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NCOIL TO ADVANCE WORKERS' COMP REFORM, TARGETS EMPLOYEE MISCLASSIFICATION

Philadelphia, Pennsylvania, July 14, 2009—Recognizing a need for state legislative action in 2010, the National Conference of Insurance Legislators (NCOIL) on July 10 formed a subcommittee to move forward an *Employee Misclassification Workers' Compensation Coverage Model Act*. After serious discussion and debate, members of the Workers' Compensation Insurance Committee deferred consideration of the model to its November Annual Meeting in order to fully consider a barrage of last-minute comments received from regulator, insurer, employer, anti-fraud, and organized labor representatives.

Rep. Charles Curtiss (TN)—who co-sponsored the model for discussion purposes—at the NCOIL Summer Meeting here, said:

I believe that employee misclassification is the root cause of the workers' comp problems facing states, including increased medical, legal, and coverage costs. Most states exempt independent contractors from workers' compensation insurance coverage, creating a loophole for employers looking to avoid these mandates. This practice leaves injured workers vulnerable and shifts costs to our already overburdened health insurance system and the public.

Co-sponsor Sen. Ralph Hudgens (GA) said:

As a small business owner, I know firsthand how unfair it can be when employers recast their employees as independent contractors to avoid costs. This creates a competitive disadvantage for compliant employers vying for the same business. During the current economic downturn, our states have even greater concern about this issue, and I'm glad NCOIL is moving forward with this model. While this isn't cake yet, we need to keep cooking it.

The draft model—based on Florida and Wisconsin statutes—targets transparency, disclosure, and accountability in workers' compensation insurance. It would set up a strict nine-point test to clearly 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 don't comply.

During the Friday meeting, the Committee heard testimony from representatives of the American Council

of Life Insurers (ACLI), Coalition Against Insurance Fraud, Coalition for Independent Contractor Freedom (CFICF), National Association of Insurance Commissioners (NAIC), National Council on Compensation Insurance (NCCI), Property Casualty Insurers Association of America (PCI), and United Brotherhood of Carpenters and Joiners of America. Written comments were also submitted by the Associated Builders and Contractors (ABC), Messenger Courier Association of America (MCAA), Strategic Services on Unemployment & Workers' Compensation (UWC), and United Postal Service (UPS).

Interested parties—while generally acknowledging employee misclassification as a major problem and often supporting the model's goals—expressed varying perspectives on the definition of an independent contractor and the nine-point test, among other things. Some expressed the view that coverage should be mandated in other high-risk jobs, such as logging and trucking.

The Subcommittee will review all comments and produce a revised discussion draft by the end of July. The Subcommittee intends to hold a series of conference calls to advance the model for consideration at the NCOIL Annual Meeting.

Subcommittee members will include Committee Chair Rep. Susan Westrom (KY), Rep. Barbara Byrum (MI), Assem. Nancy Calhoun (NY), Rep. Curtiss, Rep. Dan Dodd (OH), Sen. Hudgens, Rep. Kathleen Keenan (VT), NCOIL Vice President Rep. George Keiser (ND), and Rep. Frank Wald (ND). Additional Workers' Compensation Insurance Committee members not in attendance at the July meeting will be invited to join the Subcommittee.

Subcommittee conference calls will be open to the public. Interested parties should contact Jordan Estey at jestey@ncoil.org to be added to an e-mail distribution list. Interested party comments will be available soon on the NCOIL Web site. The revised model will also be available in late July.

The NCOIL Annual Meeting will be held from November 19 through 22 in New Orleans, Louisiana.

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.

For further details, please contact the NCOIL National Office at 518-687-0178.

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