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National Conference of Insurance Legislators

...for the states

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**STATEMENT OF THE
NATIONAL CONFERENCE OF INSURANCE LEGISLATORS (NCOIL)**

**BEFORE THE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON FINANCIAL SERVICES,
UNITED STATES HOUSE OF REPRESENTATIVES**

**HEARING ON
“THE IMPACT OF CREDIT-BASED INSURANCE SCORING ON THE
AVAILABILITY AND AFFORDABILITY OF INSURANCE”**

WEDNESDAY, MAY 21, 2008

**THE HONORABLE GEORGE KEISER
NORTH DAKOTA HOUSE OF REPRESENTATIVES
NCOIL SECRETARY
FORMER CHAIR, NCOIL
PROPERTY-CASUALTY INSURANCE COMMITTEE**

Introduction

Good afternoon Chairman Watt, Ranking Member Miller, and Members of the Subcommittee. Thank you for inviting me to testify before the Subcommittee on the very important subject of insurance credit scoring.

My name is George Keiser. I am a North Dakota State Representative. I serve as Secretary of the National Conference of Insurance Legislators' (NCOIL), and I am also former chair the NCOIL Property-Casualty Insurance Committee.

NCOIL is an organization of state legislators whose main area of public policy concern is insurance. NCOIL legislators chair or are members of the committees responsible for insurance legislation in their state houses. NCOIL states represent a large majority of the premium volume written in the U.S.

I am pleased to be here today on behalf of NCOIL to discuss insurance scoring in the context of an NCOIL *Model Act Regarding Use of Credit Information in Personal Insurance*—the only model law that would regulate how insurers use credit data. I have been asked to address why NCOIL investigated the issue; the process by which NCOIL adopted its model law—now used in 26 states; what the model law would allow and prohibit; and the ways in which it protects consumers.

Insurance scoring is an underwriting tool that weighs certain elements of a consumer's credit history in order to produce a numerical score, which many experts believe is an effective predictor of risk.

Regulating using objective formulae—which are blind to address, ethnicity, gender, income, marital status, and other prohibited factors—may offer a consistent, accurate way to underwrite and rate. This may mean greater efficiency in the market, more product offerings, and lower prices for the majority of consumers. Insurance scoring also may be critical to small insurers, who may have fewer underwriting resources than large companies do and may depend on credit history to compete.

However, NCOIL is clear that insurers should not have free reign. Our group feels strongly that state legislators—who are true consumer advocates—have a responsibility to shield consumers from potential abuse and to encourage state laws that go beyond a one-size-fits-all approach. This means understanding and accommodating how senior citizens manage their credit, for example, and how people may struggle financially after a personal, catastrophic event such as extended illness or death of a spouse. Extraordinary events of this nature are likely no one's fault—and our laws should not pretend that they are.

Success of the 2002 NCOIL model proves that states were not willing to sit by and watch insurance scoring unfold. Much to the contrary, states were the ones who recognized a need to act and who did so in great number. My home state of North Dakota—as well as Colorado, Florida, Illinois, Indiana, North Carolina, Ohio, Texas, and 18 others, including New York—

took a uniform, pragmatic approach to best serve our constituents by basing our regulation on the NCOIL model act.

We responded to the concerns of people who were blind-sided by a link between their credit-card debt, for instance, and their auto premiums. Please keep in mind that many of us, as consumers ourselves, had also been unaware.

As well-intentioned as any federal or other proposal may be that would severely limit, or even ban, insurance scoring—and NCOIL believes that these proposals are well-intentioned—we feel deeply that it is more appropriate to take a balanced, state-level approach that addresses what insurance scoring can do while soundly mitigating against the less favorable.

History of NCOIL Interest in Insurance Scoring

A bit about why NCOIL approached this issue: In 2001, around the time that insurance scoring was first making news, a leading NCOIL legislator urged our group to look into the issue and to take action. Specifically, he wanted us to support banning the practice.

This legislator, Rep. Craig Eiland of Texas, was the incoming chair of our Property-Casualty Insurance Committee and was a future NCOIL president. By trade he was, and is, a successful trial lawyer. In response to his request, NCOIL began approximately two (2) years of in-depth debate that, in the end, led to adoption of a model act that Rep. Eiland helped develop.

