30 DAY MATERIALS AND TENTATIVE GENERAL SCHEDULE
NCOIL ANNUAL MEETING
NOVEMBER 17 - 20, 2021

As of November 8, 2021, and Subject to Change

The Westin Kierland
Scottsdale, Arizona

NCOIL ANNUAL MEETING
Scottsdale, Arizona
November 17 - 20, 2021
TENTATIVE SCHEDULE

WEDNESDAY, NOVEMBER 17th

Budget Committee	5:30 p.m.	-	6:00 p.m.
Welcome Reception	6:00 p.m.	-	7:00 p.m.

THURSDAY, NOVEMBER 18th

Registration *Exhibits Open: 9:00 a.m. – 5:00 p.m.*	7:00 a.m.	-	5:00 p.m.
Welcome Breakfast	8:15 a.m.	-	9:45 a.m.
Networking Break	9:45 a.m.	-	10:00 a.m.
Health Insurance & Long Term Care Issues Committee	10:00 a.m.	-	11:30 a.m.
Legislative Oversight Workshop (To run concurrent with Health Committee)	10:00 a.m.	-	11:30 a.m.
NCOIL Innovation Series Insurance Score Transparency	11:30 a.m.	-	12:45 p.m.
The Institutes Griffith Foundation Legislator Luncheon Direct-to-Consumer Insurance: Discussing the Model and Exploring Its Impact	12:45 p.m.	-	1:45 p.m.

Financial Services & Multi-Lines Issues Committee	1:45 p.m.	-	3:00 p.m.
Networking Break	3:00 p.m.	-	3:15 p.m.
Workers' Compensation Insurance Committee	3:15 p.m.	-	4:30 p.m.
Nominating Committee (Members Only)	4:30 p.m.	-	5:30 p.m.
Adjournment	4:30 p.m.		
CIP Member & Sponsor Reception	5:15 p.m.	-	6:15 p.m.

FRIDAY, NOVEMBER 19TH

Registration *Exhibits Open: 8:00 a.m. – 3:00 p.m.*	8:00 a.m.	-	3:00 p.m.
Life Insurance & Financial Planning Committee	9:00 a.m.	-	10:30 a.m.
Networking Break	10:30 a.m.	-	10:45 a.m.
NCOIL – NAIC Dialogue	10:45 a.m.	-	12:00 p.m.
Luncheon with Keynote Address	12:00 p.m.	-	1:30 p.m.

Reminder: There will be no Legislative Micro Meetings. However, there will be a room available throughout the duration of the conference for informal meetings.

Health General Session Prior Authorization in HealthCare – Are Gold Cards the Answer?	1:30 p.m.	-	2:30 p.m.
Networking Break	2:30 p.m.	-	2:45 p.m.
Property& Casualty Insurance Committee	2:45 p.m.	-	4:15 p.m.
Legislative Oversight Workshop (To run concurrent with P&C Committee)	2:45 p.m.	-	4:15 p.m.
Articles of Organization & Bylaws Revision Committee	4:15 p.m.	-	4:45 p.m.
Adjournment	4:45 p.m.		
IEC Board Meeting	4:45 p.m.	-	5:30 p.m.

SATURDAY, NOVEMBER 20TH

Registration *Exhibits Open: 8:00 a.m. – 11:00 a.m.*	8:00 a.m.	-	10:00 a.m.
General Session Man's Best Friend But Not Insurable?	9:00 a.m.	-	10:15 a.m.
Networking Break	10:15 a.m.	-	10:30 a.m.
Joint State-Federal Relations & International Insurance Issues Committee	10:30 a.m.	-	12:00 p.m.
Business Planning Committee and Executive Committee	12:00 p.m.	-	1:00 p.m.

******Please note all speakers listed are scheduled to speak as of November 8, 2021. There will be modifications between now and the start of the Meeting.******

******Reminder: there will be no Legislative Micro Meetings. However, there will be a room available throughout the duration of the conference for informal meetings.******

WEDNESDAY, NOVEMBER 17, 2021

Budget Committee
Wednesday, November 17, 2021
5:30 p.m. – 6:00 p.m.

Chair: Asm. Kevin Cahill (NY) – NCOIL Treasurer
Vice Chair: Sen. Neil Breslin (NY)

1.) Call to Order/Roll call/Approval of July 14, 2021 Committee Meeting Minutes
2.) Consideration of Adoption of 2022 Budget
3.) Any Other Business
4.) Adjournment

Welcome Reception
Wednesday, November 17, 2021
6:00 p.m. – 7:00 p.m.

THURSDAY, NOVEMBER 18, 2021

Welcome Breakfast
Thursday, November 18, 2021
8:15 a.m. – 9:45 a.m.

1.) Welcome to Scottsdale
    The Honorable Evan Daniels – Director – Arizona Dep't of Insurance and Financial Institutions
2.) ***Hon. Tom Considine***
    Introductory Comments from NCOIL CEO
3.) ***Rep. Matt Lehman (IN)***
    a.) President's Welcome
    b.) New Member Welcome and Introduction
4.) Any Other Business
5.) Adjournment

Networking Break
Thursday, November 18, 2021
9:45 a.m. – 10:00 a.m.

Health Insurance & Long Term Care Issues Committee
Thursday, November 18, 2021
10:00 a.m. – 11:30 a.m.

Chair: Asw. Pam Hunter (NY)
Vice Chair: Rep. Deborah Ferguson (AR)

1.) Call to Order/Roll Call/Approval of July 17, 2021 Committee Meeting Minutes
2.) Consideration of NCOIL Telemedicine Authorization and Reimbursement Model Act
    Asw. Pam Hunter (NY) – Sponsor
    America's Health Insurance Plans (AHIP) Representative
3.) Consideration of NCOIL Accumulator Adjustment Program Model Act
    Sen. Jason Rapert (AR), NCOIL Immediate Past President (Prime Sponsor); Rep. Deborah Ferguson (AR); Rep. George Keiser (ND); Asw. Pam Hunter (NY) – Co-Sponsors
    Steve Schultz, Director of State Legislative Affairs – The Arthritis Foundation
    American Bankers Association (ABA) Health Savings Account (HSA) Council Representative
    America's Health Insurance Plans (AHIP) Representative
4.) Consideration of NCOIL Model Act Regarding Air Ambulance Patient Protections

Del. Steve Westfall (WV) – Prime Sponsor; Rep. Thaddeus Jones (IL); Rep. Deanna Frazier (KY); Rep. Tom Oliverson, M.D. (TX) – Co-Sponsors
The Honorable Nat Shapo, Partner, Katten Muchin Rosenmann, LLP – Former Director of the Illinois Department of Insurance

5.) Discussion on 340B Drug Pricing Program

Jeremy Crandall, Director of Federal and State Policy – National Ass'n of Community Health Centers (NACHC)
Maureen Testoni, President & CEO – 340B Health
Melodie Shrader, Vice President, State Affairs - Pharmaceutical Care Management Association (PCMA)

6.) Any Other Business

7.) Adjournment

Legislative Oversight Workshop
(To run concurrent with Health Committee)
Thursday, November 18, 2021
10:00 a.m. – 11:30 a.m.

Ben Eikey
Manager
State Training and Communications
Levin Center at Wayne State Law

Carmen JM Simon
Evaluation & Strategic Planning Consultant

The Hon. Sara Gelser (OR)
Oregon Senate Majority Whip
Chair, Senate Committee on Human Services, Mental Health and Recovery

NCOIL Innovation Series
Insurance Score Transparency
Thursday, November 18, 2021
11:30 a.m. – 12:45 p.m.

Moderator: Rep. Matt Lehman (IN) – NCOIL President

Gary Sanginario, CPCU
AVP, Insurance Market Education
Product Management
LexisNexis Risk Solutions

PJ Smith
Sr. Director of Product Management
LexisNexis Risk Solutions

Amy Bach
Executive Director
United Policyholders

Jesse McKendry
Senior VP, Insurance
Metromile

The Griffith Institutes Legislator Luncheon
Direct-to-Consumer Insurance: Discussing the Model and Exploring Its Impact
Thursday, November 18, 2021
12:45 p.m. – 1:45 p.m.

*****Open Only to Public Policymakers and Staff*****

David Pooser, Ph.D.
Associate Professor of Risk Management
St. John's University

Financial Services & Multi-Lines Issues Committee
Thursday, November 18, 2021
1:45 p.m. – 3:00 p.m.

Chair: Rep. Edmond Jordan (LA)
Vice Chair: Rep. Jim Dunnigan (UT)

1.) Call to Order/Roll Call/Approval of July 16, 2021 Committee Meeting Minutes
2.) Consideration of NCOIL Remote Notarization Model Act
Rep. Edmond Jordan (LA) – Sponsor
3.) Continued Discussion on NCOIL Uniform Captive Insurer Model Act
Sen. Jason Rapert (AR), NCOIL Immediate Past President – Sponsor
4.) Introduction and Discussion of NCOIL Insurance Regulatory Sandbox Model Act
Rep. Bart Rowland (KY) – Prime Sponsor; Rep. Wendi Thomas (PA) – Co-Sponsor
The Honorable Evan Daniels – Director – Arizona Dep't of Insurance and Financial Institutions
Wade Eyerly, Founder & CEO – Degree Insurance
Jeff Klein, Esq., Of Counsel - McIntyre & Lemon, PLLC
5.) Discussion on Uniform Electronic Transactions Act (UETA) Developments Stemming from COVID-19
Karen Melchert, Regional Vice President, State Relations – American Council of Life Insurers (ACLI)
6.) Consideration of Re-adoption of Model Law
-Identity Theft Protection Model Act – Originally Adopted 11/21/03; Readopted 11/11/06, 11/20/11, 11/20/16
7.) Any Other Business
8.) Adjournment

Networking Break
Thursday, November 18, 2021
3:00 p.m. – 3:15 p.m.

Workers' Compensation Insurance Committee
Thursday, November 18, 2021
3:15 p.m. – 4:30 p.m.

Chair: Rep. Tom Oliverson, M.D. (TX)
Vice Chair: Sen. Paul Utke (MN)

1.) Call to Order/Roll Call/Approval of July 15, 2021 Committee Meeting Minutes
2.) Presentation on Texas Occupational Injury Management
    Amy Lee – Steadfast Policy Strategies; Former Special Advisor and Director of Work Comp Research and Evaluation Group - Texas Dep't of Insurance
    Texas Alliance of Non-Subscribers Representative
3.) Discussion on Federal Work Comp Preemption Developments and Consideration of Resolution Opposing Federal Monitoring of the State-Based Workers' Compensation System
    Rep. Tom Oliverson, M.D. (TX) – Sponsor; Co-Sponsor – Rep. Susan Westrom (KY)
    Frank O'Brien, VP, State Gov't Relations – American Property Casualty Insurance Association (APCIA)
4.) Grand Bargain Under Siege? A Discussion on *Matilde Ek v. See's Candies Inc.*
    Jeff Adelson, General Counsel, Co-Managing Shareholder – Adelson McLean
5.) Consideration of Re-adoption of Model State Structured Settlement Protection Act
    -Supported 2/27/04, 7/22/06, 7/17/11, 11/20/16, 7/15/21
6.) Any Other Business
7.) Adjournment

Nominating Committee (Members Only)
Thursday, November 18, 2021
4:30 p.m. – 5:30 p.m.

Co-Chairs: Sen. Travis Holdman (IN) – NCOIL Immediate Past President
Sen. Jason Rapert (AR) – NCOIL Immediate Past President

CIP Member & Sponsor Reception
Thursday, November 18, 2021
5:15 p.m. – 6:15 p.m.

FRIDAY, NOVEMBER 19, 2021

Life Insurance & Financial Planning Committee
Friday, November 19, 2021
9:00 a.m. – 10:30 a.m.

Chair: Asw. Maggie Carlton (NV)
Vice Chair: Rep. Wendi Thomas (PA)

1.) Call to Order/Roll Call/Approval of July 15, 2021 Committee Meeting Minutes
2.) Update on Interstate Insurance Product Regulation Commission (IIPRC)
Karen Schutter, Executive Director - IIPRC
3.) Discussion on Regulatory Obstacles to the Recruitment and Retention of Insurance Producers
The Honorable Greg Serio, Former Superintendent of the New York Department of Financial Services
4.) Presentation on Protecting Vulnerable Adults from Financial Exploitation
Michael Hedge, Director, State Gov't Relations – National Association of Insurance and Financial Advisors (NAIFA)
Maeghan Gale, Policy Director, Gov't Relations – NAIFA
5.) Update on Paid Family Medical Leave (PFML) Developments
Karen Melchert, Regional Vice President, State Relations – American Council of Life Insurers (ACLI)
6.) Any Other Business
7.) Adjournment

Networking Break
Friday, November 19, 2021
10:30 a.m. – 10:45 a.m.

NCOIL – NAIC Dialogue
Friday, November 19, 2021
10:45 a.m. – 12:00 p.m.

Chair: Asm. Ken Cooley (CA) – NCOIL Vice President
Vice Chair: Rep. Martin Carbaugh (IN)

1.) Call to Order/Roll call/Approval of July 16, 2021 Committee Meeting Minutes
2.) Update on State Adoption of Credit for Reinsurance Models
3.) Update on NAIC Special Committee on Race in Insurance
4.) Discussion on New NAIC Letter Committee
5.) Discussion on NAIC Priorities
6.) Discussion on New NAIC Improper Marketing of Health Insurance (D) Working Group
7.) Any Other Business
8.) Adjournment

Luncheon with Keynote Address
Friday, November 19, 2021
12:00 p.m. – 1:30 p.m.

Cara Christ, MD, MS
Immediate Past Director – Arizona Department of Health Services (DHS)
Chief Medical Officer – Blue Cross Blue Shield of Arizona

Health General Session
Prior Authorization in HealthCare – Are Gold Cards the Answer?
Friday, November 19, 2021
1:30 p.m. – 2:30 p.m.

Moderator: Asw. Pam Hunter (NY)

Clayton Stewart
Director, Legislative Affairs
Texas Medical Association

Kelly Walla
Assoc. VP & Deputy General Counsel
Texas Medical Association

Terrance Cunningham
Director, Admin. Simplification Policy
American Hospital Association

Miranda Motter
Senior Vice President of State Affairs
America's Health Insurance Plans (AHIP)

Networking Break
Friday, November 19, 2021
2:30 p.m. – 2:45 p.m.

Property & Casualty Insurance Committee
Friday, November 19, 2021
2:45 p.m. – 4:15 p.m.

Chair: Rep. Bart Rowland (KY)
Vice Chair: Sen, Vickie Sawyer (NC)

1.) Call to Order/Roll Call Approval of July 16, 2021 Committee Meeting Minutes
2.) Discussion on State Efforts to Lower the Uninsured Motorist Population
   Victoria Kilgore, Director of Research – Insurance Research Council (IRC)
   Alex Hageli, Director, Personal Auto, Electronic Issues, Specialty Lines & Counsel Policy, Research & International – American Property Casualty Insurance Association (APCIA)
   Andrew Kirkner, Regional Vice President – Ohio Valley / Mid-Atlantic Region – National Association of Mutual Insurance Companies (NAMIC)
3.) Surfside Collapse: Implications for the Future Relationship between Property Insurance and Building Standards
   The Honorable Greg Serio, Former Superintendent of the New York Department of Financial Services
   Dottie Mazzarella, Vice President, Gov't Relations - International Code Council
   Daniel Dean, Risk Mitigation Officer – Bridgepoint Global Property Consultants
   Todd Thomas, LL.M, Ch.FE, RF, CPCU, ARM, AIC, Chief Consultant - Sigma Consulting Corp.
   Lisa Miller, CEO and Owner – Lisa Miller Consultants
4.) Discussion on Safety and Insurance Requirements for All Terrain Vehicles (ATVs)
   Jon Schnautz, Regional Vice President – Southwest Region – National Association of Mutual Insurance Companies (NAMIC)
5.) Any other business
6.) Adjournment

Legislative Oversight Workshop
(*To run concurrent with P&C Committee)*
Friday, November 19, 2021
2:45 p.m. – 4:15 p.m.

Ben Eikey
Manager
State Training and Communications
Levin Center at Wayne State Law

Carmen JM Simon
Evaluation & Strategic Planning Consultant

The Hon. Sara Gelser (OR)
Oregon Senate Majority Whip
Chair, Senate Committee on Human Services, Mental Health and Recovery

Articles of Organization & Bylaws Revision Committee
Friday, November 19, 2021
4:15 p.m. – 4:45 p.m.

Chair: Sen. Shawn Vedaa (ND)

1.) Call to Order/Roll Call/Approval of October 8, 2021 Committee Meeting Minutes
2.) Continued Discussion and Consideration of Proposed Amendments to NCOIL Articles of Organization & Bylaws
3.) Any Other Business
4.) Adjournment

IEC Board Meeting
Friday, November 19, 2021
4:45 p.m. – 5:30 p.m.

SATURDAY, NOVEMBER 20, 2021

General Session
Man's Best Friend But Not Insurable?
Saturday, November 20, 2021
9:00 a.m. – 10:15 a.m.

Moderator: Rep. Edmond Jordan (LA)

Prof. Fran Ortiz
South Texas College of Law Houston

Dr. Kris Irizarry
National Canine Research Council

Dr. Lisa Lisa Gunter, CBCC-KA
Maddie's Fund Research Fellow
Arizona State University in the Department of Psychology

Andrew Kirkner, Regional Vice President – Ohio Valley / Mid-Atlantic Region – National Association of Mutual Insurance Companies (NAMIC)

Networking Break
Saturday, November 20, 2021
10:15 a.m. – 10:30 a.m.

Joint State-Federal Relations & International Insurance Issues Committee
Saturday, November 20, 2021
10:30 a.m. – 12:00 p.m.

Chair: Sen. Bob Hackett (OH)
Vice Chair: Sen. Roger Picard (RI)

1.) Call to Order/Roll Call/Approval of July 15, 2021 Committee Meeting Minutes
2.) Continued Discussion and Consideration of NCOIL Resilient Revolving Loan Fund Model Act
    Sen. Katie Fry Hester (MD) – Sponsor
    Roderick Scott, Board Chair – Flood Mitigation Industry Association (FMIA)
3.) Perspectives on the National Flood Insurance Program's (NFIP) New Rating Methodology: Risk Rating 2.0
    The Honorable Andrew Garbarino (NY-02) – U.S. House of Representatives
    Chris Greene, Founder – Community First Agency, LLC – "The Flood Insurance Guru"
    Association of State Floodplain Managers (ASFPM) Representative
4.) Consideration of Re-adoption of Model Law
    -Company Licensing Modernization Model Act - Adopted by the NCOIL Executive Committees on July 12, 2002. Readopted by the NCOIL Executive Committee on November 19, 2004, November 11, 2006, November 20, 2011 and November 20,2016.
5.) Any Other Business
6.) Adjournment

Business Planning Committee & Executive Committee
Saturday, November 20, 2021
12:00 p.m. – 12:30 p.m.

Chair: Rep. Matt Lehman (IN) – NCOIL President
Vice Chair: Asm. Ken Cooley (CA) – NCOIL Vice President

1.) Call to Order/Roll Call/Approval of July 17 Committee Meeting Minutes
2.) Future Meeting Locations
3.) Administration
    a.) Meeting Report

b.) Receipt of Financials

4.) Consent Calendar – Committee Reports Including Resolutions and Model Laws Adopted/Readopted Therein

5.) Other Sessions

a.) The Institutes Griffith Foundation Legislator Luncheon

b.) Featured Speakers

c.) General Sessions

6.) Nominating Committee Report/Election of Officers

7.) Any Other Business

-Consideration of Auditor

8.) Adjournment

BUDGET COMMITTEE MATERIALS

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
BUDGET COMMITTEE
BOSTON, MASSACHUSETTS
JULY 14, 2021
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Budget Committee met at the Westin Boston Waterfront Hotel in Boston, Massachusetts on Wednesday, July 14, 2021 at 5:00 P.M. (EST)

Assemblyman Kevin Cahill of New York, NCOIL Treasurer and Chair of the Committee, presided.

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

Rep. Deborah Ferguson (AR)
Asm. Ken Cooley (CA)*
Rep. Matt Lehman (IN)
Sen. Jerry Klein (ND)
Sen. Neil Breslin (NY)

Also in attendance were:

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

2022 BUDGET PLANNING

Asm. Cahill thanked everyone for joining and noted that we're here today to discuss and plan for NCOIL's 2022 budget. Everyone present should have a copy of the proposed budget. Before going through the budget and opening it up for questions and comments, Asm. Cahill noted some procedural matters: today's meeting is only for the Committee to discuss the document distributed and determine if any changes should be made – no votes will be taken. The Committee will then meet at the NCOIL Annual Meeting in Scottsdale in November to formally adopt the 2022 Budget and send it to the Executive Committee for final consideration at the conclusion of the Annual Meeting.

Asm. Cahill first noted that with the 2021 budget, we were fairly conservative with numbers mostly in an effort to be prudent because of the largely unknown effects of COVID – we weren't sure if there was going to be a terrible third wave and/or if travel would continue to be curtailed. Accordingly, as the document distributed shows, a nearly balanced budget was adopted for 2021. The good news is that NCOIL is in the midst of having a very strong year and the organization is probably going to exceed those projections. Therefore, the numbers in the proposed 2022 budget may seem to be much higher than 2021 but when compared to 2020 and 2019, they are essentially normalized numbers.

Starting with dues - 30 states paid last year for a total of $508,000 which represented an all-time high for NCOIL in terms of the amount of dues collected. The reason why the total amount collected does not read $600,000 ($20,000 times 30) is because some states did not pay the full amount of $20,000 due to COVID-budget issues, and some

states noted that they had already previously planned for NCOIL dues in the prior amount of $10,000 so that couldn't be changed – but those states noted that they will make changes to their future budgets to reflect the new amount of $20,000.

As of now, 30 states are on track to pay dues again this year and there may end up being more as New Jersey has paid its dues for the first time in several years. Accordingly, the $600,000 represents an aspirational but reasonable number for 2022. As of July 8, 13 states have paid their 2021 dues, but most states operate on a July 1 fiscal year, so the majority of dues payments typically arrive after this meeting. Also, an added benefit of the $600,000 number is that it allows the organization to budget for $300,000 in Corporate & Institutional Partners (CIP) revenue, which is on track for what is expected this year and represents a traditional 2:1 ratio of state dues to CIP dues which is a nice ratio to have to show that NCOIL is still largely a state supported organization. Hearing no questions or comments, Asm. Cahill proceeded.

Next, for meeting support & revenue, as stated earlier, we were conservative with our 2021 numbers so in light of how things are consistently improving in terms of travel restrictions being lifted and the country re-opening, the 2022 numbers in the distributed document more-so mirror the numbers of 2020 and 2019. Hearing no questions or comments, Asm. Cahill proceeded.

Next, the Industry Education Council (IEC) NCOIL grant. As note 2 in the distributed document states, that projected number is based on IEC negative growth. The IEC has a formula based on as their membership shrinks, their grant to NCOIL shrinks – this has been the case for several years. Hearing no questions or comments, Asm. Cahill proceeded.

Next: interim calls. There were more interim calls in the second half of 2020 and in 2021 because of COVID and that is expected to continue in 2022 as Zoom has become such a popular mode of meeting. The number of $4,000 in the distributed document is on track for what is expected this year in interim call revenue. Hearing no questions or comments, Asm. Cahill stated that, overall, the total support & revenue number comes in at $1,477,000 which reflects a return to normal as well as continued growth.

Moving to the expense side – CIP expenses are up essentially because more members are expected which increases the cost of the CIP meetings and receptions. Asm. Ken Cooley (CA), NCOIL Vice President, stated that he had a question regarding interim calls. Regarding the estimate in revenue going from $1,000 in 2018, to $2,000 in the current year and $4,000 for next year, Asm. Cooley asked what was behind that estimated growth. Asm. Cahill stated that the reasoning is that Zoom has become a very popular means of communication for the various NCOIL committees and thus it is anticipated that there will be an increase in the use of interim committee meetings held via Zoom. Asm. Cooley asked if he would be correct in categorizing that as a "new normal" budget amount. Asm. Cahill replied yes. Hearing no other questions or comments, Asm. Cahill proceeded.

Moving to the stipend program – the increased amount from last year is because the amount is based on a formula which assumes a complete consumption of $6,000 for all fully contributing dues-paying states. So, an increased collection of dues corresponds with an increased/assumed consumption of stipends. Asm. Cooley asked if some stipends have been provided to cover legislator's registration costs if they virtually

attended NCOIL conferences. Cmsr. Tom Considine, NCOIL CEO, stated that stipends have been provided of both sorts – some physical travel stipends were provided because a number of legislators did attend NCOIL conferences in-person; and some other stipends were provided that covered the registration cost for legislators participating virtually.

Asm. Cahill stated that the idea behind the stipend program is to encourage states that have not really fully participated or only have had one or two legislators participating to expand their participation hopefully bringing new legislators into the fold and making states less resistant to participating, or when they do, for those states that don't reimburse expenses for these conferences, removing the disincentive for those members to participate. Asm. Cahill stated that he believes the program has proven to be successful so far and there doesn't appear to be any form of abuse and it can be expected that the program will help NCOIL grow with new legislators participating.

Rep. Matt Lehman (IN), NCOIL President, stated that he just wanted to note that there are 27 legislators attending their first NCOIL conference here in Boston and that's a signal of how that program is working and if you look at the states where those first-time legislators are from, such as Maine, Connecticut, Delaware and Maryland, those are not traditional NCOIL participating states so that is a really good sign of NCOIL reaching out beyond its own borders so to speak and that the program is working well. Asm. Cooley stated that he thinks the program is working well and there are four legislators from western states that are attending this conference who are first-time attendees. Hearing no further questions or comments, Asm. Cahill proceeded.

Moving to the retainer and incentive payment. For the retainer, as note 4 in the distributed document shows, the increased number reflects 100% of the retainer being paid from NCOIL, not the Insurance Legislators Foundation (ILF). Additionally, the annual contractual increase of 3%, which NCOIL Support Services waived in 2021, resumes in 2022. For the incentive payment, that number is based on a contractual formula involving a change in NCOIL net assets over a contractual base amount. As overall NCOIL performance increases, so does the incentive payment to staff. Hearing no questions or comments, Asm. Cahill proceeded.

Moving to conference expenses, the numbers in the distributed document are very similar to last year and years past. While increased attendance is expected at meetings in 2022 which corresponds with increased expenses, there also won't be certain expenses that we had this year such as those for Zoom and other COVID-related expenses. Accordingly, that's why the numbers don't change too much. Hearing no questions or comments, Asm. Cahill proceeded.

Moving to future location deposits – that number is based on how future contracts read and they all largely mirror past contracts. Hearing no questions or comments, Asm. Cahill proceeded.

Moving to IEC Discount Givebacks – that involves discounts IEC members receive on NCOIL conference registrations, so that lost revenue is tracked as an expense. As IEC membership is expected to decrease, the number in the distributed document accordingly is less than last year. Hearing no questions or comments, Asm. Cahill proceeded.

Moving to travel – Asm. Cahill noted that staff informed him that the number of $20,000 often used in budgets has never been exceeded. The 2019 number of $35,000 was high because it was NCOIL's 50th anniversary and it was anticipated that the NCOIL President and other Officers would travel a lot but that didn't happen. Hearing no questions or comments, Asm. Cahill proceeded.

Moving to Audit Fees and Accounting Fees – as note 6 in the distributed document states, the increased audit fee amount reflects NCOIL bearing a greater portion of the audit expense and the ILF a lesser share – that better reflects the auditing involved of each organization. The accounting fees are stable. Hearing no questions or comments, Asm. Cahill proceeded.

Moving to Miscellaneous – that number remains the same. As you can see, there was a big bump in 2019 and that was because prior budgets didn't have an incentive payment line so that was moved around. Hearing no questions or comments, Asm. Cahill proceeded.

Lastly, the D&O insurance amount remains the same. Asm. Cahill noted that, overall, the proposed budget has support and revenue at $1,477,000 and expenses at $1,343,610 for an excess of $133,390 which is a solid increase from last year and aligns with prior years.

Asm. Cahill asked if there were any final comments or questions.

Cmsr. Considine asked Asm. Cahill if he agreed that the lack of discussion, which is encouraging, means that no one is suggesting any changes to the proposed budget that was prepared by him and staff. Asm. Cahill agreed with Cmsr. Considine and there were no further questions or comments.

ADJOURNMENT

Upon a Motion made by Sen. Jerry Klein (ND) and seconded by Rep. Lehman, the Committee adjourned at 5:30 p.m.

HEALTH INSURANCE & LONG TERM CARE ISSUES COMMITTEE MATERIALS

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
HEALTH INSURANCE & LONG TERM CARE ISSUES COMMITTEE
BOSTON, MASSACHUSETTS
JULY 17, 2021
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Health Insurance & Long Term Care Issues Committee met at the Westin Boston Waterfront Hotel on Saturday, July 17, 2021 at 10:30 A.M. (EST)

Assemblywoman Pam Hunter (NY), Chair of the Committee, presided.

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

Rep. Deborah Ferguson (AR)
Sen. Mathew Pitsch (AR)
Sen. Jason Rapert (AR)*
Asm. Ken Cooley (CA)*
Rep. Matt Lehman (IN)
Rep. Joe Fischer (KY)
Rep. Deanna Frazier (KY)*
Rep. Jim Gooch (KY)*
Rep. Bart Rowland (KY)
Rep. Edmond Jordan (LA)*
Sen. Paul Utke (MN)
Rep. Tracy Boe (ND)
Sen. Shawn Vedaa (ND)
Asm. Kevin Cahill (NY)
Sen. Bob Hackett (OH)
Rep. Wendi Thomas (PA)
Rep. Tom Oliverson, M.D. (TX)
Del. Steve Westfall (WV)

Other legislators present were:

Sen. Keith Ingram (AR)
Rep. Steven Meskers (CT)
Rep. Chad McCoy (KY)*
Rep. Lori Stone (MI)
Rep. Carlie Kotyza-Witthuhn (MN)
Sen. Mike McLendon (MS)
Sen. Randy Burckhard (ND)

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. Joe Fischer (KY), NCOIL Secretary, the Committee voted without objection by way of a voice vote to waive the quorum requirement.

MINUTES

Upon a motion made by Asm. Kevin Cahill (NY), NCOIL Treasurer, and seconded by Rep. Fischer, the Committee voted without objection by way of a voice vote to adopt the minutes of the Committee's April 17, 2021 meeting.

INTRODUCTION AND DISCUSSION OF NCOIL ACCUMULATOR ADJUSTMENT PROGRAM MODEL ACT (Model)

Sen. Jason Rapert (AR), NCOIL Immediate Past President and lead sponsor of the Model, stated thank you, Madam Chair. I'll be very brief and I'm really looking forward to being there in person for our next meeting in November in Scottsdale. I'm proud to sponsor this Model law as it mirrors a piece of legislation I sponsored in Arkansas that was signed into law just a few months ago. In fact, this type of legislation has been a growing trend across the country as states such as Arizona, Connecticut, Georgia, Illinois, Oklahoma, Tennessee, Virginia, and West Virginia have all passed legislation on this issue. The issue that such legislation and this Model deals with is that it seeks to prohibit accumulator adjustment programs which prevent copayment assistance that helps patients pay for high-cost prescription drugs from counting towards their annual deductible or maximum out-of-pocket costs. I truly believe that this is a good piece of consumer legislation when families are strapped already this allows them to enjoy those benefits themselves rather than them being taken up by a greedy middleman in the process.

Accordingly, the Model and the laws across the country simply state that no matter who is paying for these funds whether its pharmaceutical manufacturers, copay systems, a go fund me page, aunt or uncle - those funds and third-party payments should be counting towards a patient's cost-sharing requirements. The language you see before you on page 374 in your binders essentially mirrors the language that was discussed during our last Committee meeting that is supported by the American Medical Association, American Cancer Society Cancer Action Network, AIDS Institute, National Hemophilia Foundation, Cancer Support Community, American Kidney Fund and many others. What's great about this issue is that it is truly bipartisan – both red states and blue states have enacted legislation on this issue, and I am thrilled that my colleagues and Committee members from both sides of the aisle have joined me in sponsoring this Model: Madam Chair – Assemblywoman Hunter from New York – and Madam Vice Chair – my colleague Representative Deborah Ferguson from Arkansas – have signed on as well as former NCOIL President Representative George Keiser of North Dakota. I look forward to the discussion today and I am confident that we can get to a place where the Model is ready and adopted at our Annual Meeting in November. I appreciate the opportunity and I look forward to a robust discission to get to a place to vote on the Model in November with any suggested amendments if they are out there. Thank you.

Members of the All Copays Count Coalition - Stephanie Hengst, Manager of Policy & Research at The AIDS Institute, and Kollet Koulianos, Senior Director of Payor Relations – began the discussion. Ms. Hengst stated that I'll be quick given time limitations. The AIDS Institute has been working on this issue for quite awhile now and it's part of our larger work on health insurance benefit design and looking at how those benefit designs are structured, the ways in which they are changing and the ways those changes are putting more financial responsibility onto patients. We know that patients are already subjected to utilization mgmt. techniques such as step therapy or prior authorization so now we are seeing copay accumulator adjustment policies on top of that and copay assistance has really helped patients afford their meds which ultimately also reduces health inequities in healthcare so that's kind of how we've come to this issue and as part of our contribution to the advocacy has been to document how common these copay accumulators are and how they have proliferated in recent years.

In a report issued by the AIDS Institute published earlier this year, I did some background research and looked at all of the ACA marketplace plans across the states so we looked at all 45 states plus D.C. and pulled out five states that as previously mentioned passed legislation going into the 2021 plan year but when we looked at all those other states we saw that every single state had at least one plan in their marketplace with a copy accumulator in it and when we broke that down even further there were at least 14 states that had a copay accumulator in every single plan. Here is a nice visual of kind of what the landscape looks like across the country in terms of percent of plans in states with copay accumulator policies and you might say I live in an orange state where residents have a 50-50 chance of selecting a plan that may honor their copay assistance however then you get into network adequacy issues where many people may be living in an area or region where there is only one issuer offering plans and their chance may be that one plan has a copay accumulator in it. Bottom line is that for patients such as those living with HIV or hemophilia or other rare diseases is that they are really having no options to select plans that's going to honor their copay assistance and have it counted towards their out of pocket (OOP) costs as intended.

So, these next two slides ill go kind of quickly but they are also shared and they are also in the report I mentioned that we published. What they demonstrate is that over the course of a plan year what a patient pays OOP and ultimately what the insurer or pharmacy benefit manager (PBM) is collecting so when there is a copay accumulator in place or a copay maximizer as there are variations on the policies, the insurer and/or PBM is collecting a significant amount more than under a standard plan design when there is no copay accumulator in there and ultimately when a patient is paying all of their money up to that annual limit on top of that is the copay assistance being collected and copay assistance is not a discount its still money that is being collected so these accumulator programs can really be thought of as an income tax generator for insurers or PBMs.

This slide also shows what Sen. Rapert was discussing at the beginning how at the beginning of 2021 there are already five states that have passed legislation and since the Spring its been kind of like a popcorn effect with lots of other states passing legislation which is great and lots of advocates have been working with legislators to introduce legislation in states as you can see. There are now 11 states that have passed legislation plus Puerto Rico and we're hopeful that in the upcoming session that there will be much more success with all of this momentum happening. The All Copays Count Coalition has drafted model legislation that NCOIL is considering and as you note this is the legislation that has largely bene utilized in the states that have passed legislation and that has also been introduced. Its very short and sweet and to the point to address the issue and what it does is require an insurer or PBM to count payments that are made by or on behalf of the enrollee towards their OOP so again its very simple and addresses the issue and will protect patients and their copay assistance so that they can afford their medications. There is a lot more I can discuss on this and I am happy to connect with anyone offline if they are interested in state specific information.

Ms. Koulianos stated basically what is copay assistance – we're talking about coupons, discounts cards or other programs provided by either manufacturers, non-profits and as you've heard grandmas, grandpas, aunts, uncles, go fund me pages, there are various mechanisms in which patients have had to get help in order to receive their life saving treatment. When do patients receive the assistance – they receive the assistance only

after a doctor or physician has deemed the right therapy to meet their treatment costs and only after the insurance company has already sent them through the prior auth process to make sure the drug is on the preferred drug list so its not circumventing any plan design. High deductible health plans (HDHPs) – we did a survey along with other chronic disease groups at the beginning of this year and 55% of patients with chronic diseases stated that they are on a HDHP and regarding income levels, 69% of the individuals with an income under $40,000 have a HDHP and also 33% of patients surveyed who reported being unable to afford their medications or treatments because their copay assistance ran out were persons of color.

There are racial, ethnic and income based disparities that exist here. We look at even the lowest silver plan on the marketplace the average deductible is $4,879 so this is absolutely unattainable for so many people to be able to hit that kind of deductible and your insurance doesn't pay until you've paid the entire deductible and so I'm clear when you have a high cost chronic disease like hemophilia or other conditions that have been mentioned the assistance you receive is capped, so even if they allow the assistance which is what the insurance companies are saying you can use the assistance but it doesn't count, so by month two or three that assistance has run out for the year if you have a $4,879 deductible and then the patient has to bear that full responsibility before they can get their meds or they are held hostage at the pharmacy counter literally. So health plans are changing the rules on the way this assistance program counts. We're asking lawmakers to enact policies to require plans to count the assistance. Legislation to ban copay accumulator adjustment programs does not conflict with existing 2004 Internal Revenue Service (IRS) guidance on HDHPs with health savings accounts (HSAs). The clear intent of The Department of Health and Human Services (HHS') regulation allowing plans discretion on whether or not to count manufacturer cost-sharing assistance toward the Affordable Care Act's (ACA's) annual limitation on cost sharing only applies "to the extent consistent with state law." So ill end there since we are on a time limit, but I also have my contact info within the slide deck and I'm happy to speak to anybody offline.

Brendan Peppard, Regional Director of State Affairs at America's Health Insurance Plans (AHIP), stated that rising drug prices impose a heavy burden on all Americans, a direct result of high list prices determined solely by drug companies. While pharmaceutical companies are posting record profits, too many hardworking Americans must choose between paying their bills and accessing lifesaving medicines. You already know from our previous testimony that we believe coupons are tools intentionally used by drug manufacturers for financial gain allowing them to skirt the responsibility to lower drug prices for all Americans. As you know the federal gov't protects taxpayers from this scheme prohibiting the use of coupons in certain markets. Pfizer is currently litigating this issue to attempt to undue this prohibition and according to one of HHS' lawyers "to upend decades of settled law and agency guidance in this highly regulated space." We've given you info about our concern with coupons in our written comments so I wont focus on that more today. Instead, I will talk about the problem that you have clearly identified – the high price of drugs and how that makes it difficult for people to afford their prescriptions and some proposed amendments we believe will help improve the model and get at the problem. Before I discuss the problem and the proposed amendments I would like to reiterate that the model in its current form is harmful in that it does nothing to address or control high drug prices that drug companies alone are setting and it takes away a lever that health plans have to control market manipulation created by coupons and hold drug companies accountable.

I would like to turn to the problem you have identified – 96% of voters agree that lowering drug prices is an important challenge facing Americans and 86% of voters say drug makers are responsible for rising prices. This model as drafted does not address the high prices but instead narrowly focuses on the OOP costs facing certain individuals. OOP costs for all services, drugs and devices are based on the underlying cost of the product or service. Since the model focuses on limiting the ability of health insurance providers to properly account for OOP spending in some circumstances, instead of on the problem of high drug prices, we think the committee should consider some amendments which get at the fair and equitable offer of the aid from drug makers and expand on the good work of transparency already begun by NCOIL. In the purpose section we recommend that the committee remove language that is incorrect. First, make clear that drug costs are high because manufacturers set high list prices. More importantly, remove the incorrect assertion that insurers use accumulator programs to "double dip." At no point in the use of coupons or other cost sharing assistance do health insurers or PBMs receive the value of coupons. Generally, a coupon is created by a manufacturer, given to a patient and then it goes to the pharmacy along with any remaining consumer payment. The value of the coupon is then given back to the manufacturer as payment for the drug. Health insurers and PBMs may not even be aware that a coupon is being used because coupons include their own identifying info that results in them being processed separately from a consumers' insurance.

Now, turning to the body of the Model. First, we recommend that you limit the accumulator ban to cover drugs that have no lower cost alternative. This model should not facilitate drug manufacturers efforts to circumvent formulary mgmt. and give patients the ability to go off formulary for the same price. That will just harm our ability to negotiate lower prices for all consumers in the future. Instead, limit the manipulation of pharmaceutical manufacturers where there are less expensive options available either as a generic, another brand that the insurer has placed on a lower formulary tier or when a drug is available in an alternative form. Next, require patient assistance to be provided to all enrollees for the entire plan year and require advance notice of discontinuation. This amendment is entirely for patient protection – patients who rely on medication for long periods of time should not be concerned about their assistance being halted suddenly. Additionally, if patient assistance is allowed manufacturers cannot be allowed to discriminate when deciding who can use a coupon. Finally, provide additional transparency to understand the full impact of third party payments on healthcare spending and aid insurance provider ability to administer the Model. We applaud NCOIL's past transparency efforts. As mentioned, health insurance providers are often not aware a coupon is being used because coupons include their own identifying info which results in them being processed separately from the consumer's insurance. Without inclusion of the notice we recommend adding there is a risk that health plans may have difficulty complying with the model because we may not know that a coupon has been used. Thank you for the opportunity to speak and we stand ready to work with you on any amendments you consider.

Kevin McKechnie, Executive Director of the American Bankers Association (ABA) HSA Council, stated that we represent 94% of all the HSA's in the U.S. and we can tell you from our research that is just now available based on 2020 data we insure 1 in 3 working Americans – not ourselves of course but the companies that are members – and that nets out to about 65 million people in the country that look to HSA qualified insurance to finance their major medical experience. We're here to visit with you today because there

is an irony – I find myself visiting with you time to time to talk about what the IRS says a HDHP plan is and it's the irony of my career that I tend to represent the IRS pro bono at this point which I don't want to do much anymore. They are the arbiters of what a HDHP plan is and isn't and they are the arbiters of what an eligible individual is and those two things have to match for someone to be able to contribute to their HSA. So we're not here today to offer comments on whether or not a copay accumulator is a good idea or not or what the relationship is to that with a drug company may or may not be. We're here to offer comments about how it affects a federally regulated HDHP and affects the 65 million people covered by them and their ability to contribute to their account and here's why.

When there are coverages that the IRS determines are other coverages which are prohibited you lose your contribution eligibility and usually that means the HDHP ceases to be a HDHP and if one or the other happens you are no longer able to keep you major medical insurance and have to find alternate coverage so we've seen this in the past and so have you in your capitols when people talk about this procedure or that procedure such as breast cancer screening or colonoscopy screening that should be done without cost sharing which is a perfectly laudable goal except that if you have a HDHP and you are a HSA contributor a bill like that cancels your eligibility and throws you out of your health plan and you have to find some other plan. So we've gone from capitol to capitol and said these are perfectly reasonable bills and we're not here to debate them rather we are here to suggest to you that you provide a carve out for people insured this way so that to the extent whatever mandate you're discussing may affect their contribution eligibility it would not affect their contribution eligibility which means you are able to go forward with your plans in your capitol and people insured with these plans are able to keep their plan going.

We'd like to note to you that we've sent to NCOIL staff a letter the IRS wrote to the Illinois Department of Insurance (DOI) where they sorry to say took a contrary view to the info you saw in the presentation – a copay accumulator strategy is completely in contravention of IRS rules. Now there is something else to look at and the reason we are asking for an exception to be made in this case is because we have looked through the carriers that we do business with that are on our board – none of them process claims in exactly the same away and we don't have any intention to force them to which is why the exceptions seem to make more sense because it was easier to accomplish and it lets other businesses continue to do business the way they have done so before but I wanted to offer an example that's from the IRS letter. If a drug cost $500 and the coupon was $400 and it was going to net out to $100 the IRS says that $100 is what goes to your OOP - that's it. It would be perfectly reasonable if the coupon for $400 was contributed to your account because as Sen. Rapert says and he's right, anyone can contribute to an HSA and its deductible to you – your aunt can, your company can, your grandfather can – we have no trouble there and if that's how this issue plays out for HSA qualified people well then great which means people have money in their account but that's not how the issue is playing out as a practical matter today with respect to how these claims are adjudicated from carrier to carrier and because that's the case what we're asking for is an exception be made in your model law for people insured with plans manufactured under IRS section 223 which is the HSA statute.

Asw. Hunter asked if there is proposed language that will be forwarded to the Committee relative to the recommendations. Mr. McKechnie replied yes and that will be ready very soon.

Rep. Wendi Thomas (PA) asked in states that have passed this language did it only impact the fully insured plans because self insured plans are guided by the Employee Retirement Income and Security Act of 1974 (ERISA)? Mr. McKechnie stated that we are at the case where states decided that this is how these claims will be adjudicated so it will affect for fully insured plans for certain because you are in charge of what is and what isn't in your borders. The IRS is in charge of determining what a HDHP is nationwide and so this is where the conflict arises where a state DOI or a legislature says this is how we treat drugs in our state and how we think these claims are adjudicated and its in contravention to the way HDHP rules run then that's where the disqualification problem arises. Rep. Thomas stated that she understands that but I'm asking more self-insured vs. fully insured plans because it's my understanding that state legislators cannot legislate requirements for self insured plans and 7 out of 10 people at least in my state are covered under a self insured plan so I'm not opposed to the model because I think its good I'm just trying to be clear as to whether the states that have adopted it does it impact only fully insured plans?

Ms. Koulianos replied that the legislation only impacts fully insured plans. Rep. Bart Rowland (KY) stated that we passed a similar bill this past session and it's my understanding that it only applied to fully insured plans and it even didn't apply to the state employee health plan because its self-insured. Mr. Peppard stated I'm not familiar with all of the laws passed but its my understanding that generally speaking the laws would only apply to fully insured plans.

Jeff Klein, Of Counsel to the ABA HSA Council through McIntyre & Lemon, PLLC, stated that I wanted to make the point that we understand as we follow the model and legislation in states that this is intended to be a consumer protection device so if I can make a very simple comment even though we obviously have a proprietary interest in HSAs we don't want there to be an unintended consequence for those who have their own HSA accounts and be restricted from using them whether its for reproductive services, opioid or insulin treatment and our intent is aligned with yours and is not in any way intended to derail the model. The second point I wanted to make is that we saw some maps about legislation that has been drafted on copay accumulators but we've also been pleased to work with many of your members in the statehouses across the country in AR, KY, IA and NE and in AR and KY we actually got a fix similar to this model and our proposal we submitted is based on an AR bill and there were several bills in IA and NE that were introduced but were not passed so we are trying diligently wherever we can and it's a problem because it's a defensive action and an uphill battle. The third comment in the interest of time is that the National Association of Insurance Commissioners (NAIC) is actively concerned about this as well and their health committee staff which is about the best we've seen in any of the committees there including Brian Webb and Jolie Matthews have recently surveyed their insurance dept's and the IL IRS letter has been widely distributed among insurance dept's so they are looking at that issue and have similar concerns that we do.

Rep. Deborah Ferguson (AR), Vice Chair of the Committee, stated that I know there is some disagreement bout the IRS notice and if it does apply so maybe at the next meeting we can here from the opposing side on the notice. The bottom line is that we can't lose focus on why the model was brought – doctors are finding that patients were not taking their specialty medicine because their OOP costs were so high so all of these assistance programs were to help people afford their medicine and if you take that ability

away we're going to be back where we were before the programs started in that patients that are very sick and may die and they cannot afford their medicine and will note take their medicine because they just can't afford the OOP costs.

CONTINUED DISCUSSION ON NCOIL TELEMEDICINE AUTHORIZATION AND REIMBURSEMENT MODEL ACT (Model)

Asw. Hunter, sponsor of the Model, stated that we are hoping to be able to vote on this in November and we've made good progress with lots of discussion and hopefully this will be the final discussion before a vote. Today we're going to hear about network adequacy and provider directories and how they interact with telemedicine with an eye towards determining whether any provisions relating to those topics should be included in the model.

John Weis, Board Member, President and Co-founder of Quest Analytics (QA), thanked the Committee for the opportunity and said he is here today to provide education and discuss the importance of consistent network adequacy standards across all programs and really share how we see telemedicine aligns with brick and mortar for in patient care that is essential in today's society. For a little bit of background on QA for those of you who may not know us well, we provide the lens into healthcare networks for both state and federal regulators as well as the health plans allowing them to measure, monitor and manage their provider networks and to ensure appropriate access to care for all Americans. We're often asked to provide input to legislators to help them understand the pros and cons of policy with regard to network adequacy when changes are being discussed. We've been the innovators of the industry for the last 30 years and created the vision and delivery of network adequacy into the industry and we pioneered the concept of measuring directory accuracy and the importance of that and transparency and we were the pioneers that introduced the GeoAccess reporting to improve transparency through Medicare and Medicaid in the marketplace as well as the commercial plans. We're used by over 95% of America's health plans today and we're also the partner with both state and federal regulators to make sure that they are reviewing these plans on a consistent basis. As I said earlier we're often called in for our expertise and industry insight in regard to network adequacy so today I really wanted to focus on how telemedicine and network adequacy are essentially hand in hand

As I always like to say, telemedicine isn't going away – the paste is out of the jar. We've squeezed the toothpaste out and it's not going back in but I think we need to be really consistent on how we look at this and I think the folks at the Centers for Medicare and Medicaid Services (CMS) have really done a smart job of baby stepping into this process. They came out with a methodology that said telemedicine isn't a replacement for brick and mortar, it's a complement. So what they did is said well we're going to look at what specialty types can you apply a telemedicine visit and then we're essentially going to relax the standard for network adequacy as opposed to replacing that standard. So this is what they started with and basically they picked about a dozen specialties and said we're going to allow telemedicine visits for these types of specialties and then we are going to complement the network adequacy by reducing the percentage by 10%. Previously they said 90% of the beneficiaries need to be within a certain time and distance and they said if you are able to show telemedicine in that specialty we are going to give you a credit and allow you to discount that by 10%. The other thing that we're seeing in the marketplace is the requirement for a health plan to essentially notate which providers provide telemedicine services and which ones don't to allow the

consumer to have that indication and preference of I can receive care within that provider for telemedicine or I can receive care at that provider for brick and mortar.

The other thing that I caution the committee to understand is that we are really in the infancy when it comes to telemedicine. We are trying to understand what specialties adapt well to telemedicine and what specialties really need to have an in-patient visit. We also really don't have a tremendous amount of data because we are probably 15 months into the telemedicine and we really need to understand is telemedicine a cost saver or is it a cost inflator and I think as we go further we're going to have an understanding of how many telemedicine visits also require an in patient brick and mortar so therefore my cost of care was inflated versus saved. We're going to know more in three years than we do today and again I think that the way that we need to do this is to be consistent and essentially we need to baby step into this versus saying telemedicine is the future and the only way that someone can receive care. I think we still need to have considerations that we still need to have appropriate access to medical care and as a consumer I need to choose to do that either in-patient or via telemedicine.

Mr. Peppard stated that as I have previously testified, we wholeheartedly believe in investing in new ways to provide access to care and one of the major ways is telehealth as patients can receive more services where they are and have the ability to access a wider variety of providers and specialties than those who are physically practicing in their area. This can help patients who wish to receive services from providers with a particular expertise, who are from a similar race or background or gender to align with their unique circumstances. As the use of telehealth grew significantly during the pandemic we believe that it will be a regular part of some patient's care going forward. To plan for a more permanent use of more telemedicine we do urge you to consider to allow health plans to use telemedicine as an integral part of network development. We believe that network adequacy standards should reflect the healthcare delivery options in these markets. Any standards adopted should also leave room for future innovations. For example, the NAIC's Health Benefit Plan and Network Access and Adequacy Model Act allows the commissioner to determine sufficiency of a network using a number of data and criteria including healthcare service delivery options such as telemedicine or telehealth, mobile clinics, centers of excellence and other ways of delivering care. I'll stop there and I am happy to answer any questions.

Asm. Cahill stated that my experiences is that the CMS network adequacy standards usually exceed most of the ones that we have in states if states have them at all in terms of formal network adequacy standards. The proposal here that we are considering must continue to recognize that telehealth is a supplement not a substitute for healthcare and so when we look at what the gentleman just presented about a 10% reduction in the standard and I looked at the specialties I'm not so sure that making it more difficult for somebody to do an in person OBGYN or in person cardiac care is an advancement in healthcare. Brick and mortar is still the way that we deliver healthcare and until technology proves to the point where everything can be done mechanically and otherwise in a remote fashion we still need to have those basic standards. We usually talk about this in terms of the access of patients but we also should be considering seriously the impact on health systems in our communities. If a health plan is able to contract with a group of providers who say yes ill cover these rural counties out in the distant areas telehealth-wise we are probably depriving those communities of developing an adequate healthcare system in and of themselves so I would just urge that we continue to consider network adequacy both in terms of telehealth and also independent

of that that we consider creating some models for network adequacy standards generally speaking.

Rep. Ferguson stated that in addition to what Asm. Cahill is saying, I do think we need to be very careful that these insurance carriers are not steering patients to telemedicine companies that they contracted with instead of their own physician. Their own physician with telemedicine should be the priority over a telemedicine doctor that's never seen the patient. We can actually harm rural healthcare because if you're diverting and steering all these patients to a big telemedicine company that the doctor has never even seen the patient the local doctor is not going to be able to stay in business in that community and that's a real consideration for steerage and incentivizing telehealth over you own provider.

