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COMMITTEE: COMMUNICATIONS, FINANCIAL SERVICES, & INTERSTATE COMMERCE

POLICY: INSURANCE

TYPE: DIRECTIVE

INSURANCE REGULATORY MODERNIZATION

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

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

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

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

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

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

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

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

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

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

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

In the same vein, NCSL is concerned by federal bankruptcy rulings under the federal bankruptcy code that would allow alien insurers and reinsurers to move certain trust fund assets to bankruptcy proceedings in their domicile country. The trust funds established by alien insurers and reinsurers are to serve as collateral for insurance and reinsurance underwriting in the United States. Federal bankruptcy rulings have allowed such alien insurers and reinsurers to be exempt from state solvency regulation and have placed these collateral trust funds out of the reach of state insurance departments.
which are solely responsible for solvency protection. NCSL urges Congress to rectify
this situation by amending federal law to eliminate or limit this exemption for alien
insurers and reinsurers under the bankruptcy code.

**Insurance Information Security**

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

**INSURANCE FRAUD - FEDERAL CRIMINALIZATION**

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

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

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

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

**EQUAL ACCESS TO FBI CRIMINAL HISTORY RECORDS**
State regulators should have efficient access to the Federal Bureau of Investigation’s (FBI) Criminal Justice Information System in order to establish dependable procedures for licensing officers, directors, and agents of insurance companies across the United States.

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

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

**TERRORISM RISK INSURANCE**
NCSL requests Congress work with state insurance regulators to ensure that the property and casualty insurance and group life insurance industries develop the products to protect Americans from financial losses associated with terrorism and to ensure an available and affordable insurance market for American consumers and businesses.
NCSL continues to believe that any reauthorization of the Terrorism Risk Insurance Act should recognize the temporary nature of the program, and therefore encourages efforts to further promote development of the private insurance markets. Any federal plan for a temporary and limited federal backstop for terrorism insurance coverage must not adversely impact a state’s ability to levy premium taxes, regulate the business of insurance and set solvency standards for property and casualty and group life insurers.
A corporation is defined as a legal entity or structure created under the authority of a state's laws, consisting of a person or group of persons who become shareholders. The entity's existence is considered separate and distinct from that of its members. A corporation can enter into contracts, sue and be sued, pay taxes separately from its owners, and do the other things necessary to conduct business.

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

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

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

In 2006, the General Accounting Office (GAO) and the Money Laundering Threat Assessment Working Group of the U.S. Treasury Department released studies regarding what they considered the lax corporate formation requirements by
states. Almost every state was cited by the GAO report for inadequate corporate formation information requirements.

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

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

Therefore, the National Conference of State Legislatures will oppose any unwarranted effort at the federal level to preempt state incorporation laws without proper justification that such laws have led to criminal or terror activities.
Whereas, it is well established that states have primary jurisdiction and responsibility for regulating insurance products offered by the life insurance industry to consumers in their respective jurisdictions; and

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

Whereas, NCSL endorsed the development and implementation of the Interstate Insurance Product Regulation Compact (Insurance Compact) in 2004 and has actively supported its mission with NCSL legislators serving on the Insurance Compact Legislative Committee; and

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

Whereas, the Insurance Compact is an instrumentality of the states serving as a central clearinghouse for prompt and thorough product review and approval while preserving state authority over all other areas of insurance regulation—including agent licensing, market conduct, company licensing and solvency regulation—as well as preserving applicable state filing fee revenues; and
WHEREAS, since it became operational in 2006, the Insurance Compact has demonstrated sustained growth in the number of Compacting States, the number of Uniform Standards for the authorized product lines, the number of filing companies and product filings and has transformed the state-based product filing platform for Compacting States, their regulated entities and insurance consumers.

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

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

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

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

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

WHEREAS, it is well-established in interstate compact case law that regulations adopted by states pursuant to an interstate compact with congressional consent can apply when different from state law; and
WHEREAS, the Insurance Compact is considering adoption of a position statement known as Position Statement 1-2022 to document that Congress conferred implied consent for the Insurance Compact in 2006 in the form of Public Law 109-356 enacted by Congress and signed by President George W. Bush, which authorized the District of Columbia to enter the Compact, and approved the delegation of authority necessary for the Commission to achieve the purposes of the Compact; and

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

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

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

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