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National Council of Insurance Legislators (NCOIL)

Model Act to Support State Regulation of Insurance Through More Informed Policymaking

To be considered by the NCOIL Executive Committee on December 8th, 2018
**Sponsored by Asm. Ken Cooley, CA*

Preamble:

The purpose of this Law is to secure more informed legislative oversight of the insurance industry. Under the McCarran-Ferguson Act, 10 U.S.C. § 1011, primary responsibility for setting insurance regulatory policy rests with the States. In order to regulate a large, sophisticated industry in interstate commerce, the States must work together to, among other things, develop model insurance legislation. Most such model laws, however, are written not by legislators but rather by executive branch officials, through the National Association of Insurance Commissioners (NAIC).

State insurance commissioners act at NAIC in large part operating under a delegation of authority from the states' legislative branch, but without oversight of state legislators. Although technically NAIC models must be passed in the States, in reality, the most important models are mandated under the NAIC accreditation system.

NAIC, a fully funded 501(c)(3), generates almost all of its approximately \$100 million budget from funds generated through its members' status as government regulators. Today that funding base has diversified to include assessments of licensees mandated to use NAIC's services by insurance commissioners, but a key original funding source that allowed NAIC to grow to where it is today was NAIC bylaws-required assessments of member States.

Due to the fact that State legislators must be educated about the complexities of insurance public policy, and be kept abreast of developments and trends in insurance markets and regulation in order to be able to work together as lawmakers to draft appropriate national model legislation, State Legislators specializing in insurance-related issues organized the National Council of Insurance Legislators (NCOIL) in 1969. State insurance budgets should ensure that both NAIC and the NCOIL are properly supported to ensure the purposes set forth in this Preamble.

Section 1. Purpose

The purpose of this Act is to ensure that NAIC and NCOIL are properly supported to ensure that insurance public policymakers are kept informed concerning issues which are dependent upon legislative authority for their positive resolution and which are being debated by state regulators. This Act will further amend a State's insurance code provision establishing the powers and duties of the office of Insurance Commissioner to require that State Insurance Commissioner shall make a presentation, or coordinate with the NAIC for such a presentation to be made, which can inform Members of key policy and fiscal oversight committees, at least every other year, on the status and activities of the National Association of Insurance Commissioners and the role therein of legislative delegation and incorporation by reference of existing or future NAIC policy adoptions. Finally, to support the informed exercise of legislative delegation in the field of insurance regulation, this measure will require the insurance commissioner to support more informed participation by key policy and budget legislators in the NCOIL and NAIC process.

Section 2. Insurance Department and Legislative Participation in NAIC & NCOIL

(a) The State Insurance Commissioner, (during even numbered years or the first year of each legislative biennium) shall appear before each insurance committee of this state, and as optionally determined by the Committee on Rules of each House, each budget committee, to provide a presentation on the National Association of Insurance Commissioners accreditation process. The presentation shall provide an overview of the role of the delegation of legislative authority for policy development which enables the NAIC accreditation process to function.

(b) This presentation shall provide an explanation, including citations to the relevant sections of state law which reflect NAIC accreditation standards or incorporation of existing NAIC rules, standards and processes by reference.

(c) Provisions of state law which can operate to authorize future NAIC changes to be operative in this state without additional authorization by the Legislature shall be identified in a standalone format which highlights the future delegation authority as it appears in existing law or regulation of this state.

(d) The presentation shall further provide an overview of the minimum NAIC accreditation standards pertaining to 1), Laws & Regulations, (2), Regulatory Practices & Procedures, and 3), Organizational & Personnel Practices. The Commissioner shall provide an overview of the specific laws and regulations which the accreditation standard specifies, the intended purpose of each, when they were adopted by the NAIC and in this state, and any changes to any of these standards since the last briefing provided to the Legislature pursuant to this provision.

(e) This presentation may be done at a hearing that is held jointly with the relevant House and Senate standing committees and budget committees.

(f) The Insurance Department shall put in writing the information which is required to be provided or presented in accordance with subdivisions (a), (b), (c), (d), and (e), and will share that information along with any updates either yearly or once during each biennium session with relevant policy committees.

(g) In lieu of the presentation specified in Subdivisions (a), (b), (c), (d) and (e) above, the Insurance Department may coordinate with the National Association of Insurance Commissioners to conduct a similar training session during any NAIC National Meeting in which case the Department of Insurance shall provide from its general operating funds necessary expenses for registration and reimbursement for reasonable food, travel and lodging during the National meeting for no more than two policy committee members from each house and one budget committee member.

***Drafting Note:** States may opt to revise Section 2(g) pertaining to whether the source of funding for legislator participation at an NAIC National Meeting is sourced from the State Insurance Department or from the State's General fund or other fund.*

(h) In the event that the NAIC opts to conduct training for lawmakers, the following conditions must be met:

(i) the information provided in association with the training must be provided in writing.

(ii) the training must be held in a forum that is open to the public.

(i) The Insurance Department shall 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 NAIC meetings, the key policy issues of interest to the state that staff are participating in the development of, and what the state Insurance Department is specifically advocating on those topics of state interest.

(j) Information provided in accordance with subdivisions (f), (h), and (i) of this section shall be made available online via a publicly accessible website.

(k) The Department of Insurance shall annually from its general operating funds provide funding for the state's membership in, and reasonable food, travel and lodging sufficient to provide for the chairmen and ranking members of the House and Senate insurance committees of jurisdiction, and the budget committees, to fully participate in the National Council of Insurance Legislators.

***Drafting Note:** States may wish to revise Section 2(k) pertaining to whether the source of funding for legislator participation in NCOIL is sourced from the State Department of Insurance or from the State's General fund or other fund.*

Section 3. Effective Date

This Act shall take effect _____