

**NCSL STANDING COMMITTEE on COMMUNICATIONS, FINANCIAL
SERVICES, & INTERSTATE COMMERCE
POLICY DIRECTIVES AND RESOLUTIONS**

**LEGISLATIVE SUMMIT
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CONTENTS

POLICY: INSURANCE.....	1
POLICY: CORPORATE FORMATIONS	7
POLICY: PROPOSED RESOLUTION IN SUPPORT OF POSITION STATEMENT RECOGNIZING CONGRESSIONAL CONSENT TO THE INTERSTATE INSURANCE PRODUCT COMPACT.....	9

1 **COMMITTEE: COMMUNICATIONS, FINANCIAL SERVICES, &**
2 **INTERSTATE COMMERCE**

3 **POLICY: INSURANCE**

4 **TYPE: DIRECTIVE**

5 **INSURANCE REGULATORY MODERNIZATION**

6 The National Conference of State Legislatures (NCSL) is committed to state regulation
7 of the business of insurance. NCSL acknowledges the responsibility of states to adjust
8 state systems to meet the needs of the modern economy. NCSL opposes any proposal
9 to establish either a federal or a dual system of regulation of insurance, to cede any
10 state authority to regulate financial institutions involved in the business of insurance or
11 to obtain Congressional ratification of trade agreements that preempt state regulation of
12 insurance.

13 States and insurance commissioners continue to develop a shared vision of insurance
14 regulatory reform to meet the needs of the modern marketplace while preserving the
15 advantages of the state system. NCSL supports the efforts of states to streamline and
16 simplify insurance regulation. NCSL endorses state participation in the Interstate
17 Insurance Product Regulation Commission, which creates a national state-based
18 system to make regulatory decisions quickly on life insurance products according to
19 uniform national standards. NCSL endorses state participation in the Surplus Lines
20 Insurance Multi-State Compliance Compact (SLIMPACT), an interstate compact to
21 protect and facilitate the collection of premium tax revenue on surplus lines and
22 independently procured insurance placements by the compacting states.

23

24 NCSL believes that state efforts to enact significant reforms in critical areas represent
25 tremendous progress, and NCSL will continue to support further efforts as states move
26 forward to achieve widespread reform in all areas in the years ahead.

27

28 **State-Federal Partnership**

[BACK TO THE TABLE OF CONTENTS](#)

29 Individually and at the national level, states work to modernize insurance regulation.
30 However, state legislatures recognize a legitimate federal role in overseeing and
31 promoting well-functioning insurance markets.

32 Title V of the Dodd-Frank Wall Street Reform and Consumer Protection Act established
33 The Federal Insurance Office (FIO) within the U.S. Department of Treasury. While
34 NCSL and other state groups were successful in limiting the scope of the FIO's
35 authority, concern remains that the FIO will serve as a vehicle to promote a greater
36 federal role in the historically state-regulated industry of insurance.

37
38 Therefore, NCSL opposes any administrative action by the FIO or federal legislation
39 that: relies on wholesale preemption of state authority, would compel state compliance
40 with federal standards or those of any non-governmental third party, or conditions,
41 restricts or redirects state insurance revenues, including insurance premium taxes, fees
42 and fines, either directly or as a condition of a state's refusal to submit to federal
43 standards or federal efforts to commandeer a state executive branch official to
44 participate in a federal regulatory program.

45 Moreover, some in Congress and industry support federal legislation to establish a
46 single federal regulator of insurance or allow for dual federal and state insurance
47 regulation. NCSL opposes any provision of federal legislation that preempts state
48 authority through the creation of a federal insurance official, commission or entity with
49 the authority to regulate insurance, to implement federal standards, to enforce state
50 compliance with federal standards, or to initiate or participate in judicial proceedings to
51 resolve differences between federal standards and state law.

52
53 State legislators perform a critical role in the development of insurance public policy.
54 However, despite this important function, state legislators are oftentimes overlooked for
55 service on federal advisory boards and committees related to the regulation of the
56 business of insurance. Recognizing this recurring oversight, NCSL requests an
57 enhanced effort from the federal government to incorporate state legislators onto
58 associated insurance advisory panels.

[BACK TO THE TABLE OF CONTENTS](#)

59

60 **Insurance Company Solvency**

61 The safety and soundness of insurance companies operating in the United States are
62 the prime objective of state insurance regulation. State legislatures have endeavored to
63 strengthen state insurance departments and to create standards for financial regulation
64 that have improved the solvency of insurance companies.

