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NCOIL SUMMER MEETING

July 10—13, 2019
Newport Beach, CA



Sen. Dan "Blade" Morrish, LA
President



Thomas B. Considine
NCOIL CEO



Rep. Matt Lehman, IN
Vice President

NCOIL CONCLUDES SUCCESSFUL SPRING MEETING IN NASHVILLE

The National Council of Insurance Legislators (NCOIL) met from March 14-17 at the Sheraton Grand in Nashville, TN and hosted a successful Spring Meeting with nearly 300 attendees, four dozen legislators from 24 states, including 14 first time attendees, 5 Insurance Commissioners (or equivalent), and representatives of 13 state insurance departments. The 7 policy committees all met, as well as the first meeting of the Special Committee on Natural Disaster Recovery. LA Sen. Blade Morrish presided over his first meeting as NCOIL President.

"I was pleased that NCOIL attracted a large number of attendees and first-time legislators to the spring meeting" said Morrish. "It validates the hard work NCOIL has done to advocate and educate state legislators on insurance matters."

Participants at the Welcome Breakfast heard from TN Rep. Ron Travis, Chair of the TN House Insurance Committee as well as Commissioner Tom Considine, NCOIL CEO who delivered a three-year progress report based on the Strengths, Weaknesses, Opportunities and Threats (SWOT) exercise that took place during 2016.

"It is appropriate that NCOIL is on an upward trend as we celebrate the 50th year of existence, but it doesn't make any sense to do a SWOT exercise if we are not transparent about how we're measuring up against the results of that exercise" said Considine. *Con'd on Page 2*

IEC QUARTERLY COLUMN

A Proposed Catastrophic Relief and Recovery Act *Charley Burhan, WAAG*

Ben Franklin, the father of American property & casualty insurance, noted that the only certainties were death and taxes. Were he insuring now he would add ever-increasing catastrophic losses and mounting sales taxes for repairs and replacements.

Aside from requiring larger deductibles and seeking more and more reinsurance, how can carriers and public policy makers work to lessen the burden on policyholders and communities? While some jurisdictions have passed pre and post disaster anti-gouging laws on select items ranging from bottled water to gasoline, there has not been an effort to create a sales tax forgiveness on repair items ranging from lumber to shingles, drywall etc., as well for sales tax on replacement vehicles, a growing loss component from hurricanes.

While sales taxes are in many states a dominant funding source for state and local governments, nonetheless a number of states have conducted sales tax holidays for school supplies, clothing, and for politically popular reasons, including economic stimulus and fairness. *Con'd on Page 3.*

NCOIL Spring Meeting Con'd

“The organization has made tremendous progress since the SWOT exercise in all aspects where there were concerns – number of states participating, number of legislators participating, time allotted to consider and act on model laws, and interaction with federal and regulatory counterparts. There is more to do, of course, but the spring meeting agenda, registration and items NCOIL is considering shows 2019 will be a very robust year consistent with that upward trend.”

There were two timely general sessions: Assignment of Benefits (AOB) Clauses: A Tool for Abuse or a Benefit to Homeowners?; and Business Interruption Coverage: Are Businesses REALLY Covered?

The Joint State-Federal Relations and International Insurance Issues Committee continued discussion about the development of an NCOIL Insurance Business Transfer Model Act, in addition to starting a discussion about possible amendments to the NCOIL Market Conduct Surveillance Model Law; the Health Insurance and Long Term Care Issues Committee discussed a draft Model Law on Drug Pricing Transparency; the Special Committee on Natural Disaster Recovery discussed amendments to the NCOIL State Flood Disaster Mitigation and Relief Model Act relating to the private flood insurance market; the Workers' Compensation Insurance Committee discussed development of an NCOIL Workers' Compensation Drug Formulary Model Act; the Property & Casualty Insurance Committee discussed development of Model Legislation in Response to the American Law Institute's Restatement of the Law of Liability Insurance; and the Financial Services Committee discussed the development of model legislation relating to insurance modernization initiatives including rebate reforms, electronic issuance of salvage titles, and the electronic delivery of policyholder information. Discussions of these proposals will continue during interim committee calls and at the 2019 Summer Meeting in Newport Beach, CA.

The Life Insurance & Financial Planning Committee readopted the Life Settlements Model Act and the Unclaimed Life Insurance Benefits Act. The Property & Casualty Insurance Committee readopted the NCOIL State Flood Disaster Mitigation and Relief Model Act until the Summer Meeting while amendments are still being considered.

