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NCOIL ADOPTS FOUR NEW MODEL LAWS AT ANNUAL MEETING IN NEW ORLEANS, LA

Model Laws include the NCOIL Paid Family Leave (PFL) Insurance Model Act; the NCOIL Insurance Regulatory Sandbox Model Act; and two Property and Casualty Insurance Models

Belmar, NJ – During the 2022 National Council of Insurance Legislators (NCOIL) Annual National Meeting in New Orleans, LA, the organization adopted four new Model Laws. All four Models passed without opposition via voice vote by their respective policy committees and the NCOIL Executive Committee.

The NCOIL Life Insurance & Financial Planning Committee, Chaired by Rep. Carl Anderson (SC), adopted the NCOIL Paid Family Leave (PFL) Insurance Model Act, sponsored by Sen. Paul Utke (MN), NCOIL Secretary, and co-sponsored by Rep. Deborah Ferguson, DDS (AR), NCOIL President. The NCOIL Financial Services & Multi-Lines Issues Committee, Chaired by Rep. Edmond Jordan (LA), adopted the NCOIL Insurance Regulatory Sandbox Model Act, sponsored by Rep. Bart Rowland (KY), Chair of the NCOIL Property & Casualty Insurance Committee and co-sponsored by Rep. Wendi Thomas (PA) and Rep. Tom Oliverson, M.D. (TX), NCOIL Vice President.

Additionally, the Property & Casualty Insurance Committee adopted the NCOIL Delivery Network Company (DNC) Insurance Model Act, sponsored by Rep. Rowland, and co-sponsored by Del. Steve Westfall (WV), Vice Chair of the NCOIL Health Insurance & Long Term Care Issues Committee, and the NCOIL Dog Breed Insurance Underwriting Protection Model Act, sponsored by Asm. Kevin Cahill (NY), former NCOIL Vice President, and co-sponsored by Rep. Tammy Nuccio (CT). More information on the passage of these two models can be viewed [here](#).

The NCOIL Paid Family Leave (PFL) Insurance Model Act provides a framework for states to create a new line of insurance in which any insurer licensed to transact life insurance or disability income insurance will also be able to provide coverage for paid family leave. Since many workers need to take time off work for family reasons, including bonding with a new child or



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caring for an ill family member, this Model would allow insurers to expand existing income replacement benefits to include paid family leave.

“I was proud to sponsor the PFL Insurance Model Act as it benefits both workers and employers,” said Sen. Utke. “Having coverage for paid family leave will give people the peace of mind that they won’t have to face financial hardship to take care of a loved one. I look forward to seeing how states use this Model across the country.”

“It’s also important to note that the Model is very flexible in that it can be used in states that have existing mandatory paid family leave requirements for their employers or it can be used in states that don’t have such a requirement but want to make it available to employers as an enhanced benefit to their employees as we see an ever-increasing competitive employment market,” Sen. Utke concluded.

Rep. Ferguson said, “This creates an important framework for states as they look to find the best way to implement paid family leave. The Model has so much potential as it can be used to not only support businesses but it could also serve as a model for a type of private-public partnership between insurance companies and government paid family leave programs,” said Rep. Ferguson. “This is an issue that has been left unsolved for far too long and I’m glad we were able to work to provide guidance to states that will give real benefits to consumers.”

During the drafting and deliberation process, the Committee heard from interested parties including the American Council of Life Insurers (ACLI), the Children’s Action Alliance, and the Center for American Progress.

The NCOIL Insurance Regulatory Sandbox Model Act provides regulators the authority to grant insurers waivers from specific requirements of insurance laws or regulations in order for more innovative or efficient insurance products to emerge. The Model aims to reduce hurdles for insurance companies that want to introduce new concepts and products at the same speed as insurance technology develops.

Several states across the country have such sandboxes with some being industry-targeted and others being all-inclusive thereby opening the door for any and all companies to apply and participate, regardless of industry. The NCOIL Model is insurance-specific, similar to those enacted in states such as Kentucky, South Dakota, Utah, Vermont, and West Virginia.

“We implemented an insurance regulatory sandbox in Kentucky and I have seen how beneficial it is for promoting innovation,” said Rep. Rowland. “The insurance industry is dynamic and there are changes happening every day. This Model will give companies the ability to create new products to respond to consumer demand while also ensuring compliance with state law. Sandboxes enable innovators to work with regulators in trialing new products, services, and business models while regulations are temporarily waived but consumers remain protected.”

