

**NATIONAL COUNCIL OF INSURANCE LEGISLATORS  
FINANCIAL SERVICES & MULTI-LINES ISSUES COMMITTEE  
CHARLESTON, SOUTH CAROLINA**  
APRIL 17, 2021  
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Financial Services & Multi-Lines Issues Committee met at the Francis Marion Hotel on Saturday, April 17, 2021 at 9:00 A.M. (EST)

Representative Edmond Jordan of Louisiana, Chair of the Committee, presided.

Other members of the Committee present were (\* indicates virtual attendance via Zoom):

Sen. Jason Rapert (AR)	Asm. Ken Blankenbush (NY)
Asm. Ken Cooley (CA)*	Asw. Pam Hunter (NY)*
Rep. Matt Lehman (IN)	Sen. Bob Hackett (OH)
Sen. Tom Buford (KY)	Del. Steve Westfall (WV)
Rep. Joe Fischer (KY)	

Other legislators present were:

Sen. Mathew Pitsch (AR)	Asm. Kevin Cahill (NY)*
Rep. Terri Austin (IN)	Rep. Forrest Bennett (OK)
Sen. Brandon Smith (KY)	Sen. Roger Picard (RI)
Rep. Kyra Bolden (MI)	Sen. Ronnie Cromer (SC)
Rep. Brenda Carter (MI)	Rep. Jim Dunnigan (UT)
Rep. Daire Rendon (MI)	Rep. Warren Kitzmiller (VT)
Sen. Lana Theis (MI)*	
Sen. Paul Utke (MN)	
Sen. Dean Kirby (MS)	
Sen. Walter Michel (MS)	

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO  
Will Melofchik, NCOIL General Counsel  
Tess Badenhausen, Assistant Director of Administration, NCOIL Support Services, LLC

#### **QUORUM**

Upon a motion made by Asm. Ken Cooley (CA), NCOIL Vice President, and seconded by Rep. Matt Lehman (IN), NCOIL President, the Committee voted without objection by way of a voice vote to waive the quorum requirement.

#### **MINUTES**

Upon a motion made by Sen. Jason Rapert (AR), NCOIL Immediate Past President, and seconded by Rep. Joe Fischer (KY), NCOIL Secretary, the Committee voted without objection by way of a voice vote to adopt the minutes of the Committee's December 11, 2020 meeting.

#### **DISCUSSION/CONSIDERATION OF NCOIL INSURER DIVISION MODEL ACT**

Rep. Jordan stated that the first topic on the agenda is the consideration of the NCOIL Insurer Division Model Act. The original version of the Model was sponsored by Connecticut Senator Matt Lesser, but Asm. Cooley has since introduced an amendment by way of a Committee substitute which is in the binders on page 259. We will be voting on the Model today, but I'll first turn it over to Assemblyman Cooley.

Asm. Cooley stated that he is very proud to sponsor this Model. What's presented before you today is an amendment by way of a Committee substitute to the original version introduced by Sen. Lesser. The backdrop to this is that in March of 2020, NCOIL adopted an Insurance Business Transfer (IBT) Model Act. Like the IBT Model Act, insurer division statutes 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. While IBTs and insurer divisions are similar in some respects, they are nonetheless distinct restructuring mechanisms with different functions. Accordingly, following NCOIL's adoption of its IBT Model Act, it made sense that there should not be one Model without the other for states to consider adopting.

Sen. Lesser then stepped forward with an initial draft of the Model and an issue that arose in the process related to whether to require or permit the Insurance Commissioner to utilize an independent expert and hold a public hearing during the course of reviewing an insurer division transaction. The first draft of the Model permits such action while the Colorado bill and the Committee substitute in your binders makes such action mandatory. That is the biggest distinction between the two proposals. I relate this back to the 1980s when I was chief counsel to the Assembly Committee on finance and insurance and we did a lot of oversight looking into the administration of certain facets of the DOI because they had one unit where very technical issues were being settled by one individual exercising their own judgment and they were so technical they weren't really exposed to consideration and controversy arose to that fact so in my view adding a requirement for a public hearing when these types of transactions are being reviewed kind of aligns with what we said about sunshine is the best antiseptic and it requires that deliberations about restructuring of the business, albeit a technical issue, have the benefit of a public hearing and public input. I think it supports transparency in gov't and accountability and in that sense it's a very important change.

That said, I have also included drafting notes on those two issues which are on pages 264 and 267 of your binders. Those drafting notes explain that while the Model requires the commissioner to select and retain an independent expert and hold a public hearing in especially large or complex divisions, some state insurer division statutes provide the commissioner discretion to do so regardless of the size or complexity of the transaction. And then the Model sets out factors states should consider when considering whether or not to require the retention of an independent expert and require a public hearing.

So, the principal change aligns with the idea of sunshine is the best antiseptic and in these types of restructurings the basic rule in the NCOIL Model is that there should be a hearing with an outside expert to inform the discretion exercised by the regulator although we do provide a path via drafting notes for something else. Before closing I would like to point out a couple of changes to the Model that have been made since it was released in the 30 day materials. The changes are on page 266 and 267 of your binders and deal with the very important issue of guaranty fund protection and basically ensuring that guaranty coverage is as expected and that the funds act as expected. I feel very strongly about guaranty fund protection as I am also sponsoring similar amendments to the NCOIL Guaranty Fund Model Act currently pending in our P&C Committee.

