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National Council of Insurance Legislators (NCOIL)

Resolution Regarding the Use of Certain Rating Factors

**Sponsored by Sen. Neil Breslin (NY) & Rep. Matt Lehman (IN), NCOIL President*

**To be Discussed and Considered by the NCOIL Special Committee on Race in Insurance Underwriting on July 15, 2021*

WHEREAS, the National Council of Insurance Legislators (NCOIL) formed a Special Committee on Race in Insurance Underwriting (the Special Committee) on September 25th, 2020; and

WHEREAS, the Committee was charged with: taking testimony, discussing, and defining the term “proxy discrimination” – an undefined term that has been used by many when discussing insurance rating, and has even been included in regulatory-related documents; and discussing the wisdom of certain rating factors being used in insurance underwriting, such as criminal history, zip code, occupation and level of education; and

WHEREAS, the Special Committee has held five public hearings and meetings over the past seven months to take testimony, discuss and evaluate these issues; and

WHEREAS, the Special Committee and the NCOIL Executive Committee have adopted a Model Definition of Proxy Discrimination contained within amendments to the NCOIL P&C Insurance Modernization Model Act; and

WHEREAS, the Special Committee has extensively discussed the use of certain rating factors in insurance underwriting; and

WHEREAS, NCOIL remains opposed to unfair discrimination in all forms; and

WHEREAS, legislatures have on occasion prohibited or restricted certain rating factors, despite their being correlative with loss due to overriding and superseding public policy

considerations including but not limited to concerns, based upon considerations related to protected class status; and

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

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

WHEREAS, the Special Committee having heard testimony regarding the wisdom and efficacy and impact of a wide variety of rating factors, and having considered that testimony; and

NOW, THEREFORE, BE IT RESOLVED that NCOIL supports legislatures' role and responsibility in prohibiting or restricting ~~finds that the use of~~ certain rating factors ~~should be prohibited~~ despite their being correlative with loss and NCOIL finds that the use of certain such rating factors should be prohibited or restricted as contrary to public policy and unfairly discriminatory, ~~based upon the negative and adverse effect that the use of these factors have on protected classes;~~ and therefore

BE IT FURTHER RESOLVED that NCOIL views as contrary to public policy and unfairly discriminatory ~~and urges the prohibition of~~ the use of all data in the underwriting of private, non-commercial insurance that is: related to non-pending arrests, charges and indictments that do not result in conviction; related to convictions that do not relate in any way to ~~either~~ fraud; or are not related to the insurability of a prospective or existing policyholder, and urges state legislatures to prohibit its use ~~risk being evaluated for the insurance being sought (such as arson for property insurance);~~ and

BE IT FURTHER RESOLVED that NCOIL does not find, at this time, based on current available data, any additional factors used ~~views as potentially unfairly discriminatory in its application~~ in the underwriting of private, non-commercial insurance to be unfairly discriminatory, but does find that they could be potentially unfairly discriminatory in their application, and NCOIL recognizes that legislatures may conclude, either today or in the future, that the use of other such rating factors should be prohibited or restricted due to public policy and fairness considerations that are deemed to outweigh the actuarial justification and predictive value such factors may possess, ~~either singly or in combination, but does not view those factors as unfairly discriminatory at this time;~~ and

BE IT FURTHER RESOLVED that NCOIL notes that insurance underwriting is an ever-evolving, complex process; and

BE IT FURTHER RESOLVED that NCOIL believes the review of underwriting fairness is one that States should conduct on an annual basis; and

BE IT FURTHER RESOLVED that NCOIL supports legislation in the states to accomplish the eseat ends.