Sen. Bob Hackett (OH) stated that he doesn't disagree with his colleagues but remember the major problem with healthcare in this country is the cost and one of the real abuses of healthcare is that people use the emergency room for the wrong reasons at times and so I think one of the great things that's come out of this is the amount of telehealth that's being used to direct people to the right thing. I totally agree with my colleagues that on specialties that the doctors would rather have in person visits for certain things and I don't necessarily disagree with that but it's really important that there are a lot of in patient visits that could be done through telehealth and it's not really cutting out I mean they almost get the same reimbursement not quite the same, but almost the same. All of the doctors I see now are all telehealth so I just think I agree that we shouldn't cut out specialties but when you go see your primary care physician he is going to order all these tests and order the same test when you go see a primary care physician for a physical when you go in and see them in that scenario so I think we're trying to be smarter and use telehealth correctly and where we have the abuse is the emergency room and it helped tremendously in helping people not go there as they used to for normal colds and flus.

J.P. Wieske, former deputy commissioner in the WI insurance department, stated that he was the chair of the NAIC network adequacy group that put the standards together so it's in that context that he would like to make some comments. I think in context when we looked at the issue we had a long discussion on it and it went on for months and the reason we added the language that Mr. Peppard focused on is that I was focused on the issues such as Rhinelander. WI where literally there are no dermatologists available and how are you able to get access and we had issues inside ACA plans that would have not allowed the plans under the CMS standards to be able to operate in any of those counties which would have left us bare and we were left with a very problematic series of acts that attached in especially rural communities so I wanted you to have that context for that discussion as its important and I appreciate the concerns which we also discussed around whether or not there would be a movement out of telehealth at that time and I think the feeling was with a lack of specialties and a lack of availability and on top of that even if folks are able to get to it it's a significant drive and there are providers offering telehealth in a unique atmosphere where you can drive to a site and there are camera capabilities and nurses who pull in doctors to have those discussions and that's still technically telehealth and its available in those areas.

Asw. Hunter asked Mr. Wieske if he could respond to Rep. Ferguson's questions relative to networks or plans directing patients to their specific providers and not their own. Mr. Wieske stated that its interesting and we talked about that as well as an issue –

increasingly you are seeing a number of insurers getting into the business of operating clinics that is not just telehealth clinics but physically operating clinics you're also seeing a trend I think in a good way of large employers putting clinics inside paid for through their self-funded benefit but administered sometimes through the insurer to get it so it becomes a very difficult issue because there are significant access issues. On top of that they typically are contracting with outside entities for a discount and providing one and there is a variety of things that provide access on a national basis so in order to be able to get the better rates they typically do that as a national contract is available 24/7/365 instead of just in the local municipality but I think the goal is if you look at how most of the telehealth bills are designed and how they are put together I think the idea is to ensure some access to local providers being able to provide that and I agree that's an important feature of it and provides an important access point. We actually visited in WI when I was there in the dep't that there were some possibilities that if you designed this correctly in your state that it could be a differentiator and start attracting if you have a good environment for doctors and in WI we had good medical malpractice, then you might be able to use telehealth as a way to bring in more medical care in specific areas and for the rural communities to be able to have broader access to attract providers who have a better quality of life there and are able to practice telehealth as well so I think it's a complicated issue.

Asw. Hunter stated that we are going to take all of this into consideration and get into hopefully voting on this model our November meeting.

CONTINUED DISCUSSION ON NCOIL MODEL ACT REGARDING AIR AMBULANCE PATIENT PROTECTIONS

Asw. Hunter stated that having been Chair of this Committee for a couple of years this model has been a point of conversation and has changed along the way since it's been introduced as we've had an introduction and amendments and federal legislation and state legislation and lawsuits so it's a of developments almost akin to a soap opera. We want to make sure we have as much info as we possibly can and if you recall we had a great discussion at our last meeting in April and towards the end of the meeting we decided we need to further examine the legal issues surrounding this type of legislation so today we have legal experts who are closely involved with the litigation surrounding this type of legislation and they can help us clarify a few things. We'll take questions at the end and much of the conversation will focus on the Eighth Circuit Court of Appeals opinion (Guardian Flight, LLC v. Godfread) if you have your binder it's on page 367 and also before you is an analysis of that opinion provided by one of our speakers today, Professor Dan Schwartz, Fredrikson & Byron Professor of Law at the University of Minnesota Law School. Before we start the discussion, I note the list of sponsors of the model has grown since our last meeting which now include Rep. Thaddeus Jones (IL) and Rep. Deanna Frazier (KY) joining Rep. Tom Oliverson, M.D. (TX) and Del. Steve Westfall (WV).

Chris Brady, Senior VP and General Counsel at Air Methods Corporation (AMC), thanked the Committee for the opportunity to discuss state's ability to regulate air ambulance memberships under the McCarran-Ferguson Act (MF). At the outset I think its important to confirm that AMC agrees with other air ambulance providers that only laws regulating the business of insurance (BOI) can avoid the preemptive scope of the Airline Deregulation Act (ADA). Where we continue to disagree however is whether an air ambulance membership product that pools consumer risk qualifies as the BOI such

that they would be subject to state regulation under MF. AMC is aware of the WV district court recent decision and its earlier progeny including Guardian. I won't waste this committee's time with a line by line analysis of where we think the court got it wrong but simply note that we fundamentally disagree with the court's conclusion. The WV cases and Guardian however are instructive in the test that courts look to to determine whether MF preemption applies. There are three elements to this test: 1.) does the practice in question have the effect of transferring or spreading policyholder risk; 2.) is the practice an integral part of the policyholder relationship between the insurer and insured; 3.) is the practice limited to entities within the insurance industry.

What I would say is that at this point there really can be no debate about the first point. Every court that has looked at this has agreed that there is sharing of risk between the issuer and the buyer. Membership programs operate exactly like an insurance pool with providers pooling risk that exceeds the value of the membership plan. On the second question of whether the practice is an integral part of the policy relationship between the insured and insurer and the third question is the practice limited to entities within the insurance space what we've seen is very light analysis in courts on this and some engagement in semantics of whether a contract is a policy or whether a policy has to be expressly called a policy to qualify. From our perspective that is a largely academic pursuit and I wont dive deep into that but what I would do is point you to Prof. Schwarcz's memo where he discusses this test in great detail and remarkably comes to the same conclusion as AMC regarding the three factor test. On page 10, he states that the three factor test does suggest that air ambulance memberships constitutes the BOI. Now, to be fair Prof. Schwarcz offers further explanation suggesting that courts should use different factors to look at this but that is a test that no courts which have looked at this have applied but again to be fair he suggests that MF would not apply and that states would continue to face legal headwinds.

However, this analysis is turning on whether the membership issuer rates or underwrites these products or just uses them to offer medical services. From AMC's perspective, this is akin to letting the fox run the henhouse. Whether or not providers rate or underwrite their products should not and cannot be the definitive determination as to whether these products are insurance products. AMC really remains cognizant that the underlying driver of these discussions started out as consumer protection discussions. Membership products are marketed and sold as insurance products, consumers commonly identify them as such and they treat them like other health insurance products even delaying care to ensure they are transported by a covered provider. AMC records indicate that over 200 patients have delayed care to wait for a covered air ambulance membership provider rather than take the closest most appropriate provider for emergent care. Further, just this year, a medical patient in CA refused transport with AMC to wait for their air medical membership provider. The air medical membership provider was not available for several hours and that patient died in the hospital before they could be transported even though there were other providers available ready and willing to transport. This is a tragedy, its egregious and it's a direct result of consumers being offered these products on the basis of fear and insurance yet providers continue to suggest that the MF act gives the states no ability to regulate these products.

The federal gov't has entrusted states to protect consumers in the insurance realm and reaffirmed that commitment through the MF act. AMC remains committed to finding a solution to prevent these tragedies from occurring and committed to working with this body to navigate these legal challenges.

Prof. Schwarcz stated that I would like to start off by explaining my role here as it's a little different. I was hired to be an independent consultant – I'm a law professor – and to provide my legal analysis of Guardian and so everything I'm about to tell you is my independent judgment and I was hired to provide that and my independent judgment is that there is a very clear legal issue and that is that states don't have the authority to regulate air ambulance subscriptions as insurance under the MF act and so to explain that I just want make sure we are all clear on the framing and then ill go through my analysis and explain some of the characterizations of my report which has been given to you and I apologize for it being quite lengthy and it was very much mischaracterized by the prior speaker as I very much came to the conclusion both that states don't have this authority and states don't have this authority either under the Pireno test or any other test. So, with that in mind I think it sounds like we can all start with the assumption that if air ambulance subscriptions constitute the BOI under the MF act then states have the authority to regulate them but if they don't constitute the BOI under the MF act then in fact there is ADA preemption so the first really important framing point to understand here is that this is not a question of state law and whether or not you want to define air ambulance subscriptions as the BOI under state law it's actually not pertinent to the legal analysis because the legal analysis turns on the meaning of the phrase the BOI in the MF act which is a federal statute and as you no doubt are aware, state law cant supply a definition to a federal statutory term.

So, what that means is we have to answer this analysis and conduct this analysis looking to federal precedent regarding the meaning of this federal statutory language and my report details that I actually think that the federal precedent is absolutely clear and the U.S. Supreme Court is absolutely clear that air ambulance subscriptions are not the BOI and hence that states don't have the authority to regulate them. This decision is of course consistent both with Guardian and now the WV district court. Now I'll explain why I reached this conclusion. If you look at Supreme Court precedent its true that the Pireno test is out there and its relevant and important and you can conduct the analysis under that test. But there are a number of factors that in my view make it absolutely clear even without clouding ourselves with Pireno that air ambulance subscriptions do not constitute the BOI. The Supreme Court has been absolutely clear that the BOI involves, you won't be surprised to hear this, underwriting and rating risk – charging different prices to different people depending on the amount of risk that they pose and potentially not offering insurance to unduly risky induvial applicants – that's not what air ambulance subscriptions do. They are offered to all comers on a fixed fee. Moreover, Supreme Court precedent including the Royal Drug case makes it absolutely clear that in assessing whether or not a product is insurance, one has to look at whether the product is being offered for the principal purpose of risk transfer or merely to facilitate the provision of services. In fact the Supreme Court says in Royal Drug that pre-paid medical services are not considered the BOI under the MF act because that's not what Congress understood that language to mean when it enacted the MF act in 1945.

Well, if you look at air ambulance subscriptions, why are they offered by companies and by GMR - they are offered not because GMR is interested in becoming a large insurer and transferring risk. They are offered to facilitate the provisions of a service – air ambulances which is what GMR does - they provide air ambulance services just like AMC. They are not focused on the spreading or transfer of risk they are just using that to help facilitate their provisions of services and this is actually very much analogous to a case the Supreme Court discussed at length in Royal Drug which is discussed in my

lengthy report. Next, air ambulance subscriptions don't actually require payments to anyone. They don't require payments to third parties; they don't require payments to a consumer. All they specify is that any amount that's owed will be cancelled and won't be charged against the consumer and courts have been very clear that such debt cancellation contracts don't constitute the BOI. Why – because the BOI usually involves you sell a product and you have to enter into a reserve and you anticipate this is how much we are going to have to pay in the future and you then have to invest in assets to match those reserves. None of that happens with debt cancellation contracts like those issued here. There is no reserving and no investing in assets to match those reserves and again – different Supreme Court precedent on the same point makes clear that in general, insurance involves insurers taking on investment risk.

Now I want to discuss specifically Pireno because talk about out of context quoting of the report. The quote you heard and ill repeat it because it really shockingly mischaracterizes what I say. There is a quote that says the Pireno test does indeed suggest that the sale of air ambulance subscriptions constitutes the BOI. What was left off – the start of the sentence: "if one assumes this to be the case." What are we assuming? If one assumes that the sale of air ambulance subscriptions constitutes the BOI, then the Pireno test is satisfied. So what I'm trying to establish here is that in my view part of the reason why courts have had some difficulty with the Pireno test is that its actually not a perfect fit for these circumstances – it's certainly true that courts have applied the Pireno test and we can both apply the Pireno test as my counterpart described as using different semantics but as a semantic game of are we going to call the sale of air ambulance subscriptions insurance, are we going to call those people who buy them policyholders? If we do, the Pireno test comes out one way. If we say no its not insurance and no they are not policyholders the test comes out another way and so in my mind the real reason why some people get a little bit confused about this is because they are not focusing on the right questions which is are air ambulance subscriptions insurance products and once you focus on that question the Pireno test actually becomes very simple and I actually walk through the proper application of the Pireno test on the top of page 11 of my opinion where I say if one starts from the premise that air ambulance companies that sell subscriptions are not insurers, then the Pireno test deals the opposite result and of course my entire report is about why that is the proper starting assumption.

So in my mind and again I want to emphasize I don't really have a bone to pick in this and frequently I'm hired and I look into an issue and I come back and say it's not the answer you want but in this case I was hired and the more I looked into this just as an independent academic who has been working with the MF act and working with insurance matters for several decades, the more I became convinced that there is not a question here in my mind in terms of whether or not these laws are going to be upheld. Efforts by states to regulate air ambulance subscriptions as insurance will continue to be struck down by federal courts. Its not a fluke that you have the Eighth Circuit and the WV district courts striking down these laws and they are going to continue to do so. So, my advice to you is simply that's going to continue to happen and efforts to avoid that are not going to successful. That is my conclusion and I'm happy to answer any questions you may have about it.

Before moving to the next speaker, Charlotte Taylor, Esq. Partner at Jones Day, Asw. Hunter noted that Prof. Schwarcz made mention several times that he was hired and

asked him to make mention of who hired him. Prof. Schwarcz replied he was hired on behalf of GMR.

Ms. Taylor thanked the Committee for the opportunity to speak and first agreed with Asm. Hunter's earlier statement that this matter has mirrored a soap opera and I think a big question is what is going to be a productive use of the resources of state insurance legislators going forward and I agree with Prof. Schwarz that trying to regulate air ambulance memberships as insurance is not going to be a productive avenue, its going to be a dead end. I will touch on some of the similar issues but hopefully not be too repetitive. I just wanted to start by reviewing how we got to this space and it all starts with the ADA which may be familiar to some of you but the ADA is a federal statute that gives exclusive regulatory authority over air carriers to the federal gov't when it comes to air carrier rates, routes and services so any state law that regulates the rates, routes or services of an air carrier is going to be preempted by the ADA.

Air ambulance providers are federally regulated air carriers and all of GMRs providers have certificates with the Federal Aviation Administration (FAA) and the Department of Transportation (DOT) and memberships are effectively a way of paying for the services of an air carrier and a way of saying in advance ill pay this small fee and then if I'm transported that's going to be my entire OOP cost. The air carrier will recover from the insurer as applicable but that's all that the consumer will be charged and over the years the Supreme Court has looked at for example frequent flyer programs offered by airlines and said those are ways of effectively paying a discount for air carrier services so state efforts to regulate those are preempted and numerous courts have looked at the GMR membership in particular and come to a similar conclusion - this is a way of paying for a portion of the fare essentially when a patient is transported and therefore ADA preemption applies to state laws that try to regulate that. We saw the Fourth Circuit come to that conclusion in Cheatham; we saw Guardian and portions of its analysis; and the two WV courts that have recently addressed this have also looked at the specific membership and found that preemption applies.

So that's the baseline and then the question that has come up over and over is whether the MF act offers a kind of key that's going to unlock this and AMC's position has been that it does but that is just not what the law says under the MF act and there is not going to be another way to spin this around to change that conclusion. So, Prof. Schwarcz already spoke about the MF act reverse preemption and I don't want to repeat too much of what he said but essentially it's a federal statute that saves state laws from federal preemption for example by the ADA if they are regulating the BOI and the two key points to me again repeating what Prof. Schwarcz said is that phrase the BOI is a federal statutory phrase so there are instances where many states will regulate a product that they consider to be insurance but for federal law purposes its not the BOI and I go back to a 1959 Supreme Court case Securities & Exchange Commission v. Variable Annuity Life Insurance Company of America that talked about variable annuity contracts and many states regulate those as insurance but the Supreme Court said for federal law purposes this is not the BOI under the MF act because there is no investment risk taking on the part of the companies offering those products so changes to state law or categorizations that you can make under state law aren't going to alter the analysis that the Eighth Circuit for example the conclusion that it came to.

The second point that I would emphasize is that going back to Royal Drug which Prof. Schwarcz talked about, case after case has held that debt cancellation contracts or

prepaid discounted services contracts are not the BOI. Now many of these are now in the air ambulance membership area but it's not limited to that so Royal Drug looked at a prepaid medical services plan called the group health plan and said this is not the BOI because the purpose of this arrangement is not to pool risk and use actuarial analysis to calculate what reserves are necessary, etc. – the purpose of this is to get people health services and so building on that foundation and there has been a dispute about the Pireno factors and we think those do not point in the direction of this being the BOI but also just taking a step back you have the Royal Drug that says prepaid medical services plans are not the BOI then in 1990 there is a case called First National Bank of Eastern Arkansas v. Taylor and the Eighth Circuit said a debt cancellation contract is not the BOI. You have an Eleventh Circuit case from 2014 called Federal Trade Commission v. IAB Marketing Association that was a case where someone was offering a membership plan that gave you discounts on medical services and the Eleventh Circuit said this is not the BOI under the MF act and you have Guardian coming to that specific conclusion with respect to the GMR membership and you have the two different judges in the southern district of WV also coming to that conclusion.

What we've seen in the air ambulance space specifically is that it doesn't matter how different state laws have tried to get to trigger MF act reverse preemption it all comes to the same place. North Dakota had enacted a complete ban on the sale of air ambulance subscription plans and the Eighth Circuit found that it was preempted and invalid. Wyoming had passed a law saying that air ambulance membership plans count as disability insurance. After Guardian came down the WY folks recognized that it was not going to be a viable path going forward and GMR worked with them on an alternative solution. In WV the first case involved the insurance commissioner had proposed to apply the general definition of insurance and say I'm going to define memberships as insurance and that was enjoined and subject to a preliminary injunction and in the second WV case the legislature passed almost the exact bill that AMC has been advocating for and again the judge there found that's not the BOI and said calling the sky green does not make it green – calling something insurance does not make it insurance for purpose of the MF act. I'll stop there and leave time for questions but I think that the answer is that this is not going to be the magic key that unlocks this – the law is very clear and there is numerous precedents in this area and its not going to a productive use of legislators time to have another try with a different version of this.

Asw. Hunter stated that I think as legislators I think I know as one it is always our responsibility to make sure that anything that we are promoting and putting forward has the best interests of our constituents which are our friends and neighbors and organizations in the community and we've been talking about this for many months and we want to make sure that the best possible model product that we can produce obviously is put forward, regardless of whether it's a blue purpose or red state, that is a foundation that we can put forward so leading us in that direction with respectful conversation I want to now open it up for our legislators who would like to ask questions.

Del. Westfall stated that with all the states you named trying to do something to regulate this industry there has got to be a problem and I think there is a problem in WV which is why we passed the law we did which the courts didn't agree with. My question is - is it your position that states cannot protect consumers from bad actors without preemption by the ADA – is there any way we can do that as we're trying to protect our people so what do you suggest? Ms. Taylor stated that GMR has advanced a model bill that has consumer protections in it with an emphasis on transparency, disclosures in advance,

and opening up avenues for consumers to lodge complaints and to see those addressed and in states like WY, GMR worked with the legislature to come up with a solution like that which was mutually acceptable. I would also say that the DOT is another place where consumers have recourse and that's very clear in the ADA that the Secretary of Transportation can enjoin any unfair practice so its not the case that GMR is saying we want to absolutely escape any consumer protections but it has to be something that's navigated consistent with the applicable law.

Prof. Schwarcz stated that my role is to help you understand what things you can do that will actually survive and be effective and its probably the least effective way to help consumers to pass a bill that several years later is going to be struck down by courts and then you have done anything but create uncertainty so that's my only goal and it's in that vein that I offer my advice just from a legal perspective that attempting to do what you want to do by declaring that air ambulance subscriptions constitute the BOI will not work and its not an effective strategy. I have a lot of ideas on what might be effective strategy but I'm not an expert in that arena and I don't want to pretend that I am but I am an expert in insurance law and it's in that spirit that I offer you that advice which is attempting to solve this problem by a solution that will be struck down by courts is probably not the best use of your resources and time and I would encourage you to find an alternative solution among the options that are being discussed.

Del. Westfall stated that NY and FL have passed legislation trying to regulate air ambulances and GMR has not challenged those but they did challenge what we passed in WV. Why did they not challenge the FL and NY laws? Ms. Taylor stated that I cant speak to all the details of that but I will say that GMR has made a concerted effort on a state by state basis with the legislators and insurance dept's to figure out how we are going to be in that state and in a couple of instances a decision was made simply not to offer memberships to residents of that state and in WV there are a number of memberships there and there are many members who rely on that and that was in place before the law was passed. Del. Westfall stated to Asw. Hunter that he thinks we need to continue to look at this and maybe at a different route or perhaps the same route but what we passed in WV was struck down but I still think it's a problem otherwise we wouldn't be talking about it.

Asw. Hunter stated that as a follow up to that I'd like to ask Mr. Brady for some responses to the differing views on these issues as clearly we have heard today that there are varying opinions. Mr. Brady stated that I think looking at FL and NY as guides is important and I think there is not clarity from us and it doesn't sound like there is clarity from this committee as to why those laws are ok and others are not. I think even in WY, providers have worked with states and I think as we think about how to take care of consumers and work with this body it's a difficult path for us to navigate and we are committed to doing that and we'll continue to look at states like NY and FL that have not taken challenges to their laws as instructive and we'll go back because from what we can tell it does not seem to be an issue with other air ambulance providers.

Asw. Hunter stated that she had asked many months ago and she does not believe she received a response – with all of these questions and going back to the consumer and our states law enforcement agents and Attorneys General across the country have there been any consumer protection lawsuits from any Attorneys General relative to subscriptions or consumers coming forward saying I've been duped and bought something that was not reported to be what it is. Mr. Brady stated that on behalf of AMC

we are aware of at least three class actions that have been brought not by Attorneys General but by consumers on behalf of consumers who purchased these membership products and then were subsequently billed after the transport for OOP costs or for proceeds from other insurance policies related to a tragic accident or some type of larger medical emergency. I think the public record on those speaks for itself but I think the providers of those memberships have relied on the ADA to suggest that there is absolutely no recourse for those consumers. Asw. Hunter asked if those were personal lawsuits brought and not by states relative to an organization. Mr. Brady replied yes and I'm not aware of any states that have brought any actions through Attorney General offices.

Rep. Frazier stated that my first question is for Ms. Taylor – with the new federal balance billing act preventing air ambulances from balance billing, it would appear that the only benefit the company membership products would provide to customers is covering cost sharing amounts that are determined by third parties – do you have a comment with regards to that. Ms. Taylor stated that once the NSA is effective for patients with private commercial insurance there will not be balance bills but that first of all is a limited category of patients and copays and deductibles are really substantial expenses and we heard some testimony early today about plans with a $4,000 deductible and there is also a 20% copay amount for all Medicare transports and that is a huge portion of the market so the idea that patients will not have really significant OOP expenses after the NSA act is law I think is not accurate.

Rep. Frazier stated that her next question involves a trauma patient in CA who insisted on waiting for their free air ambulance to arrive while other air transportation was readily available and tragically that person ended up dying while waiting on their membership helicopter to arrive. Do you have knowledge of other cases where this may have happened? Ms. Taylor stated that she does not have knowledge of any cases where that happened and Mr. Brady made some representation about that case and I don't know but I do know that the GMR membership terms and conditions state very clearly that members should in a health emergency take the first available transport and they make it clear that the GMR provider is not always going to be available to be the first called.

Rep. Chad McCoy (KY) stated that my question is for Prof. Schwarcz – the comment in the WV case that you can't just call something green really does bring up a state's rights/federalism issue and looking at the GMR model that I heard you say was proposed, how is it going to withstand constitutional scrutiny and what is the legal analysis around that which gets us around the preemption. Prof. Schwarcz stated that I would say that it is true that in that opinion and I think accurately what it stated is that states can't supply a definition of a federal statutory term so states do have the authority to define the BOI for a variety of purposes but in this unique circumstance the issue turns on the interaction of several statutes so I think that's the first point. Your question goes to whether or not there would be preemption under the ADA of the alternative models and on that point I think the question really is we don't get to a legal question if there is a political settlement so if everyone is satisfied with the language it may not even get to that and I will say I have not analyzed that so I don't want to speak to the preemption analysis as the preemption analysis under the ADA asked about state regulation of rates and services and so that would be the question whether or not the regulations that are focusing on transparency constitute that and I think there can be arguments on that which wouldn't turn on the definition of the BOI and again I want to

stay in my lane because I only want to offer you opinions on things of I am very confident in and consistent with my expertise and where I am very confident is attempting to get around the ADA through the mechanism of labeling this as insurance will not work.

Obviously if you have a compromise settlement of some type or an understanding that a transparency related measure is not going to be challenged under the ADA you might justify that by saying it doesn't constitute an attempt to regulate rates or services whereas its very clear and many courts have held that attempting to regulate subscriptions directly constitutes regulation of airline rates so I think that's why the issue is different and I think that would be the way in which you can reach that type of negotiated settlement. Rep. McCoy stated that it sounds like that's saying we agree we won't sue you but if we did we would win and if we are making bad policy that still sounds like bad policy to me.

Asm. Cooley stated that in CA we've looked at some of this and obviously there is a very important state interest to the extent that state dollars fund medical care, costs not be outrageous and there is a consumer interest to have people knowing what's going on and I think at the state level the state interest of protecting the public's purse and the consumer interest of being protected are important values the state can bring to the table even under the ADA and I think that is how you can start to approach it and make the argument that this is fit for state regulation. I do note that just a month ago today the leadership of the NAIC sent a letter to the DOT which has established an Air Ambulance and Patient Billing Advisory Committee under the 2018 reauthorization of the ADA that basically asked the DOT to look at how you might give states jurisdiction on some of these consumer protection issues specifically with respect to air ambulances so I think for us as lawmakers it's going to be very important to take note of the NAIC's approach to kind of reach out to the federal govt and build a case for some tweak to their relevant law so I think that this is a very large and animated conversation on many fronts at this moment including at NCOIL and the NAIC.

Rep. Oliverson stated that I just wanted to correct the record from our previous meeting because it turns out that I had spoken out with regard to a particular company that I became aware of as we were advancing legislation in TX which is similar to the GMR proposed model and there was some conversation in committee and I spoke about it at our last meeting about Helimedic which is a supposed subscription service and I expressed to the committee that some of the facts and details about this company were not correct but I just wanted to clarify that in fact upon further investigation my office has been unable to reach anybody in the company and the airport where supposedly they are going to have air ambulances has no record of them ever being at the airport or any request and our Secretary of State has no record of this company incorporating in Texas to do business so it very much seems like a Frye festival type operation and I feel very misled and I'm very disappointed and I have to say as I'm listening to this conversation with all due respect to Prof. Schwarcz I am encouraged by what I've heard with respect to the NAIC and it may be worth our efforts as well at NCOIL since I do believe this is an ongoing consumer issue for us to join them in their efforts in asking the DOT to clarify with respect to the ADA this very important issue.

My understanding is that this is one of the largest medigap products that consumers do purchase even though they may already have coverage or do have coverage through Medicare and that this product is sold widely to Medicare beneficiaries and yet it's supposedly completely beyond our reach besides numerous consumer complaints that

we receive across our state so I really commend Del. Westfall for staying the course and I'm sad to report in TX our efforts at compromise legislation were not very well supported and went absolutely nowhere and I would encourage us to continue to work aggressively on this issue at the state and federal level.

Asw. Hunter stated that we will work with Del. Westfall and others as we move forward to our annual meeting in November to try to get to some sort of conclusion. For anyone with comments or questions or concerns please address them and send them to NCOIL staff and we will make sure they are addressed accordingly.

CONSIDERATION OF RE-ADOPTION OF MODEL LAW – EMPLOYEE-SPONSORED GROUP DISABILITY INCOME PROTECTION MODEL ACT (ORIGINALLY ADOPTED 11/16; TEMPORRAILY RE-ADOPTED 4/21)

Hearing no questions or comments, upon a motion made by Asm. Cahill and seconded by Del. Westfall, the Committee voted without objection by way of a voice vote to re-adopt the Model.

ADJOURNMENT

Hearing no further business, upon a motion made by Del. Westfall and seconded by Rep. Rowland, the Committee adjourned at 12:00 p.m.

Atlantic Corporate Center
2317 Route 34, Suite 2B
Manasquan, NJ 08726
732-201-4133
CHIEF EXECUTIVE OFFICER: Thomas B. Considine

National Council of Insurance Legislators (NCOIL

Telemedicine Authorization and Reimbursement Act (TARA)

Sponsored by Asw. Pam Hunter (NY)

Discussion Draft as of October 19, 2021~~August 25th, 2020~~

To be ~~introduced and~~ discussed and considered during the NCOIL Health Insurance & Long Term Care Issues Committee meeting on November 18, 2021~~July 17, 2021April 17, 2021December 10, 2020. September 26, 2020~~

Table of Contents

Section 1. Title.

This act shall be known as and may be cited as the Telemedicine Authorization and Reimbursement Act.

Section 2. Purpose

The Legislature hereby finds and declares that:

(A) The advancements and continued development of medical and communications technology have had a profound impact on the practice of medicine and offer opportunities for improving the delivery and accessibility of health care, particularly in the area of telemedicine.

(B) Geography, weather, availability of specialists, transportation, and other factors can create barriers to accessing appropriate health care, including behavioral health care, and one way to provide, ensure, or enhance access to care given these barriers is through the appropriate use of technology to allow health care consumers access to qualified health care providers.

(C) There is a need in this state to embrace efforts that will encourage health insurers and health care providers to support the use of telemedicine and that will also encourage all state agencies to evaluate and amend their policies and rules to remove any regulatory barriers prohibiting the use of telemedicine services.

(D) The need to access health care services is compounded by the challenges associated with COVID-19, as consumers are experiencing the negative effects the pandemic has on physical, mental, and emotional health that will extend into future years.

(E) Access to telemedicine is vital to ensuring the continuity of physical, mental, and behavioral health care for consumers during the COVID-19 pandemic and responding to any future outbreaks of the virus.

Section 3. Definitions

(A) "Telemedicine" means the delivery of clinical health care services by means of real time audio only telephonic conversation, two-way electronic audio visual communications, including the application of secure video conferencing or store and forward technology to provide or support healthcare delivery, which facilitate the assessment, diagnosis, consultation, treatment, education, care management and self-management of a patient's health care while such patient is at an originating site and the health care provider is at a distant site; consistent with applicable federal law and regulations; unless the term is otherwise defined by law with respect to the provision in which it is used.

(B) "Telehealth" means delivering health care services by means of information and communications technologies consisting of telephones, remote patient monitoring devices or other electronic means which facilitate the assessment, diagnosis, consultation, treatment, education, care management and self-management of a patient's health care while such patient is at the originating site and the health care provider is at the distant site; consistent with applicable federal law and regulations; unless the term is otherwise defined by law with respect to the provision in which it is used.

(C) "Store and forward" transfer means the transmission of a patient's medical information from an originating site to the provider at the distant site without the patient being present.

(D) “Distant site” means a site at which a health care provider is located while providing health care services by means of telemedicine or telehealth; unless the term is otherwise defined with respect to the provision in which it is used.

(E) “Originating site” means a site at which a patient is located at the time health care services are provided to him or her by means of telemedicine or telehealth, unless the term is otherwise defined with respect to the provision in which it is used; provided, however, notwithstanding any other provision of law, insurers and providers may agree to alternative siting arrangements deemed appropriate by the parties.

Section 4. Coverage of Telemedicine Services

(A) Each insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis; each corporation providing individual or group accident and sickness subscription contracts; and each health maintenance organization providing a health care plan for health care services shall provide coverage for the cost of such health care services provided through telemedicine services, as provided in this section.

(B) An insurer, corporation, or health maintenance organization shall not exclude a service for coverage solely because the service is provided through telemedicine services and is not provided through in-person consultation or contact between a health care provider and a patient for services appropriately provided through telemedicine services.

(C) An insurer, corporation, or health maintenance organization shall not require a covered person to have a previously established patient-provider relationship with a specific provider in order for the covered person to receive health care services provided through telemedicine services; however, the establishment of a patient-provider relationship shall not occur via an audio-only telephonic conversation..

(D) An insurer, corporation, or health maintenance organization shall reimburse the treating provider or the consulting provider for the diagnosis, consultation, or treatment of the insured delivered through telemedicine services on the same basis that the insurer, corporation, or health maintenance organization is responsible for coverage for the provision of the same service through in-person consultation or contact.

(E) An insurer, corporation, or health maintenance organization may offer a health plan containing a deductible, copayment, or coinsurance requirement for a health care service provided through telemedicine services;, however, such deductible, copayment, or coinsurance shall be combined with the deductible, copayment, or coinsurance applicable to the same services provided through in-person diagnosis, consultation, or treatment.

(F) No insurer, corporation, or health maintenance organization shall impose any annual or lifetime dollar maximum on coverage for telemedicine services other than an annual or lifetime dollar maximum that applies in the aggregate to all items and services covered

under the policy, or impose upon any person receiving benefits pursuant to this section any copayment, coinsurance, or deductible amounts, or any policy year, calendar year, lifetime, or other durational benefit limitation or maximum for benefits or services, that is not equally imposed upon all terms and services covered under the policy, contract, or plan.

(G) The requirements of this section shall apply to all insurance policies, contracts, and plans delivered, issued for delivery, reissued, or extended in [State] on and after January 1, 20__, or at any time thereafter when any term of the policy, contract, or plan is changed or any premium adjustment is made.

(H) This section shall not apply to short-term travel, accident-only, limited or specified disease, or individual conversion policies or contracts, nor to policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under state or federal governmental plans.

(I) Nothing shall preclude the insurer, corporation, or health maintenance organization from undertaking utilization review to determine the appropriateness of telemedicine services, provided that such appropriateness is made in the same manner as those determinations are made for the treatment of any other illness, condition, or disorder covered by such policy, contract, or plan. Any such utilization review shall not require prior authorization of emergent telemedicine services.

Section 5. Limited Telemedicine License

An applicant who has an unrestricted license in good standing in another state and maintains an unencumbered certification in a recognized specialty area; or is eligible for such certification and indicates a residence and a practice outside [State] but proposes to practice telemedicine only across state lines on patients within the physical boundaries of [State], shall be issued a license limited to telemedicine by the [State] Medical Board. The holder of such limited license shall be subject to the disciplinary jurisdiction of the [State] Medical board in the same manner as if (s)he held a full license to practice medicine.

Section 6. Network Adequacy and Limitation

(a) An insurer shall not use telemedicine or telehealth to satisfy network adequacy requirements with regard to a health care service.

(b) An insurer shall not limit coverage only to services delivered by select third party telemedicine or telehealth organizations.

Section 7~~6~~. Rules

The [chief State insurance regulator and the chief medical licensing regulator] may adopt rules regulating that are consistent with this Act.

Section 8~~7~~. Effective Date

This Act shall become effective immediately upon being enacted into law.

Section 9~~8~~. Severability

If any provision of this Act is held by a court to be invalid, such invalidity shall not affect the remaining provisions of this Act, and to this end the provisions of this Act are hereby declared severable.

Atlantic Corporate Center
2317 Route 34, Suite 2B
Manasquan, NJ 08726
732-201-4133
CHIEF EXECUTIVE OFFICER: Thomas B. Considine

National Council of Insurance Legislators (NCOIL)

Model Act Regarding Air Ambulance Patient Protections

***Sponsored by Del. Steve Westfall (WV)**
***Rep. Thaddeus Jones (IL); Rep. Deanna Frazier (KY); Rep. Tom Oliverson, M.D. (TX) – Co-Sponsors**

***Draft as of October 19, 2021~~November 9, 2020.~~ To be ~~introduced and~~ discussed and considered during the Health Insurance & Long Term Care Issues Committee on November 18, 2021~~July 17, 2021April 17, 2021December 10, 2020.~~**

AN ACT to amend the insurance law, in relation to private air ambulance services and consumer protections

Section 1. Short Title

This Act may be cited as the Air Ambulance Patient Protection Act.

Section 2. Purpose

This Act is intended to help preserve the long-standing jurisdiction that states have over the regulation of the business of insurance as expressly established by the McCarran-Ferguson Act (15 U.S.C. 1011 et seq., 1945), and to affirm the ability of states to regulate the business of insurance without threat of Federal obstruction.

Moreover, the intent of this Act is to uphold a state's role in our nation's federalism system of government and prevent any interpretation of the McCarran-Ferguson Act that narrows or precludes a state's ability to protect its consumers and regulate the business of insurance, including the definition thereof.

Section 3~~1~~. Section (X) of the insurance law is amended by adding a new subsection (X) to read as follows:

(a) An air ambulance service provider or any affiliated entity who solicits air ambulance membership subscriptions, accepts membership applications, or charges membership fees, is deemed to be engaged in the business of insurance to the extent that it contracts, promises, guarantees, or in any other way claims to pay, reimburse, or indemnify the copayments, deductibles or other cost-sharing amounts of a patient relating to the air ambulance transport as determined or set by the patient's health insurance provider,

health care provider or other third parties or, any post-service payments of costs to third parties relating to the transport ~~or other entity that directly or indirectly, whether through an affiliated entity, agreement with a third party entity, or otherwise, solicits air ambulance membership subscriptions, accepts membership applications, or charges membership fees, is an insurer~~.

(b) To the extent that an air ambulance membership subscription falls within the business of insurance described in paragraph (a) of this section, it ~~An air ambulance membership~~ shall be considered insurance and an insurance product and may be considered secondary insurance coverage or a supplement to any insurance coverage and shall be regulated accordingly by the State Department of Insurance.~~;~~

Section 42. Air Ambulance Patient Billing Consumer Protections:

(a) An entity operating an air ambulance membership program pursuant to Section 3(a) of this Act ~~air carrier operating air ambulance operations~~ shall, within one year of enactment of this Act, implement a patient advocacy program, which shall include, at a minimum, the following components:

(1) A dedicated patient hotline number and dedicated patient resource email address to process patient billing and claims, and to address patient questions, complaints and concerns;

(2) A dedicated patient advocacy page on the air medical provider's website that is clearly marked as the “patient portal” or “patient advocacy” page, which is easily navigated to and contains clearly-written and comprehensive resources for patients, including:

(A) A layperson's explanation of what to expect during the claims process,

(B) Frequently asked questions and answers,

(C) Frequently used forms,

(D) Information regarding the air ambulance provider’s financial assistance or charity care program, and

(E) Additional resources for patients, including but not limited to contact information for the DOT Consumer Affairs Division, state and federal health and insurance regulatory agencies and departments, and other health consumer informational resources;

(3) Dedicated individuals assigned to review patient complaints and disputes about air ambulance billing and to respond to patients, governmental agencies and any other concerned parties no later than 3 months from the date the complaint is received;

(4) The inclusion of the patient hotline number and email address required by paragraph (1) and patient advocacy webpage address required by paragraph (2) on all patient communication materials, including but not limited to websites, brochures, letters, invoices or billing statements that are sent to or made available to patients;

(5) Mandatory yearly patient advocacy training for all air medical provider personnel who have direct interaction with patients and/or their family members via written, verbal or electronic communications; and

(6) A financial assistance or charity care program to assist patients suffering financial hardship with resolving any unpaid balance owed to the air medical provider.

(b) This provision shall not be enforced in a manner that conflicts with federal law, including the federal preemption of state regulation of air carriers.

Section 5~~3~~. Consumer disclosures.

(a) An entity selling air ambulance membership products pursuant to Section 3(a) of this Act shall make the following general disclosures in writing in bold type and not less than twelve (12) point font on any advertisement, marketing material, brochure or contract terms and conditions made available to prospective members or the public:

(1) if eligible and covered by Medicaid or Medicaid managed care, the prospective member is already covered with no out of pocket cost liability for air ambulance services; and~~.~~

(2) if eligible and covered under Medicare and/or a Medicare supplemental plan, the prospective member might already be covered for air ambulance services and should consult with a representative of the Medicare program or a representative of their Medicare Advantage or Medicare Supplemental Plan to determine the level of existing coverage they have for air ambulance and out of pocket costs and whether their plan provider recommends additional supplemental insurance coverage.

Section 6. Severability

If any provision, part or clause of this Act is declared invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections or provisions of this article or the article in its entirety.

Section 7~~4~~. This Act shall take effect one year after enactment.

Atlantic Corporate Center
2317 Route 34, Suite 2B
Manasquan, NJ 08726
732-201-4133
CHIEF EXECUTIVE OFFICER: Thomas B. Considine

National Council of Insurance Legislators (NCOIL)

Accumulator Adjustment Program Model Act

***Sponsored by Sen. Jason Rapert (AR)**
***Rep. Deborah Ferguson (AR); Rep. George Keiser (ND); Asw. Pam Hunter (NY) – Co-Sponsors**

***Draft as of June 15th, 2021.**

To be discussed and considered during the Health Insurance & Long Term Care Issues Committee meeting on November 18, 2021~~July 17, 2021.~~

Table of Contents

Section 1. Title

This Act shall be known and may be cited as the "[State] Accumulator Adjustment Program Act."

Section 2. Legislative Purpose

(A) The legislature finds that cost sharing assistance is indispensable to help many patients with rare, serious, and chronic diseases afford out-of-pocket costs for their essential, often lifesaving, medications.

(B) The legislature further finds that patients need cost sharing assistance because of the high out-of-pocket cost of medications.

(C) The legislature further finds that when patients face unexpected charges during the plan year, they are less likely to adhere to their medication regimen.

(D) The legislature further finds that lack of patient adherence to needed medicines leads to potential negative health consequences for the patients, such as unnecessary emergency room visits, doctors' visits, surgeries, and other interventions.

(E) The legislature further finds that patients are only able to use cost sharing assistance after they have met requirement(s) for coverage of their medication. Requirements for coverage can include the medication's inclusion on the patient's formulary and utilization management protocols, such as prior authorization and step therapy.

(F) The legislature further finds that health insurers and pharmacy benefit managers (PBMs) have implemented programs, such as accumulator adjustment programs, to restrict cost sharing assistance from counting towards a patient's deductible or annual out-of-pocket limit.

(G) The legislature further finds that as a result of an accumulator adjustment program, a patient is required to continue to make payments even if the patient has already hit an out-of-pocket limit when including cost sharing assistance. As such, the cost sharing assistance depletes leaving the patient responsible for paying the full deductible and meeting the annual out-of-pocket limit for a second time. This means accumulator adjustment programs limit the benefit patients receive from copay assistance programs.

(H) The legislature further finds that patients often are not aware of the inclusion of accumulator adjustment programs in their health plan contracts. Patients tend to learn about these types of programs when they attempt to obtain their medication after their cost sharing assistance has run out, whether at the pharmacy, infusion center, or at home through the mail.

(I) The legislature further finds that accumulator adjustment programs allow health insurers and PBMs to "double dip" by accepting funds from both the cost sharing assistance program and the patient beyond the original deductible amount and the annual out-of-pocket limit.

(J) Therefore, the legislature declares it a matter of public interest that health insurers and PBMs must count any amount paid by the patient or on behalf of the patient by another person towards a patient's annual out-of-pocket limit and any cost sharing requirement, such as deductibles.

Section 3. Definitions

(A) “Cost sharing” means any copayment, coinsurance, deductible, or annual limitation on cost sharing (including but not limited to a limitation subject to 42 U.S.C. §§ 18022(c) and 300gg-6(b)), required by or on behalf of an enrollee in order to receive a specific health care service, including a prescription drug, covered by a health plan, whether covered under the medical or pharmacy benefit.

(B) “Carrier” OR “Insurer” OR “Issuer” means [cross-reference state insurance statutes and use their existing definitions], and shall include, but not be limited to any health insurance company, nonprofit hospital and medical service corporation, managed care organization, and, to the extent permitted under federal law, any administrator of an insured, self-insured, or publicly funded health benefit plan offered by public and private entities. For the purposes of this section, “insurer” does not include self-insured employer plans governed by the Employee Retirement Income Security Act of 1974 (ERISA) (Pub.L. 93–406, 88 Stat. 829, as amended).

(C) “Commissioner” means the state insurance commissioner.

(D) “Health Plan” means a policy, contract, certificate, or subscriber agreement entered into, offered, or issued by a health insurance issuer to provide, deliver, arrange for, pay for, or reimburse any of the costs of healthcare services.

(E) “Person” means a natural person, corporation, mutual company, unincorporated association, partnership, joint venture, limited liability company, trust, estate, foundation, nonprofit corporation, unincorporated organization, or government or governmental subdivision or agency.

(F) “Pharmacy Benefit Manager” means any person or business who administers the prescription drug or device program of one or more health plans on behalf of a third party in accordance with a pharmacy benefit program. This term includes any agent or representative of a pharmacy benefit manager hired or contracted by the pharmacy benefit manager to assist in the administering of the drug program and any wholly or partially owned or controlled subsidiary of a pharmacy benefit manager.

Drafting Note: Use existing statutory definitions of “health plan” and “pharmacy benefit manager” when possible.

Drafting Note: If “person” is already in the state’s definition, that includes corporation. Otherwise, can remove “by another person.”

Section 4. Cost-Sharing Requirements

When calculating an enrollee's overall contribution to any out-of-pocket maximum or any cost-sharing requirement under a health plan, a [CARRIER/INSURER/ISSUER] or

pharmacy benefit manager shall include any amounts paid by the enrollee or paid on behalf of the enrollee by another person.

Section 5. Rules

The commissioner shall promulgate rules necessary to carry out this Act.

Section 6. Enactment

(A) This section shall apply with respect to health plans that are entered into, amended, extended, or renewed on or after January 1, 202##.

FINANCIAL SERVICES & MULTI-LINES ISSUES COMMITTEE MATERIALS

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
FINANCIAL SERVICES & MULTI-LINES ISSUES COMMITTEE
BOSTON, MASSACHUSETTS
JULY 16, 2021
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Financial Services & Multi-Lines Issues Committee met at the Westin Boston Waterfront Hotel on Friday, July 16, 2021 at 9:00 A.M. (EST)

Representative Edmond Jordan (LA), Chair of the Committee, presided*.

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

Sen. Mathew Pitsch (AR)
Sen. Jason Rapert (AR)*
Asm. Ken Cooley (CA)*
Sen. Travis Holdman (IN)
Rep. Matt Lehman (IN)
Rep. Joe Fischer (KY)
Rep. Jim Gooch (KY)*
Rep. Derek Lewis (KY)
Rep. Brenda Carter (MI)
Rep. Tracy Boe (ND)
Sen. Jerry Klein (ND)
Sen. Shawn Vedaa (ND)
Asm. Ken Blankenbush (NY)
Sen. Bob Hackett (OH)
Rep. Forrest Bennett (OK)
Del. Steve Westfall (WV)

Other legislators present were:

Rep. Deborah Ferguson (AR)
Sen. Keith Ingram (AR)
Rep. Steve Meskers (CT)
Rep. Tammy Nuccio (CT)
Rep. Kerry Wood (CT)
Sen. Spiros Mantzavinos (DE)
Rep. Roy Takumi (HI)
Rep. Bart Rowland (KY)
Rep. Kevin Coleman (MI)
Sen. Mike McLendon (MS)
Sen. Chuck Younger (MS)
Sen. Randy Burckhard (ND)
Sen. Neil Breslin (NY)
Sen. Sandy Senn (SC)

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. Cooley (CA), NCOIL Vice President, and seconded by Rep. Joe Fischer (KY), NCOIL Secretary, 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 Asm. Cooley, the Committee voted without objection by way of a voice vote to adopt the minutes of the Committee's April 17, 2021 meeting.

CONTINUED DISCUSSION ON NCOIL UNIFORM CAPTIVE INSURER MODEL ACT (MODEL)

Sen. Rapert thanked Rep. Jordan and stated I'll be very brief and I'm really looking forward to being there in person for our next meeting in November in Scottsdale. I just want to express my support for this Model and for captive insurers in general. At its last meeting in April, this Committee had a very positive introductory discussion on this issue and the language that is before you in your binders on page 247. Since that time, I have officially signed on as sponsor of the model language which is really a compilation of several state's captive insurer statutes. As you may know, Vermont has been a leader in the captive insurance industry for over thirty years and is regarded as not just a national leader but a global leader in captive insurance as Vermont is first, worldwide, in gross written premium and assets under management, and ranks third in the number of active captive insurance companies.

Accordingly, having representatives from Vermont here today to discuss their experience in the captive insurance industry will be extremely beneficial to ensuring that the Model ends up being the strongest possible piece of work product that it can be. The Model can end up providing states guidance when they are looking to develop a captive insurer statute and can send a signal to those states that captive insurance is something that NCOIL supports provided there is an appropriate statutory framework in place. I think by our next meeting in November we can have a version of the model ready for consideration by the committee. Thank you, Mr. Chairman and I'll turn it back over to you.

Richard Smith, President of the Vermont Captive Insurance Association (VCIA), thanked the Committee for the opportunity to speak about the Model and about Vermont and some background on some of the important aspects we see in any kind of legislation that's going to either establish or update captive industry laws in individual states. I've been leading the VCIA for the last 10 years and ill talk briefly about VCIA a little later on but first ill turn it over to my fellow panelists for introductions.

Dave Provost, Deputy Commissioner of the Vermont Captive Insurance Division, stated that along with Sandy Bigglestone, Director of the Vermont Captive Insurance Division, they are responsible for regulating captive insurance companies that are domiciled in Vermont and working with our legislature to keep our captive law up to date. Ms. Bigglestone stated that I've bene with the VT Dept for 24 years and work closely with legislative initiatives and licensing new captives and approving changes in business plans including National Association of Insurance Commissioners (NAIC) initiatives.

Ms. Bigglestone then noted some selected information of why Vermont is the leading U.S. domicile for captive insurance business. We've been in the business for over 40 years and it started in 1981 with a simple law called the special insurer act and our law has been adapted many times over the course of 40 years to meet the changing needs of the industry and I think that's an important piece. We do have as of the most recent year end $30 billion in gross written premiums, $197 billion in assets and VT is a small state so we have a great economic benefit to a small state like VT for our captive

insurance industry existing there but what's important also is that VTs captive industry represents 10% of the overall captive industry in the world. We are a leading domicile for risk retention groups (RRGs) which are group captives formed under a federal act and VT chairs the RRG task force at the NAIC. Just a piece about our expertise over the years and the folks that are involved in the business and the infrastructure which includes all aspects of govt the industry ass'n the service providers in VT and the fact that we can be innovative has awarded us the gold standard of domiciles.

Mr. Smith stated that VCIA is the largest captive trade ass'n the world and we have nearly 400 member organizations and these organization rank from fortune 50 companies to small non profit hospitals. As you can see from this map our members come from almost every state in the union plus members from different countries so we have a breadth that represents a wide swath of the captive insurance industry. I know that you have already had a brief from Ann Marie Towle and Gary Osborne at your last meeting about what a captive is but we'll just do a quick overview.

Ms. Bigglsetone stated that the word captive inherently implies control so a captive is an entity licensed and controlled by its owners in covering the risk of its owners. It can write policies of insurance directly to its owners who also can interact with the commercial insurance carries on a reinsurance basis and reinsurance is just insurance for insurance companies. Captives are licensed and regulated in a single jurisdiction and usually under special insurance laws. For the next slide id like to point out some similarities between typical commercial insurance companies. If you think of an insurance company like liberty mutual or farmers insurance and how consumers buy insurance so I think making this comparison will help put it in perspective about how captives function and how they are similar. One, they are licensed insurance companies under state laws and set insurance premium rates for risk. It chooses to underwrite. They write insurance policies and collect premiums and pay claims against those premiums that they write.

On the next slide there are some comparisons and contrasts between traditional insurance companies and captives. Captives are typically only licensed in the state of their domicile. Commercial insurers are licensed in all states whether they are domiciled or writing. Captives write policies to its owners and affiliated businesses. Traditional insurers write policies to anyone. State regulators are focused on a business plan and solvency of a captive although certain types do fall under NAIC accreditation standards like RRGs who can register to do business in states under the federal act. Traditional insurers follow NAIC accreditation standards with all states applying those standards on a substantially similar basis the focus being financial solvency and consumer protection. Regulatory practices for captive compliance and solvency measures are primarily derived from the standards developed by the NAIC. These are standard that all insurance regulators do focus on. Because captive insurance is not focused on insurance for consumers we took he best of those NAIC standards and tailored them to the business of captive insurance. Traditional or commercial insurance companies employ people who run the operations of the insurance company whereas most of the time captives are managed by service providers with expertise in insurance operations and accounting.

Mr. Provost stated that I looked around the audience this morning and about half of you might remember a cover of Time magazine dealing with insurance and the other half is too young to know about it. In the early 1980s there was a hard market for insurance and we are back into a hard market now. There are lots of insurance companies like

Geico and State Farm that are willing to sell consumers auto and home insurance any time and any day. In the commercial insurance space there are times when you cannot buy insurance – its not available at any price or reasonable price and that is one of the primary reasons why companies form captives. Captive insurance is all about control - companies taking control of their insurance buying and their insurance availability. If they cant buy insurance on the open market they form their own insurance company and then use that company to self insure risk or to buy reinsurance on the wholesale market. It is all about control and financing risk and managing risk. A captive provides a certain amount of self imposed discipline on a company's insurance and self insurance program. You can do anything you can do in a captive just by saying I'm not going to buy insurance and ill take care of those losses myself but with a captive you are forced to put the money aside in advance and that money is watched over by regulators and examined by regulators and that's the big difference with captives – it provides a lot of discipline and provides a board governance and its another subsidiary in a corporate structure that then has to be looked at by the c suite and the president and CEO and general counsel so its really all about discipline in insurance buying.

As you go forward with the Model there are some things we think you really need to consider. For one, there are over 60 domiciles in the world right now and over 30 states with captive insurance laws already. These laws are dynamic and most states adopt these laws from existing captive domiciles and all of the states that wind up in the captive insurance business wind up adopting these models every year and changing so just keep in mind that this Model will need to keep up in the world around it and it needs to be a dynamic model and cant be stagnant otherwise its going to be left behind pretty quickly because we do change our captive laws every year to keep up with the insurance marketplace so that's something to really consider. Plus you're already going to have 30 sates with captive laws that might not match the model so you'll get a lot of input I think from those states that don't follow the Model that you are proposing so they are either going to have to make changes or make changes to the Model so there is going to be a lot of back and forth I think in that discussion.

