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NCOIL MODEL ZEROES IN ON WORKERS' COMP MISCLASSIFICATION—LOOKS AT INDEPENDENT CONTRACTORS

Troy, New York, June 22, 2009—In an effort to protect injured workers and reduce costs, insurance legislators on July 10 in Philadelphia will move forward needed model legislation requiring employers to appropriately identify employees for workers' compensation benefit purposes. The National Conference of Insurance Legislators (NCOIL)—in conjunction with its Summer Meeting scheduled for July 9 through 12 at the Philadelphia Marriott—will consider a proposed *Employee Misclassification Workers' Compensation Coverage Model Act* to promote transparency, disclosure, and accountability in the market and to establish clear criteria to distinguish independent contractors from employees.

Committee Chair Rep. Susan Westrom (KY), addressing the need for model legislation, said:

Misclassification of employees and independent contractors plagues state workers' compensation systems. While some employers fraudulently label their employees as independent contractors to avoid costs, state regulators often lack clear standards to distinguish one from the other, resulting in confusion and increased costs while leaving injured workers vulnerable. The draft model is a timely approach to advance necessary reforms.

The draft model—which is sponsored for discussion by NCOIL leaders Rep. Charles Curtiss (TN) and Sen. Ralph Hudgens (GA)—would set up a nine-point test to define an independent contractor and mandate workers' compensation coverage in the construction industry, with certain exceptions. It would create clear procedures for insurer application, disclosure, and auditing and provide civil and criminal penalties for employee misclassification and insurance fraud. It also would establish strict enforcement authority including, among other items, power to temporarily shut down job sites when employers fail to comply.

Model development follows a joint National Association of Insurance Commissioners (NAIC) and International Association of Industrial Accident Boards and Commissions (IAIABC) review of workers' compensation independent contractor issues. Among other recommendations, the NAIC/IAIABC working group in a 2008 white paper supports clearer legal standards regarding independent contractor status.

The model is based on Florida and Wisconsin workers' compensation statutes. During initial development, NCOIL solicited input from representatives of the Associated Builders and Contractors

(ABC), Coalition Against Insurance Fraud, National Council on Compensation Insurance (NCCI), National Federation of Independent Business (NFIB), and United Brotherhood of Carpenters and Joiners of America, as well as from certain state insurance and workers' compensation regulators. NCOIL anticipates further input at the meeting from all interested parties.

At the Philadelphia meeting, the Committee also will consider a *Resolution Opposing the Creation of a Federal Commission to Examine State Workers' Comp Laws*, sponsored for discussion by Rep. Westrom. The [resolution](#) reiterates NCOIL support for state authority over individual workers' compensation systems, highlighting the benefits of state oversight, such as quick response by state benefit delivery programs and recently enacted cost-containment reforms. The resolution specifically opposes federal H.R. 635, *The National Commission on State Workers' Compensation Laws Act of 2009*, and generally opposes any legislation that would create a broader federal role in workers' compensation systems.

NCOIL is an organization of state legislators whose main area of public policy interest is insurance legislation and regulation. Most legislators active in NCOIL either chair or are members of the committees responsible for insurance legislation in their respective state houses across the country. More information is available at www.ncoil.org.

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