65

66 NCSL opposes any proposal to establish federal standards for state solvency regulation
67 that cedes any authority to federal agencies to regulate financial institutions involved in
68 the business of insurance, including congressional ratification of trade agreements that
69 would preempt state regulation of insurance for solvency purposes. Although NCSL
70 continues to support the National Association of Insurance Commissioners' Financial
71 Regulation Standards and Accreditation Program, NCSL acknowledges that state
72 legislatures and governors have the responsibility to enact policy, which state regulators
73 enforce. NCSL recognizes that interstate compact proposals have the potential of
74 addressing binding uniformity and effectiveness in specific areas of regulation.

75

76 NCSL also objects to actions taken or contemplated by the Internal Revenue Service or
77 other federal agencies to assert priority claims to the assets of failed insurers. The
78 states should first be allowed to distribute an insolvent company's assets to pensioners,
79 family businesses, other policyholders and others protected by the McCarran-Ferguson
80 Act's delegation of the business of insurance to the states.

81

82 In the same vein, NCSL is concerned by federal bankruptcy rulings under the federal
83 bankruptcy code that would allow alien insurers and reinsurers to move certain trust
84 fund assets to bankruptcy proceedings in their domicile country. The trust funds
85 established by alien insurers and reinsurers are to serve as collateral for insurance and
86 reinsurance underwriting in the United States. Federal bankruptcy rulings have allowed
87 such alien insurers and reinsurers to be exempt from state solvency regulation and
88 have placed these collateral trust funds out of the reach of state insurance departments,

BACK TO THE TABLE OF CONTENTS

89 which are solely responsible for solvency protection. NCSL urges Congress to rectify
90 this situation by amending federal law to eliminate or limit this exemption for alien
91 insurers and reinsurers under the bankruptcy code.

92

93 **Insurance Information Security**

94 NCSL opposes any federal effort to preempt state laws and regulations or to enact
95 federal standards that address the use of financial and credit information in insurance.

96

97 **INSURANCE FRAUD - FEDERAL CRIMINALIZATION**

98 NCSL recognizes the toll that policyholder and claimant initiated fraud has on the cost of
99 insurance and the solvency of the insurer. We applaud the action taken in various states
100 to pass laws that make it more difficult to file a false claim, increase the penalties for
101 those who are guilty of fraudulent activities, and expand state insurance department
102 fraud units.

103 NCSL believes that the prosecution of policyholder and claimant fraud should and must
104 remain in the jurisdiction of state and local law enforcement officials. However, in cases
105 of internal insurer fraud that may be the result of interstate and international
106 conspiracies to defraud, loot or plunder an insurance company, states and the federal
107 government should cooperate to prosecute such criminal activity.

108

109 As a result of financial services modernization, the various federal and state financial
110 institutions regulators need to coordinate anti-fraud activities. However, federal
111 legislation to assist the coordination of state and federal anti-fraud activities should not
112 unnecessarily preempt state anti-fraud laws and regulations nor grant audit or subpoena
113 authority to a federal entity over a state agency operating under appropriate state
114 constitutions and laws.

115

116 NCSL's endorsement of federal involvement in the criminal prosecution of certain kinds
117 of insurance fraud does not diminish our support for continued state regulation of the
118 insurance business. Federal criminal sanctions will assist state regulators in state efforts

BACK TO THE TABLE OF CONTENTS

119 to prevent future insolvencies.

120

121 **EQUAL ACCESS TO FBI CRIMINAL HISTORY RECORDS**

122 State regulators should have efficient access to the Federal Bureau of Investigation's
123 (FBI) Criminal Justice Information System in order to establish dependable procedures
124 for licensing officers, directors, and agents of insurance companies across the United
125 States.

126

127 NCSL calls on Congress to give state insurance regulators statutory access to FBI
128 fingerprint files. This information is currently available to federal and state banking and
129 securities regulators. Access will help safeguard insurance consumers from the
130 unnecessary risk of having known fraud artists or violent offenders engaged in the
131 insurance business.

132 **NATURAL DISASTER MITIGATION AND INSURANCE**

133 NCSL urges Congressional action that would: (a) provide federal grants, tax credits or
134 deductions to assist consumers to strengthen their homes to better withstand
135 catastrophic natural disasters; and (b) create a commission to determine what other
136 action is necessary and appropriate to support and enhance the ability of existing
137 insurance and reinsurance mechanisms to cope with catastrophic natural disasters.
138 However, any such action must not displace private sector risk transfer mechanisms,
139 adversely impact a state's ability to levy premium taxes, regulate the business of
140 insurance and set solvency standards for property and casualty insurers.

