

## Preserving State Insurance Regulation...

- By interacting with Congress on issues of critical importance to insurance public policy
- By educating state lawmakers on the solutions to their insurance-market crises
- By fostering relationships between state legislators
- By asserting the primacy of state insurance regulation under the McCarran-Ferguson Act of 1945

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## NCOIL TO CONGRESS: PROMOTE, DON'T PREEMPT, STATE REGULATION

As Members of Congress fire shots across the bow of state insurance regulation, NCOIL has retaliated by taking aim at federal preemptive efforts in strongly worded missives. At the July NCOIL Summer Meeting in Seattle, 26 members of the NCOIL Executive Committee signed a letter to Senators John Sununu (R-NH) and Tim Johnson (D-SD) opposing S. 40, *The National Insurance Act of 2007*, and adopted a resolution opposing repeal of the *McCarran-Ferguson Act*.

S. 40 would create an Office of National Insurance (ONI) within the Treasury Department, and would permit insurers to bypass state regulatory protections in favor of an ONI license to sell insurance nationally.

In the letter, NCOIL lawmakers said an optional federal charter (OFC) would "result in a quagmire of federal

and state directives and promote ambiguity and confusion" and "ultimately impose the costs of a needless federal bureaucracy upon businesses and the public."

NCOIL again voiced concern as to the inadvertent negative consequences of S. 40, further aligning itself with other state-based groups, including the National Governors Association, National Conference of State Legislatures, Council of State Governments, and the National Association of Insurance Commissioners, in its strong opposition to OFC initiatives.

Legislators also formally opposed *The Insurance Industry Competition Act*, S. 618/H.R. 1081 that would repeal an essential provision of the *McCarran-Ferguson Act* that grants insurers a limited antitrust exemption. *McCarran* also gives states sole au-

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## NCOIL IN ACTION: 2007 SUMMER MEETING

*At the Seattle Summer Meeting, lawmakers took the following actions, among others:*

- adopted a letter from NCOIL Executive Committee members to Senator John Sununu (R-NH) and Tim Johnson (D-SD) opposing their OFC legislation, S. 40
- adopted resolutions opposing repeal or amendment of the *McCarran-Ferguson Act*, as well as opposing certain executive sessions of public policy officials, and resolutions on large-deductible amendments to state liquidation laws and on land-use
- moved for further consideration an amended NCOIL life settlements model, as well as models on PEOs, guaranty funds, accident response fees, secondary markets in physician discounts, and rental vehicle damage waivers
- moved for further consideration a resolution on state catastrophe funds and federal assistance, as well as a resolution and friendly amendment on use of legal settlements as public policymaking instruments
- received a report on Phase I of an ILF *Study on State Authority*

**“It is important that NCOIL—as a staunch proponent of state authority—ensure that the regulatory system now in place is the best it possibly can be. NCOIL will use the study’s findings and recommendations to set a strategic agenda to enhance state insurance regulation, which can be considered for adoption by each state.”**

## LEGISLATORS PUSH MITIGATION, ADOPT LAND-USE RESOLUTION

NCOIL expanded its efforts to promote natural disaster mitigation on July 21, when legislators unanimously adopted a proposed *Resolution Regarding State Land-Use Policies* during the NCOIL Summer Meeting in Seattle.

The resolution, which complements an NCOIL building code model law adopted earlier this year, supports requiring, via statute, that updated land-use policies take into consideration hazard mitigation issues and sets forth items that should be included in appropriate land-use strategy—such as, among others, measurable objectives, timelines for implementation, and recognition of the rights and responsibilities of property owners.

According to Rep. George Keiser (ND), co-sponsor of the

resolution, “Mitigation isn’t only about enforcing strong building codes, though that’s critically important. It’s also about deciding where and in what way to allow development in the first place. The NCOIL resolution,” he said, “will encourage local governments to do what’s right, if they haven’t already.”

The resolution, co-sponsored by Sen. Steven Geller (FL), also encourages states to adopt the NCOIL building code model act and to coordinate land-use strategies with the Federal Emergency Management Agency (FEMA) in order to determine the appropriate allocation of disaster mitigation grants.

The NCOIL Subcommittee on Natural Disaster Insurance Legislation adopted the land-use resolution on July 19, followed by the Property-Casualty Insurance Committee on July 20.

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## NCOIL LEGISLATORS REACT TO GROUNDBREAKING STATE AUTHORITY STUDY

On July 21, at its Summer Meeting in Seattle, NCOIL aired Phase I of *A Study on State Authority: Making a Case for Proper Insurance Oversight*—the first study of its kind to take an aerial view of state regulation to reveal the ways in which it contributes to a healthy insurance market and the ways in which it may not work as well and inhibit the market.

NCOIL President Sen. Alan Sanborn (MI), in announcing Phase I, said, “It is important that NCOIL—as a staunch proponent of state authority—ensure that the regulatory system now in place is the best it possibly can be. NCOIL will use the study’s findings and recommendations to set a strategic agenda to enhance state insurance regulation, which can be considered for adoption by each state.”

Sen. James Seward (NY), NCOIL Secretary, observed, “This study lays

the foundation for NCOIL’s ongoing efforts to not only preserve the state regulation of insurance, but to improve upon it for the benefit of consumers across the country.”

James Schacht of Navigant Consulting, LLC, who led the study, and Bruce Foudree of Lord, Bissell & Brook LLP, a coauthor, reported on authority granted to—and real-life roles of—players who impact state oversight, including legislators, attorneys general, regulators, and the National Association of Insurance Commissioners (NAIC). Dr. Joseph F. Zimmerman, Professor of Political Science at The Rockefeller College of Public Affairs & Policy at the State University of New York in Albany, also served as a coauthor.

