck" with the carrier that the consumer uses. There should be a standardized portable mechanism to share the data. Overall, this is a big issue and conversations should continue between now and NCOIL's Portland meeting. Mr. Birnbaum supports the recommendations made by Mr. Bissett.

Rep. Henne asked where the balance is between transparency and proprietary information. The big data is used to determine the rate, but where is the line drawn. Commissioner Chaney said that the issue is about keeping the information confidential and to use it correctly.

Birny Birnbaum first stated that he is not a big fan of credit scoring. With credit scoring, there are federal agencies that oversee the bureaus that collect and maintain the data. However, the data has oversight in terms of quality, access, and consent. On the other hand, if a claim is filed and the insurance company channels the consumer to a higher level of scrutiny on the claim the basis for this is not explained. There is no disclosure on the type of information used. The question is if this promotes innovation and more affordability or if it excludes the most vulnerable consumers. A lot of the big data applications out there are not subject to various protections.

Rep. Botzow asked if there is data that should not be collected and how do the legislators know. Mark Smith said that there are factors specifically prohibited by law. Proxies for these factors should also not be used. Commissioner Chaney said that some of the social media background should not be used because it is opinion based and not fact driven.

Rep. Lehman said that a work plan would be started so that when the Portland meeting takes place this conversation is not just being picked back up again from scratch.

#### INITIAL POSSIBLE CONSIDERATION OF MODEL LAW TO REGULATE TOWING COMPANIES

Lynda Weaver of Nationwide Insurance said that there are many inconsistencies between states with regard to towing. It would be appropriate to consider a model act. Information that has been gathered will be shared.

Rep. Lehman asked Committee members to take a look at their own states to identify issue points for discussion.

#### UPDATE ON TNC DISCUSSION OF THE SHARING ECONOMY

Frank O'Brien of the Property Casualty Insurers Association of America (PCI) said that NCOIL adopted the TNC Model Act. Very quickly, the NCOIL model has become the centerpiece for discussion. There are 30+ states that have acted on the TNC issue. The NCOIL model has been a success less than a year since its inception.

#### ADJOURNMENT

There being no other business, the Committee adjourned at 9:20 a.m.

## Property/Casualty Flex-Rating Regulatory Improvement Model Act

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*Adopted by the Executive Committee on February 27, 2004, and readopted on November 20, 2011.*

Drafting Note: This model is intended for consideration in jurisdictions with a more restrictive rate-filing and review system than outlined in this bill. The model is intended to serve as an interim approach to enactment of an open competition–based system, as endorsed by the National Conference of Insurance Legislators (NCOIL) Property/Casualty Insurance Modernization Act.

### Section 1. Short Title

This Act shall be known as the *Property/Casualty Flex-Rating Regulatory Improvement Model Act*.

### Section 2. Scope

This Act applies to personal lines insurance written on risks in this state by any insurer authorized to do business in this state.

### Section 3. Flex-Rating Provisions

- A. Notwithstanding the requirements of [*insert citations of state laws providing for the filing, review, approval, and/or disapproval of rates for property and casualty insurance*], a filing made by an insurer under this section that provides for an overall statewide rate increase or decrease of no more than twelve (12) percent in the aggregate for all coverages that are subject to the filing may take effect the date it is filed. The twelve (12) percent limitation does not apply on an individual insured basis. No more than one rate filing may be made by an insurer pursuant to the expedited process provided in this subsection during any twelve-month period, unless a rate filing, when combined with any other rate filing or filings made by an insurer within the preceding twelve (12) months, does not result in an overall statewide increase or decrease of more than twelve (12) percent in the aggregate for all coverages that are subject to the filing.
- B. Rate filings falling outside of the limitation provided for in subsection (A) of this section shall be subject to [*insert citations to the appropriate filing and review provisions of the insurance code*], unless those filings are otherwise exempt from those provisions pursuant to another section of the insurance code.
- C. A filing submitted pursuant to subsection (A) of this section is considered to comply with state law. However, if the Commissioner of Insurance determines that the filing is inadequate or unfairly discriminatory, he/she shall issue a written order specifying in detail the provisions of the insurance code the insurer has violated and the reasons the filing is inadequate or unfairly discriminatory and stating a reasonable future date on which the filing is to be considered no longer effective. An order by the Commissioner pursuant to this subsection that is issued more than thirty (30) days from the date on which the Commissioner received the rate filing is prospective only and does not affect any contract issued or made before the effective date of the

order. For purposes of this Act, “unfairly discriminatory” means a rate for a risk that is classified in whole or in part on the basis of race, color, creed, or national origin.

- D. No rate increase within the limitation specified in subsection (A) of this section may be implemented with regard to an individual existing policy, unless the increase is applied at the time of a renewal or conditional renewal of an existing policy and the insurer, at least thirty (30) days in advance of the end of the insured’s policy period, mails or delivers to the named insured, at the address shown in the policy, a written notice that clearly and conspicuously discloses its intention to change the rate. A notice of renewal or conditional renewal that clearly and conspicuously discloses the renewal premium applicable to the policy shall be deemed to be in compliance with this subsection.