“No matter how complex a topic is, and many topics related to innovation can indeed be complex, the importance of having conversations remains paramount,” said Rep. Oliverson. “Having conversations and an open dialogue can be very helpful in ensuring that development of

innovative products is not stifled or unnecessarily impeded. After several discussions and hearing from those who have been involved in the sandbox process, it was ultimately decided that even if the take-up rate is low in the sense that there aren't a ton of formal applications to get into the sandbox and have a law or regulation waived, what the sandbox does is ignite conversations and more importantly, conversations about innovation. Kudos to Rep. Rowland for shepherding this Model across the finish line.”

During the drafting and deliberation process, the Committee heard from interested parties including the American InsurTech Council (AITC), the Arizona Department of Insurance and Financial Institutions, Degree Insurance, Eusoh, the Independent Insurance Agents & Brokers of America (IIABA), Libertas Institute, and the Vermont Department of Financial Regulation.

NCOIL CEO Commissioner Tom Considine said, “The adoption of these four Model Laws during our Annual Meeting highlights how productive NCOIL has been this past year. I’d like to thank the work of the Committee Chairs as well as the sponsors and co-sponsors who helped get these Models adopted without opposition. We’ll be watching with great interest to see how these Models get adopted into state law in the upcoming legislative sessions.”

Full copies of the models appear below:

National Council of Insurance Legislators (NCOIL)

Paid Family Leave Insurance Model Act

**Sponsored by Sen. Paul Utke (MN)*

**Co-sponsored by Rep. Deborah Ferguson, DDS (AR)*

**Adopted by the NCOIL Life Insurance & Financial Planning Committee on November 17, 2022 and by the NCOIL Executive Committee on November 19, 2022.*

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Section 1. Title

This Act shall be known as the [State] Paid Family Leave Insurance Act

Section 2. Purpose

The purpose of this Act is to create a new line of insurance, known as paid family leave insurance, under which any insurer licensed to transact life insurance or disability income insurance business in this state may be authorized to issue policies covering such risk.

Section 3. Definitions

In the appropriate “Definitions” section of [State] Insurance Code, the following term shall be added:

“Family leave insurance” means an insurance policy issued to an employer related to a benefit program provided to an employee to pay for a percentage or portion of the employee’s income loss due to: (i) the birth of a child or adoption of a child by the employee; (ii) placement of a child with the employee for foster care; (iii) care of a family member of the employee who has a serious health condition; or (iv) circumstances arising out of the fact that the employee’s family member who is a service member is on active duty or has been notified of an impending call or order to active duty.

Family leave insurance may be written as an amendment or rider to a group disability income policy, included in a group disability income policy or written as a separate group insurance policy purchased by an employer.

Section 4. Paid Family Leave Insurance License

In the [State] Insurance Code, the following language shall be added to the Classes of Insurance section indicating what policies a licensed life insurer or disability income insurer may issue in this state: “family leave insurance”

Section 5. Rules

The commissioner may adopt rules as necessary to effectuate the provisions of this Act.

Section 6. Effective Date

This Act is effective immediately.

Section 7. Addendum

The following may be used to as a basis for developing rules referenced in Section 5, or, in the alternative, may be used as a basis for a more detailed statutory addition to a particular state's insurance code.

The rules may be based on the following, or in the alternative may be included in the statute as law.

An insurance company licensed to issue life insurance or disability income insurance policies in accordance with this title may also offer paid family leave benefits providing wage replacement caused by absences that are not based upon an insured's status as disabled. Such benefits may be offered either through a rider to a policy of disability income insurance or as a separate policy and must: (1) comply with the relevant sections of this title, and (2) [comply with any state disability income insurance filing requirements - cite state insurance code].

§ 100. Short Title

This Article shall be known and may be cited as the "Paid Family Leave Income Replacement Benefits Act".

§ 101. Purpose

[State] is a family-friendly state, and providing the workers of [State] with access to paid family leave insurance will encourage an entrepreneurial atmosphere, encourage economic growth, and promote a healthy business climate. Many workers need to take time off work for family reasons, including bonding with a new child or caring for an ill family member. Increasingly, employers in [State] want to make paid leave benefits available to workers who need time off for these reasons. Employers recognize workers will be healthier and more productive workers when able to take care of family responsibilities without a complete loss of income, and believe that offering paid family leave benefits to their employees will improve recruitment opportunities and reduce turnover in the workplace. Disability insurers currently offer income replacement benefits to workers who need time off from work because of their own disabling medical condition. Disability insurers have extensive experience, claims staff, systems, and expertise that can be used to provide fully insured paid family leave benefits for employees either through employer-sponsored group insurance policies or voluntarily purchased employee policies. It is in the best interests of [State's] workers and employers to permit disability insurers to expand their fully insured benefits in [State] to include paid family leave benefits.