I present this as an alternative to the original version of the Model and I think it's a good place for NCOIL to land in making clear that we support sunshine being the best antiseptic as sound policy that is well established in our business and the drafting notes are designed to be the result of different local positions. Thank you, Mr. Chairman. I request the support of the body for this proposal and I'll turn it back over to you.

Paul Martin, VP of State Relations at the Reinsurance Association of America (RAA), stated that RAA supports the committee substitute and would like to thank Asm. Cooley for his leadership on this and as he indicated this is essentially the CO bill that all stakeholders worked on in 2020 to get to a place where everybody felt comfortable to balance the needs of companies that wanted to do divisions and the other stakeholders who wanted transparency and accountability that hearings and expert witnesses can provide. In fact, this substitute is so good, if it is adopted, we would urge the Committee to consider reopening the IBT model that you adopted last year and make it congruent with the division model. I know Sen. Rapert is running the NCOIL IBT model in his state and assuming the amendment we proposed gets into that we are hoping that the Sen. Jason Rapert AR IBT Model will become the Model for NOCIL. We think that this strikes a really good balance between the interests of all the parties and provides everyone the necessary confidence that when we do these transactions going forward that they have been vetted.

Upon a Motion made by Rep. Lehman and seconded by Asw. Pam Hunter (NY), the Committee voted without objection by way of a voice vote to adopt Asm. Cooley's committee substitute with the changes he discussed.

#### **DISCUSSION ON DEVELOPMENT OF NCOIL REMOTE NOTARIZATION MODEL**

Rep. Jordan stated that we discussed this issue at our last meeting in December and now we have the first draft of a Model for discussion which is in your binders on page 274. The Model is still in the early stages of drafting and is meant to generate discussions as there is no sponsor attached yet.

Bill Anderson, VP of Gov't Affairs at the National Notary Association (NAA), thanked the Committee for the opportunity to present and stated that he wants to talk a little bit about remote online notarization (RON). Let me take a minute to clarify what we mean by RON because there is not just one but there are five different types of notarization in our world today and it would be great to make sure we are all on the same page. The first type of notarization is paper notarization and is what we all have come to know very well where the documents signer and notary are physically present and in the same room. Paper documents are used and the signer uses a paper full of identification to verify their identity to the notary and the documents are signed using ink pens and physical notary seals. The second kind of notarization came around about 20 years called electronic notarization. In this, the document signer and notary are in each other's physical presence like a paper notarization but electronic records instead of paper documents are used and the signer passes a physical form of ID to the notary just like they do in a paper notarization to verify identity and since electronic documents are used the documents are signed with electronic signatures and electronic notary seals.

Then in 2012, RON came about and here the document signer and the notary appear before each other using communication tech jus like I am appearing before you today via Zoom. Electronic records are used to transact the notarizations but with the identification the signer is identified to the notary by using multiple factors of identification because its inherently insecure

for a signer to simply display on camera a physical form of ID to the notary like they would in each other's physical presence. Then the documents are signed using electronic signatures and electronic notary slips. The fourth type of notarization is a variation of RON called paper RON. Here, the document signer and notary appear before each other using comm technology like a RON but paper documents are used not electronic records and they are signed and sent back and forth between the signer and notary through the mail. The signer is identified through the notary using multiple factors of identification and I'll describe that a little bit more in a moment and then the documents are signed using ink seals and physical ink signatures. The final type of notarization came about due to COVID in the last year and that's what we call remote ink notarization. Like RON, the document signer and the notary appear before each other using comm technology. Like paper RON, paper documents are used and sent back and forth to the parties through the mail. Here, the signer is identified by flashing ID through the camera to the notary while they are in Zoom or comm tech session and not by using multiple factors of identification and then the documents are signed by ink pens and seals.

With that in mind I want to give everyone an explanation that I am going to be talking mostly about #three here today – RON. With that, let's look at the lay of the land. As of 2021, we have 32 states that have enacted RON permanently in statutes. The states in blue had enacted permanent RON through 2020 and the states in green have introduced it this year and we already have three states that have enacted it - WY, UT, and WV. The WV bill also included remote ink notarization and that's the first state that has chosen to enact a permanent statute like that. Now all of these statutes that have been enacted are based upon one or more uniform model acts and they are the NAA Model Electronic Notarization Act published in 2017, the Revised Uniform Law on Notarial Acts Uniform Law Commission in 2018, the Model Legislation for Remote Online Notarization by the Mortgage Bankers Association and American Land Title Association. All of the 32 enactments reflect one or more of these acts and these acts all have many things in common. Once the laws are enacted and all of the statutes give the notary commissioner the ability and authority to promulgate a set of rules there is another set of standards that comes in – the Remote Online Notarization Standards Mortgage Industry Standards Maintenance Organization. Many of the administrative rules across the country reflect those standards.

Turning to the COVID temporary actions, in the last year there has been a whole slew of activity giving notaries temporary authorization during the pandemic to perform remote notarization – either RON or, more commonly, remote ink notarization. There's been 26 Governors that have issued Executive Orders allowing them to do so. Eleven states chose to enact temporary legislation to allow notaries to do this. Six states published emergency regulations and 16 state notary commission officials issued formal guidance to notaries on how to do this. I note there that the states in red used one or more so you might have had a state where the Governor issued an executive order and then there were emergency regulations adopted as well as guidance so there has been a lot of activity. Only two states during the pandemic have done nothing with remote ink notarization or RON – CA and SC.

