NCOIL NEWSLETTER

Rep. Deborah Ferguson DDS AR
President

Thomas B. Considine
NCOIL CEO

Rep. Tom Oliverson MD, TX
Vice President

NCOIL Releases 2023 Summer Meeting 30 Day Materials

The National Council of Insurance Legislators (NCOIL) released the 30-day materials for the 2023 Summer Meeting in Minneapolis, Minnesota from July 19-22.

NCOIL CEO, Commissioner Tom Considine said, "With many interesting and timely topics on the agenda and an already strong turnout from legislators and industry alike, we look forward to productive and lively sessions."

Among the highlights for the Summer Meeting agenda are:

- The Joint State-Federal Relations and International Insurance Issues Committee will hear from Joey Mattingly, PharmD, Ph.D., MBA, Associate Professor & Vice Chair for Research, Department of Pharmacotherapy at The University of Utah regarding recent federal healthcare reform proposals in issues such as lowering prescription drug prices, pharmacy benefit manager reform, and capping insulin prices.

- The Health Insurance and Long-Term Care Issues Committee will consider two Model Laws – the NCOIL Biomarker Testing Insurance Coverage Model Act, sponsored by Asw. Pam Hunter (NY), NCOIL Treasurer, and co-sponsored by Sen. Paul Utke (MN), NCOIL Secretary; and the NCOIL Hospital Price Transparency Model Act, sponsored by Rep. Tom Oliverson, M.D. (TX), NCOIL Vice President, and co-sponsored by Rep. Rachel Roberts (KY).

- The Financial Services & Multi-Lines Issues Committee will discuss proposed amendments to the NCOIL Insurance E-Commerce Model Act, sponsored by Rep. Edmond Jordan (LA), and discuss Resolutions on issues such as existing law exemptions for new data privacy laws, sponsored by Rep. Forrest Bennett (OK), and establishing national standards and procedures for the reporting and payment of premium taxes due as a result of interstate insurance transactions, sponsored by Rep. Oliverson.

- The Workers' Compensation Insurance Committee will hear the National Council on Compensation Insurance's (NCCI) "State of the Line Presentation" which focuses on the status of and trends in the workers' compensation insurance marketplace. The Committee will also hear a presentation from Ramona Tanabe, CEO of the Workers' Compensation Research Institute (WCRI) on trends in states after adoption of drug formularies.

- The Life Insurance & Financial Planning Committee will hear a presentation from Steve Schoonveld, FSA, MAAA, Managing Director, Global Insurance Services at FTI Consulting, on Minnesota's project to increase access to long-term services and supports. The Committee will also discuss a Resolution, sponsored by Rep. Carl Anderson (SC), opposing the return of a U.S. Department of Labor Fiduciary Rule.
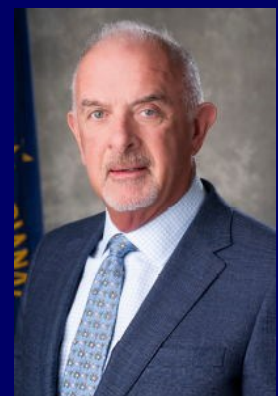
NCOIL Releases 2023 Summer Meeting 30 Day Materials (cont'd)

- The Property & Casualty Insurance Committee will discuss proposed amendments to the NCOIL Model State Uniform Building Code, sponsored by Rep. Jim Dunnigan (UT), and begin discussions on two potential NCOIL Model Laws: the NCOIL Catalytic Converter Theft Prevention Model Act, sponsored by Reps. Oliverson and Jordan; and the NCOIL Public Adjuster Professional Standards Reform Model Act, sponsored by Rep. Michael Meredith (KY), and co-sponsored by Rep. Matt Lehman (IN), NCOIL Immediate Past President.

- The NCOIL-NAIC Dialogue will discuss: the NAIC's draft Consumer Privacy Protection Model Law; the NAIC's Public Adjuster Licensing Model Act alongside development of NCOIL's Public Adjuster Professional Standards Reform Model Act; the NAIC's development of a model bulletin on issues relating to artificial intelligence and the insurance industry; and recent Federal Trade Commission (FTC) activities.

- Three important and interesting general sessions will also be held: part two of NCOIL's special year-long series of general sessions focused on different types of Environmental, Social, and Governance (ESG) public policy; Silicon Valley Bank, Signature Bank, and First Republic Failures: Are We in a Banking Crisis?; and The Ongoing Effort to Achieve Mental Health Parity.

