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This letter will present a brief synopsis and then a more detailed report of action taken at the National Conference of Insurance Legislators (NCOIL) Summer Meeting in Newport, Rhode Island, from July 7 through 10, 2005.

At the meeting, legislators focused on issues including underserved life insurance markets; use of claims history information; confidentiality of risk-based capital data; anti-runners fraud model legislation; domestic violence; natural disaster catastrophe funds; certified aftermarket crash parts; crop insurance; insurance (credit) scoring; reinsurance collateral and credit for reinsurance; long-term care partnership programs; payday lending; pharmacy benefit managers (PBMs); and identity theft.

Over 350 state legislators, insurance regulators, and industry, consumer, and media representatives attended the meeting.

## **SYNOPSIS**

At the NCOIL Summer Meeting, legislators:

- Adopted a proposed *Resolution to Improve Access to Underinsured Life Insurance Markets*
- Adopted a proposed model act regarding use of claims history information
- Adopted a proposed *Resolution in Support of the Confidentiality of Risk-Based Capital Information*
- Readopted the NCOIL *Model Anti-Runners Fraud Bill*
- Readopted the NCOIL *Property and Casualty Insurance Domestic Violence Model Act*
- Readopted the NCOIL *Natural Disaster Catastrophe Fund Model Act*
- Overwhelmingly voted to form a subcommittee to consider a draft aftermarket crash parts model law, and held a hearing on the issue
- Overwhelmingly voted to send a letter to federal agencies opposing plans that would promote an unlevel playing field in the sale of crop insurance
- Moved for further consideration the bylaws-required review of the NCOIL credit scoring model act
- Moved for further consideration a proposed *Approved List of Reinsurers Model Act*, and held a special Executive Committee meeting on the issue
- Moved for further consideration proposed long-term care partnership program model legislation

- Moved for further consideration proposed payday lending model legislation
- Participated in general sessions on pharmacy benefit managers (PBMs) and identity theft

## **DETAILED REPORT**

### **UNDERSERVED LIFE INSURANCE MARKETS**

On July 7, the NCOIL Life Insurance Committee overwhelmingly adopted a *Resolution to Improve Access to Underinsured Life Insurance Markets*, which recognizes consensus between legislators and life insurance industry representatives that there is a significant and growing underinsured life insurance market and advocates a comparative study of all proposals addressing the problem. The resolution, which the Executive Committee adopted on July 8, resolves that NCOIL will work with the NAIC and other interested parties to further analyze the issue and to propose a possible solution. The resolution also reasserts the prerogative of legislators to make insurance public policy decisions in the individual states. The NAIC currently is considering a proposed resolution that would ban limited term life insurance licensing requirements.

### **CLAIMS HISTORY INFORMATION**

On July 8, the NCOIL Property-Casualty Insurance and Executive Committees adopted a proposed *Model Act Regarding the Use of Insurance Claims History Information in Homeowners and Personal Lines Residential Property Insurance*. The proposed model law represents the culmination of NCOIL's more than one-year consideration of the issue. Among other things, the model would 1) prohibit taking an adverse action based solely on the claims history of a previous property owner; 2) prohibit taking an adverse action based on consumer inquiries; 3) prohibit using claims experience of the property or a new applicant that is more than five (5) years old; 4) largely prohibit using claims experience to underwrite coverage more than 30 days from when an insurer issued a coverage binder; and 5) require an insurer to re-underwrite and re-rate an insured within 30 days notice that claims information was incorrect or incomplete, and then return any overpayment.

The model also would mandate filings by claims-history report providers and would allow that, upon request of a consumer, an insurance company must identify the claim information that led to an adverse action. The model would prevent an insurer from using claims without payments unless 1) more than one such event occurred within the previous three years or 2) such a claim affected the nature of the risk and was predictive of future loss.

The Committee first considered the model act in November 2004. Subsequent input from certain interested parties led to the amended version adopted on July 8. The model law fulfills a P-C Committee charge to investigate issues surrounding claims history information and to adopt model legislation as appropriate.

### **RISK-BASED CAPITAL**

On July 8, the NCOIL Property-Casualty Insurance and Executive Committees adopted a proposed *Resolution in Support of the Confidentiality of Risk-Based Capital Information*. The resolution asserts that RBC data should not be used for insurance rate-making and opposes legislation pending in several states that would do so with regard to medical liability coverage. Among other things, the resolution claims that the use of RBC for rate-making would expose RBC laws to abuse and could lead to insolvencies, inadequate rates, and destabilized and constricted markets.

