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NCOIL SPRING MEETING

March 2 – 4, 2018

Atlanta, Georgia



Sen. Jason Rapert, AR
NCOIL President



Thomas B. Considine
NCOIL CEO

SUCCESSFUL 2017 NCOIL ANNUAL MEETING IN PHOENIX CONCLUDES

The 2017 NCOIL Annual Meeting at the Phoenix Grand Sheraton met from November 16th to 19th. There were 278 registrants, 55 legislators from 24 states, including 10 first time legislators, and 8 total Insurance Departments represented. This represents a continued growth among participants.

The Nominating Committee met and selected the officer slate for 2017-2018 of Arkansas Sen. Jason Rapert to serve as President, Vermont Rep. Bill Botzow as Vice-President, Indiana Rep. Matt Lehman will remain as Treasurer and California Asm. Kenneth Cooley was elected to serve as Secretary. Kentucky Rep. Steve Riggs and Indiana Sen. Travis Holdman will serve as Immediate Past Presidents.

“It has been an honor to serve as NCOIL’s President for the past year and I look forward to working with Sen. Rapert as he assumes the NCOIL presidency” said Rep. Riggs. “During my term I worked diligently to formalize a recruitment process that has proven to be successful in increasing participation among insurance legislators and new states. For nearly 50 years NCOIL has been the only insurance legislators’ organization that educates our colleagues and writes insurance model laws and I am proud of the part I played to continue that.”

“I am excited to assume the NCOIL Presidency and look forward to continuing to increase state legislator participation around the nation. Our organization has been a leader in educating policymakers to make informed insurance policy decisions that protect consumers and ensure a vibrant insurance marketplace in every state” said Sen. Rapert. “Rep. Riggs has done an outstanding job as President and I look forward to his counsel as Immediate Past President.”

Rep. Riggs made a recommendation to the Arti

cles of Organization and Bylaws Committee to replace “Conference” with “Council” believing it more accurately reflected the 50 member states of NCOIL. It passed unanimously, with a number of members noting that the organization will still commonly be known as NCOIL.

“NCOIL continues to educate legislators and policymakers about emerging and continual insurance matters to increasing numbers of legislators and participants” said Commissioner Tom Considine, NCOIL CEO. “The leadership has been encouraging in ensuring policy matters are handled in a timely fashion so we can discuss the ever changing insurance policy environment.”

Congressman David Schweikert delivered a fascinating keynote address about tax and regulatory reform efforts. As a member of the Ways & Means Committee, he has been an instrumental player in these efforts. He also discussed his efforts with the Blockchain Caucus to protect data so all aspects of it can be electronic and portable.

The Financial Services Committee re-adopted the Credit Default Insurance Model Legislation; adopted a Model Act to Support State Regulation of Insurance by Requiring Competition Among Insurance Rating Agencies; adopted a Model Act Prohibiting Consumer Reporting Agencies from Charging Fees Related to Security Freezes; amended the NCOIL Credit Report Protection for Minors Model Act; and adopted a Resolution Encouraging the Adoption of Voluntary Data Call Principles.

The Joint State-Federal Relations and International Insurance Issues Committee re-adopted the Exhaustion of Administrative Remedies Model Legislation and Producer Compensation Disclosure Model Amendment to the Producer Licensing Model Act.

The Health, Long-Term Care & Health Retirement

Con’d on Page 3



Rep. Bill Botzow
Vice President



Rep. Matt Lehman, IN
Treasurer



Asm. Ken Cooley, CA
Secretary



Rep. Steve Riggs, KY
Immediate Past President



Sen. Travis Holdman, IN
Immediate Past President

SEN. RAPERT ASSUMES NCOIL PRESIDENCY

The National Council of Insurance Legislators (NCOIL) Nominating Committee selected Arkansas Senator Jason Rapert to serve as President during the Annual Meeting held in Phoenix, AZ from November 16th – 19th. The report of the Nominating Committee was affirmed by the Executive Committee.