"Tom and the staff have done a great job of putting together an interesting agenda that has attracted both legislators and interested parties from across the country to come to Minneapolis for the meeting," said AR Representative Deborah Ferguson, DDS, NCOIL President. "I'm looking forward to engaging in important policy discussions."

At the 21 day mark, there are 287 registered attendees, including 53 legislators and 4 Insurance Commissioners. The full agenda can be viewed here.

NCOIL Slams Federal Encroachment of State Regulation of Insurance

NCOIL Pushes Back on IRS Encroachment of the State Regulation of Insurance

Belmar, NJ – The National Council of Insurance Legislators (NCOIL) has submitted a comment letter to the Internal Revenue Service (IRS) urging it to retract a proposed rule which poses a significant threat to the longstanding framework of the state regulation of insurance and violates the McCarran-Ferguson Doctrine.

"The Proposed Rule undermines the well-established and continually reaffirmed framework of the state-based system of insurance regulation," said Arkansas Representative Deborah Ferguson, DDS, NCOIL President. "This system has created the strongest, safest, and most successful insurance market in the world, and it is imperative that state insurance legislators and regulators work together to prevent federal encroachment that has no basis in law."

If promulgated, the Rule would abrogate the States' authority in a number of ways related to the captive insurance area. Many businesses across America have established captive insurance companies to mitigate against a wide range of extremely relevant risks. A significant subset of these are on the smaller to medium size of the range and are able to make a small insurance company election, known as an 831(b) tax election.

The IRS has apparently expressed concerns regarding certain companies' utilization of Section 831(b), something that NCOIL takes no position on other than to condemn fraud in all instances. However, in its attempt to address its concerns, the IRS goes too far and seeks to insert itself into captive insurance companies' loss ratios, an insurance business aspect which constitutes the very heart and core of "the business of insurance" which, pursuant to the McCarran Ferguson Act, shall be "regulated by the States." *Cont'd on Page 3*

Asw. Pamela Hunter, NY
Treasurer

Sen. Paul Utke, MN
Secretary

Rep. Matt Lehman, IN
Immediate Past President

Sen. Travis Holdman, IN
Immediate Past President

NCOIL Slams Federal Encroachment of State Regulation of Insurance (cont'd)

NCOIL CEO, Commissioner Tom Considine stated, "We at NCOIL urge the IRS to retract the Proposed Rule and return to the drawing board to address its stated concerns in a way that is narrow, tailored, non-retroactive, and most importantly does not violate the McCarran-Ferguson Doctrine by infringing on the Congressionally-delegated rights of the States to regulate the business of insurance."

A public hearing on this matter will be held on July 19th. For more information on the public hearing and to view all public comments on the Proposed Rule, please see this link: https://www.regulations.gov/document/IRS-2023-0017-0001

A full copy of the comment letter can be viewed here.

NCOIL Opposes FTC Encroachment of the State Regulation of Insurance

Belmar, NJ – The National Council of Insurance Legislators (NCOIL) has submitted a comment letter to the Federal Trade Commission (FTC) urging it to amend a proposed rule which, as currently drafted, needlessly encroaches on the longstanding framework of the state regulation of insurance and violates the McCarran-Ferguson Doctrine.

"This Proposed Rule is yet another example of why it is important for state legislators and regulators to always be alert and ready to push back on any and all attempts to undermine the state-based system of insurance regulation," said Arkansas Representative Deborah Ferguson, DDS, NCOIL President. "Protecting consumers is always our number one priority and the state-based system of insurance regulation has proven time and time again that it is more than capable and that federal involvement is not needed."

If promulgated as currently drafted, the Rule would abrogate the States' authority to regulate service contracts, which have historically been recognized as an insurance-related product, illustrated by the fact that state insurance departments, in whole or in part, currently regulate service contracts in 43 states. Many of those regulations include specific requirements on issues such as cancellations and refunds, disclosures, demonstration of financial responsibility to pay claims, and entity registration with the state department of insurance.

Service contracts, like insurance, provide consumers the ability to protect themselves from financial hardship. In the case of service contracts the risk arises should some of their most important purchases (i.e. mobile devices, motor vehicles, household systems and appliances) break down and require expensive repair, replacement, or maintenance. Specifically, service contracts ensure the repair, replacement, or maintenance for the operational or structural failure of property (or indemnity for the same) due to defects, accidental damage, normal wear and tear, or damages due to service interruption.