### **ANTI-RUNNERS FRAUD**

On July 8, the NCOIL Property-Casualty Insurance and Executive Committees voted to readopt an *NCOIL Model Anti-Runner Fraud Bill*, originally adopted on July 13, 2003. The model act, which is based

on model legislation adopted by the Coalition Against Insurance Fraud, would make it a felony to commit acts aimed at fraudulently obtaining auto insurance benefits through the use of false claims for provider services.

### **DOMESTIC VIOLENCE**

On July 8, the NCOIL Property-Casualty Insurance and Executive Committees voted to readopt an NCOIL *Property and Casualty Insurance Domestic Violence Model Act*, originally adopted on March 1, 1998, and readopted on July 13, 2001. The model act would prohibit unfair discrimination by property-casualty insurers on the basis of domestic violence.

### **CATASTROPHE FUND**

On July 8, the NCOIL Property-Casualty Insurance and Executive Committees voted to readopt an NCOIL *Natural Disaster Catastrophe Fund Model Act*, originally adopted on November 12, 1995, and amended on July 13, 2001. The model would create a natural disaster catastrophe fund aimed at helping a state maintain a viable and orderly insurance market in the event of a major natural disaster.

### **CERTIFIED AFTERMARKET CRASH PARTS**

On July 7, the NCOIL Property-Casualty Insurance Committee held a hearing on a proposed *Certified Aftermarket Crash Parts Model Act* and voted that 1) NCOIL President Rep. Craig Eiland (TX) should appoint a subcommittee charged with further reviewing the draft model act and offering its recommendations to the full Committee at the November Annual Meeting and 2) interested parties should be given a 30-day timeframe to submit language-specific comments on the proposal for subcommittee consideration.

The proposed model law, which NCOIL first considered in 2001 and subsequently deferred in November 2002 in order to pursue other issues, would endorse certification of aftermarket crash parts by third-party organizations, such as the Certified Automotive Parts Association (CAPA); require disclosure as to the use of certified aftermarket crash parts; and provide that a person leasing or financing a vehicle could not be penalized for using a certified part.

A proposed substitute amendment would 1) replace the more general requirements for qualification as an independent third-party certifying entity with a number of specific accreditation requirements; 2) specify that certified aftermarket crash parts are not just suitable replacement parts, but are of like kind and quality to car-company parts and are in compliance with a state's Unfair Claim Settlement Practices Act; 3) revise the required disclosure included in a repair estimate to, among other things, add crash parts supplied by an independent manufacturer and recycled or salvaged parts as other possible parts used in a repair; and 4) identify the act's purpose as creating a market incentive for the use of certified aftermarket crash parts.

### **CROP INSURANCE**

On July 7, the NCOIL Executive Committee overwhelmingly voted to send a letter to federal agencies opposing plans that would promote an unlevel playing field in the sale of crop insurance. Legislators determined to hold a conference call of the NCOIL Steering Committee, comprised of NCOIL officers and committee chairs, in the near future in order to consider specific language for the letter.

### **CREDIT SCORING**

On July 7, the NCOIL Property-Casualty Insurance Committee voted to defer until the November Annual Meeting its bylaws-required review of an NCOIL *Model Act Regarding Use of Credit Information in Personal*

*Insurance*, originally adopted on November 22, 2002, and amended on July 16, 2004. Legislators cited a lack of time to appropriately consider the issue. The model act would prohibit an insurer from denying, canceling, or non-renewing a policy based solely on credit information. The model would, in part, 1) require an insurer to re-underwrite and re-rate an insured whose credit report was corrected; 2) require an insurer to notify an applicant that credit information would be used, as well as notify when an adverse action was based on credit information and what the four primary credit-related factors were; 3) indemnify insurance producers obtaining credit information/insurance scores according to an insurer's procedures and according to applicable law and regulation; and 4) restrict a consumer reporting agency's ability to provide or sell data submitted in conjunction with an insurance inquiry.

