

NCOIL NEWSLETTER



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**NCOIL Summer Meeting
TENTATIVE
More Information to Follow Soon**



Rep. Matt Lehman, IN
President



Thomas B. Considine
NCOIL CEO



Asm. Ken Cooley, CA
Vice President

NCOIL URGES FEDERAL ACTION ON COVID CLAIMS

Since the start of the outbreak of COVID-19 in the U.S., the NCOIL national office has received a number of calls and communications about the legislative efforts in some states to legislate coverage for COVID-19 under the business interruption provisions in insurance policies, despite express exclusions for communicable diseases in those policies. In recognition of the fact that such legislation, if enacted, could tremendously harm the broader economy and is very likely unconstitutional, NCOIL has acted quickly and decisively to try and prevent such legislation from being enacted.

NCOIL has communicated twice in the past three weeks with every legislator on a committee with jurisdiction over insurance in every state plus every legislator where the abovementioned retroactive business interruption legislation is pending to discuss the issue of mandating the inclusion of business interruption coverage for coronavirus in policies that would otherwise exclude such coverage.

In those communications, NCOIL has stressed that while professionals and businesses are indeed facing unprecedented, dire economic challenges, we cannot compound the damage to the broader economy by forcing insurers to pay claims for which they did not contract. To do so could destabilize these insurers and render them unable to pay claims for which they did accept the risk, and did rate.

NCOIL believes that this crisis is one of the rare instances in which federal involvement in the state-based system of insurance regulation is necessary. NCOIL has reached out to Congress on several occasions to advocate for the creation of a COVID-19 Business Interruption & Cancellation Claims Fund (COVID Claims Fund). Following the tragedy of 9/11/2001, Congress enacted the Air Transportation Safety and System Stabilization Act and included within it the Victims Compensation Fund (VCF). We urge a similar solution now for the legion of businesses & professionals who are suffering from unprecedented costs from the interruption of their businesses as well as the many associations who have had to cancel their events, virtually all of whom have an exclusion in their business interruption and event cancellation policies for communicable diseases.

Furthermore, a discussion draft of legislation titled the "Pandemic Risk Insurance Act of 2020" (PRIA) which would create the Pandemic Risk Insurance Program (PRIP) to provide a federal backstop for insured pandemic losses has been circulated among Members of Congress and certain media outlets and industry representatives. While we have not had the privilege of reviewing the discussion draft, it is our understanding that PRIA would operate entirely prospectively, enabling businesses, professionals and associations to procure pandemic coverage in the future because insurers will not exclude it once a federal backstop is in place, much like terrorism insurance became available once the Terrorism Risk Insurance Act (TRIA) passed.

NCOIL President, IN Rep. Matt Lehman, said, "We understand that the nation is facing unprecedented, urgent social and economic issues. NCOIL is working to ensure that sound public policy relating to COVID-19 is enacted to help resolve the impacts of the crisis. I look forward to speaking with my insurance legislator colleagues and business professionals from all over the country to discuss NCOIL's opposition to this type of retroactive legislation and set forth NCOIL's support for Congress to take action and enact legislation that would guard against future harm related to a pandemic or outbreak of communicable disease, and help those that have already been harmed by COVID-19."

While it is likely that NCOIL will be supportive of PRIA, separate action is needed to deal with the crisis at hand. It is imperative that Congress also focus on those current, mounting uninsured losses that fall specifi-



Asm. Kevin Cahill, NY
Treasurer



Rep. Joe Fischer, KY
Secretary



Sen. Jason Rapert, AR
Immediate Past President



Sen. Travis Holdman, IN
Immediate Past President

COVID Claims Cont'd

cally within the communicable disease exclusion contained in business interruption and event cancellation policies, or otherwise fall outside those policies' protection. Accordingly, enacting both PRIA and the COVID Claims Fund would meet the goals of guarding against future harm related to a pandemic or outbreak of communicable disease, and helping those that have already been harmed by COVID-19.