The FTC apparently has some concerns with certain companies' use of service contracts. Having not yet studied them, NCOIL takes no position on those specific concerns at this time, other than to condemn unfair and deceptive actions in all instances. However, state's current level of service contract regulation dictates that under the express power given by Congress to the States to regulate insurance, States also have the express power to regulate certain products, such as service contracts, that fall within the regulatory penumbra of insurance regulation.

NCOIL CEO, Commissioner Tom Considine stated, "We at NCOIL urge the FTC to exempt service contracts from the Proposed Rule to ensure that the Rule does not violate the McCarran Ferguson Doctrine and infringe on the Congressionally-delegated rights of the States to regulate the business of insurance. State insurance legislators and regulators have been effectively overseeing insurance practices and consumer protections for decades, and this proposal needlessly threatens to disrupt a system that has led to the strongest and safest insurance market in the world."

For more information on the Proposed Rule and to view all public comments, please see this link: https://www.regulations.gov/document/FTC-2023-0033-0001

A full copy of the comment letter can be viewed here.

ARTIFICIAL INTELLIGENCE —THERE'S NOTHING FAKE ABOUT IT
*IEC Perspective**

By *Gregory J. Lestini, Partner; Jeff Knight, Of Counsel, Elizabeth F. Martini, Of Counsel; Bricker Graydon*

Artificial Intelligence (AI) has become ubiquitous in today's corporate lexicon. And while much has been said, and written, about AI, the question still remains: what, exactly, is AI? Or, more aptly for this discussion, what about it will impact the insurance industry?

As to the former, there are no shortage of definitions of AI. Alan Turing ("the father of computer science") described it as "systems that act like humans."[1] While many have built on that early definition, there is a simplicity about it that makes it easy to understand when trying to evaluate just how disruptive AI will be in the insurance industry. For our purposes, we're going to further define the word "systems" in Mr. Turing's definition to mean both massively capable computers *and* the trove of data that they have access to.

As to the latter – the impact that AI will have on the insurance industry – we'll stick with a word that we used earlier: disruptive. Whether good or bad remains to be seen, but AI, and more specifically, Generative AI, will undoubtedly revolutionize insurance operations, risk management, underwriting, and the customer/carrier experience more generally.

Generative AI
Generative (GAI), at its core, is a deep-learning AI model that is capable of generating text, images, and other content based on the data it was trained on[2]. It learns by identifying patterns and structures within its existing data to create new and "original" content (air quotes to acknowledge the considerable dispute as to whether the content is truly "original" given how GAI is trained on volumes of already existing data)[3]. You've likely already seen, or maybe tinkered with, GAI, as it has exploded into the zeitgeist with tools like ChatGPT, Dall-E, and Bard.

Big Data and AI: A Perfect Match
Before getting to how AI and GAI will impact the insurance industry, it is worth stepping back for a moment to reintroduce a term that has been used (perhaps misused) with some regularity: big data. Though most understand it in context, the term "big data" has become somewhat fungible since its inception in the early 1990's. In essence, "big data" is the output produced by a society that has seen rapid advances in technology and similarly rapid advances in overall interconnectedness. Think of the speed with which a social media post may make the rounds online and the granularity of the information known about us that is publicly available. Buried in all of that data lies patterns, trends, and associations that tell a story.

As it happens, AI requires data to function. Massive amounts of data. In a way, AI allows big data to maximize its potential. Collected and stored, big data has potential energy. It's ready to be released but until acted upon, it sits. When used by AI, it transforms into kinetic energy. It's moving and doing work.

Insurance companies have long had massive amounts of data, and it's growing exponentially. And not just high level data, but the type of granular data that can help transform how consumers are viewed and how risk is identified (and priced). Whether the data is in the form of social media posts, telematics, news, or weather forecasts, a mass of data no longer has to be intimidating to the end user or overwhelming to existing statistical models. AI can harness it, make sense of it, and it can analyze it with tremendous speed and, in most cases, accuracy. What was once overwhelming is now both achievable and scalable.