141

142 **TERRORISM RISK INSURANCE**

143 NCSL requests Congress work with state insurance regulators to ensure that the
144 property and casualty insurance and group life insurance industries develop the
145 products to protect Americans from financial losses associated with terrorism and to
146 ensure an available and affordable insurance market for American consumers and
147 businesses.

[BACK TO THE TABLE OF CONTENTS](#)

148 NCSL continues to believe that any reauthorization of the Terrorism Risk Insurance Act
149 should recognize the temporary nature of the program, and therefore encourages efforts
150 to further promote development of the private insurance markets. Any federal plan for a
151 temporary and limited federal backstop for terrorism insurance coverage must not
152 adversely impact a state's ability to levy premium taxes, regulate the business of
153 insurance and set solvency standards for property and casualty and group life insurers.

[BACK TO THE TABLE OF CONTENTS](#)

1 **COMMITTEE: COMMUNICATIONS, FINANCIAL SERVICES, &**
2 **INTERSTATE COMMERCE**

3 **POLICY: CORPORATE FORMATIONS**

4 **TYPE: DIRECTIVE**

5 A corporation is defined as a legal entity or structure created under the authority of a
6 state's laws, consisting of a person or group of persons who become shareholders. The
7 entity's existence is considered separate and distinct from that of its members. A
8 corporation can enter into contracts, sue and be sued, pay taxes separately from its
9 owners, and do the other things necessary to conduct business.

10 The ability to regulate and set standards for incorporation law had long resided within
11 the individual states. Many states rely on the revenue generated by incorporation fees,
12 corporate taxes and other fees as a way to fund many of their public needs. States
13 determine what the articles of incorporation need to involve and have the ability to both
14 tighten and lift barriers for corporate formation.

15 One of the key reasons for forming a corporation is the limited liability protection
16 provided to its owners. Because a corporation is considered a separate legal entity, the
17 shareholders have limited liability for the corporation's debts. The personal assets of
18 shareholders are not at risk for satisfying corporate debts or liabilities.

19 In 2001, after the terrorist attack on the United States, the U.S. Treasury Department
20 was tasked with tracking the funding of terrorists cells and groups. One of the findings
21 of these early studies was the concern that state corporate formation statutes may have
22 allowed terrorists and other criminals in laundering money and hiding assets. In 2002, a
23 number of states were identified by the Treasury Department as having insufficient
24 requirements for the identification of members, managers or the beneficial owners of the
25 corporation or other limited liability entities.

26 In 2006, the General Accounting Office (GAO) and the Money Laundering Threat
27 Assessment Working Group of the U.S. Treasury Department released studies
28 regarding what they considered the lax corporate formation requirements by

29 states. Almost every state was cited by the GAO report for inadequate corporate
30 formation information requirements.

31 In late 2006, the Permanent Subcommittee on Investigations of the United States
32 Senate Homeland Security and Governmental Affairs held a hearing on the reports and
33 what the Subcommittee claimed was the states failure to respond. In February 2007,
34 some in Congress served noticed that if the states failed to address the findings of the
35 studies, then Congress would set a national standard for corporate formation and
36 registration. In doing so, Congress would preempt most states' corporate formation
37 statutes and seriously impact the revenues of many states.

38 A special Task Force was established by the Executive Committee of the National
39 Conference of State Legislatures to study the federal reports, and the congressional
40 hearing and to determine if the concerns were valid. After a year of meetings and
41 hearings, the NCSL Task Force has found that while some state statutes may lack
42 some of the transparency demanded by the federal agencies, the wholesale preemption
43 of state corporate formation statutes is unwarranted and unnecessary. However, NCSL
44 is committed to working with the National Association of Secretaries of State, American
45 Bar Association, and the National Conference of Commissioners of Uniform State Laws
46 to enhance the transparency of current state corporate formation laws.

47 Therefore, the National Conference of State Legislatures will oppose any unwarranted
48 effort at the federal level to preempt state incorporation laws without proper justification
49 that such laws have led to criminal or terror activities.

