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NCOIL CAUTIONS CONGRESS: MCCARRAN REPEAL WOULD DESTABILIZE INSURANCE MARKET

Washington, DC, April 16, 2007—The National Conference of Insurance Legislators (NCOIL) recently urged the Senate Judiciary Committee to proceed with caution regarding S. 618, the *Insurance Industry Competition Act of 2007*, that would repeal the McCarran-Ferguson Act limited antitrust exemption for insurers. In an April 6 letter to Committee Chair Patrick Leahy (D-VT), NCOIL expresses concern that S. 618 misinterprets the role of states in enforcing antitrust protections and would jeopardize insurer practices that promote available and affordable coverage, expose insurance markets to uncertainty and litigation, and create an environment that inadvertently disadvantages consumers most in need.

The letter, while commending the Committee's intentions, notes that "The McCarran-Ferguson exemption is not a loophole through which bad actors can evade antitrust requirements. Nothing in the Act restricts federal prosecutors from enforcing federal laws related to boycotts, intimidation, or coercion." The letter, signed by NCOIL President Sen. Alan Sanborn (MI), also points out that nothing in the Act precludes a state attorney general—as evidenced by the recent "tenacity" of the New York State attorney general's office—from prosecuting wrong doers under existing state laws.

Regarding competition, the letter expresses concern that S. 618 would endanger the sharing of loss history and other information that allows smaller and more regional insurers to operate effectively against large companies. "Absent these more moderately sized carriers," the letter states, "insurance markets would be less responsive to the availability and affordability needs of consumers—particularly in strained markets." Prices would go up, the letter notes, not down.

Sen. Sanborn also writes that should the Federal Trade Commission (FTC) enforce antitrust requirements, as S. 618 would allow, "insurance companies would fall prey to a complicated and very likely contradictory climate of abiding by both state and federal laws. Such confusion," he says, "would destabilize insurance markets that rely on predictability to gauge risks and price products," and likely would result in years of costly litigation.

Finally, the letter recognizes that S. 618 would call into question the operations of state guaranty funds and residual market mechanisms. These structures, the letter says, together with laws carefully tailored to suit specific state markets, “safeguard the needs of consumers most at risk.”

Copies of the letter were sent to the bill’s co-sponsors: Sen. Harry Reid (D-NV), Sen. Trent Lott (R-MS), Sen. Arlen Specter (R-PA), and Sen. Mary Landrieu (D-LA).

NCOIL distributed a similar letter to House Judiciary Committee Chair Rep. John Conyers (D-MI), who has jurisdiction over companion bill H.R. 1081; Rep. Peter DeFazio (D-OR), sponsor of H.R. 1081; and co-sponsors Rep. Rodney Alexander (R-LA), Rep. Bobby Jindal (R-LA), Rep. Charlie Melancon (D-LA), Rep. Gene Taylor (D-MS), and Rep. Walter B. Jones, Jr. (D-NC).

NCOIL is an organization of state legislators whose main area of public policy interest is insurance legislation and regulation. Most legislators active in NCOIL either chair or are members of the committees responsible for insurance legislation in their respective state houses across the country. More information is available at www.ncoil.org

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