



**Inside this issue :**

IEC Article	P.1
Insurance Careers Month	P.1
Special Cmte—National Disaster Recovery	P.2
30 –Day Materials	P.3
Capitol Corner	P.3
Nashville Schedule	P.4

visit [Ncoil.org](http://Ncoil.org) for more news



Sen. Dan “Blade” Morrish, LA  
President



Thomas B. Considine  
NCOIL CEO



Rep. Matt Lehman, IN  
Vice President

## Capital

**o** By Will Melofchik

**r** Greetings -

**e** Welcome to the latest installment of Capital Corner, a column that aims to update you on some of the issues currently on NCOIL’s radar. Below are three issues that NCOIL will be devoting significant time and attention to throughout 2019 with an eye towards perhaps developing Model legislation for states to consider.

### Insurance Business Transfer Laws Continue to Garner National Attention

As insurers face challenges when deciding how to best change business mix or shed lines of business or legacy books, one method of doing so has been consistently growing in popularity: insurance business transfer (IBT) laws. IBT laws essentially allow an insurer to transfer legal liability of some or all of its business underwritten to another insurer.

IBT laws are modeled after the UK’s successful “Part VII” transfers, authorized under the UK Financial Services and Markets Act 2000 and an increasing number of states are adopting such laws, or ones that are similar. Those states, among others, include Connecticut, Oklahoma,, Rhode Island, Vermont, Illinois, and most recently Michigan. Additionally, the Georgia and Iowa

*Con’d on Page 2.*

## NCOIL HIGHLIGHTS FEBRUARY AS INSURANCE CAREERS MONTH

The National Council of Insurance Legislators (NCOIL) highlights February as the 4th annual Insurance Careers Month. With more than 850 partners, the Insurance Careers Movement works to engage the next generation for careers in insurance.

“As insurance policy makers, we are always looking to make sure those entering the workforce are aware of opportunities in the insurance industry” said LA Sen. Dan “Blade” Morrish, NCOIL President. “I know personally, I want the best and brightest young people in Louisiana to enter the insurance industry.”

More information about the Insurance Careers Movement can be viewed here:

<http://insurancecareerstrifecta.org/>

“It is critical that young people consider the insurance industry as a career” said Commissioner Tom Considine, NCOIL CEO. “I know as a young professional with a few years of private practice after law school, my career trajectory positively shifted after I accepted a position at MetLife where I stayed for 18 years only to leave to be the Insurance Commissioner in New Jersey.”



Asm. Ken Cooley, CA  
Treasurer



Asm. Kevin Cahill, NY  
Secretary



Sen. Jason Rapert, AR  
Immediate Past President



Sen. Travis Holdman, IN  
Immediate Past President

## Capitol Corner Con'd

legislatures passed IBT laws, but they were ultimately vetoed by Governors Nathan Deal and Kim Reynolds, respectively.

Sensing that IBT laws were gaining traction in state legislatures, at the recent NCOIL Annual Meeting in Oklahoma City, the Joint State-Federal Relations & International Insurance Issues Committee (Committee) held an educational session on IBT laws with an eye towards possibly developing an NCOIL IBT Model Law for states to adopt and use as guidance in developing their own IBT Laws.

The Committee heard from Luann Petrellis, Managing Director – PricewaterhouseCoopers, LLP; Buddy Combs, Oklahoma Deputy Cmsr. of IBTs; and Adam Kerns, VP – State Relations, of the Reinsurance Assn of America (RAA). Each speaker offered his/her perspectives on IBTs and whether model IBT legislation is something NCOIL should pursue.

Mr. Combs' perspective was particularly interesting as he was directly involved in helping pass the Oklahoma IBT Law that was signed into law by Governor Mary Fallin on May 7, 2018, with a November 1, 2018 effective date. The OK IBT law allows for any U.S. or alien insurer to transfer and novate a book of business to an OK-domiciled insurer. The OK IBT law also applies to all lines of insurance business and applies to both active and run-off books of business.

To bring about an IBT under the OK IBT law, the transferring insurer first files an IBT Plan with the Insurance Commissioner which must include, among other things, an opinion from an independent expert, which itself must include, among other things, the expert's opinion of the likely effects of the IBT plan on policyholders and claimants. The Commissioner then has 60 days to review the IBT plan and if approved, the transferring insurer must then apply to the District Court for approval. Within 15 days after a hearing is scheduled, the transferring insurer must provide notice to policyholders, among others, notifying them the date and time of the hearing and that they may comment on or object to the transfer and novation. However, under the OK IBT law, policyholders "shall not have the opportunity to opt out of or otherwise reject the transfer and novation."