#### **Section 4. Effective Date**

This Act shall take effect thirty (30) days after its approval by the Governor.

**TAB #12**



### **Joint State-Federal Relations and International Issues**

NCOIL Summer Meeting, Portland, OR

Saturday, July 16, 2016

12:00 pm – 1:45 pm

*State-Federal Relations Chair: Sen. Robert Hayes, SC*

*International Issues Chair: Sen. Dan “Blade” Morrish, LA*

*\*Call to order/roll call/approval of minutes (12:00-12:07)*

*\*Draft minutes of State-Federal Relations Committee meeting February 26, 2016 and International Issues Committee meeting February 27, 2016*

1. Update on IIPRC Developments (12:07-12:37)
  - *Karen Schutter, Executive Director & Commission Secretary, IIPRC*
  
2. Update on H.R. 5143: “Transparent Insurance Standards Act of 2016” (12:38-12:50)
  
3. EU Equivalence (12:50-1:00)
  - *Julie McPeak, NAIC, Commissioner, Tennessee Department of Commerce & Insurance*
  - *Dave Snyder, PCI*
  
4. Covered Agreements (1:00:1:10)
  - *Eric Cioppa, NAIC, Maine Bureau of Insurance*
  
5. FIO/FACI Activity (1:10-1:20) [NOTE – If no one from FIO is present – SKIP]
  - *Dave Snyder, PCI*
  - *Julie McPeak, NAIC, Commissioner, Tennessee Department of Commerce & Insurance*
  
6. Consideration of resolution endorsing NAIC Credit for Reinsurance Model Law and Regulation (1:20-1:35)
  - *Eric Cioppa, NAIC, Maine Bureau of Insurance*
  - *AIA offered amendments/clarifications*
  
7. Brexit Impact on U.S. Insurance Market: Opportunity or Threat? (1:35-1:45)
  - *Dave Snyder, PCI*
  
8. Adjournment

### **State-Federal Relations Committee**

Chair: Sen. Robert Hayes, SC  
Vice Chair: Rep. Kurt Olson, AK

Sen. Jason Rapert, AR  
Rep. Matt Lehman, IN  
Rep. Peggy Mayfield, IN  
Rep. Joseph Fischer, KY  
Rep. Jeff Greer, KY  
Rep. Steve Riggs, KY  
Sen. Dan "Blade" Morrish, LA  
Rep. Michael Webber, MI  
Rep. George Keiser, ND

Sen. Jerry Klein, ND  
Sen. David O'Connell, ND  
Rep. Don Flanders, NH  
Sen. Neil Breslin, NY  
Sen. James Seward, NY  
Rep. Brian Kennedy, RI  
Rep. Bill Botzow, VT  
Rep. Kathie Keenan, VT

### **International Insurance Issues Committee**

Chair: Sen. Dan "Blade" Morrish, LA  
Vice Chair: Rep. Joseph Fischer, KY

Sen. Jason Rapert, AR  
Rep. Richard Smith, GA  
Rep. Matt Lehman, IN  
Rep. Peggy Mayfield, IN  
Rep. George Keiser, ND  
Sen. Jerry Klein, ND

Sen. David O'Connell, ND  
Sen. Neil Breslin, NY  
Sen. James Seward, NY  
Rep. Bill Botzow, VT  
Rep. Kathie Keenan, VT

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
STATE-FEDERAL RELATIONS AND  
FINANCIAL SERVICES & INVESTMENT PRODUCTS MEETING  
LITTLE ROCK, ARKANSAS  
FEBRUARY 26, 2016  
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) State-Federal Relations and Financial Services & Investment Products Joint Committee met at the Little Rock Marriott in Little Rock, Arkansas on Friday, February 26, 2016 at 2:00 p.m.

Sen. Robert Hayes, Jr. of South Carolina, chair of the State-Federal Relations Committee, presided.

Other members of the Committee present were:

Sen. Jason Rapert, AR	Sen. Jerry Klein, ND
Rep. Martin Carbaugh, IN	Sen. Neil Breslin, NY
Rep. Matt Lehman, IN	Sen. James Seward, NY
Rep. Joseph Fischer, KY	Rep. Brian Kennedy, RI
Rep. Steve Riggs, KY	Rep. Bill Botzow, VT
Rep. George Keiser, ND	Rep. Kathie Keenan

Other legislators present were:

Sen. Gregory Standridge, AR	Sen. Ed Buttrey, MT
Sen. Travis Holdman, IN	Asm. William Barclay, NY
Rep. Ken Goike, MI	Sen. Kevin Bacon, Oh
Rep. Henry Vaupel, MI	

Also in attendance were:

Tom Considine, NCOIL CEO  
Paul Penna, Executive Director, NCOIL Support Services  
Christina Zuk, Legislative Director, NCOIL Support Services  
Paulina Grabczak, Deputy Legislative Director, NCOIL Support Services

## MINUTES

Upon a motion made and seconded, the Committee unanimously approved the minutes of its November 13, 2015 meeting in San Antonio, Texas.

