

GUIDELINES ON CORPORATE OWNED LIFE INSURANCE

Corporate Owned Life Insurance (COLI) is life insurance a corporate employer buys covering one or more employees. With COLI, the employer is generally the applicant, owner, premium payer and beneficiary of the policy. COLI can be acquired on an individual or group basis and can take many forms. For example, it can be used to indemnify the employer for the loss of earnings or costs of replacing a key employee who becomes disabled or dies, or to finance the cost of a stock redemption agreement or a deferred compensation plan. COLI has also increasingly been used as a financing vehicle for broad-based welfare benefit plans, such as health benefit plans.

This relatively new application of the principals of corporate owned life insurance to retiree health benefits is largely attributable to the promulgation of Statement 106 by the Financial Accounting Standards Board (FASB). Under FASB 106, post-retirement benefits, including retiree health benefits, are required to be accrued as they are earned over the working lifetime of the employee, rather than as they are paid after retirement. Unfunded accrued benefits create a growing balance sheet liability. COLI or a variation thereof, Trust Owned Life Insurance (TOLI), where the insurance is purchased by a trust, typically a VEBA trust established under Section 501(c)(9)IRC, create a balance sheet asset which the employer can use to finance the cost of the benefit.

COLI and TOLI are attractive methods of financing liabilities such as an employer's obligations under a retiree health benefit plan. When for example, retiree health benefits are provided through an insured health benefit plan, the policy's cash values can be used to finance the after-tax cost of the health insurance premiums for the retired employees. When an insured retired employee dies, the policy death benefit allows the company to recover part or all of the costs of the plan. The policy values and death benefit also represent a source of funds which can be used to pay premiums for other employees who are covered under the plan.

When an employer provides health benefits to retired employees on a self-insured basis, the cash values and death benefits of the coverage are used to finance the coverage. Moreover, contributions to the VEBA Trust may, within well defined limits, be deductible to the employer.

Because of COLI's and TOLI's attractiveness in financing an employer's obligation under a plan established to provide broad-based welfare benefits to retirees, there has been increased interest in the use of COLI and TOLI for this purpose. There has also been increased interest in assuring that COLI and TOLI arrangements satisfy insurable interest requirements.

Business entities traditionally have been found to have insurable interests in the lives of their officers, managers and key employees. This is because the business may reasonably expect to benefit from the continuance of their lives or to suffer a loss if these individuals die. Many states have also recognized an insurable interest in the lives of non-key employees, particularly in the context of financing broad-based welfare benefit plans.

Some states have enacted laws that either specifically recognize an insurable interests in a COLI-TOLI arrangement, including those whose purpose is the financing of broad based welfare plan arrangements. Other states have found such insurable interests in their common law; in interpretations of existing statutes and case law without specific COLI-TOLI enabling language.

Citations to state statutes relating to insurable interests of employers in their employees can be obtained by contacting the Legal Division of the NAIC.

States considering a legislative response to insurable interest concerns regarding employers and their employees should consider the following elements for inclusion in their law:

COLI Guidelines

1. The law should recognize that employers have a lawful and substantial economic interest in the lives of key employees and in other employees who have a reasonable expectation of benefiting from an employee welfare benefit plan.
2. Employers should be required to notify eligible employees of their proposed participation in the plan and the employees should be given an opportunity to refuse to participate. On a prospective basis, employers should obtain written consent of each individual being insured. Consent would include an acknowledgement that the employer may maintain the life insurance coverage even after the insured individual's employment has terminated.
3. An employer shall not retaliate in any manner against an employee or a retired employee for refusing consent to be insured.
4. For non-key or non-managerial employees, the amount of coverage should be reasonably related to the benefits provided to the employees.
5. With respect to employer provided pension and welfare benefit plans, the life insurance coverage purchased to finance the plans should only be allowed on the lives of those employees and retirees who, at the time their lives are first insured under the plan, would be eligible to participate in the plan.

Chronological Summary of Actions (all references are to the Proceedings of the NAIC).

1993 Proc. I 7, 10, 780, 782-783 (adopted).

2002 Proc. 3rd Quarter 12, 13, 116, 118, 119 (amended and reprinted).

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This chart is intended to provide readers with additional information to more easily access state statutes, regulations, bulletins or administrative rulings related to the NAIC model. Such guidance provides readers with a starting point from which they may review how each state has addressed the model and the topic being covered. The NAIC Legal Division has reviewed each state’s activity in this area and has determined whether the citation most appropriately fits in the Model Adoption column or Related State Activity column based on the definitions listed below. The NAIC’s interpretation may or may not be shared by the individual states or by interested readers.

This chart does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Nor does this state page reflect a determination as to whether a state meets any applicable accreditation standards. Every effort has been made to provide correct and accurate summaries to assist readers in locating useful information. Readers should consult state law for further details and for the most current information.

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KEY:

MODEL ADOPTION: States that have citations identified in this column adopted the most recent version of the NAIC model in a **substantially similar manner**. This requires states to adopt the model in its entirety but does allow for variations in style and format. States that have adopted portions of the current NAIC model will be included in this column with an explanatory note.

