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For Immediate Release
September 24, 2020
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NCOIL ADOPTS PRIVATE PRIMARY RESIDENTIAL FLOOD INSURANCE MODEL ACT

*Provides Protection of Lives and Property from the Peril of Flood and
Encourages Expansion of Private Flood Insurance Market*

Manasquan, NJ – At the NCOIL “Summer” Meeting in Alexandria, VA, the organization adopted the NCOIL Private Primary Residential Flood Insurance Model Act sponsored by FL Representative David Santiago and NC Senator Vickie Sawyer. The measure passed on a voice vote by the NCOIL Special Committee on Natural Disaster Recovery and is expected to be affirmed by the Executive Committee when it convenes in two days.

NCOIL President Matt Lehman (Rep. – IN) stated, “This Model is extremely critical and timely as the nation is amid hurricane season. As of September 14th, just last week, the National Hurricane Center has named 20 storms in just over three months. The Hurricane Center literally just recently ran out of traditional names for storms and had to use the Greek alphabet to name subtropical storm Alpha. With several weeks to go in the 2020 hurricane season, it is our responsibility as state legislators and for those of us insurance agents to make more options available and be transparent with consumers on their financial plan. Many homeowners do not realize that flood insurance is not already part of their policy. Natural disasters cannot be controlled, but there is control over protection for the potential immense destruction and loss.”

The NCOIL Special Committee for Natural Disaster Recovery first met at the 2019 Spring Meeting in Nashville, TN. Over a dozen legislators from 13 states serve on the Committee representing coastal and inland states that have suffered flooding, hurricanes, tornadoes, and wildfires in the past few years. NCOIL 2019 President, LA Senator Dan “Blade” Morrish appointed NC Senator Vickie Sawyer as the Committee Chair during an interim call of the Committee in June 2019. Additionally, during that interim call, the Committee heard from legislators and interested parties on the best course of action regarding the private flood insurance market.



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NC Sen. Vickie Sawyer stated, “I greatly appreciate the opportunity to join the NCOIL leadership team and to work with the committee on an issue where I have personally seen such devastating effects in my home state. As an insurance agent, state Senator, and resident of a coastal state, I see all too often that we need solutions to help communities after a natural disaster. I am honored to have been able to chair the committee and sponsor the Private Primary Residential Flood Insurance Model Act.”

The initial drafting discussion for the NCOIL Private Primary Residential Flood Insurance Model began at the 2019 Spring Meeting, previously taking the form of proposed amendments to an existing NCOIL Model Act - the NCOIL State Flood Disaster Mitigation and Relief Model Act. The Committee then decided to develop a standalone Model Act, initially titled the NCOIL Private Flood Insurance Model Act. The Model is based partly on existing Florida legislation that has proven to be very successful in facilitating expansion of the private flood insurance market.

During the drafting discussions, NCOIL legislators and staff heard from a wide array of interested parties including: Federal Emergency Management Association (FEMA), National Association of Mutual Insurance Companies (NAMIC), American Property Casualty Insurance Association (APCIA), National Association of Realtors (NAR), Lisa Miller & Associates, Independent Insurance Agents and Brokers of America (IIABA), Reinsurance Association of America (RAA), State Farm Insurance Company, United Policyholders (UP), National Association of Insurance Commissioners (NAIC), Farmers Insurance Group, Center for Economic Justice (CEJ), National Association for Professional Insurance Agents (NAPIA), Wholesale and Specialty Insurance Association (WSIA), and others.

The purpose of the Model is “to provide protection of lives and property from the peril of flood,” and is “designed to encourage a robust private primary residential flood insurance market to provide consumer choices and alternatives to the existing National Flood Insurance Program (NFIP).

Highlights of the Model include: a recommendation that states utilize a “use and file” or “file and use” rate filing system for private flood insurance coverage; a requirement that an insurer must attest that the rates are based on actuarial data, methodologies, standards, and guidelines relating to flood that are not excessive, inadequate, or unfairly discriminatory; and a recommendation that states do not impose greater filing requirements for private flood insurance form filings than the State requires for other property lines of insurance.