Interestingly, Connecticut, Illinois, and Michigan have enacted restructuring laws that are similar to IBT laws, termed "division" laws. Division laws allow domestic insurance companies to divide into two or more insurance companies – effectively a "de-merger" – resulting in the assets and liabilities of the dividing insurers, including insurance policies and reinsurance agreements, being allocated and becoming the assets and liabilities of the two or more resulting insurers by operation of law.

At the upcoming NCOIL Spring Meeting in Nashville, Tennessee, the first draft of an NCOIL IBT Model Law will be discussed – sponsored by Asm. Andrew Garbarino (NY) and Rep. Lewis Moore (OK) – which is largely based on the OK IBT law. The Committee will hear from a great panel consisting of: The Hon. Beth Dwyer, Supt. of Insurance for the RI Dep't of Business Regulation; Buddy Combs, OK Deputy Cmsr. of IBTs; Doug Wheeler, Senior VP – Gov't Affairs, NY Life; Amy Lazzaro, VP – Regulatory Affairs, Cigna State Gov't Affairs; Robert Redpath, Senior VP & U.S. Legal Dir., Enstar; and Karen Melchart, Regional VP – State Relations, ACLI.

Notably, the National Association of Insurance Commissioners (NAIC) has also expressed an interest in IBT laws, and its Financial Condition Committee recently voted to form a Restructuring Mechanisms Working Group and a Restructuring Mechanisms Subgroup (groups with very similar names but different charges) to conduct a deep-dive into current IBT laws and surrounding issues. The specific charges for the Working Group and Subgroup can be found here: [https://www.naic.org/cmte\\_e\\_res\\_mech\\_wg.htm](https://www.naic.org/cmte_e_res_mech_wg.htm); and here: [https://www.naic.org/cmte\\_e\\_res\\_mech\\_sg.htm](https://www.naic.org/cmte_e_res_mech_sg.htm)

To view the first draft of the NCOIL IBT Model Law please click here: <http://ncoil.org/wp-content/uploads/2019/02/IBT-Model-Law-Draft.pdf>. What do you think of the first draft? Should the draft follow another state's IBT law as the starting point rather than Oklahoma's? Should the draft instead take the form of a "division" law like Connecticut's or Michigan's?

When discussing IBT laws, one of the main issues to consider is whether policyholders are adequately protected. After all, novation is not something to take lightly, particularly when it can occur over a policyholder's objection. For instance, policyholders and *Con'd on Page 5.*

## NCOIL RELEASES 2019 SPRING MEETING 30 DAY MATERIALS

The National Council of Insurance Legislators (NCOIL) released the 30-day material for the 2019 Spring Meeting in Nashville, TN from March 14 -17.

“At the first NCOIL meeting of 2019, there is much to for legislators, regulators and participants to consider and learn” said Commissioner Tom Considine, NCOIL CEO. “This meeting will set the table for much of what will be discussed and debated this year.”

Among the highlights for the Spring Meeting are:

- The first meeting of the Special Committee on Natural Disaster Recovery including discussion on proposed amendments to NCOIL State Flood Disaster Mitigation and Relief Model Act
- General Session titled “Assignment of Benefits (AOB) Abuse: Beware When Signing on the Dotted Line”
- Continued discussion on the Development of NCOIL Insurance Business Transfer (IBT) Model Law
- Discussion on Pharmaceutical Value-Based Contracting;
- Discussion on Impact of Blockchain in the Insurance and Financial Services Industries
- Consideration of a resolution in Support of Good Samaritans’ Efforts to Prevent Loss of Life Due to Opioid Overdose
- Marijuana in the Workplace: What do States Need to Know as the Legalization of Marijuana Increases?
- Discussion on Development of Model Legislation in Response to American Law Institute’s Restatement of Law of Liability Insurance

At the 30-day mark, there are more than 200 registered attendees, including more than 30 legislators, and 5 insurance commissioners. Those numbers will increase as the meeting draws closer.

The full agenda can be viewed here: <http://ncoil.org/wp-content/uploads/2019/02/Nashville-30-day.pdf>

## NCOIL ANNOUNCES FORMATION OF SPECIAL COMMITTEE ON NATURAL DISASTER RECOVERY

LA Senator Dan “Blade” Morrish, NCOIL President announced the formation of a Special Committee on Natural Disaster Recovery to examine how states deal with recovery from natural disasters. The aim of the committee is to create best practices, so each state is not creating a new model every time it suffers from a natural disaster.

The first order of substantive business that the Committee will consider is the re-authorization of, and amendments to, the existing NCOIL State Flood Disaster and Mitigation Relief Model Act. The amendments currently offered for consideration are based on Florida Statute 627.715, enacted in 2014, that aim to encourage a robust private flood insurance market to provide consumer choices to the existing National Flood Insurance Program (NFIP).