§ 102. Definitions

As used in this Article:

1. “Armed forces of the United States” includes members of the National Guard and Reserves.
2. “Child” means a person who is (i)(a) under 18 years of age; or (b) 18 years of age or older and incapable of self-care because of a mental or physical disability; and (ii) a biological, adopted, or foster son or daughter; a stepson or stepdaughter; a legal ward; a son or daughter of a domestic partner; or a son or daughter of a person to whom the employee stands *in loco parentis*.
3. “Family Leave” is any leave taken by an employee from work for reasons enumerated in Section 103.
4. “Family Member” may include a child, spouse, or parent as defined in this Section or any other person defined as a “family member” in the policy of insurance.
5. “Health care provider” shall mean a person licensed under the public health law of the [State].
6. “Parent” means a biological, foster, or adoptive parent, a stepparent, a legal guardian, or other person who stood *in loco parentis* to the employee when the employee was a child.
7. “Serious health condition” means an illness, injury, impairment, or physical or mental condition, including transplantation preparation and recovery from surgery related to organ or tissue donation, that involves inpatient care in a hospital, hospice, or residential health care facility, continuing treatment or continuing supervision by a health care provider as defined in the insurance policy. Continuing supervision by a health care provider includes a period of incapacity which is permanent or long term due to a condition for which treatment may not be effective and where the family member need not be receiving active treatment by a health care provider.

§ 103. Family Leave Benefits:

Family leave benefits may be provided for any leave taken by an employee from work to:

- (a) participate in providing care, including physical or psychological care, for a family member of the employee made necessary by a serious health condition of the family member;
- (b) bond with the employee’s child during the first twelve months after the child’s birth, or the first twelve months after the placement of the child for adoption or foster care with the employee;
- (c) address a qualifying exigency as interpreted under the Family and Medical Leave Act, 29 U.S.C. § 2612(a)(1)(e) and 29 C.F.R. §§ 825.126(a)(1)-(8), arising out of the fact that the spouse, child, or parent of the employee is on active duty (or has been

notified of an impending call or order to active duty) in the Armed Forces of the United States;

(d) care for a family service member injured in the line of duty; or

(e) take other leave to provide care for a family member or other family leave as specified in the policy of insurance.

§ 104. Explanation of Family Leave Reasons

The policy of insurance shall set forth the details and requirements with regard to each of the covered family leave reasons.

§ 105. Benefit Period

The policy of insurance shall set forth the length of family leave benefits that are available for each covered family leave reason, which will in no event be less than [two weeks] during a period of fifty-two consecutive calendar weeks. Fifty-two consecutive calendar weeks may be calculated by (i) a calendar year; (ii) any fixed period starting on a particular date such as the effective or anniversary date; (iii) the period measured forward from the employee's first day of family leave; (iv) a rolling period measured by looking back from the employee's first day of family leave; or (v) any other method that is specified in the policy of insurance.

§ 106. Waiting Period

The policy of insurance shall set forth whether there is an unpaid waiting period and, if so, the terms and conditions of the unpaid waiting period, which may include, but are not limited to: (i) whether the waiting period runs over a consecutive calendar day period, (ii) whether the waiting period is counted toward the annual allotment of family leave benefits or is in addition to the annual allotment of family leave benefits, (iii) whether the waiting period must be met only once per benefit year or must be met for each separate claim for benefits, and (iv) whether the employee may work or receive paid time off or other compensation by the employer during the waiting period.

§ 107. Amount of Family Leave Benefits/Other Income

(a) The policy of insurance shall set forth: (i) the amount of benefits that will be paid for covered family leave reasons; (ii) the definition of the wages or other income upon which the amount of family leave benefits will be based; and (iii) how such wages or other income will be calculated.

- (b) If the family leave benefits are subject to offsets for wages or other income received or for which the insured may be eligible, the policy shall set forth: (i) all such wages or other income that may be set off and (ii) the circumstances under which it may be offset.

§ 108. Permissible Limitations, Exclusions, or Reductions

Eligibility for family leave benefits under this Article may be limited, excluded, or reduced, but any limitations, exclusions, or reductions shall be set forth in the policy of insurance. Permissible limitations, exclusions, or reductions may include, but are not limited to, any of the following reasons:

- (a) for any period of family leave wherein the required notice and medical certification as prescribed in the policy has not been provided;
- (b) for any family leave related to a serious health condition or other harm to a family member brought about by the willful intention of the employee;
- (c) for any period of family leave during which the employee performed work for remuneration or profit;
- (d) for any period of family leave for which the employee is eligible to receive from his or her employer, or from a fund to which the employer has contributed remuneration or maintenance;
- (e) for any period of family leave in which the employee is eligible to receive benefits under any other statutory program or employer-sponsored program, including, but not limited to, unemployment insurance benefits, worker's compensation benefits, statutory disability benefits, statutory paid leave benefits, or any paid time off or employer's paid leave policy;
- (f) for any period of family leave commencing before the employee becomes eligible for family leave benefits under the policy; or
- (g) for periods of family leave where more than one person seeks family leave for the same family member.