Id also like to talk briefly about why states form captive laws as there really are only two reasons. One is to support your local industry so that you're industry can form a captive in your state and they don't have to fly to Bermuda or the Cayman islands or Vermont to have their board meetings. And the other reason is for economic development and that's why Vermont passed it and that's why Hawaii passed a captive law. We don't have industries that can support a captive insurance industry in Vermont. We're a very small state and put us all together and we're about the same size as the Boise, Idaho metropolitan area so a few jobs and a few tax dollars makes a big difference in Vermont. It took us 40 years to get to 400 jobs and most states can do that with one factory in a weekend so it's a difference. At any rate if you are going to support local industry with a captive law there are plenty of models out there. If you are going to try to form a new business in your state and use this for economic development purposes I'm not sure a model is the way to go you kind of want to build a better mousetrap so following the same model that everyone else does isn't going to provide you with much of a business edge in that regard.

Maryland did a study a few years ago about captive insurance and whether they should pass a law and the study came back with saying there is very little downside risk to any state so I think there is very little downside risk to a model. On the other hand there wasn't much of an upside. Unless you have a local business industry that can support a

captive domicile there's already so many choices out there that you are going to have a hard time competing with other states and other domiciles around the world.

Mr. Smith stated that again we really appreciate the reasons the model is before you today as supportive of the captive insurance industry which is very important to us and we appreciate you looking at this. I think for us providing a roadmap for other states to look at in terms of establishing a captive law or updating their own captive laws is a terrific idea but one of our concerns is putting a model out there that doesn't have the flexibility or could potentially cause confusion among regulators looking at states like Vermont that have updated their captive law and evolved the law to meet the evolving needs of the industry it happens on a regular basis as a matter of fact VCIA works with VT every year to go into our legislature and tweak the law and sometimes make major changes but sometimes just tweaks but always looking to update our laws to make sure they meet the needs of the industry going forward.

Sen. Bob Hackett (OH) stated that I carried the legislation in Ohio and I appreciate you saying states are different and the reasons they pass captive laws are different. Ohio was a state that had so many domestic carriers as it's a big insurance state and we were losing so much business to exiting captives so when we set our own captive law we got a lot of business that came in but we did not want to have an aggressive captive situation because we have the other insurance companies. For example we do not allow association captives and I realize when you look at the model a lot of times NCOIL tries to create the framework and allow the states to put the policy in it and decide how they want to handle it but each state is very different in how they do it. Vermont is great but their thing is that they want the business as they are a captive sate that really wants the business from other states but Ohio wasn't and really wanted to take care of our own corporations and own insurance companies. Maybe we'll change but when you make the statement that there is as much oversight – there isn't as much oversight between traditional carriers and captives. There is better oversight when they just self insure but captives and the path to oversight from the DOI is less than the regular oversight you see with insurance companies so you have to be careful that you don't be too aggressive with captives. Vermont is pretty aggressive with its captives. Sen. Hackett asked the speakers if they have ever had a captive go under in all their years.

Mr. Provost stated that Sen. Hackett is right in that the regulation is different but there is a reason and that is because traditional insurance companies provide insurance to the general public and captives provide it only to its owners so when we look at a captive for a fortune 500 company it is self insurance as they have the money and assets and resources to insure themselves in fact they often have more resources than the insurance company that wants to sell them insurance. There have been failures - Enron had a captive and Enron went under so when a captive parent fails the captive is going with it. In that case we have the same laws that traditional companies have for liquidating insurance companies so there is a very good reason for a difference in the laws and that really is the risk involved between insuring the general public and insuring yourself but you're absolutely right that not every state is going to want to form a captive market for captive insurance companies. States like Ohio has a lot of industry that you want to provide captive solution for those industries just as a home state solution and that's wonderful and common.

Enron was obviously very unusual as it went bankrupt overnight and it wasn't a long process like most failures are so when Enron went bankrupt the next day we went to

court and seized the captive insurance company and looked at the assets and garnered all the assets that we could and like we would with any other liquidation we handed it over to a liquidator who then spent the next few years settling all the claims and paying them all out and at the end of the day there was a little bit of money left over that went back to the Enron estate so it is exactly the same process in this case it was a much quicker process because Enron again went down the tubes overnight but we were able to seize control and garner assets, pay its claims and close it down.

Sen. Travis Holdman (IN), NCOIL Immediate Past President, stated that he is somewhat involved with the captive industry and I know the IRS has taken quite an aggressive stand against captives or at least justifying the formation of a captive on behalf of a company. I'm speaking specifically in reference to 831b captives. Other than having actuarially determined premiums and actual policies in place and claims and risk distribution that's required where do you think the IRS and the service is going with their oversight of 831b captives? Mr. Provost stated that I will start with Vermont does not define captives by their tax elections. 831b is a tax election whereby small companies can be taxed only on their investment income and in order to do so you have to qualify as an insurance company under the IRS rules. The IRS has been very aggressive in pursuing those that promote this as a tax haven. We look at insurance companies and captive insurance companies from the insurance perspective and your taxes are your business to the greatest extent possible. When we see someone who is focused on the 831b election we pretty much say no thank you we are not interested. The IRS has gone after promoters of the 831b captives with you are selling a tax deduction rather than an insurance product and that has ben their focus which I think is totally justified. But if you have formed your captive properly with the proper structure and the right actuarial analysis and the right reasons for it as in what's the insurance problem you are trying to solve then you will have no issues with the IRS.

Mr. Smith stated that we have met a number of times with officials at the U.S. Treasury dep't and have supported the fact that there are unscrupulous folks who are pushing these micro captives or 831bs as some sort of tax play as opposed to an insurance company and as Mr. Provost mentioned that doesn't fit the Vermont model and shouldn't fit any captive model. We are concerned that there is this kind of spill over effect where folks here about these 831bs and then think that's how the whole captive industry operates and that's the problem and concern we have and I'm concerned the IRS has that view to be honest with you. We've been supportive of what they have done in terms of moving on and focusing on some of these other actors but the concern we have is that it's the broad brush in terms of the laser on the bad actors and that's something we are dealing with an have broad concerns about for sure.

Ms. Bigglestone stated that state insurance regulators do have the leeway to be the gatekeepers of regulating captive insurance business and letting in business that makes sense that is lawful that is meant for insurance purposes, insurance risk financing purposes, so the state insurance regulators do have an obligation to implement sufficient regulatory practices to oversee the business that they are letting in.

Hearing no further questions or comments, Rep. Jordan noted that this topic will be further discussed and possibly voted on at our November meeting in Scottsdale.

CONTINUED DISCUSSION ON NCOIL REMOTE NOTARIZATION MODEL ACT (INCLUDING LIVE DEMO OF REMOTE NOTARIZATION)

Rep. Jordan stated that we first discussed this issue at our December meeting and at our last meeting in April draft model law language was introduced which I have now agreed to sponsor. The language is in your binders on page 243. One change that has been made to the language since April is in Section D on page 245 – the number of years in which the recording must be retained has been lowered from 10 to seven years. I think seven years is in line with the spirt of modernization efforts, will reduce costs of compliance with the act, and is also in line with several state attorneys record retention requirements, including my home state of Louisiana. Joining us today are Nicole Booth, Executive Vice President of Public Affairs at Notarize, and Jacqueline Phillips, Director of Notary Engagement and Education at Notarize. Ms. Booth and Ms. Phillips will be providing us with a demonstration of how a remote notarization takes place. I think this will be very beneficial for the Committee to see and then I believe the Model will be ready for a vote at our next meeting in November.

Ms. Booth thanked the Committee for the opportunity to speak and stated that Notarize is a digital trust provider and we are a platform that integrates technology with live human interaction to establish identities. We offer digital identity proofing and identification services including a market leading notary public platform to allow any person or organization to get their documents notarized 24/7. Access to digital services is more important than ever and so we thank you for your leadership in holding discussions on issues like remote online notarization (RON) to make sure they work not only for consumers but all parties – attorneys, notaries and all citizens. Today we are going to give you a quick lay of the land on RON law and then we are going to dig into an example of how RON can work specifically using our platform of course.

So far in 2021,10 additional states have passed permanent online notarization laws which allows for documents to be notarized online through multi factor authentication and live audio visual. Six of those state laws have been signed by their governors WY, WV, NM, KS, AR and OR and we are awaiting governor signature in four additional states IL, NY, NJ, and NH. So if you are looking at totals we have 35 states that have signed permanent RON laws and once those remaining states have signed their laws hopefully by the end of this year we'll be up to 39 states. With this review lets move onto how RON works in real time and practice. Today we're going to walk through the signer and notary experience. I'm going to be taking you through the experience as a signer and then Ms. Phillips is going to be my notary.

We're going to start here at the signer's dashboard, this is my dashboard, and I've already signed up for a notarize account so I can come back to this account at any point. I've already uploaded my document but I can upload my document here. We're going to continue to the document so once I've uploaded I'm going to be prompted to enter my name as it appears on my ID and this will help when we're going through credential analysis which we'll get to in a moment. This already starts the purposeful multi layered approach of fraud prevention and safety and security and we ensure the three factor authentication of something you know something you have and something you are. So then you'll be prompted to see if a second signer is needed for purposes of this demo we are going to skip this step so I don't need a witness or a second signer. Today we are going to go through a vehicle release form and at this point in the stage I'm still in control of the document and I can adjust and move my name anywhere on the screen. I can move around things on the form to make sure everything is uploaded. Once I have done any additional edits to the document I can move forward. This is important I will need to

go through a quick tech check to make sure my internet is strong and my audio visual is setup correctly. Per law this is important because it's not only about a good experience for me to have as I'm getting my document singed but it's the live human element of the signer and the notary to be able to see each other and interact back and forth as part of that safety and security piece.

I'm going to continue and you can see me and I can see myself and I'm checking the output and you can see my voice is being heard and the last step is they are checking my internet connection to see how strong it its. It says my connection is weak but we can still use the platform with a weak connection so if you are in a rural area or you don't have the best Wi-Fi this is still an option to use no matter where you are located. We'll connect anyway. Once I'm done with that I can move on to the identity verification stage as it again is part of the multi layered safety and security process. We're going to check my name and my DOB and then use only the last four digits of my SS number and this is going to help our third party vendor perform dynamic knowledge based authentication. We do not share this info and in fact we only ask for the pieces needed to do the third party identification its only to help us complete this next step of the process. Everything looks good here and I'm going to continue and now what we're going to do is go through those dynamic knowledge based authentication questions. We use a series of third party databases to draw up these questions. Before I get into the program ill explain how it works and walk through it. To pass this step I must answer four out of five questions correct in two minutes. If I get it wrong once I have one other shot to do it. If I get it wrong then I'm done with the system – its not that I cant get my document notarized I just cant get it notarized with a RON – that's for safety and security as we want to make sure you are who you say you are.

So lets see if I can get these questions right. You'll see that they cheated for me and gave me correct answers but clearly that is not on there when you are going through this as a signer but for demo purposes they gave me correct answers so I didn't mess it up. In the bottom left corner you can see it tells me how much time I have remining as I'm going through these questions. Once I feel like I have all the questions correct I check my time and I submit and I've successfully passed the knowledge based authentication. Now we are going to move onto credential analysis. How we do that is we use a gov't issued ID and we're going to take pictures of it. Today I'm going to use my business card acting as my driver's license and you can do that one of two ways you can do it through your mobile device or you can do it through your web browser. Today I'm going to use the web browser and I'm going to take a picture of my fake driver's license press a key and confirm and continue. We'll take a picture of the back and then confirm and continue. Then I'm going to enter my driver's license number as it would be on my drivers license or the ID I provided. All of the other info looks correct here and we are then prompted for a second form of ID. This document does not require a second form of ID so we will move on.

Here is the part where we are going to start bringing in Ms. Phillips into the process and it gives you an idea of the costs associated with RON. The national standard is $25 per notarization and that is split between the technology platform and the notary so the notary can build their business. Now we can get started. On average the wait time to connect to a notary is less than a minute. Ms. Phillips stated now we are in the part where a notary and the signer are meeting each other so you can see me the notary on the top and the signer below and we'll walk the signer on filling out their portion of the document. So I'm going to switch a little bit because I want you to see I can use a

pointer as me as a notary and it will show up there as a signer so I can direct their attention to any part of the document. At that blue dot I'm going to ask Ms. Booth to choose a signature at the top left hand of the screen ad she's going to be able to choose that and drag it to where she is going to place the signature on the document. I'm going to have her create a new signature as the signer has the ability to have two signature choices – a text based signature and a handwritten signature for this demonstration we're going to use text based. Ms. Booth will choose her signature and id like to point out here that the signer does have a disclaimer that they are agreeing that this electronic signature is just as binding as their pen and ink signature. This will now have her signature on the document and at this point the signer has completed their potion and you'll see me switch my screen.

The notary portion is a lot more intensive because I'm doing a lot more adding to the document as necessary. Id like to point out there on the top left hand of the screen there is a yellow exclamation point which is reminding the notary that they have to perform credential analysis so this is the part that you are. Here is the ID Ms. Booth uploaded for review and I'm going to check here to make sure that it was a drivers license and the name attached and DOB matched. If any of those don't match its probably not the signer that needs to be here and I as a notary would terminate the call and then have the signer come back through with either the correct person that needs to sign the document or the correct ID. After I've done that I can look at the back and front of the ID to make sure that is valid and then ill compete the ID validation. The check mark then goes from a green exclamation point to a green checkmark. I am now able to complete my notarization on the document so I'm going to use some of the tools I have to add all of the info. The notary is then prompted when they are adding that annotation what kind of language they are using which allows the notary to do the journal that the notary must do for a RON. For this example I can drag all of the info I need onto the document including a disclaimer that this had been done by audio visual communication. There is also a script that the signer and notary can go through and ill go through that now. Hello I am Ms. Phillips I am a commissioned notary in the state of TX and id like to let you know that todays audio visual session will be recorded. Do you agree. I agree. Another part of this is that we have the signer state their name for the record so please state your name for the record. Nicole booth. Are you participating in todays notarization under your own free will. I am. And you consent to engage in an electronic transaction today using your electronic signature as you binding signature in these documents. Yes. So this is all captured in the audio visual requirement that the states have in order to know who the signer is performing the notarization and also that they are legally binding themselves to this notarization. This document also requires an oath so this is also captured on the side so I'll go ahead and perform that. Please raise your right hand - do you solemnly swear or affirm under the penalty of perjury that anything made by you in these documents is true and correct to the best of your knowledge and belief. Do you swear or affirm. I affirm. So this part is now done. I'm going to go ahead and lock my document and the notary has now legally done their 509 digital certificate to the document.

The notary is now complete and ill lock the document and this allows for any kind of technology hiccups. Ill now complete this session and now I will move it back to Ms. Booth for the signer experience. So something worth noting is in the audio visual recording we are only recording the talking heads we are not recoding the sensitive info within the document only the talking heads to ensure that the person is who they say they are and that's for a couple of reasons – one is to watch for duress and assist the

notary in that piece as well as for follow up in case anything happened as fraudsters don't like to be recorded on camera. We missed the survey portion of the discussion but I think that's ok. Now we're at the end where my document has been uploaded and I can e-mail it to anyone I need and I can come back and open it any time within the notarize portal. A few things id like to highlight is that you always have access to in the portal is you can see the doc and it tells you what the doc is and when it was completed and also the audio visual recording which takes a few minutes to process but that is available as well and you can see the type of notarial act that was competed, who completed it, their commission number, the platform that it was completed on. And also a summary of what was paid and my access pin to notarize and a summary of the status. That's it and it took a little longer than we expected but we wanted to make sure we went through each step.

UPDATE AND REVIEW ON STATE INSURANCE REGULATORY SANDBOXES

Before starting with the speakers, Rep. Jordan first noted that in your binders for your reference during this discussion, starting on page 261 is a copy of Vermont's insurance sandbox enabling statute, following by a copy of Utah's. I would now like to recognize my colleague from Kentucky, Representative Bart Rowland, for brief comments.

Rep. Rowland stated that thank you, Mr. Chairman. I'll be very brief. Before we hear from our speakers I would just like to note that my home state of Kentucky also has an insurance regulatory sandbox that has been in effect since 2019. I support the concept of insurance regulatory sandboxes and as you'll hear from the speakers today, the main goal of such sandboxes is to reduce regulatory hurdles for companies that want to introduce new concepts and products at the same speed as insurance technology develops. Before moving forward with any sort of NCOIL model law language relating to insurance regulatory sandboxes, I'm interested to hear how they have operated in other states and whether model language is indeed necessary. Thank you, Mr. Chairman.

Rees Empey, Director of State Gov't Affairs at the Libertas Institute, thanked everyone for coming out to Boston and for inviting him to speak. I'm grateful to be here. My name is Rees Empey and I'm the Director of State Government Affairs at Libertas Institute, a non-profit think tank based in Utah. While Libertas works on a range of issues in Utah, my role is to bring policies we've helped usher through the Utah State Legislature to other states. One of these, and my biggest priority, is the concept of a regulatory sandbox while also supporting the existing ones such as Kentucky and Vermont's insurance sandbox. Now imagine you've just graduated from college and you're ready to make some money, but your degree isn't helping you out as much as you were hoping I'm sure that most of you know someone struggling with this or maybe some of you even went through this. But imagine how different life would be for a post-graduate student if their earnings were secured for the first five years after graduation.

In other words, Degree Insurance, which is a company based not even five minutes from Libertas' office, is an innovative company that will cut a check for the student if that student's income fails to reach the average earnings for that particular degree, whatever that degree may be. Degree Insurance is licensed to operate in Utah, South Dakota, North Dakota, Illinois, and Arizona but frequently runs into issues with other states' insurance departments due to things like seasoning requirements or not fitting neatly within the typical insurance mold. That's because, prior to Degree Insurance, nobody has pursued an insurance product such as this. Degree Insurance is but one example of

an innovative insurance product and serves as proof as to why regulatory sandboxes can be so helpful in the insurance space, as well as many others. Now, I should note that Degree Insurance is not a sandbox participant in any of those states, but the regulatory sandbox in South Dakota did attract them there, for example. In short, sandboxes enable innovators -- businesses both big and small -- to work with regulators in trialing new products, services, and business models while regulations inapplicable to their idea are temporarily waived. Now, states can pursue an industry-targeted sandbox, which highlights specific industries to allow for temporary regulatory relief. Utah and West Virginia's insurance sandboxes are good examples. On the other hand, states can also pursue an all-inclusive sandbox, which opens the door for any and all companies, regardless of industry, to apply for temporary regulatory relief, which Utah unanimously adopted this year. This "sandbox" concept originated in 2014 when the United Kingdom launched the world's first sandbox and targeted fintech companies.

Shortly after, countries such as Australia, Singapore, Hong Kong, and several others implemented sandboxes of their own while expanding the concept's application to other industries. Stateside, in 2018, Arizona passed America's first sandbox, which targeted fintech companies. Following Arizona's lead, states such as Utah, Vermont, Kentucky, Florida, West Virginia, California, Hawaii, Wyoming, and South Dakota began implementing their own while states like New York and North Carolina are actively considering them. At Libertas, we love sandboxes because it invites the business community to the table so they can highlight troublesome regulations while working with regulators and legislators to update the state's regulatory code to better welcome the innovations of tomorrow. In addition, with multiple states running sandboxes, businesses are able to scale up and offer their product across several sandbox states rather than just one or two. Now, a lot of folks are worried about "bad actors" and I don't blame them, but consumer protection is offered from the very beginning with the application process and throughout the trial period, which is typically two years max.

Businesses trialing their product in the sandbox are supervised by regulators while ideas that will obviously cause harm to consumers are barred from entry. As the sandboxes operate, it'll help the state legislature identify and update outdated regulations by providing real examples of those regulations not working. Now, these revisions and funding for the sandbox program itself can't happen without the state legislature. These regulatory waivers are temporary. The regulators overseeing these businesses in the sandbox recommend reforms to the legislature based on what they're seeing when those regulations are waived. And, in the end, the sandbox concept strives to allow for its participants to enter the full marketplace once their trial period ends and offer their products to any and all consumers rather than the typical cap of 10,000 consumers within the sandbox. In Utah, our sandboxes are still mostly getting off the ground. While Utah hosts a fintech, legal services, insurance, and all-inclusive sandbox, I want to narrow in on our insurance sandbox. In 2020, Utah State Representative Adam Robertson sponsored House Bill 402, which established Utah's insurance sandbox. H.B. 402 passed the Utah State House of Representatives with 58 yay votes and 11 nay votes. Over in the Senate, H.B. 402 passed with 27 yay votes and 1 nay vote.

And after receiving both Republican and Democrat support in the legislature, H.B. 402 received the governor's signature and the program launched right as COVID hit, which, as many of you know, changed day-to-day life for almost everyone. However, we're hopeful it'll take off as more states in the Mountain West and, frankly, the entire country, begin to consider and adopt a similar sandbox, which will appeal to the insurance

industry's trend of offering their products regionally. West Virginia, Louisiana, South Dakota, and North Carolina are good examples just from this year. Overall, sandboxes provide opportunities for creative minds to trial their new and innovative products while providing regulators and legislators with real examples of regulations not neatly working in today's innovative world. Also, rather than a startup spending thousands of dollars on lawsuits and lobbyists to change the law to accommodate them, which not all of them can afford, this offers them a more affordable avenue to trial their service. And we cannot begin to imagine the life-changing products and services that may come as a result of this new regulatory framework. Thank you all for having me and I appreciate your time.

Kevin Gaffney, Deputy Commissioner of Insurance at the Vermont Department of Financial Regulation, stated that Vermont was the second state behind Kentucky to implement an insurance regulatory sandbox. That sandbox was put in place through Act 57 in 2019 and just to give a brief overview of the concept I think you've heard it from Rees but basically it's the commissioner granting a waiver of either a law or regulation or bulletin that would prohibit either more efficiencies or more innovations in the marketplace it would also still maintain whatever the public policy goals of the law regulation or bulletin attempted to achieve by another means and the waiver would not substantially increase the risk to consumers and obviously the waiver would be in the public interest so that's all in the application process. A waiver may be granted for up to 12 months and within the 12 month waiver period an extension of an additional 12 month period can be requested.

With the consumer protection piece in Vermont we have a limit of 10,000 customers for any product tor service being delivered to Vermonters and there are also mandatory disclosure requirements which is something that the legislature was very supportive of as was the commissioner in making sure that the purchaser or a product or service through a waiver was aware who the participant was in the market that the product and service and innovator was temporary and there was an end to the waiver period and obviously contact info to the dep't should the consumer have any questions concerns or complaints. The commissioner must give a public notice period so when the applicant applies for the waiver the waiver is then posted on the dep't website and there is a timeframe to offer public comment.

There are financial requirements as part of the sandbox and there are statutory deposit requirements by regulation the amount is no less than $19,000 but its commensurate with the risk or product or service being provided. The participant must provide 60 days prior notice of the effective date of the waiver with an estimate of the total amount of premiums and claims anticipated during the waiver period and that amount may be increased or decreased within the timeframe should the commissioner determine that the risk profile has changed during the waiver period. There is a distinction between issuing a license to a company and having them do business and the level of monitoring that the sandbox requires so there is additional monitoring within the sandbox regime that requires quarterly monitoring of the policies written, the premium dollars and claim dollars and any material changes in business plans underwriting and claims practices so this provides a little more detail and insight to your state regulators on what is actually happening with the sandbox participant and to evaluate the compliance with the conditions of the waiver; the commissioner has broader authority to examine further any transactions, accounts or records as the commissioner does generally under examination authority.

There are a number of provisions that are not subject to the waiver so obviously capital and surplus requirements, taxes and fee and any regulations that s an NAIC accreditation requirement, health insurance, guaranty associations, work comp, insurance trade practices, licensing requirements, and long term care (LTC) insurance. As you as regulators consider legislation in your states these are items you may or may not look at differently. We didn't have the foresight when we did this legislation of what came about 70 days after the regulation was promulgated which was the pandemic so I can see work comp there being opportunities for innovation in that space and I think the gig economy was emerging pre pandemic and I think it will emerge more post pandemic so I think there are a number of innovative ways to perhaps deliver insurance products that we didn't consider at the time because there was a level of conservativeness to offer that in the sandbox. What happens at the expiration of the wavier period - the participant will stop all waiver activity that we permitted through the wavier and comply with all generally applicable laws and there is annual reporting to the legislature by the commissioner of the total number of waivers we have to provide details on the petitions for waivers how many we received how many were granted and how many were denied waivers that were laxed or revoked or any disciplinary action imposed and a list of regs or bulletins that have been adopted or amended as a result or in connection with the waiver. Lastly with respect to statutes to which waivers apply the commissioner may make recommendations as to whether such statute should be continued, eliminated or amended in order to promote innovation and establish a uniform regulatory system for all regulated entities.

Regarding the legislative process I touched on it briefly we passed act 57 in 2019 and there generally were some concerns about giving the commissioner discretion to waive the laws but I think if you look at the structure of the sandbox there is a lot of monitoring and control to protect consumers and those robust consumer protections were important to both the commissioner and the legislature. Originally no waivers could be granted after July 1 2021 which would make this discussion moot so in the past legislative session due to the pandemic the legislature enacted a 2 year extension of the new application deadline and the sunset of the law so the law now sunsets on July 1 2025 and new applications can be received no later than July 1 2023. We have not yet received any applications I think in part both regulators and industry had to react in the last 17 months to the pandemic certainly and regulators we enacted many emergency rules that the industry had to respond to to protect consumers and to deliver the service that best served the public so their attention could have been taken away from the innovative initiatives. I also think its an opportunity always to just interact with the tech community. They are not necessarily insurance folks they may have the concept and may be contracting with an incumbent insurer to deliver an innovative product but what we would like to express is that the dept. is always open to hearing about innovative ideas and we do anticipate the greater need of products and services and a lot of times you'll hear the perspective from the innovators but I also think the consumer demand not just the millennial generation and younger I think there is consumer demand across the board for products to be delivered in a more efficient way and also to get to markets and areas we found through the pandemic have been underserved so I think the sandbox can offer a lot of different opportunities for your constituents in your states.

Lastly I have some links to both the regulation if you want to look at the details and we also created a portal on our website so if an applicant wishes to pursue a wavier they can fill out some general info on the website to initiate the process as a way to give

what's coming to us and arrange for further details before an application is submitted. I hope that gives you a flavor of what we engaged in legislatively and by regulation in Vermont and I'm happy to answer any questions.

Sen. Spiros Mantzavinos (DE) asked if you have seen either in Vermont or Utah any costs associated with doing this like additional regulators that may have expertise for a particular sandbox or anything like that. Mr. Gaffney stated it's a good question and its something we have wondered. We're fortunate in Vermont to have been able to attract a lot of strong experienced regulators and we actually expanded our staff in areas of focus where we see innovative products already in the already regulated market outside of sandboxes so I think we have capacity to take that on but the reality is if those numbers grew we would have to account for the resources to conduct that work.

Rep. Steve Meskers (CT) stated that there is a part of me that finds this very exciting and a part of me that's completely horrified by the structure. The question regarding regulatory framework is that if I am insuring the product with legislative structure of a 2 year sunset provision what is the timeframe of the insurance I am looking to cover or the nature of the coverage. I cant sell performance on a college degree that requires 4 years to get the degree with a product that has a sunset before I graduate because obviously we wont know what my salary is going to look like before the insurance license expires so there is a question about the timeframes about the policies looking to be underwritten in the sandbox and the expiration of the law. Also, when I think about insurance a lot of it deals with credibility, trust, public confidence so the participants that are moving into this business are we looking into licensed insurance regulated entities that are looking to expand into the sandbox with new innovative products where we are granting them waivers to test products or are we bringing in new innovators who may or may not be known to the insurance community or to the regulators in my state. Am I trying to broaden the aspects of my existing insurance companies or am I allowing new which I would say untested players into the market so I'm trying to measure risk and when I open up the gate to new performance I want to make sure it's not like we all got involved in energy deregulation and we ended up with Enron so I want to make sure which road we're going down on this.

Mr. Gaffney sated both and for the initial observation on the timing in terms of the sunset that is one of the reasons why I wanted to present what we went through because I think that's a good observation as I think the sunset creates some limitations so you look at doing that in your state you may want to consider that and create and decide what limitations you are creating. Perhaps you could just ask for some kind of report back after a certain period of time to gain comfort to continue with the sandbox rather than a sunset. Pragmatically we are hopeful that we get some sandbox applications and we show a record of success and there will be a decision before the expiration of the legislation to perhaps extend the sunset but I'm not suggesting that I have the ability to do that but I think the information will provide the documentation whether its warranted or not and ultimately the legislature will have to decide. In terms of incumbents versus innovators it's both and I think the applications and the detail that we have in there the incumbents are very family with and very comfortable in that space and the innovators may not be but that doesn't mean that as you've heard from our captive team earlier and certainly there are plenty of consultants and experts that can sit with innovators to make sure they comply with all of the actuarial analysis and reg requirements so we will through the regulatory oversight make sure that we don't approve any applicants we don't feel comfortable with so there is an application process to protect against that but I

think the observation is good and I think there is an opportunity to help both incumbents and innovators.

Rep. Meskers stated my only concern would be in the institutional framework you'd want to be very careful of the unwind provisions so if we go to a sunset and there is unwind and there have been no claims and no claim history and essentially you have your consumer buying into a product that has presented no insurable value is the unwind going back to the shareholders or is there going to be any restitution to the participants in the market who bought insurance and have had no loss record. Mr. Gaffney stated that absent loss doesn't mean absent value I mean insurance is a transfer of risk so when you are under the contract you have the protections if you have a claim you have that protection but if you go a year with your auto insurance and don't have a claim you don't get the money back because it's a risk pooling arrangement.

Rep. Meskers stated that's a risk pooling arrangement where you are spreading risk among a loss history and with this we have no loss history so I want to make sure we are not underwriting a product that has no value and charging consumers so there is kind of a back and forth there when we have no history and innovation, you want to provide legitimate levels of insurance and coverage and risk perception and make sure it's not just a fee harvesting arrangement for innovators. Mr. Gaffney sated absolutely and that's our role as regulators and I think we are adept enough to understand the difference. There has to be at true risk that exists and a true exposure that exists or remembering the earlier slide I mentioned there had to be a business plan that outlines the policies to be written and anticipated claims and premiums and we wont just accept those for face value we will ask questions how they got to that and if there are actuarial assertions they are going to have to have actuaries weigh in on that and justify that representation. I also want to clarify that I kept saying incumbents and innovators but there are plenty of incumbents that are innovators so when I say inventors I think there are innovators in the incumbent space and in the non-licensed insurance space.

Rep. Rowland stated that after passage in 2019 in KY of its sandbox the KY DOI had a lot of conversations with folks who thought they needed a sandbox to implement their ideas only to find out after discussing with our dept that they were able to find a way under current insurance statues and regs to operate so to date we have not successfully completed an application in KY but we have had a lot of conversations the dept. tells me and also there is discussion that KY itself is a market maybe too small for some of these innovators to come in and implement their idea there is just not enough market so potentially if we do implement a model and some other states implement it then maybe at that time the market becomes large enough for some of these innovations to operate but my question is we've had several states now that do have regulatory sandboxes so do you know of any state that has successfully granted a waiver under their sandbox.

Mr. Empey stated Utah's insurance sandbox if memory serves correctly has run into a similar problem where innovators mistakenly thought that they couldn't operate before the sandbox and to add on to that I think a lot of the new insurance sandbox programs such as WV, SD I think it's just too new and its going to take some more time and some more states to adopt especially in the region of KY and UT and VT for us to really see action so its more regional. Mr. Gaffney stated I haven't seen any waivers granted but that doesn't mean there haven't been I'd have to check in with my fellow regulators. I do think there are some regulators who feel they already have the ability to do this without a sandbox and I think you could argue that if you look at the current insurance laws and

the discretion of the commissioner but I think when we established the sandbox and I don't know if this was the case in KY we felt that it was a much more transparent process to lay out the landscape and consumers could be fully aware of what's coming and all the disclosures coming so we felt the sandbox was the right approach. I think now time will tell with whether we have the right balance in terms of the right structure of the sandbox. If there are barriers within the sandbox regime we'd like to hear from the innovators and we certainly will react to those and reengage with the legislature on this.

Rep. Rowland stated that he believes it was positive in KY and it at least did create some conversations between the innovators and its DOI and the entire time we were debating it in KY I felt like the biggest opportunity was not new insurance companies and new product but all the back office support that goes into selling pricing or handling claims for current insurance companies. I think that's the real opportunity that some of these folks will think of some product to help us support our existing insurance industry. Mr. Gaffney stated that ill add that we talk about risk transfer and the like but I also see the opportunity for risk mitigation as a to of insurance is looking at not just assuming risk but also looking at ways to mitigate loss and offer either wellness or other types of loss mitigators and I think there is a lot of innovation in that space and certainly those provide some strong benefits to consumers.

Rep. Deborah Ferguson (AR) stated that if the goal of the sandbox is to encourage IT and innovation obviously if not many states are getting takers for the waiver are there any states offering incentives for innovation like tax credits and things for the companies to get started? Mr. Empey stated that personally I think that temporary regulator relief is a good way to attract and I think a problem is that a lot of folks just aren't aware of these sandboxes and that's part of my role at Libertas is to try and increase that awareness so that folks know about and can take advantage of sandboxes across the country. Rep. Ferguson stated that UT was just insurance are you finding more interest in FinTech and other areas; where are you finding the most interest. Mr. Empey stated our fintech sandbox and insurance sandbox have not had any successful applicants they thought that they couldn't operate before the sandbox and then they found out they actually could however our legal service sandbox which is run by our state Supreme Court currently hosts over 30 entrepreneurs working on new products such as different ways to run a law firm and then our all inclusive sandbox just passed last session is set to go on next month and has received a lot of interest from all sorts of folks from different backgrounds and interests. Mr. Gaffney stated that I don't think Vermont would want to move away from the discipline we have established in the sandbox with incentives. You kind of heard that discussion earlier with captives in the tax code and first an foremost its an insurance product and if someone wants to come to market with an insurance product they have to follow the regulatory regime and meet that discipline. We welcome innovation but within the regime of insurance innovation.

Rep. Tammy Nuccio (CT) stated my expertise is in the healthcare arena and I'm thinking of this as if you are an incumbent and you are not innovating you are dying so I see this as an opportunity not only for incumbents but for new innovators. If I selectively pick a reg that I think is impairing my ability to come to market with a new product how is the risk determined for the consumer in relation to that singular reg. Who is determining that risk. Mr. Gaffney stated that part of the process is in the business plan so its the anticipated claims that will come with that so without knowing what reg you are talking about it would be hard to assess but I think that's why if you look at the provisions not part of the wavier a lot of the insurance trade practices laws are not because we just felt

like none of those can be compromised and those would present some difficult situations for consumers. It would depend on what specifically is being waived to assess that but a lot of times its not necessarily something that enhances risk but just changes process. A simple example is that policies are typically in the P&C side a 12 month policy but that regime has changed quite a bit now they can be monthly or hourly but then how do you do cancellation provisions that are 45 days so you have to waive those cancellation provisions to be able to deliver those products we don't necessarily see those as increasing the risk its just how do you deliver that and in what way and electronically most likely on a cell phone and its an opt in for a consumer so its more about process than enhanced risk.

Rep. Nuccio stated that leads me to my next question of for the states that have implemented this what are the types of regs that are being asked to be waived. Mr. Gaffney stated that I wish I could give you a whole list but we don't have any applicants right now but maybe the next time we talk ill have examples. Rep. Nuccio stated I'm thinking of the sunset date and the two years and depending on the type of insurance and the specific reg you are looking to waive that is found to be cumbersome especially with an emerging market and developing a new product, 2 years depending on the type of insurance may not be enough to establish in depth knowledge or trends to be able to say if we remove this reg across the board we are going to see a, b, c, or d. So I think there is some concern around the sunset in relation to the type of service, provider, and insurance and also the type of product that they are looking to innovate as you might need more flexibility around I need 5 years to see if this will create a positive trend or if it will have a 3 year positive spike and then tank so the sunset date being hard and fast is a little concerning for me. Lastly, from a health insurance perspective I'm thinking of how many times in industry we see new products and markets and ways to be able to specialize in new areas and I got to thinking about a 10,000 member limit you could really focus in on a national account who has several thousand and create a market driven specific thing if there is reg that is impairing a specific thing in that network but that would then have the possibility of crossing state lines so the sandbox if I'm hearing correctly would be state specific so you would either need to find a conglomeration of accounts that equaled up to 10000 or a national account that happened to have a large radius or base with a 10,000 number max. Is that what you think this is going to help with or are you seeing this as more smaller members pooled together or more of a national model with a combined membership.

Mr. Gaffney stated that the basis for the sandbox is to kind of test out a new idea not necessarily go to a full broad market. I was hearing some discussion the last few days about work comp about data and we like to see it so we can decide as legislators how to go about making decisions as we don't want to change a law without seeing the data to support the change. The sandbox is that – it gives you the opportunity to test something out and see some results and then decide at the end of that period whether some minor revision to the reg or law is required so its kind of a catch 22 as would 5 or 10 years be more robust yes but I don't think you'd want to waive or extend a reg or law for any extended period of time before you kind of make an evaluation of do you then have to convert from the sandbox regime into the traditional regime. In Vermont the waiver does not apply to healthcare and I think for some of the things you are touching on we just didn't feel healthcare was the right fit – we may be missing the mark there but our initial view was that it wouldn't work based on what we think the needs of the healthcare consumer are. Rep. Nuccio stated that is interesting because I think healthcare is probably one of the biggest areas of insurance that we need to understand and probably

one of the biggest concerns of Americans across the country is healthcare costs so being able to find innovative ways to do that and to understand the regulatory impact kind of loops me back to again regardless of the insurance type looking at which reg how do we determine that risk and not just taking info based solely on insurance companies but being able to actually gauge the risk to the 100,00 people.

Mr. Empey stated that regarding the point about crossing state lines I think that is why having reciprocity agreement language within the sandbox is so important which is something we started to see in fintech sandboxes. For example, WV just made an amendment to their fintech sandbox to add reciprocity agreements so that WV sandbox can talk to WY and UT and AZ and I think something along those lines can happen in the insurance sandbox space as well and would be a good thing.

J.P. Wieske stated that he is the former deputy commissioner in the WI insurance department and is now representing the American Insurtech Council and would note that in my position in WI we did have a similar regulatory sandbox and the law actually dates back to the 1970s and it allows the commissioner to waive an insurance law with a hearing and a ruling. Just for note we did go through a number of these processes with companies in WI that came in and in a very similar approach a lot of the waivers we did fine similar to other states that in a lot of cases there is nothing that needs to be waived but in a lot of cases there are filing issues inside depts. from a timing perspective and needing to be able to adjust the filings very fast and so as Vermont has indicated you need some staffing issues and some other pieces that go along with that. We had a number of successful products that went through we had private agreements with the insurers to in fact return premium in certain cases if a policy was never going to pay out the exception is the consumer can't know that money is going back because that messes up the whole experiment but they had a an agreement behind the scenes with us to be able to return the premium net of claims following the piece so there are a number of issues we went through but the biggest thing we saw was the ability to make changes in new product filings and to make them very quickly and to make adjustments based on specifics. You may have heard ads for a product sold across the country by an insurance company sold to landlords pre-COVID I don't know if they do post-COVID that would cover their rents in case they lost their job. That is something that went through our process and was ultimately launched. There are several others that went through the process as well and there is a lot of successful innovation that could happen as a result of this so I think its something that states should take look at.

Rep. Jordan staid thank you to everyone and noted we may discuss this again at our November meeting.

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.

Atlantic Corporate Center
2317 Route 34, Suite 2B
Manasquan, NJ 08726
732-201-4133
CHIEF EXECUTIVE OFFICER: Thomas B. Considine

National Council of Insurance Legislators (NCOIL)

Remote Notarization Model Act

***Draft as of June 15,~~March 16~~, 2021.**
***To be discussed and considered during the Financial Services & Multi-Lines Issues Committee on November 19, 2021~~July 16~~ ~~April 17, 2021.~~**

***Sponsored by Rep. Edmond Jordan (LA)**

AN ACT concerning remote notarial acts, and other acts for executing and verifying certain documents, by notaries public and certain other authorized officials using communication technology.

(A) As used in this section:

"Communication technology" means an electronic device or process that:

(1) allows a notary public or an officer authorized to take oaths, affirmations, and affidavits, or to take acknowledgements, and a remotely located individual to communicate with each other simultaneously by sight and sound; and

(2) when necessary and consistent with other applicable law, facilitates communication with a remotely located individual who has a vision, hearing, or speech impairment.

"Foreign state" means a jurisdiction other than the United States, a state, or a federally recognized Indian tribe.

"Identity proofing" means a process or service by which a third person provides a notary public or an officer authorized to take oaths, affirmations, and affidavits, or to take acknowledgements with a means to verify the identity of a remotely located individual by a review of personal information from public or private data sources.

"Notarial act" means any official act performed by a notary public appointed pursuant to the provisions of the [State notary law], or otherwise qualified and commissioned as a notary public in this State, or performed by an officer authorized to take oaths, affirmations and affidavits under […] or to take acknowledgments under […]. "Notarial act" shall include the following: taking acknowledgments; administering oaths and

affirmations; executing jurats or other verification; taking proofs of deed; and executing protests for non-payment.

"Outside the United States" means a location outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory, insular possession, or other location subject to the jurisdiction of the United States.

"Remotely located individual" means an individual who is not in the physical presence of a notary public, or an officer authorized to take oaths, affirmations, and affidavits, or to take acknowledgements, performing a notarial act under subsection c. of this section.

"Satisfactory evidence" means a passport, driver's license, or government issued nondriver identification card, which is current or expired not more than three years before performance of the notarial act; another form of government identification issued to an individual, which is current or expired not more than three years before performance of the notarial act, contains the signature or a photograph of the individual, and is satisfactory to the notary public or officer authorized to take oaths, affirmations, and affidavits, or authorized to take acknowledgements; or a verification on oath or affirmation of a credible witness personally appearing before the notary public or officer and known to the notary public or officer or whom the notary public or officer can identify on the basis of a passport, driver's license, or government issued nondriver identification card, which is current or expired not more than three years before performance of the notarial act.

(B) Notwithstanding the provisions of any law or regulation to the contrary, a notary public appointed pursuant to the provisions of the [State notary law], or otherwise qualified and commissioned as a notary public in this State or an officer authorized to take oaths, affirmations and affidavits under […] or to take acknowledgements under […] may perform notarial acts using communication technology for a remotely located individual if:

(1) the notary public or officer:

(a) has personal knowledge of the identity of the individual appearing before the notary public or officer, which is based upon dealings with the individual sufficient to provide reasonable certainty that the individual has the identity claimed;

(b) has satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing before the notary public or officer; or

(c) has obtained satisfactory evidence of the identity of the remotely located individual by using at least two different types of identity proofing;

(2) the notary public or officer is reasonably able to confirm that a record before the notary public or officer is the same record in which the remotely located individual made a statement or on which the remotely located individual executed a signature;

(3) the notary public or officer or a person acting on their behalf creates an audio-visual recording of the performance of the notarial act; and

(4) for a remotely located individual who is located outside the United States:

(a) the record:

(i) is to be filed with or relates to a matter before a public official or court, governmental entity, or other entity subject to the jurisdiction of the United States; or

(ii) involves property located in the territorial jurisdiction of the United States or involves a transaction substantially connected with the United States; and

(b) the act of making the statement or signing the record is not prohibited by the foreign state in which the remotely located individual is located.

(C) If a notarial act is performed under this section, any required certificate shall indicate that the notarial act was performed using communication technology.

(D) A notary public appointed pursuant to the provisions of the [State notary law], or otherwise qualified and commissioned as a notary public in this State, or an officer authorized to take oaths, affirmations and affidavits under […] or to take acknowledgments under […], a guardian, conservator, or agent of such person or, if such person is deceased, a personal representative of the deceased person, shall retain the audio-visual recording created under paragraph (3) of subsection B. of this section or cause the recording to be retained by a repository designated by or on behalf of the person required to retain the recording. Unless a different period is required by rule adopted pursuant to subsection G. of this section, the recording must be retained for a period of at least <u>seven</u>~~10~~ years after the recording is made.

(E) (1) Notwithstanding the provisions of the [State administrative procedures act], to the contrary, the State Treasurer may, in her discretion, adopt rules or append provisions to the manual distributed pursuant to section [State notary law] as necessary to implement the provisions of this section, which rules or appended provisions may include the means of performing a notarial act involving a remotely located individual using communication technology; standards for communication technology and identity proofing; and standards for the retention of an audio-visual recording created under paragraph (3) of subsection B. of this section.

(2) Before adopting, amending, or repealing any such rule or appended provision pursuant to this subsection, the State Treasurer shall consider the most recent standards regarding the performance of a notarial act with respect to a remotely located individual promulgated by national standard-setting organizations such as the Mortgage Industry Standards Maintenance Organization and the recommendations of the National Association of Secretaries of State.

(F) This act shall take effect immediately.

Atlantic Corporate Center
2317 Route 34, Suite 2B
Manasquan, NJ 08726
732-201-4133
CHIEF EXECUTIVE OFFICER: Thomas B. Considine

National Council of Insurance Legislators (NCOIL)

Uniform Captive Insurer Model Act

***Sponsored by Sen. Jason Rapert (AR)**
***Draft as of June 15, 2021. To be discussed during the Financial Services & Multi-Lines Issues Committee meeting on November 19, 2021~~July 16, 2021.~~**

Table of Contents

Section 1. Title

This Act shall be known and may be cited as "The Uniform Captive Insurer Act."

Section 2. Purpose

A. The purpose of this Act is to provide uniform requirements for licensing of captive insurance companies within each of the fifty states in the United States of America.

B. This Act shall not apply to the formation of foreign captive insurance companies.

Section 3. Definitions

(1) "Agency captive insurance company" shall mean an insurance company described in paragraphs (2) a. and b. of this section:

a. An insurance company that is owned or controlled by an insurance agency, brokerage or reinsurance intermediary, or an affiliate thereof, or under common ownership or control with such agency, brokerage or reinsurance intermediary, and that only insures the risks of insurance or annuity contracts placed by or through such agency, brokerage or reinsurance intermediary; or

b. An insurance company that is owned or controlled by a marketer or producer of service contracts and/or warranties, and that only insures or reinsures the contractual liability arising out of such service contracts or warranties sold through such marketer or producer.

c. For the purposes of this paragraph (2), "common ownership or control" shall mean ownership of 10 percent or more of the voting securities of a person or such other form of ownership or control as the Commissioner may approve.

(2) "Alien captive insurance company" means any insurance company formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of an alien jurisdiction which imposes statutory or regulatory standards in a form acceptable to the commissioner on companies transacting the business of insurance in such jurisdiction.

(3) "Association" means any legal association of persons that has been in continuous existence for at least 1 year or such lesser period of time approved by the Commissioner, the association members of which, or which does itself, whether or not in conjunction with some or all of the association members:

a. Directly or indirectly, own, control or hold with power to vote all of the outstanding voting securities or other voting interests of, or have complete voting control over, an association captive insurance company; or

b. Constitute all of the subscribers of an association captive insurance company organized as a reciprocal insurer.

(4) “Association captive insurance company” means any captive insurance company that insures risks of the Association Members of the association and any of their affiliated companies.

(5) “Association member” means any person that belongs to an association.

(6) “Branch business” means any insurance business transacted by a branch captive insurance company in this state.

(7) “Branch captive insurance company” means any alien captive insurance company licensed by the commissioner to transact the business of insurance in this state through a business unit with a principal place of business in this state. A branch captive insurance company is a pure captive insurance company with respect to operations in this state, unless otherwise permitted by the commissioner.

(8) “Branch operations” means any business operations of a branch captive insurance company in this state.

(9) “Capital and surplus” means the amount by which the value of all of the assets of the captive insurance company exceeds all of the liabilities of the captive insurance company, as determined under the method of accounting utilized by the captive insurance company in accordance with the applicable provisions of this chapter.

(10) “Captive insurance company” means any pure captive insurance company, association captive insurance company, agency captive insurance company, sponsored captive insurance company, industrial insured captive insurance company, special purpose captive insurance company, special purpose financial captive insurance company, series captive insurance company, or risk retention group, whether domestic, foreign or alien, or branch captive insurance company, licensed under the provisions of this chapter.

(11) “Commissioner” means the Insurance Commissioner of this State or the Commissioner’s designee.

(12) “Domestic” means formed under the laws of this State.

(13) “Foreign” means formed under the laws of any state.

(14) “General account” means all assets and liabilities of a protected cell captive insurance company not attributable to a protected cell.

(15) “Industrial insured captive insurance company” means any captive insurance company that insures risks of the industrial insureds that comprise the industrial insured group and any of their affiliated companies.

(16) "Industrial insured group" means any group of industrial insureds that collectively:

a. Directly or indirectly, own, control, or hold with power to vote all of the outstanding voting securities or other voting interests of, or have complete voting control over, an industrial insured captive insurance company; or

b. Constitute all of the subscribers of an industrial insured captive insurance company organized as a reciprocal insurer.

(17) "Organizational documents" means the documents that must be submitted to form a captive insurer in this state and obtain a Certificate of Authority.

(18) "Parent" means a person that directly or indirectly owns, controls, or holds with power to vote more than 50 percent of the outstanding voting securities or other voting interests of a pure captive insurance company.

(19) "Participant" means a person or an entity, authorized to be a participant under this Act, and any affiliate of a participant, that is insured by a protected cell captive insurance company, if the losses of the participant are limited through a participant contract.

(20) "Participant contract" means a contract by which a protected cell captive insurance company insures the risks of a participant and limits the losses of each such participant to its pro rata share of the assets of one (1) or more protected cells identified in such participant contract.

(21) "Person" means a natural person, partnership (whether general or limited), trust, estate, association, corporation, limited liability company, statutory trust, business trust, custodian, nominee or any other individual or entity in its own or any representative capacity, in each case whether domestic, foreign, or alien.

(22) "Protected cell" has the meaning given such term in this Act.

(23) "Protected cell" means a separate account established by a protected cell captive insurance company formed or licensed under this chapter, in which an identified pool of assets and liabilities arc segregated and insulated by means of this chapter from the remainder of the protected cell captive insurance company's assets and liabilities in accordance with the terms of one (1) or more participant contracts to fund the liability of the protected cell captive insurance company with respect to the participants as set forth in the participant contracts.

(24) "Protected cell assets" means all assets, contract rights, and general intangibles identified with and attributable to a specific protected cell of a protected cell captive insurance company.

(25) “Protected cell captive insurance company” means any captive insurance company:

(a) ln which the minimum capital and surplus required by this chapter are provided by one (1) or more sponsors;

(b) That is formed or licensed under this chapter;

(c) That insures the risks of separate participants through participant contracts; and

(d) That funds its liability to each participant through one (1) or more protected cells and segregates the assets of each protected cell from the assets of other protected cells and from the assets of the protected cell captive insurance company’s general account.

(26) “Protected cell liabilities” means all liabilities and other obligations identified with and attributed to a specific protected cell of a protected cell captive insurance company.

(27) “Pure captive insurance company” means any captive insurance company that insures risks of its parent and any of such parent’s affiliated companies and any controlled unaffiliated business.

(28) “Series” means a series established under this Act, or corresponding law of another state.

(29) “Series captive insurance company” means a series which has received a certificate of authority pursuant to this chapter.

(30) “Special purpose captive insurance company” means any person that is licensed under this chapter and designated as a special purpose captive insurance company by the Commissioner.

(31) “Special purpose financial captive insurance company” means a captive insurance company that is granted a certificate of authority under this Act.

(32) “Sponsor” means any person or entity that is approved by the commissioner to provide all or part of the capital and surplus required by this chapter and to organize and operate a protected cell captive insurance company.

(33) “Sponsored captive insurance company” means a captive insurance company, including a special purpose financial captive insurance company as defined in this Act:

a. Of which the minimum capital and surplus required by this Act is provided by 1 or more sponsors;

b. That is licensed under the provisions of this Act;

c. That insures the risks of its participants only, through separate participant contracts; and

d. That funds its liability to each participant through 1 or more protected cells and segregates the assets of each protected cell from the assets of other protected cells and from the assets of the sponsored captive insurance company's general account.

(34) "State" means the State of _____, and "state" means any other state, district, commonwealth or possession of the United States of America.

Section 4. Name

No captive insurer shall adopt a name that is the same, deceptively similar, or likely to be confused with or mistaken for any other existing business name registered in this state nor any name likely to mislead the public.

Section 5. Requirements and Limitations of Captive Insurance Company

(1) Any captive insurance company, when permitted by its organizational documents, may apply to the commissioner for a license to do any and all insurance comprised in this Act; provided, however, that:

(a) No pure captive insurance company shall insure any risks other than those of its parent and affiliated companies or a controlled unaffiliated business or businesses;

(b) No association captive insurance company shall insure any risks other than those of its association, those of the member organizations of its association, and those of a member organization's affiliated companies;

(c) No industrial insured captive insurance company shall insure any risks other than those of the industrial insureds that comprise the industrial insured group, those of their affiliated companies, and those of the controlled unaffiliated business of an industrial insured or its affiliated companies;

(d) No captive insurance company shall provide personal motor vehicle or homeowner's insurance coverage or any component thereof;

(e) No captive insurance company shall accept or cede reinsurance except as provided in this Act.