## SPECIAL DISCUSSION OF THE IMPACT OF THE DODD-FRANK ACT ON INSURANCE

Chairman Hayes called the following panelists to testify:

- Sam Proctor, Debevoise & Plimpton
- Julie Gackenbach, Confrere Strategies
- Kevin McKechnie, American Bankers Association (ABA)

Julie Gackenbach of Confrere Strategies spoke first. Ms. Gackenbach stated that we are now in year six of the Dodd-Frank Act, and we continue to work through a number of issues. It has changed the way we look at insurance. For instance, where the traditional system



used to look more toward the protection of policy holders, now we are thinking about whether we should be doing standards that affect the industry and the economy as a whole.

We also have a number of entities that are in regulatory competition. As a result, there's almost a sense of "we are going to out-regulate the regulators." We've moved beyond the traditional regulatory system for insurance that we've seen in the states. We're duplicating efforts in many ways – for instance, we've set up the FIO and the Office of Financial Research at the federal level that spend time analyzing and gathering information in many cases where the state is already gathering that information.

Ms. Gackenbach further stated that the regulatory and legal environment has become much more complex, and that there are many more threats to the state regulation of insurance.

Kevin McKechnie from the American Bankers Association (ABA) stated that at its conception the idea was that the Consumer Financial Protection Bureau (CFPB) would be barred from regulating the business of insurance. So our goal today is to measure to what degree that injunction has been undermined.

Mr. McKechnie further stated that we are getting dangerously close to a point where NCOIL should consider having sessions on dual regulation on the horizon – something we were trying to specifically avoid ten years ago.

Two years ago, Mr. McKechnie circulated a memo to the Committee outlining the various authorities in Dodd-Frank. That memo has since been refreshed, but is not ready for distribution yet, but will be available at the NCOIL's next meeting in Portland.

Samuel E. Proctor of Debevoise & Plimpton stated that the international and domestic insurance regulatory landscape is undergoing significant changes as part of a systemwide response to the global economic crisis.

Mr. Proctor stated that the International Association of Insurance Supervisors is implementing stricter capital and supervisory standards for large insurers at the international level. In the United States, we see insurers subject to increasing federal regulation in a fairly complex set of ways. For instance, the Financial Stability Oversight Council has designated three insurers as "systemically important financial institutions (or "SIFIs"): AIG, MetLife, and Prudential. This designation subjects them to Federal Reserve supervision and enhanced prudential standards.

Mr. Proctor stated that while Dodd-Frank generally preserves the U.S. insurance regulatory framework as it existed pre-crisis, in areas where it impinges on existing arrangements, the impact is pronounced. Those impacts predominantly fall on larger and more complex insurance groups. However, several of the key impacts have yet to fully manifest themselves and there are additional changes on the horizon.

Sen. Hayes asked if there is anything that any of the states are doing in response to Dodd-Frank. Mr. Proctor responded that New York always occupies a unique place in terms of insurance and regulation generally, but that most of the activity is happening at the NAIC level. Ms. Gackenbach stated that states may be a little more involved when you see what the actual parameters are, particularly if they pre-empt state law. Ms. Gackenbach further stated that there may be a time when the states will have to say, "we still maintain ultimate regulatory control" in this space.

DISCUSSION OF INITIATIVES TO PROMOTE CYBER-SECURITY/INSURANCE

Sen. Hayes called the following panel to testify:

- Kevin McKechnie, American Bankers Association (ABA)
- Tim Nagel, Prudential
- Wes Bissett, Independent Insurance Agents and Brokers of America (IIABA)

Mr. McKechnie stated that he wanted to bring attention to a study released by the Financial Services Sector Coordinating Council (FSSCC) for Homeland Security and the American Bankers' Association (ABA) to address the issue of cyber security being poorly understood. As a result, there is now a "buyers' guide" linking a number of tips with a number of technologies in this space. Mr. McKechnie would be happy to make this buyers' guide available to NCOIL.

Mr. Nagel stated that he agreed with the lunchtime comments of Governor Hutchinson that cyber security should be on everyone's mind. For cyber security, there's generally three things we focus on:

- Confidentiality: Is the information safe and protected?
- Integrity: Can we trust and rely upon the data?
- Availability: Do I have the platform to use the data?

Mr. Nagel stated that we should be focusing more closely on the integrity and availability of data.

Mr. Nagel further stated that the information of interest in cyber-security is shifting. The Office of Personnel Management was hacked for personal information, not for money. This information is used to build identities.

Mr. Bissett stated when the Committee last met in November, he spoke about a document that the NAIC was working on framed as a Cyber Security Bill of Rights. Since that time, a re-fashioned document called the "Road Map for Cyber Security Consumer Protections" was adopted in December by the NAIC. It outlines a number of standards that the NAIC felt consumers were entitled to, and operates as a bill of rights. The NAIC is also working on a cyber security model law, though Mr. Bissett has not yet seen a copy of it.

