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PRESIDENT: Rep. Matt Lehman, IN
VICE PRESIDENT: Asm. Ken Cooley, CA
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IMMEDIATE PAST PRESIDENTS:
Sen. Jason Rapert, AR
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For Immediate Release
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NCOIL SPECIAL COMMITTEE ON RACE IN INSURANCE UNDERWRITING ADOPTS SERIES OF RESOLUTIONS

Resolutions Focus on Use of Certain Rating Factors, Artificial Intelligence, and Insurance Score Transparency; Committee Refers Certain Issues to NCOIL Standing Policy Committees

Manasquan, NJ – The National Council of Insurance Legislators (NCOIL) Special Committee on Race in Insurance Underwriting (Committee) adopted three Resolutions on the topic at the NCOIL Summer Meeting (Meeting) in Boston, MA on Thursday, July 15. New York Senator Neil Breslin Chairs the Committee which was formed in September of last year.

During the Meeting, the Committee adopted unanimously three resolutions sponsored by Sen. Breslin and Indiana Representative and NCOIL President, Matt Lehman: Resolution Regarding the Use of Certain Rating Factors (Rating Factor Resolution); Resolution Regarding the Use of Artificial Intelligence in Underwriting (AI Resolution); and Resolution Regarding Insurance Score Transparency (Transparency Resolution). The NCOIL Executive Committee adopted all three Resolutions unanimously on July 17.

Having met its charges, the Committee now sunsets pursuant to NCOIL bylaws. However, the AI and Transparency Resolutions refer certain issues to NCOIL standing policy committees for further discussion and consideration.

Specifically, the AI Resolution states that while NCOIL believes that the use of AI will surpass the use of individual factors in insurance underwriting, the issue falls beyond the Committee's charges and therefore NCOIL should undertake a review of the use of AI in insurance underwriting through the committees of jurisdiction over each line of insurance to ensure that such use is not unfairly discriminatory.

The Transparency Resolution states that consumers, policymakers, insurance producers and the insurance industry would benefit greatly from additional transparency in the development and usage of insurance scores, similar to that used for credit scores, and refers the issue to the

NCOIL Property & Casualty Insurance Committee to develop a Model Law on Transparency in Insurance Scores with the goal of achieving parity with the transparency in the development and usage by lenders & credit bureaus of credit scores.

The Rating Factor Resolution puts NCOIL on record as finding that it views as contrary to public policy and unfairly discriminatory 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 fraud; or are not related to the insurability of a prospective or existing policyholder, and urges state legislatures to prohibit its use.

Additionally, the Rating Factor Resolution states that NCOIL does not find, at this time, based on current available data, any additional factors used 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 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. Further, the Rating Factor Resolution noted that NCOIL believes the review of underwriting fairness is one that States should conduct on an annual basis.

Senator Breslin said, “I am honored to have Chaired this very important Committee and am proud of the work that we have accomplished. Since being formed, we have heard from a variety of speakers, all of whom were very knowledgeable with differing opinions and viewpoints. Hearing from such a diverse group of experts enabled the Committee to produce the strongest possible work product. The three Resolutions represent a sound and fair way to simultaneously meet the Committees charges and recognize that other issues should be referred to NCOIL standing policy committees having fallen outside the Committee’s scope.”

NCOIL CEO, Commissioner Tom Considine remarked, “Representative Lehman, Senator Breslin, and the Committee members deserve a ton of credit for all of their hard work throughout the past several months. The Committee was diligent from its inception in making sure to gather as much information as possible from a wide array of sources, while at the same time being mindful of the need to complete its charges in a timely fashion. I think it’s fair to say that some Committee members would have preferred that it go farther, while others would have preferred it not go nearly as far. I think that is generally a good sign. As an organization, we will make sure to continue the critical work on the issues of AI and insurance score transparency through our standing policy committees.”

NCOIL President, IN Rep. Matt Lehman, said, “When I formally announced the creation of this Committee last September, I said that NCOIL needs to take a more active role in framing the discussions around race and insurance underwriting that can have a huge impact on both policyholders and the insurance industry as a whole. As the organization representing state

insurance legislators who have proper constitutional jurisdiction over the significant public policy issues related to regulating the business of insurance, NCOIL's voice needed to be heard."