With the 13 or so states we basically have 2/3 of the country that have enacted permanent RON. For the remaining third, there are really four key policies that you really want to make sure that you clarify for your Model. The first is ID. I mentioned earlier that multiple factors of ID are used in RON. Here, the body of literature suggests that you should identify a remote individual based on something they know, something they have or something they are. Something they know would be knowledge based authentication questions that only that individual could possibly be able to answer. Something you have would be an identification credential that during the RON session is captured on camera and then sent off to a 3rd party

service to determine whether the ID appears to be genuine. Something you are would be like a biometric like a face scan or thumbprint. You should use multiple factors, two or more of those things to identify the remotely located individual. Secondly, electronic records should be used and I say this for two reasons – because in an electronic notarization over the internet you have potential chain of custody issue. When you go before a notary for a paper notarization you take for granted that the notary knows that the same document that they are notarizing is the same one that the document signer signs because it just is handed cross the table to one another but with a remote notarization how do you know? And with a remote ink notarization where a paper document is mailed how do you know if after the person signs the document they changed something before the document gets sent to the notary in the mail.

So, in these electronic platforms that allow for RON, they have the ability to present the electronic record being notarized simultaneously both with the notary and the signer and they can see what each other is doing with the document in real time so when they sign the notary can see it and when the notary notarizes it the signer can see it. The second policy is electronic records because it allows us to use cryptographic technology to apply to what we call a taper evidence seal to the document. Once the documents are signed this cryptographic solution is applied and then after its applied if any changes are made to the document everyone will be able to know that and there will be a complete audit trail of the changes and then people will be able to decide whether or not to trust the document. The third policy you should consider is an audio visual recording of the RON. All of the states that have enacted permanent RON require this and it provides important evidence of the remotely located individuals willingness to sign the document and their mental competence in doing so and it also provides evidence of what the notary did. Should a document be contested after you will have the recording there to see what everyone did. The final policy to consider is recognition. Notarial actors cross borders with documents every day and every state has a statute that recognizes the notarial acts of sister states. We recommend that you leverage the existing inter-state recognition laws that the states already have on the books to recognize RON. There has been some discussion with the notary community as to whether the interstate recognition laws explicitly will allow RON. While they don't explicitly say so my recommendation is that you fall back on them because they all say as long as the notarial act is performed by a notary public of the sister jurisdiction it will be recognized.

Frank O'Brien, VP of State Gov't Relations at the American Property Casualty Insurance Association (APCIA), stated that we put this issue forward and we're pleased and thankful that NCOIL has put it on the agenda so as to begin the discussion and from our point of view and the industry point of view this is part of a larger group of issues out of the COVID pandemic. One of the things that COVID caused everyone in the business community and frankly pretty much everywhere is to take a look at things in terms of what we were doing, why we were doing them and how we were doing them. This is part of a number of issues including various electronic communication type things including e-signature and e-deliveries and e-posting and on the auto side of things various registering of motor vehicles as in MA we have the registry of motor vehicles as opposed to the department of motor vehicles (DMV) but DMV related issues particularly in the area of total loss valuations salvage titling issues and e-titling issues in general. In that regard I note that a number of states are currently looking at various digitalization practices when it comes to electronic vehicle titling and we are getting into areas like blockchain which I'm sure that Mr. Anderson on the notarial side of things is aware of as well.

We are also looking at remote issues. One of the success stories coming out of this as my colleagues in the agent community will know is that we've had a flood of states that have moved

toward online and remote licensing applications and that has proven to be successful and is something that bears looking into in terms of other remote applications in particular on the examination side of things both in terms of licensing, using financial examinations in a remote setting - things like that. In terms of this particular thing, I want to note that Mr. Anderson has probably forgotten more about notaries and notarization than I will ever know and I appreciate his expertise as well as the expertise of his trade association. In terms of looking at this from our point of view in the insurance community one of the things that happened is that when we all went remote like everyone else all of a sudden people didn't want to be in the same room with other people so that pretty much grounded the traditional in person notarization practice to a halt the traditional paper approach that Mr. Anderson noted.

That required a number of states to pivot to various forms of electronic notarization. Some states pivoted more successfully than others. The 30 plus states that were noted on Mr. Anderson's slides dare I say that they may not have been 30 different approaches but at least 15 different approaches depending on what state and what box was being gored during the process. For example, we ran into situations in some states where they allowed online remote notarizations but the remote notary literally had to be in the same state or some other location requirement and that caused some issues. The other thing that took place is over the years it was one of those things we used notary requirements on a lot of procedures because that's what we've always done and it was easy to add a notary requirement and over the course of the years notary upon notary upon notary requirement was added to various processes. Particularly in the insurance context where we are moving more and more to the electronic side of things, it caused us to question whether there was value associated with the notary process. We do believe there is value associated with the notary process in a number of different transactions however in some cases there may not be as much value as perhaps there once was.