“I am excited to assume the NCOIL Presidency and look forward to continuing to increase state legislator participation around the nation. Our organization has been a leader in educating policymakers to make informed insurance policy decisions that protect consumers and ensure a vibrant insurance mar-

ketplace in every state” Senator Rapert said.

“Rep. Riggs has done an outstanding job as President and I look forward to his counsel as Immediate Past President.”

Senator Rapert has had a successful career in the financial services and insurance industry, has been a member of NCOIL since November of 2011, chairs the Arkansas Senate Insurance & Commerce Committee, serves on the IIPRC and was recently named co-Legislator of the year by the National Association of Mutual Insurance Companies. He assumes the Presidency after serving in all the NCOIL officer steps beginning in 2015 – Treasurer, Secretary and Vice-President.

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NCOIL PRESIDENT SEN. JASON RAPERT APPLAUDS 18 MONTH DELAY IN DEPARTMENT OF LABOR FIDUCIARY RULE

AR Sen. Jason Rapert, NCOIL President, reacted to the news that the Department of Labor has proposed an 18-month delay in the implementation of the Fiduciary Rule that harms consumers and infringes on states regulation of insurance.

“I first raised this issue at NCOIL more than a year ago. The Fiduciary Rule would harm the very people it purports to help. State based regulation of insurance has served consumers and companies well for 75 years and this unnecessary and I am proud that the Labor Department is delaying the implementation to revisit the rule.”

“NCOIL legislators rightfully guard their legislative prerogative to regulate insurance” said Commissioner Considine, NCOIL CEO. “Sen. Rapert has led on this issue for nearly two years to protect state based regulation of insurance.”

At the 2016 NCOIL Summer Meeting, the NCOIL Life Insurance & Financial Planning Committee adopted a Resolution in Opposition to the United States Department of Labor (DOL) Fiduciary Rule. At that time, Commissioner Considine wrote the DOL urging them to incorporate language that recognized state based regulation of insurance, but no action was taken. The resolution was affirmed by the Executive Committee at the 2016 Annual Meeting.

“Of course, I believe delay is not the ultimate answer and, consistent with the NCOIL Resolution we passed last year, the DOL should repeal the Rule,” concluded Rapert.

NCOIL EXPRESSES RENEWED CONCERNS ABOUT ALI RESTATEMENT OF THE LAW OF LIABILITY INSURANCE

Following a General Session at the 2017 NCOIL Annual Meeting titled ‘A Restatement or NEWstatement? Examining the ALI’s Proposed Restatement of the Law of Liability Insurance’ with a panel consisting of the proposed Restatement’s Reporter Professor Tom Baker, and project participants Professor Peter Kochenburger, Laura Foggan, and Victor Schwartz, NCOIL expressed renewed concern that the proposed Restatement will proceed towards final adoption by the ALI Council without any meaningful changes.

During the session, Professor Baker provided background on the proposed Restatement and the ALI in general, and stated that every rule of insurance law adopted in the proposed Restatement is grounded in existing case law. However, Laura Foggan *Con'd on Page 5.*

NCOIL ANNUAL MEETING Con'd

Issues Committee adopted the NCOIL Out-of-Network Balance Billing Transparency Model Act and the Model Act Regarding Air Ambulance Insurance Claims

Other highlights of the NCOIL Annual Meeting included:

- An overview of the NAIC accreditation process by NAIC General Counsel Kay Noonan
- Recap of the 2017 NCOIL DC Education Fly-In
- Resolutions honoring the lives of the late NH Rep. Don Flanders and AR Sen. Greg Standridge
- General Session titled “A Restatement or NEWstatement? – Examining the ALI’s Proposed Restatement of the Law on Liability Insurance”
- General Session on the risks facing the long term care insurance industry
- General Session examining cybersecurity in the wake of the Equifax breach
- The Life Insurance and Financial Planning Committee examined innovative trends shaping the life insurance industry; received an update about Interstate Insurance Product Regulation Commission (IIPRC) developments; and discussed the recently promulgated New York regulations concerning notification requirements before an adverse change in non-guaranteed elements of existing policies.
- The Property & Casualty Insurance Committee discussed adoption of a Model Towing Act and amendments to the NCOIL Model State Uniform Building Code. The committee will continue discussion on those topics at the NCOIL Spring Meeting. The committee also discussed flood insurance market developments including the impact of the recent hurricanes on insurers and policyholders.
- The Joint State-Federal Relations and International Insurance Issues Committee discussed the road ahead for the U.S. insurance system in light of the Covered Agreement; the future of SIFI designations; Federal insurance fraud prevention efforts; and Congressman Sean Duffy’s legislation (H.R. 3762, H.R. 3746, H.R. 3861) that aims to reassert the state based system of insurance regulation.
- The NCOIL – NAIC Dialogue discussed the NAIC Insurance Data Security Model Law; the NAIC & Stanford University Cybersecurity Forum; NAIC group capital calculation activities; NAIC InsureU Usage Based Insurance (UBI) activities; President Trump’s Healthcare Executive Order; and the cancellation of Cost Sharing Reduction (CSR) payments.
- The Workers’ Compensation Insurance Committee discussed the impact of direct dispense programs on state workers’ compensation systems, and the prevalence of compound medications in the workers’ compensation insurance industry.
- The Health, Long-Term Care and Health Retirement Issues Committee discussed President Trump’s Executive Order on healthcare and what its impact on State healthcare markets will be. Additionally, the Committee passed two significant new reform bills: a Model Act Regarding Air Ambulance Insurance Claims, and an Out-of-Network Balance Billing Transparency Model Act
- Uber hosted autonomous car rides in Scottsdale for legislators and other participants. More than 40 people participated in the 20 minute ride around the streets of Scottsdale in an autonomous vehicle.
- Arizona Representative David Livingston hosted a state capitol tour for 19 legislators and attendees.

The 2018 NCOIL Spring Meeting will be held in Atlanta, GA from March 2nd-4th at the Whitley in Buckhead. Registration and sponsorship information will be available at ncoil.org in December.



SENATOR RAPERT Con'd

As an officer he has chaired the Audit Committee, the Budget Committee and the NCOIL – NAIC Dialogue.

“I look forward to working with Sen. Rapert as he assumes the NCOIL presidency” said Rep. Riggs. “During my term I worked diligently to formalize a recruitment process that has proven to be successful in increasing participation among insurance legislators and new states.”

Among Rapert’s priorities for the upcoming year include:

- Continue to work to ensure that the state based regulation of insurance continues and work to stave of international encroachment.
- Work with the Department of Labor as they delay the implementation of the Fiduciary Rule to ensure it is better for the states and consumers.
- Continue to engage with states and legislators that do not actively participate with NCOIL.
- Ensure NCOIL continues to educate legislators on emerging and longstanding insurance issues and serve as the only insurance legislative organization that enacts model laws in a timely fashion so they can be considered in state legislatures.

“NCOIL leadership continues to be geographically and politically diverse” said Commissioner Tom Considine, NCOIL CEO. “Bipartisan and bicameral perspectives create better models and resolutions. Sen. Rapert’s drive and enthusiasm will continue to move NCOIL forward, and I look forward to working closely with him in his new role.”

Vermont Rep. Bill Botzow will serve as Vice-President, Indiana Rep. Matt Lehman will remain as Treasurer and California Assemblyman Kenneth Cooley was elected to serve as Secretary. Kentucky Rep. Steve Riggs and Indiana Sen. Travis Holdman will serve as Immediate Past Presidents.

NCOIL ADOPTS MODEL ACT ON OUT-OF-NETWORK BALANCE BILLING TRANSPARENCY

The NCOIL Health, Long-Term Care and Health Retirement Issues Committee voted to adopt the Out-of-Network Balance Billing Transparency Model Act sponsored by NY Senator James Seward. The measure was affirmed by the NCOIL Executive Committee at the conclusion of the 2017 Annual Meeting in Phoenix, AZ.