Closing the insurance gap in this country is vital to ensuring that states can properly and efficiently recover from a natural disaster, and NCOIL believes that expanding access to the private flood insurance market can be a large step towards closing said gap. The difference between what is insurable and what is currently insured is simply too large.

The existing Model and proposed amendments can be viewed on the NCOIL website [here](#)

“NCOIL had a similar group that met over 10 years ago, and I believe that now is an opportune time for NCOIL to again focus on these issues due to the new issues that states have confronted when responding to the natural disasters that have occurred throughout the country since then, such as the recent California wildfires” said Morrish.

## NCOIL 2019 Spring Meeting Tentative Schedule

### THURSDAY MARCH 14TH

CIP Member & Sponsor Reception 6:30 PM - 7:30 PM

### FRIDAY MARCH 15TH

Welcome Breakfast 8:15 AM - 9:30 AM  
 Networking Break 9:30 AM - 9:45 AM  
 General Session 9:45 AM - 11:15 AM  
 Joint State-Federal Relations & International Insurance Issues Committee 11:15AM - 12:15 PM  
 The Institutes Griffith Foundation Legislator Luncheon 12:15 PM - 1:15 PM  
 Health Insurance and Long Term Care Issues Committee 1:15 PM - 3:00 PM  
 Networking Break 3:00 PM - 3:15 PM  
 Financial Services Committee 3:15 PM - 4:15 PM  
 NCOIL- NAIC Dialogue 4:15 PM - 5:15 PM  
 Special Committee on Natural Disaster Recovery 5:15 PM - 6:15 PM  
 Welcome Reception 6:15 PM - 7:15 PM

### SATURDAY MARCH 16TH

IEC Board Meeting 8:15 AM - 9:00 AM  
 Life Insurance & Financial Planning Committee 9:00 AM - 10:00 AM  
 Networking Break 10:00 AM - 10:15 AM  
 General Session 10:15 AM - 11:30 AM  
 Legislative Micro Meetings 11:30 AM - 12:00 PM  
 Luncheon with Keynote Address 12:00 PM - 1:30 PM  
 Workers' Compensation Insurance Committee 1:30 PM - 2:30 PM  
 Articles of Organization & Bylaws Revision Committee 2:30 PM - 2:50 PM

### SUNDAY MARCH 17TH

Property & Casualty Insurance Committee 9:00 AM - 10:45 AM  
 Networking Break 10:45 AM - 11:00 AM  
 Business Planning & Executive Committee 11:00 AM - 12:00 PM



★ SPRING MEETING ★

2019

CELEBRATING OUR 50<sup>TH</sup> YEAR  
NASHVILLE ★ TENNESSEE

# REGISTER NOW

CLICK HERE

## COMMITTEE ON NATURAL DISASTER RECOVERY Con'd

"We have begun soliciting legislator participation so please let the NCOIL national office know if you wish to participate."

"This is an ideal time for NCOIL to discuss and create best practices so states can recover more quickly and do not have to recreate the process" said Commissioner Tom Considine, NCOIL CEO. "We will use the experiences of other states and expect a large cross-section of legislators sharing their states' experience."

## Capitol Corner Con'd

other interested parties could argue that their due process rights are violated since they are being deprived of “property” over their objection. On the other hand, one could certainly argue that IBT laws such as Oklahoma’s are constitutional because policyholders are afforded an opportunity to be heard and the law contains several other procedural safeguards such as requiring the transfer to be approved by the insurance commissioner (and court) which must include, among other things, an independent expert report that analyzes the report and considers whether the interest of policyholders would be materially adversely affected.

Please submit any comments on the draft to the NCOIL National Office and please register for the Spring Meeting to be part of the discussion. Asm. Garbarino, Rep. Moore, and the other members of the Committee look forward to discussing this issue throughout 2019 with the end result being an NCOIL IBT Model Law for states to consider adopting.

### Drug Formularies: A Growing Trend in Workers’ Compensation

Throughout the past several years, interest from state legislators in workers’ compensation drug formularies has grown significantly. One of the primary goals in workers’ compensation is to ensure that the treatment provided injured workers is related to and the most appropriate for their work-related injury. Drug formularies are touted as a way to meet that goal, in addition to combatting the opioid crisis, and lowering prescription drug costs.

Generally, a drug formulary is a predetermined list of prescription medications that specifies which drugs, both brand-name and generic, are approved for treatment of certain conditions. In the workers’ compensation context, a drug formulary is a list of drugs that will be covered when medically appropriate for the injured worker’s condition.