For example, in situations where an insurance company has a significant number of vehicle titles, a total loss situation or salvage title situation, where we have to track down the owner who was our customer and get the persons signature notarized there is not a lot of value there. We know the customer, we know what we need to do and its an extra step. On the other hand, the formal process of putting a notary signature and appearing before a notary does add a level of formality and level of gravitas if you will to various transactions. So, there are two ways to go through this. One is to take a look at moving toward more of a remote notary process and basically making it easier. The other is to go through the statutes and on a case by case basis kind of decide where a notary adds value and where it does not. We think that its more of an efficient way to do this and frankly a situation that would not engender as much opposition from the notary community to move forward with a remote notary situation. That's one of the reasons why we put this particular piece of legislation forward. It's a question of moving forward in an increasingly electronic environment, moving forward in a way to try to encourage efficiency to lower costs and of course if we are able to lower costs then that has a direct impact on the bottom line of our consumers.

Rep. Jim Dunnigan (UT) asked Mr. Anderson if he is familiar with the NCOIL draft. Mr. Anderson said yes. Rep. Dunnigan said he wants to talk a little bit about identification - you said there is know, have and are types of ID – is have an ID a biometric and know a specific knowledge by the person? Mr. Anderson stated that under the draft, there is a definition of identity proofing. I think that would be a knowledge based authentication point where an identity service provider like lexis aggregates challenge response questions from your transactional and life history and you are presented with those five questions and you have to answer four out of five correct in two minutes or less in order to pass. That is something you know. Something

you have would be an ID card which under stat statutes they have a provision called credential analysis where the signer takes a photo of an ID and transmits it through the system and then there is a third party service that looks at the ID and the placement of the elements of the ID on the front and back to determine whether or not its valid. Something you are would be a biometric.

Rep. Dunnigan stated that the proposed Model talks about identify proofing and satisfactory evidence is a passport or some other form of gov't ID so that would be have or if you have personal knowledge of the individual or then you can go to what you are calling a know, well actually that wouldn't be the know, that would probably be part of the have if you have somebody with a lexis Nexis or some other type of public identify proofing that they can do. Mr. Anderson stated that the draft Model basically says if the parties know each other so if you are doing remote notarizations in your company and there are lots of notarizations going back and forth every day like in our business I'm a PC agent here in CA and in the 50 states and we do a lot of notary bonds and in CA they have to be notarized. You could identify that person based on personal knowledge because of the relationship of working with each other so you wouldn't have to use the two forms of identity proofing in that regard because you can use personal knowledge. You can also use what we call a credible witness so that's a person that's known both to the notary and to the signer who takes an oath to identify the signer. But if not then you fall back on two forms of identity proofing which would be the knowledge based questions and probably the credential analysis as it is implemented in current laws.

Rep. Dunnigan asked if knowledge based questions are currently being used. Mr. Anderson stated that it is being used in virtually all states with enactments. In fact, if you were to get on a plane and you forgot your ID to give to the TSA agent they would put you through with a knowledge based authorization quiz in order to verify your identity to let you get you plane so that's a form of ID that you would continually use in many contexts today. Rep. Dunnigan asked if that means TSA would let someone through airport screening with knowledge based questions. Mr. Anderson replied yes.

Rep. Jordan stated that in the draft Model there is a 10 year retention requirement but in LA there is a seven year retention on records for attorneys so after you complete and a case is closed you have to retain those records for seven years but I am wondering why there would be a longer retention period on remote acts as opposed to what we have for physical paper for attorneys. Mr. Anderson stated that there has been a lot of discussion on this and the statutes range from five years to 10 years which is most common and I think the reason is because the mortgage industry likes records to be actually kept for the life of a mortgage which could be 30 years so they're probably going to keep them for 30 years if they can but 10 years was seen something as compromise.

Rep. Jordan stated that the Model will be discussed further in July and to please submit any comment to NCOIL staff.

#### DISCUSSION ON CAPTIVE INSURANCE LEGISLATIVE LANDSCAPE AND POTENTIAL MODEL ACT

Sen. Jason Rapert (AR), NCOIL Immediate Past President, stated that he would like to express his support for this discussion and for the concept of captive insurers. Several states have worked on this issue as you know. Arkansas has a very strong captive insurer statutory and regulatory framework and I think that having NCOIL discuss this topic and develop a model law to provide states guidance when they are looking to develop a captive insurer statute would be

extremely beneficial. We hope this will lead to a strong model law. The language you have before you is still in the early stages of being ready to serve as a model law, but I would be very interested in using the language as a starting point to sponsor an NCOIL captive insurer model act. I don't see Sen. Tavis Holdman (IN), NCOIL Immediate Past President, but he's very well experienced in this arena and I hope today's discussion will be educational and informative and I hope by I think by our next meeting in July we can have a version of such a Model ready for discussion and debate by the committee. It's important for us as we have done with other issues to develop a strong model for other states to use as a framework for captive insurers.

Rep. Dunnigan stated that I'm going to give a brief overview of Utah's history as a captive domicile. In 2003 the state insurance commissioner approached me and said we would like to attract captives as it's a good industry and each captive typically brings well paying jobs so I sponsored legislation in Utah and created the statute to allow captives. A couple key competitive features included no state premium tax, a very simple \$10,000 license fee and it started to grow and in 2011 I sponsored legislation to amend it to allow for sponsored cell captives sometimes referred to as rent a captive and from 2007-2016 we had a significant boom during those years with UT becoming an attractive place for what are called micro captives. In 2016 we reached a peak of 535 actively licensed captives and for about the last decade UT has been the second largest captive domiciliary in the nation and the 4<sup>th</sup> largest in the world.