Please see the links below for the letters NCOIL has sent on these issues:

March 25, 2020 letter to the eighteen Members of Congress who have collectively written a letter expressing interest on this issue: <http://ncoil.org/wp-content/uploads/2020/03/TC-ML-letter-to-Congress-re-COVID-3-25-2020.pdf>

March 30, 2020 letter to all members of the US House Financial Services Committee: <http://ncoil.org/wp-content/uploads/2020/03/TC-ML-Letter-to-Fin-Serv-Cmte-3-30-20-002.pdf>

April 17, 2020 letter to President Trump: <http://ncoil.org/wp-content/uploads/2020/04/NCOIL-Letter-to-President-Trump.pdf>

April 17, 2020 letter to U.S. Senators: <http://ncoil.org/wp-content/uploads/2020/04/NCOIL-Letter-to-U.S.-Senators-BI-Coverage.pdf>

April 17, 2020 letter to Chairs Maxine Waters and Carolyn Maloney: <http://ncoil.org/wp-content/uploads/2020/04/TC-and-ML-Letter-to-Chairs-Maloney-and-Waters-D2-002.pdf>

April 17, 2020 letter to Congresswoman Pramila Jayapal: <http://ncoil.org/wp-content/uploads/2020/04/NCOIL-Letter-to-Rep.-Jayapal.pdf>

NCOIL President IN Rep. Matt Lehman, NCOIL CEO Commissioner Tom Considine, and NCOIL General Counsel Will Melofchik are available to discuss this or related issues at your convenience.

NCOIL and the Rutgers Center for Risk & Responsibility at Rutgers Law School are sponsoring a webinar on these issues later this week on Friday, April 24th at . [CLICK HERE TO REGISTER NOW](#)

NCOIL AND RUTGERS CENTER FOR RISK AND RESPONSIBILITY TO HOST WEBINAR TO DISCUSS LEGISLATIVE RESPONSES TO BUSINESS INTERRUPTION INSURANCE AND COVID-19

The National Council of Insurance Legislators (NCOIL) and the Rutgers Center for Risk and Responsibility at Rutgers Law School are sponsoring a webinar to discuss legislative responses to business interruption insurance and COVID-19 on Friday, April 24, at 1:00 p.m. Eastern time.

During this time of global crisis, the issue of business interruption insurance coverage for losses related to the outbreak of COVID-19 has been a constant in both headlines across the country and the NCOIL mailbox. Bills have been introduced in multiple state legislatures as well as Congress that would mandate coverage and would create backup funding mechanisms for insurers.

Legislation has been discussed or introduced in Louisiana, Massachusetts, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, and South Carolina that would retroactively enact business interruption coverage into existing policies despite an absence of the physical damage required in property policies and/or express exclusions for communicable diseases in those policies.

NCOIL President, IN Rep. Matt Lehman, said, "We understand that the nation is facing unprecedented, urgent social and economic issues. NCOIL is working to ensure that sound public policy relating to COVID-19 is enacted to help resolve the impacts of the crisis. I look forward to speaking with my insurance legislator colleagues and business professionals from all over the country to discuss NCOIL's opposition to this type of retroactive legislation and set forth NCOIL's support for Congress to take action and enact legislation that would guard against future harm related to a pandemic or outbreak of communicable disease, and help those that have already been harmed by COVID-19."

The webinar will cover business interruption insurance coverage issues, the legislative proposals, the reason for and the cost of proposals, and state and federal constitutional issues.

Participants will include NJ Asm. Lou Greenwald, NJ Assembly Majority Leader; IN Majority Leader Rep. Matt Lehman, NCOIL President; Jim Lynch, Chief Actuary and Senior VP of Research and Education at the Insurance Information Institute (III); and Jay Feinman and Adam Scales, Professors of Law at Rutgers Law School and Co-Directors of the Rutgers Center for Risk and Responsibility.

Distinguished Rutgers Law School Professor, Jay Feinman stated, "We at the Rutgers Center for Risk and Responsibility explore ways in which society makes choices about risk, its proper allocation, and compensation for the harm caused when risks materialize. Scholars at the Center are closely studying the crisis rising as a result of claims under these insurance policies. Businesses faced with huge and unexpected losses naturally turn to their insurance for compensation, and legislators who are looking to help businesses out see insurance as a vehicle for doing so."

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NCOIL-Rutgers Webinar Cont'd

"NCOIL is pleased to host this webinar with the Rutgers Center for Risk and Responsibility, a nationally known center for insurance expertise. The timing of this webinar is critical as NCOIL has reached out to states and Congress to express concerns about retroactive insurance coverage legislation and to advocate for the creation of a COVID-19 Business Interruption & Cancellation Claims Fund (COVID Claims Fund)," stated NCOIL CEO, Commissioner Tom Considine.

"We urge a similar solution to the 9/11 Victims Compensation Fund enacted by Congress in 2001, now for the legion of businesses & professionals who are suffering from unprecedented costs from the interruption of their businesses as well as the many associations who have had to cancel their events, virtually all of whom have an exclusion in their business interruption and event cancellation policies for communicable diseases," Considine concluded.