§ 109. Payment of Family Leave Benefits

Family leave benefits provided under this Article shall be paid periodically and promptly [If Applicable: {as provided for in Section "X" of (State) Insurance Code}] except as to a contested period of family leave and subject to any of the provisions of Section 108 of this Article.

§ 110. The Insurance Policy

- (a) Premiums for policies or riders providing paid family leave benefits in accordance with [State’s] disability income insurance law shall be calculated in accordance with applicable provisions of the [State’s] insurance law, including Subsection (X) of such law.
- (b) Policies of insurance issued pursuant to this Article may offer coverage for paid family leave benefits or may offer paid family leave benefits as a rider to a policy of disability income insurance.

National Council of Insurance Legislators (NCOIL)

Insurance Regulatory Sandbox Model Act

**Sponsored by Rep. Bart Rowland (KY)*

**Co-sponsored by Rep. Wendi Thomas (PA) and Rep. Tom Oliverson, M.D. (TX)*

**Adopted by the NCOIL Financial Services & Multi-Lines Issues Committee on November 18, 2022 and the NCOIL Executive Committee on November 19, 2022.*

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Section 1. Title

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

Section 2. Regulatory Sandbox and Innovation Waivers

(a) The Commissioner may grant a variance or waiver with respect to the specific requirements of any insurance law, regulation, or bulletin if a person subject to that law, regulation, or bulletin demonstrates to the Commissioner's satisfaction that:

- (1) the application of the law, regulation, or bulletin would prohibit the introduction of an innovative or more efficient insurance product or service that the applicant intends to offer during the period for which the proposed waiver is granted;
- (2) the public policy goals of the law, regulation, or bulletin will be or have been achieved by other means;
- (3) the waiver will not substantially or unreasonably increase any risk to consumers; and
- (4) the waiver is in the public interest.

(b) An application for an innovation waiver shall include the following information:

- (1) the identity of the person applying for the waiver;
- (2) the identity of the directors and executive officers of the applicant, any persons who are beneficial owners of ten percent or more of the voting securities of the applicant, and any individuals with power to direct the management and policies of the applicant;
- (3) a description of the product or service to be offered if the waiver is granted, including how the product or service functions and the manner and terms on which it will be offered;
- (4) a description of the potential benefits to consumers of the product or service;
- (5) a description of the potential risks to consumers posed by the product or service or the approval of the proposed waiver and how the applicant proposes to mitigate such risks;
- (6) an identification of the statutory or regulatory provision that prohibits the introduction, sale, or offering of the product or service;
- (7) a filing fee of \$____; and
- (8) any additional information required by the Commissioner.

- (c) (1) An innovation waiver shall be granted for an initial period of up to 12 months, as deemed appropriate by the Commissioner.
- (2) Prior to the end of the initial waiver period, the Commissioner may grant a one-time extension for up to an additional 12 months. An extension request shall be made to the Commissioner at least 30 days prior to the end of the initial waiver period and shall include the length of the extension period requested and specific reasons why the extension is necessary. The Commissioner shall grant or deny an extension request before the end of the initial waiver period.
- (d) An innovation waiver shall include any terms, conditions, and limitations deemed appropriate by the Commissioner, including limits on the amount of premium that may be written in relation to the underlying product or service and the number of consumers that may purchase or utilize the underlying product or service; provided that in no event shall a product or service subject to an innovation waiver be purchased or utilized by more than 10,000 consumers.
- (e) A product or service offered pursuant to an innovation waiver shall include the following written disclosures to consumers in clear and conspicuous form:
- (1) the name and contact information of the person providing the product or service;
 - (2) that the product or service is authorized pursuant to an innovation waiver for a temporary period of time and may be discontinued at the end of the waiver period, the date of which shall be specified;
 - (3) contact information for the Department, including how a consumer may file a complaint with the Department regarding the product or service; and
 - (4) any additional disclosures required by the Commissioner.
- (f) The Commissioner's decision to grant or deny a waiver or extension shall not be subject to the contested-case provisions of the [insert reference to the state administrative procedure act].
- (g) (1) The Commissioner shall not grant a waiver with respect to any of the following:
- (A) any law, regulation, bulletin, or other provision that is not subject to the Commissioner's jurisdiction under [insert reference to the title(s) that make up the insurance code];
 - (B) any law, regulation, bulletin, or other provision concerning the assets, deposits, investments, capital, surplus, or other solvency requirements applicable to insurers;
 - (C) the required participation in any assigned risk plan, residual market, or guaranty fund;

