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## FOR IMMEDIATE RELEASE

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### **NCOIL KEEPS REINSURANCE COLLATERAL DEBATE ON TOP BURNER- VETS ILF ENFORCEMENT OF JUDGMENTS STUDY**

**Weston, Florida, March 3, 2006**—Legislators at the National Conference of Insurance Legislators (NCOIL) Spring Meeting this past weekend heard heated testimony relating to controversial proposals that would relax reinsurance collateral requirements for non-US reinsurers. At an NCOIL Executive Committee meeting on February 27, lawmakers, in the process of vetting a critical Insurance Legislators Foundation (ILF) study entitled *Enforcement of US Judgments Abroad*, heard pros and cons on the debate on one of the key points of contention in the collateral debate, that of collectibility.

The study, which looks at the enforceability of U.S. judgments and arbitration awards against unauthorized, non-U.S. domiciled reinsurers pursuant to terms of reinsurance agreements, finds that, as a general rule, U.S. judgments and awards are enforced overseas.

The study finds that there are only three contexts in which a foreign court might not enforce a U.S. judgment related to reinsurance, including (1) parties' failure to strictly follow the arbitration provisions outlined in the reinsurance contract; (2) a default decision against a reinsurer based on its inability to post 100 percent security before filing pleadings in a case, rather than a decision based on merits; and (3) punitive damage awards based on a reinsurer's bad faith conduct. The study finds, however, that the issue of punitive damages is of little relevance to the reinsurance collateral debate.

The analysis did not examine enforcement of judgments as related to insolvency, since that would have required extensive investigation into insolvency laws of other countries.

The unbiased study is the only one of its kind on collectibility and was conducted upon request of the ILF, NCOIL's research and educational arm, by Herrick Feinstein,

NCOIL's pro bono counsel. Opposing parties on the issue accepted and contributed equally to the study.

NCOIL has been instrumental in keeping the reinsurance collateral issue on the forefront of state public policy debate. At its November 2005 Annual Meeting in San Diego, the NCOIL Executive Committee voted to adopt a *Resolution Regarding Reinsurance Collateral Requirements* that 1) calls on the National Association of Insurance Commissioners (NAIC) to report back to NCOIL the results of regulators' deliberations regarding reinsurance collateral issues and 2) informs the NAIC that NCOIL intends to take action on the matter in 2006.

The issue has been before NCOIL for more than four years. The Executive Committee has deferred consideration of a proposed NCOIL *Approved List for Reinsurers Model Act* since its 2004 Summer Meeting by request of the NAIC, in order to allow regulators further study into the issue. An ad hoc regulator group and industry have been working toward resolution of the matter and report to the NAIC. In November 2002, the NCOIL International Insurance Issues Committee adopted the model law and referred it to the Executive Committee. The model would provide for reduced collateral requirements for non-U.S. reinsurers that meet certain financial solvency criteria.

The ILF's *Enforcement of US Judgments Abroad* is available on the NCOIL Web site, [www.ncoil.org](http://www.ncoil.org).

The NCOIL Spring Meeting was held at the Bonaventure Resort & Golden Door Spa in Weston, Florida, from February 23 through 26.

NCOIL is an organization of state legislators whose public policy concern 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.

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

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