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[1] https://redirect.cs.umbc.edu/courses/471/papers/turing.pdf
[2] https://research.ibm.com/blog/what-is-generative-AI
[3] https://techcrunch.com/2023/01/27/the-current-legal-cases-against-generative-ai-are-just-the-beginning/
*This column is a submission of the Industry Education Council (IEC) and reflects the IEC's perspective on the Issue(s) discussed. The views, thoughts, and opinions expressed in the column do not necessarily reflect those of NCOIL.

THERE IS STILL TIME TO REGISTER FOR THE NCOIL SUMMER MEETING IN MINNEAPOLIS

Registration for the 2023 NCOIL Summer Meeting at the Marriott Minneapolis City Center in Minneapolis, MN from July 19th—22nd is open.

For registration information please click here

See the meeting schedule on page 9 or view at the NCOIL website here

REGISTRATION FOR NCOIL OPEN GOLF OUTING TO BENEFIT THE ILF SCHOLARHSIP FUND

NCOIL is pleased to announce the Second NCOIL Open Golf Outing to Benefit the Insurance Legislators Foundation (ILF) Scholarship Fund. The event will take place on July 19th at Majestic Oaks Golf Club in Ham Lake, MN immediately preceding the 2023 NCOIL Summer Meeting. The format will be a scramble shotgun starting at 12:30 PM CT.

For registration information please click here

Don't Miss the NCOIL YouTube Channel: Subscribe Today

Weren't able to attend our past meetings? Good news– you can visit our YouTube channel for recordings of past meetings. Prior national meeting sessions and interim committee meetings are posted on our YouTube channel now.

Visit the link below to subscribe and keep up to date on all things NCOIL!

https://www.youtube.com/channel UCe09Z77z4q6HG1kv3fDG7Bg

ARTIFICIAL INTELLIGENCE —THERE'S NOTHING FAKE ABOUT IT (cont'd)
IEC Perspective*

AI and Insurance:
The proliferation of AI has transformed the way organizations operate and make decisions, and this is unsurprising given the rise in the sheer volume of data generated on a daily basis and the attendant increase in computing capabilities, generally. Put differently, the environment is (and has been) ripe for growth and will likely continue to stay that way for quite some time.

With the introduction of GAI, this transformation has only hastened. And, as GAI models have become more sophisticated and capable, their outputs have turned increasingly realistic and personalized.

The insurance industry is, of course, not immune to any of this advancement. In fact, in many ways, it may be better positioned than most because of the very data that it has long had access to. Case in point, underwriting. The part of the process where it is critical to turn data into actionable insight.

Field underwriting, or, more specifically, the lack of field underwriting, could be deeply impacted by GAI platforms. Bob Gaydos, founder and CEO of Pendella, argues in Digital Insurance that proper use of ChatGPT, in particular, in life insurance underwriting could create an environment where better virtual "field" underwriting could better predict the proper coverage class for individuals[4]. That could more accurately price policies and open a market with slim margins to more middle-income consumers. Additionally, he argues, agents can better market to typically cynical older-millennials.[5]

Beyond underwriting, insurers are using chatbots to improve customer experience. With 24/7 availability, chatbots can provide high-level advice, verify billing information, and kick-start a claims process. Chatbots, of course, are not necessarily a panacea for the user experience. Some are rule-based and can only execute certain processes based on a set of pre-defined rules. They're built on the back-end and they're good at resolving simple issues. AI-driven chatbots are not tethered to pre-defined rules. Rather, they are trained, and they learn. They learn to recognize input in an attempt to understand a user's intent. In either case, like many GAI tools, they are only as good as their data and they, too, can be prone to inaccuracies.

The claims process itself has also seen early benefits with various AI-driven tools offering assessments of damage and predictions of repair costs. In fact, there are no shortage of examples available showing how the great majority, if not entirety, of a claims process can be automated. From the collection of data through an onboard telematics device to communicating with an insured through a chatbot, and finally, concluding with a decision on how a claim may or may not proceed.

Fear, Uncertainty and Regulation:
While successful use cases are plentiful, the wide-scale integration of AI is not without its drawbacks and risk. Recall that many AI tools, and most GAI tools, are attempting to mimic human problem-solving capabilities. And while they are good at doing so, and getting better, such tools are limited to what they have been trained to do and further limited by the data that they have trained on. In other words, if a predictive model leans on a dataset that reflects some past discrimination, or bias, there is a considerable potential that the model may perpetuate that same discrimination or bias moving forward. Of course this can happen in a purely human-led decision-making model, but the scale is considerably smaller.

