

Resolution Opposing the Creation of a Federal Commission To Examine State Workers' Compensation Laws

Adopted by the NCOIL Executive Committee on July 12, 2009, and by the NCOIL Workers' Compensation Insurance Committee on July 10, 2009.

Sponsored for discussion by Rep. Susan Westrom (KY)

WHEREAS, the National Conference of Insurance Legislators (NCOIL) supports state workers' compensation laws that provide an injured worker with all reasonable and necessary medical treatment, of the nature and intensity to promote expeditious healing and return to work, and providing protection against lost wages and a fair level of income benefits during disability, while encouraging return to work, all at a cost affordable to employers; and

WHEREAS, NCOIL believes the state-based workers' compensation system has proven over the near century of its existence to constitute an effective means of protecting injured workers against the costs of industrial injury and protecting employers against the unlimited and unpredictable costs of workplace liability; and

WHEREAS, the state-based workers' compensation system, its administration, legal precedents, funding and fiscal accountability is intricately linked to each state's economy and provides the ability to experiment creatively and borrow from experiences in other states; and

WHEREAS, on January 22, 2009, U. S. Congressman Joseph Baca (CA) introduced H.R. 635, *The National Commission on State Workers' Compensation Laws Act of 2009*, which would authorize the establishment of a fourteen-member commission to examine state laws to determine if they provide an adequate, prompt, and equitable system of compensation and medical care for injury or death arising out of and in the course of employment; and

WHEREAS, a similar commission was authorized with members appointed by President Nixon in 1971 that made broad recommendations the following year that included higher disability benefits, compulsory coverage, and unlimited medical care and rehabilitation benefits; and

WHEREAS, the 1972 Commission avoided critical areas on which there was no consensus, with significant cost impact, such as compensation of permanent partial disability; and

WHEREAS, as a result, states adopting many of these recommendations incorporated significant cost drivers into their systems, without countervailing utilization controls, sowing the seeds for excessive costs and the workers' compensation financial crisis of the late 1980s and early 1990s; and

WHEREAS, a number of significant workers compensation reforms have been enacted by the states in the 37 years since the 1972 Commission issued its report, including improvements through the use of managed care processes, treatment guidelines and stronger fraud provisions; and

WHEREAS, H.R. 635, as drafted, fails to acknowledge these fundamental improvements, and implies that major problems currently exist in many state workers compensation programs; and

WHEREAS, NCOIL believes Congress will be expected to approve any recommendations made by the Commission, which would likely seek to impose rigid, one-size-fits-all federal benefit delivery rules that inherently will interfere with state benefit systems, increase system costs nationwide, and frustrate efforts of the states to contain costs; and

WHEREAS, NCOIL opposes the imposition of federal oversight and development of federal mandates on the state workers' compensation system that would create unnecessary imbalances and unintended consequences for a system that has been operating effectively for decades; and

WHEREAS, NCOIL opposes legislation that would unnecessarily increase the federal bureaucracy and create federal regulation in an area where states are currently providing adequate oversight; and

WHEREAS, NCOIL supports a state-based benefit delivery system which reflects the nature and cost of employment in individual states and facilitates timely response and ability to tailor remedies to state-specific conditions; and

WHEREAS, NCOIL supports the rights of states and their respective legislatures and stakeholders to review the performance of state-based workers' compensation systems;

NOW, THEREFORE, BE IT RESOLVED that NCOIL reiterates its support for the state-based workers' compensation system and opposition to legislation that would broaden the federal role in that system; and

BE IT ALSO RESOLVED that NCOIL opposes H.R. 635, *The National Commission on State Workers' Compensation Laws Act of 2009*, because such an evaluation is intended to, and will assuredly lead to recommendations unfavorable to the independence of the state-based workers' compensation benefit delivery system; and

BE IT FINALLY RESOLVED that NCOIL forward a copy of this resolution to state legislative leaders across the country and to all Members of the U.S. House Committee on Education and Labor.