

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS (NCOIL)

**Proposed Resolution Concerning the Recent Use of Legal Settlements
As Public Policymaking Instruments in the Insurance Arena**

To be considered by the NCOIL State-Federal Relations Committee on July 11, 2008.

Sponsored by Rep. Greg Wren (AL) and Rep. Rich Golick (GA)

WHEREAS, the states have sole regulatory authority for the regulation of the business of insurance as provided under the McCarran-Ferguson Act and affirmed most recently by the Gramm-Leach-Bliley Act; and

WHEREAS, state insurance regulation has been successful and effective for over 130 years and continuously adapts to address an ever-changing marketplace; and

WHEREAS, state legislatures have developed an unmatched expertise in insurance matters and regularly review, update, and enhance the insurance codes of their respective states; and

WHEREAS, the authority to develop and adopt insurance laws and measures rests solely with state legislatures and not with attorneys general or insurance regulators; and

WHEREAS, state insurance regulators and attorneys general are only empowered to implement and enforce the laws duly enacted by state legislatures and impose civil and criminal sanctions as authorized and permitted by those laws; and

WHEREAS, insurance regulators and attorneys general do not have the authority to assume lawmaking and policymaking functions on their own, even when they disagree with the decisions made by their state lawmakers; and

WHEREAS, a small group of state attorneys general and insurance regulators have recently undermined and evaded the legislative process by using legal settlements with insurers and large insurance brokers to unilaterally implement public policy measures; and

WHEREAS, some of these recent insurance industry settlements include expansive and extraneous provisions that extend beyond the purview of attorneys general and insurance regulators; and

WHEREAS, elements of these settlements improperly interfere with the rights of private parties to contract, ban the payment and/or receipt of forms of compensation that are legal in every state, and require innocent entities not party to the settlements to take actions that are inconsistent with state law; and

WHEREAS, the inappropriate and unnecessary provisions contained in these settlements have been negotiated outside the public eye, violate fundamental conceptions of due process, and circumvent state legislatures and the proper lawmaking process; and

WHEREAS, these settlements apply on a national basis and affect the insurance industry and insurance buyers in every state; and

WHEREAS, the continued use of settlements as a policymaking mechanism by state insurance regulators and attorneys general is a disturbing trend that threatens to diminish the proper role of legislatures, bifurcate insurance regulation and authority, and create regulatory confusion and disparity in the marketplace;

NOW, THEREFORE BE IT RESOLVED that the National Conference of Insurance Legislators:

- Is committed to maintaining the States as the sole regulator of the business of insurance,
- Affirms that state legislatures have the exclusive authority to enact insurance laws and public policy measures;
- Opposes the use of legal settlements as a vehicle for attorneys general and/or insurance regulators to implement public policy in the insurance arena;
- Opposes any settlement that includes provisions that implement new public policy or that otherwise undermines the authority of state legislatures; and
- Urges the National Association of Attorneys General (NAAG) and the National Association of Insurance Commissioners (NAIC) to help ensure that legal settlements are not utilized as policymaking vehicles and that attorneys general and insurance regulators do not usurp the authority and proper role of state legislatures; and

BE IT FURTHER RESOLVED that a copy of this resolution shall be sent to the attorney general and insurance commissioner of every state.