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**NCOIL ADOPTS RESOLUTION IDENTIFYING CERTAIN ENHANCED CASH
SURRENDER VALUE ENDORSEMENTS AS VIOLATING THE STANDARD
NONFORFEITURE LAW**

Resolution Calls Upon State Regulators to Enforce “Smoothness” Requirement of Standard Nonforfeiture Law by Withholding Approval of, and Rescinding Any Previous Approval Of, Certain Enhanced Cash Surrender Value Endorsements

Belmar, NJ – During the recently concluded 2022 National Council of Insurance Legislators (NCOIL) Summer National Meeting in Jersey City, NJ, the organization unanimously adopted a Resolution Identifying Certain Enhanced Cash Surrender Value Endorsements As Violating The Standard Nonforfeiture Law (Resolution). The Resolution was sponsored by Indiana Senator Travis Holdman, former NCOIL President, and co-sponsored by Texas Representative Tom Oliverson, M.D., NCOIL Treasurer.

The Resolution is in response to certain life insurers disregarding the Standard Nonforfeiture Law’s “smoothness” requirement by offering “enhanced cash surrender value endorsements”, which aim to incentivize consumers to terminate their policies in exchange for large increases in cash surrender value. The Standard Nonforfeiture Law’s “smoothness requirement” prohibits sharp increases in cash values and makes illegal cash surrender benefits that are discontinuous in nature and available only during certain windows of time.

At both the 2021 NCOIL Fall Meeting and 2022 NCOIL Spring Meeting, Sen. Holdman had raised this issue during the NCOIL-NAIC Dialogue, a meeting during which NCOIL legislators discuss with attending Insurance Commissioners (or equivalent) timely and important insurance public policy issues. The issue was further discussed during an interim Zoom meeting of the NCOIL Life Insurance & Financial Planning Committee in June, during which former Illinois Insurance Director Nat Shapo, on behalf of the Life Insurance Settlement Association (LISA), and the American Council of Life Insurers (ACLI) offered each organization’s respective views on enhanced cash surrender value endorsements.

Sen. Holdman stated, “Upholding the rule of law is very important to me, and the scenarios that were presented to me throughout the past several months seem to be a clear violation of statutory law. In addition to working on this issue with NCOIL, I’ve been communicating with my



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insurance department, and I look forward to this Resolution being used as a tool to resolve this issue in my home state and across the country.”

The Resolution notes that certain limited time, enhanced cash surrender value offers mimic life settlements, but the carriers offering them do not follow the consumer protection life settlement statutes created by legislators to protect policyholders offered limited time, big cash incentives to give up their policies.

The Resolution also makes clear that there are two similar types of products, but only one of which is the target of the Resolution. That wholly different product—never asserted to be in violation of the insurance code and thus not objectionable to NCOIL—has the same “enhanced cash surrender value” name, and is a common rider offered at policy issuance, but doesn’t consist of a limited time, spiked offer to terminate the policy. Instead, it’s a product designed to support the persistence, rather than the termination, of corporate owned policies due to the tax benefits of treating the surrender value as an asset.

Rep. Oliverson said, “I’m glad that Senator Holdman brought this issue to NCOIL’s attention, and I’m proud to serve as co-sponsor of the Resolution. I share Senator Holdman’s passion for upholding the rule of law and I’m pleased that NCOIL took a position on this for states to consider using as guidance.”

“Kudos to Senator Holdman and Representative Oliverson, and everyone else involved, for their leadership on this very important issue,” stated Commissioner Tom Considine, NCOIL CEO. “This issue clearly struck a chord with the member legislators of NCOIL, and I am pleased that the organization took a stand to ensure that the law is followed and that consumers are protected.”

“The process that led to the adoption of this Resolution displayed NCOIL at its best,” stated California Assemblyman Ken Cooley, NCOIL President. “An issue was identified, thoroughly discussed, and dealt with in a fair and diligent manner. I’m also proud that the Resolution reinforces the importance of legislative oversight in our system of government. In this instance, it is critical that legislators exercise oversight authority to ensure that regulators are approving products authorized by statute.”

“A key part of NCOIL’s mission is to ensure that consumers are protected,” Cooley continued. “This Resolution, and its unanimous support, shows that NCOIL seeks out and addresses issues consistent with that mission.”

A full copy of the Resolution appears below

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NCOIL is a national legislative organization with the nation’s 50 states as members, represented principally by legislators serving on their states’ insurance and financial institutions committees. NCOIL writes Model Laws in insurance and financial services, works to preserve the State jurisdiction over insurance as established by the McCarran-Ferguson Act over seventy years ago, and to serve as an educational forum for public policymakers and interested parties. Founded in 1969, NCOIL works to assert the prerogative of legislators in making State policy when it comes to insurance and educate State legislators on current and longstanding insurance issues.