Mr. Bissett has a concern that while we may hope that the NAIC model law process would result in uniformity, he suspects that that may not be the case. The NAIC is expected to release a draft of the model law in the coming weeks.

Mr. Bissett stated that while they are awaiting a first draft from NAIC, the IIABA is concerned about some of the ideas that have been floated. The IIABA does not want to see all data treated the same, without a recognition that different entities have different types of resources. They also do not want to see prescriptive, narrow types of requirements that do not take into account future changes in the marketplace.

Kate Kiernan from the American Council of Life Insurers (ACLI) stated that they are looking forward to the NAIC's model law helping to provide uniformity on laws regarding cyber security breaches. Ms. Kiernan stated that at the present moment, there are 47 different state requirements on this issue.

Chara Bradstreet from NAIC stated that the intent of the coming model act will be to minimize confusion over expectations with respect to data held by insurers. She further stated that NAIC has engaged with the Administration and federal authorities on this issue and would welcome NCOIL's input.

## UPDATE ON IIPRC DEVELOPMENTS

Sen. Hayes called Karen Schutter from the Interstate Insurance Product Regulation Commission to provide an update on the Interstate Insurance Product Regulation Compact (IIPRC). Ms. Schutter provided a map with all of the compacting states, which at present time is 44 states. Ms. Schutter noted that Connecticut is considering joining the compact this year.

The next meeting of the IIPRC will be Saturday April 2, 2016 at 12:30 central time in New Orleans, Louisiana in conjunction with the NAIC Spring Meeting. NCOIL members are encouraged to attend.

## ADJOURNMENT

There being no further business, the Committee adjourned.

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
INTERNATIONAL INSURANCE ISSUES COMMITTEE  
LITTLE ROCK, ARKANSAS  
FEBRUARY 27, 2016  
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) International Insurance Issues Committee met at the Little Rock Marriott in Little Rock, Arkansas, on Saturday, February 27, 2016, at 10:15 a.m.

Rep. Joe Fischer of Kentucky, Vice-Chair of the Committee, presided.

Other members of the Committee present were:

Sen. Jason Rapert, AR	Sen. Jerry Klein, ND
Rep. Matt Lehman, IN	Sen. Neil Breslin, NY
Sen. Joe Hune, MI	Sen. James Seward, NY
Rep. George Keiser, ND	Rep. Bill Botzow, VT

Other legislators present were:

Rep. Deborah Ferguson, AR	Asm. Will Barlcay, NY
Rep. Martin Carbaugh, IN	Sen. Kevin Bacon, OH
Sen. Travis Holdman, IN	Sen. Gary Stanislawski, OK
Rep. Ronald Crimm, KY	Rep. Brian Kennedy, RI
Rep. Steve Riggs, KY	Sen. Robert Hayes, SC
Rep. Ken Goike, MI	Rep. Spencer Hawley, SD
Rep. Henry Vaupel, MI	

Also in attendance were:

Tom Considine, NCOIL CEO  
Paul Penna, NCOIL Support Services' Executive Director  
Christina Zuk, NCOIL Support Services' Legislative Director  
Paulina Grabczak, NCOIL Support Services' Deputy Legislative Director

## MINUTES

Upon a motion made and seconded, the Committee unanimously approved the minutes of its November 12, 2015, meeting in San Antonio, Texas.

## REPORT ON RECENT LEGISLATIVE AND REGULATORY DEVELOPMENTS

Dave Synder of Property Casualty Insurers Association of America (PCI) stated that the financial crisis and Dodd-Frank changed the state of affairs because of the new roles provided for in the Treasury Department and the Federal Reserve Board. The issue is how this will all work in the future to both protect state regulation as well as give the United States a united and strong voice to come up with global standards that actually reflect the work that is done on the state level. This is the new world after the financial crisis and Dodd-Frank.

Mr. Synder said that the International Association of Insurance Supervisors (IAIS) has concluded some additional consultations on how to designate insurers as global systemically important. Likewise, the Financial Stability Board has concluded a consultation paper on the resolution of global systemically important insurers. There are several United States companies that have these designations.

Mr. Synder said that there is a continued regulatory focus on capital standards. They relate to the global systemically important insurers. The Federal Reserve Board has regulatory authority over two categories of companies: (1) those designated as systemically important and (2) those that have thrifts. What the Federal Reserve Board does domestically for the capital standards will not only be important to those companies, but to the entire state-based regulatory system. The question here is if the Federal Reserve Board will recognize the state capital requirements and aggregate them or if it will come up with an entirely new banking-related standard. Mr. Synder believes that the foundation of the work should be the state-based capital standards.

Mr. Synder said that international organizations have been created as a result of the financial crisis and they are increasingly getting involved in insurance regulation. Recently, the House Financial Services Committee held a hearing to discuss a broad range of international issues as well as draft legislation under the Chairman of the Housing and Insurance Sub-Committee. The hearing focused on the draft legislation that would strengthen the Congressional role and also require that before the Treasury and Federal Reserve Board go into a negotiation they must reach a consensus with the states on a position. The draft bill also provides for additional transparency, and public notice and comment.