The Articles of Incorporation and Bylaws Revision Committee met and voted to change the name of the Financial Services Committee to the Financial Services & Multi-lines Issues Committee so policy issues that cross multiple lines of insurance will have a more suitable place to be discussed.

The Health Insurance and Long-Term Care Issues Committee passed a Resolution sponsored by NY Asm. Kevin Cahill, NCOIL Secretary, and UT Rep. Jim Dunnigan in Support of Amending ERISA to Enable State Policymakers to Enact More Meaningful State Healthcare Reforms. The Life Insurance and Financial Planning Committee passed a Resolution sponsored by NY Asm. Pamela Hunter in Support of Good Samaritans' Efforts to Prevent Loss of Life Due to Opioid Overdose. The Special Committee on Natural Disaster Recovery adopted a Resolution recognizing September 1st – 7th 2019 as “Natural Disaster Resiliency Week”. All three resolutions were affirmed by the Executive Committee.

The Keynote Luncheon Address was delivered by Nicholas Whyte, Ph.D., Senior Director, Global Solutions, APCO Worldwide, who provided a spellbinding presentation on “Brexit on the Brink and Other Matters.”

Sen. Morrish announced the formation of a four-part training program for legislative staff and new legislators that includes two webinars and two on-site trainings at the NCOIL Summer Meeting in Newport Beach, CA. Full details will be available in the next few days.

“The Special Committee on Natural Disaster Recovery has much work to consider over the course of the year so states can formulate best practices where disasters have occurred” Morrish concluded.

Committee meeting minutes can be viewed at [here](#).

The 2019 NCOIL Summer Meeting will take place in Newport Beach, CA from July 10th – 13th. Registration will open in April.



Asm. Ken Cooley, CA
Treasurer



Asm. Kevin Cahill, NY
Secretary



Sen. Jason Rapert, AR
Immediate Past President



Sen. Travis Holdman, IN
Immediate Past President

CIP MEMBERS

Save the Date!!

June 20–21, 2019

NCOIL CIP Planning Meeting

Jersey City Hyatt Jersey
City, NJ

Proposed Catastrophic Relief and Recovery Act Con'd

Likewise there is wide diversity in what items are taxed and at what rate for similar political reasons and a sense of fairness.

These same principles of fairness and stimulus should attach to sales tax holidays and/or sales tax rate reduction on insurer payments post disaster as well as sums paid by self insured parties for otherwise we are taxing recovery and taxing misery. In addition, as a former Director of Insurance in Ohio noted, the prices of these key items rapidly escalate post disaster causing states and counties to collect even more sales tax.

Since recovery can take months if not years to complete, these currently taxable items will either have to be programmed as non-taxable as some items are now, within a radius of the declared disaster, or sales tax exemption forms would be issued as now occurs when non-taxable entities show tax exemption forms and numbers.

A more elegant solution to the problems of physical sales tax vouchers also exists via blockchain technology. The top ten P&C writers are already utilizing blockchain for subrogation while scores of counties and states are working on blockchain protocols for everything from issuing deeds to car titles to property taxes, and the list keeps growing. Likewise, the NAIC and the National Association of Motor Vehicle Administrators have multiple working groups to move all their numerous licensing and reporting functions by the entities and interested parties they work with, to blockchain protocols. To this add the task forces on blockchain at NCSL, the National Governors Association, the Association of State Budget Officers, to name but a portion of active parties.

How states act should be left to reflect their particular systems and needs though a broad model bill can still be written. Ideally NCOIL can start working with states with the most catastrophic exposure and cross reference jurisdictions where there are already anti-gouging statutes and/or sales tax relief laws and tax holidays.

To the degree legislators are concerned about a loss of tax revenue, these savings only occur at the time of the loss and would have to be reflected in subsequent filings to reflect loss experience. More importantly, the potential savings apply to any loss victim, whether they are insured or not.

Carriers and policy makers had concerns when credit scoring was first being promoted twenty years ago, but the need and the fairness catalyze action. My sense is that tax relief will be less controversial and with growing catastrophic losses, rather necessary.

WAAG is a consulting and government relations company that works on product development, process enhancement and issues lobbying at the legislative and regulatory level. WAAG (Way Above Average Group) is based in Chicago.

Charley Burhan has represented financial service companies in half the country for over 35 years as well as staffing presidential and Congressional races, issues referenda, and other races.