“This has been a long and complicated path to come to this point of completion. We worked diligently, listening to all interested parties to fashion a model act that is balanced, transparent and fair” said Sen. Seward. “Improving disclosure and the independent dispute resolution process works to the benefit of both the consumer and industry.”

The purpose of the act is to protect consumers from unexpected medical bills that result from their receiving care from out-of-network providers. Improved disclosures by health benefit

plans, providers, and facilities, and a procedure for appealing out-of-network referral denials, as well as an alternative, independent dispute resolution process, will help consumers better navigate the insurance complex insurance world and reduce the incidence of costly, surprise bills.

“NCOIL legislators and interested parties know that we are serious about moving diligently to complete model laws for consideration by the states” said Commissioner Tom Considine, NCOIL CEO. “Even complicated models can advance by continuing the dialogue between meetings. I applaud Sen. Seward for his leadership in completing this legislation, which truly is a model for the nation in every sense of the word. The baseball style arbitration provision of ADR really is innovative, and should be a significant game changer.”

AN IEC VIEW OF THE ALI'S PROPOSED RESTATEMENT OF THE LAW, LIABILITY INSURANCE

By the National Association of Mutual Insurance Companies and the American Insurance Association

As announced in issue 9 of the NCOIL Newsletter, a general session of the 2017 NCOIL Annual Meeting featured a robust discussion about the merits of the American Law Institute’s (ALI) proposed Restatement of the Law, Liability Insurance. You may recall, in May 2017 NCOIL sent a letter to the ALI expressing serious concerns with the proposed Restatement, specifically noting multiple instances where the proposed Restatement rewrites the law, rather

Con'd on Page 6.

ALI RESTATEMENT OF THE LAW OF LIABILITY INSURANCE Con'd

cited several instances where the proposed Restatement conflicts directly with existing State statutory law.

After the discussions during the general session made it clear that there are unlikely to be any meaningful changes to the proposed Restatement, NCOIL Past Presidents NY Sen. Neil Breslin and NY Sen. James Seward introduced a Resolution “Encouraging the American Law Institute to Materially Change the Proposed Restatement of the Law of Liability Insurance”, during the Property & Casualty Insurance Committee and asked that, if adopted, the Executive Committee table the Resolution’s final adoption so NCOIL could send its concerns by way of a letter to the ALI, enclosing a copy of the Resolution. The Property & Casualty Insurance Committee adopted the Resolution without objection.

“It is disappointing that there has been little movement to make this a true ‘restatement’ of existing majority law” said NCOIL CEO Commissioner Tom Considine. “NCOIL legislators made clear during both the general session and the Property & Casualty Insurance Committee that they closely guard legislative prerogatives as their right. The letter cites more than 10 instances where the proposed Restatement goes beyond existing law. As the letter and Resolution note, if changes are not made to the proposed Statement, NCOIL will take action to ensure that the proposed Restatement is not afforded recognition as an authoritative reference.”

From the letter to the ALI:

Should there not be meaningful change in the proposed Restatement, NCOIL will be forced to oppose the proposed Restatement project as a misrepresentation of the law of liability insurance, and as a usurpation of lawmaking authority from State insurance legislators. Shortly, NCOIL's Executive Committee will be determining what action to take in relation to the Property-Casualty Insurance Committee Resolution enclosed, including the role NCOIL will take alerting State Chief Justices, State legislative leaders and members of the committees with jurisdiction over insurance public policy, as well as State insurance regulators, about NCOIL's concern that the Restatement is, in numerous places, a misstatement of the law, and does not afford proper respect to the expertise and jurisdiction of State insurance legislators and should not be afforded recognition as an authoritative reference.