Currently, UT is one of the largest and most respect domiciles in the country and world for captives and the total annual reported economic benefit including local payroll, hotel nights, professional services, and other expenditures has exceeded \$11 million per year since 2011, with a high of \$18.2 million in 2019. Total cash and other invested assets held in Utah financial institutions reached a record high of \$1.633 billion in 2020. Total gross written premium was also reported at a recorded high in 2020 of \$1.51 billion. This past session which we concluded in March the state risk manager came to me and said UT had an earthquake a year ago and we had some significant wind storms and the state has billions of dollars in assets in property and he said will you change the law so that the state risk department or manager can create a captive to manage the risk and get more access to her reinsurance market. We carefully created that and we are very cognizant that we didn't want the captive competing with the private commercial market and that passed this session.

Anne Marie Towle, Global Captive Solutions Leader at Hylant, stated that I lead the global captive solutions team at Hylant and I've been involved in the industry for nearly 30 years and overall with a lot of different captive insurance associations. I currently am a board member of the VT captive insurance association and VT is the largest U.S. domicile for captives and third largest globally, very similar to UT as just mentioned. I think it's important as we're looking at model legislation and involving the different domiciles here in the U.S. and sharing information and getting everyone involved.

I first wanted to discuss some concepts with you as I'm not sure how much of an understanding that everyone has with captive insurance companies but as we're working with operations and individual companies whether for profit or non profit we really look at and evaluate their risk tolerance and appetite and there are a number of different types of captives that we'll touch on in a moment. On the risk appetite spectrum, financial control and program control are the big drivers for organizations when you look at from a U.S. perspective and some of the IRS laws that are available and what you can avail yourself of, making sure you adhere from a risk mgmt. perspective and really what is the driving motivation of why people want to establish a captive and really it's to take on some of the risk and manage that risk and control their losses because as you look at the spectrum and moving up to a guaranteed cost program to eventually a

deductible program and even up to a group captive program or a single parent it becomes very instrumental as people are looking to control their costs from an insurance perspective.

Part of its going to be different for every single organization on how they measure their risk and what their appropriate risk tolerance will be. So thinking about what does that mean if I'm a non profit community hospital versus a for profit organization that's a global organization – how they measure their risk tolerance is going to be very customized for each individual company and that's important as they are evaluating taking on a risk program. It becomes extremely important when you think about the plethora of risks that are out there today for many different types of organizations. We are dealing with a lot of different things today that we weren't 10 or 20 years ago when we think about cyber threats, active shooters and I'm here in IN and we had a horrific event a couple of days ago at a FedEx facility and you think about these exposures to risk and what can we do to help mitigate some of these areas and a captive can be a solution for many organizations out there.

So when we think about how do you identify these different risk and design a program, today what we are seeing in terms of trends within the captive insurance organizations is the different types of policies that we have listed here on the right hand side so we are seeing a lot of active use in the P&C market and I probably don't need to explain to all of you that it's a hard market today and with the pandemic going on its been a challenge for many orgs so managing their property risk and some liability risks and healthcare costs as you can imagine are continuing to increase so how do you manage it and finance some of it. The way I view a captive essentially is it's a risk financing vehicle so how can you set money aside, be able to protect yourself and control the claims you have in a variety of different coverages.

So when you think about some of those captive basics, its looking at in true form the way I describe it is a licensed, regulated form of self insurance. So thinking about very similar to any traditional insurance company the primary use for a captive around the world with the 7,000 plus captives out there is really what we call a single parent captive and that is where you are going to insure the risks of your own org and potentially any affiliated companies with you and then you have the opportunity to take on a layer of risk. None of the captives out there that's been established in the U.S. and globally in various domiciles take on unlimited risk – its very structured and tailored to an org so managing that risk is important. For instance, I work with compensation and taking on a primary layer and funding it through a captive is something that has been tried and true for quite a long time since the beginning of captives. There are other types of captives and I know the gentleman from Utah mentioned sponsored cell legislation that was passed and he was sponsor of that type of legislation which is important. We have cell captives, sponsored cell captives, or segregated cells and they have become very popular over the last 10-15 years because instead of setting up your own established captive you can go down the path of renting it and we mean instead of setting up and owning your own single family home you could rent an apt basically is what I compare it to. With renting there is lower cost of entry and lower annual operating costs due to the timelines of being able to utilize and rent a facility is fairly quick compared to some other structures so its become much more popular and there are quite a few cell structures available in a variety of states and countries for orgs to utilize that type of facility.

The other types of captives ill touch on quickly relate to group/association or a risk retention group (RRG). The RRG is a little bit more traditional similar to a traditional insurance company and follows the NAIC guidelines of course. There has been a lot of discussion and thought as to how we can make changes to any types of these captives whether its one of them or all of them and I think when looking at model legislation and accepting and understanding the ability

to do business in the various states is an important aspect and that's something to consider when we look at the continued growth of captives particularly in this hard market and coming out of the pandemic and how people are looking to finance their risk and control their own destiny.