Please follow this link to register: <https://rutgers.webex.com/rutgers/onstage/q.php?MTID=e25985f1513ef0355998751d6dd1e4965>

Please also visit the NCOIL COVID-19 Resource Page for information and updates on industry, state, and federal insurance-related initiatives relating to the outbreak of COVID-19:

<http://ncoil.org/ncoil-covid-19-resource-page/>

NCOIL PRESIDENT AND CEO STATEMENT ON ENACTMENT OF CORONAVIRUS RELIEF BILL—THE CARES ACT

Indiana Representative Matt Lehman, NCOIL President, and Commissioner Tom Considine, NCOIL CEO, issued the following statement regarding the enactment of the historic coronavirus relief bill – The Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

"I applaud President Trump for signing the CARES Act into law in order to provide the country the social and financial relief it needs during this time of crisis. Congress also deserves a tremendous amount of credit for working together and acting quickly to get this done. There is still much work to do, but the CARES Act is a great step towards revitalizing the country" said Lehman.

"NCOIL appreciates the bipartisan approach towards developing the CARES Act. As Congress continues its work on further coronavirus-related legislation, NCOIL believes the issue of business interruption insurance coverage as it relates to the coronavirus needs to be addressed. While we support efforts to protect businesses and professionals facing the grave economic consequences of the current crisis, we cannot support, in any manner, efforts to retroactively force coverage into the contractual agreements that are business interruption insurance policies," said Considine.

"We believe there is a way to accommodate all of our collective concerns for the businesses and professionals facing a near full stop on their income, as well as associations who are forced to cancel their revenue generating events with a national solution that has already proved effective. Accordingly, we have reached to Congress to suggest a federal claims fund in the model of the 9/11 Victims Compensation Fund for these claims that fall outside the four corners of their insurance contracts. We look forward to working with Congress on this very important issue," Considine concluded.

NCOIL COMMENTS ON FEDERAL LEGISLATION

The National Council of Insurance Legislators (NCOIL), announced its opposition to a piece of federal insurance legislation today, while supporting an unrelated disaster mitigation bill. Commissioner Tom Considine, NCOIL CEO, wrote to Rep. Rashida Tlaib opposing H.R. 1756, the Preventing Credit Score Discrimination in Auto Insurance Act, as well as to Re. Mike Thompson, Chair of the House Subcommittee on Select Revenue Measures, in support of H.R. 5494, the Catastrophe Loss Mitigation Incentive and Tax Parity Act of 2019.

H.R. 1756 seeks to ensure there is no unfair discrimination in automobile insurance underwriting. While the intent of the bill is noble, NCOIL believes there remains confusion and misinformation surrounding how and why insurers use certain factors to underwrite, such as credit information. The business of insurance is centered on predicting the level of risk an applicant or policyholder represents and charging a premium that corresponds to that level of risk. Credit-based insurance scores have proven to be a very accurate predictor of risk within the property and casualty insurance industry.

In 2002, NCOIL adopted the Model Act Regarding use of Credit Information in Personal Insurance (Model) in an effort to both recognize the benefits of credit-based insurance scores and to afford consumers protections with respect to the use of their credit information. The Model has been adopted by 30 states and has served to protect consumers while helping to promote competitive insurance marketplaces. The Model can be viewed [here](#).

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Future NCOIL Meetings:

Summer 2020
TENTATIVE
More Information to Follow Soon

Annual 2020
December 9—12
Tampa, FL

Spring 2021
March 11—14
Washington, DC

Summer 2021
July 14—17
Boston, MA

Annual 2021
November 17—20
Scottsdale, AZ

Spring 2022
March 3—6
Las Vegas, NV

Summer 2022
July 13—16
Jersey City, NJ

Annual 2022
November 16—19
New Orleans, LA

Fed Legislation Cont'd

NCOIL President, IN Rep. Matt Lehman, said, "The issue of credit score discrimination in insurance has been a recurring hot topic for the last 20 years. It is also important to note that states have jurisdiction to regulate the business of insurance pursuant to the McCarran-Ferguson Act of 1945. In this instance, NCOIL opposes federal involvement as an infringement on the states' well-established authority to oversee the business of insurance and determine what is best for their individual states."

Considine stated that he was "perhaps as surprised as anyone, and more surprised than most, when the use of credit score proved to be an actuarially sound factor to consider in auto insurance underwriting, but you cannot argue with the conclusions. The statistically supported validity of the numbers is compelling."