(f) Any captive insurance company may provide excess or stop-loss accident and health insurance, unless prohibited by federal law or the laws of the state having jurisdiction over the transaction;

(2) Except as provided in this Act, no captive insurance company shall transact any insurance business in this state unless:

(a) It first obtains from the Commissioner a license authorizing it to do insurance business in this state;

(b) Its board of directors or committee of members or managers or, in the case of a reciprocal insurer, its subscribers' advisory committee holds at least one (1) meeting each year in this state;

(c) It maintains its principal place of business in this state; and

(d) It appoints a registered agent to accept service of process and to otherwise act on its behalf in this state; provided, that whenever such registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the commissioner shall be an agent of such captive insurance company upon whom any process, notice, or demand may be served.

(3) In order to receive a license to issue policies of insurance as a captive insurance company in this state, an applicant business entity shall meet the requirements of this subdivision (3):

(a) The applicant business entity shall submit its organizational documents to the commissioner. If the commissioner approves the organizational documents, then the commissioner shall issue a letter to the applicant certifying the commissioner's approval. The applicant business entity shall submit the organizational documents, along with a copy of the approval letter issued by the commissioner, and the required filing fees for organizational documents prescribed to the Secretary of State for filing. Upon filing the organizational documents, the secretary of state shall issue an acknowledgment letter to the applicant. The applicant business entity shall submit a copy of the acknowledgment letter relative to the applicant's organizational documents issued by the secretary of state to the commissioner.

(b) The applicant business entity shall also file with the commissioner evidence of the following:

(i) The amount and liquidity of its assets relative to the risks to be assumed;

(ii) The adequacy of the expertise, experience, and character of the person or persons who will manage it;

(iii) The overall soundness of its plan of operation;

(iv) The adequacy of the loss prevention programs of its insureds; and

(v) Such other factors deemed relevant by the commissioner in ascertaining whether the applicant business entity will be able to meet its policy obligations.

(c) No less than the amount required by Section 6 shall be paid in by the applicant business entity and deposited with the Commissioner. In the alternative, an irrevocable letter of credit in that amount and acceptable to the commissioner shall be filed with the commissioner.

(4) Information submitted pursuant to this subsection (4) shall be and remain confidential, and shall not be made public by the commissioner without the written consent of the captive insurance company, except that:

(a) Such information may be discoverable by a party in a civil action or contested case to which the captive insurance company that submitted such information is a party, upon a showing by the party seeking to discover such information that:

(i) The information sought is relevant to and necessary for the furtherance of such action or case;

(ii) The information sought is unavailable from other non-confidential sources; and

(iii) A subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the commissioner.

(b) The commissioner shall have the discretion to disclose such information to a public officer having jurisdiction over the regulation of insurance in another state; provided, that:

(i) Such public official shall agree in writing to maintain the confidentiality of such information; and

(ii) The laws of the state in which such public official serves require such information to be and to remain confidential.

Section 6. Capital and Surplus Requirements

(1) No captive insurance company shall be issued a license unless it possesses and maintains unimpaired paid-in capital and surplus of:

(a) In the case of a pure captive insurance company, not less than two hundred fifty thousand dollars (State Specific);

(b) In the case of an association captive insurance company, not less than five hundred thousand dollars (State Specific);

(c) In the case of an industrial insured captive insurance company, not less than five hundred thousand dollars (State Specific);

(d) In the case of a protected cell captive insurance company, not less than two hundred fifty thousand dollars (State Specific).

Drafting Note: *These specific amounts do not serve as an endorsement and are included only to represent what one state, Tennessee, has chosen for capital and surplus requirements. States may wish to consider their own capital and surplus requirements.*

(2) The commissioner may prescribe additional capital and surplus based upon the type, volume, and nature of insurance business to be transacted.

(3) Capital and surplus shall be in the form of cash, or cash equivalent, or an irrevocable letter of credit issued by a bank approved by the commissioner.

Section 7. Formation

(1) A pure captive insurance company may be incorporated as a stock insurer with its capital divided into shares and held by the stockholders, as a nonprofit corporation with one (1) or more members, or as a limited liability company.

(2) An association captive insurance company, an industrial insured captive insurance company, or a risk retention group may be:

(a) Incorporated as a stock insurer with its capital divided into shares and held by the stockholders;

(b) Incorporated as a mutual corporation;

(c) Organized as a reciprocal insurer in accordance with chapter 16 of this title; or

(d) Organized as a limited liability company.

(3) A captive insurance company incorporated or organized in this state shall have not less than three (3) incorporators or three (3) organizers of whom not less than one (1) shall be a resident of this state.

(4) The capital stock of a captive insurance company incorporated as a stock insurer may be authorized with no par value.

(5) In the case of a captive insurance company formed as a:

(a) Corporation, at least one (1) of the members of the board of directors shall be a resident of this state;

(b) Reciprocal insurer, at least one (1) of the members of the subscribers' advisory committee shall be a resident of this state; and

(c) Limited liability company, at least one (1) of the members or managers shall be a resident of this state.

Section 8. Organizational Documents

The organizational documents shall include the National Association of Insurance Commissioners Uniform Certificate of Authority Application forms 1P, 2P, 8, 11, and 13.

Section 9. License Suspension/Revocation

(1) The license of a captive insurance company may be suspended or revoked by the commissioner for any of the following reasons:

(1) Insolvency or impairment of capital or surplus;

(2) Failure to meet the requirements of this Act;

(3) Refusal or failure to submit an annual report, as required by this chapter, or any other report or statement required by law or by lawful order of the commissioner;

(4) Failure to comply with its own charter, bylaws or other organizational document;

(5) Failure to submit to or pay the cost of examination or any legal obligation relative to an examination, as required by this chapter;

(6) Use of methods that, although not otherwise specifically prohibited by law, nevertheless render its operation detrimental or its condition unsound with respect to the public or to its policyholders; or

(7) Failure otherwise to comply with the laws of this state.

(2) If the commissioner finds, upon examination, hearing, or other evidence, that any captive insurance company has violated subsection (a), then the commissioner may suspend or revoke such company's license if the commissioner deems it in the best interest of the public and the policyholders of such captive insurance company, notwithstanding any other provision of this title.

Section 10. Investments

No pure captive insurance company, industrial insured captive insurance company, protected cell captive insurance company, incorporated cell captive insurance company or special purpose financial captive insurance company as defined in this Act shall be subject to any restrictions on allowable investments; provided, that the commissioner may prohibit or limit any investment that threatens the solvency or liquidity of any such company. Companies under this section (1) must file with the commissioner a statement of investment policy approved by its governing body that describes the types of investments that the company may elect to undertake and may not make investments that materially deviate from the statement of investment policy that is on file with the commissioner.

Section 11. Reinsurance

(1) Any captive insurance company may provide reinsurance as authorized by this title on risks ceded by any other insurer.

(2) Any captive insurance company may take credit for the reinsurance of risks or portions of risks ceded to reinsurers complying with this title. If the reinsurer is licensed as a risk retention group, then the ceding risk retention group or its members must qualify for membership with the reinsurer. The commissioner shall have the discretion to allow a captive insurance company to take credit for the reinsurance of risks or portions of risks ceded to an unauthorized reinsurer, after review, on a case by case basis. The commissioner may require any documents, financial information or other evidence that such an unauthorized reinsurer will be able to demonstrate adequate security for its financial obligations.

(3) In addition to reinsurers authorized by this title, a captive insurance company may take credit for the reinsurance of risks or portions of risks ceded to a pool, exchange or association to the extent authorized by the commissioner. The commissioner may require any documents, financial information or other evidence that such a pool, exchange or association will be able to provide adequate security for its financial obligations. The commissioner may deny authorization or impose any limitations on the activities of a reinsurance pool, exchange or association that, in the commissioner's judgment, are necessary and proper to provide adequate security for the ceding captive insurance company and for the protection and consequent benefit of the public at large.

(4) Except where specifically provided otherwise, insurance by a captive insurance company of any workers' compensation or accident and health qualified self-insured plan of its parent and affiliates shall be deemed to be reinsurance.

Section 12. Taxes - To Be State Specific

Section 13. Rules; Risk Management Function

The commissioner may adopt rules establishing standards to ensure that a parent or its affiliated company, or an industrial insured or its affiliated company, is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by a pure captive insurance company or an industrial insured captive insurance company, respectively; provided, however, that, until such time as rules under this section are adopted, the commissioner may approve the coverage of such risks by a pure captive insurance company or an industrial insured captive insurance company.

Section 14. Rules

The Commissioner is authorized to promulgate rules and regulations necessary to effectuate the purposes of this Act. All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act.

Section 15. Recognition in Other States

Notwithstanding anything in this Act to the contrary, a captive insurance company duly licensed in this State shall be recognized as a captive insurance company in foreign states provided it meets the capital and surplus requirements of such foreign state.

Section 16. Visits by Commissioner; audits

(1) At least once every three (3) years, and whenever the commissioner determines it to be prudent, the commissioner shall visit each captive insurance company and thoroughly inspect and examine its affairs to ascertain its financial condition, its ability to fulfill its obligations and whether it has complied with this chapter. The commissioner may extend such three-year period to five (5) years; provided, that the captive insurance company is subject to a comprehensive annual audit by independent auditors approved by the commissioner during such five-year period. The comprehensive audit shall be of a scope satisfactory to the commissioner. The expenses and charges of the examination shall be paid by the captive insurance company.

(2) All examination reports, preliminary examination reports or results, working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination made under this section are confidential and are not subject to subpoena and may not be made

public by the commissioner or an employee or agent of the commissioner without the written consent of the captive insurance company, except to the extent provided in this subsection (2). Nothing in this subsection (2), shall prevent the commissioner from using such information in furtherance of the commissioner's regulatory authority under this title. The commissioner shall have the discretion to grant access to such information to public officers having jurisdiction over the regulation of insurance in any other state or country, or to law enforcement officers of this state or any other state or agency of the federal government at any time, only if the officers receiving the information agree in writing to maintain the confidentiality of the information in manner consistent with this subsection (2).

Section 17. Dividends, payment out of capital or surplus

No captive insurance company shall pay a dividend out of, or other distribution with respect to, capital or surplus without the prior approval of the commissioner. Approval of an ongoing plan for the payment of dividends or other distributions shall be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by, or determined in accordance with formulas approved by the commissioner. A captive insurance company may otherwise make such distributions as are in conformity with its purposes and approved by the commissioner.

Section 18. Violations, authority of commissioner

If, after providing notice consistent with the process established by applicable law and providing the opportunity for a contested case hearing held in accordance with the Uniform Administrative Procedures Act, the Commissioner finds that any insurer, person, or entity required to be licensed, permitted, or authorized to transact the business of insurance under this chapter has violated any provision of this chapter or any rule or regulation authorized by this chapter, the commissioner may order:

(a) The insurer, person, or entity to cease and desist from engaging in the act or practice giving rice to the violation;

(b) Payment of a monetary penalty of not more than (_____) for each violation, but not to exceed an aggregate penalty of (_____), unless the insurer, person, or entity knowingly violates a statute, rule or order, in which case the penalty shall not be more than (_____) for each violation, not to exceed an aggregate penalty of (_____). This subdivision (b) shall not apply where a statute or rule specifically provides for other civil penalties for the violation. For purposes of this subdivision (b), each day of continued violation shall constitute a separate violation; and

(c) The suspension or revocation of the insurer's, person's, or entity's license.

Section 19. Severability

If any clause, sentence, paragraph, section or part of this act or the application thereof to any person or circumstances, shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this act, and the application thereof to other persons or circumstance, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstances involved.

Atlantic Corporate Center
2317 Route 34, Suite 2B
Manasquan, NJ 08726
732-201-4133
CHIEF EXECUTIVE OFFICER: Thomas B. Considine

National Council of Insurance Legislators (NCOIL)

Insurance Regulatory Sandbox Model Act

Draft as of October 19, 2021 and based on KY HB 386, signed into law on March 26, 2019.
To be introduced and discussed during the Financial Services & Multi-Lines Issues Committee on Thursday, November 19, 2021.

Sponsored by Rep. Bart Rowland (KY)
Rep. Wendi Thomas (PA) – Co-sponsor

Table of Contents

Section 1. Title

This Act shall be known and cited as the "[State] Insurance Regulatory Sandbox Act."

Section 2. Definitions

(1) "Applicant" means a person that has filed an application under Section 3 of this Act;

(2) "Beta test" means the phase of testing of an insurance innovation in the regulatory sandbox through the use, sale, license, or availability of the insurance innovation by or to clients or consumers under the supervision of the department;

(3) "Client" means a person, other than a consumer, utilizing a participant's insurance innovation during a beta test to carry on some activity regulated by the department;

(4) "Director" means the director of insurance innovation;

(5) "Extended no-action letter" or "extended letter" means a public notice setting forth the conditions for an extended safe harbor beyond the beta test under which the department will not take any administrative or regulatory action against any person using the insurance innovation described in the extended no-action letter;

(6) "Innovation's utility" means an evaluation by the commissioner of the insurance innovation's ability to adequately satisfy factors set forth in subsection (1)(b)1. of Section 3 of this Act;

(7) "Insurance innovation" or "innovation" means any product, process, method, or procedure relating to the sale, solicitation, negotiation, fulfilment, administration, or use of any product or service regulated by the department:

> (a) That has not been used, sold, licensed, or otherwise made available in this [State] before the effective filing date of the application, whether or not the product or service is marketed or sold directly to consumers; and
>
> (b) That has regulatory and statutory barriers that prevent its use, sale, license, or availability within this [State];

(8) "Limited no-action letter" or "limited letter" means a letter setting forth the conditions of a beta test and establishing a safe harbor under which the department will not take any administrative or regulatory action against a participant or client of the participant concerning the compliance of the insurance innovation with [State] law so long as the participant or client abides by the terms and conditions established in the limited no-action letter;

(9) "Participant" means an applicant that has been issued a limited no-action letter under Section 5 of this Act; and

(10) "Regulatory sandbox" or "sandbox" means the process established under this Act by which a person may apply to beta test and obtain a limited no-action letter for an innovation, potentially resulting in the issuance of an extended no-action letter.

Section 3. Application Process

(1) Except as provided in subsection (2) of this section, on or before [date], a person may apply to the department for admission to the sandbox by submitting an application in the form prescribed by the commissioner, accompanied by the following:

(a) A filing fee of [xxxxx]);

(b) A detailed description of the innovation, which shall include:

1. An explanation of how the innovation will:

a. Add value to customers and serve the public interest;

b. Be economically viable for the applicant;

c. Provide suitable consumer protection; and

d. Not pose an unreasonable risk of consumer harm.

2. A detailed description of the statutory and regulatory issues that may prevent the innovation from being currently utilized, issued, sold, solicited, distributed, or advertised in the market;

3. A description of how the innovation functions and the manner in which it will be offered or provided;

4. If the innovation involves the use of software, hardware, or other technology developed for the purpose of implementing or operating it, a technical white paper setting forth a description of the operation and general content of technology to be utilized, including:

a. The problem addressed by that technology; and

b. The interaction between that technology and its users;

5. If the innovation involves the issuance of a policy of insurance, a statement that either:

a. If the applicant will be the insurer on the policy, that the applicant holds a valid certificate of authority and is authorized to issue the insurance coverage in question; or

b. If some other person will be the insurer on the policy, that the other person holds a valid certificate of authority and is authorized to issue the insurance coverage in question; and

6. A statement by an officer of the applicant certifying that no product, process, method, or procedure substantially similar to the innovation has been used, sold, licensed, or otherwise made available in this [State] before the effective filing date of the application;

(c) The name, contact information, and bar number of the applicant's insurance regulatory counsel, which shall be a person with experience providing insurance regulatory compliance advice;

(d) A detailed description of the specific conduct that the applicant proposes should be permitted by the limited no-action letter;

(e) Proposed terms and conditions to govern the applicant’s beta test, which shall include:

1. Citation to the provisions of [State] law that should be excepted in the notice of acceptance issued under subsection (6) of Section 4 of this Act; and

2. Any request for an extension of the time period for a beta test under subsection (1) of Section 6 of this Act and the grounds for the request;

(f) Proposed metrics by which the department may reasonably test the innovation's utility during the beta test;

(g) Disclosure of all:

1. Persons who are directors and executive officers of the applicant;

2. General partners of the applicant if the applicant is a limited partnership;

3. Members of the applicant if the applicant is a limited liability applicant;

4. Persons who are beneficial owners of ten percent (10%) or more of the voting securities of the applicant;

5. Other persons with direct or indirect power to direct the management and policies of the applicant by contract, other than a commercial contract for goods or nonmanagement services; and

6. Conflicts of interest with respect to any person listed in this paragraph and the department;

(h) A statement that the applicant has funds of at least [xxxxx dollars] available to guarantee its financial stability through one (1) or a combination of any of the following:

1. A contractual liability insurance policy;

2. A surety bond issued by an authorized surety;

3. Securities of the type eligible for deposit by authorized insurers in this [State];

4. Evidence that the applicant has established an account payable to the commissioner in a federally insured financial institution in this [State] and has deposited money of the United States in an amount equal to the amount required by this paragraph that is not available for withdrawal except by direct order of the commissioner;

5. A letter of credit issued by a qualified United States financial institution as defined in [citation to appropriate State statute]; or

6. Another form of security authorized by the commissioner; and

(i) A statement confirming that the applicant is not seeking authorization for, nor shall it engage in, any conduct that would render the applicant unauthorized to make an application under subsection (2) of this section.

(2) (a) The following persons shall not be authorized to make an application to the department for admission to the sandbox:

1. Any person seeking to sell or license an insurance innovation directly to any federal, state, or local government entity, agency, or instrumentality as the insured person or end user of the innovation;

2. Any person seeking to sell, license, or use an insurance innovation that is not in compliance with subsection (1)(b)5. of this section;

3. Any person seeking to make an application that would result in the person having more than five (5) active beta tests ongoing within the [State] at any one (1) time; and

4. Any person seeking a limited or extended no-action letter or exemption from any administrative regulation or statute concerning:

a. Assets, deposits, investments, capital, surplus, or other solvency requirements applicable to insurers;

b. Required participation in any assigned risk plan, residual market, or guaranty fund;

c. Any licensing or certificate of authority requirements; or

d. The application of any taxes or fees.

(b) For the purposes of this subsection, "federal, state, or local government entity, agency, or instrumentality" includes any county, city, municipal corporation, urban-county government, charter county government, consolidated local government, unified local government, special district, special purpose governmental entity, public school district, or public institution of education

Section 4. Director of Insurance Innovation

(1) There shall be a director of insurance innovation within the department, responsible for administering Sections 2 to 9 of this Act. The director shall be appointed by the [xxxxx] with the approval of the Governor in accordance with [citation to appropriate State law].

(2) The director shall review all applications for admission to the sandbox.

(3) (a) Unless extended as provided in paragraph (b) of this subsection, the commissioner shall issue a notice of acceptance or rejection in accordance with this section within sixty (60) days from the date an application is received.

(b) The commissioner may extend by not more than thirty (30) days the period provided in paragraph (a) of this subsection if he or she notifies the applicant before expiration of the initial sixty (60) day period.

(c) An application that has not been accepted or rejected by a notice of acceptance or rejection issued by the commissioner prior to expiration of the initial sixty (60) day period, or if applicable, the period provided in paragraph (b) of this subsection, shall be deemed accepted.

(4) The commissioner may request from the applicant any additional material or information necessary to evaluate the application, including but not limited to:

(a) Proof of financial stability;

(b) A proposed business plan;

(c) Pro-forma financial statement; and

(d) Executive profiles on the applicant and its leadership demonstrating insurance or insurance-related industry experience and applicable experience in the use of the technology.

(5) The commissioner shall review the application to:

(a) Identify and assess:

1. The potential risks to consumers, if any, posed by the innovation; and

2. The manner in which the innovation would be offered or provided; and

(b) Determine whether it satisfies the following requirements:

1. The application satisfies the requirements of Section 3 of this Act;

2. The application proposes a product, process, method, or procedure that meets the definition of innovation under Section 2 of this Act;

3. Approval of the application does not pose an unreasonable risk of consumer harm;

4. The application identifies statutory or regulatory requirements that actually prevent the innovation from being utilized, issued, sold, solicited, distributed, or advertised in this [State]; and

5. The application proposes an innovation that is not substantially similar to an innovation:

a. That has been previously beta tested; or

b. Proposed in an application that is currently pending with the department.

(6) Upon review of the application, the commissioner shall, in his or her discretion, issue one (1) of the following:

(a) If the commissioner determines that the application fails to satisfy any of the requirements under subsection (5)(b) of this section, he or she shall:

1. Issue a notice of rejection to the applicant; and

2. Describe in the notice of rejection the specific defects in the application; or

(b) If the commissioner determines that the application satisfies the requirements of subsection (5)(b) of this section, he or she shall issue a notice of acceptance to the applicant. The notice of acceptance shall:

1. Set forth the terms and conditions that will govern the applicant's beta test, which shall include, at a minimum:

a. Requiring the applicant to:

i. Abide by all [State] law, except where explicitly excepted;

ii. Utilize the insurance innovation within this [State]; and

iii. Report any change in the disclosures made pursuant to subsection (1)(g) of Section 3 of this Act;

b. Notice of the licenses required to be obtained prior to the commencement of the beta test;

c. Monthly reporting obligations structured to determine the progress of the beta test;

d. Consumer protection measures deemed necessary by the commissioner to be employed by the applicant;

e. The level of financial stability required to be in place for the beta test. The commissioner may increase, decrease, or waive the requirements for financial stability required under subsection (1)(h) of Section 3 of this Act, commensurate with the risk of consumer harm posed by the insurance innovation;

f. Duration of the beta test, including any extension authorized under Section 6 of this Act;

g. Permitted conduct under the limited letter;

h. Any limits established by the commissioner on the:

i. Financial exposure that may be assumed by an applicant during the beta test;

ii. Number of customers an applicant may accept; and

iii. Volume of transactions that an applicant or its clients may complete during the beta test; and

i. Metrics the commissioner intends to use to determine the innovation's utility; and

2. Provide that the notice of acceptance shall expire unless:

a. It is accepted by the applicant in writing; and

b. The acceptance is filed with the department within sixty (60) days of the issuance of the notice.

(7) An applicant may request a hearing pursuant to [citation to appropriate State stutate] on:

(a) A notice of rejection; and

(b) A notice of acceptance, if the request is made prior to its expiration.

Section 5. Limited No-Action Letter

(1) Within ten (10) days following the timely receipt of an acceptance pursuant to subsection (6)(b)2. of Section 4 of this Act, the commissioner shall issue a limited no-action letter that:

(a) Sets forth terms and conditions for the participant that are the same as those set forth in the notice of acceptance issued under subsection (6) of Section 4 of this Act; and

(b) Provides that so long as the participant and any clients of the participant abide by the terms and conditions set forth in the letter, no administrative or regulatory action concerning the compliance of the insurance innovation with [State] law will be taken by the commissioner against the participant or any clients during the term of the beta test.

(2) If the application is deemed accepted under subsection (3)(c) of Section 4 of this Act, the proposed limited no-action letter included with the application shall be deemed to have the effect of a limited letter issued by the commissioner.

(3) The safe harbor of the limited letter shall persist until the earlier of:

(a) The early termination of the beta test under Section 6 of this Act;

(b) The issuance of an extended no-action letter; or

(c) The issuance of a notice declining to issue an extended no-action letter.

(4) A limited no-action letter issued by the commissioner under this section shall be exempt from the application of [inert citation to appropriate State statute] .

(5) The commissioner shall publish any limited letter issued pursuant to this section on the department's Web site.

Section 6. Beta Rest Requirements

(1) The time period for a beta test shall be one (1) year. The time period may be extended by the commissioner in the notice of acceptance for a period that is not longer than one (1) year if a request is made in accordance with subsection (1)(e) of Section 3 of this Act.

(2) During the beta test, the participant and any clients of the participant shall:

(a) Comply with all terms and conditions set forth in the limited no-action letter; and

(b) Provide the department with all documents, data, and information requested by the commissioner.

(3) (a) For any violation of the terms or conditions set forth in the limited letter, the commissioner may:

1. Issue an order terminating the beta test and the safe harbor of the limited letter before the time period set forth in the limited letter has expired; and

2. Impose a fine of not more than [xxxxx] dollars per violation.

(b) The commissioner may also issue an order under paragraph (a)1. of this subsection if, following receipt of information or complaints, the commissioner determines the beta test is causing consumer harm.

(4) (a) The commissioner may issue an order requiring a client to cease and desist any activity violating the terms or conditions set forth in the limited letter.

(b) The issuance of a cease and desist order to one (1) client shall not otherwise impact the ability of the participant or any other clients to continue activities relating to the innovation in a manner compliant with the requirements of the limited letter.

(5) A participant or client may request a hearing on any order issued under this section pursuant to [insert citation to appropriate State law].

Section 7. Beta Test Review

(1) (a) Within sixty (60) days of completion of the beta test, unless the time period is extended up to thirty (30) days upon notice from the commissioner, the commissioner shall issue an extended no-action letter or a notice declining to issue an extended no-action letter.

(b) The participant may continue to employ the insurance innovation pursuant to the terms and conditions of the limited letter during the period between the completion of the beta test and the issuance of either an extended no action letter or a notice declining to issue an extended no-action letter.

(2) The commissioner shall review the results of the beta test to determine whether the innovation satisfies the following requirements:

(a) The data presented demonstrates that the innovation's utility was meritorious of an extension;

(b) Regulatory and statutory barriers prevent continued use of the innovation within this [State];

(c) The innovation provided a benefit to [State] consumers; and

(d) The issuance of an extended no-action letter:

1. Presents no risk of unreasonable harm to consumers or the marketplace; and

2. Serves the public interest.

(3) Upon review of the results of the beta test, the commissioner shall, in his or her discretion, issue one (1) of the following:

(a) If the commissioner determines that the innovation fails to satisfy any of the requirements under subsection (2) of this section, he or she shall:

1. Issue a notice declining to issue an extended no-action letter;

2. Describe in the notice the reasons for the declination;

3. Notify the participant for the innovation of the notice; and

4. Publish the notice on the department's Web site; or

(b) If the commissioner determines that the innovation satisfies the requirements under subsection (2) of this section, he or she shall issue an extended no action letter. An extended no-action letter issued by the commissioner shall include:

1. A description of the insurance innovation and the specific conduct permitted by the extended letter in sufficient detail to enable any person to use the innovation or a product, process, method, or procedure not substantially different from the innovation within the safe harbor of the extended letter;

2. Notice of any certificate of authority, license, or permit the commissioner determines is necessary to use, sell, or license the innovation, or make the innovation available, in this [State];

3. An expiration date not greater than three (3) years following the date of issuance;

4. Notice that the extended no-action letter may:

a. Only be modified by:

i. Promulgation of an administrative regulation, if the safe harbor addresses a requirement established by administrative regulation; or

ii. An act of the General Assembly; and

b. Be rescinded prior to its expiration if the commissioner receives complaints and determines continued activity poses a risk of harm to consumers;

5. Clarification of required procedures related to the issuance and cancellation of any policies of insurance, if applicable, due to the expiration period; and

6. Notice that, upon expiration, all persons relying on the extended no action letter shall cease and desist operations related to the innovation unless changes have been made to [State] law to permit the innovation by:

a. The promulgation of an administrative regulation, if the safe harbor address a requirement established by administrative regulation; or

b. An act of the General Assembly.

(4) A hearing on a notice of declination may be requested in accordance with [insert appropriate citation to State statute].

(5) An extended no-action letter issued by the commissioner pursuant to this section shall be:

(a) Exempt from the application of [insert citation to appropriate State statute]; and

(b) Published on the department's Web site.

Section 8 Confidentiality

(1) All documents, materials, or other information in the possession or control of the department that are created, produced, obtained, or disclosed in relation to this Act and that relate to the financial condition of any person shall be confidential and shall not be subject to public disclosure pursuant to the [State] Open Records Act, [citation].

(2) Notwithstanding any law to the contrary, the commissioner may disclose in an extended no-action letter any information relating to the insurance innovation necessary to clearly establish the safe harbor of the extended letter.

Section 9. Reports

(1) One hundred twenty days (120) days prior to the start of the 20xx, 20xx, 20xx, 20xx, and 20xx regular sessions of the General Assembly, the commissioner shall submit a written report to the Committees with jurisdiction over insurance issues in each Chamber that meets the requirements of subsection (2) of this section. Thereafter, the commissioner shall submit the report annually, upon request.

(2) The report shall include the following:

(a) The number of:

1. Applications filed and accepted;

2. Beta tests conducted; and

3. Extended letters issued;

(b) A description of the innovations tested;

(c) The length of each beta test;

(d) The results of each beta test;

(e) A description of each safe harbor created under Section 7 of this Act;

(f) The number and types of orders or other actions taken by the commissioner or any other interested party under this Act;

(g) Identification of any statutory barriers for consideration of amendment by the General Assembly following successful beta tests and the issuance of extended letters; and

(h) Any other information or recommendations deemed relevant by the commissioner.

(3) The commissioner shall also provide the Committees with jurisdiction over insurance issues in each Chamber a detailed briefing, upon request, to discuss and explain any report submitted under this section.

Section 10. Rules

The Commissioner is authorized to promulgate rules and regulations necessary to effectuate the purposes of this Act.

Section 11. Effective Date

This Act shall take effect [xxxxxxx].

Atlantic Corporate Center
2317 Route 34, Suite 2B
Manasquan, NJ 08726
732-201-4133
CHIEF EXECUTIVE OFFICER: Thomas B. Considine

National Council of Insurance Legislators (NCOIL)

Identity Theft Protection Model Act

Adopted by the NCOIL Executive Committee on November 21, 2003. Readopted by the NCOIL Executive Committee on November 11, 2006, and on November 20, 2011, and on November 20,2016. To be considered for re-adoption by the NCOIL Financial Services & Multi-Lines Issues Committee during the November, 2021 NCOIL Annual Meeting.

Section 1. Short Title

The Act shall be known and may be cited as the Identity Theft Protection Act.

Section 2. Purpose

The purpose of this Act is to protect consumers from the misuse of their personal financial information by those with the intent to defraud another person or with intent to commit any violation of federal, State or local law and to make such offenses a felony.

Section 3. Definitions

For the purposes of this Act, these defined words have the following meaning:

(A) "Document-making implement" means any implement, impression, electronic device, or computer hardware or software, that is specifically configured or primarily used for making an identification document, a false identification document, or another document-making implement;

(B) "Identification document" means a document made or card issued by or under the authority of the United States Government, a state, political subdivision of a state, a foreign government, political subdivision of a foreign government, an international governmental or an international quasi-governmental organization which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals;

(C) "Means of identification" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any:

(1) Name, social security number, date of birth, official state or government issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number;

(2) Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;

(3) Unique electronic identification number, address, or routing code; or

(4) Telecommunication identifying information or access device as defined in 18 U.S.C. section 1029(e).

(D) "Produce" means to manufacture, alter, authenticate, or assemble an identification document; and

(E) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other commonwealth, possession, or territory of the United States; and

(F) “Financial Information” means any of the following information identifiable to an individual that concerns the amount and/or condition of an individual’s assets, liabilities or credit:

(1) Account numbers and balances;

(2) Transactional information concerning any account; or

(3) Codes, passwords, social security numbers, tax identification numbers, driver’s license numbers or any other information held for the purpose of account access or transaction initiation.

Section 4. Identity Fraud

(A) Any person who shall:

(1) knowingly and without lawful authority produce an identification document or a false identification document;

(2) knowingly transfer an identification document or a false identification document knowing that the document was stolen or produced without lawful authority;

(3) knowingly possess with intent to use unlawfully or transfer unlawfully five (5) or more identification documents (other than those issued lawfully for the use of the possessor) or false identification documents;

(4) knowingly possess an identification document (other than one issued lawfully for the use of the possessor) or a false identification document, or financial information with the intent that the document or financial information be used to defraud the United States, this State, any political subdivision of it or any public or private entity;

(5) knowingly transfer or possess a document-making implement with the intent that the document-making implement will be used in the production of a false identification document or another document-making implement which will be so used;

(6) knowingly possess a false identification document that is or appears to be a genuine identification document of the United States, this State or any political subdivision of it or any public or private entity which is stolen or produced without lawful authority knowing that the document was stolen or produced without such authority; or

(7) knowingly transfer or use with intent to defraud, without lawful authority, a means of identification or financial information of another person living or dead, with the intent to commit, or to aid or abet, any unlawful activity that constitutes a violation of federal, state or local law; shall be guilty of a felony and shall be subject to the penalties set forth in section (insert appropriate statutory reference).

(B) The provisions of this section shall not apply to any person who has not reached his or her twenty-first (21st) birthday who misrepresents or misstates his or her age through the presentation of any document in order to enter any premises licensed for the retail sale of alcoholic beverages for the purpose of purchasing or having served or delivered to him or her alcoholic beverages or attempting to purchase or have another person purchase for him or her any alcoholic beverage pursuant to section (insert appropriate statutory reference).

Section 5. Penalties

(A) Every person who violates the provisions of this Act shall be imprisoned for not more than three (3) years and may be fined not more than five thousand dollars ($5,000) for a first conviction.

(B) Every person who violates the provisions of this Act shall be imprisoned for not less than three (3) years nor more than five (5) years and shall be fined not more than ten thousand dollars ($10,000) for a second conviction.

(C) Every person who violates the provisions of this Act shall be imprisoned for not less than five (5) years nor more than ten (10) years and shall be fined not less than fifteen thousand dollars ($15,000) for a third or subsequent conviction.

Section 6. Effective Date

This act shall take effect upon passage and shall apply to those offenses which occur after the date of passage.

WORKERS' COMPENSATION INSURANCE COMMITTEE MATERIALS

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
WORKERS' COMPENSATION INSURANCE COMMITTEE
BOSTON, MASSACHUSETTS
JULY 15, 2021
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Workers' Compensation Insurance Committee met at the Westin Boston Waterfront Hotel on Thursday, July 15, 2021 at 10:00 A.M. (EST)

Representative Tom Oliverson, M.D. (TX), Chair of the Committee, presided*.

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

Rep. Deborah Ferguson (AR)
Sen. Mathew Pitsch (AR)
Asm. Ken Cooley (CA)*
Rep. Matt Lehman (IN)
Sen. Paul Utke (MN)
Rep. Tracy Boe (ND)
Rep. George Keiser (ND)*
Sen. Jerry Klein (ND)
Rep. Wendi Thomas (PA)
Rep. Dennis Powers (TN)
Del. Steve Westfall (WV)

Other legislators present were:

Sen. Keith Ingram (AR)
Rep. Steve Meskers (CT)
Rep. Tammy Nuccio (CT)
Rep. Roy Takumi (HI)
Rep. Terri Austin (IN)
Rep. Jim Gooch (KY)*
Rep. Bronna Kahle (MI)
Rep. Lori Stone (MI)
Sen. Mike McClendon (MS)
Sen. Walter Michel (MS)
Sen. Charles Younger (MS)
Rep. Hank Zuber (MS)
Sen. Shawn Vedaa (ND)
Asm. Ken Blankenbush (NY)
Sen. Bob Hackett (OH)
Rep. Forrest Bennett (OK)
Sen. Ronnie Cromer (SC)
Sen. Sandy Senn (SC)

Also in attendance were:

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

MINUTES

Upon a motion made by Asm. Ken Cooley (CA), NCOIL Vice President and seconded by Del. Steve Westfall (WV), the Committee voted without objection by way of a voice vote to adopt the minutes of the Committee's December 11, 2020 and April 16, 2021 meetings.

"STATE OF THE LINE" PRESENTATION – AN UPDATE ON THE STATUS OF AND TRENDS IN THE WORKERS' COMPENSATION INSURANCE MARKETPLACE

Jeff Eddinger, Executive Director, Regualtory Business Management at the National Council on Compensation Insurance (NCCI), stated that he will start off looking at the workers' compensation premium. When people ask me what is the biggest impact of COVID on work comp this is really it and it's actually an indirect impact so the recession that was caused by COVID and shutdowns caused work comp premiums to decrease by 10% in the calendar year 2020. So, the next slide will show you that it does vary a little by state but any shade of blue means that premiums decreased for that state so pretty much across the board every state was affected to some extent. The next slide shows residual market premium which also shows a slight decrease but really the important thing to note here is that the residual market premiums has been stable and dropping over the last few years really just showing that the work comp market has been very stable and insurance carriers are willing to write work comp on a voluntary basis because the next slide shows that the residual market share has covered around 7% and you see there that is 6.5% for the most recent year so it's very small and manageable showing that the market is competitive and companies are able to find coverage in the voluntary market.

The next slide just shows the approved changes in the loss costs that have occurred over the last 20 years and over the last few years the filings NCCI have been making have been dominated by decreases so there were a couple of years where the decreases overall with states approached 10% and that has moderated a bit so in the last year overall -5.6% and the next slide will show the reason for that and that is last year's rate filing cycle for all the states and you can see that it is very dominated by loss cost decreases the largest one being a 20% decrease in Virginia. The one thing I wanted to mention is that the rate filing season has just started as NCCI just made its first filing last week and it did release some information on how we have addressed pandemics in the rating process for filings going forward. The decision that NCCI has made is to treat COVID claims and any future pandemics as a catastrophe and what that means is any claims from COVID are being excluded form the rate making calculation because they are being addressed through approved catastrophe provisions in the majority of states. The majority of states have both a terrorism catastrophe provision and an additional catastrophe provision for other types of catastrophes such as domestic terrorism versus foreign terrorism, earthquakes and catastrophic industrial accidents so during this rate filing season we'll be adding pandemics to the list of catastrophes that are address by the approved provisions in the majority of our states.

Slide 10 shows the combined ratio for work comp and you can see the latest year the combined ratio for calendar year 2020 is 87% and that's the fourth straight year of calendar year combined ratios under 90% and the seventh consecutive year under 100% so obviously the line has been in the very strong position for a number of years now and the next slide shows the slight uptick in the latest year's combined ratio is driven by a slight uptick in the loss ratio. The next slide shows investment gains on insurance transactions at 11% over the last two years which is right around the long term average of about 12%. The next slide show that when you combine the calendar year underwriting profit with investment gain you see there a pretax operating gain of 24% similar to last year's 25% so a very robust operating gain there.

The next several slides show information we have on COVID claims. Slide 15 is a basic summary on what our data shows so far for COVID claims. We're looking at about $260 million in incurred losses in COVID claims and that's made up of about 45,000 claims so the average for those claims is about $6,000 so fairly small. The next slide shows that

75% of those claims are lost time claims. Normally for other types of claims we kind of see the opposite distribution – that 75% of clams are medical only and 25% are lost time but in the case of COVID it's the other way around. The next several slides show how the claims break down by size of loss so you can see on slide 17 that about 60% of the claims are very small and under $1,500 and if you keep on going through the slides you'll see the percentages: $1,500–4,999 about 27%; $5,000 – 10,000 about 6%; and then slide 19 shows that there are a very small percentage of COVID claims over $100,000 very severe making up 60% of the losses we saw before.

The next slide not surprisingly shows that the overwhelming majority of COVID claims are driven by healthcare workers and first responders accounting for close to 75% of COVID claims. The next slide shows that rounding out the rest of the claims we do have restaurant workers, building operations, distribution stores and others but the majority of claims come from healthcare and first responders. So, slide 23 shows claims frequency and what we're looking at is almost every single year we see a decrease in work comp claim frequency and we see it again in the latest year of minus 7% which is a little bit larger than the long term average that we see of 3% or 4%. The next slide shows the claims severity so the average cost per claim this is the medical claim severity and obviously medical claim severity has been going up. The previous year was up 3.7% and the latest year we had more difficulty estimating due to COVID claims we're calling it plus or minus 2% but at somewhat moderated over time and that's what slide 25 shows that medical claim severity in the last half of that slide has been more in line with the medical consumer price index (CPI) versus the first half of that slide where the blue line was increasing a lot faster than the red line.

The next slide shows the average claim costs for indemnity or loss time claims wage replacement and the latest increase there is a 3% increase and when you look at the next slide its basically showing that indemnity average claims severity has been changing about the same amount as wage inflation is changing so both medical and indemnity costs have moderated and are moving more in line with wages and CPI. The next slide basically sums up the highlights of what the work comp industry is experiencing right now with premiums down by 10% and the calendar year combined ratio of 87% and we are looking at an actual year loss ratio of 100% still breaking even. The reserve position is stronger than ever and the claim frequency is down by 7% and indemnity and medical severity while up are up in a moderate way and as I said we're looking at about $260 million in reported COVID claims for 2020.

The final slide looks at what are we keeping an eye on – the system is strong but we are looking at what future COVID claims could happen and could there be more surges and how long will it take for premium recovery in the line. We've seen the impact of vaccines but again we are seeing surges in many states. Permanent disability we are looking at some long haul claims and keeping an eye at some of those claims turning into very high cost claims where there is permanent injury involved. The other thing we are watching are the presumptions that are still being introduced and some may have retroactive features and may expand coverage beyond first responders and healthcare workers and may start to include infectious diseases that normally would be excluded. And then just looking at how our loss development might be affected by COVID so really just wondering whether 2020 is anomaly or wondering whether there will be lasting effects on the market.

Asm. Cooley stated that you highlighted the difference between medical expense claims and lost time claims saying we kind of saw things turn around with COVID - can you offer more commentary on the characteristics of lost time claims and a distinction to the other type for general education. Mr. Eddinger stated that when I talk about your normal every day work comp claim so not COVID related the reason that the majority of those claims are medical only is because you can have a slip or fall or a burn that is not necessarily severe and only requires a little medical attention and you are back to work right away or within the waiting period but COVID is the opposite as you may not be hospitalized and you may contract COVID or think that you have COVID and you have to quarantine and cant work and stay home and wait it out so you are paid for time off while doing that but then you are back to work - and again this is not everybody but the majority of people who contracted COVID on the job only received those types of benefits and never had to receive hospitalization or medical benefits.

Rep. Oliverson stated that he was struck by the small dollar amount with respect to claims that were filed for lost time at work and wages and stuff like that. Are you able to dig into that to different sectors of the economy whether certain jobs that were sort of more associated with these claims or were there any trends you can tell us. I find that fascinating as you said the average claims was less than $1,500 for lost time at the job and of course I remember when the pandemic first began folks were being told they couldn't come back to work for two weeks so I'm wondering if there is more data on that. Mr. Eddinger stated that the average claim is about $6,000 so we did run through a lot of small claims and there are a lot of instances where it could even be that someone thinks they contracted COVID so they have to get off work to get tested but for a lot of people who contract the disease it could be mild and it could be a very short time off of work so you could just be talking about a few days or week off work and then they are back to work without ever having to receive any medical attention or hospitalization and that is pretty consistent in the non-NCCI states that the average cost of claims is relatively small.

Rep. Oliverson stated that the other question he had was that when this first began he talked to some carriers and companies in Texas and everyone was sort of accepting every claim that came their way because they didn't have any legal framework for liability protection for exposure or anything like that and there wasn't a vaccine ad we really didn't know what we were dealing with. I would assume that we are starting to see a lot of these claims tail off now in terms of medical claims severities probably getting a little less expensive - are the time off work related claims heading in the right direction from what you can tell? Mr. Eddinger stated that we really wouldn't have that sort of up to the minute data to know whether or not things are trailing off but the one thing I would mentions is that the claims I'm talking about are from 2020 so just keep in mind we have claims occurring in 2021 but we had a large surge at the end of 2020 and then now we are seeing a lot fewer claims but now we are seeing another surge so I cant really say what is happening out there and I think there are going to be work related claims going forward as long as there are COVID claims happening.

Sen. Mathew Pitsch (AR) stated that those are extremely impressive numbers but at what level did federal dollars coming into the system perhaps make those numbers better. Mr. Eddinger asked which numbers specifically. Sen. Pitsch stated that it could be the CARES Act or small businesses were able to find funds to not have people file work comp. I look at that number and much like Rep. Oliverson stated that is just too good of a number for us to look at COVID. We were all running around scared of what

that number would look like and here it is very small. I guess I'm looking for why that number is so attractive. Mr. Eddinger asked Sen. Pitsch if he was talking about the number of claims or the dollars of claims? Sen. Pitsch stated that he is referring to the dollars of claims – I'm looking at a $14 billion dollar reserve and I'm looking at $240 million maybe in claims and an average claim of $6,000 with $1,500 most of them and those seem small to me as a small business owner that if I've got a work comp caused by COVID I've lost an employee for awhile to file that and those are awful small and I'm wondering if the research shows that small businesses did something else besides file a work comp claim.

Mr. Eddinger stated that I wouldn't know if someone did or did not decide to file a work comp claim but I will say that the vast majority of COVID claims are not that severe so it's a very small percentage and there are obviously some deaths involved as well but again that's a relatively small percentage basis and relatively small percentage that ends up being a very long term long haul claim so I'm not necessarily surprised that the average cost of a COVID claim is small. I think maybe everybody can breathe a sigh of relief that the total dollar amount and total impact on work comp losses have remained relatively small maybe about somewhere around 1% of work comp and part of that too could just be not every COVID claim you here about was contracted in the line of work on the job so as I showed earlier 75% we're talking about first responders and healthcare workers so work comp is going to be a small piece of every COVID claim that occurred in the U.S.

USING WORKERS' COMPENSATION DATA AND SYSTEMS TO IMPROVE SAFETY AND HEALTH

Steve Wurzelbacher, PhD, CPE, ARM, Director of the Center for Workers' Compensation Studies (CWCS) National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), stated that we are going to give a basic outline of the potential within work comp for improving health and safety and then give some updates on different types of studies we have online and that includes claims, health services, risk exposure assessment, prevention effectiveness and outreach and then we'll end with outlining some partnership opportunities. Our basic mission is to maximize the use of work comp data and systems to improve workplace safety and health and the only way to really do that is through partnerships and we try to really build bridges between public health, insurance, employer and worker communities.

When we look at the actual potential of the system most people look at just claims and we do focus a lot on claims and what they can tell us about emerging risks and ways to control those but we also realize that every single claim is a person so we can also look at how their treatment was conveyed and how they are getting and receiving treatment and returning to work and making a full recovery. What's more, the insurers actually have quite a bit within the system to do risk assessment as they put people out in the field to do hygiene sampling and safety walkthrough and many of the states also have risk control programs so they have people in the field and in some states they offer actual programs to fund putting in place things like engineering controls and really the whole infrastructure for work comp is a way that especially small employers can reach health and safety.

At this point I am going to talk about some of the main focus that we have which is to look at the claims data. As this group knows, work comp is really the largest database of

workplace injuries in the U.S. so this includes a variety of reports within each state from a first report and then detailed reports as you go down but this really entails millions of claims in some single state claims databases and includes a variety of information such as narratives of how the injury occurred and codes for industry and occupation and detailed diagnosis and patient demographics. All this information can be really very informative to understand what caused the injury to occur in the first place and how we can prevent that. One of the things we did a few years ago was to develop a grant and the purpose of it was to develop collaborations between state work comp bureaus, dept's of health and unemployment insurance agencies. The bottom-line goal was to help states really be able to use the comp trend data by industry and cause of injury. What these states did, CA, MA, OH, TN, MI which were funded, was they took the comp data in their states and linked it to the unemployment insurance data and how they did it was there is a federal employer identification number that's common in both sets. These are both state controlled sets so really it's just within the state they were able to get the data use agreement and the info wasn't shared with NIOSH it's only with OH that we have a detailed partnership. Basically, what they are able to do is to attach the work comp claim and add to it the employer industry and numbers of employees which appears in the unemployment insurance data quarterly. What this allows then is not only counts of claims but also rates so the number of claims say per 100 workers as an employer and industry level. Many of the state reports are publicly available and you can see the depth they went into in different reports.

NIOSH has also had a longstanding partnership with OH and OH is one of four exclusive work comp fund states meaning that the state itself acts as the insurance company. We've had a very rich partnership with OH and been able to really put out quite a bit of work on claims analysis to look at overall industries, detailed causes of injury and then drill into specific industries that we knew were higher rated in terms of injury like ambulances and landscaping. And also dig into specific types of diagnosis such as traumatic brain injuries. We have also been working with the work comp community on COVID. NCCI has been a huge partner in this in terms of what they are able to do and put out on a regular basis. Their dashboard is fantastic and if you haven't checked it out you should do that. Many states are also individually putting out information on COVID in addition to NCCI such as the California Workers' Compensation Institute (CWCI). We also host monthly calls which are open if anybody would like to join and is a sounding board for folks to present data on COVID and share best practices for analysis. We are also sponsoring studies to actually look into more detail as to how COVID is related to different factors like occupation, age, tenure, gender and also employer factors like industry firm size and region and country. These studies are also looking at the impact of on total injured worker care not just those folks that have COVID claims but overall in the comp system and a big task is looking at the long term impact so what are the detailed diagnoses, treatments, disability, costs and so forth that are occurring within these claims. So, what NIOSH has done is actually partnered with six states and the Workers' Compensation Research Institute (WCRI) to do these analysis. A number of the states are sharing data right now and WCRI has put reports out as has NCCI so its an ongoing process.

With work comp, a lot of times with the size of these databases unique solutions are needed to address the size and volume of data and types of data being produced so I'll talk a little bit about machine learning and text mining and data visualization. Machine learning is something hat has been around for awhile and you basically can apply it to narrative text so for instance the claims data like I slipped on ice and hurt my back you

can actually apply a text mining approach that will code that into a structured outcome. We worked a lot with leaders in the field such as Liberty Mutual and Purdue University has basically developed auto coders that can code to three levels of causation. If anyone would like these we can share them and they are basically free algorithms. In a similar way NIOSH researchers have also developed automated coding approaches for industry and occupation so if you have a free text field for either of those there is a free system you can go to online and it will actually code it for you. There have been a lot of results and we have basically been producing dashboards and it's a great way to visualize complex data. Internally we also are using quite a bit in terms of power BI to really cut through the data and visualize and understand and tap into the power of that narrative.

That's claims in a nutshell and health services is the next perspective of what we do and this is really assessing the impact of health factors on work comp outcomes and this includes looking at the person's functional status whether they can return to work and what's their pain level and prescription drug use. Healthcare factors under study include: access and quality of care; conventional and alternative treatments; care coordination, re-injury; injury cause and diagnoses; and patient occupation/industry, employer size. We have a number of current studies under way working with OH Bureau of Work Comp (OHBWC) looking at different types of treatment like chiropractic and one of our folks is also working on his dissertation with WA looking at physical therapy. A big focus of course is preventing opioid use disorders among workers so we have an internal framework for that and hosted a meeting a couple of years ago and sponsored some work with WCRI in this area. We continue to also share research from a number of other organizations such as NCCI, Workers' Compensation Insurance Rating Bureau of California (WCIRB) and so forth.

Another aspect of what we do is risk and exposure assessment and as I mentioned insurers are really some of the largest collectors of the group of occupational risk and exposure data in many areas so there are a lot of opportunities to look at the data and determine whether it can be used to understand risk across industries and determine whether there are different emerging hazards. We had two studies that looked at industrial hygiene data and what's the practice within work comp insurance carriers and what type of standardized forms were being used to collect this data. We have been working a lot with the American Industrial Hygiene Association and they are recommending the creation of a guidance document to guide how data can be standardized. The proposal has just now been accepted so it is being processed.

Another aspect of what we do with partners is to identify what works to prevent injuries and we call it intervention effectiveness. We really look at insures as ideal partners because insures provide services and grants and tend to have access to employers, especially state based ones over a long period of time. Ohio in particular has had a grant where they actually put in place engineering controls and since 1999 they have had this program and as of the most recent year they have pad almost $15 million in a matching grant so its basically a 3:1 grant that OH pays $3 for every $1 from employer but the idea is actually to put in place an engineering control that is needed at the work place. We have partnered with several folks to study whether this program is effective and not to get into the details too much but it definitely has shown to be effective and we have gone through and RAND actually did a study as this type of program has bene offered by other states and some of them are competitive based programs and it has shown it can work. We are also looking at things like insurers on site risk control

processes and also with OH it has also sponsored an employee wellness program. We have also worked with SCIF (CA state WC fund) and studied in-vehicle monitoring systems (IVMS).

With outreach what we try to do is try and connect insurer, public health, employer, and worker communities. We have a regular webinar series and state work comp analyses work groups formed and a lot of work focuses on COVID now but also related to everything else. One of our recent webinars discussed cannabis and work comp which has been a big topic and we are working on a follow up paper and our director John Howard is the co-author of it which includes authors from NCCI, WCRI and The International Association of Industrial Accident Boards and Commissions (IAIABC) so that should be coming out in the next few months. We have also had one based on opioid use within the comp system which was presented by folks who looked at an overall literature approach to the area and summarized a lot of the factors that are effective in controlling that within comp systems. We also did one recently focusing on what insures are doing to respond to COVID and again they are a great intermediary to reach employers for safety and health reasons so they have been doing quite a bit to understand and communicate ways to prevent COVID and in a number of cases the state programs were actually providing funding for engineering controls and personal protective equipment (PPE) such as masks and also advising how they were coding risk control. If anyone would like any information on anything I have mentioned as far as auto coders, cross works and denominator methods we have a toolkit. We also do something called data viz services so if your state is interested let us know and we would be more than happy to work with you. I'll close by saying we thrive on partnerships and that's how we operate and we are always looking for areas of collaboration so if your state is interested please let us know and we would be more than happy to work with you.

Rep. Oliverson stated that you were talking about studies monitoring the use of chiropractic care and physical therapy and cannabis and things like that – where would we go as legislators to have access to the results of some of the work? Is there a portal to get them? Dr. Wurzelbacher stated that we do and if you go to our webpage we basically post everything that we publish on that website and if for some reason you can't access it you can e-mail us and we can give you a copy. Rep. Oliverson stated that he has read several of the reports and I've found them to be very helpful in developing legislation in Texas. Rep. Oliverson asked if NIOSH also collaborates with various entities that run work comp programs to develop best practices to treat certain types of injuries and the speediest recoveries. Dr. Wurzelbacher stated that's probably the area of our research where it's most new and I think we're at the beginning of that. NIOSH in general focuses on injury prevention so this is one of the first times we're starting to look at what happens after an injury occurs but there have been entities that have worked on that for quite some time such as NCCI and WCRI and WA state the put out quite a bit of work. At this time we would be echoing past work but we are hoping to make contributions to that area in the future.