A couple of more points as to why captives continue to be very popular and a good strategy in a risk managers toolbox. Its going back to what I mentioned earlier on having control and the other additional aspect that's really important for many orgs is access to capacity. There are orgs out there for instance right now child welfare agencies are having an enormously difficult time carrying cost effective insurance for their sexual molestation coverage and so opening up a captive potentially is one solution where they can access additional reinsurance carriers that they might not be able to access from a traditional commercial placement. So looking at manuscript and coverage forms, that could be a broader coverage form and then support on reinsurance capacity is an important driver I think today and we're seeing this more and more. The other area that I think is truly important is the pandemic risk opened a lot of peoples eyes of business interruption and covering costs and insurance for that pandemic whether its event cancellation or even coverage for interruption related to a virus or communicable disease so I think there are going to be a lot of changes coming forth for captives seeking to insure a layer and I think there is going to be additional capacity with the insurers who may want to entertain and take on some level of risk in these areas so we're looking at continued growth in the next few years in this capacity.

Wrapping up on some concepts, there are a variety of reason companies go down this path and then they think about having a little more control over their own destiny and the flexibility with designing their own programs yet still partnering with a lot of carriers out there it becomes instrumental when looking at soothng out that cost of risk for the long term and not being subject to the peaks and valleys of the overall industry because that can be extremely frustrating when trying to budget and plan for insurance on a year to year basis so when you have good loss history and have the ability to manage and finance some of those costs within an insurance company you own and control and partner with some traditional insurance companies it can be a win-win all the way around. I think some of these reasons really help drive home the message and thought process when talking to risk managers and C-suites across the country in orgs that have been involved in captives for 10-20 years – the stakeholders that are going down the path right now to explore the opportunity.

Gary Osborne, Chair of the South Carolina Captive Insurance Association (SCCIA), stated that he is a Scottish chartered accountant that's had the pleasure of living in SC for nine years and served as Chair of SCCIA. I've been involved in the captive industry since 1985 and lived in Bermuda, VT, Hawaii and SC and so I've had a great deal of experience with jurisdictions that are working this and very familiar with laws in other states and I believe there are laws in 35 states that have captive laws now. I'm here to present on behalf of SCCIA and I also am involved with the VT captive insurance Assn so I bring their comments as well. We're very open to hearing NCOIL's main driver for this because I've been involved in creating laws in VT, SC and other states and there almost is a model act and Rep. Kitzmiller (VT) being involved in VT and almost every other state has started with VT's law and adapted it so we would like to see the model act if its coming out as being a model and it's a great starting point and then you've got all the other states that have made a couple of variations and I think the draft is an initial job of putting together a sort of best of all that that's out there and one of the best things about the U.S. is that we have 50 jurisdictions and there is a small amount of variation so one of the biggest things we want to make sure of is if any model act comes out of here that its not going to limit the ability to have some variation.

We understand that one of the drivers of the model might be that there may be a fear of somewhat of a race to the bottom that we're getting too competitive in our industry and we're here to talk with you as its important that yes maybe there is some need for a common standard to make sure we're meeting some form of minimum standard but we really do look forward to having the ability for variation between the domiciles. The vast majority are very similar but for instance NY and TX have come up with laws that were very much designed for their own in state companies so there are some variations in their laws that are very much stating that a TX business should do a captive in TX and its not really designed as a market for a SC company to form a captive in TX so that kind of variability is quite important. We are very confused to see this sort of initial approach – we like the first model but we'd just like to be an involved partner to make sure that our orgs can see that variability and flexibility and its not lost. Its important to note that captive insurance and alternative insurance is now almost 50% of the market and growing. As Ms. Towle stated we are seeing vast amounts of companies being formed right now in a variety of states and some sort of model that might allow for a little more clarity on where we are going to face self procurement tax, facing different types of how do we operate cross states is one of the biggest issues facing our industry and there has been multiple approaches so we hope working with you as a group might come up with some answers that might allow for some sort of better reciprocity among states on how captives are treated.

Jeff Silver, Exec VP and General Counsel for Applied Underwriters (AU), thanked the Committee for the opportunity to speak and thanked Rep. Dunnigan for his remarks as UT is a vibrant captive jurisdiction. Mr. Silver stated that AU has been in the captive business for a very long time. Captives are proliferating as Ms. Towle has indicated. I was reading yesterday that there are now more captives in the world than regular insurance companies and the amount of captives is increasing dramatically as a very valuable tool in a number of different instances in terms of captive insurance companies. Its also important to one that there is a vacuum at the NAIC with respect to captives. They've discussed captives in various discussion groups and things of that nature but they really haven't addressed the issue of captives directly which I think this model legislation will do. What the model legislation is intended to do and Mr. Osborne's point is well taken – every state is going to have some variation in terms of capital and surplus requirements and things of that nature but what the model is supposed to do is to try to uniform it. We have 38 states that have captive laws – the model would attempt to uniform that and most importantly as Ms. Osborne also pointed out there is the a question of reciprocity. You have with the proliferation of these captives that are involved in multistate jurisdictions and an issue that has come up and that we've tried to address is you have a state domicile captive for example in UT – what is it going to do when it does business in another state – is it going to be recognized as a captive? So the model tries to 1.) talk about some kind of uniformity in the application process to streamline that across the states; 2.) attempts to leave the capital and surplus requirements to each particular state so that they can set their own requirements.

