

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

3
4 **POLICY: INSURANCE**

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6 **TYPE OF POLICY: DRAFT POLICY DIRECTIVE**

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8 **INSURANCE REGULATORY MODERNIZATION**

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

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

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

29 **State-Federal Partnership**

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

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

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

58 **Insurance Company Solvency**

59 The safety and soundness of insurance companies operating in the United States are
60 the prime objective of state insurance regulation. State legislatures have endeavored to

61 strengthen state insurance departments and to create standards for financial regulation
62 that have improved the solvency of insurance companies.

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

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

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

87 **Insurance Information Security**

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

90 **INSURANCE FRAUD - FEDERAL CRIMINALIZATION**

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

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

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

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

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

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

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

121 **NATURAL DISASTER MITIGATION AND INSURANCE**

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

130 **TERRORISM RISK INSURANCE**

131 NCSL requests Congress work with state insurance regulators to ensure that the
132 property and casualty insurance and group life insurance industries develop the
133 products to protect Americans from financial losses associated with terrorism and to
134 ensure an available and affordable insurance market for American consumers and
135 businesses.

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