### **REINSURANCE COLLATERAL/CREDIT FOR REINSURANCE**

On July 8, the NCOIL Executive Committee held a special meeting to hear arguments from panels for and against a proposed NCOIL *Approved List of Reinsurers Model Act*. Legislators also received a briefing on two new alternative proposals being considered by an ad hoc group of regulators regarding existing credit for reinsurance and reinsurance collateral requirements, including a rating and a pooling proposal. Legislators are slated to form an NCOIL position on the proposed model act by the NCOIL 2005 Annual Meeting.

The Executive Committee has deferred consideration of the model since its 2004 Summer Meeting by request of the National Association of Insurance Commissioners (NAIC) to allow for further exploration of the issue. The ad hoc regulator group and industry have been working toward resolution of the issue and reports to the NAIC. The NCOIL International Insurance Issues Committee adopted the model and referred it to the Executive Committee in November 2002. The model would provide for reduced collateral requirements for non-U.S. reinsurers that meet certain financial solvency criteria.

### **LONG-TERM CARE PARTNERSHIPS**

On July 7, the Life Insurance Committee again deferred consideration of a proposed *Model Act Enabling States to Create Partnership for Long-Term Care Programs* and a proposed *Model Act Implementing State Partnership for Long-Term Care Programs (working draft)* to allow for development of federal legislation to allow for partnerships by amendment of Medicaid plans.

The proposed models follow the Committee's November 2004 adoption of a resolution urging Congress to amend title XIX of the Social Security Act to allow additional states to establish long-term care partnership programs. During the 2004 Annual and the 2005 Spring Meetings, legislators deferred consideration of the model laws in order to monitor action on proposed federal legislation that would address implementing a long-term care partnership program.

The proposed *Model Act Enabling States to Create Partnership for Long-Term Care Programs* would amend state's Medicaid statutes to allow for asset disregard under a state's long-term care partnership program. The proposed *Model Act Implementing State Partnership for Long-Term Care Programs (working draft)* would implement a long-term care partnership program that would become effective following Congressional enactment of the *Long-Term Care Partnership Program Act of 2004* (S.2077/H.R.1406).

### **PAYDAY LENDING**

On July 7, the Financial Services & Investment Products Committee deferred consideration of a proposed *Model Deferred Presentment Services Act* to allow time for legislators and interested parties to submit amendments to the proposal and to investigate additional options for payday lending legislation. The act, submitted as a starting point for discussion, was adopted by the American Legislative Exchange Council (ALEC) in 1999. The model would require that lending agreements be in writing and that consumer disclaimers be included in payday lending transactions. The act also would cap maximum transaction amounts, disallow more than two transactions at any one

time, limit renewals of those transactions to no more than three times, and eliminate criminal culpability, absent fraud, on the part of the consumer.

### **PBMs**

On Saturday, July 9, legislators participated in a general session entitled *Pharmacy Benefit Managers (PBMs): Finding the Formula for Drug Savings?* Representatives of PBMs, pharmaceuticals, chain drug store organizations, as well as health plans, the regulatory community and consumer groups spoke to how PBMs impact the insurance market, how they should be regulated, the impact of their administration of the new Medicare drug benefit, and the issue of therapeutically equivalent drugs and mail-order pharmacies.

### **IDENTITY THEFT**

On Saturday, July 9, legislators participated in a general session entitled *Identity Theft: How Can States Protect Personal Information?* Representatives of the FTC and consumer groups examined new rules and procedures instituted to protect consumers. Representatives from trade and industry groups discussed the challenges they face trying to comply with both state and federal laws due to conflicts created by federal preemption. All speakers then offered their opinions on how state legislators might best approach the task of protecting consumers from identity theft.

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In addition, legislators considered the following issues, among others:

- federal initiatives to **preempt state insurance regulation**
- **financial modernization**, including market conduct surveillance reform and the NAIC *Interstate Insurance Product Regulation Compact*
- **finite insurance and reinsurance** arrangements
- reauthorization of the **Terrorism Risk Insurance Act (TRIA)**
- application of Sarbanes-Oxley **corporate governance** to non-public companies
- **interstate health insurance sales and reimbursement**
- **Medicare**
- **state guaranty funds**
- **natural disaster** mitigation and federal legislation
- **professional employment organizations (PEOs)**
- **regulation of insurance and financial services** products
- **Social Security reform**

*If you would like to receive additional information regarding any of the above issues, or are interested in ordering a general session audiotope or a transcript of the aftermarket crash parts hearing, please contact the NCOIL National Office at (518) 687-0178.*