Section 15 talks about recognition in other states and I think that's great and really needs to be looked at and examined on a going forward basis so that the continued proliferation of captives can address the multijurisdictional issue that has arisen in the captive industry.

Sen. Rapert stated that NCOIL has had a great history in trying to pick some of the best ideas from across the states and try to produce a model that improves the issue and helps to improve the environment for different aspects of insurance. You mentioned some of the best things, could you leave with us one or two points that you want to leave us with as we continue discussion. Mr. Osborne stated that its important to note that this is a regulated entity and should subject to we try to use the term light but appropriate regulation because we are really insuring our own risk but its important to note that we have what I consider the best domiciles all

require state examination on every 3-5 years or so and they also require things like audits. So its important that state departments rely on independent auditors heavily. The ability to perhaps waive that for very small captives is a possibility and I've seen that and don't mind it but its important that we have a kind of light regulation but its regulated and won't just become a free for all. There is definitely a need for oversight to make sure that companies are following their business plans so audits and even examinations are an important part of the process as we are regulated insurance companies and those sorts of things are in the major domiciles and while there can be some flexibility around that, that's the kind of thing we are looking for to make sure we are acting appropriately and responsive to the state regulators that are overseeing us.

Mr. Silver stated that the other point that is important is the reciprocity issue as that is critical in terms of as these captives continue to grow and each state continues to go out and get more captives the jurisdictional issues that are going to arise between a state having a captive in x state and that state's captive doing business in another state we need to address that issue because its becoming more of an issue on a going forward basis. Mr. Osborne stated that reminded me of an interesting example – OH is a state that has actually specifically excluded captives from self procurement taxes so that's a clear example of a state saying captives are a very useful tool whether you form it in OH or somewhere else we are not going to impose a self procurement tax so OH is one of the leaders in that reciprocity recognition for captives and is an example of a state that has provided an answer and made it much easier to do business in OH.

Sen. Bob Hackett (OH) stated that you mentioned NY and TX and OH is very similar and I carried the legislation and I appreciate the work SC and VT has done. In hindsight do you think that those states are too conservative? We just wanted the business of corporations in our state because business was going out of the state so we wanted our own corporations that have captives to move the captives to OH. But at the same time our DOI is saying that we didn't want to create a scenario of liability and liberal captives creating a problem and major corporations using captives to actually move some of the risk outside their bottom line. I know most states don't allow that but now that we've had a lot of years of captives do you think OH, TX and NY should get more liberal?

Mr. Osborne stated that he would hope to see NY and TX be a little more liberal but I'm not going to tell the legislators how to do business but I think those states have been successful and they were very focused to start with and I think they can expand. I'm working with a company now in NY to form a captive and they are a NY company and it makes sense if its NY and if it has operations in other states and becomes a little trickier. Especially in TX which is a little more restrictive than NY. I would like to see them become a little more open but that's for us to convince legislators. VT, SC, HI, and UT have done a great job of showing that they are not open for everything and they are definitely taking responsibility seriously as the failure rates for captives, as there are failures and we are never going to deny that, are in line or lower than the traditional insurance industry. So I would like to see TX and NY and other states be more open but I don't see that happening but I would have no problem with all 50 states having a captive law and then that would probably be the situation of most of the time a company would form in its own state because it does take care of many issues if you can do it in your own state and there has definitely been a movement recently that if your company is trying to form a captive and you are one of the 38 states quite often it makes sense to do it in the home state. This model act if it were adopted across the country could allow that and hopefully as other states get more comfortable working on this perhaps they would become a little more liberal in their rules.

Sen. Hackett stated that when we create model legislation we try to create the framework but give states the ability to develop their own policy. OH and CA don't agree on a lot even though

we work on some things together and so it allows that and that's why I think with this legislation I don't want to see the conservatism of some captive laws in some states go away because I think that's what they wanted so I want the model to have the ability to protect everybody but also to work for everybody so each state can come in and take the framework and make it more liberal or conservative. Mr. Silver stated that point is well taken but just recently WA passed legislation which taxes any captive that has a risk in WA at 2% or will not let you form a captive in WA to operate so that is a state that is going in just the opposite direction that we think the states should go in.

Rep. Jordan stated that we will discuss this in the summer and it seems it generated lots of interest so we all look forward to hearing more on it.

#### ANY OTHER BUSINESS

Asm. Cooley stated that he would like to introduce a topic that he is very interested in and one which he thinks would be great for further discussion at NCOIL as its very relevant to its mission – legislative oversight. In many states, lawmakers are getting more assertive (and seeking a path and tools to use to give vent to those feelings) as a response to too much perceived unilateralism in how their Governors and executive branch officials chose to respond to the COVID crisis of the last 12 months very often without any communication with the legislative branch which actually adorned quite often because of COVID and the fear of becoming a super spreader event. There is a concern in legislatures I think about the role of the legislature as an independent branch of gov't and the mutual accountability that should exist.