"Indeed," Lehman continued, "NCOIL's voice has been heard and the organization has been a leader the past several months in taking important action in a timely manner while making sure that all voices and perspectives are heard."

"However, as the AI and insurance score transparency Resolutions state, just because the Committee has met its charges and completed its work, that does not mean that these issues are no longer important and need not be further examined. I am very interested in the discussions that will take place during the Property & Casualty Committee regarding the development of an insurance score transparency model law. That issue is one that I, both as a legislator and an agent, feel particularly strong about."

The video recording from the meeting will be posted on the NCOIL website soon.

The Resolutions appear below.

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NCOIL is a national legislative organization with the nation's 50 states as members, represented principally by legislators serving on their states' insurance and financial institutions committees. NCOIL writes Model Laws in insurance and financial services, works to preserve the State jurisdiction over insurance as established by the McCarran-Ferguson Act seventy-six years ago, and to serve as an educational forum for public policymakers and interested parties. Founded in 1969, NCOIL works to assert the prerogative of legislators in making State policy when it comes to insurance and educate State legislators on current and longstanding insurance issues.

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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*

**Adopted by the NCOIL Special Committee on Race in Insurance Underwriting on July 15, 2021 and by the NCOIL Executive Committee on July 17, 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 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 certain rating factors 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; and therefore

BE IT FURTHER RESOLVED that NCOIL views as contrary to public policy and unfairly discriminatory 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 fraud; or are not related to the insurability of a prospective or existing policyholder, and urges state legislatures to prohibit its use; and

BE IT FURTHER RESOLVED that NCOIL does not find, at this time, based on current available data, any additional factors used 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 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; 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 these ends.

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National Council of Insurance Legislators (NCOIL)

Resolution Regarding the Use of Artificial Intelligence in Underwriting

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

**Adopted by the NCOIL Special Committee on Race in Insurance Underwriting on July 15, 2021 and by the NCOIL Executive Committee on July 17, 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 Special Committee has held five public hearings and meetings over the past seven months to take testimony, discuss and evaluate these issues; and

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

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

WHEREAS, the Special Committee has heard testimony indicating that the use of Artificial Intelligence has become increasingly prevalent in insurance underwriting and continues to grow; and

WHEREAS, the use of Artificial Intelligence in insurance underwriting falls beyond the charges to this Special Committee; and

NOW, THEREFORE, BE IT RESOLVED that NCOIL finds that underwriting is an ever-evolving, complex process; and

BE IT FURTHER RESOLVED that NCOIL believes that the use of Artificial Intelligence will surpass the use of individual factors in insurance underwriting; and

BE IT FURTHER RESOLVED that the Special Committee finds that NCOIL should undertake a review of the use of Artificial Intelligence in insurance underwriting through the committees of jurisdiction over each line of insurance to ensure that such use is not unfairly discriminatory.

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Resolution Regarding Insurance Score Transparency

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

**Adopted by the NCOIL Special Committee on Race in Insurance Underwriting on July 15, 2021 and by the NCOIL Executive Committee on July 17, 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 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, 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 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 or allow such factors falls within the province of the legislature pursuant to the Constitutions of the various States; and

WHEREAS, one factor used by many insurers in the underwriting process is consumers' insurance score; and

WHEREAS, the specific individual factors used in the calculation of an insurance score remain undisclosed to consumers; and

WHEREAS, lenders and/or credit bureaus provide consumers, or make available to them, with the factors used in the calculation of a consumer's credit score, the weight given to each factor, and when a change in a factor results in a change to the consumer's credit score; and

WHEREAS, the greater transparency in the calculation and operation of consumers' insurance score is beneficial and desirable; and

WHEREAS, consumers, policymakers, insurance producers and the insurance industry would benefit greatly from additional transparency in the development and usage of insurance scores, similar to that used for credit scores; and

NOW, THEREFORE, BE IT RESOLVED that NCOIL finds that greater transparency is needed in the development and usage of insurance scores; and

BE IT FURTHER RESOLVED that the Special Committee finds that NCOIL should develop a Model Law on Transparency in Insurance Scores with the goal of achieving parity with the transparency in the development and usage by lenders & credit bureaus of credit scores; and

BE IT FURTHER RESOLVED that the Special Committee refers this issue to the NCOIL Property & Casualty Insurance Committee for further action.