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This letter will present a brief synopsis and then a more detailed report of action taken at the National Conference of Insurance Legislators (NCOIL) Spring Meeting in Weston, Florida, from February 23 through 26, 2006.

At the meeting, legislators focused on issues including: natural disaster insurance; preemption of state insurance regulation; applying Sarbanes-Oxley investor-oriented protections to non-public companies; insurance (credit) scoring; workers' compensation reciprocity agreements; market conduct surveillance reform; reinsurance collateral and enforcement of judgments; payday lending; life insurance awareness; pharmacy benefit managers (PBMs); fragmented health insurance; and statewide building codes.

Over 280 state legislators, insurance regulators, and industry, consumer, and media representatives attended the meeting.

SYNOPSIS

At the NCOIL Spring Meeting, legislators:

- Adopted an amended NCOIL *Resolution Regarding Catastrophic Natural Disaster Insurance Issues*
- Adopted a proposed *Model State Resolution in Opposition to Federal Preemptive Insurance Regulatory Measures*
- Adopted a proposed *Resolution on the Application of Federal Sarbanes-Oxley Standards to State Insurance Regulation*
- Adopted an extraordinary life circumstances drafting note amendment to the NCOIL credit scoring model act
- Endorsed, in the NCOIL Workers' Compensation Insurance Committee, an IAIABC *Model Agreement Between Jurisdictions to Govern Coordination of Claims and Benefits*
- Held a special meeting on NCOIL options for market conduct surveillance reform and formed a subcommittee to renew NCOIL examination of the issue
- Moved for further consideration a proposed *Approved List of Reinsurers Model Act*
- Moved for further consideration proposed payday lending model legislation
- Moved for further consideration a proposed resolution regarding life insurance awareness month
- Held a special meeting on pharmacy benefit managers (PBMs) and voted to pursue development of a draft model law
- Participated in general sessions on fragmented health insurance and statewide building codes

In addition, due to time constraints, legislators deferred until the 2006 Summer Meeting their bylaws-required reviews of the NCOIL *Identity Theft Protection Model Act*, *Mental Health Parity Model Act*, *Insurance Compliance Self-Evaluative Privilege Model Act*, and *Secondary Addressee Model Act*.

DETAILED REPORT

NATURAL DISASTER INSURANCE

On February 23, the Subcommittee on Natural Disaster Insurance Legislation adopted an amended NCOIL *Resolution Regarding Catastrophic Natural Disaster Insurance Issues*, which the Property-Casualty Insurance and Executive Committees originally adopted on July 16, 2004. The amendments 1) recognize the impact that Hurricanes Katrina, Rita, and Wilma have had on the natural disaster insurance legislation debate and 2) acknowledge recent efforts of the National Association of Insurance Commissioners (NAIC) regarding development of a national mega-catastrophe program.

The amendments reaffirm NCOIL's support for state insurance regulation; commit NCOIL to working in concert with the NAIC; support an appropriate federal role in a mega-cat system, including working with interested parties to determine what that role might be; welcome further dialogue regarding merging natural and man-made catastrophe risks into a single nation-wide program; and restate NCOIL's support for tax-deferred catastrophe reserves.

The Property-Casualty Insurance and Executive Committees adopted the amended resolution on February 24 and 25, respectively.

FEDERAL REGULATORY PREEMPTION

On February 24 and 25, respectively, the State-Federal Relations and Executive Committees adopted a proposed *Model State Resolution in Opposition to Federal Preemptive Insurance Regulatory Measures*. The resolution, which state legislatures may use to convey their opposition to federal preemption, reasserts state regulatory authority under the McCarran-Ferguson Act and says that states are more responsive to consumer needs than a federal bureaucracy would be.

The resolution points to the ongoing actions of state legislatures, NCOIL, and the National Association of Insurance Commissioners (NAIC) to modernize insurance oversight. It notes that federal preemptive initiatives would draw premium tax revenue from the states and bifurcate insurance regulation, allowing insurers to evade state consumer protections and/or creating mandatory federal insurance standards preempting state law.

