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.