Asm. Cooley stated that I would like to jump in and make a comment. Earlier this week in CA we had a bill that came up in our insurance committee and became controversial and it was a work comp question and the controversy was that there were allegations of misconduct but not a lot of specific detailed data to back it up. So the bill didn't advance because there was an argument that there is something broke without narrative data to support it so for the lawmakers on the call this presentation and Mr. Eddinger's are very

important for us as lawmakers to take note of because for example in work comp there is a lot of data available and under your state law and mine in CA carriers are required to collaborate and respond to inquires from the regulator so I just want to point out that if you ever as legislators are hearing of an issue affecting the insurance marketplace of work comp that is a moment to think about how could we get insights on this issue out of the marketplace and yes the insurance regulators paly a very key role but their role is to really implement your state law so if you are hearing about an issue that interests you and would like to learn more about it that's a time to place a call into your regulator and get their team to talk with you and discuss the issue and what they have in their systems that might shed light on it and whether there is some question directed at the industry or through some of these intermediary data groups that can help shed light on it. I do think coming to NCOIL is actually coming to learn in the insurance space how to exert the power of our individual offices and this presentation is a portal to exercising that power.

CONSIDERATION OF RE-ADOPTION OF MODEL LAWS

Rep. Oliverson stated that per NCOIL bylaws, all Model Laws must be considered for re-adoption every five years or else they sunset. The three models scheduled for re-adoption are the Trucking/Messenger Courier Industries Workers' Comp Model Act; Model Agreement Between Jurisdictions to Govern Coordination of Claims and Coverage; and the Model State Structured Settlement Protection Act. Rep. Oliverson noted that there are amendments to the Structured Settlement Model that are currently being developed so the motion to re-adopt that model will need to be temporary until the next conference in November so that the amendments can be developed and finalized and considered at that conference. Upon a Motion made by Sen. Paul Utke (MN), Vice Chair of the Committee, and seconded by Asm. Cooley, the Committee voted without objection by way of a voice vote to re-adopt the Structured Settlement Model until the November conference.

Upon a Motion made by Rep. George Keiser (ND) and seconded by Asm. Cooley the Committee voted without objection by way of a voice vote to re-adopt the Trucking/Messenger Courier Industries Workers' Comp Model Act and Model Agreement Between Jurisdictions to Govern Coordination of Claims and Coverage.

ADJOURNMENT

Hearing no further business, upon a motion made by Rep. Oliverson and seconded by Asm. Cooley, the Committee adjourned at 11:15 a.m.

Atlantic Corporate Center
2317 Route 34, Suite 2B
Manasquan, NJ 08726
732-201-4133
CHIEF EXECUTIVE OFFICER: Thomas B. Considine

National Council of Insurance Legislators (NCOIL)

Resolution Opposing Federal Monitoring of the State-Based Workers' Compensation System

Sponsored by Rep. Tom Oliverson, M.D. (TX)
Co-Sponsor – Rep. Susan Westrom (KY)

To be Discussed and Considered by the NCOIL Workers' Compensation Insurance Committee on November 18, 2021

WHEREAS, the National Council of Insurance Legislators (NCOIL) supports state workers' compensation laws that provide an injured worker with all reasonable and necessary medical treatment of the nature and intensity to promote expeditious healing and return to work, and provide protection against lost wages and a fair level of income benefits during disability, while encouraging return to work, all at a cost affordable to employers; and

WHEREAS, the state-based workers' compensation system has proven over the near century of its existence to constitute an effective means of protecting injured workers against the costs of workplace injury and protecting employers against the unlimited and unpredictable costs of workplace liability; and

WHEREAS, the state-based workers' compensation system, its administration, legal precedents, funding and fiscal accountability is intricately linked to each state's economy and provides the ability to experiment creatively and borrow from experiences in other states; and

WHEREAS, on September 10, 2021, the U.S. House Education and Labor Committee voted to approve language proposed for inclusion in the FY 2022 budget reconciliation bill that would provide funding and authority to the U.S. Department of Labor Office of Workers' Compensation Programs (OWCP) for "monitoring of State workers' compensation programs and preparation of an annual report"; and

WHEREAS, NCOIL opposes a federal workers' compensation monitoring and reporting program as it could lead to one-size-fits-all federal benefit delivery rules that inherently will interfere with state benefit systems, increase system costs nationwide, and frustrate the ability of the states to experiment creatively in their efforts of the states to contain costs; and

WHEREAS, NCOIL opposes the imposition of federal monitoring and reporting on the state workers' compensation system that could create unnecessary imbalances and unintended consequences for a system that has been operating effectively for decades; and

WHEREAS, state workers' compensation systems are already subject to robust monitoring and reporting requirements at the state level; and

WHEREAS, NCOIL supports a state-based benefit delivery system which reflects the nature and cost of employment in individual states and facilities timely response and ability to tailor remedies to state-specific conditions;

WHEREAS, NCOIL supports the rights of states and their respective legislatures and stakeholders to monitor the performance of state-based workers' compensation systems; and

NOW, THEREFORE, BE IT RESOLVED that NCOIL reiterates its support for the state-based workers' compensation system and opposition to legislation that would broaden the federal role in that system; and

BE IT FURTHER RESOLVED that NCOIL opposes the enactment of language that would add a responsibility to the federal OWCP to monitor state workers' compensation programs; and

BE IT FINALLY RESOLVED that a copy of this Resolution shall be distributed to the Members of the U.S. House Committee on Education and Labor; Members of the U.S. Senate Committee on Health, Education, Labor and Pensions; and the Chairs of the Committees of insurance jurisdiction in each Legislative Chamber of each State.

Atlantic Corporate Center
2317 Route 34, Suite 2B
Manasquan, NJ 08726
732-201-4133
CHIEF EXECUTIVE OFFICER: Thomas B. Considine

National Council of Insurance Legislators (NCOIL)

Model State Structured Settlement Protection Act

Supported by the NCOIL Executive Committee on February 27, 2004, July 22, 2006, July 17, 2011, November 20, 2016, and July 18, 2021

Sponsored by Sen. Carroll Leavell (NM)

To be considered for re-adoption during the NCOIL Workers' Compensation Insurance Committee on November 18, 2021.

SECTION 1. TITLE.

This Act shall be known and referred to as the "Structured Settlement Protection Act."

SECTION 2. DEFINITIONS.

For purposes of this Act--

(a) "annuity issuer" means an insurer that has issued a contract to fund periodic payments under a structured settlement;

(b) "assignee" means a party acquiring or proposing to acquire structured settlement payment rights from a transferee of such rights.

(c) "dependents" include a payee's spouse and minor children and all other persons for whom the payee is legally obligated to provide support, including alimony;

(d) "discounted present value" means the present value of future payments determined by discounting such payments to the present using the most recently published Applicable Federal Rate for determining the present value of an annuity, as issued by the United States Internal Revenue Service;

(e) "gross advance amount" means the sum payable to the payee or for the payee's account as consideration for a transfer of structured settlement payment rights before any reductions for transfer expenses or other deductions to be made from such consideration;

(f) "independent professional advice" means advice of an attorney, certified public accountant, actuary or other licensed professional adviser;

(g) “interested parties” means, with respect to any structured settlement, the payee, any beneficiary irrevocably designated under the annuity contract to receive payments following the payee’s death, the annuity issuer, the structured settlement obligor, and any other party to such structured settlement that has continuing rights or obligations to receive or make payments under such structured settlement;

(h) “net advance amount” means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under Section 3(e) of this Act;

(i) “payee” means an individual who is receiving tax free payments under a structured settlement and proposes to make a transfer of payment rights thereunder;

(j) “periodic payments” includes both recurring payments and scheduled future lump sum payments;

(k) “qualified assignment agreement” means an agreement providing for a qualified assignment within the meaning of section 130 of the United States Internal Revenue Code, United States Code Title 26, as amended from time to time;

[(l) “responsible administrative authority” means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by such structured settlement;]

Drafting Note 1: this Model recognizes that in some states a structured settlement may have been approved by an administrative body, i.e., a “responsible administrative authority,” rather than a court. The definition of “responsible administrative authority” and subsequent references to that term are bracketed, because they can appropriately be omitted in a State whose laws do not provide for administrative approval of structured settlements (or in which the only settlements that receive administrative approval are workers’ compensation settlements and such settlements are excluded from the definition of “structured settlement” as discussed in note 2 below).

(m) “settled claim” means the original tort claim [or workers’ compensation claim] resolved by a structured settlement;

Drafting Note 2: References to workers’ compensation are bracketed, because in some States transfers of payment rights under workers’ compensation settlements are incompatible with workers’ compensation laws.

(n) “structured settlement” means an arrangement for periodic payment of damages for personal injuries or sickness established by settlement or judgment in resolution of a tort claim [or for periodic payments in settlement of a workers’ compensation claim];

(o) “structured settlement agreement” means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement;

(p) “structured settlement obligor” means, with respect to any structured settlement, the party that has the continuing obligation to make periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement;

(q) “structured settlement payment rights” means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, where –

(i) the payee [resides] [is domiciled] in this State; or

Drafting Note 3: This definition, which determines the applicability of a statute based on this Model, refers to the place where a structured settlement payee has his or her primary, continuing residence, e.g., where he or she pays State taxes, is registered to vote, is licensed to drive, etc. In some States that place may commonly be referred to as the payee’s “domicile,” in other States it may be referred to as the payee’s “residence.”

(ii) the structured settlement agreement was approved by a court [or responsible administrative authority] in this State

(r) “terms of the structured settlement” include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement and any order or other approval of any court [or responsible administrative authority] or other government authority that authorized or approved such structured settlement;

(s) “transfer” means any sale, assignment, pledge, hypothecation or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration; provided that the term “transfer” does not include the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution, in the absence of any action to redirect the structured settlement payments to such insured depository institution, or an agent or successor in interest thereof, or otherwise to enforce such blanket security interest against the structured settlement payment rights;

(t) “transfer agreement” means the agreement providing for a transfer of structured settlement payment rights.

(u) “transfer expenses” means all expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the gross advance amount, including, without limitation, court filing fees, attorneys fees, escrow fees, lien recordation fees, judgment and lien search fees, finders’ fees, commissions, and other payments to a broker or other intermediary; “transfer expenses” do not include preexisting obligations of the payee payable for the payee’s account from the proceeds of a transfer;

(v) “transferee” means a party acquiring or proposing to acquire structured settlement payment rights through a transfer;

SECTION 3. REQUIRED DISCLOSURES TO PAYEE.

Not less than three (3) days prior to the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type no smaller than 14 points, setting forth —

(a) the amounts and due dates of the structured settlement payments to be transferred;

(b) the aggregate amount of such payments;

(c) the discounted present value of the payments to be transferred, which shall be identified as the "calculation of current value of the transferred structured settlement payments under federal standards for valuing annuities", and the amount of the Applicable Federal Rate used in calculating such discounted present value;

(d) the gross advance amount;

(e) an itemized listing of all applicable transfer expenses, other than attorneys’ fees and related disbursements payable in connection with the transferee’s application for approval of the transfer, and the transferee’s best estimate of the amount of any such fees and disbursements;

(f) the effective annual interest rate, which must be disclosed in a statement in the following form: “On the basis of the net amount that you will receive from us and the amounts and timing of the structured settlement payments that you are transferring to us, you will, in effect be paying interest to us at a rate of _____ percent per year”;

(g) the net advance amount;

(h) the amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee;

(i) that the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the third business day after the date the agreement is signed by the payee; and

(j) that the payee has the right to seek and receive independent professional advice regarding the proposed transfer and should consider doing so before agreeing to transfer any structured settlement payment rights.

SECTION 4. APPROVAL OF TRANSFERS OF STRUCTURED SETTLEMENT PAYMENT RIGHTS.

(a) No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee or assignee of structured settlement payment rights unless the transfer has been approved in advance in a final court order [or order of a responsible administrative authority] based on express findings by such court [or responsible administrative authority] that —

(i) the transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents;

(ii) the payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received such advice or knowingly waived in writing the opportunity to seek and receive such advice; and

(iii) the transfer does not contravene any applicable statute or the order of any court or other government authority;

SECTION 5. EFFECTS OF TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS.

Following a transfer of structured settlement payment rights under this Act:

(a) The structured settlement obligor and the annuity issuer may rely on the court [or responsible administrative authority] order approving the transfer in redirecting periodic payments to an assignee or transferee in accordance with the order approving the transfer and shall, as to all parties except the transferee or an assignee designated by the transferee, be discharged and released from any and all liability for the redirected payments; and such discharge and release shall not be affected by the failure of any party to the transfer to comply with this chapter or with the court [or responsible administrative authority] order approving the transfer.

(b) The transferee shall be liable to the structured settlement obligor and the annuity issuer:

(i) if the transfer contravenes the terms of the structured settlement, for any taxes incurred by the structured settlement obligor or annuity issuer as a consequence of the transfer; and

(ii) for any other liabilities or costs, including reasonable costs and attorneys' fees, arising from compliance by the structured settlement obligor or annuity issuer with the court [or responsible administrative

authority] order approving the transfer or from the failure of any party to the transfer to comply with this Act;

(c) Neither the annuity issuer nor the structured settlement obligor may be required to divide any periodic payment between the payee and any transferee or assignee or between two (or more) transferees or assignees; and

(d) Any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this Act.

SECTION 6. PROCEDURE FOR APPROVAL OF TRANSFERS.

(a) An application under this Act for approval of a transfer of structured settlement payment rights shall be made by the transferee and shall be brought in the [court of general jurisdiction or other designated court] in the [county][other political subdivision] in which the payee [resides][is domiciled], except that if the payee [does not reside][or is not domiciled] in this state, the application may be brought in the court [or before the responsible administrative authority] in this state that approved the structured settlement agreement.

(b) A timely hearing shall be held on an application for approval of a transfer of structured settlement payment rights. The payee shall appear in person at the hearing unless the court [or responsible administrative authority] determines that good cause exists to excuse the payee from appearing in person.

(c) Not less than twenty (20) days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under Section 4 of this Act, the transferee shall file with the court [or responsible administrative authority] and serve on all interested parties (including a parent or other guardian or authorized legal representative of any interested party who is not legally competent) a notice of the proposed transfer and the application for its authorization, including with such notice:

(i) a copy of the transferee's application;

(ii) a copy of the transfer agreement;

(iii) a copy of the disclosure statement required under Section 3 of this Act;

(iv) the payee's name, age, and county of [residence][domicile] and the number and ages of each of the payee's dependents;

(v) A summary of:

(A) any prior transfers by the payee to the transferee or an affiliate, or through the transferee or an affiliate to an assignee, within the four years preceding the date of the transfer agreement and any proposed transfers by

the payee to the transferee or an affiliate, or through the transferee or an affiliate, applications for approval of which were denied within the two years preceding the date of the transfer agreement; and

(B) any prior transfers by the payee to any person or entity other than the transferee or an affiliate or an assignee of the transferee or an affiliate within the three years preceding the date of the transfer agreement and any prior proposed transfers by the payee to any person or entity other than the transferee or an affiliate or an assignee of a transferee or affiliate, applications for approval of which were denied within the one year preceding the date of the current transfer agreement, to the extent that the transfers or proposed transfers have been disclosed to the transferee by the payee in writing or otherwise are actually known to the transferee.

(vi) notification that any interested party is entitled to support, oppose or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court [or responsible administrative authority] or by participating in the hearing; and

(vii) notification of the time and place of the hearing and notification of the manner in which and the date by which written responses to the application must be filed, which date shall be not less than five (5) days prior to the hearing, in order to be considered by the court [or responsible administrative authority].

SECTION 7. GENERAL PROVISIONS; CONSTRUCTION.

(a) The provisions of this Act may not be waived by any payee.

(b) Any transfer agreement entered into on or after the effective date of this Act by a payee who resides in this state shall provide that disputes under such transfer agreement, including any claim that the payee has breached the agreement, shall be determined in and under the laws of this State. No such transfer agreement shall authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

(c) No transfer of structured settlement payment rights shall extend to any payments that are life-contingent unless, prior to the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for (i) periodically confirming the payee's survival, and (ii) giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.

(d) If the payee cancels a transfer agreement, or if the transfer agreement otherwise terminates, after an application for approval of a transfer of structured settlement payment rights has been filed and before it has been granted or denied, the transferee shall promptly request dismissal of the application.

(e) No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee or any assignee based on any failure of such transfer to satisfy the conditions of this Act.

(f) Nothing contained in this Act shall be construed to authorize any transfer of structured settlement payment rights in contravention of any applicable law or to imply that any transfer under a transfer agreement entered into prior to the effective date of this Act is valid or invalid.

(g) Compliance with the requirements set forth in Section 3 of this Act and fulfillment of the conditions set forth in Section 4 of this Act shall be solely the responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer shall bear any responsibility for, or any liability arising from, non-compliance with such requirements or failure to fulfill such conditions.

EFFECTIVE DATE. This Act shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after the [thirtieth (30th)] day after the date of enactment of this Act.

LIFE INSURANCE & FINANCIAL PLANNING COMMITTEE MATERIALS

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
LIFE INSURANCE & FINANCIAL PLANNING COMMITTEE
BOSTON, MASSACHUSETTS
JULY 15, 2021
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Life Insurance & Financial Planning Committee met at the Westin Boston Waterfront Hotel on Thursday, July 15, 2021 at 3:00 P.M. (EST)

Representative Wendi Thomas (PA), Vice Chair of the Committee, presided.

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

Rep. Deborah Ferguson (AR)
Asm. Ken Cooley (CA)*
Rep. Jim Gooch (KY)*
Rep. George Keiser (ND)*
Sen. Jerry Klein (ND)
Sen. Shawn Vedaa (ND)
Asm. Ken Blankenbush (NY)

Other legislators present were:

Rep. Tammy Nuccio (CT)
Rep. Roy Takumi (HI)
Sen. Paul Utke (MN)
Sen. Randy Burckhard (ND)
Sen. Ronnie Cromer (SC)

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 Sen. Jerry Klein (ND), the Committee voted without objection by way of a voice vote to waive the quorum requirement.

MINUTES

Upon a motion made by Asm. Ken Cooley and seconded by Sen. Klein, the Committee voted without objection by way of a voice vote to adopt the minutes of the Committee's April 16, 2021 meeting.

DISCUSSION ON INTERSTATE INSURANCE PRODUCT REGULATION COMMISSION (IIPRC) DEVELOPMENTS

a.) Colorado Supreme Court Decision Amica Life Insurance Company v. Wertz

The Hon. Mary Jo Hudson, Partner at Squire, Patton, Boggs and Former Director of the Ohio Insurance Department, thanked the Committee for the opportunity to speak and stated she is an NCOIL veteran as a former Director of the Ohio Department of Insurance and having served as an officer of the IIPRC for all four of those years and having served with NCOIL CEO Cmsr. Tom Considine. I would first like to provide some background on compacts and here we are talking about the IIPRC. I know you hear a lot about it just to give you some background – you all deal with compacts I'm sure in your states and it is a contract among states, a very important governance tool used by the states to get work done without relying on the federal gov't and letting states do it by themselves. There is a clause in the Constitution regarding compacts but you don't have to have federal consent to have a compact. If there is federal consent for the compact whether its express through a specific bill or implied which means Congress has recognized the compact but didn't do anything to change it those terms in the compact can preempt conflicting state constitutional terms.

With that in mind, we go to our compact – the insurance compact commission (ICC). It has been around for 15 years with 46 states involved and I'll say as a commissioner we were just starting with about 26 states when I started in 2007 and it's great to see this success which is due in large part to the efforts of NCOIL who helped get it up and running so its a great legacy. Upon the formation, the ICC became what's referred to as a joint public agency among those member states – it's a separate body and not part of the National Association of Insurance Commissioners (NAIC). Its staffed and supported separately form the NAIC - there is some support and some office sharing but it's not part of the NAIC and each state commissioner represents that compact as the state representative of that compact. The staff at the ICC is Karen Schutter and they are the staff of that compact so the compact as you may know regulates the product terms for life insurance, annuities, disability and long term care (LTC) products that are sold in the states.

Life insurance companies don't have to file with the compact but many choose to as its incredibly successful and many life insurance companies use it regularly as it improves speed to market and helps have uniformity in their product across the country which helps streamline compliance and helps make sure sales are streamlined as well. I'm here to talk about there was a court case that came out last year around the end of 2019 Amica v. Wertz out of the Colorado Supreme Court and that decision challenged some of the terms of the compact. My firm was retained by the ICC to do a review of the compact's governance and the decision. In Amica, the CO SC ruled that the CO constitution prevented the inter state compact's uniform standard on life insurance based on the assumption that the inter state compact does not have any congressional consent and the issue there was in the CO insurance code they have a one year suicide exclusion and only one other state has that, MO – all other states are two years and the compact standard was two years. Someone brought an action saying they should be paid for a claim of one year and the insurance company challenged it saying no it should be per the uniform standards. The issue was handled in our opinion improperly as it was in a federal court which is sort of beside the point for our purposes today but the bottom line is the CO SC issued a decision that said our CO statute controls rathe than the compact uniforms standards which is quite contrary to the terms of the compact that CO adopted as well as all of the other members states.

Part of our analysis found that the ICC has received congressional consent through what's called the doctrine of implied consent so when congress approved D.C. becoming

a member back in 2006 congress consented to the compact and that consent is sufficient to support a congressional consent. The court in Amica did not discuss that and didn't look into it and nobody really briefed congressional consent so they sort of went out on their own side analysis to make their findings. This implied congressional consent is a very strong argument that the ICC and states up to this point have not really had to pursue.

So what's next – this decision in our opinion as we did this analysis for the compact should have a narrow impact so long as the states and the compact going forward stand up for itself in effect and educate regulators and the states and the public about the body of law that supports the compact and about the importance of maintaining compacts and the way legislatures adopt them and acknowledging that implied congressional consent so that other litigants can't go out and try to use this I think poorly decided decision from the CO SC to erode certainty and uniformity that comes right now from the ICC's wildly successful program. We made several recommendations to the compact to try and help shore this up and really there is no silver bullet to stop challenges in the future but what can happen is it's about providing information that can be cited in other court cases to educate state regulators and legislators so that you all now can talk about it as if those uniform standards do apply rather than one off state requirements and then also recommend that the ICC begin to offer in its uniform standards that if there is litigation like that the compact is required to be brought in as party.

b.) Amendments to NAIC Model Standard Nonforfeiture Law for Individual Deferred Annuities

Ms. Schutter, Executive Director of the IIPRC, thanked the Committee for the opportunity to speak and thanked Dir. Hudson who was retained as a consultant to do our governance review and a lot of the recommendations that have come out of the report are very important. We have worked very closely with NCOIL and have provided updates on the compact at a number of meetings as well as we've done even more education for those legislators that are new to the compact and want to understand why the states came together to collaborate and agree upon uniform standards that really are developed through a comprehensive process involving the legislators as we have a legislative committee and we adopt uniform standards that will apply to products that really cross state borders you could have a consumer buy a product in one state and then move into another state so it makes sense that the standards are uniform across states and they also compete on the federal basis with securities and banking products and there has been a long call by the industry and it was a very serious threat for 15 years we don't hear as much now for federal preemption in these areas. And a lot of the reason why you don't hear about it now is because states and regulators and legislators have worked together through the compact to make product approval more seamless through uniformity.

I would like to recognize those state legislators who have been very engaged and active with the compact – Rep. Matt Lehman (IN), NCOIL President; Asw. Maggie Carlton (NV), the Chair of this Committee; as well as Rep. Joe Fischer (KY), NCOIL Secretary. You also probably know RI Rep. Brian Kennedy, UT Rep. Jim Dunnigan, GA Rep. Matt Dollar and IL Sen. Laura Fine as they are all members of the legislative committee and are very active as we have regular calls with them and they attend meetings and you see they sit with the commissioners in all of our deliberations. OH Sen. Bob Hackett, AR Sen. Jason Rapert, NCOIL Immediate Past President, IN Sen. Travis Holdman, NCOIL

Immediate Past President, have also been members of the legislative committee. Dir Hudson gave a very concise compressive overview of the first case that got to an opinion and it had a lot of twists and turns with a lower court ruling that the compact was constitutional as state legislators understood what they were doing and could enter into an agreement. With the CO opinion we appreciate the recommendations that came out from Squire and we are looking at them. Implied congressional consent obviously has a meaning in terms of the dialogue and what our regulators are doing we have a governance committee of our officers along with others they are looking at the opinion and to the recommendations from Squire and putting in a plan of action and working with the members of NCOIL and other organizations such as the National Conference of State Legislatures (NCSL) and the National Association of Attorneys Generals (NAAG) and the Council of State Governments (CSG) who has a national center of interstate compacts. It's going to be akin to what all the stakeholders did back in the early 2000s when the compact was first developed in terms of raising awareness of what the compact was and what the achievements have been and those have been that right now the industry is using the compact. Over the last 10 years most products that are being used right now are industry approved products for 46 compacting states and soon to be 47 as I'm happy to let you know Delaware recently enacted the compact and is waiting the Governor's signature. So for 47 states you can have a uniform product that comes through the compact and we have actuaries and former regulators review that look at the product under detailed standards and everything is transparent to regulators and they are involved in the standards and what we're doing.

I was asked to bring to you attention an issue we have been dealing with this past year. It is a little bit of an outgrowth of the CO case where it made our regulators really pause and the issue is that last year through working with industry the regulators opened up a model law – the NAIC Model Standard Nonforfeiture Law for Individual Deferred Annuities. What they did was amended a minimum nonforfeiture rate because of the exceptionally low interest rate environment not just historically over the last several years but because of the pandemic and how its plummeted. So they amended the model law – it was 1% and it went down .15%. There were a lot of good reasons for it so there could be product offering in these areas. What we did is that our uniform standards that requirement is actually incorporated by reference (IBR) and I understand that it has a meaning at NCOIL but what's happens in our standards is that we incorporated a lot of the technical models of the NAIC and because this is substantive and on its face although there are a lot of good consumer benefits from lowering this we decided to pause and not incorporate that immediately into the standards.

We wanted to wait because that standard nonforfeiture law is actually a statute in the states so we wanted to see how states were going to enact that change and so far there are some discussions still going on but of the 46 compacting states 10 of them have enacted the change so that means the majority of them have not yet enacted them so we paused bringing that standard automatically into our standards and what we did was we indicated in our standards that a company must follow the minimum nonforfeiture rate in state law. So this does take step back from uniformity and the benefit that everyone bargained for but because it was something that was IBR we wanted to and this was probably the first time it happened in the 20 years, we created an emergency rule and took a pause and we said that provision is following state law and we'll probably look at it in a couple of years as more states embrace the change and the normal program will come back but there are some examples in our uniform standards where we go back to state law maybe because it a public policy that one half are one side and

one half are on another or maybe it's a public policy that is outside of the compact that companies want to put into their policies.

This looks a little bit like we are stepping away form uniformity but many of our members were deferential to our legislators and wanted to make sure that this change was one that states would embrace on the state level before it made its way back into the standards. I would also say that we are likely to look at our standards one of the main one's being the suicide exclusion and we find that our standards are widely accepted and based on NAIC and NCOIL models and there are some states that might have a one off requirement and some of it might be meaningful. In CO it has a one year suicide exclusion statue and only two compacting states have that but that's a meaningful conflict so we will be looking at those types of provisions and seeing if we can minimize the conflict so that first of all whether its beneficiaries or policyholders don't feel like they have to go to litigation.

UPDATE ON THE SETTING EVERY COMMUNITY UP FOR RETIREMENT ENHANCEMENT (SECURE) ACT 2.0 AND OTHER FEDERAL RETIREMENT INITIATIVES

Bradford Campbell, Partner at Faegre, Drinker, Biddle & Reath, LLP, thanked the Committee and noted that from 2006-2009 he served as the assistant secretary of labor for the employee benefits administration which administers the Employee Retirement Income Security Act of 1974 (ERISA) the fiduciary and reporting provisions governing retirement and other private sector employee benefits plans. In my work there I spent a lot of time dealing with clients dealing with the overlap and the issues created by federal law and the intersection with the work that you all do in regulating state insurance products. I'll address three topics that are relevant in both congress and the executive branch currently in an area that will affect you all – the Secure Act 2.0 and annuity provisions that are in it; and two other regulations from the Department of Labor (DOL) that are affecting conduct standards and some other annuity related issues for participants and insurance producers and others related to those plans.

Starting with Secure 2.0 as you will recall we're talking 2.0 because the first version was two years sago and what we've seen on a bipartisan basis in congress was that there is a consent that there is not enough take up of guaranteed income products of various sorts in retirement plans governed by ERISA and that there needs to be encouragement to have those products be made available to provide certain guarantees to participants particularly in defined contribution plans like 401ks. In the first version they provided greater rules for portability, so that a 401k participant who found the 401k plan, stopped offering an annuity from one provider and then switched to another would for example be able to roll that annuity they purchased over into an IRA and be able to have that portability and not be at a disadvantage because the plans had a change the investment options. There was also established a safe harbor for the selection process of the annuity provider so that if the fiduciaries of the 401k plan, the person charged with making those decisions on behalf of the plans, if they followed the list of elements listed in the federal statute they would have a reduced civil liability in the event the annuity provider is unable to make payments - the idea is to reduce concerns about potential liability as a barrier to adopting those. The third provision was to require that on an annual basis 401k plans and other similar defined contribution plans would provide to participants a projection of the retirement income that could be provided by something like an annuity based on the amount they have accumulated in their 401k plans. That

last provision passed and it is something I'll talk about because with passing that into law it then comes into the labor dept. to implement that into regulation.

Because the Secure Act was successful and bipartisan it had only three no votes in the entire congress which is quite a feat for a substantive piece of legislation they decided to take another run at changes to retirement plans. Secure Act 2.0 was passed by voice vote by the House Ways and Means Committee and it's a package of 20/25 different provisions and there are three of them related to annuity providers and trying to make them more available. These are a little more technical but they address some of the tax code issues that have also contributed to limited availability of annuities in retirement plans. The first and probably most significant is facilitating qualifying longevity annuity contracts. Because of the required minimum distribution rules under the tax code which means that once you achieve a certain age you are required to start taking distributions from your 401k plan, the way those rules were originally structured no more than 25% of the assets in a plan could be devoted to a Qualified Matching Contributions (QMAC) and that was presumably to prevent over benefiting from the tax benefits. Congress at least in the House has decided that is limiting the availability of what are useful products for retirees and so they would remove in the Secure act 2.0 the 25% limit so that would effectively allow for amounts over $500,000 to be put into a QMAC so that would facilitate that.

Another change of course in general is increasing the required minimum distribution commencement age from 72 to 75 phased in over 10 years which would provide more time and less mandatory draw down on some of those assets which indirectly facilitates annuities. They would also permit because exchange traded funds didn't exist when these provisions were written in the code they would permit now a class of exchange traded funds to be used in annuities by changing the way the taxation of those is. In other words there wouldn't be internal capital gains these would now be eligible to be taxed as ordinary income when distributed just as other types of retirement savings in that space are. Lastly they were going to change the actuarial rules for calculating retired minimum distributions that have made it difficult for certain what are otherwise common and popular annuity features like return of premiums on death and being able to provide non leveled annuity payments. By facilitating those changes the Secure Act 2.0 would make annuities somewhat more attractive and useful in this context. That bill passed the House Ways and Means Committee by voice vote and there is similar legislation in the Senate. It's not clear yet when the Sente is going to act on this legislation what is pretty clear is that there is a lot of support when you speak to folks on capitol hill about it they all think it or some variation of it incorporating the Senate's views will pass what no one can commit to is when. So we're all pretty optimistic that some variation of these proposals will come through but whether it happens later this year in sort of the end of the year must pass legislation that we always seem to find with funding or defunding the gov't and increasing the debt limit or whether it comes earlier next year we'll see but the prospects for the legislation look good.

As I mentioned before the labor dept is charged with implementing the lifetime income disclosure rule and the reason I think it's going to be significant is that it will give participants sort of real estimations about how well they are doing in retirement savings and the value potential about having the annuity form of payment. The reality is that if you tell me I have $350,000 in my 401k ill say that's great I'm doing really well but I have no idea what that actually means for my retirement but if you say based on the $350,000 you have $600 a month or whatever the number is in retirement income that I can

process immediately so I think it's a very useful and significant way to explain to participants their retirement savings. What's not simple is how you calculate that number. What's the methodology that you use and that's what the labor dept was tasked with doing by Congress. The Trump admin issued an interim final regulation last September. An interim final reg is a reg where if they don't change it it will apply as written but they are taking comments or took comments on it and would consider changing it so unless the Biden admin acts the Trump rule will go into effect this September and likely will apply to most plans in the first part of next year.

Just recently a few weeks ago the Biden admin announced that it does intend to change that rule and will be scheduled at least to propose a new final rule for the disclosure requirements and the methodology and is scheduled to do so in July. I have to say they are unlikely to make that deadline given that they have not yet sent anything to the White House for review. We know publicly what's in rules when they go for review but we don't' know what's in them until they go out but its not yet gone for review and that review can take up to nine days so it seems unlikely they are going to meet their July deadline and that in turn raises a question of whether they will change the September deadline we'll have to wait and see but what's at issue there are some questions about what's the right methodology and whether this will be helpful or cause confusion in particular should you take the current account balance - if I'm a worker with an account balance of $5,000 are you going to pretend that I'm 67 and give me a disclosure that says I get $18 a month in retirement income or are you going to project that $5,000 balance forward to retirement age assuming certain contributions and growth and then calculate the annuity number. Those are the kinds of issues the Biden admin is presumably going to address. The Trump admin shows these simplistic numbers of using what do you have in your account today and this is what you will get if you retired today. A lot of folks including Chair Neal of the Ways and Means Committee suggested that they should use the more complex but potentially more confusing calculation. So we will see. When they proposed the rule and what's in it due to the nature of an interim final rule we wont see what's in the final rule until its published because comments were already taken on the proposal so its an unusual wrinkle in the process.

The last issue deals with DOL's fiduciary regulation. The issue there is when is someone who is giving advice to a participant in a retirement plan subject not only to their normal conduct in the case of an insurance producer's rule and regulations about recommending an annuity and when are they also subject to the federal gov't ERISA fiduciary standard. What the Trump admin did and what the Biden admin agreed with and ratified this February was that they have expanded the interpretation of the siting rule to mean that most rollover recommendations would now be subject to ERISA's fiduciary duty. The difference is if its truly a one time recommendation that can still be viewed as a sales event and is not a ERISA fiduciary advice but if I'm recommending an annuity where I'm intending to give you additional recommendations as we go along in the relationship then it would be subject to ERISA's fiduciary advice.

The reality is that ERISA and the concept of commissions and standards for insurance compensation don't play well together. Under ERISA a commission is a prohibited transaction and not a permitted form of payment unless there is a special rule that says it is so there are new special rules that have also gone into effect in February that were intended by the dept to let these two issues coexist to let insurance producers, broker dealers, registered investment advisors, the full range of different financial professionals to be able to make these recommendations and still get paid even if it's a commission

subject to additional conditions. There has been quite a bit of debate particularly in the insurance industry that says that the new exemption in the special rules which is called prohibited transaction exemption 2020-02 there has been a lot of concern that it doesn't properly take into account the realities of independent distribution that assumes a level of control b/w the financial institution and the financial professional that works in the securities setting but doesn't work in an independent distribution setting where the carrier doesn't have control over the independent producer which is by design as a consumer protection at the state level so there is a disconnect of where the labor dept is going and where state insurance regulation is and DOL has announced that those rules that apply in February there is an existing exemption for insurance that can be used but by this December DOL is going to propose a new fiduciary rule that will change this existing interpretation that just came out and may change exemptions as well so to sum that up what we have is a new DOL interpretation that's capturing more insurance producers as ERISA fiduciaries, new exemptions that may or may not adequately cover the needs of those products in making those recommendations and on the horizon an entirely new regulation and a new start to the entire process. So if you enjoyed 2016 when the Obama admin changed the fiduciary rule and that was eventually vacated by the federal courts in 2018 you'll enjoy the next two years because we are going to have many of the same debates again.

Rep. Thomas asked if there is within the requirements an explanation of how they are doing this that's going to go out to people who live in our states that explains this is our projection – no matter which way they do it. To me it's more important that they explain what they are doing and how they calculated it for people as much as the actual number. Mr. Campbell stated that the exact details would depend on how they are going to change it in the final rule. We just this June learned they actually were going to change it so that was an open question. In terms of what it says currently there would be a disclosure that explains generally how it was calculated. How useful that would be to the average participant to read the fine print is an open question but the benefit of the path the Trump admin chose is that it is simple to calculate and it doesn't have a lot of variables. The disadvantage and this is my personal opinion is that it doesn't help me if I'm a younger worker with a small balance to get a projection based on where I am today when that's not where I'll be if I retire. In some ways this is modeled after the fed govt's thrift savings plan for 401ks which provides an annual annuity projection and having been a participant in that as a former federal employee I've found that projection to be of no help at all. When I was 30 I wasn't near retirement when I was 40 I wasn't near retirement and it appears when I'm 50 I wont be near retirement so telling me what that annuity will be based on the balance today when it has changed radically over that period I think has very limited value and I think it needs to be projected forward using more assumptions but as you point that would also take a lot more explanation.

LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATIONS: WHAT ARE THEY? HOW HAVE THEY RESPONDED TO COVID? HOW DO THEY INTERACT WITH CAPTIVE INSURANCE LAWS?

Peter Gallanis, President of the National Organization of Life & Health Guaranty Associations (NOLHGA), stated that I was asked to give a report today basically at a high level on the nature of operations, concerns and prospects for the life and health insurance guaranty system to talk specifically about the effect of the pandemic on the system and to address any special issues that might exist between the insurance guaranty system on the one hand and captive insurers on the other. To begin, I just

wanted to make the point that at a very high level the system of providing a financial safety net for consumers in the rare cases where a life or health insurance company fails has been established by the state legislatures working with the regulators and industry and consumer reps it has been refined repeatedly over the last four decades and I think we're in the position right now where the system has proven again and again that it does a good job of protecting consumers and I think its in large part because of the hard work that NCOIL members and other important leaders and stakeholders have taken. If current trends continue absent unexpected extraordinary special problems I think we can look forward to more decades of success of providing a safety net for insurance consumers.

Turning to slide three I was sked to report on the effect of the COVID pandemic and I'm very happy to report that although operationally behind the scenes we had to begin doing a lot of things differently to make sure we were able to provide through our state insurance guaranty association the same type of levels and protections that we have historically when we've been called upon to perform the pandemic itself really resulted in no material increase in the number of insolvencies of life and health insurers. The industry stood up very well. Second, the pandemic did not result in increased costs of the guaranty association providing protections to policyholders. Finally, because I think we did a lot of scrambling increased reliance on technology and did a lot of things that you folks and others had to do to be able to continue doing business over the last 16 months there really was no net effect at least from a consumer perspective of the pandemic on guaranty system operations which is a good thing.

Going to slide four I'd like to talk about the question I was asked to give any available insights on how captive insurers and the guaranty system related to each other and I think the short answer is that guaranty associations protect consumers who have policies with member insurance companies that fail. First of all there aren't a lot of them that fail but second by and large captive insurers are not guaranty association member companies so it really has never been the intent and it is not the outcome that when a captive fails policyholders of the captive are protected by the guaranty associations. The interest in captives because a lot of captives are for example reinsurers and they have an indirect sort of financial implication for companies that would be protected by the guaranty system but so far in our experience in 100 or so insolvencies where NOLHGA members have been involved we really have not had material challenges that have been posed by any captive insurer or reinsurer being part of the picture so from our standpoint its really been an issue that's been pretty remote to our concerns and operations.

That said I'd like to talk a little bit about the current state of the guaranty system and how we got to where we are and what we're doing and how we're doing it and what we're concerned about. Looking at slide six some background points I think you know that we have basically two separate systems reflected by guaranty associations of two different types in every state – in every state there is a life and health guaranty association and a property & casualty guaranty association. In each system there is a national organization that has been formed by the individual guaranty associations to provide support and services for those individual guaranty associations. In the case of the life and health system that support mechanism is NOLHGA the entity for which I work but the guaranty associations and guaranty systems basically developed in the late 1960s early 1970s we worked closely with receivers and insurance regulators to make sure that when a company fails consumers are protected and that's our focus – protecting

consumers not bailing out companies that for whatever reason have not been able to make it.

The elements of the guaranty system basically, on the life and health side anyway, are that we have guaranty associations in the 50 states and D.C. and Puerto Rico. Each one of them is a separate legal entity established by a state law that your legislatures have passed. Those laws are basically drawn from at least on the life and health side an NAIC model and there are some differences state to state tailoring to specific state preferences but broadly speaking there is a great deal of similarity across the country. NOLHGA serves our member guaranty associations and was created by them to support and deliver efficiencies and cost effective solutions that benefit consumers and keep the cost of the system down. The way we go about this basically is when the guaranty association systems obligations under their statutes are triggered usually by a liquidation of an insolvent company the guaranty associations continue the coverage that is to say they honor the commitments of the failed company so that they are not taking someone who is 20 years into a life policy or an annuity and throwing them back in the marketplace where they have to replace that. In that regard we are a little different than the P&C system where for most lines of business coverage is cancelled and the policyholders are able to go back out and get replacement coverage on business that is typically repriced and rewritten on an annual basis anyway. It doesn't work that way with life contracts and annuity contracts and some types of health contracts so if you are going to honor the commitment you have to continue the contract. Our preferred way of doing that is by supporting a transfer of the business that's in force when a company fails to another healthy company and that's done basically by giving the healthy company that takes on the liabilities assets that are usually made up by assets in the estate of the failed company plus topping up payments that cover a deficiency that are provided by the guaranty associations.

The guaranty associations cover people who are residents of their states – its residency based and each state determines the level of protection that's provided but the levels for protection are generally pretty consistent across the country on the life and health side. Moving to the next slide, how does the system get paid for? Well the largest chunk of funding for the performance of the guaranty system is from assets that remain within the estate of the failed company – they have failed which basically means that their liabilities exceed their assets but they usually have a significant amount of assets that provide depending on the type of company 50 cents on the dollar 70 cents or 90 cents and essentially the guaranty associations provide most of the rest necessary to protect consumers. Guaranty associations also benefit from receiving premiums on policies that pay premiums there are some statutory deposits that legislatures provide for that also support the activities of the guaranty system but the bulk of what we think of in terms of guaranty association funds comes from assessments that are made to member companies and in some cases those assessments are subject to tax offsets over a period of time reducing the amount of otherwise due and owing premium taxes.

For people who don't know a lot about the guaranty system and how it has performed historically this slide talks about some of the facts that not everyone knows. First, there are very few cases historically of life and health insurers of any significant size that have failed. I'm going to point to the 2008 financial crisis and the worst of the pandemic last year - there were no life and health companies of major significance that failed because of either the crisis or the pandemic. Second, unlike banks, insurance companies are really not subject to run on the bank behavior and that's because the liabilities usually

come due over a very long period of time which means that our cash needs are a lot lower than the FDIC for example needs to fund when a bank fails. We do have operational resources to keep the benefits going to policyholders and historically the performance of the system has been really solid over the years I don't think there has ever been a case where a guaranty association has failed to pay for what your statutes call to pay when a consumer's company fails.

Slide 12 shows the number of cases that we've had to respond to over the course of the last 30 years and as you've seen the number of multi state cases is pretty small. Slide 13 answers the question that people often ask – do you have the financial capacity within the guaranty system to respond to failures by companies and this chart really captures the answer to that question. The bottom shows green and that reflects the amount of money that guaranty associations have had to spend to protect consumers on a year to year basis and the blue reflects the amount of funding capacity that we have and although the chart is simplified and if you drill down there are a lot of different ways to talk about it this gives you a sense that the total capacity of the guaranty system nationally historically has always been much greater than the cost to run the system. Moving to the next slide I list some of the recent cases we have been confronted by and we actually have to spend money protecting consumers when there is a liquidation and there have been a few cases in recent years and ill talk about them in a few minutes. Rehabilitation often leads to a liquidation so we often monitor rehabilitations but guaranty associations typically do not pay money out in a rehabilitation.

Ill go now to slide 16 which is where we're talking about challenges to the guaranty system as we move forward. And I would say that our biggest challenge over the last 10 years and likely our biggest challenge over the next 10 years have been in the area of LTC. Some of the reasons particularly for the problems with older LTC are spelled out in the top half of the slide and some of the challenges to try and rehabilitate these blocks are spelled out on the bottom. We literally could spend five hours talking about LTC but we have seen some cases recently and we are likely to see more and it is an area of concern and I'd be happy to help and discuss this with you anytime. The next slide mentions some of the recent LTC cases we've seen the biggest one we've seen liquidation with has been Penn Treaty in PA; there is a much smaller company called Senior American that has been in liquidation; there is a case in PA right now called SHIP that is in rehabilitation and may or may not at some point end up in liquidation; there is another rehabilitation in WI that is largely a LTC company and I think we are going to avoid having a liquidation there although I'm just talking about what's been public and the signs seem to be pretty good.

There have also been some work streams at the NAIC and my guess is at NCOIL too that have been focused on LTC issues and if we had more time we could discuss. We are worried about some other things and there has been some mention of them today. NCOIL members are looking very closely at insurance company restructuring mechanisms and how to be able to do that in a way that accomplishes good but doesn't saddle the society with a risk of increased numbers of insolvencies. We're also somewhat concerned and have been historically with related party transactions within the insurance space. As we move forward what we are really hoping to do as we have been doing for a long time is to use the experience we've gained to work with legislators, regulators, industry and other stakeholders to make sure we are prepared for whatever happens to come down the pipe in the future and I think this is the fifth time I've been asked to testify before NCOIL over the last 30 years or so historically we've had a great

relationship with NCOIL as we have had with regulators and I think having that relationship and maintaining it is going to be important for all of us as we seek to protect consumers with anything that may confront us in the coming years. Thank you and I welcome any inquiries now or in the future from you and your members.

ADJOURNMENT

Hearing no further business, upon a motion made by Asm. Cooley and seconded by Asm. Kevin Cahill (NY), NCOIL Treasurer, the Committee adjourned at 5:30 p.m.

NCOIL – NAIC DIALOGUE MATERIALS

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
NCOIL – NAIC DIALOGUE
BOSTON, MASSACHUSETTS
JULY 16, 2021
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) NCOIL – NAIC Dialogue met at the Westin Boston Waterfront Hotel on Friday, July 16, 2021 at 10:45 A.M. (EST)

Assemblyman Ken Cooley (CA), Chair of the Committee and NCOIL Vice President, presided*.

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

Sen. Mathew Pitsch (AR)
Sen. Travis Holdman (IN)
Rep. Matt Lehman (IN)
Rep. Joe Fischer (KY)
Rep. Brenda Carter (MI)
Sen. Paul Utke (MN)
Rep. Tracy Boe (ND)
Sen. Jerry Klein (ND)
Sen. Shawn Vedaa (ND)
Sen. Bob Hackett (OH)

Other legislators present were:

Sen. Keith Ingram (AR)
Sen. Chuck Younger (MS)

Rep. Steven Meskers (CT)
Rep. Tammy Nuccio (CT)
Rep. Kerry Wood (CT)
Rep. Roy Takumi (HI)
Rep. Jim Gooch (KY)*
Del. Courtney Watson (MD)
Sen. Mike McLendon (MS)
Sen. Walter Michel (MS)
Rep. Hank Zuber (MS)
Sen. Randy Burckhard (ND)
Asm. Kevin Cahill (NY)
Asw. Pam Hunter (NY)
Rep. Wendi Thomas (PA)
Sen. Mary Felzkowski (WI)

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 Rep. Matt Lehman (IN), NCOIL President and seconded by Rep. Joe Fischer (KY), NCOIL Secretary, the Committee voted without objection by way of a voice vote to waive the quorum requirement.

MINUTES

Upon a motion made by Rep. Fischer and seconded by Rep. Brenda Carter (MI), the Committee voted without objection by way of a voice vote to adopt the minutes of the Committee's April 16, 2021 meeting.

NO SURPRISES ACT (NSA) REGULATORY ISSUES

Asm. Cooley stated that one of the main issues addressed in the NSA is the prohibition of balance billing. I'm proud to note that NCOIL in 2017 took great action on that issue with the adoption of the Out of Network Balance Billing Transparency Model Act (Model). Asm. Cooley asked Mississippi Insurance Commissioner Mike Chaney if he could provide an update as to the status of balance billing of consumers since enactment of the NCOIL Model Act and the NSA. Before proceeding to Cmsr. Chaney, Idaho Insurance Director and NAIC President-Elect Dean Cameron thanked NCOIL for the opportunity to be with you and present with you as Rep. Lehman said to me earlier it's unique the three of us here are former state legislators and have walked in your shoes and know the difficult choices you have to make in fact as I was packing for this conference I found an NCOIL badge and brochure from when I attended NCOIL several years ago in Boston so its an interesting time and we're grateful for the opportunity to be with you and we look forward to a continued great relationship as we deal with important issues.

Cmsr. Chaney stated that ill reiterate what Dir. Cameron said of how we're pleased to be here and have an open dialogue. Very briefly, our state has had a longstanding law on the books which says that if a consumer assigned their health benefits to a healthcare provider that they could not balance bill if they were in the network and in the last two years we've strengthened the law to give the commissioner some regulatory authority to enforce balance billing and of course if you go to the hospital and assign your benefits and they are not in the network then the payment would be at the out of network rate. We have basically done this to prevent balance billing in emergency rooms where you have a provider that's on contract and they get a $8,000 or $9,000 surprise bill when a mother takes their child into the ER at 2 am. Its worked very well to prevent balance billing and protect consumers and we've also used this as enforcement against air ambulances. We've had instances where air ambulances would go and pick someone up 10 miles off the interstate and fly them in and the insurance carrier may pay $10,000 or $15,000 depending on how far the flight was which is a normal payment and then the consumer would get a $50,000 or $60,000 bill three or four weeks after and that's not just in my state its common in a lot of states so we took the position that we did regulate to some degree the medical providers on the aircraft and the air ambulances had to prove that it actually cost them $50,000 for a 45 minute flight so we've bene able to keep that genie in the bottle and I'm pleased to say in four years we haven't lost a single case. That may not hold true in the future but so far we are batting fairly well without having to go to court which is a little different than the states like Montana and North Dakota where they have a lot of rural areas so ill now let Oklahoma Insurance Commissioner Glen Mulready talk about some of the issues they have in OK with balance billing.

Cmsr. Mulready stated that as everyone knows some states have passed their own state regulations and laws and some have not and in OK we tried for a couple of years and weren't able to get something pushed through and I jokingly mentioned that it felt like I was beating my head against the wall but the federal legislation came along and the importance of that is that it was meant to supplement and not take the place of anything that any of the individual states have done and it does supplement in some very important areas like Employee Retirement Income Security Act of 1974 (ERISA) self-insured plans and air ambulances as Cmsr. Chaney mentioned. In the law it required a definition of geographic areas and input was sought by the NAIC and we gave our input but they ultimately did not take that and they decided instead of the geographic areas

currently used for Affordable Care Act (ACA) plans within the state for pricing purposes they did a different definition instead so there will be fewer areas and fewer payment amounts we'll see what happens there. A survey has gone out to all regulators in fact I believe it was due yesterday and there are a lot of states like OK when we are being asked who regulates provider billing in your state and you get on some conference calls and hear some crickets because a lot of them are not authorized to do that so there are many states including ours that need to take some action on that or it will just revert to the feds to fulfill the enforcement on that.

There is some feedback and additional space for comments on NSA regs that I believe is due on Sep. 7th and I'll read some feedback we received that will probably be included in our comments to them – 1.) need a clear definition of covered services to prevent carriers form using provider exclusions, tiered networks and other language to limit protections for consumers; 2.) specify the authority of the states to enforce air ambulance provisions to avoid any challenges under the Airline Deregulation Act (ADA); 3.) suggesting we need flexibilities for the states to define geographic areas as I mentioned earlier they are using a different definition than we recommended; 4.) need funding for the states to enforce those federal laws as there currently is no funding provided at all; 5.) clarification for how more protective state laws might play out especially in areas of disclosures where states don't allow waivers of protections; 6.) needing more info on how state and federal oversight will be coordinated with complaints that are filed. We have a potential collaborative agreement with the feds that they've talked about but there is no detail for that so what would that look like we don't really know. That's about it for feedback with us for the NSA as its playing out.

Asm. Cooley stated that the points you make on geographic regions is sort of a theme - as state regulators do you have an undercurrent of worry that you have the federal level in various areas entities jumping into the insurance space and not understanding how state based regulation has worked with the regulators and resources and the systematic way you have sought to undertake your responsibilities and not understanding the logic to your issues at the state level and not wanting to reinvent the wheel. Cmsr. Mulready stated that's at the center of the NAIC's concerns with the definition it just shrinks it down too much and when you are talking about paying a fair reimbursement level we believe that the better approach is what was suggested and used in the pricing areas under the ACA. Asm. Cooley stated that its just a question of they are introducing their take on how to solve these things and not necessarily knowing how its regulated. Cmsr. Chaney stated that under the ACA most states were required to have geographic districts and that's for billing purposes and the NAIC took the position that and the Centers for Medicare & Medicaid Services (CMS) has told us that they must consult with the NAIC on the definition of geographic areas and the NAIC recommended using the geographic areas that already exist within the states under the ACA so for premium pricing purposes and consistency and alignment with premiums. Its out there and we think the states should be able to regulate like you say Asm. Cooley we are in your corner on that.