The resolution, which is one element of NCOIL's effort to preserve state regulation, opposes any legislation that threatens the power of state legislatures, governors, insurance commissioners, and attorneys general to oversee, regulate, and investigate the business of insurance and protect consumers.

SARBANES-OXLEY

On February 24, the Financial Services & Investment Products Committee unanimously adopted a proposed *Resolution on the Application of Federal Sarbanes-Oxley Standards to State Insurance Regulation*. The resolution opposes a National Association of Insurance

Commissioners' (NAIC) plan to apply Sarbanes-Oxley (SOX) investor-oriented protections to non-public companies and objects on the following grounds:

- the federal SOX Act was designed to protect investors in public companies and has generated inordinately high compliance costs greatly exceeding government estimates
- insurers already comply with state requirements well beyond SOX provisions
- costs of the NAIC proposal will be passed on to policyholders, either through higher premiums or through depleting resources currently utilized for policyholder services, and would result in additional, unknown expenses for state insurance departments
- any initiative to apply SOX-like requirements to non-public companies is a matter of significant public policy, which should be authorized by state legislatures, if at all, and not through state administrative or regulatory procedures

In April of 2004, the NAIC/AICPA Working Group released proposed revisions to the NAIC Model Audit Rule. The proposed revisions called for applying SOX auditor independence and internal control assessment requirements on that segment of the insurance industry to which they do not now apply. On March 10, 2005, then-NCOIL President Rep. Craig Eiland (TX), acting on behalf of the full NCOIL Executive Committee, sent a letter to the NAIC objecting to the plan on both substantive and procedural grounds.

The NCOIL Executive Committee, after passing several friendly amendments, unanimously adopted the resolution on February 25.

INSURANCE (CREDIT) SCORING

On February 24, the NCOIL Property-Casualty Insurance Committee unanimously adopted a drafting note amendment to the NCOIL *Model Act Regarding Use of Credit Information in Personal Insurance*, which the P-C Insurance and Executive Committees originally adopted on November 22, 2002; amended on July 16, 2004; and readopted, respectively, on November 17 and 19, 2005. The drafting note would, among other things, 1) require an insurer to disregard, upon a consumer's request, credit information related to an extraordinary life circumstance; 2) require independent verification of such an event; and 3) clarify that an insurer's compliance with state rate and rate-filing rules, among other requirements, would not be jeopardized because of granting an exception. The NCOIL Executive Committee adopted the amendment on February 25.

The credit scoring model law would, in part, 1) prohibit an insurer from denying, canceling, or non-renewing a policy based solely on credit information; 2) require an insurer to re-underwrite and re-rate an insured whose credit report was corrected; 3) require an insurer to notify an applicant that credit information would be used, as well as notify when an adverse action was based on credit information and what the four primary credit-related factors were; 4) indemnify insurance producers obtaining credit information/ insurance scores according to an insurer's procedures and according to applicable law and regulation; and 5) restrict a consumer reporting agency's ability to provide or sell data submitted in conjunction with an insurance inquiry.

WORKERS' COMPENSATION RECIPROCITY

On February 23, the NCOIL Workers' Compensation Insurance Committee endorsed the concept of reciprocity agreements for workers' compensation insurance claims. The Committee voted overwhelmingly to support an IAIABC *Model Agreement Between Jurisdictions to Govern Coordination of Claims and Coverage* and referred it to the NCOIL Executive Committee for further discussion on February 25. During the Executive Committee meeting, legislators voted to

remit the model agreement to the W-C Committee for further consideration at the Summer Meeting. At that time, the Committee will determine whether to delete an attached Oregon amendment prior to final Executive Committee consideration.

The IAIABC reciprocity agreement would define temporary employment, specify what benefits are to be covered in the event of an accident, and determine the coverage source for the injury claims. The agreement would provide clarity in situations where a temporary worker is injured in a second state. The attached Oregon Amendment provides an example of detailed enabling language.

