

**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

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.