H.R. 5494 would exempt from federal taxation state-based grants that support pre-disaster mitigation for homes against wildfires, windstorms, and earthquakes. NCOIL recognizes the fact that natural disasters are occurring with more frequency, and that steps need to be taken to ensure that people are encouraged to take action with respect to utilizing pre-disaster mitigation programs.

Currently, there is inconsistent tax treatment of state and federal disaster mitigation grants. Congress previously excluded grants provided by FEMA from federal income tax, but state grants are subject to federal income tax. By simply fixing this inconsistency and providing tax parity for certain state-based pre-disaster grant programs, homeowners will be further empowered to protect their homes from natural disasters.

NCOIL CEO Commissioner Tom Considine stated, "We at NCOIL commend Chairman Thompson for introducing H.R. 5494 and taking action to alleviate the harmful impact of future natural disasters. This bipartisan legislation would encourage property owners to utilize federal aid to enhance their safety rather than being penalized for receiving these resources that could protect against disasters. NCOIL supports these vital mitigation efforts and looks forward to other steps to help safeguard Americans from natural disasters."

The **letter on H.R. 1756** can be viewed [here](#).

The **letter on H.R. 5494** can be viewed [here](#).

Information and updates on **H.R. 1756** can be viewed [here](#).

Information and updates on **H.R. 5494** can be viewed [here](#).

NCOIL CONCLUDED SUCCESSFUL 2020 SPRING MEETING IN CHARLOTTE

Despite the omnipresent spectre of the coronavirus, the National Council of Insurance Legislators (NCOIL) concluded a successful 2020 Spring Meeting at the Charlotte Marriott City Center in Charlotte, North Carolina. There were 273 total registered attendees consisting of 46 legislators from 18 states, 15 first-time legislators, five Insurance Commissioners (or equivalent), and 11 insurance departments represented. Indiana Representative Matt Lehman presided over his first meeting as NCOIL President.

"Despite travel bans and precautionary procedures implemented in response to the Coronavirus pandemic, I am pleased with the large turn-out of attendees and the participation from first-time legislators in Charlotte," said NCOIL President, IN Rep. Matt Lehman. "We had anticipated that at some point the consistent climb of attendance might begin to slow, but the data proves otherwise for the NCOIL Spring Meeting. 2020 is already demonstrating to be a busy year of policy discussion, and it's because of everyone who shows up to engage in the critical discussions that make it possible for NCOIL to move quickly on urgent issues we face as a country."

Participants at the Welcome Breakfast were greeted by NC Insurance Commissioner Mike Causey, followed by a presentation from Paul Tetrault, Executive Director of the Insurance Library.

Nick Davidson, Acting Director of Public Health of the South Carolina Department of Health and Environmental Control (DHEC), delivered an informative and timely Keynote Luncheon Address on COVID-19 (Coronavirus disease) awareness and prevention, followed by the most extensive Q&A session in NCOIL memory.

The agenda was highlighted by the adoption of four NCOIL Model Laws – the NCOIL Insurance Business Transfer (IBT) Model Act by the Joint State-Federal Relations & International Insurance Issues Committee, sponsored by NY Asm. Andrew Garbarino and OK Rep. Lewis Moore; the NCOIL E-Commerce Model Act sponsored by LA Rep. Edmond Jordan, the NCOIL E-Titling Model Act sponsored by WV Del. Steve Westfall, and the NCOIL Rebate Reform Model Act sponsored by NCOIL President, IN Rep. Matt Lehman, all by the Financial Services & Multi-Lines Issues Committee. Additionally, amendments to the NCOIL Market Conduct Surveillance Model Act, sponsored by IN Sen. Travis Holdman, NCOIL Immediate Past President, were adopted by the Joint State-Federal Relations & International Insurance Issues Committee. These models and amendments were then adopted by the Executive Committee.

Dr. James M. Carson, Daniel P. Amos Distinguished Professor of Insurance of the Terry College of Business at the University of Georgia, delivered a presentation at The Institutes Griffith Foundation Legislator Luncheon titled "Considering the Economic Impact of the Insurance Industry on the States: An Overview for Public Policymakers."

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Successful Spring Meeting in Charlotte Cont'd

There were two enlightening general sessions: "LIBOR's End: What Does it Mean?"; and "What States Preparing for Opioid Lawsuit Funds Can Learn from Tobacco Settlements."