The NCOIL Process

The NCOIL process was long and thorough—the model law we offer today is the product of some 15 hours of NCOIL debate. We held a special general session on whether insurance scores are fair. We debated the pros and cons of two (2) model laws—a simple version and a more comprehensive approach that we ultimately passed—as well as a host of proposed amendments. We engaged in lively Committee discussions and heard from all key players—regulators, consumers, insurers, agents, actuaries, credit-modeling, and credit-bureau interests—as well as from some of our own legislators who had real doubts about whether insurance scores should be used.

As the dialogue progressed, Rep. Eiland began to see a need for insurance scoring. He worked with a very thoughtful legislator from Illinois—who came from a different political party—and together they helped develop a model law that they both believed was an effective compromise between various interests.

In November 2002, our P-C Committee—spearheaded by Rep. Eiland—held a long, intense hearing with nearly 12 witnesses who offered different perspectives regarding each provision of the draft model. We went line-by-line. The Committee met for hours after the hearing—extending the discussion well beyond our scheduled adjournment—then finalized our review the next morning. We passed the model in a decisive 20-5 vote.

In just a few months, 16 states had passed legislation and/or regulation based on the NCOIL model law. The bill I worked to pass in North Dakota enjoyed the support of our insurance

commissioner and was among the first NCOIL-based bills signed into law—joining the bill that Rep. Eiland helped pass in Texas.

Our model has been challenged by legislators and regulators across the country, and it has emerged as the standard for oversight of credit history in underwriting and rating. One national agent organization has called it the “center of gravity” in the insurance scoring debate.

What the NCOIL Model Act Does

The NCOIL model is non-discriminatory; assists the young, old, and those who suffer extraordinary events; and provides for use of updated credit information. The NCOIL approach applies to personal insurance, including auto and homeowners. It prohibits an insurer from calculating an insurance score based on income, gender, address, zip code, ethnic group, religion, marital status, or nationality.

It prohibits an insurer from denying, canceling, or non-renewing coverage due only to credit history. And it prohibits an insurer from basing renewal rates solely on credit history.

Consumer Protections

Under the NCOIL language, a consumer is not haunted by ancient credit data. In order to take an adverse action, an insurer must use a credit report that was issued or an insurance score that was calculated within 90 days from the time that a policy is written or renewed. The model also requires an insurer to re-underwrite or re-rate if a consumer or his or her agent requests it at annual renewal.

Under the NCOIL language, insurance companies are discouraged from taking an adverse action because a consumer has a “thin” credit file—or, like many careful senior citizens—has no credit card at all.

The NCOIL model offers common-sense restrictions on how insurers can treat certain specific information. Credit inquiries that consumers do not initiate—for instance, inquiries that credit card companies make before sending out promotional credit offers—cannot count negatively. Neither can collection accounts related to a sickness or other medical event for which a consumer could not pay.

Consumers who wisely “shop around” for the best deals on auto and home loans likewise are protected. Multiple inquiries from either the mortgage or auto lending industries can only count—if they count at all—for one credit “hit” per 30-day period.

The NCOIL model act allows an insurer to give a so-called “pass” to persons impacted by extraordinary life events—such as divorce, illness, or death of a spouse, as I mentioned earlier.

If a consumer challenges his or her credit report and has it corrected, the NCOIL model says that an insurer must go back and re-underwrite and re-rate that consumer based on the new information. If the consumer has overpaid, then the insurer must return the amount of overpayment.

If an insurer does take an adverse action due to credit experience, then the insurer must give the consumer up to four (4) reasons why credit was a factor. An insurance company also must disclose up-front that it will use credit information when underwriting and rating. Under the NCOIL model, a company must file its insurance scoring models with the state insurance department, which would consider them trade secret.

In addition, the NCOIL model law outright prohibits credit reporting agencies from selling insurance-related data to third parties that do not deserve it.

Conclusion

We appreciate the work of this Subcommittee to ensure that credit history is used fairly by insurance companies—because if not carefully regulated, it does carry potential for abuse. We ask, however, that in your deliberations you recognize the great strides that states have made to balance consumer protection against the need for healthy insurance markets.

The 26 states around the country that regulate based on the NCOIL model responded effectively to an emerging issue that demanded a public policy response. We acted in a timely and consumer-friendly fashion. It is worth noting that states as diverse as New York and North Dakota, Texas and Maine have successfully used the NCOIL model to suit their very different demographics. Federal legislation that would set aside these strong laws is unneeded and may actually bring unintended, unfortunate consequences, such as higher rates for consumers who would benefit from their good credit.