MARKET CONDUCT SURVEILLANCE

On February 24, the State-Federal Relations Committee held a special session to review an original NCOIL *Market Conduct Surveillance Model Law*, which NCOIL adopted on February 27, 2004. At the special session, Committee Chair Rep. Craig Eiland (TX) created a subcommittee charged with examining viable NCOIL options for market conduct surveillance reform prior to the Summer Meeting. The group will begin by reviewing the February 2004 NCOIL model but also will consider a newly passed Texas *Insurance Market Conduct Surveillance Act* and a joint NCOIL/NAIC *Market Conduct Surveillance Model Law*, adopted by NCOIL in July 2004 and by the NAIC in September 2004. All three proposals are currently before the Committee. The subcommittee also will solicit and review comments on the February 2004 version from interested parties.

On February 25, at the NCOIL Executive Committee Meeting, NCOIL President Rep. Frank Wald (ND) appointed Sen. Neil Breslin (NY) as Chair of the Subcommittee, as well as the following Subcommittee members: Rep. Craig Eiland (TX), Sen. Steven Geller (FL), Rep. Robert Damron (KY), Rep. Fulton Sheen (MI), Sen. Pam Redfield (NE), Sen. Carroll Leavell (NM), Rep. George Keiser (ND), Rep. Brian Kennedy (RI), and Rep. Mark Young (VT).

State-Federal Relations Committee members made the initial decision to review the NCOIL/NAIC *Market Conduct Surveillance Model Law* based on a lack of state, and particularly regulatory, support for the joint model law and identified the following three NCOIL options: 1) return to the original NCOIL model act; 2) reevaluate the NCOIL-NAIC draft; or 3) consider a recently enacted Texas market conduct bill that was based on the NCOIL-NAIC model. The NCOIL market conduct model would establish methods for collecting marketplace data and set forth a continuum of market conduct actions for consideration prior to undertaking targeted market conduct exams.

REINSURANCE COLLATERAL/ENFORCEMENT OF JUDGMENTS

On February 25, the NCOIL Executive Committee adopted a proposed *Resolution Regarding Reinsurance Collateral Requirements* that, among other things, recognizes the importance of both domestic and non-U.S. reinsurers. The resolution supports 1) continuing to reassess credit for reinsurance rules in light of an evolving reinsurance market and changes to regulatory and accounting standards, and 2) collateral rules that are effective and fair and that provide contract security while not increasing costs or reducing capacity. The resolution supports the work of the National Association of Insurance Commissioners (NAIC) on this issue; urges the NAIC to complete its review as soon as possible; requests that NAIC leadership report progress to NCOIL at the 2006 Spring and Summer Meetings; and commits NCOIL to reconsidering a draft *Approved List of Reinsurers Model Act* no later than the 2006 NCOIL Summer Meeting.

Also on November 19, the Committee accepted a report from the Insurance Legislators Foundation (ILF) Board regarding enforcement of judgments as related to reinsurance collateral requirements. The report, prepared by the law firm of Herrick Feinstein, represented an independent legal analysis of the enforceability of U.S. judgments and arbitration awards against unauthorized, non-U.S. domiciled reinsurers pursuant to terms of reinsurance agreements. The report determined that, as a rule, U.S. judgments are enforced overseas. It noted three potential exceptions to this conclusion: 1) parties' failure to strictly follow the arbitration provisions outlined in the reinsurance contract; 2) a default decision against a reinsurer based on its inability to post 100 percent security before filing pleadings in a case, rather than a decision based on merits; and 3) punitive damage awards based on a reinsurer's bad faith conduct. The study recognized that the punitive damage issue is not especially relevant to reinsurance collateral requirements.

The NCOIL Executive Committee has deferred consideration of the *Approved List of Reinsurers Model Act* since its 2004 Summer Meeting by request of the NAIC, in order to allow regulators further study into the issue. An ad hoc regulator group and industry have been working toward resolution of the matter and report to the NAIC. In November 2002, the NCOIL International Insurance Issues Committee adopted the model law and referred it to the Executive Committee. The model would provide for reduced collateral requirements for non-U.S. reinsurers that meet certain financial solvency criteria.