(D) [insert references to the provisions of the insurance code related to insurance licensing requirements, insurance trade practices, particular lines of insurance or insurance products (e.g. health insurance, workers' compensation insurance), etc.];

(E) any law, regulation, or bulletin required for the Department to maintain its accreditation by the National Association of Insurance Commissioners unless the law or regulation permits variances or waivers;

(F) the application of any taxes or fees; and

(G) any other law, regulation, or bulletin deemed ineligible by the Commissioner.

(2) The authority granted to the Commissioner under this section shall not be construed to allow the Commissioner to grant or extend a waiver that would abridge the recovery rights of consumers.

(h) A person who receives a waiver under this section shall be required to possess or obtain one or a combination of the following in an amount subject to such conditions and for such purposes as the Commissioner determines necessary for the protection of consumers:

(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 [insert reference to appropriate state law]; or

(6) Another form of security authorized by the Commissioner

(i) (1) At least 30 days prior to granting an innovation waiver, the Commissioner shall provide public notice of the draft waiver by publishing the following information:

(A) the specific statute, regulation, or bulletin to which the draft waiver applies;

(B) the proposed terms, conditions, and limitations of the draft waiver;

(C) the proposed duration of the draft waiver; and

(D) any additional information deemed appropriate by the Commissioner.

(2) The notice requirement of this subsection may be satisfied by publication on the Department's website.

(j) (1) If a waiver is granted pursuant to this section, the Commissioner shall provide public notice of the existence of the waiver by providing the following information:

(A) the specific statute, regulation, or bulletin to which the waiver applies;

(B) the name of the person who applied for and received the waiver;

(C) the duration of and any other terms, conditions, or limitations of the waiver;
and

(D) any additional information deemed appropriate by the Commissioner.

(2) The notice requirement of this subsection may be satisfied by publication on the Department's website.

(k) (1) The Commissioner may revoke a waiver if the person who obtains the waiver fails to comply with any terms, conditions, or limitations established by the Commissioner or the requirements of this section or if the waiver is causing consumer harm.

(2) In addition to any other sanctions and penalties permitted by the law, the Commissioner may impose a fine of not more than \$_____ on any person who obtains a waiver that fails to comply with any terms, conditions, or limitations established by the Commissioner or the requirements of this section.

(l) The Commissioner, by regulation, shall adopt procedures for the submission, granting, denying, monitoring, and revocation of petitions for a waiver pursuant to this section. The procedures shall set forth requirements for the ongoing monitoring, examination, and supervision of, and reporting by, each person granted a waiver under this section and shall permit the Commissioner to attach reasonable conditions or limitations on the conduct permitted pursuant to a waiver. The procedures shall provide for an expedited application process for a product or service that is substantially similar to one for which a waiver has previously been granted by the Commissioner. The procedures shall include an opportunity for public comment on draft waivers under consideration by the Commissioner.

(m) Upon expiration of an innovation waiver, the person who obtained the waiver shall cease all activities that were permitted only as a result of the waiver and comply with all generally applicable laws and regulations.

(n) The ability to grant a waiver under this section shall not be interpreted to limit or otherwise affect the authority of the Commissioner to exercise discretion to waive or enforce requirements as permitted under any other section of this title or any regulation.

(o) The Commissioner shall submit a report annually to the [insert reference to state legislature] providing the following information:

(1) the total number of applications for waivers that have been received, granted, and denied by the Commissioner;

(2) for each waiver granted by the Commissioner, the information specified under paragraph (j)(1);

(3) a list of any regulations or bulletins that have been adopted or amended as a result of or in connection with a waiver granted under this section;

(4) with respect to each statute to which a waiver applies, the Commissioner's recommendation 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; and

(5) a list of any waivers that have lapsed or been revoked and, if revoked, a description of other regulatory or disciplinary actions, if any, that resulted in, accompanied, or resulted from such revocation.

(p) No new waivers or extensions shall be granted after July 1, _____.

(q) This section shall be repealed on July 1, _____.

Section 3. Reciprocity

The Commissioner may enter into agreements with other States that have enacted laws that are substantially similar to this Act in order to advance the purposes of this Act and to facilitate the consideration of applications for innovation waivers from persons that have satisfied the requirements of this Act and received similar waivers in other States.

Section 4. Rules

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

Section 5. Effective Date

This Act shall take effect xxxxxx