Mr. Synder said that the legislation has broad support. For example, it cites as a finding the effectiveness of state-based regulation and it requires that, as a negotiating objective, international standards must protect policyholders and recognize the United States approach to doing this.

Mr. Synder stated that the opponents are saying that the legislation ties the hands of those doing negotiations. PCI believes the legislation does the opposite. It requires that consensus be reached by the states before a negotiation is started so that the United States is not advocating for different positions, which has happened before. Opponents are also saying that international standards do not matter because they have to be enacted or Congress must adopt them. The issue is that this relies on a defense strategy rather than being proactive. In the end, both of these criticisms do not have merit.

Mr. Synder said that there is a very short window for Congress to re-balance Dodd-Frank and failure to do so will lead to the ongoing erosion of state-based insurance regulation. There is a situation now where NCOIL has an opportunity to get bi-partisan support for good House legislation and restate support for Senate legislation that already exists as a number of proposals. This is the opportunity for NCOIL to step in and defend what is in the best interests of the public that is represented. Mr. Synder asked for general support for the direction and technical engagement with the NAIC to make sure that everyone is comfortable with the legislation. This must be done now because the legislation may be finished sooner than in the next few months.

Sen. Breslin said that a policy should be developed where NCOIL gets on board right away with the NAIC and model letters should be developed that can be used by individual legislators as a tool to write to members of Congress.

Commissioner Jim L. Ridling of Alabama said that the NAIC is in a unique position to work on international issues because of its presence in Washington, D.C. NCOIL and NAIC can jointly have a great impact in Washington supporting state regulation. It is important to stay very engaged in Washington, D.C.

## DISCUSSION OF PROPOSED "COVERED AGREEMENT" FOR REINSURANCE COLLATERAL, IMPACTS OF FEDERAL INSURANCE OFFICE (FIO), UNITED STATES TRADE REPRESENTATIVE (USTR) NEGOTIATION WITH THE EUROPEAN UNION (EU)

Dennis Burke of the Reinsurance Association of America (RAA) noted that the RAA strongly supports state-based regulation. The issue is that the members that operate internationally need to do so on a level playing field. The members that Mr. Burke is most concerned about are the United States members. They are facing an unfair competitive playing field with the Solvency II, which is the new, untested European system, which went in effect on January 1, 2016. Since that time, certain countries have granted equivalence. However, the United States companies are subject to any of the European Union countries imposing different standards on them.

Mr. Burke stated that the RAA is agnostic on how to get to a level playing field, and he wishes that there were a state-based approach that appears to be viable, but one is not seen. The path forward to get temporary and then permanent equivalence in the United States in a timely fashion is a covered agreement. RAA conditionally supports the covered agreement. Any agreement needs to have significant state input, it needs to enshrine the primacy of the United States statebased system, and the states must be very involved in the development of whatever is agreed. Everyone should be working collectively to ensure that the United States is appropriately represented.

Rep. Keiser commented that the issue is that approaches have all been reactive. The NAIC and NCOIL have been doing their own initiatives instead of defining basic standards. Collectively, everyone should come forward unified. This way, there is not just a reaction to standards that are being imposed. There is more than just an opportunity to send letters to Congress, but it will require everyone working together.

Commissioner Jim L. Ridling of Alabama noted the hiring of former Commissioner Tom Considine and spoke to how highly respected he is among regulators around the United States and this action will go a long way toward further NAIC-NCOIL relations.

Upon a motion made and seconded, the Committee referred the matter to Executive Committee for discussion and response. Specifically, the matter referred to the Executive Committee is to discuss reaching out to the NAIC and the Chairman developing the legislation in Congress to see what can be done together and also provide legislators individually with sample talking points and letters so that the legislators can reach out to their Congressional delegation.

## REPORT ON PROGRESS OF INTERNATIONAL ASSOCIATION OF INSURANCE SUPERVISORS (IAIS) INITIATIVES

Dave Synder of Property Casualty Insurers Association of America (PCI) stated that there are real issues with what the international capital standards will look like and if they will be the United States approach or be a top-down bank-centric approach. There are real issues about the standards that may apply to the systemically important insurers and whether the United States should do its standard first rather than going international. Additionally, there are issues of proportionality.

## UPDATE ON U.S. TRADE NEGOTIATION ACTIVITY AND PROSPECTS

Dave Synder of Property Casualty Insurers Association of America (PCI) commented that the Trans-Pacific Partnership agreement is before Congress and it does include provisions

on financial services. For the companies that do business overseas, there is strong support. Everyone should look at the legislation to make sure interests are protected. The legislation is controversial and there are groups that oppose it. From an industry perspective, the agreement has a lot in it that protects regulation because of a carve-out that states commitments are being made, but regulators still have the right to regulate. Everyone should take a look to see if it strikes the right balance or not.