NCOIL Executive Committee members who heard the briefing expressed most concern regarding the NAIC, and raised

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## NCOIL GROUP ENDS REVIEW OF LIFE SETTLEMENTS MODEL—VOTE EXPECTED

Following more than six hours of discussion and debate at the NCOIL Summer Meeting in Seattle, the Subcommittee on Life Settlements completed its review of controversial amendments to an NCOIL *Life Settlements Model Act* and approved a new draft of the model law.

Subcommittee Chair Rep. George Keiser (ND) said, "We made great progress on developing a model that will address the growing problem of STOLI without burdening legitimate life settlement arrangements."

During special sessions on July 18 and 19, members reviewed proposed changes related to, among other things, consumer disclosures, prohibited practices, licensing and reporting requirements, and a moratorium period for selling a life insurance policy. Regarding a moratorium, legislators rejected proposals calling for a five-year ban, instead strengthening language in the NCOIL model that prohibits a person, with certain exceptions, from selling a policy before two years after purchase.

Members also approved language that would require a broker to make added disclosures to policyowners, including contractual agreements that a broker may have with a provider

and a "full, complete and accurate description of all offers, counter-offers, acceptances and rejections relating to the proposed life settlement contract."

To quell an ongoing debate between life insurer, settlement, and institutional market representatives, the Subcommittee will soon convene an open conference call with securities and insurance regulators, as well as industry, to discuss whether life settlement purchases should be regulated by a model act. While settlement and institutional market forces claim that a purchase is solely governed by securities law, life insurers suggest that regulatory authority is split between the two offices in some states.

Parties participating in July included the American Council of Life Insurers; Association for Advanced Life Underwriting; Coventry; Institutional Life Markets Association; Life Insurance Finance Association; Life Insurance Settlement Association; Life Settlement Institute; and National Association of Insurance and Financial Advisors.

The NCOIL model would regulate life settlements by requiring, among other things, provider and broker licensing, complex disclosures to a policy owner, and a two-year moratorium on selling a policy.

*The [credit scoring] study notes that African-Americans and Hispanics tend to be over-represented among consumers who are classified as high-risk, but finds that this is a reflection of a greater likelihood of filing claims.*

## FTC: CREDIT SCORES ARE OKAY FOR AUTO INSURANCE

A long-overdue report, released last month, from the Federal Trade Commission (FTC) concludes that credit-based insurance scores for auto coverage "are effective predictors of risk" and do not discriminate against racial or ethnic minorities based on their minority status. The study notes, however, that African-Americans and Hispanics tend to be over-represented among consumers who are classified as high-risk, but finds that this is a reflection of a

greater likelihood of filing claims.

The report says there is no clear-cut reason why scores correlate with loss. Two of its drafters have criticized the report, taking issue with its allegedly scant data collection and questionable methodology, which they say did not meet FTC standards. Their fellow FTC members argue that the report and its findings are reliable.

An FTC insurance scoring report regarding homeowners' coverage is expected next year.

**SAVE THE DATE**

**NCOIL  
Annual  
Meeting &  
Seminar**

**November  
15 through 18,  
2007**

**Las Vegas,  
Nevada**

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## NCOIL TO CONGRESS

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thority to regulate the business of insurance.

A *Resolution in Opposition to Amending or Repealing the McCarran-Ferguson Act*, sponsored by NCOIL Officers, attests that *McCarran-Ferguson* "has led to the successful promotion of a strong, efficient, consumer-based system of insurance oversight."

The resolution says, "NCOIL opposes passage of S. 618/H.R. 1081 on the grounds that it misinterprets

the role of states in enforcing antitrust protections and would jeopardize insurer practices that promote available and affordable coverage; expose insurance markets to uncertainty and litigation; and create an environment that inadvertently disadvantages consumers most in need."

The letter and resolution were adopted unanimously by the NCOIL State-Federal Relations Committee on July 20, followed by the Executive Committee on July 21.

## NCOIL LEGISLATORS

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questions relating to, among others, NAIC authority and accountability, budget, staff, use of state insurance information for profit, confidentiality of data being shared by the NAIC, alleged deficiencies in the NAIC open meetings policy, and the appropriateness of the NAIC signing memorandums of understanding with foreign nations in its present status as a 501(c)(3) nonprofit organization.

NCOIL Vice President Rep. Brian Kennedy (RI) said, "The study is a great first step in providing a thorough and comprehensive review of the NAIC and its amoeba-like tendency to grow unfettered and without direct state control for its actions....I think it is incumbent upon us as the legislators of our states and commonwealths to swing the balance of power back to the legislative branch...."

Rep. George Keiser (ND), NCOIL

Executive Committee Chair, said in summary, that "The preliminary draft of *A Study on State Authority* by Navigant is comprehensive and informative. The roles of the NAIC and the court system have evolved and there is not a clear separation of legislative, executive and judicial branch powers and responsibilities....If state legislators do not become involved and develop strategies for modernization, state regulation of insurance will be at risk."

The final phase of the study will offer recommendations in such areas as the principles that should underlie an effective insurance regulatory scheme; defining the NAIC's role and strengthening state legislative oversight; and the alleviation of potential jurisdictional issues between state attorneys general and insurance commissioners. It is scheduled for September completion and will be vetted at the NCOIL Annual Meeting in November.

### **ON THE AGENDA: 2007 ANNUAL MEETING**

Legislators will consider many critical issues at the November NCOIL Annual Meeting, including, among others:

- Federal preemptive efforts
- Life settlements
- Natural catastrophe proposals
- Professional employer organizations
- Rental vehicle damage waivers
- Insurance (credit) scoring
- SCHIP
- Long-term care
- Terrorism insurance
- Interstate compacts
- State insurance authority
- Subprime lending