NCOIL looks forward to working Subcommittee members regarding the appropriate regulation of insurance credit scoring. Thank you for the opportunity to address this Subcommittee, and I look forward to your questions.

APPENDIX

(as of October 12, 2007)

THE NATIONAL CONFERENCE OF INSURANCE LEGISLATORS

States that Have Enacted the NCOIL *Model Act Regarding Use of Credit Information in Personal Insurance*

Since the November 22, 2002, NCOIL adoption of a *Model Act Regarding Use of Credit Information in Personal Insurance*, the following states have enacted proposals similar to the NCOIL model:

STATE	BILL NUMBER	AUTHOR	STATUS
ARKANSAS	SB 846	Sens. Higginbothom/ Holt/ B. Johnson/ Horn/ Bryles	<i>Signed by Governor Mike Huckabee— 4/16/03</i>
COLORADO	SB 216	Sen. Lamborn	<i>Signed by Governor Owens—6/17/04</i>
FLORIDA	SB 40A	Sen. Miller	<i>Signed by Governor Jeb Bush—6/26/03</i>
GEORGIA	HB 215	Reps. Golick/Harbin/ Maddox	<i>Signed by Governor Sonny Perdue—5/30/03</i>
ILLINOIS	HB 1640	Reps. J. Osmond/Parke/ Mautino/Yarbrough et al.	<i>Signed by Governor Rod Blagojevich— 7/9/03</i>
INDIANA	SB 178	Sens. Paul/Antich	<i>Signed by Governor Frank O'Bannon— 5/7/03</i>
IOWA	SB 2257	Sens. Kettering/Bolkcom/ and Stewart	<i>Signed by Governor Vilsack— 4/7/04</i>
KANSAS	HB 2071	Senate Committee on Financial Institutions and Insurance	<i>Signed by Governor Kathleen Sebelius— 4/16/03</i>
LOUISIANA	HB 1448	Rep. Hebert	<i>Signed by Governor Murphy Foster, Jr.— 7/7/03</i>
MAINE	HB 362	Rep. Canavan	<i>Signed by Governor John Balducci—5/19/03</i>
MONTANA	SB 311	Sen. Duane Grimes	<i>Signed by Governor Brian Schweitzer— 4/21/05</i>
NEBRASKA	LB 487	Sens. Redfield/Combs/ Hudkins/McDonald/Price/ Schimek/Stuhr/Thompson	<i>Signed by Governor Mike Johanns—4/16/03</i>

NEVADA	SB 319	Sen. Shaffer	<i>Signed by Governor Kenny Guinn—6/10/03</i>
NEW MEXICO	SB 560	Sen. Leavell	<i>Signed by Governor Bill Richardson—4/6/05</i>
NEW YORK	SB 5618	Sen. Seward	<i>Signed by Governor George Pataki—7/27/04</i>
NORTH CAROLINA	SB 771 (picks up certain provisions from NCOIL model)	Sen. Thomas	<i>Signed by Governor Michael Easley—6/19/03</i>
NORTH DAKOTA	HB 1260	Reps. Koppelman/ Grosz/N. Johnson	<i>Signed by Governor John Hoeven—4/4/03</i>
OKLAHOMA	SB 539	Sens. Coffee/Horner	<i>Signed by Governor Brad Henry—4/22/03</i>
RHODE ISLAND	SB 137/ HB 5362 (picks up certain provisions from NCOIL model to apply to earlier RI statute)	Sens. Bates/Walaska/ et al. and Rep. Kennedy et al.	<i>Became Law Without Governor's Signature—7/17/03</i>
TENNESSEE	SB 2259	Sen. Dixon	<i>Signed by Governor Bredesen— 4/13/04</i>
TEXAS	(SB 14)	(Sen. Jackson, et al.)	<i>(Signed by Governor Rick Perry—6/11/03</i> Note: SB 14, an omnibus regulatory modernization bill, includes insurance-scoring language based on the NCOIL model act.)
VIRGINIA	SB 1284	Sen. Puckett	<i>Signed by Governor Mark Warner—3/24/03</i>

TOTAL — 22

REGULATORY ACTIONS:

Alabama 127 (Chapter 482-1-217) *(significantly based on NCOIL model)*
Delaware Regulation 906 *(loosely based on NCOIL model)*
Mississippi 2003-1 *(significantly based on NCOIL model)*
West Virginia Informational Letter 142A *(incorporates key NCOIL provisions)*

TOTAL — 4