Mr. Synder said that there is another negotiation—the Trade in Services Agreement that is a coalition of a couple dozen countries that are determining how to open their markets, but still protect their regulation. Lastly, there is the trade negotiation with Europe, which may include some elements of financial services. NCOIL should be engaged on all three of these.

Commissioner Jim L. Ridling of Alabama encouraged NCOIL to get to know their Federal Reserve Office.

Birny Birnbaum of the Center for Economic Justice (CEJ) encouraged NCOIL to get engaged on the trade agreement at least as much as NCOIL is getting engaged on other international issues. A decision has been made on it and there are provisions in it that more directly usurp state authority. Mr. Birnbaum discussed the draft legislation in Congress that requires consensus by the various United States parties. This is great, but what is meant by “consensus.” The key is what it means and how it is achieved. Consensus should mean that there is an opportunity to weigh in on issues.

Mr. Birnbaum noted that the states have a much stronger case if they can demonstrate uniformity across the states in terms of financial protections of consumers. Right now, the NAIC establishes a baseline for accounting rules and risk-based capital calculations, which is the foundation for financial regulation. However, states then have permitted practices. This means that states can deviate from the NAIC standards and in some situations these deviations create huge differences in the assets that are counted as capital. This deviation among the states creates an opening for criticism and European regulators may believe that there is no United States system because it varies.

Rep. Keiser asked if anyone has gone through the trade agreement and identified what the specific problems are so that they could be better understood. Mr. Birnbaum stated that more information would be provided on the issue. Additionally, Mr. Birnbaum believes there is a good opportunity to be involved in the crafting of the legislation in Congress, but asking questions on it like how consensus is defined is important and does not mean that one is opposed to the draft legislation.

ADJOURNMENT

There being no further business, the Committee adjourned at 11:25 a.m.

Atlantic Corporate Center  
2317 Route 34, Suite 2B  
Manasquan, NJ 08736  
732-201-4133  
CHIEF EXECUTIVE OFFICER: Thomas B. Considine



PRESIDENT: Sen. Travis Holdman, IN  
VICE PRESIDENT: Rep. Steve Riggs, KY  
SECRETARY: Sen. Jason Rapert, AR  
TREASURER: Rep. Bill Botzow, VT

## **National Conference of Insurance Legislators (NCOIL)**

### **Resolution in Support of the National Association of Insurance Commissioners (NAIC) Credit for Reinsurance Model Law and Regulation (Reinsurance Models)**

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**WHEREAS**, in light of U.S. and EU representatives continuing their efforts towards the pursuit of a Covered Agreement in the absence of an EU finding of US Equivalence, NCOIL believes that it is important to reaffirm its support for the U.S. state-based insurance regulatory system; and

**WHEREAS**, NCOIL believes that a Covered Agreement relating to reinsurance collateral requirements with collateral requirements below those set forth in the Reinsurance Models will pose an economic threat to the state-based regulation of insurance thereby undermining U.S. policyholders and companies; and

**WHEREAS**, State regulators have historically required foreign reinsurers to hold 100% collateral within the U.S. for the risks they assume from U.S. insurers, intended to ensure claims-paying capital is available and reachable by U.S. firms and regulators should it be needed, particularly in the wake of a natural disaster; and

**WHEREAS**, foreign reinsurers' regulators and politicians have objected to their companies having to post a high amount of collateral in the U.S. because it makes such capital unavailable for other purposes; and

**WHEREAS**, in 2011, the NAIC worked with State regulators and amended its Reinsurance Models to allow foreign reinsurers to post significantly less than 100% consumer protection collateral for U.S. claims, provided the reinsurer is evaluated and certified; and

**WHEREAS**, to date, 32 States have passed legislation to implement those Reinsurance Models, with an additional five States having plans to do so; and

**WHEREAS**, NCOIL believes that States that have passed or will pass the Reinsurance Models strengthen the argument that State regulation is flexible, adaptable to changes in the global reinsurance markets, and respectful to other competent regulatory structures; and

**WHEREAS**, NCOIL believes that if the Federal government enters into a Covered Agreement on reinsurance collateral, thereby capitulating to the requests of



representatives of foreign reinsurers to post little to no collateral in the U.S., small and medium sized U.S. insurers and their customers will be greatly disadvantaged; and

**WHEREAS**, therefore, if implemented, NCOIL urges a Covered Agreement on reinsurance collateral to maintain as its floor the collateral requirements set forth in the NAIC's Reinsurance Models; and

**NOW, THEREFORE, BE IT RESOLVED**, that NCOIL strongly supports the NAIC Reinsurance Models and urges all States that have not already done so to adopt them; and

**AND, BE IT FINALLY RESOLVED**, that this resolution will be distributed to state legislative leadership, committee chairs and members, state regulators, and other interested parties.

