

To: Members, NCOIL Business Planning and Executive Committee

From: Assemblyman Ken Cooley, California

Date: July 14, 2018

Re: Recommended Amendments to “*Model Act to Support State Regulation of Insurance Through More Informed Policymaking*”

As I have engaged in my ongoing due diligence, I feel I am at a stage to counsel a series of very specific and narrowly tailored amendments to my draft model. They are intended to advance its objectives of strengthening state legislative capacity and thereby uphold our responsibility to provide checks and balances within and among our varied state’s governing institutions, which necessarily includes NAIC decisional processes.

I would like to propose the addition of these amendments in the draft model for distribution in advance of the Annual Meeting and formal adoption at that meeting.

### **Specific Amendments Proposed for Incorporation in the Model**

1. **Written Report:** The model (Section 2 (a), (b), (c) and (d)) requires each state Insurance Department to provide training for the Legislature on the NAIC accreditation process and recent NAIC updates to accreditation policies and laws, and detailed information which explains how this program relies upon delegation of authority to the NAIC, including statutory citations from the state’s law that tie into NAIC accreditation standards or incorporate NAIC policy by reference. If provisions in state law exist which will enable future NAIC policy changes to be incorporated in the state’s statutes without any further state law prior approval by the Legislature, such provisions should be especially standalone format which highlights such future delegation authority.

The proposed amendment will specify that the insurance department shall put in writing the information in Section 2 (a) through (d) and share the information with any updates yearly or once during each biennium session every with the relevant policy committees.

2. **Written Advocacy Disclosure:** The model at present does not take note of the highly structured and standardized Committee working group structure of the NAIC which is where ideas are debated which rely for their implementation in each state upon positive legislative action or pre-existing legislative delegation to the NAIC.

The proposed amendment will add a requirement that a state’s insurance department report in writing annually or once for each legislative biennium on the nature of its NAIC participation, including such matters as the number of staff attending each NAIC meeting,

the key policy issues relevant to the citizens of their state they are participating in the development of and what the state insurance department is specifically advocating on those topics of home state interest.

3. **Publicly Available Web Access to above:** The proposed amendments will include a requirement that the information set out in the above-two points be made available online on at a publicly-accessible website.
4. **NAIC Training in Writing and Accessible Online:** With respect to the draft model's Section 2(f) NAIC education option, the amendments will require that in the event the NAIC opts to conduct this training for lawmakers (which it may so as to ensure consistency in the NAIC/statutory delegation narrative) that, consistent with amendment 1 above, the information be provided in writing and all this writing be made available in a public portion of the NAIC website.
5. **NAIC Lawmaker Forum an Accountable Public Meeting:** It is also proposed a specific requirement be added that in order to support the public accountability objects of the model, the NAIC legislator educational and training forum be conducted in an "open to the public" format.
6. **Consider adding Training Content to Existing NAIC "IDRR Resources" Report:** The NAIC already publishes and updates a periodic report on the status of Insurance regulation in the various states entitled "Insurance Department Resources Report.

The current NAIC IDRR Report is at : [https://www.naic.org/prod\\_serv/STA-BB-16-01.pdf](https://www.naic.org/prod_serv/STA-BB-16-01.pdf)

#### 7. **Proposed Drafting Notes to Accompany Model:**

- a) **Drafting Note on Funding for NAIC Travel Costs:** Add a drafting note to acknowledge any state may opt to revise the portion of the draft which pertains to whether the State Insurance Department funds the legislator participation in an NAIC-based training (Section 2(f)) or if the Legislature wishes to appropriate funds directly from the General Fund or another fund.
- b) **Drafting Note on Funding for NCOIL Costs:** Add a similar drafting note with respect to funding legislator participation in NCOIL (Which Section 2(g) specifies as being sourced from the Insurance Department) from the state's General Fund or other fund if this is the Legislature's preference.

Regarding these funding issues generally, I understand it may be argued there is a separation of powers issue in mandating the executive branch cover the cost of a legislator's participation. I would argue this issue should be evaluated through the lens that this is a special class of interaction because the Executive branch's NAIC "accreditation-dependent" insurance department relies on the Legislature exercise of its positive power to pass laws or its delegated authority implicit in existing laws.

Accordingly, the insurance department's necessary reliance – for accreditation purposes - upon past, present and future legislative openness to the continuation of this delegated authority warrants making sure the present body of lawmakers understand how the status quo is a class of delegated authority they should be informed on and which they are satisfied upholds the interests of their state's citizenry. On this basis I feel there is a mutuality of interest present in this insurance fact pattern that makes the "separation of powers issue" of lesser significance.