ENVIRONMENTAL, SOCIAL, AND GOVERNANCE (ESG) ISSUES

Asm. Cooley stated that brings us to ESG issues which has become an important new acronym across the entire govt and business sector and asked for comments from NAIC representatives.

a.) NAIC Special Committee on Race in Insurance

Dir. Cameron stated that the NAIC acknowledges and thanks NCOIL's work in this area and looks forward to reading and understanding its work and collaborating on that. I have to tell you when we started this one of the first persons I called after the NAIC officers decided to take on this issue was to Rep. Lehman because we knew this was a big enough issue and important enough and that we all despise inappropriate discrimination and unfair treatment of your constituents and consumers. He was one of the first persons I called and solicited NCOIL's help. As you know NAIC created this Special Committee last summer the first of its kind in it's history which is currently chaired by NAIC President and Florida Insurance Commissioner David Altmaier and myself as President-Elect and then with Missouri Insurance Director Chlora Lindley-Myers as Vice President and Connecticut Insurance Commissioner Andrew Mais and Secretary-Treasurer serving as co-vice chairs. The Committee has five critical workstreams. The first two are on researching and analyzing the level of diversity within the insurance industry and then on the state regulatory front within our state depts. as workstream two. The third, fourth and fifth workstreams look at what barriers exist in the insurance sector that politically disadvantage people of color or historically underrepresented groups and we are wanting to make sure they are equally protected and treated under either property & casualty or life and aunties or health insurance lines.

The full committee met a few weeks ago to hear comments form interested parties on our draft charges and we just recently this week discussed those draft charges and we will be publishing those draft charges after our July 21 meeting in which we hope to adopt the charges for the remainder of 2021 and through 2022. Those charges will be on our website and we will make sure that NCOIL has an opportunity to see them and will appreciate any thoughts and comments. We know that they are not going to be perfect and are not written like me or Cmsr. Mulready or Cmsr. Chaney would write them but they are a combination of voices within the NAIC. The special committee will hold a public meeting in our national summer meeting in Columbus in August and the other workstreams will continue to work and meet and gather info. There are a variety of opinions some stronger than others on this process that its taking a little longer than we would hope as you know the NAIC is a thoughtful and deliberative organization that takes its time on things but we are committed to exploring and making sure there is no unfair discrimination, unfair bias, proxy discrimination, or disparate impact on the products being offered but we acknowledge these are complex and difficult issues and we need to be deliberative in order to avoid unintended consequences in the market. We have been working equally with out consumer reps and industry to make sure things are treated appropriately and I have to say we are encouraged with the open and unprecedented discussions that have taken place on these difficult issues.

Asm. Cooley stated as you alluded to NCOIL concluded its fifth and final meeting of its Special Committee on Race in Insurance Underwriting yesterday. There is an ongoing curiosity of the work of the NAIC's committee but Rep. Lehman would you like to offer some comments about our experience and work product. Rep. Lehman stated that we did wrap up yesterday with our special committee with three resolutions but specifically the one on the use of certain factors in underwriting I would love to see how that is received at the NAIC and the direction its going. We had very good meetings and saw a lot of data that was presented over the course of those meetings and what really kind of rose to the top was the one issue that we included in the resolutions which is the arrest issue. Other issues I think are probably ripe for continued discussion. I do think it's a broader discussion than the use of artificial intelligence (AI). I think with our resolutions

now being adopted as issues come forward specifically they will be assigned to respective committees but we will continue to watch and be a resource if needed with the NAIC. Rep. Lehman asked the NAIC reps if there are any comments on the NAIC's timeline with its specific committee.

Dir. Cameron stated that they look forward to reading the Resolutions. I know that we have a group that is also looking at AI and how its utilized and we have a couple of different working groups and task forces I will tell you that we are pushing forward and creating a another letter committee that focuses on cyber and data and AI and that's the first time we will have a new letter committee in a long time but that was prompted at a recent meeting and we will be voting on that bylaw change probably in Columbus and we look forward to collaborating with you because I think as regulators we want to know what's in that black box that's determining rates as that's our responsibility and we think carriers should be able to explain and justify what the calculations are and how they arrived at their calculations. Cmsr. Mulready stated that as described a new letter committee added that was at Dir Cameron's initiative so that was his push and kudos to him because we do have big concerns about that and the black box and rate review and that process used to be a lot simple a few decades ago but has become complex and I think that new committee will be very helpful to dig through some of that stuff.

Asm. Cooley asked a question but it was difficult to hear due to technical difficulties with Zoom. Dir. Cameron stated he believes he understood the question which was what is the status of the adopting of charges. Dir. Cameron stated that we discussed the charges at length during our recent meeting and we will be meeting next week on the 21st and be voting on those charges is the intention. They have been modified and we have sought public comments and received it and have modified them to accommodate some of the suggestions made by industry, trade groups, and consumer reps. They're still not going to be perfect but its time that we move passed adopting the charges and start to get into the real data collection. Cmsr. Chaney stated that I think Cmsr. Mulready and Dir. Cameron have covered everything very well but the arrest issue is something that we will have to tackle in the C committee especially in P&C and how do you address that issue and I know every legislator is always asked about credit scoring and other issues so with AI and proxy discrimination you have some issues with the databases we have today because we aren't certain what the data contains on AI as an example if somebody is improperly discriminated against simply because of AI or proxy discrimination you don't know what proxy was sued so it presents a whole host of issues for us as regulators to address those issues.

Rep. Lehman stated that one of the key issues which was used in one of the resolutions is transparency – its one thing to know what's in the box and its one thing to be able to explain it to the end user and we are seeing that now in our industry where someone will say I know when we did credit scoring you had to give me the factors that went into the adverse selection of my rate yet now with my insurance sore I went form a t5 to a t7 and had a percentage increase and I ask what's in there and the answer is we don't know. So I think part of this is not just what data is going in but how is that being displayed to the end user and consumer and I think we all saw the tweet about Lemonade about the collection of 1,600 data points and you have to ask the question what 1,600 things does an insurance carrier know about me to determine my rate. That's troubling I think just in the sense of the unknown of what is being collected so I think we are on a joint mission in a way of consumer protection as regulators and public policymakers so I think we will want to work with you on that with transparency and AI and discriminatory issues.

b.) Regulating Climate Change Risks

Asm. Cooley stated that we're seeing in the West and really all over the country unprecedented things related to droughts and wildfires and other things. Asm. Cooley asked for an update as to what specifically the NAIC's Climate and Resiliency Task Force will be working on and what its timeline is. Cmsr. Chaney stated that this isn't a new topic for the NAIC as its an old topic as the NAIC has had its climate and resiliency TF under the C committee for many years and has been elevated to an executive TF and highlights our goal at the NAIC to address climate issues and to that effect the TF includes 33 states and territories and is led by CA Insurance Commissioner Ricardo Lara along with SC Insurance Director and NAIC Immediate Past President Ray Farmer. We have five members that serve as vice chairs. The mission of the TF is to serve as the coordinating NAIC body for discussion and engagement on climate related risk and resiliency issues acknowledging there are other groups in the NAIC who have or will need to be involved in any regulatory recommendation related to climate risk and resiliency and that's important for members of NCOIL to understand that we don't work as one man on an island we work as a group and try to coordinate some of our efforts which is especially important with data collection and AI with the new committee Dir. Cameron has put together.

The pre-disaster workstream is led by WI Insurance Commissioner Mark Afable; the building code and mitigation part of that includes 19 state DOIs and if you are from a coastal state you will understand you need building codes and its not rocket science to understand that you need a stronger house if you are on the coastline and stay out of the floodplain as its real simple stuff if we can do this. The climate resiliency workstream is led by OR Insurance Commissioner Andrew Stolfi and there are six states in that group. The solvency workstream is led by MD Insurance Commissioner Kathleen Birrane and the HI Insurance Commissioner Colin Hayashida leads the innovation workstream which is charged to consider new innovative insurance products. You must have new products which might include non admitted products to try to address some of the climate change issues and things like earthquakes and wildfires. The final workstream is the technology workstream and that will have to work very closely with the new AI committee if adopted so we have our work cut out for us on climate change – whether you agree with it or not we do face climate change and we know from history that its been around for a long time I'm not going to debate whether its caused by man or not you have to remember I'm from the south so I may gave a different opinion but if you are from AZ and its 114 degrees you may start wondering what climate change is about today. We have some new committees that we have formed under the C committee and the catastrophic working group at the NAIC and one of them deals with the Federal Emergency Management Agency (FEMA) and I will let Cmsr. Mulready address that as he has been asked to be the Vice Chair along with WV Insurance Commissioner James Dodrill to address some issues so if we can have a better working relationship with FEMA on some of the issues of climate change that would be great.

Cmsr. Mulready stated that I don't have a lot to add except that development is literally three or four weeks old of the creation of that new FEMA catastrophe advisory group and ill be vice chair of that along with Cmsr. Dodrill so we're just getting that going and there has been no action taken but just emphasizing the importance of bettering the relationship and interacting with FEMA going forward.

Asm. Cooley stated that he is certainly familiar with climate change being an issue at NAIC meetings for at least 15 years and we are seeing states like CT start to pass statutes involving climate related risk in the insurance business. How do you see this movement affecting the accreditation process - obviously accreditation is looking at supporting the solvency of carries – do you see a long term integration of some of these climate issues in accreditation? Cmsr. Chaney stated that if a company has risk out there that is on their balance sheet and we cant weigh that risk it affects surplus so that is really the main job as regulators is to be certain enough that insurers are solvent enough to pay claims and the other part of it is to protect the consumer so its going to present a whole host of issues for us as to how do we determine and that would be out of the E committee at NAIC on solvency how climate change will affect the balance sheet.

There are so many things we have to deal with on the balance sheet including security valuation which we have at the NAIC so when we get to statement on statutory account principle (SSAP) 71 that's another issue which is not climate related but is an example of what we have to look at as regulators in balance sheets looking at solvency and other issues. I hope that answers your question. Asm. Cooley stated that yes the question was more about accreditation but in CA I know that it passed some insurance legislation regarding green investments and it was kind of structured in a way to adjust make sure it was integrated with the solvency requirements and investment rules to support their solvency. Cmsr. Chaney stated that on that line let me just say as a Commissioner and a regulator I do worry about what constitutes accreditation at a state level when we are reviewed every five years you'll understand for accreditation the issue there should be that the body as a whole at NAIC should determine those issues and not one person or a bureaucrat on a committee that Is down in the trenches I think that will give you some solace Asm. Cooley I hope so. We are addressing that issue its just not at the top of the ladder.

Rep. Tammy Nuccio (CT) stated that NAIC is really an arbiter of a lot of data regarding info to help us make good legislative law so yesterday we learned about the Safeguarding Tomorrow through Ongoing Risk Mitigation (STORM) Act and talked a lot about flood which we can link back to climate change and there was a suggestion that as a state we should be passing legislation to utilize the money that the fed govt is making available for flood plain areas so I'm wondering if you guys have used that data regarding resiliency and climate change and if we wanted to look at passing model legislation regarding that where could we partner with you to obtain data to understand how much is flood impacting our insurance rates and if we were to pass legislation to alleviate those zones what could we expect to see in terms of returns from insurance.

Cmsr. Chaney stated that ill address that from a state specific standpoint – I've been dealing with flood for 14 years as a Commissioner and 15 years as a legislator. Risk rating 2.0 which you heard a lot about yesterday form FEMA presents a host of problems for states, not so much my state, but if you are in LA where you have almost 500,000 policies or SC you are in trouble but flood affects every state in the union just as you turned on your TV this morning you saw that so states are going to have to address the flood issue on a state by state basis the problem has been the fed govt talks a good game but they have never really tried to fix the National Flood Insurance Program (NFIP). As a regulator I've tried to go around that and say ok if that's the case lets see if we can get an admitted company to do flood endorsements which we have been able to

do in our state and FL has been able to do a little bit of what we have done and to bring in some of the surplus groups like Lloyds and others to write flood insurance.

Now the reason I am telling you that is you have to understand can they write in certain zones. If you do away with the zones its not a big issue because let me tell you the technology today within the last two years has come around and we can tell you specifically what the elevation is of a home and can tell you whether a home was destroyed by a storm surge such as in Rhode Island and Massachusetts or whether it was destroyed by wind so there are a lot of new things coming out. I would be careful and put a lot of flexibility in a statute if that's what you're trying to do so I would just say from a state specific standpoint be very flexible and don't kill things that are working and leave the ability to protect the consumer. Consumers have to buy into the flood program if they are going to be protected.

Rep. Nuccio stated that she understands that and appreciates that feedback but what I'm looking for is basically a partner in being able to identify where we could use this to actually help mitigate that so trying to find a way to get the data to help support us writing some sort of legislation that's going to help us utilize this federal money because as you said if all we are going to get from the fed govt is the ability to have a revolving loan program that they are going to do a 90-10 match on how do I optimize that in my flood zone. Cmsr. Mulready stated that he's not sure he can answer that but he will speak on behalf of his state in that they are ready and willing to find and produce data to do the best things for flood management and how to utilize money the best because it is about resiliency and mitigation efforts and there is data out there. The NFIP is not necessarily the best and quickest in terms of getting data and unfortunately in many states that's the only source of flood data. Cmsr. Chaney stated that you need to understand that FEMA agreed to share the data with us about six months ago and now Cmsr. Mulready will have to deal with that as vice chair and it's a huge problem because the data is so massive and someone has to go through it so what method do you use to get it at a granular level to something where you can actually use it. The problem is going to be you are going to get a lot of promises out of FEMA and they rarely deliver.

Asm. Cooley stated that on issues like this I suggest to Rep. Nuccio to sit down with her insurance commissioner and have a direct conversation about data as its a good path and they can help you figure out accessing what the NAIC might have and what specialty staff they have so a partnership with the insurance commissioner's office is a good way to go .

REVIEW OF INTERNATIONAL MONETARY FUND (IMF) 2020 FINANCIAL SECTOR ASSESSMENT PROGRAM (FSAP) REVIEW OF THE U.S. FINANCIAL REGULATORY SYSTEM

Asm. Cooley stated that last year the International Monetary Fund (IMF) completed its 2020 Financial Sector Assessment Program (FSAP) review of the U.S. financial regulatory system. This review included the insurance sector, as well as the banking and securities sectors, and was coordinated by the Treasury Department Office of Financial Markets. This was the third FSAP for the U.S., with previous FSAPs taking place in 2010 and 2015. There was one recommendation included in the report which caught our attention titled "The targeted review of the state-based insurance regulation and supervision found that supervisory independence remains to be addressed." So they have treated the independence of the state based regulatory system in some respects at

least in their view something that needs to be addressed. They talked about supervisory independence—perceived or actual—is likely to be undermined by the appointment of insurance commissioners and their senior staff by state governors in several states or the direct election of the commissioners in others. They also expressed concern over governance and control over budgets and staff renumeration. I'm interested to hear how the NAIC is viewing this sort of FSAP process and these sorts of questions and what the NAIC's reaction was.

Dir. Cameron stated that there was a private reaction and then a public reserved reaction. Ill just say that this is a five year process and its long been felt particularly by the international community that they don't care for the sate based regulatory system and we of course strongly support it and know that there are even those at the federal level that call for a more centralized fed govt system of regulation they don't necessarily want to deal with the states. We are the largest insurance market worldwide and we really control and should control it and while we appreciate their comments we feel like the assessment went beyond the bounds of its authority and beyond the bounds of where they should have been as there is no evidence whatsoever in fact evidence to the contrary that the way we appoint, elect, unselect or unappoint commissioners has any impact on the solvency of the insurance industry in America so we respectfully disagree with their assessments. There was suggestion that you as legislators should change the way that those are appointed so that our term is a set term and coincides with the governor term well that is again really beyond their authority. There is nothing in my opinion whatsoever that indicates that our markets are less solvent because of our current appointment and election process. In the interest of time ill stop there as there are a number of suggestions that if we need to get our blood pressure up we can react to them but I'll leave it there.

Asm. Cooley stated that when I see these types of comments I was actually advising the CA assembly in the 1980s on insurance when NAIC adopted accreditation and the earliest accreditation statute passed in CA and went through my committee so I certainly recognize that the NAIC has this long tradition of accreditation related to required laws, financial standards and organizational things and I think you are 30 years into your insurance dept resources report kind of profiling what is the staff support for an insurance dept setting a sort of implicit standard for what is adequate staffing to meet the regulatory challenges and your licensing laws. I partly view this as they don't understand the character of the work and law which underpins the state regulatory system and while I am always worried about delegation I think on this issue the accreditation standards are very important and are something to be educating them on. I can understand your private conversations and more temperate public remarks.

Dir. Cameron thanked Asm. Cooley for comments on accreditation as we certainly take that very seriously and work very collaboratively to make sure those standards are strong to protect consumers and the industry. Asm. Cooley stated that I do think the climate change efforts need to be kept in the solvency conversation as we start looking at rules of investing and how that relates to resiliency and sustainability we need to keep a focus on its impact on solvency so I see this as two very interconnected conversations.

UPDATE ON PROPOSED CHANGES TO SSAP NO. 71

Asm. Cooley stated that we continue to have interest in the proposed changes to SSAP No. 71 and the bottom line for us is that we feel that we are in a position of economic

turmoil for those companies affected and NCOIL has supported a five year phase in for this. Is there any update on this topic? Cmsr. Mulready stated that for those who have not been involved with the issue, basically its tied to insurance companies utilizing third party arrangements to finance upfront commissions and the accounting of that. We had our accounting practices TF reviewing that and they had decided that it was a non substantive issue versus a substantive issue and that's not inconsequential because the way that process works is that if that TF calls it a non substantive issue they are just saying they are clarifying something so that immediately goes into effect upon their vote and approval. The officers I think in a very wise move decided to still call it non substantive but treat it as if it were substantive so it went through a multiple step process and it was voted on in March through the TF and moved to the E committee and that was voted on April 13 and we will next address the issue in our August meeting in Columbus.

I will let you know from an update standpoint is that two things impacting it substantively are 1.) the implementation date – the original implementation date was 12-31 of this year but there is a number of regulators who believe its not a fair timeline at all given that we're not going to vote on it until August and there are only a handful of companies that are affected as its not a widespread practice so there is a lot of move afoot to allow for a phase in; 2.) change in bylaws – Louisiana Insurance Commissioner Jim Donelon has put forth a change in our bylaws that would require any of those E committee decisions to trickle up as this has. There is also discussion about changing the rules in that committee so that decision will be made and voted on in our August committee meeting whether we change the rules in the committee or make actual changes to bylaws. I think one thing I'll throw in is that some suggestions by others are that it should just be handled with a permitted practice and some of the pushback by some of the regulators is that permitted practices are in some circles sort of frowned upon in the accreditation process so they are not thrilled about that.

Asm. Cooley stated that from prior conversations NCOIL has recommended a five year phase in and I hear you are saying there is a conversation about a delayed effective date from within the NAIC as they debate this. Do you anticipate that it will probably not be made on 12-31 of this year? Cmsr. Mulready stated that yes my opinion would be that I think there will be a push to delay the implementation and the question is how far. To be transparent I don't think it will be five years as most of these arrangements don't even carry out five years so I think somewhere there might be a delay but it probably won't be five years. Cmsr. Tom Considine, NCOIL CEO, stated that we almost have three commissioners who its preaching to the choir on this issue so I am wondering if siting on either side of you if we had the WV and ME commissioners would your confidence remain as high that the effective will be put off 12-31. Cmsr. Mulready stated that they would clearly have a different perspective. Dir. Cameron stated that I'll add that this was discussed at our recent meeting and I think most would like to see a resolution and there are very strong opinions on both sides but I think most would like to see reasonable resolution and it won't likely come into effect 12-31 but I don't think it will be five years it may be two or one year. Cmsr. Mulready stated I didn't mean to disparage my colleagues in any way but what you'll find is that those who have come from the financial accounting world they tend to have a very rigid perspective versus a market perspective others have.

DISCUSSION ON FEDERAL INSURANCE OFFICE (FIO) REQUEST FOR INFORMATION (RFI) REGARDING PERSONAL AUTO INSURANCE MARKET

Asm. Cooley stated that under FIO's statutory authority this certainly seems like something they are authorized to do – to monitor trends and engage in inquires on how the market is working. This came out in just the last two months and one can hardly ask questions about seeking information on these markets without being in the NAIC's bailiwick so is this something you have responded to or plan to respond to? Cmsr. Chaney stated that NAIC will respond but its going to take us some time and we have been dealing with FIO on auto insurance for well over a decade and there is a move at FIO to have one universal type auto insurance policy run by the fed govt claiming its run by the states. It's become an issue and the bottom line is we are state based regulators and that's where it needs to be we don't need the fed govt telling us what our auto premiums are going to be for everyone in the U.S it would be a nightmare so we will address it.

DISCUSSION ON NAIC LONG TERM CARE INSURANCE (LTC) MULTI-STATE RATE REVIEW FRAMEWORK

Asm. Cooley stated that yesterday we heard from guaranty association representatives that they look at LTC as an issue of long term interest and concern to the guaranty funds generally. It is outstanding the manner in which the NAIC has responded to the gravity of the LTC environment and solvency and how it affects customers. Is there an update on your LTC insurance TF that can be provided.

Dir. Cameron stated that we see this as an existential threat to our state based regulatory system because the number of companies have dramatically diminished as it wasn't too long ago we had over 100 insurers writing standalone LTC products and now we have less than 20 and probably less than 15. We have roughly 7 million policies nationwide and the solvency of those companies are a continued threat as it seems every year we have a new company that is potentially in a solvency issue so it remains a top priority. One of the challenges or issues that we have faced and there are many to the whole market is the fact that it was not appropriately underwritten or the actuaries did not adequately account for the increased costs and morbidity and mortality and length of time people would keep these policies and declining interest rates and all of those issues but on top of that as state regulators every state has addressed these issue differently and it will be shocking to no one but each carrier may be presenting their need differently to each state so we've had a number of issues and one of the solutions that the TF has been working on is a multi state review framework which would allow multiple states at the same time to gather info in a collective manner and then that data would be shared with each state. It does not however take away any authority or responsibility for the sate commissioner to review or do its own analysis it just merely is an additional data point and reference point by which we can define using the same methodologies and info as to whether a rate increase is needed and by the way we know the lack of rate increases is leading to the insolvency of some of these plans and some companies and it's a balancing act and we're working really hard to protect consumers to make sure they are not priced out of the marketplace but also that there is a product in the marketplace that you can purchase at an affordable rate. We have continued to make inroads with congress proposing different ideas as to how to improve the marketplace the most recent one was support of legislation allowing people to take money out of their 401k or IRA to help pay for premiums for their LTC product those have all been endorsed by the NAIC and are being supported and we continue to look to other areas to provide solvency in this very touchy area.

Asm. Cooley asked are you working on anything related to reduced benefit options (RBOs) such as the potential development of mechanisms to help regulators and consumers. Dir. Cameron replied absolutely and noted that we have a subcommittee of our TF that is focused strictly on that and as you know there are a coupe of legal issues where the NAIC or NAIC members are involved in trying to protect consumers and make sure consumers have adequate info and appropriate choices moving forward. Asm. Cooley stated it's a complex issue and in CA just this week the CA public employee retirement system settled a lawsuit of about 79,000 retirees who had bought a policy 15 years ago with a guaranteed benefit no increase in rates and that's a multi million settlement potentially around their LTC product so it's a very complex issue.

Sen. Bob Hackett (OH) stated that one of the things I learned in OH is that OH during the pandemic shut down all increases which I think is a major mistake because all the money is coming down from the feds so when you kick the can down the road as we have a new commissioner she's dealing with it its a tough issue. Sen. Hackett asked if a lot of the states did the same thing in terms of recommending states hold off on increases during the pandemic. Dir. Cameron stated there was no recommendation from the NAIC and in fact probably to the contrary. None of us like rate increases but at the same time when the solvency of a company is showing that in order for them to stay alive there has got to be some sort of an adjustment we want to make sure it's a reasonable adjustment and we want to make sure one state isn't subsidizing another state so that's part of the issue on our multi state analysis once it gets up and running. We've run two or three test cases through the system and trying to show folks how it will work. Hopefully it will be there and will be one more data point commissioners can address.

Cmsr. Chaney stated that the real issue for the states is most of us don't control the rates we do it by what called desk orders. The issue before NAIC is that the Senior Health Insurance Company of Pennsylvania (SHIP) is asking along with VA Insurance Commissioners Scott White to let the courts set the rates or all the various rates since SHIP is in rehabilitation and that's a bone of contention for states who think the rates should be state specific so that's a real issue and we'll work through it. Several states including MS have joined in with an amicus brief or a suit to try and rectify that so that bankruptcy courts cannot set rates for it. Cmsr. Mulready stated that the efforts being led as pushback for consumer protection are LA in one court and MA and ME leading the other one.

ADJOURNMENT

Hearing no further business the Committee adjourned at 12:00 p.m.

PROPERTY & CASUALTY INSURANCE COMMITTEE MATERIALS

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
PROPERTY & CASUALTY INSURANCE COMMITTEE
BOSTON, MASSACHUSETTS
JULY 16, 2021
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Property & Casualty Insurance Committee met at the Westin Boston Waterfront Hotel on Friday, July 16, 2021 at 3:00 P.M. (EST)

Representative Bart Rowland (KY), Chair of the Committee, presided.

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

Asm. Ken Cooley (CA)*
Rep. Terri Austin (IN)
Rep. Matt Lehman (IN)
Rep. Joe Fischer (KY)
Rep. Derek Lewis (KY)
Rep. Edmond Jordan (LA)*
Rep. Brenda Carter (MI)
Rep. Kevin Coleman (MI)
Sen. Paul Utke (MN)
Sen. Walter Michel (MS)
Rep. Tracy Boe (ND)
Sen. Jerry Klein (ND)
Sen. Shawn Vedaa (ND)
Asm. Ken Blankenbush (NY)
Asm. Kevin Cahill (NY)
Sen. Bob Hackett (OH)
Sen. Jay Hottinger (OH)
Rep. Forrest Bennett (OK)
Del. Steve Westfall (WV)

Other legislators present were:

Rep. Steven Meskers (CT)
Rep. Tammy Nuccio (CT)
Rep. Kerry Wood (CT)
Sen. Spiros Mantzavinos (DE)
Rep. Roy Takumi (HI)
Rep. Jim Gooch (KY)*
Del. Courtney Watson (MD)
Sen. Randy Burckhard (ND)
Sen. Mary Felzkowski (WI)

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. Joe Fischer (KY), NCOIL Secretary, the Committee voted without objection by way of a voice vote to waive the quorum requirement.

MINUTES

Upon a motion made by Rep. Fischer and seconded by Sen. Jerry Klein (ND), the Committee voted without objection by way of a voice vote to adopt the minutes of the Committee's April 18, 2021 meeting.

PROPERTY & CASUALTY INSURANCE GUARANTY FUNDS: WHAT ARE THEY? HOW HAVE THEY RESPONDED TO COVID? HOW DO THEY INTERACT WITH CAPTIVE INSURANCE LAWS?

Roger Schmelzer, President & CEO of the National Conference of Insurance Guaranty Funds (NCIGF), thanked the Committee for the opportunity to speak and stated that we are the coordinating body for the P&C guaranty fund system and yesterday at the life committee you heard from our counterpart the National Organization of Life and Health Guaranty Associations (NOLHGA) and so this is the other side of the house and I'm pleased to be joined by Barbara Cox our former general counsel for 25 years and now in private practice and she'll provide most of the info today and ill provide a couple of other things.

Ms. Cox stated that first of all ill start with the basic what are guaranty funds well they pay covered claims when an insurance company becomes insolvent and is ordered into liquidation which does happen sometimes despite everyone's best efforts. They are normally private associations although a few of them are controlled by insurance depts. They are overseen usually by a board of directors made up of industry members; there are a few public members and legislative appointees. Where does the money come from - well generally three sources: assessments on guaranty fund members and that is any insurance company writing business in the state is compelled to become a member of the guaranty fund those assessments are generally limited to 2% of net direct written premium; also they get money from the available assets of the insolvent insurance company and that's kind of a funny thing sometimes you get a lot of money right away sometimes you get a little money right away a lot of money later; and sometimes no money; sometimes 100% of claims payment at the end of the day; also in certain states there are statutory deposits collected by the insurance dept. California has huge work comp deposits which fund a lot of their claims should a work comp carrier go down. How many insolvencies – well it varies from year to year and right now we are at around seven for 2020. We've had up to 21 in a year and I wont dwell on it because we're short on time how much fun we had during that year as it was shortly after the 9-11 incidents where some insurance companies went down and reinsurance dried up and we had a few other huge carriers go down about the same time and we were getting phone calls at our annual meeting about liquidations so it was an interesting and busy time for all of us but we all learned a lot so that was good.

Keep in mind that these estates will be open for while and the guaranty funds will be handling claims for a while so just because you see seven in 2020 doesn't mean the guaranty systems aren't busy there are still some reinsurance claims open that date back to 2001. Assessments – those numbers are in billions and there have been up to $1.4 billion in member assessments in any given year right now we're down to about $400 million so it really varies and is importantly a post funded system meaning the guaranty funds don't collect the money from their members until they need the money to pay the claims so there is not a situation where you pay a certain amount of money every year whether there is insolvency activity or not. Mr. Schmelzer calls this just in time funding which is exactly what it is. Capacity - there is plenty of capacity and that slide is not illustrating the blue line as it should be way down on the bottom of the chart

as we only use a fraction of the capacity that's available for the system and I have another slide that will illustrate that better. Since 2001, total payouts have been about $23.4 billion and we've recovered about $17 billion from the insolvent estates and net assessments were $11 million so again there is plenty of money and we don't have much time today so if anyone has additional questions about assessment capacity please give us a call we are happy to talk at length about that.

You all wanted to know about captives and we at NCIGF don't know a whole lot about captives and that's because most states have language similar to what is in the DE law – "No captive insurance company shall be permitted to join or contribute financially to any plan, pool, association, or guaranty or insolvency fund in this State, nor shall any such captive insurance company, or any insured or affiliate thereof, receive any benefit from any such plan, pool, association or guaranty or insolvency fund for claims arising out of the operations of such captive insurance company." So generally we don't cover those programs there is an exception in GA for certain work comp programs that's one of the things I can talk at length about why that happened but there is no time for that today but it was an interesting situation. Ill now turn it over to Mr. Schmelzer to discuss future challenges.

Mr. Schmelzer stated that I wanted to also say thank you for the work you have done on guaranty funds over the last two years. You reauthorized your model law that we helped you write almost 20 years ago we appreciate that as that was a very big thing for NCIGF to have a national organization recognize what we did and how we did it there is also a National Association of Insurance Commissioners (NAIC) model we like both but we really like this one. Also the work you have done on insurance business transfers (IBTs) and divisions is very important and that's part of these future challenges that we are talking about. Ill now talk about COVID a little bit and you'll be glad to know and this was unknown at the outset how insurance would fair under the pandemic and what that would mean for the guaranty fund system and we were all concerned as it was an unknown situation but fortunately there were no failures of any extreme nature and certainly none that happened due to COVID and the guaranty fund system itself I'm pleased to say had absolutely no interruptions in service and as Ms. Cox mentioned just because there are a few number of insolvencies there is still a lot going on in guaranty funds and nobody stopped doing that work and if anything there was probably more work we were able to do just simply because we were able to recognize the challenges that we had so COVID was not an impact on the guaranty fund system and more important not on the insurance industry per se.

One of our biggest challenges is keeping the guaranty fund system in an always ready status. Title 2 of the Dodd-Frank act assigns the resolution of insurance companies of all sizes to the state guaranty fund system and to the state receivership system there is no distinguishing feature there that says in any way that the state system would not handle the failures in fact there is authorization for the Federal Deposit Insurance Corporation (FDIC) if the state insurance regulatory system doesn't move quickly enough to go ahead and petition for a company to be put in liquidation but the resolution would still take place in the states which means we have to always be ready and our members need enough staff and equipment and all the security necessary to handle whatever comes their way.

The system is very lean as it costs about $80 million a year to run the guaranty fund system. We have to be sure that our members are working smart that NCIGF is working

smart and that we are prepared to do the work we are statutorily assigned to do. We do have some issues in doing that however. One is security and data security as that is the most important objective that we have among several strategic objectives at the guaranty fund system as we spend an enormous mount of time working with our members and at NCIGF to be sure that our system is completely secure. All of these other things we have to do it wont matter if we aren't secure. The transition of data is probably the most critical issue facing the guaranty fund system and it works with the partnership with regulators. There needs to be a much earlier involvement as possible with insurance regulators and insurance receivers but on the regulator side so that if a company were to become impaired one way or another or go into supervision we would already have an understanding we don't want to be involved in the decision about a company going insolvent but what we do want to do is be prepared for a seamless transition of claims data into the guaranty funds and to the insurance receivers. Everything is digital now and you may think it makes it easier but it doesn't. Paper files some people will tell you they would much rather have but the internet pipe is only so big and you can only get so much info and so much is imaged so we need to have as much preparation as we possibly can and we think we're making progress on that as it's a change that's probably going to have to be statutory in some states to allow us to be able to do that.

New business models as we talked a little bit about IBTs and divisions and you are talking about that here. The insurance environment is very dynamic you know that but there are decisions that get made in insurance depts that sometimes you don't know how they are going to come out many years later and how it will affect an insurance company and we all want to be sure that the industry is doing what it needs to do to serve consumers and we need to make sure we do what we need to do to protect policyholders in the event that protection is necessary. Thank you I'm happy to answer any questions. Rep. Rowland thanked them for the presentation and thanked them for being a resource to NCOIL.

DEVELOPMENTS IN POST-DISASTER CLAIMS HANDLING LEGISLATION

Amy Bach, Executive Director of United Policyholders (UP), thanked the Committee for the opportunity to speak and share info with you. Rep. Pam Marsh, Chair of the Oregon House Committee on Energy and Environment, is with us so we are just going to jump right in. Our topic today is "improving disaster recovery through insurance reform legislation" and we are mindful of the time constraints today. Rep. Marsh stated I am happy to be here even in this virtual form. Ms. Bach stated that Rep. Marsh's district was heavily impacted by the 2020 wildfires and in addition to being chair of the energy and environment committee she has been vice chair of a special committee on wildfire recovery. She has been very hands on in her district with the impacted constituents and aggregating resources and a lot of her focus has been on assisting manufactured and mobile home residents. Of the 2,800 homes a very significant number were manufactured. Rep. Marsh stated that my district is in southern Oregon just across the California border and we were impacted by the fires that went through our state on Sep. 8 of last year and in my tiny legislative district that fire took 2,500 housing units and of those 1,500 were manufactured homes a total of 18 parks were largely or fully destroyed in that and that was significant because the manufactured homes are where a lot of our most vulnerable residents live – our elders, working class people and Latina and latinx population.

Ms. Bach stated that I have had the honor of presenting before NCOIL in the past and have been an insurance consumer advocate since 1984 and co founder of the national nonprofit UP and also active at the NAIC as a consumer rep and serve on the Federal Advisory Committee on Insurance (FACI) where I co-chair a protection gap subcommittee with a reinsurance exec. My organization is a 501(c)3 and we are celebrating our 30th year of service and through our roadmap to recovery program we connected with Rep. Marsh because we educate, support and survey disaster impacted communities and individuals and together we have done some education programs and also I helped out on the legislation because through advocacy and action programs we also support legislative and regulatory reforms that improve loss recovery and uphold the indemnification purpose of insurance. Ms. Bach asked Rep. Marsh to touch on the context and experience that led her to introduce the bill we are reviewing today.

Rep. Marsh stated that we recognize here in the west that wildfires are really our existential threat in the future but I realize that's not the case in ala parts of the country and many of the disasters that the Federal Emergency Management Agency (FEMA) has handled in the past are quite different like floods and hurricanes and they leave a community in different conditions. In the cases of these wildfires, what we had left was nothing. What we had left was carnage of debris and what that meant was that the entire community instead of doing any kind of repair and that's a condition FEMA more normally addresses this is all about an extended rebuilding process. We are a community that was already hard hit by a lack of construction workforce with the pandemic materials skyrocketed across the country probably all of you had heard about that from yourselves or constituents so we faced a situation where we were going to have to do widespread debris pickup in partnership with FEMA and were looking at significant delays in issuing permits and immediately people got their insurance policies and started to say oh my god I have one year to rebuild my house how am I possibly going to pull that off. Certainly under the best of conditions if your house burns down and you have house plans in your safety deposit box and your daughter in law is a contractor maybe you can rebuild in a year but with conditions we were facing with large spread disaster it was simply impossible. So it was from the very beginning of the disaster as our conditions unfolded that we realized our conditions really mandated a different approach in insurance policies and that initiated the legislation that we did as a result.

Ms. Bach stated that insurers application of depreciation is particularly problematic for manufactured homeowners. The bill does not address that but that is something I am throwing out there for your members because it is a significant consideration. You already heard some things on the next slide and we heard Rep. Marsh talk about the challenges of there being a lot of homes destroyed with limited resources but there is also the reality of that companies and independent adjusters are stretched thin after large scale disasters and training and experience varies and the use by insurers of Xactimate software to calculate their settlement offers on dwelling claims is a chronic source of dispute because builders price differently they don't use Xactimate. Underinsurance is also very prevalent so in addition to the concern that Rep. Marsh identified of people realizing that there was no way they could rebuild in a year and needing additional living expenses covered there is also this problem that Rep. Marsh and the legislature took aim at in the bill that we will review. It sort of builds on what we've tried to do in CA through regulation and tries to get insurers to do a better job at working with customers to insure dwellings to their true replacement value at the point of sale. Another reality in the lay of post wildfire land is that we have not really seen

insurers be willing to adopt across the board voluntarily special rules to expedite disaster claims and so we've seen some legislatures like CA, CO, OR through legislation compelling a certain amount of a disaster claim which is a little different from a one off and as you've heard from Rep. Marsh 12 months of additional living expenses is not enough for people to get them to where they can move back into a replacement home.

Ms. Bach stated that you can see that my organization part of what we do is these surveys and they document over and over that wildfire survivors are chronically underinsured so only 18% of people who lost their homes in last fall's CO wildfires said they had enough insurance to rebuild and then only 23% in CA so we definitely have a very severe problem on our hands which I have presented on to NAIC over the years and to NCOIL as well. It doesn't matter really where the disaster hits as dwellings are not adequately insured which I don't think is news to a lot of you but is compelling and the approach Rep. Marsh took in her bill I can discuss. The next slide is an illustration that 12 months is just not realistic to expect people to replace their dwelling after a wildfire and in fact one year after the fires in Paradise less than one third of the impacted people had been offered full settlement on their dwelling after one year. One last bit from our survey is when people have been asked what are your biggest sources of post wildfire stress insurance claims come up way too high so what we are looking to do and what Rep. Marsh did and we would like to see you all do in your states is to work with insurers either on a voluntary agreement basis or through legislation to reduce the stress and make the process not so challenging for overwhelmed and traumatized people who have lost everything.

What the OR legislature and CA has done and a little as well in CO is to extend policy deadlines to be a little more realistic and factor in the extraordinary circumstances to reduce the prevalence and impact of inadequate insurance to give survivors some flexibility to use policy benefits to replace their homes elsewhere which helps get people out of wildland urban interfaces (WUIs) and then we'd like to see more innovation reform in reducing the requirements that people list every single item in their medicine cabinet and their kitchen draw in order to settle their contents claims.

Rep. Marsh stated that part of her bill, HB 3272, was really to address the timelines that were involved with consumers holding insurance policies and those had to do with the rebuilding issue I mentioned earlier. Typically, people looked at their policies and found that they had one year to rebuild and the state asked insurers to extend and some did and to be clear many insurance companies were very helpful and people are praising them after their experience but that actually made it all the more difficult when you started to hear stories of insurance companies not really stepping up when they weren't obligated to. The heart of the bill is to extend the replacement timeline and the way the legislation reads is that now an individual whose home burns down in a single event so your house is the only house on the block that burns down you'll have up to two years to rebuild and you'll have the option with a one year limit of asking for two six month extensions so if you have extenuating circumstances and can't get a contract and materials aren't available you can extend for six months and then for another six months for a max of two years and in cases where an emergency has been declared you have a minimum of two years to rebuild and the option of two six month extensions so a total of three years again if you are facing extenuating circumstances and along with that we ask that living expenses in the case of an emergency situation be extended subject to the limits of the policy so that was really the heart and most important takeaway for most of the people we were responding to.

Rep. Marsh stated that the other benefits in the bill in terms of rebuilding in addition to the timeline were the ability to combine coverages so if you had a studio out back or one room accessory unit and you don't have enough coverage in your policy to rebuild your primary home you can combine the coverage and use that studio or other building in the construction of your primary home. That was an issue we are going to see come up in this case although this bill unfortunately is not retroactive and the cost of building and materials and construction and when you are competing a whole host of other people who have had losses those costs accelerate not unsurprisingly. The last piece of coverage was really to allow you to rebuild in that location where you are or to rebuild in a different location or to purchase a home in a different location as we found in some cases people just had to start their lives over again as they didn't have the psychological capability to stay or the logistical ability to work through a rebuild so they needed to buy someplace else and rebuild their lives and we made that possible with the legislation. Ms. Bach stated that I am hoping by presenting here today we are helping spark a national trend that all states allow these levels of flexibility as they don't cost insures more than they would otherwise have to pay if a homeowner rebuilt and they are practical. Ms. Bach asked Rep. Marsh if she tried to have her bill have retroactive application. Rep. Marsh stated that they were working with insurers and the department of insurance (DOI) and the DOI asked many insurers to voluntarily take on some of these policy changes and many did and we recognized that we needed to start at the beginning of a policy period so we didn't try to make it retroactive.

Ms. Bach stated to Rep. Marsh that the effort to try to reduce the frequency and severity of people finding out after the fact that their dwelling is not properly insured you took an approach that is somewhat similar to what CA has done which is to mandate that when an insurer does that replacement cost estimate at the point of sale that it be comprehensive and that it include the main cost drivers. CA lists them and the OR law basically just invites or gives the consumer the opportunity to get their insurer to do that estimate is that correct. Rep. Marsh stated that's correct and we can't obligate people to buy more coverage and we also know given what we've seen that every one of us should be calling our insurance company to figure out how far our coverage is to what we need so what we were trying to do is to simply spur thought about it and spur consumers to reach out to insurance companies before the disaster hits. Ms. Bach stated that we compared the OR law to the CA law and this PowerPoint will be available to everyone today. We've already reviewed all of the insurance and this slide is just to give you statutory references in the two states to compare as they are very similar in the approach which I think makes sense as its much easier for adjusters to deal with similar sets of rules in different sates so I think it would be very helpful for all wildfire prone states to have these flexibility rules in place and these extensions in place.

Rep. Marsh stated that I'll add a quick comment which is that I mentioned earlier that we worked with the DOI which got on board with the bill and the governor was supportive but we also had a really positive working relationship with reps form the industry and they didn't endorse the bill but they also agreed not to oppose it because I think they realize that if these are pragmatic reforms that really reflect the conditions we are seeing on the ground and it was a way for them to step up and do something good for consumers as part of that relationship. I think they deserve a lot of credit for being there when we needed them. Ms. Bach stated I think as Asm. Cooley knows from CA some of these reforms that got put into legislation started with a voluntary agreement that Cmsr. Poizner had negotiated many years ago and insurers found they could live with the

reforms so they proceeded to legislation. We tried that and the idea here is not to impose onerous requirements on insurers that are going to make it harder to do business particularly in light of their legitimate concerns of increased risk due to climate change so it's a good balance and is the right approach and this bill has a healthy balance.

Asm. Cooley sate that UP grew out of the Oakland hills firestorm of 1991 which was shocking at the time and now much has superseded and UP has been very active in CA since then. Ms. Bach stated its been our honor to work with you especially since I know you have a very deep understanding of insurance marketplace forces and that has been helpful.

Sen. Mary Felzkowski (WI) stated that my one concern and question is you are going in and legislating this and basically altering the insurance contract and saying you can include coverage a for coverage b and you are going to pay an additional up to 24 months of loss of use on a homeowners policy – are you at all concerned about the actuarial that goes along with that and whether companies are going to be able to sustain that in these situations or how do you address that issue. Ms. Bach stated that the OR bill doesn't mandate additional so much dollar amount as much as additional time so it doesn't say the insurer must provide a dollar amount they just have to make that dollar amount available for a longer amount of time. Also, insurers did not seem to have any problem adjusting to a whole series of reforms that were implemented in CA over the years by adjusting their rates and because it's not retroactive and primarily relates to giving the policyholder just more time and flexibility and not necessarily more money it doesn't seem like it's had a problematic impact on rates other than the problematic impact that all these wildfires are having. Rep. Marsh stated that it was very reassuring to know that CA had preceded us with these reforms and have been able to sustain them and sustain coverage as we also knew that many insurance companies offer one or another the reforms that we were proposing so what we were trying to do is establish a baseline across all companies so that there was really no question that a consumer would get adequate time to rebuild or to cover their expense or ability or rebuild in a different location but we know that insurance companies already do these things in many cases. And still even though wildfire loss is huge across the state the experience of loss is still quite minimal if you look at the full docket of insurance policy coverage so the importance of having adequate coverage for a person when they are at the worst moment of their lives and absolutely in crisis seemed much more compelling to the legislature than worrying about whether or not there would be some impact on price down the road and I would note that the legislation was highly bipartisan I'm not sure that we had a handful of legislators in opposition.

Rep. Matt Lehman (IN), NCOIL President, stated one concern I have and I don't know if you addressed it in Oregon is as a broker we already have a struggle to get people to insure at an adequate limit so you began your presentation by showing the number of people who were uninsured at that time of a loss. The majority of those I see today is that its their decision to underinsure and we push for higher limits and they choose lower limits because they think they are over insured until they have a loss. Does this not encourage underinsuring if I know I can simply pull my other coverages over if I need them because I think that would be a concern if I can take my coverage B of $30,000 and underinsure by $30,000 knowing that I'm going to get that extra $30,000. That kind of goes to the contract issue and disrupts that claim so I'm curious if that was addressed.

No one is forcing people to underinsure and if anything the carriers today are moving in the opposite direction of what I'm seeing in Indiana.

Rep. Marsh stated certainly getting people to get the right kind of coverage was an important goal for all of us and that was an important component of the bill to require insurance companies to offer consumers at every other renewal some basic info of what it would cost to replace their home. We did discuss with insurance companies and had a little bit of pushback on the question of combined coverage but the idea that someone would be so calculating as to think in the case of full wildfire when everything on my property is destroyed I'll be able to use that coverage from another building with the main building I think just doesn't hold water in terms of the consumer's approach to it I think there are very few consumers who are going to assume everything on their property is going to burn down in a wildlife more likely they are going to have a kitchen fire and their house is going to burn down and they are not going to have any combined coverage to draw upon in a case like that so when we sat down and talked it through with companies there just wasn't enough there to worry about.

Sen. Bob Hackett (OH) stated that it's not going to be retractive as you said so the insurance industry is paying premiums so if you expand coverages to allow for more coverages the premium is going to be expanded but they still have to get the premium increases through the Department of Insurance in CA so what has the experience has been has the DOI played hardball with them in CA? Asm. Cooley stated that definitely they played hardball and that's been a part of it is taking a lot of conversation back and forth. The change of CA to the elected insurance commissioner has impacted a lot of the regulatory environment and certainly the post disaster environment so it has been a challenging time and we actually had an insurance commissioner get in trouble because he crossed some lines he shouldn't have in terms of some post disaster conversations in terms of playing hardball but there is vigorous advocacy on both sides but it is often the case of once it gets resolved its been resolved fairly amicably in the legislature. Ms. Bach stated that my understanding is that 91% of the rate increase applications that have come in since the last campfire in Paradise have been approved so I think the process is working somewhat well for the insurers although not perfect of course as Asm. Cooley referenced.

UPDATE ON NCOIL FAIRNESS FOR RESPONSIBLE DRIVERS MODEL ACT (MODEL)

Rep. Rowland stated that Sen. Shawn Vedaa (ND), sponsor of the Model, will provide us with an update on where we are with the status and development of the Model. Sen. Vedaa stated thank you Mr. Chairman. I'll be very brief – I just wanted to provide the Committee with an update on this Model which is in your binders on page 329. As I stated to the Committee at its last meeting in April, the Model is intended to be viewed as the next step in support of "no-pay no-play laws" which NCOIL adopted a Resolution in support of in 2014. The Model, and the laws in the approximately 10 states that have similar laws, including my home state of North Dakota, prohibits uninsured drivers from collecting the benefits of a system in which they do not participate. Specifically, the Model - subject to certain exceptions - prohibits a person, or personal representative of a person, who was an uninsured motorist and who sustained bodily injury or property damage as the result of a motor vehicle accident from recovering non-economic damages for the person's bodily injury or property damage or death.

The discussion of the Model in Charleston generated a vigorous dialogue among Committee members and while such a dialogue is extremely healthy and is what our Committee meetings are intended for, I believe it rose to a level where it indicated that we are far from reaching the level of consensus needed to move the Model forward in a meaningful way. Accordingly, following the April meeting, I directed staff to research the relationship between the level of penalties for driving uninsured with a state's uninsured motorist population, as well as the cost of those penalties versus the cost of compliance, with an eye towards taking a step back and examining the overall issue of uninsured motorists knowingly driving uninsured. That research is before you. I will be discussing the research with staff to discuss what the next best steps are for the Model. So, for now, the Model and issue are on pause, so to speak, and I look forward to having them back on the agenda at the Committee's next meeting in November for an update. One query I propose for the Committee to consider is if the problem we're looking to address is reducing the percentage of the uninsured motorist population, should the statutory penalties for driving uninsured simply be increased? I ask that you consider that question between now and November and please reach out to me and staff with any suggestions or comments as to what the best path forward and approach is. Thank you, Mr. Chairman.

DISCUSSION ON WARRANTY LEGISLATIVE AND REGULATORY LANDSCAPE

Greg Mitchell, Esq., Chair of the Insurance Industry Group at Frost, Brown, Todd, LLC, stated that he is joined by Eric Arnum, Editor of Warranty Week, and they are privileged to provide an intro and overview of the warranty legislative and regulatory landscape which would be a very deep subject and we'll try and provide it at a level of understanding of consumer and market perspective. Just in simple terms and using perspective without picking on Apple here's an iPhone so with it comes a warranty and Apple provides an express limited warranty provided under the Uniform Commercial Code (UCC) which is a law in all of our respective states that provides for the manufacture and distribution channel of what the manufacturer distribution channel promises will be a performance and fitness for purpose of how that good product will operate once it's in the consumer or businesses' hands. What has evolved over a period of time has been the development of basically third parties that have looked at what's developed in the world of warranties and has developed additional services and benefits of which has been provided by third parties and we start to creep over in the world of insurance. What has developed in the regulatory landscape because it would very much be impractical in this world of insurance and insurance regulation in dealing with a service contract extended warranty with the full provisions of insurance. So back in approximately 1995 the NAIC with some industry development crated the first NAIC model act that basically provided a carve out of the definition of insurance so as we look across the landscape and in the slides we'll have an overview of state approaches a number of states adopted the model but a number of states have taken all kinds of different variations from IN which is done by bulletin a carve out of insurance to other states that have very in depth regulations and statutory provisions a lot of which are regulated by the DOI just like the insurance side so it runs the gamut but in principle it stands for its separately stated consideration and for a separate time period so there's a lot of creativity and benefit which consumer have by virtue of the development of what we refer to as extended warranties and service contracts.

What translates that kind of what we refer to as quasi insurance because of the carve out that changes that from an extended warranty or service contract regulated product to

a world of insurance so if we take that same element and we say Apple provides the warranty Apple actually provides their own extended warranty service contract so you can pay an additional statement of consideration by Apple of which they'll then cover across their warranty for different provisions that will fill the gaps of which the warranty doesn't cover that you can then do by extended warranty to provide additional benefits that you can as a consumer or small business want to include. If we add into the contractual language that the consumer/small business receives loss and theft we now switch it over to the world of insurance and all of these provisions really depend upon what is in that piece of paper that's handed over that's the world we live in of what are the details what are you saying and promising to your customers that will develop as to where it fits into this regulatory landscape.

So as we sort of break down where we fall from policymaker's decisions of where states have gone about on the warranty side an Original Equipment Manufacturer (OEM) your car manufacturer provides the warranty; your manufacturer refrigerator provides the warranty. Its two party and the consideration is part of that purchase of that good its simple and uniform. We come over to the world of extended warranty service contracts we now start to break down of where do we want to have financial responsibility; where do we want to have perhaps reserves set aside for what those future losses may be on those benefits you've promised in the future; where may you want to have disclosures provided to the consumer or small business; where may you want to have other regulatory provisions including a few states have adopted licensing of sellers so you can see it sort of runs from insurance light to getting really close to being regulated as an insurance product as would be referred to as primarily in CA and FL. And then we get over into the world of insurance where we start to add benefits that have and are triggered by fortuitous events that is risk dispersion and risk distribution where you are spreading that transfer of risk and providing benefits which are outside of the term of the extended service warranty contract and I have to caveat that because as the laws have developed and continue to develop down these different industries you start to see creep of what is allowed to be offered whether it's accidental damage from handling it's not the product it's simply you drop the iPhone in the toilet as may happen or other things where you start to pick that up in this middle regulatory silo versus what would be in some other considerations be considered to be an insurance product i.e. triggered by a fortuitous event I dropped it on the toilet and didn't expect it and maybe or maybe not I could have prevented it and you start to see a lot of evolution depending upon what state we're talking about down through that cycle.

So it really kind of breaks down into multiple cycles and Mr. Arnum will go into more about where we see the industry is and has evolved in substantial use and continual reception by the consuming public whether a consumer household or a small business into a couple of different channels one of which obviously is consumer products and for the most part there are regulated kind of in their own window and have different businesses that have arisen that support that part of the industry segment and may include Apple which could fall on the consumer side or on the spectrum of business to business side where a company may buy 100 iPhones or Samsung or pick your company that may do it and all of a sudden it's a business to business contract. Then you have really a whole different cycle in the home warranties and a number of states regulate that sperate from the consumer side and then a whole totally sperate industry really on the vehicle service contracts down through the OEM manufacturers like Toyota and Nissan and Porsche and others are going down through and now we're seeing a development of the industry like on the vehicle service contracts for previously owned

cars so it will be certified previously owned automobile and you'll put a warranty over the top of that and may then add and sell the consumer an additional extended warranty for separately stated consideration above and sperate from the purchase price so you can see you could have multiple products regulated differently and from the consumer's perspective they don't understand the backend and it's the front end of the regulation and policymaking decision that really depends upon kind of how everything is laid out and how effectively it's working.