**TAB #13**



**Business Planning Committee**

NCOIL Summer Meeting

Sunday, July 17, 2016

9:00 am – 9:45 am

*Chair, Sen. Travis Holdman, IN*

1. Future meeting locations
2. Proposed site sharing for NCOIL/NAIC 2018 annual meeting
  - *Andrew Beal, NAIC & Tom Considine, NCOIL*
3. Other Matters
4. Adjournment

### **Business Planning Committee**

Chair: Sen. Travis Holdman, IN  
Vice Chair: Rep. Steve Riggs, KY

Sen. Jason Rapert, AR  
Sen. Dan "Blade" Morrish, LA  
Rep. George Keiser, ND  
Sen. Neil Breslin, NY  
Asm. Kevin Cahill, NY  
Rep. Marguerite Quinn, PA  
Sen. Robert Hayes, SC  
Rep. Bill Botzow, VT  
Rep. Warren Kitzmiller, VT  
Sen. Mike Hall, WV

**TAB #14**



**Executive Committee**

NCOIL Summer Meeting, Portland, OR

Sunday, July 17, 2016

9:45 am – 10:30 am

*Chair, Senator. Travis Holdman, IN*

*\*Call to order/roll call/approval of February 28, 2016 committee meeting minutes*

1. Administration
  - a. Meeting Report
  - b. Dues
  - c. Receipt of financials
  - d. Nomination of Executive Committee members
  
2. Non-controversial calendar
  - a. Committee Reports
  - b. Re-adoption of Model Laws
  
3. Other sessions
  - a. Griffith Foundation legislator luncheon
  - b. Keynote luncheon
  - c. Welcome breakfast
  
4. Any other business
  
6. Adjournment

## **Executive Committee**

President: Sen. Travis Holdman, IN  
Vice President: Rep. Steven Riggs, KY

Secretary: Sen. Jason Rapert, AR  
Treasurer: Rep. Bill Botzow, VT

Rep. Kurt Olson, AK  
Sen. Joyce Elliott, AR  
Rep. Deborah Ferguson, AR  
Rep. Kelley Linck, AR  
Sen. Joe Crisco, CT  
Rep. Robert Megna, CT  
Rep. Rich Golick, GA  
Rep. Richard Smith, GA  
Rep. Martin Carbaugh, IN  
Rep. Matt Lehman, IN  
Sen. Thomas Buford, KY  
Rep. Jeff Greer, KY  
Rep. Tommy Thompson, KY  
Rep. Susan Westrom, KY  
Rep. Greg Cromer, LA  
Rep. Chuck Kleckley, LA  
Sen. Dan "Blade" Morrish, LA  
Sen. Joe Hune, MI  
Rep. Don Gosen, MO  
Sen. Freddie Videt Carmichael, MS  
Sen. Buck Clarke, MS  
Sen. Dean Kirby, MS  
Rep. George Keiser, ND\*  
Sen. Jerry Klein, ND  
Sen. David O'Connell, ND  
Rep. Don Flanders, NH  
Sen. Carroll Leavell, NM\*  
Asm. William Barclay, NY

Sen. Neil Breslin, NY\*  
Asm. Kevin Cahill, NY  
Sen. William J. Larkin, Jr. NY\*  
Asm. Joseph Morelle, NY  
Sen. James Seward, NY\*  
Sen. Kevin Bacon, OH  
Sen. Keith Faber, OH  
Rep. Bob Hackett, OH  
Rep. Jay Hottinger, OH  
Rep. Michael Stinziano, OH\*\*  
Sen. Jake Corman, PA  
Rep. Anthony Deluca, PA  
Rep. Robert Godshall, PA  
Rep. Marguerite Quinn, PA  
Rep. Brian Kennedy, RI\*  
Sen. William Walaska, RI  
Sen. Robert Hayes, SC  
Rep. William Sandifer III, SC  
Rep. Steve McManus, TN  
Sen. Larry Taylor, TX  
Rep. Hubert Vo, TX  
Sen. Curtis Bramble, UT  
Rep. Jim Dunnigan, UT  
Sen. Ann Cummings, VT  
Rep. Kathie Keenan, VT\*  
Rep. Warren Kitzmiller, VT  
Sen. Mike Hall, WV  
Del. Harry Keith White, WV

\* Past Presidents and Members of Executive Committee

\*\* NCOIL Committee Chair (Member as per Bylaws)

*All state committee chairs responsible for insurance legislation in NCOIL contributing member states are automatically, per NCOIL bylaws, voting members of the Executive Committee at their first meeting.*

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
EXECUTIVE COMMITTEE  
LITTLE ROCK, ARKANSAS  
FEBRUARY 28, 2016  
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) Executive Committee met at the Statehouse Marriott in Little Rock, Arkansas on Sunday, February 28 at 9:00 a.m. Sen Travis Holdman of Indiana, Chair of the Committee, presided.