1 **COMMITTEE: COMMUNICATIONS, FINANCIAL SERVICES, &**
2 **INTERSTATE COMMERCE**

3 **POLICY: PROPOSED RESOLUTION IN SUPPORT OF POSITION**
4 **STATEMENT RECOGNIZING CONGRESSIONAL**
5 **CONSENT TO THE INTERSTATE INSURANCE**
6 **PRODUCT COMPACT**

7 **TYPE: MEMORIAL RESOLUTION**

8 **WHEREAS**, it is well established that states have primary jurisdiction and responsibility
9 for regulating insurance products offered by the life insurance industry to consumers in
10 their respective jurisdictions; and
11

12 **WHEREAS**, the National Conference of State Legislatures (NCSL) strongly supports
13 rights of states to regulate their unique insurance markets while joining together to support
14 targeted modernization initiatives that protect insurance consumers and streamline
15 regulation; and
16

17 **WHEREAS**, NCSL endorsed the development and implementation of the *Interstate*
18 *Insurance Product Regulation Compact* (Insurance Compact) in 2004 and has actively
19 supported its mission with NCSL legislators serving on the Insurance Compact Legislative
20 Committee; and
21

22 **WHEREAS**, the Insurance Compact serves to bring states together to set national
23 Uniform Standards that apply as the product requirements for life insurance, annuity,
24 disability income, and long-term care insurance products, including requirements that in
25 certain cases may differ from state-specific product requirements; and
26

27 **WHEREAS**, the Insurance Compact is an instrumentality of the states serving as a central
28 clearinghouse for prompt and thorough product review and approval while preserving
29 state authority over all other areas of insurance regulation—including agent licensing,
30 market conduct, company licensing and solvency regulation—as well as preserving
31 applicable state filing fee revenues; and

32 **WHEREAS**, since it became operational in 2006, the Insurance Compact has
33 demonstrated sustained growth in the number of Compacting States, the number of
34 Uniform Standards for the authorized product lines, the number of filing companies and
35 product filings and has transformed the state-based product filing platform for Compacting
36 States, their regulated entities and insurance consumers.

37
38 **WHEREAS**, the Compacting States represent 46 jurisdictions comprising more than 70
39 percent of the nationwide premium volume for asset-protection insurance products; and

40
41 **WHEREAS**, more than 100 product Uniform Standards prepared and adopted by the
42 Insurance Compact member states have fulfilled the promise of stringent and detailed
43 requirements administered by knowledgeable, professional staff, with over 12,000
44 insurance products reviewed and approved for use in the Compacting States; and

45
46 **WHEREAS**, states' legislatures determine the extent and authority of participation in the
47 Insurance Compact, and further exercise their sovereign authority and rights, through
48 their legislatively designated representative to the Insurance Compact, who serves on the
49 Compact Commission, its governing body; and

50
51 **WHEREAS**, the Insurance Compact has become an extremely important part of the fabric
52 of state-based product regulation for these authorized insurance products; and

53
54 **WHEREAS**, a recent court opinion by the Colorado Supreme Court found that
55 congressional consent to an interstate compact would affect whether states could join
56 together to embrace provisions in duly promulgated uniform standards that may differ
57 from state laws; and

58
59 **WHEREAS**, it is well-established in interstate compact case law that regulations adopted
60 by states pursuant to an interstate compact with congressional consent can apply when
61 different from state law; and

62 **WHEREAS**, the Insurance Compact is considering adoption of a position statement
63 known as Position Statement 1-2022 to document that Congress conferred implied
64 consent for the Insurance Compact in 2006 in the form of Public Law 109-356 enacted
65 by Congress and signed by President George W. Bush, which authorized the District of
66 Columbia to enter the Compact, and approved the delegation of authority necessary for
67 the Commission to achieve the purposes of the Compact; and

68
69 **NOW, THEREFORE BE IT RESOLVED** that NCSL reaffirms its endorsement of the
70 Insurance Compact as the legislative-regulatory state-based solution to making the
71 product submission, review, and approval process more uniform, efficient, and robust
72 across states; and

73
74 **BE IT ALSO RESOLVED** that NCSL agrees that the Compact Commission, working with
75 legislators, regulators, and others in Compacting States, should take action to further
76 strengthen and inform on the legal foundation of the Insurance Compact, an interstate
77 agreement among the states requiring passage by their respective legislatures; and

78
79 **BE IT FURTHER RESOLVED** that at the recommendation of the Insurance Task Force
80 of the Communications, Financial Services and Interstate Commerce Committee, NCSL
81 supports the adoption by the Compact Commission of Position Statement 1-2022
82 acknowledging implied congressional consent was given to the Insurance Compact in
83 2006; and

84
85 **BE IT FINALLY RESOLVED** that a copy of this Resolution shall be distributed to the
86 Office of the Interstate Insurance Product Regulation Commission with instructions to
87 distribute to its members, members of the Legislative Committee and members of its
88 Consumer and Industry Advisory Committees.

89