The Model also requires important disclosures to be made to consumers such as: a requirement that if a consumer currently has no coverage under the NFIP, the consumer must be informed of the existence of the NFIP before placing the consumer application with private flood insurance; and that all consumers, including those that currently have coverage under the NFIP, must be informed that the coverage under the NFIP may be provided at a subsidized rate and that the full-

risk rate for flood insurance may apply to the property if the applicant later seeks to reinstate coverage under the program.

The Model also sets forth that a state’s diligent effort law shall not apply to flood coverage under an insurance policy issued by an eligible surplus lines insurer unless and until the Commissioner certifies in a bulletin or order that the admitted private flood insurance market is adequate; and states that writing private flood insurance does not constitute participation in the property insurance market for purposes of determining participation in the state’s residual market program.

NCOIL CEO, Commissioner Tom Considine, stated, “2020 has been a record-breaking year in many distressing ways, hurricanes just one of them. With regard to natural disasters, we know all too well that not enough people are insured when a catastrophic event occurs. I am pleased with the hard work of the Special Committee and the outcome of the NCOIL Private Primary Residential Flood Insurance Model which is the result of much discussion and compromise between several legislators and interested parties.”

A full copy of the model is below.

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National Council of Insurance Legislators (NCOIL)

Private Primary Residential Flood Insurance Model Act

****Sponsored by Rep. David Santiago (FL) and Sen. Vickie Sawyer (NC)***

****Adopted by the NCOIL Special Committee on Natural Disaster Recovery on September 24, 2020. To be considered by the NCOIL Executive Committee on September 26, 2020.***

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Section 1. Title

This Act shall be known as the Private Primary Residential Flood Insurance Model Act.

Section 2. Purpose

To provide protection of lives and property from the peril of flood, this legislation is designed to encourage a robust private primary residential flood insurance market to provide consumer choices and alternatives to the existing National Flood Insurance Program (NFIP).

Section 3. Definitions

For purposes of this Act:

(a) “Authorized Insurer” means an insurer that is authorized by the [State entity for regulating insurance] to write insurance under a certificate of authority issued by the [State entity for regulating insurance] to transact insurance in this State.

(b) “National Flood Insurance Program” means the program of flood insurance coverage and floodplain management administered under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et. seq) and applicable federal regulations promulgated in Title 44 of the Code of Federal Regulations.

(c) “Primary residential flood insurance” means an insurance policy covering losses from flood to residential property, other than commercial property, written in this State by any insurer authorized to do business that is not written to apply coverage in excess of the coverage provided under another flood insurance policy, whether issued by a private insurer or the National Flood Insurance Program.

Section 4. Rates

(a) Rates for flood insurance coverage established pursuant to this paragraph are not subject to prior approval by the [State entity for regulation of insurance]. An insurer must attest that the rates are based on actuarial data, methodologies, standards, and guidelines relating to flood that are not excessive, inadequate, or unfairly discriminatory. The [State entity for regulation of insurance] may audit an insurer’s flood rates to ensure compliance with State laws and regulations.

(b) An insurer shall file with the [State entity for regulation of insurance] all rates and any change to such rates within 30 days after the effective date. The notice of a rate change must include the name of the insurer and the average statewide percentage change in rates. Actuarial data with regard to such rates for flood coverage must be maintained by the insurer for 2 years after the effective date of such rate change.

Drafting Note: A “use and file” rate filing is used in this section. A State may choose to apply a “file and use” standard instead.

Section 5. Forms

The [State entity for regulating insurance] may require, through the application of the State’s existing regulatory system:

- (a) that an insurer file the forms for primary residential flood insurance coverage;
- (b) that an authorized insurer may issue an insurance policy, contract, or endorsement; and,
- (c) for residential properties required to have flood insurance that are in a Special Flood Hazard Area designated by the Federal Emergency Management Agency, that the coverage at least meets the private flood insurance requirements as specified in 42 U.S.C.

§ 4012a(b) and applicable federal regulations in document 84 FR 4953, effective July 1, 2019.

Drafting Note: In the interest of facilitating the growth of the private flood market, the intent of this section is to ensure that States do not impose greater filing requirements for private flood insurance form filings than the State requires for other property lines of insurance. Further, States may also wish to consider further streamlining the filing requirements for commercial flood insurance to enhance insurers' ability to develop private flood policies and endorsements that would provide consumers with choices when compared to the protection provided by the National Flood Insurance Program.