Other members of the Committee present were:

Rep. Steve Riggs, KY	Sen. Neil Breslin, NY
Rep. Bill Botzow, VT	Asm. Kevin Cahill, NY
Re. Deborah Ferguson, AR	Sen. James Seward, NY
Rep. Matt Lehman, IN	Sen. Kevin Bacon, OH
Rep. George Keiser, ND	Rep. Brian Kennedy, RI
Sen. Jerry Klein, ND	Sen. Robert Hayes, SC
Asm. William Barclay, NY	

Also in attendance were:

Tom Considine, NCOIL CEO  
Paul Penna, Executive Director, NCOIL Support Services  
Christina Zuk, Legislative Director, NCOIL Support Services  
Paulina Grabczak, Deputy Legislative Director, NCOIL Support Services

Meeting was called to order at 9:00 am

#### MINUTES

Rep Botzow made a motion to approve and Rep. Riggs seconded a motion, the Committee unanimously approved the minutes of the November 15, 2015 minutes in San Antonio, TX.

#### MEETING REPORT

Commissioner Considine reported there were 214 attendees at the Little Rock meeting including 32 legislators, four newcomers, five Insurance Commissioners and our host Governor, Asa Hutchinson.

#### DUES

Commissioner Considine noted there were several states, because of the billing cycle, whose payments were still outstanding for 2015 – 2016. He also noted that Oklahoma was planning to rejoin, and Chairman Holdman noted that Minnesota was considering it.

Rep. Botzow made a motion to adopt the meeting report and it was seconded by Rep. Riggs.

#### FINANCIALS

Mr. Penna noted that NCOIL YTD thru 4th quarter 2015 support and revenue was \$637,370 and expenses were \$658,306 for a change in assets of (\$20,936) and a total net assets of \$500,559. The ILF YTD thru 4th quarter 2015 support and revenue was \$137,047 and expenses were \$135,145 for a change of \$1,902 and total net assets of \$168,107.



A motion was made by Rep. Lehman and seconded by Sen. Klein.

#### NON-CONTROVERSIAL CALENDAR

The International Committee report was moved from the non-controversial calendar to the Committee Reports.

No one wished to speak on other committees.

#### COMMITTEE REPORTS

##### International Insurance Committee

Commissioner Considine summarized the discussion from the International Insurance Committee where there is a bill in Congress in draft form that is being prepared for introduction that is strongly in favor of state based regulation of insurance. Sen Seward suggested reaching out to the NAIC to work together and provide NCOIL letter to targeted members of Congress that previously served as state legislators.

This would show NCOIL participants that there is “bang for their buck” and show NCOIL as a leader.

Senator Holdman commented that this is a critical piece of what we’re all about. Treasury excluded everyone.

Motion was made by Rep. Keiser and seconded by Rep. Botzow and carried on a voice vote.

#### RE-ADOPTION OF MODEL ACTS

Rep. Botzow summarized that the Life Insurance & Financial Planning Committee re adopted the:

Beneficiaries’ Bill of Rights

Life Insurance Disclosure Model Act

Long term care Tax Credit Model Act

There was discussion of all 3 and they were approved for continuation.

Motion was made by Rep. Botzow and seconded by Rep. Fisher.

#### GRIFFITH FOUNDATION LEGISLATIVE LUNCHEON

Senator Holdman discussed Dr. Drennan presentation at the Griffith Institute titled” Medicaid at 50: would LBJ recognize it today?” It was a nice briefing of where it came from and where it’s going.

#### OTHER BUSINESS

Senator Holdman raised NCOIL staff transition and bylaw changes. When he, Senator Breslin, Senator Seward, and NCOIL General Counsel Jule Rousseau were negotiating with Commissioner Considine, it was always intended that he would serve as CEO, rather than

Executive Director. ED is administrative role. We want to cast a CEO and move to a new day at NCOIL.

NSS is the company supporting NCOIL. Senator Holdman has bylaw changes but chose not to bring them at this meeting and will do so at the Portland meeting.

There are a few other bylaw changes and Senator Holdman is working with Rep. Crimm and Sen. Klein to get this done. There will be an officers' conference call within 30 days and meeting in 60 days with bylaw changes.

Update at opening session:

Senator Holdman stated we did not conclude SWOT exercise at Welcome Breakfast. It was a good discussion and feedback about NCOIL's role, but is only half completed. It will be condensed to eliminate redundancies and will be shared with members. There will be another Welcome Breakfast in Portland where we will refresh the Strengths and Weaknesses and go over Opportunities and Threats.

We are planning to put together working groups for specific tasks that come out of those issues: Membership and participation. Congress/International Issues. Flushing out all issues and will continue process.

Rep. Kaiser - Discussion of the need to have legislators sign in – protect members that they are actually in meetings. History is important to us.

Rep. Riggs raised the issue of the size of the Executive committee and whether it is useful to have such a large group when many do not participate. Suggested modernizing and removing members that do not participate in a calendar year.

Commissioner Considine introduced the NCOIL Support Services' staff.

Rep. Ferguson thanked everyone for coming to Little Rock and attending the meeting in Arkansas.

ADJOURNMENT

There being no other business, the meeting was adjourned at 9:41 am.