"Thank you to the wonderful host committee and NC legislators, Sens. Vickie Sawyer and Valerie Foushee, for being great hosts to us in Charlotte. I am happy to report that our 'Handshakes Free Meeting' was a success," NCOIL CEO, Commissioner Tom Considine said. "There were 20 last minute cancellations due to COVID-19, but that represents just 7% of the total, and a great deal of business still moved forward."

"The new NCOIL financial structure is working as intended, encouraging greater participation among legislators from contributing states through the stipend program. We look forward to welcoming new faces to NCOIL along with returning legislators as we take on another year of developing sound public policy," Considine continued.

The Property & Casualty Insurance Committee continued discussion on the NCOIL E-Scooter Insurance Model Act, sponsored by ND Sen. Jerry Klein, NCOIL Chairman At-Large, in addition to having an initial discussion on the National Association of Insurance Commissioners (NAIC) Casualty Actuarial & Statistical Task Force's (CASTF) initiatives. The Committee also heard an interesting presentation from Debra Ballen, General Counsel & Chief Risk Officer for the Insurance Institute for Business & Home Safety (IBHS).

The Special Committee on Natural Disaster Recovery continued discussion on the NCOIL Private Flood Insurance Model Act, sponsored by FL Rep. David Santiago. Lynne Grinsell from Zurich North America and Gina Schwitzgebel-Hardy of the North Carolina Joint Underwriting Association (NCJUA) and North Carolina Insurance Underwriting Association (NCIUA) each gave a presentation on Natural Disaster Mitigation Efforts.

The Life Insurance & Financial Planning Committee met to discuss Reforming the Life Insurance Application Process with Porter Nolan, Head of Legal at Ethos. Dr. Robert Gleeson, medical consultant to the American Council of Life Insurers (ACLI) spoke to the Committee about the fundamentals of life insurance underwriting. Representatives from the ACLI also introduced the Committee to the Paid Family Leave Income Replacement Benefits Model Act for development and consideration throughout 2020. Oklahoma Insurance Commissioner Glen Mulready gave an update on the work of the NAIC Accelerated Underwriting Working Group.

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WORKERS' COMP: DELIVERING FOR OUR NEIGHBORS

Bill Donnell, President and CEO, National Council of Compensation Insurance



Bill Donnell
President & CEO, NCCI

Every year there are more than 2 million workplace injuries in the United States. Behind each of those claims is a firefighter, a construction worker, healthcare worker or a mechanic. They're our moms, dads, sisters, brothers, and neighbors.

One of them is Travis Wall, a parking enforcement staffer at UCLA. He doesn't remember the moment that a car slammed into him at 35–40 miles per hour. But after two weeks in a coma, three years of rehabilitation, a dozen surgeries, and countless tears and hugs, Travis has returned to work.

It feels "triumphant," he said.

"I'm a proud man. I take pride in being a good husband, a good father, and a good provider. I was able to get back to work and feel good about myself."

Travis's story is a powerful example of how workers compensation delivers. Our system exists to help people recover.

From my perspective at NCCI, the US workers compensation system is healthy and performing well. For example:

- The frequency of claims—from devastating incidents like Travis's to more routine injuries—continues its steady drop as workers and workplaces become safer
- Insurers have enjoyed seven straight years of positive financial performance, an unprecedented record

New technology is providing everyone in the system with access to more robust and timely information to provide better decision making on medical treatments, claims management, and safety

But for state legislators, regulators, and workers compensation insurers, concerns remain.

After seven straight years of strong performance, people frequently ask me, "Are we in for a big swing in the other direction?"

Cont'd on Page 6

Successful Spring Meeting in Charlotte Cont'd

In addition to the adoption of the NCOIL IBT Model Act and amendments to the NCOIL Market Conduct Surveillance Model Act, the Joint State-Federal Relations & International Insurance Issues Committee was given a briefing on the NCOIL Comment Letter on the Department of Housing and Urban Development's Disparate Impact Rule by NCOIL CEO Commissioner Tom Considine and former Illinois Insurance Director Nat Shapo.

The Health Insurance & Long-Term Care Issues Committee had another packed agenda, during which they continued discussions on the NCOIL Short-Term Limited Duration Insurance (STLDI) Model Act and the NCOIL Health Care Sharing Ministry (HCSM) Registration Model Act, both sponsored by IN Rep. Martin Carbaugh. Additionally, the Committee held discussions on the NCOIL Patient Dental Care Bill of Rights Model Act, sponsored by ND Rep. George Keiser and AR Rep. Deborah Ferguson, and the NCOIL Vision Care Services Model Act, sponsored by OH Sen. Bob Hackett. Jean Holliday from the NC Department of Health and Human Services delivered a presentation titled "Making the Switch from Fee-for-Service to Managed Care: An Update on North Carolina's Medicaid Transformation."

