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**TREASURER:** Rep. Matt Lehman, IN  
**SECRETARY:** Asm. Ken Cooley, CA

**IMMEDIATE PAST PRESIDENTS:**  
Rep. Steve Riggs, KY  
Sen. Travis Holdman, IN

For Immediate Release  
December 15, 2017  
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## **NCOIL ADOPTS MODEL ACT REQUIRING COMPETITION AMONG RATING AGENCIES TO IMPROVE STATE REGULATION OF INSURANCE**

*Promotes Competition, Strives to Correct Past Oversight of Listing a Single, Exclusive Insurer Rating Requirement in Statutes, Regulation, Bulletins or Other Public Materials*

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Manasquan, NJ – At the 2017 NCOIL Annual Meeting in Phoenix, AZ, the NCOIL Financial Services Committee adopted a Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies sponsored by KY Rep. Steve Riggs and OH Sen. Bob Hackett. The NCOIL Executive Committee adopted an amended version.

“Legislators or regulators should not be in the business of requiring one rating agency when there are several competent rating agencies to choose from. However, almost all of the state are doing this” said KY Rep. Steve Riggs, NCOIL’s then-President. “This stems from a time long ago when there was only one rating agency that rated insurance companies.”

The purpose of the Act is to require competition in insurer ratings to benefit consumers, duly licensed insurance companies, producers, and other third-party stakeholders by promulgating and embracing insurer rating requirements in laws and regulations that incorporate the enumeration of multiple, competent insurer rating organizations.

“NCOIL has discussed promoting competition among rating agencies for several years, which led to adopting a Resolution on that issue in 2015” said OH Sen Bob Hackett, a co-sponsor of the measure. “The Model Act represents NCOIL’s commitment to the issue and belief in its importance.”

“NCOIL works to ensure that there is competition where available” said Commissioner Tom Considine, NCOIL CEO. “Regulated competition in the insurance sector protects consumers in the long run.”

There was robust debate about the measure, which resulted in changes clarifying the definition of “competent rating agency” that were finalized at the Executive Committee. There are still concerns among some rating agencies about the Model, and comments made after the Model’s adoption are included at the end of this release.



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**WEBSITE:** [www.ncoil.org](http://www.ncoil.org)



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*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 and financial services, 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.*

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## **NATIONAL COUNCIL OF INSURANCE LEGISLATORS (NCOIL)**

### **Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies**

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*Adopted by the NCOIL Financial Services Committee on November 16, 2017*

*Adopted with amendments by the NCOIL Executive Committee on November 19, 2017*

*Sponsored by Rep. Steve Riggs (KY) and Sen. Bob Hackett (OH)*

#### **Section 1. Short Title**

Model Act to Support State Regulation of Insurance by Requiring Competition among Insurance Rating Agencies

#### **Section 2. Findings and Purpose**

The Legislature finds that:

- 1) Protecting consumers and ensuring the safety and soundness of insurance companies in the United States have been the prime objectives of state insurance regulation for over 150 years.
- 2) The states have sole authority for the regulation of the business of insurance as provided under the McCarran-Ferguson Act.
- 3) State insurance regulation has been successful and effective.
- 4) State insurance regulation has in place on-going substantive procedures, processes, and protocols to license, regulate and supervise insurers.
- 5) There is no requirement that duly licensed insurance companies be rated and that among those that are, companies make choices about rating organizations based on management's evaluation of the perceived strengths of each rating organization as it relates to their markets and business models.

- 6) The test of insurer ratings is whether in the long run the company performs as expected, and in that regard each of these rating organizations on the whole have a consistent record of accurately gauging the ability of the companies to pay claims and service their customers.
- 7) An unintended yet direct consequence of designating a single, exclusive insurer rating requirement in laws, statutes, bulletins or other public material is the diminution of “public regulation by public authority” and an implication of private regulation of insurance.
- 8) A response to this threat to public regulation is necessary.
- 9) Multiple, competent insurer rating organizations exist.

It is the purpose of this Act to:

To require competition in insurer ratings to benefit consumers, duly licensed insurance companies, producers, and other third-party stakeholders by promulgating and embracing insurer rating requirements in laws and regulations that incorporate the enumeration of multiple, competent insurer rating organizations.

### **Section 3. Definitions**

As used in this Act:

- 1) “Competent Rating Agency” means A.M. Best Rating Services, Inc. Company; Demotech, Inc.; Fitch Group; Moody’s Investor Service; Kroll Bond Rating Agency; Standard and Poor’s Financial Services LLC or another rating agency certified or approved by a national entity that engages in such a process. The process shall include, but not necessarily be limited to, the following requirements:
  - a. A requirement for the rating agency to register and provide an annual updated filing;
  - b. Record retention requirements;
  - c. Financial reporting requirements;
  - d. Policies for the prevention of misuse of material nonpublic information;
  - e. Management of conflicts of interest, including prohibited conflicts;
  - f. Prohibited acts practices;
  - g. Disclosure requirements;
  - h. Required policies, practices, and internal controls;
  - i. Standards of training, experience and competence for credit analysts.
- 2) “Public Entity” means any department, agency, special purpose district, or other instrumentality of this State and county or local government in this State.

