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CONTACT:
Susan Nolan
Candace Thorson
NCOIL National Office
518-687-0178

**AFTER HEATED DEBATE, NCOIL MOVES TOWARD MODEL REGULATING
CONTROVERSIAL FUNDING FOR PLAINTIFFS**

Burlington, Vermont, July 15, 2012—Legislators meeting here on July 13 took a controversial step toward regulating financial transactions between third parties and plaintiffs in bodily injury and other litigation. The Property-Casualty Insurance Committee—after hearing calls for fair treatment and a level playing field—deferred until November a draft *Consumer Legal Funding Model Act* that looks to protect consumers receiving money from lenders unaffiliated with a case. The proposal was featured at the July 12 through 15 Summer Meeting.

According to Committee Chair Rep. Steve Riggs (KY), “Third-party funding may be an important tool for consumers looking to cover immediate expenses—such as medical bills and mortgage payments—while waiting for a court decision. But the high fees associated with third-party funding, among other things, give many legislators some pause, and so we are obligated to explore whether state oversight is appropriate.”

Rep. Charlie Curtiss (TN), sponsor of the draft model act, commented, “We need to take a serious look at this industry and see about establishing some parameters. My model, based on Tennessee legislation, will be a starting point for important debate at the November Annual Meeting. We’d be remiss if we ignored this emerging issue.”

The draft *Consumer Legal Funding Model Act*, while not opposing third-party litigation financing or capping third-party fees, would mandate various contract disclosures, including of a consumer’s right of rescission; require attorneys to sign off on the funding transaction; prohibit funding providers from paying referral fees to attorneys, medical providers, and others; establish a process for distribution of proceeds; require payment to the funding provider based on predetermined times and amounts; and prevent funding providers from assessing fees more than three (3) years after the consumer receives his/her money from the funding company. The model also would set forth attorney requirements and allow for penalties and enforcement.

In general, third-party litigation financing, also known as non-recourse financing, takes place when a lending company gives money to a plaintiff in return for receiving a portion of any settlement or award. The third-party lender receives nothing—including the amount of the original loan—if the plaintiff loses. Individual consumers often use the funds to pay daily expenses while a lawsuit works its way through the courts. Commercial plaintiffs, such as attorneys and law firms, may use the funds to finance the costs of bringing a case to trial.

Opponents of the practice, including insurers and business groups, say that it interferes with proper functioning of the judicial system, requires consumers to pay excessive fees and rates, and raises attorney conflict-of-interest concerns.

Supporters, including consumer advocates, say that third-party financing does not encourage frivolous litigation because lenders have a vested interest in giving money only to plaintiffs likely to succeed. Supporters also say that the fees and interest associated with litigation loans—which are higher than for typical bank loans—are justified because third-party lenders have no guaranty of repayment.

Participants in NCOIL discussions have included representatives of the American Legal Finance Association (ALFA), the Center for Economic Justice (CEJ), the National Association of Mutual Insurance Companies (NAMIC), Oasis Legal Finance, and the U.S. Chamber Institute for Legal Reform, as well as a legal scholar.

The NCOIL Annual Meeting will take place from November 15 through 18 in Point Clear, Alabama.

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 or by e-mail at cthorsen@ncoil.org.

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