The Workers' Compensation Insurance Committee heard a presentation from Teri Leon of Pie Insurance focused on innovation in the workers' compensation insurance marketplace.

In addition to the adoption of three NCOIL Model Laws, the Financial Services & Multi-Lines Issues Committee discussed the introduction of the NCOIL Model Act Concerning Statutory Thresholds for Settlements Involving Minors, sponsored by TX Rep. Tom Oliverson, M.D. and KY Rep. Joe Fischer, NCOIL Secretary. The Committee also heard a presentation from Nicole Gunderson, Managing Director at Global Insurance Accelerator, titled "Supporting and Promoting Innovation in the Insurance Industry."

Committee minutes are posted at www.ncoil.org.



SPRING MEETING MINUTES

CLICK HERE FOR MORE INFO

Workers' Comp IEC Quarterly Column Cont'd

While I can't predict the future, here are a couple of important observations about what's happening with the cycle.

First, more timely data and advanced analytics are enabling shorter feedback loops for underwriters. This may be moderating the peaks and valleys in workers compensation. A recent *AM Best* report says it clearly, "Technology has played a key role in diminishing the amplitude of market cycles."

Second, during my nearly 40 years in insurance, I've observed that strong core functions—underwriting, claims, reserving, analytics—make all the difference. For insurers, strong core functions mean a more robust bottom line and a sustainable business. From the regulators' perspective, insurers with strong core functions create a stable and solvent marketplace.

The regulatory landscape always has a big impact on the workers compensation world, and this year is no different. Issues such as marijuana, opioids, opt-out, post-traumatic stress disorder (PTSD), and insurtech innovations contribute to the regulatory discussion. The desire for stability connects all the players in the system.

I believe that the path to achieving stability is built on a foundation of transparency and trust. Our role at NCCI is to share information, provide transparency, and support open dialogue. That way we can all work together to reduce uncertainty. It is a difficult task, but the health of our workers compensation system depends on it.

People such as Travis, his wife, and their three sons deserve it, and that's why we must keep delivering for our neighbors.

About the author:

Bill Donnell is president and CEO of NCCI. Founded in 1923, NCCI fosters a healthy workers compensation system by gathering data, analyzing industry trends, and providing objective insurance rate and loss cost recommendations. To learn more about NCCI, please visit ncci.com.

NCOIL ADOPTS INSURANCE BUSINESS TRANSFER MODEL ACT

At the recently concluded 2020 NCOIL Spring Meeting in Charlotte, NC, the organization adopted the NCOIL Insurance Business Transfer (IBT) Model Act sponsored by NY Assemblyman Andrew Garbarino and OK Representative Lewis Moore. The measure passed on a voice vote by the NCOIL Joint State-Federal Relations & International Insurance Issues Committee and was affirmed by the Executive Committee.

The OK IBT Law, signed into law in 2018, was introduced to NCOIL to serve as a basis for an NCOIL IBT Model at the 2018 NCOIL Annual Meeting in Oklahoma City, OK. NY Asm. Andrew Garbarino and OK Rep. Lewis Moore then introduced a discussion draft of an NCOIL IBT Model Law at the 2019 NCOIL Spring Meeting in Nashville, TN, based on the OK IBT law.

NY Asm. Andrew Garbarino stated, "I greatly appreciate the Committee's work on the NCOIL IBT Model and there were a lot of great points made by the panels throughout drafting discussions. The OK IBT Law was a solid foundation to use when considering IBT model legislation. The most frequently used restructuring options in this country are sale and reinsurance or limited portfolio transfers (LPTs) but those options are limited in their scope and effect. There is a need for consistency among states and it seems to be generally agreeable that IBTs can be valuable as long as they are done properly with the right level of consumer protections."

OK Rep. Lewis Moore said, "I want to echo what Asm. Garbarino stated and thank the Committee and all interested parties for their work and input throughout the drafting process. During the Model legislation drafting discussions, I stressed the importance of the protection of policyholders and worked with NCOIL to ensure that issue remained in the Model. As is always the case with NCOIL models, states are free to change any provisions they deem appropriate. State interest in IBTs has continued to grow significantly since initially discussing IBTs at the 2018 NCOIL Annual Meeting, making it that much more important to send this Model to the states and adequately address the issue."