### **Section 4. Requirements**

No public entity shall bar any competent rating agency in designating the use of insurer rating requirements in laws, statutes, regulations, rules, bulletins, or other public materials.

### **Section 5. Effective Date**

This Act shall take effect immediately.

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# A.M.BEST

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December 6, 2017

Thomas B. Considine  
National Council of Insurance Legislators  
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Dear Commissioner Considine,

A.M. Best would like to reiterate our concerns with the Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies which was approved by the NCOIL Executive Committee at the recent NCOIL Annual Meeting.

While the basis for the Model Act is sound and A.M. Best supports the Findings and Purpose of the Model Act, we contend that the final outcome of the process was a Model Act that does not reflect current legislative and regulatory standards and was not provided the appropriate time to be properly vetted. As a result, there are several contradictions in the Model Act as it currently stands:

- 1) Listing Specific Credit Rating Agencies - The Findings and Purpose section finds there should not be a single insurer rating requirement in laws, statutes, bulletins, or other public material. To correct this in the Definitions section, the Model Act lists six different rating agencies as "Competent Rating Agencies", but leaves out five other rating agencies that are Nationally Recognized Statistical Rating Organizations (NRSRO) who are registered with the Securities and Exchange Commission (SEC) and meeting the requirements of Dodd Frank listed in the Definition section. While we applaud the removal of any one organization being

listed or recommended in laws and statutes, by listing only certain rating agencies in the Model Act and not all properly vetted rating agencies, NCOIL has merely changed the problem, not addressed it.



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2) Including the requirements for an NRSRO from Dodd Frank, without applying them — The amendment to the Definitions section of the proposed Model Act included the list of requirements from Dodd Frank, to which all NRSRO registered rating agencies are held. This list of requirements shall be part of the process for any public agency's "approval" of a rating agency to meet the standard for a "Competent Rating Agency". A.M. Best suggested this change and applauds the inclusion of standards for rating agencies to be considered a "Competent Rating Agency". However, the Model Act, as approved, left in the list of rating agencies considered "Competent Rating Agencies". Five of the six rating agencies listed in the Model Act, and six other rating agencies not included in the Model Act, submit themselves to rigorous regulatory requirements and regulatory scrutiny to officially demonstrate they meet the requirements listed in the Model Act. One rating agency, Demotech, is included on the list in the Model Act, with no evidence of any regulatory authority reviewing this rating agency to ensure they have met the standards added to the Model Act to be considered a "Competent Rating Agency". If the Model Act lists standards, there should be no need to name specific rating agencies. However, if there is a strong desire to list specific rating agencies, that list should only include rating agencies that can demonstrate a regulatory authority holds them to the standards listed.

One additional point of clarification A.M. Best would like to make sure NCOIL and its members are aware of relates to a point made in testimony at the Financial Services Committee related to the role of the NRSRO registration. The NRSRO process is not solely focused on the ratings of debt securities. The SEC, in its final rules, explicitly separates the rating of Insurance Companies and ratings of Corporate securities into two distinct classifications that an NRSRO can register. There are five classes of credit ratings for which a credit rating agency can register as an NRSRO:

- 1) Financial institutions, brokers, dealers
- 2) Insurance companies
- 3) Corporate issuers
- 4) Asset-backed securities
- 5) Issuers of government securities, municipal securities, or foreign government securities

The NAIC in their use of the NRSRO as their standard for acceptable rating agencies for certified reinsurer purposes, only accepts rating agencies who are registered with the SEC to issue ratings on Insurance Companies.



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As stated in the SEC's final rules, "In implementing the mandate [of Dodd Frank], the amendments and new rules being adopted today are designed to further enhance the governance of NRSROs in their roles as 'gatekeepers' and increase the transparency of the credit rating process as a whole." The NRSRO registration process is about standards for rating agencies. A.M. Best continues to urge NCOIL to adopt current standards already in place at state and federal levels.

NCOIL plays a very important role in the development of Model Acts. For that reason, A.M. Best is surprised by the rush to approve this Model Act. At the first public reading in the Financial Services Committee meeting, it was agreed that amendments were needed. Additionally, there were concerns raised as to the appropriateness of the list of "Competent Rating Agencies". Rather than amend the Act, and re-present it to the Financial Services Committee for further discussion, the committee approved the Act with the understanding changes would be made and allowed the Model Act to move forward to the Executive meeting without seeing the re-draft.

A.M. Best believes the Findings and Purpose of the Model Act are appropriate, but are not well served by the Definition section of the Model Act. Had more time been provided for the discussion and understanding of the current standards applied to most rating agencies, a better Model Act would have resulted.

A.M. Best looks forward to working with you and your members in the future and continuing to discuss ways to improve the Model Act.

Sincerely Yours,

A handwritten signature in blue ink that reads "Matthew C. Mosher".

Matthew C. Mosher, FCAS, MAAA, CERA  
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Cc: Senator Jason Rapert, President, NCOIL