NCOIL PASSES RESOLUTION TO AMEND ERISA

The National Council of Insurance Legislators (NCOIL) passed a resolution in support of amending the Employee Retirement Income Security Act of 1974 (ERISA) to enable state policymakers to enact more meaningful state healthcare reforms at the 2019 NCOIL Spring Meeting in Nashville, TN. The resolution was sponsored by New York Assemblyman Kevin Cahill, NCOIL Secretary, and Utah Representative Jim Dunnigan.

“As Chair of the Assembly Standing Committee on Insurance in New York I am proud that my committee works to make sound public policy for the residents of the state.” said Cahill. “But I am also frustrated that ERISA has been broadly interpreted by the courts to strike down state initiatives on issues as diverse as air-ambulance balance billing, all-payer claims databases, and regulation of pharmacy benefits managers.”

“The goal of ERISA when signed into law by President Gerald Ford 45 years ago was to protect private employee pension plans from fraud and mismanagement” said Dunnigan. “It has since come to apply to most other types of private employee benefit plans, including health plans,

Con'd on Page 4

RESOLUTION TO AMEND ERISA Con'd

and has morphed into a pre-emption cudgel that stifles policy innovation at the state level.”

At the 2018 NCOIL Annual Meeting in Oklahoma City, there was a general session moderated by TX Rep. Tom Oliverson, MD, Vice Chair of the NCOIL Health Insurance and Long Term Care Issues Committee, titled “Examining the Role of ERISA in the State Based System of Insurance Regulation: Can Meaningful State Reforms be Achieved in an ERISA-Dominated Marketplace?” with participants including Professor Jonathan Forman, Kenneth E. McAfee Centennial Chair in Law, University of Oklahoma College of Law; James Gelfand, Senior Vice President -Health Policy, ERISA Industry Committee (ERIC); Professor Elizabeth McCuskey of the University of Toledo College of Law; and, The Honorable Jessica Altman, PA Insurance Commissioner. The session was one of the highlights of the Meeting and ultimately led to the introduction of this Resolution. During the Oklahoma City session, Professor McCuskey delivered a presentation that was particularly noteworthy, due in large part to her recommendations as to how states can take the lead in expanding healthcare access and regulating health insurance by means of altering the current ERISA-landscape.

Professor McCuskey offered a few options for consideration, one of which spurred the dialogue that led to this Resolution. This approach is one in which ERISA’s preemption baseline is preserved and national uniformity is the default rule, but states could seek waivers from the Department of Labor (DOL) – hopefully in consultation with the Department of Health and Human Services (HHS) – so that states can pursue experiments relating to healthcare reform.

“As stated in the resolution, we urge members of Congress to take action and pass legislation that would amend ERISA to add a waiver provision enabling states to include self-insured single state employers in a wide range of healthcare reforms” said Commissioner Tom Considine, NCOIL CEO. “Other federal healthcare laws, such as Medicare, Medicaid and the Affordable Care Act (ACA) contain such waiver provisions; ERISA should as well.”

A copy of the resolution will be sent to the members of the U.S. House Financial Services Committee; the members of the Senate Banking Committee; the Speaker and Minority Leader of the U.S. House of Representatives; the Majority Leader and Minority Leader of the U.S. Senate; the Secretary of the Department of Labor; the Secretary of the U.S. Department of Health and Human Services; the National Association of Insurance Commissioners (NAIC); and the Chair of all state committees that have jurisdiction over insurance matters. It can be viewed [here](#).

CONSIDINE TESTIFIES IN NEBRASKA REGARDING NCOIL ASBESTOS BANKRUPTCY TRUST CLAIMS TRANSPARENCY MODEL ACT

Commissioner Tom Considine, NCOIL CEO testified before the Nebraska Judiciary Committee on Thursday, February 21st regarding Nebraska LB 421 – The Asbestos Trust Claims Transparency Act which is substantially similar to the NCOIL Asbestos Bankruptcy Trust Claims Transparency Model Act.

“We appreciate Commissioner Considine sharing NCOIL’s expertise, process and success in many states with the Judiciary Committee on March 21st” said Nebraska Sen. Mike Hilgers. “He provided valuable insight as to why this legislation is needed here in Nebraska.”

The NCOIL model was adopted unanimously in the Summer of 2017 by both the Property & Casualty Insurance Committee and the Executive Committee. The model, or substantially similar language, has been adopted in 15 states around the country.

“I was pleased to share the NCOIL model experience with the Nebraska Legislature Judiciary Committee” said Considine. “NCOIL legislators work hard to learn all sides of an issue and develop a basic legislative framework to create solutions that can be adapted to the specific needs of each state.”

The committee heard testimony on the bill. No action was taken by the committee.