From the Resolution:

WHEREAS, such Restatements, in the ALI’s own words, are “primarily addressed to courts” and “aim at clear formulations of common law and its statutory elements of variations and reflect the law as it presently stands or might appropriately be stated by a court” (ALI Style Guide, 2015); and

WHEREAS, NCOIL members became aware of this proposed Restatement in the spring of 2017 and upon review of the draft, identified several areas which, contrary to the above-stated intent, are inconsistent with well-established law and purport to address matters which are properly within the legislative prerogative; and

WHEREAS, NCOIL, through its Chief Executive Officer, Thomas B. Considine, addressed a letter dated May 4, 2017 (“the Considine letter”), to ALI leadership in an effort to identify particular concerns and effect reconsideration of and significant changes to the proposed Restatement; and

WHEREAS, NCOIL members were encouraged to learn that, after receipt of the Considine letter, ALI leadership made the decision to defer a final vote on the proposed Restatement until 2018, with the recognition that the Restatement would benefit from another year of work; and

WHEREAS, the subsequent drafts of the proposed Restatement have reflected only very minor changes to the insurance legal rules proposed and have no substantive changes in the rules proposed on the topics of particular concern identified in the Considine letter;

IEC Re: ALI's Proposed Restatement Con'd



IN MEMORIAM

AR Sen. Greg Standridge 1967 - 2017

Arkansas State Senator Greg Standridge was an active member of the National Council of Insurance Legislators serving as a member of the Executive Committee and Workers Compensation Committee. He was elected in 2015 to fill a vacancy in the Arkansas State Senate District 16 which includes Newton and Pope counties and parts of Boone, Carroll and Van Buren counties.

In addition to his efforts at NCOIL, Greg served as Russellville's constable, the volunteer chief of the Crow Mountain Fire Department, a Pope County emergency medical services rescue technician and he was a former president of the Independent Insurance Agents of Arkansas and Professional Insurance Agents of Arkansas.

Greg passed on November 16, 2017 after a long battle with cancer.

than simply reiterating the law according to existing precedents. Following the May NCOIL letter, ALI delayed its vote on the Restatement and committed to engaging with NCOIL. Unfortunately, since that time, very little engagement has taken place.

For this reason, NCOIL invited ALI's lead reporter, Tom Baker, to address the group at a general session of the 2017 NCOIL Annual Meeting. During the general session discussion, it became apparent that the ALI Reporters continue to adhere to the same approach that prompted NCOIL's earlier concerns. The Reporters remain committed to advancing new law, rather than deferring to legislative bodies better suited for policymaking, thereby impinging on the legislative prerogative. Moreover, the authors have made no effort to make any changes in the Restatement's proposed black-letter rules on the topics highlighted in the May NCOIL letter, or other sections of concern, even as the project nears completion. For instance, the proposed Restatement would replace the well-settled plain meaning rule for insurance contract interpretation and instead allow an insurance agreement's plain meaning to be challenged through introduction of extrinsic evidence. It would alter standards for rescission of a contract due to a material misrepresentation and require proof that a policy would not have been issued except

on substantially different terms. And it would impose one-way fee-shifting of litigation costs in a dispute between an insurer and insured in many settings where legislatures have not imposed that penalty, departing from the well-established American Rule that each party bears its own litigation costs.

Appropriately protective of state legislators' responsibility to enact laws, NCOIL's Property-Casualty Insurance Committee unanimously adopted a resolution outlining the areas where state law is misrepresented by the Restatement and how these misstatements undermine the existing laws that are the rightful creation of NCOIL members. On Tuesday, November 28th, the NCOIL Executive Committee sent a letter to ALI further detailing its unaddressed concerns about the Restatement and the dangers its adoption poses, as reflected in the resolution.

It is now critical that legislators understand the threat that the proposed Restatement of the Law, Liability Insurance poses to the legislative and regulatory landscape in their states, and to act to preclude this usurpation of legislators' proper authority to make law.

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Senior Vice President & General Counsel
American Insurance Association (AIA)*

*Tom Karol
General Counsel
National Association of Mutual Insurance Companies (NAMIC)*



Sen. Jason Rapert, AR



Rep. Matt Lehman, IN



Cmsr. John Doak; Rep. Steve Riggs, KY



Rep. Marguerite Quinn, PA



Buddy Combs; Kelly Dexter;
Cmsr. John Doak; Tyler Laughlin



Cmsr. Tom Considine



Rep. Bill Botzow, VT