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National Council of Insurance Legislators (NCOIL)

Resolution Urging the National Association of Insurance Commissioners To Refrain from Intruding on the Constitutional Role of State Legislators

**Sponsored by Asm. Ken Cooley (CA) – NCOIL Vice President*

**To be discussed and considered during the interim conference call meeting of the NCOIL Executive Committee on July 1, 2020*

WHEREAS, the National Association of Insurance Commissioners (NAIC) is considering the publication of a guidance paper for regulators’ review of “predictive models” in rate filings; and

WHEREAS, established rate filing review is based on correlation, which demonstrates that rating variables are valid so long as they correlate with a loss; and

WHEREAS, it is solely in the domain of a state’s people acting through their state legislature by the enactment of statutory law to identify when rates are not to be based only upon correlation; and

WHEREAS, legislatures have on occasion prohibited or restricted certain rating variables, despite being correlative with loss, based upon social considerations such as race, religion or national origin; and

WHEREAS, on other occasions, legislatures have affirmatively acted to allow specific rating factors; and

WHEREAS, the decision to prohibit or allow such factors falls within the province of the legislature pursuant to the Constitutions of the States; and

WHEREAS, despite this well-established law and policymaking procedure, the draft guidance paper attempts to establish new public policy by instructing regulators in every U.S. jurisdiction to require regulated insurers to “go beyond demonstrating correlation” and submit a “rational explanation” – as particularly defined therein - of how a rating variable connects to the risk of insurance loss when submitting rate filings for review; and

WHEREAS, such instruction to regulators is both an improper erosion of the longstanding correlation standard that has governed regulatory review of rating variables for decades and an improper intrusion into State Legislatures’ Constitutional authority; and

WHEREAS, the draft guidance undermines the rationale for and fairness of utilizing correlation; and

WHEREAS, the National Council of Insurance Legislators (NCOIL) has adopted model laws defining what constitutes “unfair discrimination” in insurance rating ([Property/Casualty Flex-Rating Regulatory Improvement Model Act -- Originally Adopted 2/27/04; Readopted 11/20/11, 7/17/16](#) and [Property/Casualty Insurance Modernization Act – Originally Adopted 7/13/01; Amended 11/16/01, 3/1/02, 11/21/03; Readopted 7/22/06, 7/15/18](#)) that are consistent with the reliance on correlation; and

WHEREAS, NCOIL and state legislatures have found that predictive efficiency, on which correlation is based, is the controlling objective and fair standard of rate filing review law; and

WHEREAS, the correlation standard meets two important insurance related public policy norms: it is fair for people to pay premiums according to their expected losses, and the better one is able to predict risk, the more solvent an insurer will be which is in the interest of consumers and society in general; and

WHEREAS, movement away from the correlation standard could jeopardize insurers’ use of otherwise fair and proper rating variables, thereby adversely impacting insurers’ ability to classify risk and jeopardizing their solvency; and

NOW, THEREFORE, BE IT RESOLVED THAT NCOIL urges the NAIC to reject any guidance papers or proposed directives that deviate from the correlation standard in the establishment of rates and the review of rate filings; and

BE IT FURTHER RESOLVED THAT NCOIL urges state legislatures to direct state insurance regulators to continue to examine rate filings as directed under the state insurance codes, looking for correlation as the central test and requirement, to prevent unfairly discriminatory rating and underwriting; and

BE IT FURTHER RESOLVED THAT NCOIL reasserts that state legislatures are the public policy makers that determine which rating factors are to be impermissible in order to ensure equal protection for protected classes and similar treatment for similarly situated risks; and

BE IT FINALLY RESOLVED THAT a copy of this Resolution shall be sent to state legislative leaders and members of the committees with jurisdiction over insurance public policy, as well as to all state insurance regulators and the NAIC.