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NCOIL PUSHES BACK ON IRS ENCROACHMENT OF THE STATE REGULATION OF INSURANCE

Urges the McCarran-Ferguson Doctrine Be Upheld

Belmar, NJ – The National Council of Insurance Legislators (NCOIL) has submitted a comment letter to the Internal Revenue Service (IRS) urging it to retract a proposed rule which poses a significant threat to the longstanding framework of the state regulation of insurance and violates the McCarran-Ferguson Doctrine.

“The Proposed Rule undermines the well-established and continually reaffirmed framework of the state-based system of insurance regulation,” said Arkansas Representative Deborah Ferguson, DDS, NCOIL President. “This system has created the strongest, safest, and most successful insurance market in the world, and it is imperative that state insurance legislators and regulators work together to prevent federal encroachment that has no basis in law.”

If promulgated, the Rule would abrogate the States’ authority in a number of ways related to the captive insurance area. Many businesses across America have established captive insurance companies to mitigate against a wide range of extremely relevant risks. A significant subset of these are on the smaller to medium size of the range and are able to make a small insurance company election, known as an 831(b) tax election.

The IRS has apparently expressed concerns regarding certain companies’ utilization of Section 831(b), something that NCOIL takes no position on other than to condemn fraud in all instances. However, in its attempt to address its concerns, the IRS goes too far and seeks to insert itself into captive insurance companies’ loss ratios, an insurance business aspect which constitutes the very heart and core of “the business of insurance” which, pursuant to the McCarran Ferguson Act, shall be “regulated by the States.”

NCOIL CEO, Commissioner Tom Considine stated, “We at NCOIL urge the IRS to retract the Proposed Rule and return to the drawing board to address its stated concerns in a way that is



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narrow, tailored, non-retroactive, and most importantly does not violate the McCarran-Ferguson Doctrine by infringing on the Congressionally-delegated rights of the States to regulate the business of insurance.”

A public hearing on this matter will be held on July 19th. For more information on the public hearing and to view all public comments on the Proposed Rule, please see this link:

<https://www.regulations.gov/document/IRS-2023-0017-0001>

A full copy of the comment letter can be viewed [here](#).

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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 over seventy 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.