Section 6. Duties of Insurer to Provide Regulatory Notice of Intent to Transact Residential Primary Flood Insurance

(a) Authorized insurers must notify the [State entity for regulating insurance] of plans to sell primary residential flood insurance products in accordance with the State's rate filing laws but at least 30 days before writing such flood insurance in this State; and

(b) File a plan of operation and financial projections or material revisions to such plan.

Section 7. Notice to Consumers

(a) If a consumer currently has no coverage under the NFIP, before placing the consumer applicant with private flood insurance, the consumer must be informed of the existence of the NFIP.

(b) All consumers covered by subsection 7(a) as well as consumers who currently have coverage under the NFIP must be informed that the coverage under the NFIP may be provided at a subsidized rate and that the full-risk rate for flood insurance may apply to the property if the applicant later seeks to reinstate coverage under the program. The insurance producer, surplus lines broker, or the insurer upon its election or if there is no producer or broker must provide such notice.

(c) This section (7) only applies if the applicant lives in a Special Flood Hazard Area. This section automatically sunsets if federal legislation is enacted allowing the insured to switch between private flood insurance and NFIP coverage without risk of penalty.

Section 8. Cancellation and Nonrenewal Notice

(a) Notice of cancellation or nonrenewal, other than for nonpayment of premium, as allowed by State statute, shall be made and provided in compliance with [applicable State law] but at least 45 days before the cancellation or nonrenewal of private flood insurance coverage to the insured.

(b) Notwithstanding (a) above, notice of cancellation for nonpayment of premium, or fraud or misrepresentation in the application, shall be made and provided in compliance with [applicable State law].

Drafting Note – The notice described must meet the delivery and other requirements established under [insert reference to the provisions of the State code addressing cancellation and nonrenewal notice requirements]. This section is intended for States that have cancellation and nonrenewal notice requirements, for other than nonpayment of premiums, that mandate the delivery of such notices fewer than 45 days before cancellation or nonrenewal of a policy but is not necessary in other States.

Section 9. Surplus Lines Placements

[Applicable State diligent effort law] shall not apply to flood coverage under an insurance policy issued by an eligible surplus lines insurer unless and until the Commissioner certifies in a bulletin or order that the admitted private flood insurance market is adequate.

Drafting Note – States may wish to consider sunseting this section after a specified period of time.

Section 10. Other Provisions.

(a) [Residual Market Mechanism] Participation. Writing private flood insurance does not constitute participation in the property insurance market for purposes of determining participation in the [insert name of State residual market program] under [insert citations of State law requiring insurers writing property insurance in the State to participate in the residual risk pool].

Drafting Note: Appropriate reference should be made to FAIR plans, wind and beach pools, and related entities.

(b) Filings Open to Inspection. All rates, supplementary rate information, and any supporting information filed under this Act shall be open to public inspection upon disposition, except information marked and accepted by the Commissioner as

confidential, Trade Secret, or proprietary by the insurer or filer in accordance with (statutory reference for confidentiality requirements). Copies may be obtained from the commissioner upon request and upon payment of a reasonable fee.

- (c) With respect to the regulation of flood coverage written in this state by authorized insurers, this section supersedes any other provision in the State Insurance Code in the event of a conflict.
- (d) An insurer may certify that the insurance policy meets the definition of “private flood insurance,” as specified in 42 U.S.C. § 4012a(b)(7) and applicable federal regulations.
- (e) It is the intent of the legislature that nothing in this law is intended to restrict the use of existing filings by an insurer or limit ability of private insurers to provide flood insurance coverage of any type not addressed herein.

Section 11. Rules

The [State entity for regulation of insurance] may adopt rules to implement this law.

Section 12. Effective Date

This Act shall take effect _____.

NCOIL is a national legislative organization with the nation's 50 states as members, represented principally by legislators serving on their states' insurance and financial institutions committees. NCOIL writes Model Laws in insurance and financial services, works to preserve the State jurisdiction over insurance as established by the McCarran-Ferguson Act seventy-five years ago, and to serve as an educational forum for public policymakers and interested parties. Founded in 1969, NCOIL works to assert the prerogative of legislators in making State policy when it comes to insurance and educate State legislators on current and longstanding insurance issues.