During the drafting discussions, NCOIL legislators and staff heard from a wide array of interested parties including: PricewaterhouseCoopers, LLC (PWC); the Oklahoma Dept. of Insurance; the Reinsurance Assoc. of America (RAA); the Rhode Island Dept. of Business Regulation; Enstar; New York Life; the American Council of Life Insurers (ACLI); Brighthouse Financial; International Solutions Services, LLC; Faegre Baker Daniels, LLP; the National Organization of Life & Health Insurance Guaranty Associations (NOLGHA); the National Conference of Insurance Guaranty Funds (NCIGF); and the American Property & Casualty Insurance Association (APCIA).

The purpose of the Model is "to provide options to address the significant limitations in the current methods available to insurers to transfer or assume blocks of insurance business in an efficient and

cost-effective manner that provides needed legal finality for such transfers in order to provide for improved operational and capital efficiency for insurance companies, stimulates the economy by attracting segments of the insurance industry to the state, make this state an attractive home jurisdiction for insurance companies, encourages economic growth and increased investment in the financial services sector and increases the availability of quality insurance industry jobs in this state."

Highlights of the Model include requirements that the IBT applicant notify interested parties such as: the chief insurance regulator in each jurisdiction in which the applicant holds or has ever held a certificate of authority, and in which policies that are part of the subject business were issued or policyholders currently reside; the National Conference of Insurance Guaranty Funds, the National Organization of Life and Health Insurance Guaranty Associations and all state insurance guaranty associations for the states in which the applicant holds or has ever held a certificate of authority, and in which policies that are part of the subject business were issued or policyholders currently reside; reinsurers of the applicant pursuant to the notice provisions of the reinsurance agreements applicable to the policies that are part of the subject business, or where an agreement has no provision for notice, by internationally recognized delivery service; all policyholders holding policies that are part of the subject business, at their last-known address as indicated by the records of the applicant or to the address to which premium notices or other policy documents are sent; and by publication in a newspaper of general circulation in the state in which the applicant has its principal place of business and in such other publications that the Commissioner requires.

The Model also requires that the Insurance Business Transfer Plan must be filed by the applicant with the Insurance Commissioner for his or her review and approval. The Plan must include information such as: a summary of the Insurance Business Transfer Plan; an identification and description of the subject business; the most recent audited financial statements and statutory annual and quarterly reports of the transferring insurer and assuming insurer filed with their domiciliary regulator the most recent actuarial report and opinion that quantify the liabilities associated with the subject business; pro-forma financial statements showing the projected statutory balance sheet; results of operations and cash flows of the assuming insurer for the three (3) years following the proposed transfer and novation; the officers' certificates of the transferring insurer and the assuming insurer attesting that each has obtained all required internal approvals and authorizations regarding the Insurance Business Transfer Plan and completed all necessary and appropriate actions relating thereto; the proposal for Plan implementation and administration, including the form of notice to be provided under the Insurance Business Transfer Plan to any policyholder whose

SPECIAL COMMITTEE ON NATURAL DISASTER INTERIM CONFERENCE CALL

Chair Vickie Sawyer (Sen. NC) will be hosting an interim conference call meeting of the NCOIL Special Committee on Natural Disaster Recovery on Friday, May 1st from 1:00 p.m. to 2:00 p.m. (EST). The purpose of the interim meeting is for the Committee to discuss the current version of the NCOIL Private Flood Insurance Model Act, sponsored by Rep. David Santiago (FL) and Chair Sawyer, and the industry-proposed strike-all amendment document titled the NCOIL Private Primary Residential Flood Insurance Model Act. The Committee will discuss the main differences between the two documents with the goal of having a Model ready for a final vote at the NCOIL Summer Meeting in July.

Please direct any comments on the documents to NCOIL General Counsel Will Melofchik at wmelofchik@ncoil.org. If you have any questions please do not hesitate to contact the NCOIL national office at 732-201-4133.

Dial-in information and a formal agenda will be circulated prior to the call.

NCOIL SPECIAL COMMITTEE ON NATURAL DISASTER RECOVERY INTERIM CONFERENCE CALL

MAY 1, 2020 • 1-2PM (EST)

[CLICK HERE FOR MORE INFORMATION](#)

IBT Model Act Cont'd

policy is part of the subject business; a full description as to how such notice shall be provided; a description of any reinsurance arrangements that would pass to the assuming insurer under the Insurance Business Transfer Plan; a description of any guarantees or additional reinsurance that will cover the subject business following the transfer and novation; a statement describing the assuming insurer's proposed investment policies and any contemplated third-party claims management and administration arrangements; a description of how the transferring and assuming insurers will be licensed for guaranty association coverage purpose; and evidence of approval or non-objection of the transfer from the chief insurance regulator of the state of the transferring insurer's domicile.