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[4]How life insurers may leverage ChatGPT in underwriting, by Bob Gaydos, June 2, 2023 https://www.dig-in.com/opinion/how-life-insurers-may-leverage-chatgpt-in-underwriting
[5]Id.

Things to See in Minneapolis:

ARTIFICIAL INTELLIGENCE —THERE'S NOTHING FAKE ABOUT IT (cont'd)
IEC Perspective*

This type of concern was a through-line in the testimony of several witnesses who appeared before the US Senate Judiciary Subcommittee on Privacy & Technology in May 2023[6]. The hearing, called "Oversight of AI: Rules for Artificial Intelligence", featured testimony from Sam Altman, the CEO of OpenAI, Christina Montgomery, the chief privacy officer at IBM, and Gary Marcus, a professor emeritus at New York University.

The hearing itself began with Chair Blumenthal playing a statement that was written and voiced by AI that mimicked his own writing and voice. Colloquially known as a "deepfake." Over the course of several hours, the Subcommittee heard testimony relating to trends, implications, and risks associated with AI, all with an eye toward assessing how the government can tackle the unenviable task of offering a regulatory framework for AI. Whether through a "scorecard," "nutrition label," or "precision regulation," the point was clear that some framework is necessary and Congress likely needs to act sooner rather than later, lest it meet a similar fate as efforts to regulate social media.

Beyond Congress, the National Association of Insurance Commissioners (NAIC) is already taking steps to understand and address the rise of AI in business and how that could impact the state-based regulatory environment. NAIC has already formed both the Innovation Cybersecurity and Technology (H) Committee, as well as the Big Data and Artificial Intelligence (H) Working Group (BDAI Working Group). With the latter being tasked with studying the development of artificial intelligence, its use in the insurance sector, and its impact on consumer protection and privacy, marketplace dynamics, and the state-based insurance regulatory framework.

In 2021, the BDAI Working Group began surveying insurers to learn how AI and machine learning techniques are currently being used and what governance and risk management controls are in place. A report of the aggregate responses from private passenger auto writers was issued in December 2022. The survey of homeowners' insurers was completed in late 2022 and the survey of life insurers expected to be issued in Q2 of 2023.[7]

At the most recent Spring 2023 US NAIC meeting, the BDAI Working Group heard from consumer representatives and trade associations on the draft Model and Data Regulatory Questions, a set of questions about models and data used by insurance companies. The commentary covered considerable ground but included pointed discussions on the legal authority to ask certain questions, the overall scope of the questions, and how much data (including third-party vendor data) is required to be disclosed.

Regulatory Considerations:
Like many aspects of insurance regulation, big data and the use thereof will be front and center in the debate over how to regulate AI in insurance. Specifically, lawmakers and regulators will need to consider:

- How to find the balance between encouraging innovation while addressing risk.
- Whether existing frameworks for responsibility and liability (e.g., Section 230 of the Communications Decency Act) have applicability.
- Identifying and prioritizing harms and rights infringement. (e.g., suppression of speech, addressing bias in algorithms and potential infringement of intellectual property)

- How to account for existing (and non-existing) international, national, state, and regulatory data privacy regimes and how they factor into the wide-scale collection and use of data, particularly in AI tools.
- Where and how federal oversight might work in a fast-moving environment.

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[6] https://www.judiciary.senate.gov/committee-activity/hearings/oversight-of-ai-rules-for-artificial-intelligence
[7] https://content.naic.org/cipr-topics/artificial-intelligence

Minnesota State Capitol Tour:

On Wednesday, July 19th, there is a tour of the Minnesota State Capitol arranged at 3 PM. If you are interested in attending, please reach out to Pat Gilbert at pgilbert@ncoil.org to secure your spot as space is limited.

ARTIFICIAL INTELLIGENCE —THERE'S NOTHING FAKE ABOUT IT (cont'd)
*IEC Perspective**

Conclusion:
AI is here and it's not going anywhere as its uses are far reaching. While the fear that AI will "overtake human thinking" and could potentially replace thousands of human workers is real, we must be willing to confront the technology and regulate it accordingly. Legislators and regulators must be willing to learn about these issues, discuss them openly, be fearless and thoughtful in their actions, and be willing to adapt as things change.