States seeking to implement drug formularies in their workers’ compensations systems have often looked to the success that Texas has had with its drug formulary, implemented in 2011. Since adopting the formulary, [Texas has reported significant savings](#) in prescription medication costs, as well as decreased prescriptions for opioids and other narcotics. However, critics of drug formularies argue that they conflict with the ability of doctors to use their own knowledge to develop a plan for their patient.

It is important to note that there are several different ways in which a state can implement a drug formulary for its workers’ compensation system. For example, states may create their own formularies or utilize a nationally available formulary such as MCG Health’s Official Disability Guidelines (ODG drug formulary) or The Reed Group’s American College of Occupational and Environmental Medicine formulary (ACOEM formulary). Further, states can decide how restrictive to make the formulary, even when adopting a commercially available formulary, as they have the ultimate authority to remove drugs from the formulary to meet the needs of that state.

Indiana is one of the most recent states to implement a workers’ compensation drug formulary as SB 369 was signed into law on March 25, 2018 and became effective on January 1, 2019. SB 369 adopted the ODG drug formulary and prohibits reimbursement without prior authorization for drugs listed in the formulary as “N” drugs. If a request for an “N” drug is denied, SB 369 directs the employer to then send the request to a third party certified by the Utilization Review Accreditation Commission and then notify the prescribing physician of the third party’s determination.

The House sponsor of SB 369, Representative Matt Lehman (IN) – NCOIL Vice President - has offered SB 369 as the starting point for developing an NCOIL Model Workers’ Compensation Drug Formulary Act. At the upcoming NCOIL Spring Meeting in Nashville, TN, the NCOIL Workers’ Compensation Insurance Committee will hear from a panel of experts on drug formularies that will start the Committee’s development of the Model throughout 2019. The panel will include: Abbie Hudgens – Administrator of the Tennessee Bureau of Workers’ Compensation; Ken Eichler – Vice President, ODG by MCG Health; Brian Allen – Vice President of Gov’t Affairs at Mitchell; Robert Nydam, - Project Director at MAXIMUS; and Joe Guerriero – Senior Vice President of The Reed Group’s MDGuidelines division.

To view the first draft of the Model Law please click here: <http://ncoil.org/wp-content/uploads/2019/02/Model-Drug-Formulary-Act.pdf>. What do you think of the first draft?

*Con’d on next page*

## Capitol Corner Con'd

Should the draft reference a commercially available drug formulary or should it suggest states to adopt their own drug formularies? Should more states be implementing drug formularies for their workers' compensation systems, or do formularies interfere with treating practitioners' ability to practice? Please submit any comments on the draft to the NCOIL National Office and please register for the Spring Meeting to be part of the discussion.

### The Drive to Modernize the Insurance Industry

Every industry undergoes significant transformation over time as it adapts to the needs of the marketplace. The insurance industry is no different as the way the insurance industry operates today is much different than how it operated 60 or 30 years ago. Insurance agents who used to go to the home of a client to pick up the monthly premium probably could not envision drones becoming a part of claims processing. While the insurance industry has advanced with society throughout the years, some state insurance statutes and regulations have not.

Accordingly, at the upcoming NCOIL Spring National Meeting in Nashville, Tennessee, the Financial Services Committee (Committee) will start conversations regarding "insurance modernization" with an eye toward developing either an omnibus modernization model or separate "rifle shot" models aimed at helping the insurance industry move past some outdated ways of doing business. For example, some states still don't have legislation that allows consumers the *option* of receiving electronic insurance coverage notices from insurers; they require paper.

Policyholder demand to conduct business electronically has been persistent, and state laws should be updated, or in some cases, enacted, to meet that demand. That is what happened with the issue of electronic proof of insurance. In 2011, no states allowed drivers to use their cell phone to show proof of insurance in a traffic stop, but today, 49 states have enacted such laws or regulations.

Other issues that the Committee will discuss in Nashville under the topic of insurance modernization include: legislation to support the electronic issuance of salvage titles; and the need for uniformity and modernization in the area of rebating.

Rebating laws - which generally prohibit giving a policyholder material consideration in return for buying insurance - first appeared on the books more than 100 years ago. However, the insurance markets have changed considerably since then and discussions examining whether such laws, in their current form, stifle innovation in marketing and sales are certainly worth having.

Please reach out to the NCOIL national office with any comments and suggestions for other issues that should be involved in the "insurance modernization" discussion. NCOIL is looking for examples of certain sections of state insurance codes that may have been left behind and forgotten about as the insurance industry moved from the Pony Express to the 21<sup>st</sup> Century.

We hope to see you in Nashville, and hear from you in the interim.

*Will*



CORPORATE &  
INSTITUTIONAL  
PARTNERS

**CIP MEMBERS MARK YOUR CALENDAR!**

NCOIL 2019 Planning Meeting

June 20-21

Jersey City, New Jersey