National Council of Insurance Legislators (NCOIL)

**Resolution Identifying Certain Enhanced Cash Surrender Value Endorsements As Violating
The Standard Nonforfeiture Law**

**Adopted by the NCOIL Life Insurance & Financial Planning Committee on July 15, 2022 and the NCOIL Executive Committee on July 16, 2022.*

**Sponsored by Sen. Travis Holdman (IN); Co-sponsored by Rep. Tom Oliverson, M.D. (TX) – NCOIL Treasurer*

WHEREAS, the Standard Nonforfeiture Law for Life Insurance, based on National Association of Insurance Commissioners (NAIC) Model #808, is a pillar of United States insurance regulation; and

WHEREAS, State legislators have agreed with the public policy in the Standard Nonforfeiture Law and adopted it across the board, a rare example of uniformity not resulting from Federal mandate or NAIC accreditation standards; and

WHEREAS, the Model has been amended from time to time, including a major set of changes in 1980, labeled “extensive and dramatic” by the regulatory actuaries who drafted and recommended them¹; and

WHEREAS, before these amendments, the Standard Nonforfeiture Law required minimum surrender values and methods of calculating them, and the “extensive and dramatic changes” included the imposition of a separate “smoothness” requirement in a new Section 8 titled “Consistency of Progression of Cash Surrender Values with Increasing Policy Duration”; and

WHEREAS, the regulatory actuaries who drafted this new “smoothness” requirement plainly stated that its “underlying purpose is to require a reasonably orderly sequence of increases,” and to correct a prior defect that allowed “sharp increases”; and

WHEREAS, the Society of Actuaries, whose members had to comply with the significant new requirement, described the new “smoothness” requirement as prohibiting “erratic cash values,” “sharp jumps” and “spikes in the nonforfeiture structure,” and making illegal cash surrender “benefits discontinuous in nature...available only during certain windows of time”²; and

WHEREAS, in the last few years, no more than three life insurers, and only one as a regular business practice, have begun offering “enhanced cash surrender value endorsements,” dramatically changing the terms of well-seasoned policies from their issued and approved policy forms, seeking to incentivize consumers to terminate policies and their death benefit protection by means of limited time, enormous increases in cash surrender value, in plain violation of the Standard Nonforfeiture Law standards described above; and

¹ 1981 NAIC Proc. Vol. II p. 837

² SOA Record, 1983 Vol. 9 p. 2004; SOA Record 1996 Vol. 22, No. 1, p. 5-6; 1996 NAIC Proc. 1Q p. 888.

WHEREAS, these endorsements were submitted by companies who self-certified compliance with the insurance code and its Standard Nonforfeiture Law and generally approved by regulators without any evidence of consideration of the Standard Nonforfeiture Law smoothness requirement; and

WHEREAS, in nearly three years of discussion, including more than six months with NCOIL's active involvement, neither regulators nor the insurers have proffered a plausible explanation of these products' compliance with the Standard Nonforfeiture Law; and

WHEREAS, these enhanced cash surrender value offers trigger the exact consumer protection concerns identified by regulatory actuaries at NAIC in developing the Standard Nonforfeiture Law smoothness requirement (a consumer who surrenders her contract based on the terms of the issued policy, and its annual statements and illustrations, which never contemplated limited time, spiked offers, ends up receiving a fraction of the benefit for the same premium payments as a similar risk who surrenders a day later after receiving an enhanced cash surrender value offer); and

WHEREAS, arguments have been offered in favor of "enhanced cash surrender value" products, but said arguments pertain to a wholly different product—never asserted to be in violation of the insurance code and thus not objectionable to NCOIL—with the same "enhanced cash surrender value" name, which is a common rider offered at policy issuance, consisting of not a limited time, spiked offer to terminate the policy, but is instead a product designed to support the persistence, rather than the termination, of corporate owned policies due to the tax benefits of treating the surrender value as an asset; and

WHEREAS, limited time, spiked cash surrender value offers carry substantial risks of the same sort as the regulated product they mimic, life settlements, and the carriers who offer them do not follow the consumer protection statutes created by legislators to protect policyholders offered limited time, big cash incentives to give up their policies, such as rescission rights, intermediary fiduciary duty, physician certification of (elderly) consumer competence, and disclosure of competing alternatives; and

WHEREAS, elected legislators perform an essential oversight function over executive branch regulators in ensuring that the laws they pass are enforced as intended, a particularly important function here, where regulators asked legislators to pass "extensive and dramatic" new requirements, and where the licensed entities' conduct is in blatant violation of the plain language descriptions of the law provided by its regulatory drafters and the actuaries who implemented the law at insurers; and

WHEREAS, State Constitutions definitively vest lawmaking authority in legislators, who by legislation authorize the creation of departments of insurance to serve as statutory regulators, whose authority is limited to the execution of the public policy established by the legislative branch; and

WHEREAS, abdication of enforcement of a central consumer protection law amounts to regulatory nullification of and rewriting of the insurance code and the displacement of the legislative branch's sole lawmaking authority by the executive branch; and

WHEREAS, NOW, THEREFORE, BE IT RESOLVED, that NCOIL, now calls upon state regulators to enforce the same Standard Nonforfeiture Law smoothness requirement that regulators requested legislators to add to the insurance codes, by withholding approval of, and rescinding any previous approval of, any non-compliant “enhanced cash surrender value” endorsements providing limited time, spiked cash surrender value offers incentivizing consumers to terminate their life insurance protection, and calls upon state legislative committees with oversight of insurance to monitor insurance departments’ actions with respect to this matter; and

WHEREAS, BE IT FINALLY RESOLVED THAT, that a copy of this Resolution shall be distributed to the American Council of Life Insurers (ACLI); each State’s Insurance Commissioner; the National Association of Insurance Commissioners (NAIC); and the Chairs of the Committees of insurance jurisdiction in each Legislative Chamber of each State.