Then we switch to we've seen a lot of development over the last decade of business to business where businesses as well as family households want to have basically holistic approaches to service. Let's just say I'm a big company and have a whole bunch of warehouses and I have a big HVAC system sitting on my roof and maybe I want outsource it and enter into a service contact with a company that will be responsible for making sure the HVAC on the warehouse operates efficiently and in use at all times so you can see how it will devolve into the world of business to business. On the area of business to business a number of states when they developed the model law there were footnotes or notes of drafting of where statutes simply carved out consumer products of where it totally carved out the entire area of service contracts so some areas in some states respectively still have the issue of the business to business could be considered to be an insurance product and it gets a little complex and it's the word we live in but it's one in which I think over the past year and a half as COVID indicated consumers are really relying upon products such as these getting the holistic approach, getting service and knowing what to do and what's covered and transferring the risk just like any other type of third party transfer.

This is just a general slide that talks about the overlay of players in the word of extended warranties. Same with warranties you have the manufacturer and the customer administrators similar to like a TPA on the insurance side in health insurance; sellers; obligors and some states refer to them as providers; and then this is also in the same world of insurance because when we talk about financial responsibility the states that have chosen to regulate and license there are varying degrees of financial security requirements which are present. We get to varying degrees of finical responsibility and a lot of sates have developed like IN used by bulletin which is if you have a contractual liability policy that is a policy of insurance that an insurer licensed admitted in some cases excess or surplus has issued that insurer will stand behind all of the contracts that the obligor provider has entered into then it will be carved out of that insurance regulation obviously that DOI will still regulate that contractual liability insurance policy and then the various forms of policy provisions whether its required to cover the first dollar that is the carrier will be on the hook at the beginning most states have where a carrier is responsible after they have attempted to have their service or repair or whatever was promised in the piece of paper covered by the obligor and if they don't after 60 days the carrier is responsible to pick up on the backend so the consumer small business actually gets covered. Other states have provisions such as a funded reserve account where you treat much like a reserve from an insurance company based on the ratios of how much funding reserves of contracts that are open and still in force. Others have various forms of deposit and reporting requirements. A number of states indicated here also require companies to file their terms and conditions either for review and approval so the agency will review those approve them if they comply with the regulatory structure in their state others it's file and use you file and it's on record it runs the gamut as you can see and this is just a high level overview kind of across the board it does not even deal with differences when you break down the variations between the consumer

product channel the home warranty channel and then with the vehicle service contract channel they each can take their own distinct regulatory differential depending upon what state we are talking about.

As I personally have seen over the evolution of development you know it's gone from the point of view of companies thinking its additional revenue source i.e. that additional consideration that is required to like companies like Apple, Microsoft and others where it really is customer service it's that providing the customer with very good benefit of making sure at all times whatever that product is they purchased will be operating and functioning to their benefit so it's looked at more of the overall consumer experience than it has with respect to normal I've paid, I've got a contract, I'll pay claims, but really is part of their overall business strategy.

Mr. Arnum stated I'm going to fly through a whole bunch of stats and numbers it may be like drinking out of a fire hose so I've provided copies of all slides to NCOIL staff so you can take home copies if you need to and you can call me if you need a deeper explanation. What we're looking at here is the dashboard for product warranties form 2003 to 2020 and I'll just give you the latest - warranty claims in 2020 were $23.8 billion that was down around 8% form 2019; warranty accrual fell only about 1% to $24.6 billion; warranty reserves which is the balance in the fund rose surprisingly to around $47.6 billion; the important number I want you to take away form here is in the lower left hand corner warranty products sold – this is the amount of products sold worldwide by the companies that report their warranty expenses it fell by $200 billion in 2020 to $1.7 trillion so that is the sector of the economy covered by product warranties. Now let's skip to extended warranties and service contracts and I should mention the slide before is based on SEC 10k and 10q financial reports and annual reports. Here we are looking at estimates form Warranty Week the industry newsletter but these estimates are also based on hard numbers coming from some of these companies and I'll show you some of them in a second. What I want to point out to you here is that we're looking at eight different sectors of the consumer portion that Mr. Mitchell was talking about.

In 2020, five were up and three were down. The ones that were up are consumer appliances, consumer electronics, mobile phones, home warranties and personal computers. The three that were down were vehicle service contracts, jewelry, and furniture. The total in 2020 spent by consumers on extended warranties in the U.S. was $47.7 billion that was down fractionally around 0.6% for 2019 but if I can jump back a second you can see clearly that 2019 was the peak for the industry so 2018 and 2017 it seems like we are on a plateau right now. Here are the shares a little hard to read but I'll tell you that vehicle service contracts it's the bulk of the industry that's $16.5 billion followed by mobile phones as Mr. Mitchell mentioned sold by mainly the phone companies that was around $11 billion and then consumer electronics is up at the top but a lot of that is also mobile phones so if you took the mobile phones sold by the companies and Best Buy and Apple and others and you added in the vehicle service contract you have about two thirds of the whole pie there. Jewelry was $2.6 billion, home warranty around $3 billion, appliances as sold by Sears or Home Depot or Lowes was $1.75 billion and furniture was $1.15 billion. These are my estimates for the industry for last year but the point I want to make to you is although it did fall a bit it was really only a little bit and what I'm about to show is numbers coming from the companies themselves. This is Lowes companies obviously a very large retailer of hardware, appliances and lumber and not so much electronics but lighting and power tools and gardening supplies they sell a whole lot of extended warranties as well and what you can

see there is for the second quarter of 2020 when we were all in lockdown they set a record for revenue in warranties of $167 million that's the second quarter of 2020 the months of May, June, July as it's a little staggered. They certainly didn't say anything about that in the press as we were all locked down but that's the truth straight out of their books.

America Home Shield is the 500 pound gorilla of the home warranty industry and they have almost half the market to themselves and that you see there is a gradually rising seasonal pattern and there's no mistake to it you're looking at 2016, 2017, 2018, 2019, and 2020 it's gradually rising and it's seasonal they have two good quarters followed by two slow quarters followed by two good quarters followed by two slow quarters it's a very clear pattern but the point I want to make is its gradually rising over time and there is no recession on that chart. American Home Shield in 2020 reported $1.47 billion in revenue in home warranties up 8% last year. Assurant Inc. a very large insurance company what we are looking at here is just the automotive part of Assurant and the jump from where they were to 2016/2017 to where they ended up in 2019/2020 was mainly because of the acquisition of the warranty group and the addition of that revenue which was very heavily automotive boosted them up the point where they are at now but once again you can see quarter by quarter going back 2.5 years it's gradually rising revenue leading to what you see in 2020 in the second half of 2020 again record revenue. This is net earned premium, fees and other in case you want to verify by looking at their financial statements. In 2020 they reported $3.7 billion in net earned premium and that was up 8% so as I said you can get copies of the slides and if you need deeper explanations about them please contact me or Mr. Mitchell.

Mr. Mitchell said we also provided to NCOIL staff some selected statutes and regulations just to provide some info of how different states handle these issues as well as the NAIC model.

Rep. Lehman stated that when we think of insurance it's a highly regulated industry obviously warranties are not because they are carved out – are we wanting to bring that in because there is a deficiency? Is this compliant driven? I bought a DVD holder and when I checked out they asked if I wanted a service plan for $3 and I said no it cost me $8 for the DVD player but the question is do I want the DOI regulating that so I think the question is where is the balance of warranties are not insurance products they dance that line but are we creating a regulatory format for products that really are just going to be more problematic to regulate than actually allow them to do what they have been doing.

Mr. Mitchell stated that personally we've been asked to provide a historical overview and I'll leave that to you as to where regulation should fall and as I mentioned IN has carved extended warranty contracts out by bulletin so I'll leave that to you if its appropriate and complaints in the IN market is probably a question for the DOI but some things are working very well and we've got different segments to the consumer segment to the vehicle segment to home warranty segment they all kind of have their own different players and different operations and back end a number of carriers have what we refer to as obligors they are actually on the contract themselves and they will have administrators so they will administer those so there is some sort of pulling in the insurance channel but I'll be the first to admit the regulation varies dramatically from state that do not regulate at all to states like IN by bulletin as long as you have a contractual liability policy in place to states like CA and FL that regulate it almost as

though it is an insurance product an in FL its regulated by the Officer of Insurance Regulation (OIR) and in CA it breaks down some is regulated by the CA DOI and the consumer side is regulated by the Bureau of Household Goods and Services so it varies and just with any product area and areas you'll have good players and bad players where that line of regulation is very complex - most of the time we look for guidance which is just that, guidance, so that when we are building products we try to build them in a compliant manner. I started 25 years ago when cell phones were a brick and built the first extended warranty coverage where we really didn't have law and so how do you tell businesses how do you develop something that consumers were asking for and then if you put loss and theft on it you couldn't have somebody that's a store cashier at a cell phone store get a P&C license it's not practical so the industry has evolved would it be helpful to have it evolve more and be more uniform, always – even though it's kind of against our interest as regulatory lawyers but we're trying to provide a good overlay so you all can perhaps have a good discussion on where the industry is and where its operating efficiently or not.

Mr. Arnum stated that I'd like to add that as my data showed you last year in a very high level fashion we sold less product but we sold more protection so therefore the value of protection must have increased in the eyes of the consumer and I think that consumers are smart enough to realize that a $3 protection plan on an $8 product is not a good value and in fact I'll do you one better I once saw a clock radio that was on sale for $19.95 and the extended warrant was $20 so a rational consumer would essentially buy two and put one on the shelf and when the other one breaks just take it down so I think consumers are aware of the value or lack of value. Mr. Mitchell stated the flip side is referencing my wife and children she wants someone to take care of something – is the AC working or not she wants a number to call. It's simple if someone can provide an extended warranty that will make sure it operates at all times especially as people are living there over the last year constantly that's very important so it's got a lot of consumer uptake and we've seen a lot of evolution of things that were about revenue generation to really more of the experience in providing really benefits and value to the consumer.

Rep. Steven Meskers (CT) said the comment about the clock radio was interesting and I guess I take the opposite point of view of its $19.95 and only lasts six months maybe I want a warranty and I think what the issue is with warranties has to be a claim and loss history on the performance because when you go to consumer products if you've got a shelf life on a washing machine and you buy a warranty for five years and the average life expectancy is 5.5 years it's just part of the profit margin so I think the claims loss history is probably something we need to think about whether it's in the insurance regulatory environment or the consumer protection environment if we don't collect data on losses and claims we're essentially offering a product to consumers for a warranty that's not needed because the product shelf life extends beyond what warranty we are purchasing and that may be a question of do you define it as consumer fraud or how do you build a rationale framework for warranty business as it sounds like there isn't one from what I'm hearing. Mr. Mitchell stated that from a legal side I'd say that's not necessarily always the case because the warranty that may have come with that appliance may be a year and within that year labor is only included for six months or 90 days and from my wife's perspective she wants to make sure it's working to the life expectancy it's her experience not the experience across the spectrum and that may be peace of mind she's willing to pay for.

Mr. Arnum said I'll give you two real life examples and hide the names so there are no innocent or guilty parties. A very large insurance company 20 years ago went into the used car extended warranty business and lost $500 million very quickly in a couple of years. A very large consumer retail electronic company started selling extended warranties on rear projection tv's the ones that had the big screen and projection was behind it well those bulbs burned out pretty quickly and those bulbs were $400 each so if you bought the extended warranty and kept on getting new bulbs the retailer took a bath and the losses were incredible so my point to you is that it is equally likely the retailer, obligor or administrator or insurance company will underprice the risk and therefore lose money it's not always a money making game sometime a money losing game because of the lack of info as you said. Consumers may not know the risk but sometimes the retailers don't either.

MEASURING RISK POST-COVID

David Dean, Chief Strategy Officer at Strategic Risk Officers, stated that we've developed an organization where we've morphed into a fintech company and developed in the space of enterprise risk mgmt. which is a big word and very confusing in the insurance industry and any industry for that matter but what we've done is developed a platform and put yourselves in the shoes of the CEO or BOD and you are trying to understand the landscape and risk of your organization in any industry. We have developed a methodology of aggregating the key data that you need to make big decisions and put guardrails on your risk. Also from a regulatory perspective this platform allows and helps those decision makers to stay in line with regulatory expectations so what I'm going to do so is show a short video that gives you that 30,000 foot view of what we do and with me is Gary Preysner, Partner at Ironwood Consulting Group who is a subject matter expert in enterprise risk mgmt.. in insurance and specific to P&C so he'll give a brief deep dive into how the system works but it's literally a click, click, click to get down to base data so we start at the 30,000 foot view and work down. Most systems in organizations start down and work from the bottom up and measure every blade of grass and bring that up so we start at the top and we advise and help the c suite execs on what the key metrics really are that they need to measure to keep themselves profitable and regulatory compliant so with that I'll play the video and turn it over to Mr. Preysner.

Following the video, Mr. Preysner stated that I consult primarily with insurance and reinsurance companies in the U.S. and really across the world I'm a CPCU an I'm really interested in enterprise risk mgmt. and worked on it for a long time. Over the course of a few days we've had a very interesting and rich set of presenters and I would start by asking a couple of questions – what I heard in terms of major themes are fintech, probably market disintermediation through things like Lemonade and sandboxes and the existential threat of long term care (LTC) on reserves of the industry and in addition to that everyone has said an enormous thing that we don't have our hands around yet is Environmental Social Governance (ESG). What are we doing on environmental and social and governance and how do they all work with each other and I can tell you that primary carriers are worrying about this not as much as they should small mutuals don't have the resources to think about it primarily its being driven by the multi state multi lines and right now the people who are far ahead from my perspective are actually international reinsurers and that's percolating down to U.S. reinsurers.

But looking at it I would ask you as regulators how are you going to manage the tradeoff between the U.N. convention on human trafficking, vendors, work relations, slave labor, palm oil, extracting industries, firearms, diversity and everything else considering that you are coming out of clearing clouds from COVID where you still have to think about pricing, underwriting, distribution and everything else you have to worry about with an insurance company. Those challenges are great for you if you are sitting in the c suite or if you are the CRO or CEO and you have to worry about Sarbanes-Oxley, about Own Risk and Solvency Assessment (ORSA) you have those problems every day and they are problems and your problems are the same – how do we protect our policyholders and how do we do that in a world that's getting more complex and how do you how to measure the tradeoffs and how do you know which risks to start with first and honestly I think you're seeing a lot of people almost throwing their arms up saying our plate was full and COVID gave us a bigger plate and it heaped more onto it - what do we do?

Watchtower is one of the things that we've developed that we think actually begins to address that issue. What does Watchtower do and I think there are three things – 1.) it creates a single source of truth in terms of your key risk indicators and the things that you have to look at. This is extremely important and most carriers have as we said little pools of data spreadsheets everywhere and many times no consistent definition of risk or key risk indicators from one unit to another and a tremendous amount of time is spent actually making sure that the definitions are common across the units or recasting them. I've heard so many people talk about even in this presentation about we're going to build a data lake or improve it. Clients, organizations, and regulators are drowning in data lakes and they don't need data lakes and more data they need the info that can be derived from that data to make decisions or to monitor progress. One thing that is very important is that we created a single source of truth. 2.) we've all gone through annual audits where we have to go thorough regulatory reviews and they typically in my experience about 25%/50% are actually involved in data collection before you actually get to an audit and what you want to audit. This streamlines that process and will probably cut it in half and provides standard executive level dashboards and most importantly within the carrier and regulators and rating agencies it provides a consistent framework by which organizations can build a risk culture and risk awareness in ways that simply they don't have now which is an enormously powerful thing for them and you.

I'll say that the software is not vaporware and not something like a gigantic system that's in somebody's eye or mind that hasn't been done. First of all, SRA was designed by bank regulators such as yourselves for reporting purposes for regulators. The point of the slide is to simply say its in between somewhere 40 and 50 banks being used every day to monitor risk and banks that go from less than $2 billion to more than $10 billion. It's a flexible system and basically designed for risk monitoring. Working with SRA I've taken my insurance expertise and we've built a piece of software specifically designed to help you monitor the risk first within the P&C organizations but then we'll also expand to life and health. So this system is proven and it works. What is it well if you look at the slide its essentially a model we've created that details the 13 or 14 major areas of risk and defines the subareas of risk and defines what the key risk indicators you need to look at to make sure the carries domiciled in your regulatory area are actually on track and if you look at it we can go through it but the specific P&C ones would be liquidity and solvency, pricing and underwriting, claims distribution, credit, legal regulatory, and reserving. All the others are ones that any org has to deal with so if you are using this for reinsurers or general agents strategic, reputational, operational, cyber, all the things that people are worrying about we've put together the risk indicators for them, the sub

indicators and we've given them ways that you can calibrate them qualitatively and quantitatively to see a.) where the org is and b.) we've provided definitions to show where the board would want to be so you actually see where you are as an org and you see where the gaps are.

This could be reported quarterly so when you do an annual audit you could do a quarterly audit. You come in and prioritize the area where you have gaps and prioritize where you don't have gaps and that gives you your audit plan and focuses you exactly on what you need to look at. This talks about a few of the banks there is not a lot to this slide I can go over it in detail I just want to go to the bottom statement from a bank that says overall it's made it easy for the mgmt. team to discuss risk in the same language - that to me is the critical portion of what this software does and what we as an industry need to be better at and that is discussing risk in the same language with the same definitions consistently across orgs and within the org. We had a discussion earlier on work comp and COVID and what was going on people said there is tremendous info and our experience is that is only step one after you have it together the development and journey you need to go on is basically take it and synthesize it into something useful and bring it forward we call that process turning actionable information into decision staring with hindsight. You see where you have a problem and look back to see what happened. When you have insight you begin the process of mitigating it and finally when you have foresight you begin the process of anticipating risk and monitoring it and improving performance proactively.

I'm not going to spend a lot of time on this except to say that orgs go through that hindsight, insight, foresight and development. We've put together on the next slide basically a very detailed set of definitions of exactly where carriers fit in this maturity journey and you can take this to any carrier and we have detailed definitions of each one and you can slot them in and see where they are and it will prioritize where they need to go and what they need to do with audits and how they need to satisfy what they need to do to get a world class risk enterprise mgmt. system. Overall, better bottom lines, better risk decisions, much easier regulatory reviews and much greater value this is incredibly important if we are going to get our hands on risk overall as an enterprise and industry as the risks become more sophisticated our monitoring mechanisms need to as well.

Mr. Dean stated that just as an anecdote over the last 60 days we have got calls from Google as their new CFO was with TD Ameritrade as their CRO and he used Watchtower at TD and when he went over to Google he brought it inside and they came back and said we had the best aggregation methodology for the CRO and board reporting they have ever seen so we now in the past 60 days are standing up Watchtower in Google so it's a huge product but that kind of validates in a big way where the product is and how valuable it is and how deep and wide it an go in an org so we're excited about that and we're excited about bringing it into the insurance industry and looking for better things to come. Thank you for the opportunity as we really appreciate it.

CONSIDERATION OF RE-ADOPTION OF MODEL LAW – PROPERTY/CASUALTY FLEX-RATING REGULATORY IMPROVEMENT MODEL ACT (ORIGINALLY ADOPTED 2/27/04; READOPTED 11/20/11; READOPTED 7/17/16)

Hearing no questions or comments, upon a motion made by Asm. Cooley and seconded by Rep. Lehman, the Committee voted without objection by way of a voice vote to re-adopt the Model.

ADJOURNMENT

Hearing no further business, upon a motion made by Asm. Cooley and seconded by Rep. Lehman, the Committee adjourned at 4:30 p.m.

Atlantic Corporate Center
2317 Route 34, Suite 2B
Manasquan, NJ 08726
732-201-4133
CHIEF EXECUTIVE OFFICER: Thomas B. Considine

National Council of Insurance Legislators (NCOIL)

Fairness for Responsible Drivers Model Act

***Sponsored by Sen. Shawn Vedaa (ND)**
***Draft as of March 16th, 2021.**
***To be ~~introduced and discussed~~ referenced during the Property & Casualty Insurance Committee on November 19, 2021~~April 18, 2021.~~**

Table of Contents

Section 1. Title

This Act shall be known and cited as the "[State] Fairness for Responsible Drivers Act."

Section 2. Application

This Act applies to a civil action brought to recover damages for injury to or the death of a person, or damage to property, resulting from a motor vehicle accident.

Section 3. Definitions

(A) "Noneconomic damages" means costs for the following:

(1) Physical and emotional pain and suffering.

(2) Physical impairment.

(3) Emotional distress.

(4) Mental anguish.

(5) Loss of enjoyment.

(6) Loss of companionship, services, and consortium.

(7) Any other nonpecuniary loss proximately caused by a motor vehicle accident.

(B) The term “Noneconomic damages” does not include costs for the following:

(1) Treatment and rehabilitation.

(2) Medical expenses.

(3) Loss of economic or educational potential.

(4) Loss of productivity.

(5) Absenteeism.

(6) Support expenses.

(7) Accidents or injury.

(8) Any other pecuniary loss proximately caused by a motor vehicle accident.

Section 4. Prohibition on Recovery of Noneconomic Damages

(A) A person who was an uninsured motorist and who sustained bodily injury or property damage as the result of a motor vehicle accident may not recover noneconomic damages for the person's bodily injury or property damage.

(B) The personal representative of a person who was an uninsured motorist and who died as the result of a motor vehicle accident may not recover noneconomic damages under [insert citation to state wrongful death statute] for the person's death.

(C) The provisions of this Section shall not apply to an uninsured motorist who at the time of the automobile accident has failed to maintain coverage for a period of 45 days or less and who had maintained continuous coverage for at least one year immediately prior to such failure to maintain coverage.

Section 5. Exceptions

The prohibition against the recovery of noneconomic damages in Section 4 does not apply if the person who is liable for the injury, damage or death:

(A) was driving while under the influence of an alcoholic beverage or controlled substance;

(B) acted intentionally, recklessly, or with gross negligence;

(C) fled from the scene of the accident; or

(D) was acting in furtherance of an offense or in immediate flight from an offense that constitutes a felony.

Section 6. Effective Date

This Act shall take effect _____.

ARTICLES OF INCORPORATION & BYLAWS REVISION COMMITTEE MATERIALS

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
ARTICLES OF ORGANIZATION & BYLAWS REVISION COMMITTEE
INTERIM COMMITTEE MEETING
OCTOBER 8, 2021
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Articles of Organization & Bylaws Revision Committee held an interim meeting via Zoom on Friday, October 8, 2021 at 12:00 P.M. (EST)

Representative Matt Lehman of Indiana, NCOIL President, presided.

Other members of the Committee present were:

Rep. Joe Fischer (KY)
Sen. Shawn Vedaa (ND)

Other legislators present were:

Sen. George Lang (OH)

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO
Will Melofchik, NCOIL General Counsel

QUORUM

Upon a Motion made by Rep. Joe Fischer (KY), NCOIL Secretary, and seconded by Rep. Lehman, the Committee voted without objection by way of a voice vote to waive the quorum requirement.

INTRODUCTORY REMARKS

Sen. Shawn Vedaa (ND), Chair of the Committee, had technical difficulties joining the Zoom meeting and ended up joining late. Accordingly, Rep. Lehman presided over the meeting in order to avoid delays in conducting Committee business. Rep. Lehman thanked everyone for joining the meeting as he acknowledged everyone's busy schedules.

Before going any further, Rep. Lehman made a few marks about the agenda and the format for the meeting. Generally, NCOIL staff, in consultation with the Chair of this Committee, reviews NCOIL's articles of organization and bylaws each year to determine if any changes should be made. Some fairly significant changes were made last year to address the realities of conducting business in a global pandemic.

The changes being proposed this year are fairly minor and are being proposed to both continue the organization on a path of improvement, and formally recognize current practices within the organization.

That brings us to the format of today's meeting – everyone should have the proposed amendments. Rep. Lehman stated that he will go through each proposed amendment and then open it up for comments and/or questions from the legislators first, followed by interested persons. The Committee will then meet in Scottsdale at the NCOIL Annual Meeting to formally consider the amendments, and if adopted, will then be sent to the Executive Committee for final adoption at the conclusion of the Annual Meeting.

DISCUSSION ON PROPOSED AMENDMENTS TO NCOIL ARTICLES OF ORGANIZATION AND BYLAWS

The first proposed amendment is in Section 3(B) of the Articles of Organization at the end of page 1. The second sentence of that section is proposed to be deleted. The reasoning behind this is to address the situation of a state that hasn't paid dues in let's say five years, but then decides to renew its status as a Contributing State. Under a strict reading of this section, that state would be required to pay all of the previously billed dues in order to be in good standing, as opposed to just paying the one year's worth of dues to re-join as a Contributing State. That makes it virtually impractical to recruit lapsed Contributing States to return and, frankly, is not the way the organization conducts business. Hearing no questions from legislators or interested persons, Rep. Lehman proceeded.

The next proposed amendment is in Section 3(B)(10) of the bylaws on page 6. The language "if she or he has an opponent for the position" is proposed to be added to the end of the last sentence in that section.

The reasoning behind this is to ensure that recusals from Nominating Committee deliberations are required only when appropriate. For example, when the Nominating Committee meets at the Annual Meeting, technically the existing officers seeking to advance in their service through the active chairs are candidates for an officer position, in addition to the legislator seeking to start their service as an officer.

Under the current language of this section, certain Nominating Committee members would therefore have to decide whether to recuse themselves even though they are only advancing in their officer service with no opponents. Rep. Lehman stated that in conversations with staff, he, Sen. Vedaa, and staff agreed that adding the proposed language makes sense to avoid any unnecessary recusals while maintaining the spirit and intent of this section. Hearing no questions or comments from legislators or interested persons, Rep. Lehman proceeded.

The next proposed amendment appears on the same page – Section(3)(B)(11) is proposed to be deleted which sets out the makeup and purpose of a Business Planning Committee.

The reasoning behind this is that since Indiana Senator Travis Holdman was NCOIL President in 2016, which also coincided with Commissioner Considine's arrival as NCOIL CEO, all of the functions of the Business Planning Committee as set out in the bylaws have been carried out by the Executive Committee, which has worked well. Rep. Lehman stated that he does not believe the Business Planning Committee has ever met by itself and conducted any business since 2016. The Committee is always just merged with the meeting of the Executive Committee at the conclusion of the national conferences which is really just a matter of following past practices – it's the Executive

Committee that is conducting the official business during those meetings. Hearing no questions or comments from legislators or interested persons, Rep. Lehman proceeded.

The next proposed amendment also appears on the same page – Section (3)(C) is proposed to be amended by adding the language "however, no legislator shall serve as Chair of any one committee for more than three (3) consecutive years." Rep. Lehman noted that he would like to add an amendment to this language to make clear that this amendment, if adopted, would apply at the beginning of next year so that current chairs would not be affected.

Accordingly, the amendment would read "however, beginning in 2022, no legislator shall serve as Chair of any one committee for more than three (3) consecutive years." The reasoning behind this is to simply facilitate a wider range of legislators Chairing a committee and to avoid having a legislator feel that they "own" a committee due to their extensive consecutive years of service as Chair.

Jeff Klein, Of Counsel, McIntyre & Lemon, PLLC, asked if that applies to Vice Chairs as well. Rep. Lehman stated that the intent is for it to apply only to Chairs.

There were no other questions or comments from legislators or interested persons.

Rep. Lehman thanked everyone for joining and stated that he looks forward to seeing everyone in Scottsdale.

ADJOURNMENT

Upon a Motion made by Rep. Fischer and seconded by Rep. Lehman, the Committee adjourned at 12:30 p.m.

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
ARTICLES OF ORGANIZATION
AND
BYLAWS

ARTICLES OF ORGANIZATION

PREAMBLE

We, duly elected representatives of the People to the Legislatures of the 50 sovereign States and territories of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, being concerned with the economic and social importance of insurance to our constituents, to the peoples of the States, to all Americans, and to the enterprises and economic resources of our nation and to its strength in world trade and commerce, and seeking a more effective exchange of insurance information among the legislatures of the States, consumers, and other concerned parties; and seeking to provide a forum for legislators to resolve and communicate their positions on insurance and related issues on a State-by-State basis, do hereby proclaim the need for creating and maintaining the resources and capacity of State legislatures to deal with insurance legislation and regulation.

I. NAME

The name of the organization shall be the National Council of Insurance Legislators (hereinafter "NCOIL.")

II. PURPOSE

The general purpose of NCOIL is to advance the knowledge and effectiveness of legislators and legislatures when dealing with matters pertaining to insurance law, participate in the formulation of model legislation addressing insurance and financial services issues, serve as a clearing house for information, reaffirm and advocate for the traditional and proper primacy of the States in the regulation of insurance, prepare special studies on insurance or insurance legislation, disseminate educational materials, communicate positions adopted by NCOIL, and any other activities that will promote the general purposes of NCOIL. These purposes may also extend into these same activities in the other areas of financial services, over which the vast majority of committees of insurance jurisdiction in the legislatures of the 50 states also have oversight.

III. MEMBERSHIP

A. General Membership shall be afforded to all States and territories of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

B. General Members who remit to NCOIL annual dues (which shall not be prorated) in an amount fixed by the Executive Committee shall be considered to be Contributing States. ~~In order to remain in good standing as a Contributing State, a General Member must pay all dues previously billed by the end of that General Member's state's fiscal year.~~

C. Each General Member and Contributing State shall be represented by its legislators who are permitted to attend NCOIL meetings and seminars.

D. The Executive Committee may, at any regular meeting, confer the title of "Honorary Member" on any individual who has served in the legislature of a General Member but is no longer a member of the legislature, and who the Executive Committee wishes to recognize for outstanding service to NCOIL, and all registration fees shall be waived for a person so titled, unless such person is employed in or providing services to the insurance industry, in which case no such waiver shall be provided.

E. The Executive Committee of NCOIL shall, in accord with the "Purpose" as stated in Section II of the Articles of Organization, offer affiliate non-voting memberships to comparable legislative organizations in non-United States jurisdictions.

IV. MEETINGS/VOTING

A. NCOIL shall meet at times and places designated by the Executive Committee. Special meetings may be called by the President and also shall be called if requested by ten or more members of the Executive Committee.

B. At any meeting of NCOIL, each Committee member shall be entitled to vote on measures before their Committee.

C. A majority vote of those Committee members present and voting shall constitute the requisite vote necessary on measures before their Committee.

D. Voting by proxies shall not be permitted.

V. OFFICERS/EXECUTIVE COMMITTEE

A. The officers of NCOIL shall consist of the following six (6) officers: a President, Vice President, Secretary, Treasurer, and two Immediate Past Presidents. No person shall be elected as an officer of NCOIL who is not a member of the Executive Committee.

B. The Executive Committee shall consist of the six (6) officers, (as stated in Article V, Section A) and at least one (1) and not more than four (4) representatives of each Contributing State of NCOIL. New members of NCOIL Contributing States shall be elected by a majority of the Executive Committee Members. Notwithstanding any other provision of the NCOIL Articles of Organization or Bylaws, the chair of the committee responsible for insurance legislation in each legislative house of each Contributing State shall automatically, by the nature of his or her office, be a voting member of the Executive Committee at his or her first meeting. A state committee chair from a Contributing State must attend the Executive Committee meeting at his or her first NCOIL conference to be recognized as a new Executive Committee member. Past Presidents who are still state legislators shall be voting, ex-officio members of the Executive Committee and shall not constitute a representative of a member State. The President shall not constitute a representative of his state during his term.

C. There may be a Parliamentarian appointed by the President.

D. In addition to the representatives of each Contributing State, the chairs of all NCOIL standing committees, who are not members of the Executive Committee, shall become members of the Executive Committee and shall continue to be members of the Executive Committee as long as they remain as chairs.

E. The Officers of the Executive Committee shall be elected at the annual meeting of NCOIL. Members of the Executive Committee shall be elected at any meeting of the Executive Committee.

F. Persons elected as officers or members of the Executive Committee must be representatives of Contributing States in good standing at the time of their election. The office of an officer or of an Executive Committee member shall be vacant if the member state of which such person is a Legislator ceases to be a Contributing State in good standing, or if the person shall no longer serve in the Legislature.

G. A majority vote of those present and voting at a meeting of the Executive Committee shall constitute the requisite vote necessary to decide any proposition except as otherwise specified in these Articles of Organization.

H. Except as stated in Article V, Section B, A representative of a Contributing State must attend two meetings prior to being considered for membership on the Executive Committee.

I. Each Executive Committee Member must attend in person at least one Executive Committee meeting annually, or be excused by the President for good cause shown, or his/her executive committee membership will terminate automatically.

VI. DUTIES OF OFFICERS AND THE EXECUTIVE COMMITTEE

A. The President shall be the highest ranking officer in the NCOIL corporate structure. She or he shall direct the general supervision of the business and affairs of NCOIL, see that all orders and resolutions of the Executive Committee are carried into effect, perform all duties incident to the office of President, perform the usual duties of the presiding officer at the meetings of NCOIL, preside over meetings of the Executive Committee, and appoint Chairpersons of all committees and members of committees in accordance with NCOIL Bylaws and perform such other duties as are provided in the Bylaws.

B. The Vice President shall chair committees and meetings chaired by the President in the absence of the President and shall perform such other duties as are assigned him/her by the President and the Bylaws.

C. The Treasurer shall be entrusted with the receipt, care and disbursement of funds of NCOIL, provided however, that if the Executive Committee shall appoint an Executive Director or CEO, the Treasurer shall coordinate and work with the that appointee in those duties.

D. The Secretary shall have charge of all correspondence to and from NCOIL, manage records of meetings including preparation of the minutes, provided, however, that if

the Executive Committee shall appoint an Executive Director or CEO, the Secretary shall coordinate and work with that appointee in those duties.

E. The Executive Committee shall have charge of the management of NCOIL and the direction of its activities. The President shall fill vacancies in the offices of Committee Chairs between annual meetings. The Executive Committee may appoint any individual or organization to function, at its discretion, as Chief Executive Officer or Executive Director. Pursuant to these duties, the Officers, in consultation with appropriate Committee Chairs as needed, shall have, between meetings of NCOIL, the ability to make temporary decisions on behalf of NCOIL pending Executive Committee approval.

VII. AMENDMENTS

These Articles of Organization may be amended or repealed at any meeting of the Executive Committee by a favorable vote of two-thirds of the members present and voting, provided however, that notice and text of any proposed amendments shall be given in summary form to the NCOIL Chief Executive Officer or Executive Director at least thirty (30) days prior to the date of that meeting in accordance with the NCOIL 30-day rule for submission of documents to NCOIL for approval or disapproval, as stated in NCOIL Bylaws, Section III. G. Amendments shall become effective immediately upon adoption unless otherwise provided therein.

VIII. REASONABLE DEPARTURE FROM ARTICLES OF ORGANIZATION

In the event of any emergency resulting from a military or terrorist attack, widespread pandemic, or similar disaster resulting in the declaration of a state of emergency (or similar declaration) by Federal or State officials, reasonable departure from these Articles of Organization shall be permitted upon the Officers and Executive Committee declaring that such action is warranted.

BYLAWS

I. QUORUM

A quorum for any meeting of any committee of NCOIL consists of forty percent (40%) of such members of said committee's roster; however, those members of the committee present may reduce the required quorum percentage for good cause as long as they are meeting with twenty four (24) hours notice to all members with said notice setting forth the date, time and place of such meeting

II. VOTING

A. Voting at meetings of the Executive Committee or any other Committee, whether in person, virtual, or telephonic, shall be by voice vote except that a roll call vote shall be taken at the direction of the Chair or upon the request of a member of that committee in instances where there are dissenting votes.

B. Written Consent in Lieu of Meeting:

1. A decision on any matter previously discussed by the Committee voting, with an opportunity for public comment, and evidenced by the consent in writing (including electronic) of a two-thirds super-majority vote of any Committee shall be as valid as if it had been decided at a duly called and held meeting of that Committee. Each decision consented to in writing may be in counterparts, which together shall be deemed to constitute one decision.

2. Unanimous Consent on any matter previously discussed by the Committee voting, with an opportunity for public comment, as achieved by the lack of objection to a duly valid notice to all Committee members shall also be as valid as if it had been decided at a duly called and held meeting of that Committee.

III. COMMITTEES

A. There shall be an Executive Committee which shall meet at each of the three yearly NCOIL conferences or at the call of the President or upon the written request of ten or more members thereof. Notice shall be given to each member of the Executive Committee setting forth the date, time and place of such meeting.

B. Standing Committees of NCOIL shall be:

1. A Joint State-Federal Relations and International Insurance Issues Committee, consisting of a minimum of seven (7) members with responsibility for representing NCOIL in matters respecting State-Federal relations and international issues related to insurance and coordinating activities of NCOIL relating to Congressional or Federal agency action affecting insurance and the State regulation thereof.

2. A Workers' Compensation Insurance Committee, consisting of a minimum of seven (7) members with responsibility for representing NCOIL in matters respecting workers' compensation insurance.

3. A Property-Casualty Insurance Committee, consisting of a minimum of seven (7) members with responsibility for representing NCOIL in matters respecting property casualty insurance.

4. A Health Insurance and Long-Term Care Issues Committee, consisting of a minimum of seven (7) members with responsibility for representing NCOIL in matters respecting health insurance and long-term care.

5. A Life Insurance & Financial Planning Committee, consisting of a minimum of seven (7) members with responsibility for representing NCOIL in matters respecting life insurance and financial planning.

6. A Financial Services & Multi-Lines Issues Committee, consisting of a minimum of seven (7) members with responsibility for representing NCOIL in matters respecting financial services and matters which cross multiple lines of insurance.

7. An Audit Committee, consisting of a minimum of three (3) members and chaired by the Vice President with the responsibility for arranging for and reviewing the audits of NCOIL funds and making recommendations to the Executive Committee

with respect to procedures relating thereto. The Treasurer shall be a non-voting, ex-officio member. The Treasurer may vote if the Executive Committee appoints a Chief Executive Officer or Executive Director under Article VI, E of the Articles of Organization.

8. An Articles of Organization and Bylaws Revision Committee, consisting of at least seven (7) members appointed by the President with the responsibility for reviewing the Articles of Organization and Bylaws of NCOIL at each annual meeting.

9. A Budget Committee, consisting of a minimum of seven (7) members appointed by the President and chaired by the Treasurer with the responsibility of developing annual budget proposals pursuant to the process enumerated in these Bylaws. The Treasurer may vote if the Executive Committee appoints a Chief Executive Officer or Executive Director under Articles VI, E of the Articles of Organization.

10. A Nominating Committee, consisting of all NCOIL past presidents, the current NCOIL president, and current standing committee chairs with one year or more of service as a standing committee chair that shall interview potential officers for the upcoming year, report nominations for officers to the annual meeting of NCOIL, and reconvene when there becomes a vacancy among the officers in order to nominate a replacement. A Nominating Committee member wishing to be a candidate for an officer shall recuse herself or himself from Nominating Committee participation if she or he has an opponent for the position.

~~11. A Business Planning Committee, consisting of a minimum of seven (7) members appointed by the President with responsibility for membership, site selection, revenue and legislator participation in NCOIL activities and programs.~~

C. The Chair and Vice Chair of any standing or special committee shall be appointed by the President and shall serve at the will of the President. However, beginning in 2022, no legislator shall serve as Chair of any one committee for more than three (3) consecutive years. Only members of Contributing States in good standing are eligible to be Chairs or, Vice Chairs of any standing or special committee. Legislators from Member States may sign up for Committees one (1) through seven (7) listed above.

D. The Chair of any Committee with the approval of the President may appoint a chair and members of task forces and subcommittees to assist in the work of NCOIL. Only members of Contributing States in good standing are eligible for appointment as a chair of a task force or subcommittee. A task force or subcommittee shall continue in existence until it has accomplished the purposes for which it was created or until the next annual meeting of NCOIL, whichever occurs earlier.

E. All Standing Committees, except the Nominating Committee, shall be continuing committees and the members thereof shall serve one-year terms or until their successors are appointed.

1. Standing Committees shall be open to all NCOIL Member Legislators during an Open Registration period. At the Annual Meeting each year, Standing Committee Registration Forms for the upcoming year shall be available in the registration area, on which NCOIL Member Legislators shall register for the Standing

Committees on which they will serve in the upcoming year, whether or not they currently serve on those committees.

2. Standing Committee Open Registration shall remain so until January 15th of the year of committee service. In the period after the Annual Meeting through January 15th NCOIL Member Legislators wishing to serve on Standing Committees but who had not registered during the Annual Meeting shall send an e-mail or letter to the NCOIL Chief Executive Officer or Executive Director stating the Standing Committee(s) on which she or he will serve.

3. From January 16th through the remainder of the year, NCOIL Member Legislators wishing to serve on Standing Committees shall send an e-mail or letter to the NCOIL Chief Executive Officer or Executive Director stating the Standing Committee(s) on which she or he wishes to serve, and the NCOIL Chief Executive Officer or Executive Director will present the request to either the Standing Committee Chair or the NCOIL President for Appointment.

F. Special Committees may be created by NCOIL at the annual meeting of NCOIL, by the Executive Committee at any meeting of the Executive Committee, or by the President between meetings of the Executive Committee and of NCOIL. Any action creating a Special Committee shall specify its size and duties, and may specify the manner of appointment of members thereof. A Special Committee shall continue in existence until it has accomplished the purposes for which it was created or until the next annual meeting of NCOIL, whichever occurs earlier.

G. 1. Any resolution or other document submitted to NCOIL for its approval or disapproval shall be submitted and sponsored by a legislator to NCOIL at least 30 days prior to the next scheduled NCOIL Conference or Annual Meeting. If a document or substantive amendment to a document is not submitted prior to the 30-day deadline, it shall be subject to a two-thirds vote for Committee consideration and a separate two-thirds vote for adoption. This section is intended to provide advance notice of the matters and items on which NCOIL will vote; it is not intended to limit germane amendments that arise during a discussion. Such germane amendments shall not trigger a supermajority vote.

2. Notwithstanding the existence of the requirement that any resolutions or documents be submitted to NCOIL at least 30 days prior to the next scheduled NCOIL Conference or Annual Meeting, such documents may pass through committees to the Executive Committee at a duly called meeting of the Executive Committee. Any resolution or other document properly considered and adopted by an NCOIL Committee shall be referred to the Executive Committee for its consideration and vote. If adopted by the Executive Committee such resolution or other document shall be considered the official NCOIL position on such matter covered.

H. Members of the committee responsible for insurance legislation in each legislative house of each Member state shall be a voting member at his or her first NCOIL conference in meetings of standing committees that he or she has joined.

I. Legislators from Member states who are not members of state committees responsible for insurance legislation shall be eligible to vote on a standing committee of which he or she is a member at her or his second NCOIL conference.

J. NCOIL meetings are open meetings except those involving discussions of the general reputation and character or professional competence of an individual; the legal ramifications of threatened or pending litigation; security issues; price of real estate or professional transactions; and matters involving a trade secret.

IV. FINANCES

The fiscal year of NCOIL shall commence on January 1 of each year and end on December 31 of the same year.

A. The Chief Executive Officer or Executive Director shall submit to the Executive Committee a proposed budget for the ensuing fiscal year 10 days before the annual meeting of NCOIL. The Executive Committee shall have the power to approve, modify or reject, in whole or in part, the budget.

B. The Executive Committee at the annual meeting of NCOIL shall adopt a budget for the ensuing fiscal year.

C. During the fiscal year, the Executive Committee may provide for an increase or decrease of an appropriation. Such increase or decrease shall only be upon the certification by the Committee of the need thereof.

D. The moneys budgeted pursuant to these Bylaws may include money for the retention of staff, the reimbursement of expenses of staff, and the expenses of Legislators for activities on behalf of NCOIL other than expenses of attending regularly scheduled NCOIL meetings.

E. Checks drawn for expenditures of less than one thousand, five hundred ($1,500) dollars shall be signed by the Chief Executive Officer or Executive Director who shall submit a monthly report of all such checks to the President of NCOIL. No more than one such check shall be paid for any one purpose without the prior express written consent of the President. All other checks drawn upon the funds of NCOIL shall be signed by both the Chief Executive Officer or Executive Director and either the President or Vice President. Notwithstanding the foregoing sentence, the NCOIL Officers may approve a system they deem sufficiently secure whereby the NCOIL President approves in writing expenditures other than by the physical signing of the check. Such system shall be endorsed by NCOIL's outside auditor.

F. The Executive Committee shall, at the annual meeting of NCOIL, select an independent auditor who shall review NCOIL's books and accounts for the current fiscal year. The auditor shall submit its report to the Audit Committee by June 30 of the next calendar year. The Audit Committee shall submit its report at the next succeeding meeting of the Executive Committee.

G. In the event that NCOIL shall, for any reason, discontinue its activities and cease to function, any monies remaining in its possession or to its credit after the payment of outstanding debts and obligations shall be distributed in equal shares to the Contributing States of NCOIL in good standing at the time of distribution.

V. RULES OF PROCEDURE

A. Each model act adopted by NCOIL shall be reviewed by the Committee of original reference every five (5) years. The respective Committee shall vote to readopt the

model act for an additional five (5) years, readopt the model act for an interim period to allow for additional study or drafting, amend and readopt the model act, or allow the model act to "sunset." Readopted models shall be sent to the Executive Committee for final adoption.

B. The NCOIL committees shall review previously adopted NCOIL model laws in order to provide an appropriate sunset schedule. Such documents shall be reviewed in the following manner: Spring Meeting shall be Life Insurance & Financial Planning Committee and the Health and Long-Term Care Issues Committee. Summer Meeting shall be Workers' Compensation Insurance Committee and Property-Casualty Insurance Committee. The Annual Meeting shall be the Joint State-Federal Relations and International Insurance Issues Committee, Financial Services & Multi-Lines Issues Committee, and Executive Committee. Model laws shall sunset every five (5) years within the Committee. Committees shall have the authority to extend the model laws from meeting to meeting.

C. In any issue not covered by the Articles or Bylaws, Robert's Rules of Order shall be the standard authority.

VI. AMENDMENTS

These Bylaws may be amended or repealed at any meeting of the Executive Committee by a favorable vote of two-thirds of the members present and voting, provided however, that notice and text of any proposed amendments shall be given in summary form to the NCOIL Chief Executive Officer or Executive Director at least thirty (30) days prior to the date of that meeting in accordance with the NCOIL 30-day rule for submission of documents to NCOIL for approval or disapproval, as stated in Section III.G of the Bylaws. Amendments shall become effective immediately upon adoption unless otherwise provided therein.

VII. REASONABLE DEPARTURE FROM BYLAWS

In the event of any emergency resulting from a military or terrorist attack, widespread pandemic, or similar disaster resulting in the declaration of a state of emergency (or similar declaration) by Federal or State officials, reasonable departure from these Bylaws shall be permitted upon the Officers and Executive Committee declaring that such action is warranted.

ARTICLES OF ORGANIZATION/BYLAWS AMENDMENTS

Adopted 4th Annual Meeting, San Francisco, November 28, 1972;
Amended 10th Annual Meeting, Detroit, November 14, 1978;
Amended 11th Annual Meeting, Charleston, November 14, 1979;
Amended 12th Annual Meeting, San Antonio, November 22, 1980;
Amended 16th Annual Meeting, Little Rock, November 17, 1984;
Amended 17th Annual Meeting, Phoenix, November 24, 1985;
Amended 18th Annual Meeting, Nashville, November 16, 1986;
Amended 19th Annual Meeting, Palm Springs, November 18, 1987;
Amended 23rd Annual Meeting, Scottsdale, November 20, 1991;
Amended 24th Annual Meeting, Charleston, November 18, 1992;
Amended 26th Annual Meeting, New York City, November 13, 1994;

Amended 27th Annual Meeting, San Francisco, November 11, 1995;
Amended 28th Annual Meeting, Austin, Texas, November 20, 1996;
Amended 30th Annual Meeting, San Diego, California, November 21, 1998;
Amended 31st Annual Meeting, Orlando, Florida, November 19, 1999;
Amended Spring Meeting, San Francisco, California, February 25, 2000;
Amended 32nd Annual Meeting, New Orleans, Louisiana, November 16, 2000;
Amended Summer Meeting, Williamsburg, Virginia, July 11, 2003;
Amended Summer Meeting, Chicago, Illinois, July 16, 2004;
Amended Annual Meeting, San Diego, California, November 19, 2005;
Amended Summer Meeting, Boston, Massachusetts, July 21, 2006;
Amended Annual Meeting, Napa Valley, California, November 10, 2006;
Amended Summer Meeting, Seattle, Washington, July 21, 2007;
Amended Annual Meeting, Las Vegas, Nevada, November 17, 2007;
Amended Spring Meeting, Washington, DC, March 1, 2008;
Amended Summer Meeting, New York, New York, July 11, 2008;
Amended Annual Meeting, Duck Key, Florida, November 20, 2008;
Amended Spring Meeting, Isle of Palms, South Carolina, March 7, 2010;
Amended Summer Meeting, Newport, Rhode Island, July 17, 2011;
Amended Annual Meeting, Santa Fe, New Mexico, November 20, 2011;
Amended Summer Meeting, Philadelphia, Pennsylvania, July 14, 2013;
Amended Annual Meeting, Nashville, Tennessee, November 24, 2013;
Amended Summer Meeting, Boston, Massachusetts, July 13, 2014;
Amended Annual Meeting, San Francisco, California, November 20, 2014;;
Amended Spring Meeting, Charleston, South Carolina, March 1, 2015;
Amended Summer Meeting, Portland, Oregon, July 14, 2016;
Amended Annual Meeting, Phoenix, Arizona, November 19, 2017;
Amended Annual Meeting, Oklahoma City, Oklahoma, December 8, 2018.
Amended Spring Meeting, Nashville, Tennessee, March 17, 2019
Amended via Conference Call Meeting of Executive Committee, July 1, 2020

JOINT STATE-FEDERAL RELATIONS & INTERNATIONAL INSURANCE ISSUES COMMITTEE MATERIAL

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
JOINT STATE-FEDERAL RELATIONS & INTERNATIONAL INSURANCE ISSUES COMMITTEE
BOSTON, MASSACHUSETTS
JULY 15, 2021
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Joint State-Federal Relations & International insurance Issues Committee met at the Westin Boston Waterfront Hotel on Thursday, July 15, 2021 at 3:00 P.M. (EST)

Senator Jerry Klein (ND), NCOIL Chairman At Large, presided.

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

Rep. Deborah Ferguson (AR)
Sen. Mathew Pitsch (AR)
Asm. Ken Cooley (CA)*
Rep. Joe Fischer (KY)
Rep. Brenda Carter (MI)
Sen. Neil Breslin (NY)
Asm. Kevin Cahill (NY)
Sen. Bob Hackett (OH)*

Other legislators present were:

Rep. Steve Meskers (CT)
Rep. Tammy Nuccio (CT)
Sen. Spiros Mantzavinos (DE)
Rep. Roy Takumi (HI)
Rep. Terri Austin (IN)
Rep. Jim Gooch (KY)*
Sen. Katie Fry Hester (MD)*
Del. Courtney Watson (MD)
Rep. Kevin Coleman (MI)
Rep. Carlie Kotyza-Witthuhn (MN)
Sen. Paul Utke (MN)
Rep. Hank Zuber (MS)
Sen. Randy Burckhard (ND)
Sen. Shawn Vedaa (ND)
Asm. Ken Blankenbush (NY)
Rep. Brad Witt (OR)
Rep. Wendi Thomas (PA)

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 Rep. Joe Fischer (KY), NCOIL Secretary, and seconded by Rep. Brenda Carter (MI), the Committee voted without objection by way of a voice vote to waive the quorum requirement.

MINUTES

Upon a motion made by Asm. Ken Cooley (CA), NCOIL Vice President, and seconded by Rep. Fischer, the Committee voted without objection by way of a voice vote to adopt the minutes of the Committee's April 16, 2021 meeting.

DISCUSSION ON IMPLEMENTATION OF THE SAFEGUARDING TOMORROW THROUGH ONGOING RISK MITIGATION (STORM) ACT AND POTENTIAL NCOIL MODEL ACT

Roderick Scott, Board Chair of the Flood Mitigation Industry Association (FMIA) thanked NCOIL for the invitation to speak as this proposed partnership of getting state model legislation for the retrofit of buildings in hazard's way is invaluable. On January 1, 2021 former President Trump signed into law the STORM Act which is now law to provide funds for multi hazard mitigation so that would be flood, wind, fire and earthquake. Hazard risks are one of the largest financial exposures we have in this country and our portion of that is the flood mitigation of buildings so that they don't flood and we can't stop flooding but we can sure get the buildings so they don't flood. We want to thank our partners the Federal Association for Insurance Reform (FAIR) which was instrumental in getting us contacted wit NCOIL - again we are the industry that fixes the buildings and we are not very familiar with the legislative process and we are eternally grateful for NCOIL's willingness to help look at drafting model legislation for the hundreds of billions of retrofit in this country in light of the changing climate – if we don't, we are going to lose.

Since 1980, there have been 265 weather and climate related events that have each cost $1 billion dollars or more in damages. We're at a quarter of a trillion dollars in losses in just that span of time and just last year my state of LA took four hurricanes, direct impacts, and my town had four floods but because I'm 86% elevated I was back in business in a week after four floods each time. Not only is flood risk increasing but flood insurance rates on the estimated three or four million buildings is going out of sight and is going to continue to reach actuarial rate in five years for all buildings except your primary residence - 11 years for your primary residence. If you are four feet below the base flood elevation today – remember that is going to change on the coast as the sea continues to rise – you'll be at $9,500 per year so compute that out for a 30 year mortgage. We have to retrofit our nation.