Accordingly, with us here today is Ben Eikey from the Levin Center at Wayne State Law who will provide some brief remarks encouraging lawmakers to be informed on this growing topic and to incorporate the fundamental idea of legislative oversight into all Executive Branch interactions and asserting accountability. It is actually a very important evolution in western law in the magna carta which asserted powers on the king and said the king's powers were not unlimited – this is a very important idea and influenced our national and state constitutions. The levin center honors Carl Levin a 36 year U.S. Senator from Michigan who among other things Chaired the U.S. Senate Committee on U.S. investigations. Mr. Eikey is a resource for legislators. Here in CA we've worked with the Levin Center in some of our training for state lawmakers and they've also had a role for Council of State Governments (CSG) West and nationally as well. The ideas he will discuss are very bipartisan and important.

Ben Eikey, Manager of State Training and Communications at the Levin Center at Wayne State Law, stated that the LC is a bipartisan org dedicated to the enhancement of legislative oversight. Thinking about oversight and thinking about these three propositions for state legislative oversight, good gov't really does require oversight. We have to be able to gather the facts to be able to handle the foundation upon which we can then go forth to be able to have policy disagreements. We believe that state legislatures of any size of any makeup can conduct good oversight. We have research in the LC and developed a 50 state study looking at the state of state legislative oversight in legislatures across the country and next week we are actually releasing new research looking at contract oversight specifically and we are going to be looking at AL, HI, ID, LA MD and TN. We have found that all sorts of different states can develop all sorts of unique and innovative ways to conduct effective oversight to be able to make sure that the laws and rules are actually being followed.

We also think that the public should demand good oversight from state legislatures. We have seen a little bit of a lapse in the attention on oversight and we think part of that is due to a lot of

investigations that we might have seen from media that are still happening but just a little differently today with the rise of social media and as a result we think that the more the public looks at this and understands that this is a priority we think that will result in better gov't overall.

When thinking about who runs an investigation, you of course have your different committees with their different legislative priorities but then you can have select committees and there are several different legislatures across the country that formed joint legislative committees in response to the pandemic to try to enforce effective oversight on how their state will respond either through oversight on a state's unemployment system or oversight on the distribution of personal protective equipment (PPE). And then also individual members are key. An interesting story is that yesterday we had a meeting with the WA DC office of the European parliament and they lamented their difficulties in the European parliament with getting members to participate in hearings or investigations and we actually responded back and said some of the best investigations that have ever happened are investigations with just even two individual members, one Democrat and one Republican and they hold each other accountable and together and don't operate in an echo chamber. Those are some of the best investigations we've seen all across the country as there is a lot of influence in just the offices we see state legislators holding and their ability to be able to conduct good effective investigations.

Over the course of an investigation, you have to go through certain stages: fact finding to be able to get the information from the dep't/agency whatever it is that you are conducting oversight over, and the write it up because if you don't write it up then it disappears and its forgotten if you are in a term limited legislature or something where it can be mixed up on facts its very important to have that paper trail; during the hearing there is all sorts of strategy and play in terms of who you invite to the hearing and how you ask questions and the order in which questions are asked – there is a lot of strategy involved in that to be able to get the info you need to be able to fulfill legislative purposes. Asm. Cooley stated that here in CA we have had the interesting experience with our heavily Democrat legislature but the minority leader has actually in training said she recognizes that part of the role in bipartisanship is that sometimes the members of one party may be the one you want to set up to ask a certain question so it's the opposing party to say the Governor or Governor's people so there is a way in which the fact that we are of two different viewpoints and two different parties actually becomes a tool in the legislators toolkit to think how some things are choreographed as hearings unfold which gets to the issue of bipartisanship and who asks what questions becomes a legislative skill and tactic.

Mr. Eikey stated that LC has lots of training and info available on its website if you are interested in looking at as an intro to this sort of topic. We have videos and various info as to how to form a hearing and ask questions and write docs to the agency or entity requesting information. If you do follow this how do you know if its good oversight thinking about the credibility and quality of the investigation. You have various ways to be able to do this in DC but at the state level its sort of a new area. There is a relatively decent amount of research that has looked at congressional oversight over the course of many years but state legislative oversight we're kind of looking into that in terms of how to measure what is and is not good oversight. We certainly have seen trends across the country in certain areas where legislatures at large do excellent oversight and other areas that can be improved which is the reason why next week we are publishing research looking at contract oversight because we have seen that as a particular area really across the country that could be enhanced. We think measuring good oversight is going to become more clear as we see different workshops conducted across the country.

The LC provides oversight training for state legislators and other information that can be found on their website. We have a very good hour long presentation with the CA general assembly

which Asm. Cooley helped with. We have a 2019 study of legislative oversight across the states at [www.stateoversightmap.org](http://www.stateoversightmap.org) which is a state of state legislative oversight study to say where are we now. We recently just launched a state oversight list serve which is new. We also have other information on legislative oversight across the country and various updates and events. And we have a panel focused on legislative oversight in light of the pandemic on May 4. We have three panels in which a NE senator, ID senator and CA assemblyman will join. We hope you can join.

Rep. Jordan stated that this will be discussed further at the summer meeting and we have some people in LA interested in talking to you and our woman's caucus in particular. Mr. Eikey stated that the LC was recently contacted by a LA Representative so there is a little interest established and I look forward to gaining traction and continuing discussions.

#### ADJOURNMENT

Hearing no further business, upon a motion made by Asm. Cooley and seconded by Rep. Fischer, the Committee adjourned at 10:30 a.m.