Importantly, the Insurance Business Transfer plan must also contain a report from an independent expert, selected by the Commissioner from a list of at least two nominees submitted jointly by the transferring insurer and the assuming insurer, to assist the Commissioner and the court in connection with their review of the proposed transaction. Should the Commissioner, in his or her sole discretion, reject the nominees, he or she may appoint the independent expert. The Model sets forth specific requirements for what the independent expert report must contain such as the independent expert's opinion of the likely effects of the Insurance Business Transfer Plan on policyholders and claimants, distinguishing between transferring policyholders and claimants, policyholders and claimants of the transferring insurer

whose policies will not be transferred, and policyholders and claimants of the assuming insurer.

The Model then requires the Commissioner to authorize the submission of the Plan to the court unless he or she finds that the Insurance Business Transfer would have a material adverse impact on the interests of policyholders or claimants that are part of the subject business. Within thirty (30) days after notice from the Commissioner that the applicant may proceed with the court filing, the Model then directs the applicant to apply to the court for approval of the Insurance Business Transfer Plan.

Following a court hearing, which the Model requires all parties to be notified of and provides them the opportunity to present evidence or comments if he, she, or itself considers to be adversely affected by the transfer, the Model requires the court to enter a judgment and implementation order if the court finds that the implementation of the Insurance Business Transfer Plan would not materially adversely affect the interests of policyholders or claimants that are part of the subject business.

The judgment and implementation order shall: order implementation of the Insurance Business Transfer Plan; order a statutory novation with respect to all policyholders or reinsureds and their respective policies and reinsurance agreements under the subject business, including the extinguishment of all rights of policyholders under policies that are part of the subject business against the transferring insurer, and providing that the

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transferring insurer shall have no further rights, obligations, or liabilities with respect to such policies, and that the assuming insurer shall have all such rights, obligations, and liabilities as if it were the original insurer of such policies; release the transferring insurer from any and all obligations or liabilities under policies that are part of the subject business; authorize and order the transfer of property or liabilities, including, but not limited to, the ceded reinsurance of transferred policies and contracts on the subject business, notwithstanding any non-assignment provisions in any such reinsurance contracts. The subject business shall vest in and become liabilities of the assuming insurer; order that the applicant provide notice of the transfer and novation in accordance with the notice provisions in Section 5 of the Model; and make such other provisions with respect to incidental, consequential and supplementary matters as are necessary to assure the Insurance Business Transfer Plan is fully and effectively carried out.

The Model also requires the Commissioner to promulgate regulations that are consistent with the Model, rather than authorizing the Commissioner to do so, and states that no Insurance Business Transfer Plan shall be approved in a State unless and until such regulations are promulgated.

NCOIL CEO, Commissioner Tom Considine, stated, "IBTs can be a driver for economic expansion which makes it vital for the states to understand the tools and guidelines that this Model has to offer. These are complex transactions, and making sure the appropriate regulations are promulgated before an IBT is approved is critical in ensuring both businesses and consumers are properly protected. Thank you to the Committee, and a special thanks to Asm. Garbarino and Rep. Moore for sponsoring this and getting the Model to a good place to be ready to send to the states."

A full copy of the model can be viewed [here](#).

As you may know, as part of NCOIL's celebration of 50 years developing sound public policy, we posted some videos on the NCOIL website and our YouTube channel. NCOIL staff conducted interviews with participating state legislators regarding their involvement with NCOIL, including NCOIL Officers President Rep. Matt Lehman (IN), Vice President Asm. Ken Cooley (CA), and Treasurer Asm. Kevin Cahill (NY), a nd Committee Chairs and Vice Chairs Rep. Richard Smith (GA), Asw. Pam Hunter (NY), and Rep. Tom Oliverson, M.D. (TX).

Additionally, there were also two sessions recorded and posted from our Annual Meeting – the Financial Services & Multi-Lines Issues Committee and the NCOIL Innovation Series "The Gig Gap: Does Insurance Come With That?"

Click on the banner below to view the interviews and sessions or visit <http://ncoil.org/2019-annual-meeting-session-recordings-interviews/>



**NCOIL'S 50TH ANNIVERSARY
2019 ANNUAL MEETING SESSIONS AND INTERVIEWS**

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