**NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
RESOLUTION OPPOSING THE OFFICE OF THE COMPTROLLER OF THE CURRENCY’S (OCC) OPINION THAT THE GRAMM-LEACH-BLILEY ACT PREEMPTS CERTAIN STATE CONSUMER PROTECTION STATUTES**

*Adopted by the NCOIL State-Federal Relations and Executive Committees on November 16, 2001.*

WHEREAS, the states have sole authority for the regulation of the business of insurance, as provided under the McCarran-Ferguson Act and reaffirmed recently by Section 104 of the Gramm-Leach-Bliley Act; and

WHEREAS, consumer protection and insurer solvency are fundamental goals of state insurance regulation, and state policymakers have effectively balanced the needs of the marketplace with the need for consumer protection for over 100 years; and

WHEREAS, many states have enacted comprehensive laws that protect consumers against unfair trade practices, coercion, and product confusion in the marketing of insurance; and

WHEREAS, the states have demonstrated that insurance business transacted by financial institutions is regulated effectively and fairly by the states; and

WHEREAS, the Office of the Comptroller of the Currency (OCC) is an unelected federal banking regulator that has no preemption power over state insurance statutes – under GLBA or otherwise; and

WHEREAS, the OCC has issued an opinion letter suggesting that provisions of a West Virginia consumer protections law are preempted, thus distorting and misinterpreting the ‘significant interference’ standard developed by the Supreme Court in its Barnett Bank decision and codified by the Gramm-Leach-Bliley Act; and

WHEREAS, NCOIL objected to the OCC consideration of this issue in June 2000 and filed formal comments urging the agency not to take such an action; and

WHEREAS, the OCC lacks the authority to issue such an opinion letter; and

WHEREAS, if left unchallenged, the OCC opinion could result in the preemption of similar consumer protection laws in approximately 20 states and could, more generally, undermine future efforts by state policymakers to exercise their regulatory authority over financial institutions selling insurance;

NOW, THEREFORE, BE IT RESOLVED, that NCOIL is committed to maintaining the states as the sole regulator of the business of insurance; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that NCOIL opposes any attempt by the OCC to preempt state insurance statutes – particularly consumer protection provisions – that were enacted by elected and accountable state officials to guard against the unfair treatment of consumers; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that NCOIL opposes the ceding of any authority to federal agencies to regulate financial institutions involved in the business of insurance; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that NCOIL strongly objects to the OCC opinion letter, on both procedural and substantive grounds; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that NCOIL will actively oppose the OCC opinion and, if appropriate, file an *amicus curie* brief in any litigation resulting from the OCC action; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that NCOIL will send a copy of this resolution to the Comptroller of the Currency and the members of the 107th Congress.