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NCOIL PRESIDENT KENNEDY TO SUBCOMMITTEE: H.R. 5840 DANGEROUS PATH TO PREEMPTIVE FEDERAL REGULATOR

Washington, DC, June 11, 2008—National Conference of Insurance Legislators (NCOIL) President Rep. Brian P. Kennedy (RI) yesterday told members of a U.S. House Financial Services Committee Subcommittee on Capital Markets, Insurance, and Government-Sponsored Enterprises that NCOIL is deeply troubled by a bill to create a new Office of Insurance Information (OII)—on the grounds that, among other things, it lacks a legislative presence, implies broad powers over insurance policy, and could lay a dangerous path to a federal insurance regulator.

Rep. Kennedy, testifying on a Manager's Amendment to H.R. 5840, the *Insurance Information Act of 2008*, said "NCOIL finds it hard to close its eyes and ignore the lack of any state legislative presence because it is the state legislators that have shaped by statute the robust insurance market that exists today."

He continued, "State solvency laws have helped make the insurance market stable, while the banking market—under federal regulation—was rocked by the savings and loan scandals of the 1990's and by the subprime lending crisis of today."

H.R. 5840 would create an Office of Insurance Information (OII) to collect, analyze, advise, and issue reports on domestic and "international insurance matters." The OII would be authorized to establish federal policy on such international matters and could preempt state statutes that the OII finds are "inconsistent" with international insurance agreements.

Speaking to the OII's scope, Rep. Kennedy said, "The word 'advise' means 'to recommend' and indicates that OII duties could be interpreted to be broader than simply offering insurance-related data." He stated that the "international insurance matters" referenced in H.R. 5840 could extend to issues generally regarded as domestic policy. He recommended that "the bill should clearly limit the OII's domestic role to that of an informational clearinghouse."

Noting that Chairman Kanjorski, primary sponsor of H.R. 5840, has previously questioned the practicality of an optional federal charter (OFC), Rep. Kennedy cautioned the Subcommittee that establishing an OII was treading on dangerous ground. The NCOIL President commented that:

An OII would establish a framework that a future Congress could build upon to create a federal insurance regulator—such as an OFC or an Office of National Insurance. Creating

an OII and not expecting an OFC is like building a baseball diamond and asking people not to play. As in the movie *Field of Dreams*, ‘if you build it, they will come.’ That is not our dream.

Rep. Kennedy raised concerns regarding the role of the National Association of Insurance Commissioners (NAIC) under H.R. 5840. He said, “NCOIL believes that giving the NAIC a primary role in the Office of Insurance Information (OII) allows the ‘tail to wag the dog.’” “It is unprecedented,” he said, “that the federal government would give such power to a private trade association.” The NCOIL President—stressing that a system of checks-and-balances is critical—said H.R. 5840 would “enhance the authority of the NAIC at the expense of the state officials to whom they, as individual regulators, are accountable.”

H.R. 5840 would give the NAIC a primary role in the collection and dissemination of insurance data. Under the bill, the OII would act as a liaison between the federal government and the NAIC; representatives of the NAIC would sit on an OII Advisory Group—which would not include state legislators; and the OII would consult with the NAIC when preparing its biennial reports to Congress.

Rep. Kennedy stressed state reform successes—pointing to the now 31-jurisdiction strong Interstate Insurance Compact, which welcomes legislative input. The NCOIL president also questioned who, under H.R. 5840, would protect consumers after a federal preemption and whether states would be left holding the bag regarding enforcement.

Other witnesses at the hearing, entitled *H.R. 5840, the Insurance Information Act of 2008*, included Jeremiah O. Norton of the U.S. Department of the Treasury; Illinois Insurance Director Michael McRaith, representing the NAIC; Neal S. Wolin of the Hartford Financial Services Group, representing the American Insurance Association (AIA); Stephen E. Rahn of Lincoln Financial Group, representing the American Council of Life Insurers (ACLI); Tracey Laws of the Reinsurance Association of America (RAA); and David A. Sampson of the Property-Casualty Insurance Association of America (PCI).

The hearing followed two others on a need for insurance regulatory reform and a third hearing on reform strategies—which addressed a Treasury Department’s *Blueprint for a Modernized Financial Regulatory Structure* and the Interstate Insurance Product Regulation Compact, among other items.

The NCOIL State-Federal Relations Committee and NCOIL-NAIC Dialogue will discuss H.R. 5840 and other federal insurance initiatives when they meet on Friday, July 11, during the July 10 through 13 NCOIL Summer Meeting in New York City.

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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