

**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 25<sup>th</sup>, 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 by statute on occasion prohibited, ~~or~~ restricted, or otherwise limited or managed the use of certain rating factors, despite being correlative with loss, ~~based upon~~ due to overriding and superseding public policy considerations ~~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 otherwise limit ~~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 ~~finds that the use of certain rating factors should be supports legislatures' role and responsibility in prohibiting ed certain rating factors~~ despite being correlative with loss, ~~based upon the negative and adverse effect that the use of these factors have on protected classes where they fall into the definition of "proxy discrimination" or are deemed contrary to public policy or unfairly discriminatory;~~ and

**BE IT FURTHER RESOLVED** that NCOIL, ~~due to overriding and superseding public policy considerations, -views as unfairly discriminatory and~~ urges ~~state legislatures, by statute, to the~~ prohibition of the use of all data in the underwriting of private, noncommercial 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 in any way~~ or to ~~the the insurability of a prospective or existing policyholder risk being evaluated for the insurance being sought (such as arson for property insurance);~~ and

**BE IT FURTHER RESOLVED** that NCOIL ~~recognizes that legislatures may conclude, either today or in the future, that other rating factors used views as potentially unfairly discriminatory in its application~~ in the underwriting of private, non-commercial insurance ~~should be restricted, prohibited, or otherwise limited or managed due to public policy and social fairness consideration that are deemed to outweigh the actuarial justification and predictive value such factors may possess; and the use of other rating factors, either singly or in combination, but does not view these 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 that end.

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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*  
*\*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 25<sup>th</sup>, 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.

### **National Council of Insurance Legislators (NCOIL)**

#### **Resolution Regarding Insurance Score Transparency**

*\*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 25<sup>th</sup>, 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 being correlative with loss, based upon considerations related to protected class status public policy considerations; 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 in some states 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

**WHEREAS, proprietary weight or formulas used by individual companies are vital to maintaining a competitive and healthy private, risk-based insurance market;**

**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.