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NATIONAL COUNCIL OF INSURANCE LEGISLATORS (NCOIL)

Exhaustion of Administrative Remedies Model Legislation

Adopted by the NCOIL State-Federal Relations and Executive Committees on November 22, 2002; readopted on March 4, 2005, and November 21, 2010.

Re-adopted by the NCOIL State-Federal Relations Committee on November 17, 2017 and the NCOIL Executive Committee on November 19, 2017. Readopted by the NCOIL Joint State-Federal Relations & International Insurance Issues Committee and by the NCOIL Executive Committee on November 19, 2022.

I. DISMISSAL OR ABATEMENT IF STATE INSURANCE DEPARTMENT JURISDICTION INVOLVED:

(a) A court shall abate or dismiss an action filed against an insurance entity unless the court determines that:

- (1) the interpretation, application, or violation of an insurance-related statute or rule involves only questions of law; and
- (2) the insurance department may not make any findings of fact or conclusions of law or issue any orders that would aid the court in resolving the action.

(b) A court may abate or dismiss an action filed against an insurance entity if the court determines that the insurance department may order in a contested case all or part of the relief the claimant seeks. The court shall specify in its order of abatement or dismissal the portion of the statute on which the court bases its order.

(c) A court that abates an action under this section:

- (1) shall refer specific issues or claims within the insurance department's jurisdiction to the insurance department for action; and
- (2) may direct the insurance department to report to the court periodically concerning the disposition of the matters referred to the agency.

(d) The statute of limitations for an action dismissed or abated under this section is tolled for the period during which the claimant seeks an administrative remedy.

II. PERIOD OF ABATEMENT: The court shall provide that the period of abatement is at least six months from the date the court enters the order of abatement, or such other reasonable time as the court may determine.

III. ADEQUATE RELIEF: Relief awarded to a claimant may be adequate even if the relief does not include exemplary damages, multiple damages, attorneys' fees, or costs of court.

IV. APPLICABILITY: This section applies only to a civil action filed against an insurance entity in which:

- (1) a claimant seeks recovery of damages on behalf of a class of claimants and
- (2) the interpretation, application, or violation of an insurance-related statute or rule is involved for at least one defendant.

V. DEFINITION: For purposes of this act, an insurance entity is any entity required to be licensed under the insurance laws of this state.