When asked the question, "how should lawmakers regulate AI in insurance?" ChatGPT responded with the following conclusion:

> It is important for lawmakers to work collaboratively with industry stakeholders, consumer advocates, and experts to strike an appropriate balance in regulating AI in insurance. The aim should be to foster innovation, protect consumer interests, and ensure fair and transparent practices in the insurance sector.

That's pretty good advice.

For additional resources on this topic, please visit the link here: https://ncoil.org/wp-content/uploads/2023/06/ARTIFICIAL-INTELLIGENCE-final.pdf

Reminder that Contributing States are eligible for two legislator stipends per National Meeting to help underwrite the cost of participating. Click below for more information

Please reach out to Pat Gilbert at pgilbert@ncoil.org with any questions

LEGISLATOR STIPENDS NOW AVAILABLE FOR CONTRIBUTING STATES
CLICK HERE FOR MORE INFORMATION

NCOIL One on One

NCOIL One on One Interview with North Dakota Senator Shawn Vedaa is out now. Click the link here to check it out!

If you haven't had a chance to watch NCOIL One on One Interviews with IN Rep. Matt Lehman, NY Asw. Pam Hunter, OH Sen. Bob Hackett, AR Rep. Deborah Ferguson DDS, ND Sen. Jerry Klein, LA Rep. Edmond Jordan, CA Asm. Ken Cooley, TX Rep. Tom Oliverson MD, NV Asw. Maggie Carlton, MN Sen. Paul Utke, MI Rep. Brenda Carter, WV Del. Steve Westfall, SC Rep. Carl Anderson, NC Sen. Vickie Sawyer, IN Sen. Travis Holdman, OK Rep. Forrest Bennett, CT Rep. Tammy Nuccio, MS Sen. Walter Michel, KY Rep. Rachel Roberts, and UT Rep. Jim Dunnigan, and NJ Sen. Nellie Pou please visit our YouTube channel here.

Thank you to everyone who has participated so far!

2023 NCOIL Summer Meeting Schedule

NCOIL Summer Meeting Conference Host Hotel is Sold Out!

See below for nearby hotels:

Marquette Hotel (0.2 miles)

The Loews (0.2 miles)

Royal Sonesta (0.2 miles)

AC Hotel (0.3 miles)

WEDNESDAY, JULY 19TH

Budget Committee	9:30 AM	-	10:00 AM
Audit Committee (Members Only)	10:00 AM	-	10:30 AM
NCOIL Open Golf Outing to Benefit the ILF Scholarship Fund	12:30 PM		
Tour of the Minnesota State Capitol	3:00 PM		
IEC Board Meeting	4:30 PM	-	5:15 PM
Welcome Reception and Presentation of Golf Outing Awards	6:00 PM	-	7:30 PM

THURSDAY, JULY 20TH

Welcome Breakfast	8:15 AM	-	9:45 AM
Networking Break	9:45 AM	-	10:00 AM
General Session	10:00 AM	-	11:30 AM
Joint State-Federal Relations & International Insurance Issues Committee	11:30 AM	-	1:00 PM
The Institutes Griffith Foundation Legislator Luncheon	1:00 PM	-	2:00 PM
Health Insurance & Long Term Care Issues Committee	2:00 PM	-	3:45 PM
Networking Break	3:45 PM	-	4:00 PM
Financial Services & Multi-Lines Issues Committee	4:00 PM	-	5:15 PM
CIP Member & Sponsor Reception	6:00 PM	-	7:00 PM

FRIDAY, JULY 21ST

Workers' Compensation Insurance Committee	9:00 AM	-	10:30 AM
Networking Break	10:30 AM	-	10:45 AM
NCOIL—NAIC Dialogue	10:45 AM	-	12:00 PM
Luncheon with Keynote Address	12:00 PM	-	1:30 PM
General Session	1:30 PM	-	3:00 PM
Life Insurance & Financial Planning Committee	3:00 PM	-	4:15 PM
Articles of Organization & Bylaws Revision Committee	4:15 PM	-	4:45 PM

SATURDAY, JULY 22ND

Property & Casualty Insurance Committee	9:00 AM	-	10:45 AM
Networking Break	10:45 AM	-	11:00 AM
General Session	11:00 AM	-	12:30 PM
Executive Committee	12:30 PM	-	1:00 PM