PAYDAY LENDING

On February 24, the Financial Services & Investment Products Committee considered a proposed *Model Deferred Presentment Services Act (working draft)* and determined to pursue development of an NCOIL payday lending model act.

Committee Chair Rep. Joe Hune (MI) announced the formation of a subcommittee charged with reviewing the *Model Deferred Presentment Services Act*, an *Illinois Payday Loan Reform Act*, and other existing payday lending legislation. The Subcommittee will solicit input from interested parties and offer recommendations to the full Committee at the Summer Meeting in July.

The *Model Deferred Presentment Act*, which NCOIL used as a starting point for discussion and which the American Legislative Exchange Council (ALEC) adopted in 1999, would establish a system of regulation for those persons involved in the business of deferred presentment services (payday loans). The Committee additionally examined the *Illinois Payday Loan Reform Act*, which the Illinois State Legislature adopted early last year. The Illinois Act reflects consensus among consumers, industry, and others and offers consumer-oriented provisions not addressed in the ALEC model.

LIFE INSURANCE AWARENESS MONTH

On February 24, the NCOIL Life Insurance and Financial Planning Committee deferred, due to time constraints, consideration of a proposed *Resolution in Support of Recognizing September 2006 as Life Insurance Awareness Month*. Legislators will revisit the issue at the 2006 Summer Meeting. The resolution emphasizes the importance of life insurance and declares NCOIL support for recognizing September 2006 as Life Insurance Awareness Month.

The resolution had not met the 30-day deadline for the Spring Meeting; legislators voted to waive the requirement prior to Committee discussion.

PHARMACY BENEFIT MANAGERS (PBMs)

On February 23, the NCOIL Health, Long-Term Care, and Health Retirement Issues Committee held a special meeting on PBMs, addressing issues regarding transparency, fiduciary duty, and whether PBM regulation is needed and, if so, by whom. Experts representing academics, pharmacies, PBMs, and health insurers testified. After the debate, legislators discussed future PBM strategies and agreed to review, at the 2006 Summer Meeting, PBM issues and to investigate state legislative initiatives to provide transparency or otherwise regulate PBM activity, with an eye toward possible consideration of an NCOIL model law.

FRAGMENTED HEALTH INSURANCE

On February 25, legislators participated in a general session entitled *Fragmented Health Insurance System: Have States Lost Control?* Speakers included representatives of the Moore School of Business, America's Health Insurance Plans (AHIP), and the Self-Insurance Institute of America (SIIA), as well as Rep. George Keiser, chair of the North Dakota Insurance Committee and of the NCOIL Health, Long-Term Care, and Health Retirement Issues Committee. Following an academic overview, the panel addressed, among other things, how federal pressures, including Medicaid and ERISA, combined with state mandates have resulted in fragmented state regulation.

BUILDING CODES

On February 25, legislators participated in a general session entitled *Reassessing State Building Codes: Mitigation and Enforcement*. Speakers representing the Institute for Business & Home Safety (IBHS), Insurance Services Office (ISO), the Property-Casualty Insurers Association of America (PCI), and the National Association of Professional Insurance Agents (PIA) addressed, among other things, public policy issues surrounding enactment of statewide building standards; community enforcement; insurer efforts related to construction codes; and the impact of effective building standards on policyholders.

In addition, legislators considered the following issues, among others:

- **natural disaster** mitigation and federal legislation
- **annuities** and related jurisdictional issues
- **financial modernization**, including the NAIC *Interstate Insurance Product Regulation Compact*
- **asbestos reform** legislation
- the National **Flood Insurance** Program (NFIP)
- insurance **fraud**
- **finite insurance and reinsurance** arrangements
- long-term solutions to **terrorism insurance** risk
- health insurance **reimbursement issues**
- **Medicare/Medicaid**
- **professional employment organizations (PEOs)**
- **regulation of insurance and financial services** products

If you would like to receive additional information regarding any of the above issues, or are interested in ordering a general session audiotape, please contact the NCOIL National Office at (518) 687-0178.

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