Mitigation reduces risk. This is what my town locks like now except for ten buildings left on the ground. We have to live above the water or dry flood proof our buildings or we are going to lose. This is FL. Florida has an estimated 600,000 of these buildings that will require retrofit or replacement with new construction. NY has 400,000, NJ has 400,000 and TX has 300,000. It goes on and on. There are three to four million old buildings – the banks in our country estimate a $1.5 trillion asset value. Our industry can retrofit these buildings, wet and dry flood proof them, and elevate them. We estimate the cost at about half of that asset value – $600 billion and we hope to create with the STORM Act a million jobs in the construction trades within the next 10-15 years – or we lose. In May of 2019 our industry was invited to a closed meeting in the Treasury building. During the meeting we had nothing but banks and mortgagors around that table and I was there to assure them we would keep up if we had financing - we don't have financing for this and that's the problem. At the end, here's the promise – this building is in Key West – a concrete block building elevated 4.5 feet and it went from $3,500 a year to $500 a year for flood insurance.

At the end of the meeting the banks basically with our assurance as an industry told the treasury that if a loan became available they would loan the federal gov't the $600 billion that we would need to mitigate these three to four million buildings – an asset value at $1.5 trillion. So the STORM Act we have to create a revolving loan program at the state level and then we are going to have to create a revolving loan program, with National Association of Counties (NACO's) help, at the taxing authority. We must have a restricted fund within these programs to keep the extreme external forces of the traditional construction and, basically the levy and drainage contractors, the traditional infrastructure for mitigation hands off this one. The banks are not going to loan us this money if we don't protect the money just for the buildings - that's their business is buildings they are not interested in loaning us money for other infrastructure which we do need to revenue bond or find other ways to fund and I remind people that 50 cents of every tax dollar from a property goes to a school.

Today's presenters on our program are the authors of this legislation. Collin Wellenkamp, Executive Director of The Mississippi River Cities & Towns Initiative (MRCTI) will speak – 10 states along that mighty river got together and talked to their Senators and Representatives and they passed this bill that we have been figuring out how to do only its multi hazard. It passed on a voice vote on the last day of the 161th Congress. Maryland Senator Katie Fry Hester, the sponsor of the 2021 legislation that passed in MD their state revolving loan program, will speak – it has become a cornerstone of our draft legislation and we have some improvements and different ideas to add to that legislation. Their legislation was crafted as a result of that giant Building Resilient Infrastructure and Communities (BRIC) program coming from the Federal Emergency Management Agency (FEMA) and we want the bank money to come in and go to the property owners and then we have this whole issue of low income -we have 300,000 low income family housing units in the flood zones in this country the least able to recover and the most vulnerable of our population. Tom Little, Co-owner and Exec. VP of Smart Vent Products, Inc., Floodproofing.com, and Smart Product Innovations, will hit cleanup and he owns a leading company in the flood mitigation industry and has become vertically integrated from doing just flood vents to selling flood insurance as well as a whole host of flood mitigation products. It's a growing industry.

Mr. Wellenkemp thanked everyone for the opportunity and noted that he is am on site today in the field and situated behind me is the MI river and out this way directly toward my hand is Grafton, IL and I am on the MO side of the Mississippi. Grafton is really a poster child city of actually this entire region of the MI which is near the confluence of the IL, MS and MO rivers just north of St. Louis – it's a poster child city for repetitive loss and the need to build resiliency into our infrastructure and our economy. When our mayors sat down to draft the resilient revolving loan fund or what came to be known as the STORM act this is what we had in mind. We had flooding, droughts, intense heat, named storms and unnamed storm events that had been impacting our region along the MI river at a record level with record persistence. We are now averaging brand new records every 24 months with both extreme heat temperature, duration of those temperatures and floods. The last big moment we had was not too long ago – 2019 we had a 270 day flood. It was the largest and longest in U.S. record history which took place from PA to OK southern MN to NO. It was truly a basin wide event impacting almost all of the major tributaries of the MI river – an eight month duration and it cost us $20 billion in actual losses.

And that flood comes on the heels of lots of other ones preceding it. A thousand year flood event in the south in 2016; the flood of 2015; the flood of 2011; the drought of 2012. And then all of the hurricanes of course in between,. We could go on and on with that but what we're really trying to do is get away from impacts and the very expensive end of the balance sheet of dealing with recovery and response and instead deal with mitigation adaptation and resilience which actually saves us up to $12 for every dollar we put into it for the economy. We think that end of the balance sheet is a much safer bet and apparently so does Congress. Not only did they pass the STORM Act but they have also put in upwards of half a billion dollars of new investment into resilience taking that away from the very expensive activities of response and recovery and hoping that if we invest before that we won't have to get to those very expensive steps. We are an association of 1,010 mayors in all 10 states and we are currently led by the mayors of Baton Rouge, LA and Bettendorf, IA. We are headquartered in St. Louis, MO and I'm not too far from there right now. If you can imagine in 2019 everywhere where I'm standing right now was underwater in fact I would be underwater right now if I was standing there right here in Spring/early Summer of 2019 it would be a couple feet above my head as a matter of fact and in 1993 it would even be further above my head. The city of Grafton received significant damage and in 2019 they got 80% of their community wiped out by that flood and many of our cities did and then came the STORM Act which was a way our cities could accomplish a few things.

One, we could get out of the cycle of having to apply to grant after grant on the federal level since most of the time they are not sufficient in getting the grants as they are extremely administrative heavy and expensive to apply for. Most of our cities don't have either the capacity or expertise to really do that credibly. The other thing we wanted to do was figure out a way when we invest in a resilience project that the investment actually goes to the resilience project so they aren't separated but built on each other and building on each other for capacity and physical attributes but also building on each other financially - so the revolving loan fund model seemed like a good way to approach that. Thirdly, we really wanted to figure out a way we could incentivize projects that concentrate not just on the built infrastructure but the natural infrastructure. I'm actually standing right here in the middle of a floodplain that isn't developed and right around the corner from me on the other side of the island Grafton, IL has installed a wetland it used to be there and was destroyed long ago and they are putting it back in order to create a natural flood buffer for their city.

Just up there you can see upriver we are actually putting in more floodplain and more habitat and more backwater areas that are linked up with a partnership with Ducks Unlimited to naturally take in risk and absorb impacts from climate change and disasters before they can get go to our cities and then let those impacts go at a managed level over time after the storm and disaster ends. That natural infrastructure is actually called out as a priority in the legislation the STORM act. As Mr. Scott said, a lot of this is to protect our built environment. The buildings are the most expensive implicated infrastructure impacted by these disasters and its hard for us to be able to finance any other solutions that might be hard-structure so levees, flood walls and other brick and mortar infrastructures to stop these disasters is really outside of our financial capacity. Not only would we not be able to afford to build it we wouldn't be able to afford to maintain it either so natural infrastructure is the only thing we can afford and the beauty of it is is that it comes with ancillary benefits and we don't have to pay to maintain it. A wetland and marsh not only do those things to help with disasters they also clean out water and regulate water in dry periods when the river is very low in order keep

navigation more reliable and its just as hard to get to a flooded elevator for grain as it is to get to one that has no water around it all because of a drought. Natural infrastructure can help us regulate that much more efficiently than we ever could with pipes and pumps.

Also, natural infrastructure is a tourist draw and people pay to look at water but they don't want to pay to look at dry smelly water so the cruise industry, the outdoor rec industry and the tourney fishing industry all are helped by increased ecology and natural infrastructure because they create draw for those tourism and outdoor rec dollars. Finally, we are using this water for a heck of a lot of manufacturing so we need it fresh and clean all the time and we need it freely accessible all the time in order to power that manufacturing economy on the MI r river. All told, our corridor enjoys a $456 billion dollar fresh water economy and we need clean fresh water to keep help that happening and need a reliable system that's ecology healthy and economically supported and backed up to help keep that economy going. The resilience revolving loan fund we think is another great tool in the toolbox to help make that happen. States are key so this is going to be partnership between the federal gov't, in this instance from state emergency managers and local cities and counties. When the resilience revolving loan fund applications hit the street which we think will be in the spring there will be an opportunity for states to compete for a capitalization grant form FEMA to form this resilience revolving loan fund within their states that our cities can apply for the project. But the administrative lift in all of this is purposefully kept light so the projects themselves really fly or don't fly and sink or swim on the merit of the ability or repay the loan and we like that much better the administrative lift that comes with traditional FEMA grants which is usually out of our reach.

Sen. Hester first acknowledged her colleague Del. Courtney Watson who is in Boston in the room. They were both elected in 2018 and have worked on several pieces of resilience legislation together so if you have any question please feel free to approach her in person as she is an expert in this. The first slides you see are of Ellicott City MD which is in my town and many of you have seen it on the news. It will celebrate its 250th birthday this year and in July 2016 we suffered our fist 1,000 year storm and it brought over six inches of rain on the hills in less than 90 minutes and the result was a flash flood that caused an estimated $11 million in damage and took the life of two or our community members and I can't stress enough the level of psychological trauma that the residents and business owners of the city suffered in addition to the monetary damage. But we rebuilt and in 2018 the city reponed and life was coming back to normal and then we had our second 1,000 year storm in May 2018 which is less than two years apart. That storm dropped 8.4 inches on the city over the span of two hours and this time caused $27 million in damage and took the life of another one of our community members so from personal experience we can tell you that climate change is real and resilience is the key to success.

Maryland is a coastal city and we suffer flooding all over the place. Ocean city is of course a great tourist destination and it repeatedly suffers flooding as does Annapolis so having experience the flooding first hand but also thinking about the state as a whole we really started to look for statewide solutions. What I found working both with county execs and also our local emergency managers is that the major barrier to rebuilding after a flood was the cost. Let alone trying to build before a flood, to prevent future floods the financial barrier that the prior speakers talked about is real at every level of state gov't. What you're looking at is a map of Ellicott City and just to explain the complexity of the

financial cost associated with building back those red dots on the slide each represent a resilience project and there's 19 in total. Some are retention ponds some are culvert expansion. There is a bypass pipe that is over 9 feet wide on the western side and there is also a 10 acre retention facility and then of course the pinnacle of this safe and sound plan is the 15 foot diameter tunnel boar to be built through the south hill district to create a shunt from the top of the hill directly to the river at the bottom and so such large infrastructure of course costs money and to implement all 19 pieces is projected to cost $140 million. For a small municipality like Ellicott City its dependent on our ability to pull money down from the state and federal level.

Throughout this process I was looking for capital in our state budget and capital at the federal level and that's originally why I was able to see FEMA's BRIC plans and so I was thrilled to learn that the round of funding will be coming again to allow states to protect their communities especially those like mine and we were in the process of trying to see how to leverage the funding from the BRIC program when we came up with a legislative solution to fill that gap. The next slide is the actual legislation that we drafted and originally we came up with this idea to crate the resilient MD revolving loan fund and modeled it after the state's clean water revolving loan fund before we had even heard of the STORM act. We had been studying infrastructure banks and impact bonds for several months and in December before our legislative session we had settled on the idea that a revolving loan fund to assist our local jurisdictions for the local match to the BRIC fund was what we needed to get the finance flowing.

A week after the federal gov't passed the STORM act so we rewrote the bill and submitted it to accept the money that the STORM act makes possible. So, SB9081 creates the MD resilient revolving loan fund and it sits within the MD emergency mgmt. agency which is now known as the MD dep't of emergency mgmt. for the purpose of providing low or no interest loans for local resilience projects either through a local govt or a nonprofit. The fund is a special non lapsing fund so the money held in it does not revert to the general fund. Additionally there is uncodified language directing MD to apply for funding thought the STORM act to capitalize the fund as soon as the funds become available. When you see the legislation you will also notice that there was $25 million of state funds that we put in the original bill to match the STORM act those funds were later removed because we put the $25 million in the capital budget in order to secure those in the capital budget process but the budget passed before the legislation did so when I was defending the bill I said listen you already passed the money now we just need to create the fund but the $25 million of state funding will allow us to draw down $225 million through the STORM act.

The next slide is how the leveraging could work. Hypothetically, loans from the MD revolving loan fund, local govt's can pull down $750 million of federal BRIC funding for a total inflow into the state of $1 billion. Now this is obviously best case scenario but ill break it down. The $25 million of capital funds is matched 90-10 with the STORM act so that turns into $250 million then the BRIC funding grants are 3:1 so if a county had a $10 million loan they could pull down $30 million in a grant through BRIC for more and that's how you get to the $1 billion. On the last slide I wanted to share a few keys to success. The first key was really the broad impact of flooding and natural disaster in MD. Unfortunately or fortunately all of my colleagues in the senate and house in every jurisdiction had experienced flooding and they knew they could save money by building the resilience of towns and communities and there was broad support for the idea that we could do something. Second, the availability of these federal funds made a huge

difference in our ability to press the legislation through in one year as its just so much easier to explain the value proposition through the budget appropriations cmte when there is federal money on the table. Finally, I couldn't have done this without incredible partnerships including our Treasurer Nancy Kopp who has been a true advocate for climate change and resiliency legislation over the years. I also want to applaud Del. Watson and the leadership in our senate and house who were great and I really feel the timing was right as the federal tools were there and so was the political will to move boldly forward so I am delighted its passed and now we're just waiting for the capitalization of the first MD revolving loan fund.

Mr. Little sated that his organization is an example, and we have a portfolio of companies, that are all laser focused on solving flood problems and we started our journey in flood protection and mitigation back in 1997 with the development of a product called Smartvent which is an engineered flood vent that is designed to revile pressure and forces against the foundation of the wall as those forces can cause the foundation to collapse and it does a number of things – it causes significant structural damage which translates into a flood insurance claim if in fact they have flood insurance but also it displaces the family. The same thing on the commercial side there are vulnerabilities when flood water comes through doorways or windows and other penetrations of the commercial building that can shut the business down so at a very high level when we solve problems our mission is to keep families from being displaced from their homes and to keep commercial businesses open to maintain business continuity and keep the lights on at the end of the day so we started with the flood vent product tin 1997 but we realized that there were other needs within the industry and part of the introduction that Mr. Scott provided in the beginning explained that we have vertically integrated over the years and today we have five companies within our portfolio that handle flood protection with wet flood proofing techniques like a flood vent, dry flood proofing techniques like barriers and shields from preventing the water from getting into a building and then we pull that all together with a company that sells flood insurance nationally. We provide the NFIP to our customers but we also have worked with private carries in the industry to provide their product and coverage in certain situations.

It was mentioned earlier that every dollar spent in resiliency or mitigation can translate to $12 in actual savings later. And what we are experts at are the buildings and the homes. We are direct with those building owners and those residential structures and we're working on a level where we would utilize a revolving loan program and our customers would be able to mitigate their particular property. Part of our evolution has been that we have developed strategies and techniques that will mitigate just about any structure in the U.S. - residential and commercial. And we developed a service called the flood design team where we are capable of doing a vulnerability study at the structure level to determine what type of techniques can be utilized to mitigate the risk. In some cases its utilizing flood vents with elevated structures that Mr. Scott mentioned and the flood vents would go around to relieve the pressure and potentially save a $35k plus claim.

Likewise on a commercial structure we have ways to put barriers and shields in place to prevent the flood water from entering into the building - some of those are deployable systems which need human intervention but we have developed innovative technology to do that passively. In MD, Ellicott City was mentioned and we are working there with passive flood proof systems that go into a building that are much like set it and forget it where the glass is flood proof and can take an impact and up to 10 feet of flood water

against and keep the inside dry. We employ 40 individuals and we also have manufacturing lines for our products that are all made in the U.S. that we deploy another 20 folks on those lines by building our products in the U.S. Scalability is there. We can manufacture more products and we can protect more homes and buildings and that comes down to the families and the economic side of items as well if this funding were to be able to be in place.

Lastly I wanted to share a quick story of a property owner along the IL river that we helped out five years ago - a 28 year veteran of the air force. He purchased his home in a flood plain and it was an elevated home and his flood insurance premium was on the rise and it was getting to the point where he was not going to be able to afford to stay in the home because he could not afford the flood insurance. He spent two years figuring out a way to lower the premium and save the house and he contacted us and we determined the solution is to retrofit flood vents into the foundation and the NFIP provides you with a flood insurance discount if you do that in your scenario. The flood vents were put in and it reduced the premium 75%. Since the installation he has flooded five times and has had 0 NFIP claims and suffered no structural damage and is still in the home and was able to marry is daughter at the house. That shows what our industry can do we can keep these folks in their homes and lower their premiums with mitigation that the NFIP recognizes and the pvt sector recognizes and we can do it residentially and commercially on the building level with a revolving loan program.

Mr. Scott thanked NCOIL again and stated he looks forward to the meeting in Scottsdale and looks forward to working with legislators to get legislation introduced in 2022 to finance the STORM act.

THE NATIONAL FLOOD INSURANCE PROGRAM'S (NFIP) NEW RATING METHODOLOGY – RISK RATING 2.0: EQUITY IN ACTION

Tony Hake, Director of NFIP Transformation, thanked the Committee for the opportunity and said its great to be here to talk to all of you about the NFIP's new pricing methodology, risk rating 2.0: equity in action, and what the new system means for your constituents and other interests that may be connected to the NFIP. I've been listening for the last 30 minutes and there are lot of links to this and interest in this. FEMA still believes that insurance is the best defense for flooding of all property types. Equity in action is a transformative effort that will help FEMA achieve its mission and pursue equity in pricing for all of our policyholders. As you are well aware, rates already increase under the current NFIP rating methodology and under risk rating 2.0 rates are going to increase for some policyholders and also rates will decrease for some policyholders. Policyholders who will see increases under the new methodology plan fundamentally differ from the rate increases under the current rating methodology. As I said before currently all NFIP policyholders have been subject to premium increases every year.

From 2018 to January 2021, the average annual premium increases under the current methodology had been around $10. These yearly increase are in line with the statutory limits set forth by Congress and would continue to occur year after year for all policyholders if no changes were made. However, under the new pricing methodology rate increases will not continue indefinitely. So once a policy reaches its full risk rate the increase stops so its important to note the new plan will comply with all statutory and regulatory requirements including premium caps currently in place. Under equity in

action two thirds of all the older homes which are currently paying some of the highest premiums will see immediate premium decreases. I'll speak later as to what those change look like across the nation.

The change will address the inequality in the program that has inadvertently developed over time and must be corrected - that is policyholders with lower value homes are paying more than they should and policyholders with higher value homes are paying less than they should. So this enables FEMA to set rates that are fair and ensures rate increases and decreases are both equitable. In fact like I said before we've learned two thirds of the older homes that have some of the highest rates in the NFIP today will see immediate decreases in the cost of their insurance. The new rating methodology has exposed these inequalities and we've not turned a blind eye to our policyholders who have been unjustly subsidizing other policyholders. In addition because our rating methodology hasn't been updated in over 40 years its not financially sustainable in its present form to withstand the frequency and intensity of recent events and the storms that we know will strike in the months and years ahead due to climate change. FEMA has the statutory mandate to set actuarially sound rates and clearly communicate that risk. It's a well known fact that FEMA has been urged for many years by many different people to improve its pricing methodology. Our current system is just fundamentally not working for the program or our policyholders and must be revamped. While difficult, now is the time.

So since the 1970s rates have primarily been based on rather static measurements emphasizing a property's elevation within a flood zone on a flood insurance rate map. This approach does not incorporate as many variables as the new methodology. As such, the new methodology is not just a minor improvement but a transformational leap forward. Under risk rating 2.0 FEMA now has the capability and tools to address rating discrepancies by incorporating more flood risk rating variables like flood frequency, multiple flood types from river overflow, storm surge, heavy rainfall, coastal erosion, and the distance to a water source along with property characteristics such as elevation and the cost to rebuild. Now that the new methodology takes into consideration the cost to rebuild, FEMA will be able to equitably issue premiums across all policyholders based on the unique risk of their food property. So previously it was done by a zone an AE zone across the nation it was all treated the same so we know now it will be unique based on the individual property. Equity in action will be based on years of investment of flood hazard mitigation by incorporating pvt sector data sets, catastrophe models and evolving actuarial science. This includes using existing FEMA mapping data and NFIP policy and claims data along with federal govt data from the U.S. Geological Survey (USGS), the National Oceanic and Atmospheric Administration (NOAA), and the U.S. Army Corps of Engineers. In addition third party commercially available structural and replacement cost data along with cat models is incorporated. This approach is clearly an a significant improvement and allows us to set actuarially sound rates and communicate the flood risk more comprehensively than ever before.

So lets break down what risk rating 2.0 equity in action really is as it fits into three big buckets and those buckets are what's staying, what's going and what's changing when comes to the new pricing methodology. First, its important to keep in mind that risk rating 2.0 is really about changing how we rate premiums so what it doesn't do is make changes to the policy forms or the coverage policyholders will receive. In terms of the policy forms there are three main types of forms right now – dwellings, general properties and residential condominium building Assoc policies. They'll continue to exist

under the new methodology however you may notice there are a couple of minor changes to those forms but its important to note that those changes are with respect to legislation FEMA is implementing as part of the Biggert-Waters Act. In terms of policy coverages there will be no change. For instance a single family home policy continues to have limits of $250,000 for the structure and $100,000 for contents. So risk rating 2.0 is transformational but its not changing every aspect of the NFIP. We are upholding the statutory requirements by limiting the premium increases as the existing statutory requirements state that most rates not increase or climb by more than 18% per year. We're also maintaining the use of the flood insurance rate maps for mandatory purchase as well as flood plain mgmt. purposes. In addition we will continue to offer premium discounts for pre subsidized and newly mapped properties as well as policyholders will still be able to transfer their discount to a new owner by assigning their flood insurance policy when the property owner changes. Furthermore, discounts for policyholders in communities that participate in the community rating system or CRS will continue. Communities will continue to earn the NFIP percent rate discounts of 5-45% based on the CRS classification. However, a point to note is that since risk rating 2.0 does not use flood zones to determine flood risk the discount will be applied uniformly to all policies throughout the participating community regardless of whether the structure is inside or outside the special flood hazard area.

So what's going? Under risk rating 2.0, preferred risk policies will be rated similar to how FEMA rates all other polices. You'll see this phenomenon more generally with how we rate. Since FEMA will be able to differentiate flood risks in areas outside the high risk flood zones there will no longer be the need for the agency to offer preferred risk policies (PRP). Also under the new methodology coverage and deductible limitations will no longer be limited to PRPs. For instance today a single family home PRP policyholder can select $200,000 in building coverage and $80,000 in contents or $250,000 in building and $100,000 in contents and no other options. Under risk rating 2.0 they can select limits and deductibles like any other standard flood hazard policy. Furthermore, under the new methodology FEMA will no longer offer the mortgage portfolio protection program since it is rarely utilized. This is a perfect example of FEMA's mission to align with our modern data principles to simplify things where it makes sense. Additionally, under the existing methodology, flood zones are the main driver of the rate as I mentioned before. This is not the case with risk rating 2.0 - for the most part the flood zone is not used for the rating in the new methodology but there are a couple of places where we are statutorily required to use flood zones under risk rating 2.0 and they include AR zones, A99 zones, and newly mapped zones. Also, under the new methodology its important to note that the base flood elevation will continue to be used for floodplain mgmt. purposes but not for insurance rating. There are two reasons for this. First, we're using elevation nationwide and BFE doesn't work nationwide. Second, we are looking to simplify our program and use concepts that the average agent or policyholder can understand and we think ground elevation is easier to understand than an unseeable base elevation line.

Sen. Klein noted we are up against clock and asked Mr. Hake to hit on a few more points and if there is more information we can discuss this at our next meeting.

Mr. Hake stated that it's important to note that even with the policyholders paying the most today they will see significant and immediate decreases when they transition to the new pricing plan. Broadly, over 1 million policyholders will see decreases and that includes 600,000 single family homes. At the extreme, 3,000 family policyholders pay

premiums from $12,000 to $45,000 a year today under the current methodology and these policies are located all across the country. Again, under this process these premiums will continue to increase year after year but the big thing with risk rating 2.0 is that there is an upward bound for those polices as no single family home will pay more than $12,125 in a premium which sounds high but today some are paying $45,000. Let's take a quick look at the national analysis for structures in the NFIP's book of business. This includes single family homes, non singly family homes, leveed and non leveed for all 5 million policies across the 50 states and DC and the territories. Here is what the new data tells us – 23% of current policyholders will see immediate deceases in their premiums – on average this will be $86 per month and $1,032 per year – that doesn't happen under the current rating system. The next category will see an increase of $0-10 per month but keep in mind that I said before - under the current system there is a 10% increase annually which equates to $8 per month under the current system so this 66% the change for some will be $2 per month so the impact between the old and new is minimal. Then there is another 7% where there is a $10-20 month increase in what they are paying. This analysis of the new pricing system shows we have eliminated a lot of the steep gaps and sharp increases that had caused uncertainty with these folks. Finally there is 4% of the NFIP policyholders who will see a $20 or more per month increase in premiums but its important to note that these policies cover high value homes in high value areas.

Sen. Klein stated that this needs to be the final slide as we are out of time and we have two more presenters. Sen. Klein asked Mr. Hake for a final statement. Mr. Hake state that during the hearings we had many senators, bipartisan, support risk rating 2.0 and we've had numerous state flood insurance cmsrs. support it and we have had direct support from the National Association of Realtors (NAR) as well as PEW. If there are any questions please submit them to FEMA and if we need to spend more time on this in the future I look forward to it. Sen. Klein stated that this issue is certainly not going away as we are on the cusp of new innovative thoughts and ideas and we'll continue this in the future.

DISCUSSION ON THE PROTECTING THE RIGHT TO ORGANIZE (PRO) ACT (H.R. 842/S.420)

Catherine Fisk, Barbara Nachtrieb Armstrong Professor of Law at UC Berkley School of Law stated that she is delighted to be here and noted that she was asked to describe the provisions and the possible impact of the PRO act which was passed by the House in March and currently is in the Senate. It is unlikely to be passed unless the Senate is to eliminate the filibuster but let me tell you what it would do if it was enacted and I'm happy to talk about what impact that might have for the issues that concern you. To be clear the PRO act covers only the right to unionize, bargain collectively and engage in work related protests in the private sector and it will have no impact on gov't employment and it would have no impact on federal or state regulation of wage and hour law, workplace safety, unemployment insurance or discrimination. The only provision it has that really has nothing to do most immediately with unionization is that it would significantly revise the federal arbitration act which is the federal statute that allows employers to insist as a condition of employment that individual non union employees sign agreements to arbitrate all disputes arising out of the employment relationship. The PRO act if enacted would prohibit mandatory that is forced pre dispute arbitration agreements broadly in pvt sector employment which of course would have a fairly significant impact because many businesses have adopted such pre dispute arbitration agreements as much as a way to

prevent employment claims from being filed as a way to channel those that exist into arbitration.

But focusing on the union side of the PRO act it would expand the number of workers who are protected by federal labor law. It would for example make low level supervisors think of a barista at Starbucks or a clerk at a convenience store who now could be characterized as supervisors and therefore not covered by protections of labor law it would make those workers employees eligible to vote in union elections and protected against retaliatory firings if they supported or opposed a union election. In addition, the PRO act would expand the number of covered employees by narrowing the definition of who is an independent contractor. You may have heard that many states use what is known as the ABC test to define how is an independent contactor exempt from state unemployment insurance (UI) protections for example but there has been a lot of controversy over whether the ABC test should be applied outside the context of UI. The PRO act would say that the test applies to determine who is protected by the right to unionize and bargain collectively which I call labor law – it's called the ABC test because only those workers who are truly A – autonomous that is free from any kind of employer control; B – who are in business or performing a business outside of the usual scope of the employers business – think the guy who comes to repair the HAVC system at a retail store is not engaged in the employer's business but is engaged in a totally separate line of business; and C - those who are customarily engaged in an independent business of their own providing the same service like an HVAC contractor like a gardener but not like a driver of an app based car dispatch service like uber.

So by adopting the ABC test for labor law the definition of who is an independent contactor would be significantly narrowed and the scope of protections for employees would be significantly broadened. Another major thing the PRO act would do is expand the right to protest about work related matters. Here what the statute would do is repeal many of the provisions of the Taft Hartley Act of 1947 which radically restricted at the time in the name of anti-communism the kinds of protests that labor organizations can engage in. Specifically what it would so is that it would expand the right to strike by eliminating a provision or an interpretation of the law that the Supreme Court added which allows employees to permanently replace striking employees. Permanent replacement of striking employees is as a practical matter firing a striking employee in many circumstances so by taking away the right to permanently replace a striking worker it would protect strikers from retaliation for striking. Second the PRO act would eliminate the ability of employers to lock out employees as a way of resolving negotiating disputes. Lockouts don't happen much anymore except in the context of professional sprots because long strikes are so unusual because of the employer's ability to permanently replace striking workers so by eliminating permanent replacement and eliminating lockouts we would likely see more strikes to resolve negotiating disputes.

Third under this provision of the PRO act it would eliminate the Taft-Hartley prohibition on secondary boycotts which is a complex concept but to understand it think of janitorial staff cleaning an office budling who are protesting sexual harassment by their employer. Their employer is technically the owner of the small janitorial company that has a contract with the building maintenance company that has a contract the property mgmt company. If the janitors stand on the sidewalk protesting sexual harassment and seek the support of for example employees of the tenants in the commercial office building the National Labor Relations board (NLRB) has held that they are engaged in a secondary boycott or strike because they are appealing to employees of an employer other than

their own. The prohibition on secondary boycotts is wildly controversial in the labor movement and by eliminating it what we might see is more solidarity whether it's a product boycott or a strike among workers of different employers. The PRO act would also eliminate the prohibition on striking or picketing to publicize that workers are seeking to organize or are seeking recognition from an employer. Sen. Klein stated that we are running out of time and we have more presenters so please make a couple of more points and summarize your final thoughts.

Prof. Fisk stated that the rest of the provisions of the PRO act would regulate the process of union elections by making them more two-sided that is giving employees greater rights to talk to each other and would eliminate state right to work laws that is laws that prohibit employers and unions from agreeing to charge union rep workers a fee for the services that they provide. It would expand remedies for violations of protected labor laws by creating a civil cause if action - you don't have to go through the NLRB, and expand civil penalties that aren't just a measure of back pay and would provide for mediation and ultimately arbitration for a negotiating dispute involving newly certified unions seeking to get a contract. What all this would mean is expanded labor rights would probably increase labor costs that is raise wages and that might have a variety of financial impacts but it would only do so in those industries where workers are interested in unionizing.

Meaghan Gale, Policy Director of Gov't Relations at the National Association of Insurance and Financial Advisors (NAIFA) stated that NAIFA is the preeminent membership association of financial and insurance professionals in the United States, representing a full spectrum of financial services practice specialties. Our members work with families and businesses to help them achieve financial security. NAIFA has 53 state and territorial chapters and 35 large metropolitan local chapters. NAIFA members in every congressional district advocate on behalf of producers and consumers at the state, interstate and federal levels. We're here not only to give a producer's perspective on the PRO act but also to talk about the importance of independent contractor status for independent broker dealers and independent financial advisors. We agree with many of the points that Prof. Fisk highlighted today and we strongly support better working conditions for exploited gig economy workers and while we recognize the PRO act is limited to the right to organize and that the bill is ensuring that marginalized workers have adequate benefits and bargaining rights to their employers we feel that it simply misses the mark for the insurance and fin serv industry and the hundreds and thousands of independent broker dealers and independent financial advisors who have built their livelihood on the independent contractor model.

The PRO act would amend the National Labor Relations act by adding the language that expands the definition of independent contractor by adopting the ABC test that Prof. Fisk spoke about. It expands it to the employee and is largely patterned after the CA AB 5 legislation which ill touch on again shortly. Our primary concern is that the PRO act uses the ABC test and that workers must meet all three criteria to be considered an independent contractor. The real crux of the problem is part B – that the work performed outside the usual course of hiring in the entity's business. Since the insurance industry has long relied on quite successfully on independent insurance agents to offer a vast variety of financial products as possible to the consumers we likely fail part B and trigger the employee classification. We are the dreaded unintended consequence that is all too common in overly simplified models. If the ABC test were confined to the PRO act then perhaps we wouldn't be up here talking about it but the test is starting to gain traction

and if it were to become the standard then there would be significant consequences down the road. We are already seeing it used in Senator Wyden's proposal for UI; the DOL is working to redefine independent contractor and is expected to use a version; and numerous states have already adopted or are seeking to adopt a version. This legislation opens the door for further policies that could negatively harm the way insurance carriers and producers best see fit to maintain their business structures. Producers could be caught in a quagmire of conflicting and uncertain employment status.

I want to restate that we are not categorically oppose to this type of legislation and we recognize and support the need of many industries for this type of protection but even in a state that is progressively pro labor as CA, lawmakers recognized that insurance and fin serv did not warrant inclusion in CA AB5 . NAIFA national, our CA chapters and our industry partners worked very closely with CA legislators to draft language and include a carve out. The language is very important to note. As an industry we are not looking to escape oversight or regulation. Rather, just to keep that the oversight with the entity that currently performs these functions like the state insurance and securities regulators or the SEC. There are a lot of reasons beyond those that we have touched on already for why this rule is not a good fit our industry but the core is that the insurance and fin serv industry has a very different independent contractor model than the uber, lyft, doordash gig economy.

Our agents do not work in short, fragmented or episodic manners that you see in many of those industries and the insurance and fin serv industry is already one of the most regulated industries in the world. Almost every aspect of agent and producer consumer relationship is subject to scrutiny oversight and often approval. Additionally, the entrepreneurial nature of the work is often what attracts producers to the business. Many use it as a second career and are intentionally leaving an employer employee relationship and that structure works for them and the industry which has been able to operate on this model successfully for decades without significant complaints. Many independent insurance agents and independent financial advisors hold long term contracts with 20 carriers to expand their product offering. Employee status could reduce the number of products in their portfolio which would ultimately mean less choice and higher prices for consumers. Its really important to note that our industry is not asking for this. NAIFA conducted a survey of over 1,000 of our members across the country representing a broad swath of practice types, ages and tenures in the industry and the results were very clear – they are happy with their current employment classification and do not wish to change it even for the right to organize. Legislation should not force a relationship between carriers and producers that they do not want.

Joshua O'Gara, NAIFA-MA President; Insurance & Benefits Advisor at O'Gara Financial Group, stated that we want to emphasize the fact that we are not in opposition to the bill. We are not anti-union. As Ms. Gale referenced many people in the insurance business are career changers – there are few people who grow up saying I want to be an insurance agent. Part of my path into the insurance industry was I actually spent some time working at UPS – I am a proud card holder of the teamsters union from that time and I still have that card. So I have a lot of experience with both that employer employee relationship and the reason why I started my own practice was that independence I was looking for. As Ms. Gale alluded to I have contracts with multiple different insurance companies and ultimately NAIFA has about 400 members in MA and 20,000 across the country and we are all small business owners. It's a 100% volunteer

organization but really this boils down to a consumer choice issue. If we get wrapped up into the PRO act to the point where we become w2 employees and there is an employer-employee relationship with each carrier that we have contracts with we just wouldn't be able to offer the same sort of choice to the client that we work with so that's really the most important issue here regardless of how I feel of being an independent contractor and being able to run my practice the way I see fit its really about maintaining consumer choice and insurance ownership right now is at probably some of the lowest levels its ever been and there are not enough people in our business right now as we have dealt with a lot of regulatory change over the last 5-10 years that have completely changed the way my business looks. I got into this business in 2006 and my practice looks completely different now than when I started. I started as an agent with NW mutual again in that employee employer relationship not to say there is anything wrong with that – and that's still out there for people who want to have that option what we're asking for is an exemption specifically for our industry because I think its warranted as it was an exception that was provided for in the CA regulation and we would like the same consideration for the PRO act at the federal level as well.

Sen. Klein thanked NAIFA for their comments and noted that he understands their concerns as there is a tremendous amount of regulation in their industry.

ANY OTHER BUSINESS

Paul Martin, VP of State Relations at the Reinsurance Association of America (RAA), stated that you will recall in our discussion in Charleston regarding the NCOIL Division Model I mentioned that Sen. Jason Rapert (AR), NCOIL Immediate Past President, was running the NCOIL Insurance Business Transfer Model in Arkansas. When working with him and the AR Insurance Dep't we have made some minor improvements to the model and in the coming months we would like to have those discussions with the cmte so that when we are in Scottsdale in November we can reopen the Model and hopefully make some improvements to it.

ADJOURNMENT

Hearing no further business, upon a motion made by Asm. Cooley and seconded by Asm. Kevin Cahill (NY), NCOIL Treasurer, the Committee adjourned at 4:15 p.m.

Atlantic Corporate Center
2317 Route 34, Suite 2B
Manasquan, NJ 08726
732-201-4133
CHIEF EXECUTIVE OFFICER: Thomas B. Considine

National Council of Insurance Legislators (NCOIL)

Resilient Revolving Loan Fund Model Act

**** Draft as of November 3~~June 15,~~ 2021. ~~This document is intended only as a discussion and conceptual draft as there is no sponsor attached.~~***

****Sponsored by Sen. Katie Fry Hester (MD)***

****To be discussed and considered during the Joint State-Federal Relations & International Insurance Issues Committee on November 20, 2021~~July 15, 2021.~~***

Since 1980, the United States has experienced 265 weather and climate related events that have each cost $1 billion dollars or more in damages. Further, recent data shows that natural disasters are increasing in both frequency and strength. This puts increased burden on insurance markets, can make certain risks increasingly difficult to insure, and can increase the cost of insurance for consumers. According to the Natural Institute of Building Sciences, every dollar spent on natural disaster mitigation saves $6. It is therefore in the best interest of states to support resilience and mitigation projects to reduce this burden, reduce the cost of natural disasters, and to save lives and property. Recent federal law, the "Safeguarding Tomorrow through Ongoing Risk Management Act" or the "STORM Act" authorizes the Federal Emergency Management Agency (FEMA) to enter into agreements with certain state agencies to provide capitalization grants for hazard mitigation revolving loan funds to provide low interest loans to fund local mitigation projects, including mitigation projects on buildings that reduce damage risk, reduce insurance rates and bring buildings into FEMA minimum National Flood Insurance Program (NFIP) requirements. This model legislation aims to provide states with a framework to be able to access this funding and fund local disaster mitigation projects.

Table of Contents

Section 1. Title

This Act shall be known and cited as the "Resilient Revolving Loan Fund Act."

Section 2. Definitions

For the purpose of this Act:

(a) "Fund" refers to the Resilient Revolving Loan Fund.

(b) "Emergency Management Department" refers to the state agency responsible for emergency management of the state passing the "Resilient Revolving Loan Fund Act."

(c) "Finance Authority" refers to a government authorized finance authority with lending experience for private property.

(d) "STORM Act" refers to the "Safeguarding Tomorrow through Ongoing Risk Management Act" (Public Law 116-284).

Section 3. Purpose

For the purpose of establishing a special, non-lapsing loan fund, the Resilient [State] Revolving Loan Fund, to provide loans for local resilience projects that address mitigation of all natural hazards, including natural disasters and additional projects related to man-made threats and hazards. Currently, Federal mitigation grant programs are set up in a way to allow for co-benefit related to man-made threats and hazards, but the primary focus of the project must be to reduce or eliminate risks from natural hazards.

Section 4. Intent

(a) It is the intent of the legislature that the Emergency Management Department or other appointed administrative or financing agency apply to the Federal Emergency Management Agency under the provisions of the STORM Act, when funding is available, to enter into an agreement to capitalize the revolving loan fund established under this Act with money appropriated to the Fund.

(b) The Emergency Management Department or other appointed administrative or financing agency may grant loans under this Act to local jurisdictions, at least in part, to meet federal matching requirements for federal resilience grants, including BRIC, Flood Mitigation Assistance (FMA), Hazard Mitigation Grant Program (HMGP), Housing and Urban Development (HUD) Community Development Block Grant Disaster Relief/Mitigation (CDBG-DR/MIT) and U.S. Army Corps of Engineer flood risk reduction projects such as levees, closures, pump stations and non-structural projects like elevation and wet/dry flood proofing.

(c) Loans can be granted to property owners to provide the financing for natural hazard mitigation projects such as wind retro fits, flood mitigation elevation and wet or dry flood proofing projects, fire mitigation retro fit projects and earthquake retrofit mitigation projects.

Section 4. Revolving Loan Fund

(a) This Act establishes the Resilient Revolving Loan Fund.

1. The Fund is a special, non-lapsing fund that shall be available in perpetuity for the purpose of providing loans in accordance with the provisions of this section.

2. The Fund is not subject to [any article of state code which dictates that at the end of a fiscal year, the unspent balance of an appropriation to special funds or accounts reverts to the general fund of the state].

3. The State Treasurer shall hold the Fund separately, and the Comptroller [or state equivalent] shall account for the Fund.

4. The Fund consists of:

    i. Money appropriated in the state budget to the Fund;

    ii. Investment and interest earnings of the Fund;

    iii. Repayments of principal and interest loans made from the Fund; ~~and~~

    iv. Any other money from any other source accepted for the benefit of the Fund; and

    v. The loan program shall have a restricted fund that will hold private capital that is allocated for the hazard mitigation of buildings only and not available for other uses.

5. The Fund is administered by the Emergency Management Department or financing authority.

6. The Fund may be used only to provide low – or no – interest loans to financing authorities ~~governments~~ and non-profit organizations for hazard mitigation and resilience projects. These loan funds can be made to private property owners for the use in hazard mitigation projects for the building.

7. The loans provided under the Fund shall be for a fixed loan period and can be attached to the property taxes, allowing the property to be sold as long as the new owner agrees to assume the debt obligation.

8. Any interest earnings of the Fund shall be credited to the Fund.

9. Money expended from the Fund is supplemental to and is not intended to take the place of funding that otherwise would be appropriated to local governments for resilience projects.

10. Loans from the Fund may be used to satisfy the nonfederal match for federal mitigation grants.

(b) The Emergency Management Department shall, taking into consideration requirements from the STORM Act, establish application procedures and eligibility criteria for loans from the Fund. The eligibility criteria shall require that a local government or non-profit organization demonstrate:

1. Need for a loan to address hazard mitigation; and

2. The ability to repay the loan, if required, at a later date.

Section 5. Effective Date

And be it further enacted that this Act shall take effect _____.

Atlantic Corporate Center
2317 Route 34, Suite 2B
Manasquan, NJ 08726
732-201-4133
CHIEF EXECUTIVE OFFICER: Thomas B. Considine

National Council of Insurance Legislators (NCOIL)

Company Licensing Modernization Model Act

Adopted by the NCOIL Executive Committees on July 12, 2002. Readopted by the NCOIL Executive Committee on November 19, 2004, November 11, 2006, November 20, 2011 and November 20,2016. To be considered for re-adoption by the NCOIL Joint State-Federal & International Insurance Issues Committee during the November, 2021 NCOIL Annual Meeting

Purpose – The purpose of this act is to promote consistency among the 50 states in licensing insurance companies by use of common licensing requirements, forms, and procedures.

Section 1 – The Commissioner of Insurance shall apply only the requirements set forth in form and detail in the Uniform Certificate of Authority Application (UCAA), and any supplemental forms promulgated pursuant to the UCAA published by the National Association of Insurance Commissioners (NAIC), as of the effective date of this act, in order to license insurers to do business in this state.

Section 2 – Revisions to the Uniform Certificate of Authority Application (UCAA) and supplemental forms promulgated pursuant to the UCAA, published by the NAIC, are incorporated by reference into this law, and are applicable to insurers, upon notice from the commissioner, as to all applications made after the effective date of the revisions. Provided, however, the commissioner may reject new requirements and forms, if after notice and hearing, the commissioner finds that they are not in the best interests of the public and that they unduly burden insurers applying for a license in this state. The Commissioner's determination shall be subject to legislative review.

Section 3 – This Act repeals all company licensing requirements and all licensing forms not contained in or required by the Uniform Certificate of Authority Application and any supplemental forms published by the NAIC in connection with it, including, but not limited to: (cite specific state law provisions to be repealed).

Section 4 – This law is effective upon enactment and applies to license applications submitted to this state after the effective date.

BUSINESS PLANNING COMMITTEE AND EXECUTIVE COMMITTEE MATERIALS

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
BUSINESS PLANNING COMMITTEE AND EXECUTIVE COMMITTEE
NCOIL SUMMER MEETING – BOSTON, MA
JULY 17, 2021
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Business Planning Committee and Executive Committee met at the Westin Boston Waterfront on Sunday July 17, 2021 at 12:00PM (EST)

NCOIL President, Rep. Matt Lehman, IN, Chair of the Committees, presided.

Other members of the Committees present (* indicates virtual attendance via Zoom)

Rep. Deborah Ferguson (AR)
Asm. Ken Cooley (CA)*
Rep. Bart Rowland (KY)
Rep. Joe Fischer (KY)
Rep. Edmond Jordan (LA)*
Rep. Brenda Carter (MI)
Sen Paul Utke (MN)
Asm. Kevin Cahill (NY)
Sen. Bob Hackett (OH)
Sen. Ronnie Cromer (SC)*

Also in attendance were:

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

QUORUM

Upon a motion made by Rep. Bart Rowland (KY) and seconded by Sen. Paul Utke (MN), the Committee waived the quorum requirement without objection by way of a voice vote.

MINUTES

Upon a motion made by Rep. Rowland and seconded by Rep. Joe Fischer (KY), NCOIL Secretary, the Committee voted without objection by way of a voice vote to approve the minutes of the Committee's April 18, 2021 meeting.

FUTURE MEETING LOCATIONS

Rep. Lehman noted that the Annual Meeting in Scottsdale is going to be from November 17-20 and remarked that a lot of people said "see you in Scottsdale" which makes it seem like NCOIL will have a good turnout at the Annual Meeting. We are moving towards a full in-person, back to normal meeting. Rep. Lehman remarked that NCOIL will continue to use Zoom for interim meetings, as it is a useful tool for those types of meetings.

The meetings coming up in 2022 are Las Vegas for the Spring Meeting, Jersey City for the Summer Meeting and New Orleans for the Annual Meeting. There is a lot to look forward to including very good topics of discussion. The 2025 Annual Meeting is scheduled for Atlanta, Georgia.

ADMINISTRATION

Cmsr. Considine noted that there were 340 attendees for the Spring Meeting: 268 in-person and 72 virtual. There were 66 legislators from 29 states: 57 in-person and 9 virtual. There were 28 first-time legislators. There were four commissioners (or equivalent) and ten insurance departments were represented.

Cmsr. Considine gave the 2021 unaudited financial report through June 30, 2021, showing a revenue of $783,717.87 and expenses of $501,181.84 for an excess of $282,536.03 heading into this meeting.

AUDIT COMMITTEE REPORT

Rep. Lehman turned it over to CA Asm. Ken Cooley, NCOIL Vice President, to give the Audit Committee report. Asm Cooley noted that on Wednesday this week, we received the audits from Collins & Co. for both the NCOIL and Insurance Legislators Foundation (ILF) financial statements. Focusing first on NCOIL, the statement of financial position or balance sheet showed us with a 2020 balance, total liabilities and net assets of $1,071,206 which was a gain over 2019, which was $679,383. Net income for 2020 is $351,337 compared to $95,115, showing a strikingly strong financial position. Looking at the statement of cash flows, net increase in cash equivalents over 2020 is $386,823. Asm. Cooley remarked that it is striking that we had such an outstanding 2020 notwithstanding COVID, which was also remarked upon by our auditor. It was noted that NCOIL had its funds in banks that exceeded the $250,000 federally insured level, which was addressed by transferring $350,000 to a third bank.

With respect to the ILF, everything was in order and no alarms were raised. It was stated by our auditor that in examining the books and records of NCOIL and in asking questions of staff and officers, that information was readily available, so NCOIL and ILF should continue its strong adherence to safe financial practice, including our president's practice of keeping all officers informed on significant financial transactions as a matter of routine, which was commended as an excellent organizational practice.

Hearing no questions or comments, upon a motion made by Rep. Rowland and seconded by Sen. Utke, the Committee voted without objection by way of a voice vote to accept the audits.

SPECIAL COMMITTEE ON RACE IN INSURANCE UNDERWRITING (COMMITTEE)

Rep. Lehman noted that the Committee held its fifth and final meeting and now sunsets pursuant to NCOIL bylaws. It has done a good job and has met its charges. There were three resolutions that came out of the Committee:

- Resolution Regarding the Use of Certain Rating Factors;
- Resolution Regarding the Use of Artificial Intelligence in Underwriting;
- Resolution Regarding Insurance Score Transparency.

The related work on all of these issues, broader than those which the Committee discussed, will keep the standing Committees busy as the issues continue to come up and will be assigned to the proper Committees moving forward.

Upon a motion made by Asm. Kevin Cahill (NY), NCOIL Treasurer, and seconded by Asm. Cooley, the Committee voted without objection by way of a voice vote to adopt the resolutions.

CONSENT CALENDAR

Rep. Lehman noted that the consent calendar includes committee reports including resolutions and model laws adopted and re-adopted therein, as well as ratification of decisions made and actions taken by the NCOIL Officers in the time between Executive Committee meetings.

The consent calendar included:

The Workers Compensation Insurance Committee re-adopted the Trucking/Messenger Courier Industries Workers' Comp Model Act, the Model Agreement Between Jurisdictions to Govern Coordination of Claims and Coverage, and the Model State Structured Settlement Protection Act (NSSTA/ NASP Compromise Model).

The Property & Casualty Insurance Committee re-adopted the Property/Casualty Flex-Rating Regulatory Improvement Model Act.

The Health Insurance & Long Term Care Issues Committee re-adopted the Employer-Sponsored Group Disability Model Act.

Ratification of Decisions Made & Actions Taken by the NCOIL Officers in time between Executive Committee Meetings.

Rep. Lehman asked if any Committee member wanted anything removed from the consent calendar. Hearing no such requests, upon a Motion made by Asm. Cooley and seconded by Sen. Utke, the Committee voted to adopt the consent calendar without objection by way of a voice vote.

OTHER SESSIONS

Rep. Lehman began by thanking Massachusetts Governor Charlie Baker for delivering the Keynote Address and for taking questions, even when his staff said he didn't have enough time. Rep. Lehman remarked that he liked that Governor Baker was very supportive of state regulation.

Rep. Lehman was pleased that the Institutes Griffith Foundation Legislator Luncheon had retuned and remarked that it was a great session on surplus lines insurers. Rep. Lehman thanked the speaker, Dr. Brad Karl, for his presentation.

There were three interesting and timely General Sessions:

- "Developments in Medical Treatment for Obesity";
- "The Delicate Balance of Legislative Oversight" which is very timely with what is currently going on in our states with COVID legislation; and,
- "Cyber Insurance: The Challenges of Ransomware and Beyond," which is the tip of the iceberg, as it will continue to be an issue that we will deal with, especially with challenges of ransomware.

Rep. Lehman also thanked the NAIC representatives that were here – Idaho Insurance Director and NAIC President-Elect Dean Cameron; Massachusetts Insurance Commissioner Gary Anderson; Mississippi Insurance Commissioner Mike Chaney; and Oklahoma Insurance Commissioner Glen Mulready. There was a very good dialogue with them, and it is always good to work with partners on the regulatory side.

OTHER BUSINESS

Pursuant to NCOIL bylaws, the chair of the committee responsible for insurance legislation in each legislative house of each Contributing State shall automatically, by the nature of his or her office be a member of the Executive Committee at his or her first meeting – such person must attend the meeting of the Executive Committee to qualify for such membership status. Of those eligible, CT Rep. Kerry Wood, DE Sen. Spiros Mantzavinos, MS Rep. Henry Zuber, and WI Sen. Mary Felzkowski, none were in present at the Executive Committee Meeting.

Rep. Lehman then introduced Teresa Casey, who on behalf of the Industry Education Council (IEC) offered two suggested topics for discussion for the upcoming NCOIL Annual Meeting agenda. They both reflect subjects that NCOIL has heard about in the past few days. One of them is on race in insurance issues, specifically addressing diversity in the insurance industry. IEC member Adam Kerns from Zurich North America (ZNA) has presented success that ZNA has had on recruiting from underserved communities. They have put 118 people into jobs at ZNA, and paid for training for people while they were in school. The IEC sees this as potentially scalable to the industry and also possibly of use in public sector settings.

The second topic is focused on long-term care insurance. The National Association of Insurance and Financial Advisors (NAIFA) believes that it is time to consider collaborative innovative solutions particularly as Washington state has undertaken a publicly administered long-term care program. The IEC wants to explore this topic as other states are considering similar legislation and the COVID pandemic has exposed further challenges in this area.

Rep. Lehman then presented a resolution for consideration in honor of Kentucky Senator Tom Buford. Sen. Buford came to many NCOIL meetings, and recently passed away. The resolution is sponsored by Rep. Lehman, KY Rep. Jared Carpenter, KY Rep. Joe Fischer, KY Rep. Deanna Frazier, KY Sen. Rick Girdler, KY Rep. Jim Gooch, KY Rep. Derek Lewis, KY Rep. Chad McCoy, KY Rep. Bart Rowland, and KY Rep. Steven Rudy.

Rep. Rowland remarked that he appreciates the Executive Committee considering this resolution in honor of Sen. Buford. Sen. Buford served for over 30 years in the Kentucky State Senate and he was Rep. Rowland's co-chair of the Senate Banking and Insurance Committee for a period of time, although Rep. Rowland got to know Sen. Buford best through NCOIL. Sen. Buford was an extremely smart and witty man. Rep. Rowland remarked that everyone will miss him not just as a legislator, but as a friend. He will make sure to communicate the resolution with Sen. Buford's family and friends.

Rep. Fischer also thanked the NCOIL Executive Committee for this Resolution. He remarked that Sen. Buford was a very productive legislator over the years. He became Chair of the Banking and Insurance Committee in 2000. Before that, he was able to

cross party lines and pass a lot of legislation. He was a delightful person to be around and work with.

Upon a motion made by Rep. Rowland and seconded by Rep. Fischer, the Committee voted without objection by way of a voice to adopt the resolution.

ADJOURNMENT

There being no further business, upon a motion made by Sen. Utke and seconded by Asm. Cooley, the Committee adjourned at 1:00PM.