RELATED STATE ACTIVITY: Examples of Related State Activity include but are not limited to: older versions of the NAIC model, statutes or regulations addressing the same subject matter, or other administrative guidance such as bulletins and notices. States that have citations identified in this column **only** (and nothing listed in the Model Adoption column) have **not** adopted the most recent version of the NAIC model in a **substantially similar manner**.

NO CURRENT ACTIVITY: No state activity on the topic as of the date of the most recent update. This includes states that have repealed legislation as well as states that have never adopted legislation.

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Alabama	ALA. CODE § 27-14-3 (1971/1994).	
Alaska	ALASKA STAT. § 21.42.020 (1966/2002).	
American Samoa	NO CURRENT ACTIVITY	
Arizona	ARIZ. REV. STAT. ANN. § 20-1104 (1954/1989).	
Arkansas	ARK. CODE ANN. § 23-79-103 (1959/2003).	
California	CAL. INS. CODE § 10110.1 (1990/1994).	
Colorado	NO CURRENT ACTIVITY	
Connecticut	CONN. GEN. STAT. § 38a-291 (1992/2004).	
Delaware	DEL. CODE ANN. tit. 18, § 2704 (1953/2002).	
District of Columbia	D.C. CODE ANN. § 31-4716 (1934/1995).	
Florida	FLA. STAT. § 627.404 (1959/1992).	

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Georgia	GA. CODE ANN. § 33-24-3(c) (1933/2003).	
Guam	NO CURRENT ACTIVITY	
Hawaii	HAW. REV. STAT. § 431:10-202 (1987/1988).	
Idaho	IDAHO CODE ANN. § 41-1804 (1961).	
Illinois	215 ILL. COMP. STAT. § 5/224.1 (1937/1992).	
Indiana	IND. CODE §§ 27-1-12-17 to 27-1-12-17.1 (1935/1995).	
Iowa	NO CURRENT ACTIVITY	
Kansas	KAN. STAT. ANN. § 40-452 (1993).	
Kentucky	KY. REV. STAT. § 304.14-040 (1970).	
Louisiana	LA. REV. STAT. ANN. § 22.613 (1953/1995).	
Maine	ME. REV. STAT. ANN. tit. 24-1, § 2404(D) (1969/2003).	
Maryland	MD. CODE ANN., INS. § 12-201 (1957/2001).	
Massachusetts	MASS. GEN. LAWS ch. 175, § 123A (1996).	
Michigan	MICH. COMP. LAWS § 500.2210 (1956/1997).	
Minnesota	MINN. STAT. § 61A.074 (1992/1994).	
Mississippi	MISS. CODE ANN. § 83-5-251 (1992/1993).	
Missouri	MO. REV. STAT. § 376.531 (1992/1994).	

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Montana	MONT. CODE ANN. § 33-15-201 (1959/1991).	
Nebraska	NEB. REV. STAT. § 44-373 (1927).	
Nevada	NEV. REV. STAT. § 687B.040 (1971/1997)	
New Hampshire	NO CURRENT ACTIVITY	
New Jersey	N.J. STAT. ANN. § 17B:24-1.1 (1991/1992).	
New Mexico	N.M. STAT. ANN. § 59A-18-4 (1984).	
New York	N.Y. INS. LAW § 3205 (1984/2001); N.Y. COMP. CODES R. & REGS. tit. 11, §§ 48.0 to 48.2 (Regulation 180) (2004/2005).	
North Carolina	N.C. GEN. STAT. §§ 58-58-75 to 58-58-85 (1951).	
North Dakota	N.D. CENT. CODE § 26.1-29-09.1 (1985/2003).	
Northern Marianas	NO CURRENT ACTIVITY	
Ohio	OHIO REV. CODE ANN. § 3911.091 (1995).	
Oklahoma	OKLA. STAT. tit. 36, § 3604 (1957/1999).	
Oregon	NO CURRENT ACTIVITY	
Pennsylvania	40 PA. CONS. STAT. § 37-121 (1921/1992).	
Puerto Rico	PR. LAWS. ANN. tit. 26, § 1104.	
Rhode Island	R.I. GEN. LAWS § 27-4-27(3) (1990/1992).	

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South Carolina	NO CURRENT ACTIVITY	
South Dakota	S.D. CODIFIED LAWS §§ 58-10-4 to 58-10-6 (1966/2000).	
Tennessee	NO CURRENT ACTIVITY	
Texas	TEX. INS. CODE ANN. § 1103.053 (2003/2005).	
Utah	UTAH CODE ANN. § 31A-21-104 (1985/2002).	
Vermont	NO CURRENT ACTIVITY	
Virginia	VA. CODE ANN. § 38.2-301 to 38.2-302 (1986/1993).	
Virgin Islands	NO CURRENT ACTIVITY	
Washington	WASH. REV. CODE ANN. §§ 48.18.030 to 48.16.060 (1947/1992).	
West Virginia	W. VA. CODE § 33-6-2(2) (1957/1992).	
Wisconsin	WIS. STAT. § 631.07 (1975/2002).	
Wyoming	WYO. STAT. ANN. § 26-15-102; § 26-15-106 (1967/1983).	