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From:

RE:

**National Council of Insurance Legislators (NCOIL)**

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

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*\*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 them<sup>1</sup>; and

**WHEREAS**, before these amendments, the Standard Nonforfeiture Law required minimum surrender values and methods of calculating them; included the imposition of a separate “smoothness” requirement; and “Consistency of Progression of Cash Surrender Values”;

**WHEREAS**, the regulatory actuaries who drafted the new law stated that its “underlying purpose is to require smoothness” and to correct a prior defect that allowed “sharp

**WHEREAS**, the Society of Actuaries, whose members had to comply with the significant new requirement, described the new “smoothness” requirement as “sharp jumps” and “spikes in illegal cash surrender values” and “benefits discontinuous in nature”<sup>2</sup>; and available o

**WHEREAS**, in the last few years, no more than three life insurers, and only one as a regular business practice, have exercised their right to 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

**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, in active involvement, neither regulators nor the insurers have proffered a plausible explanation of these products' compliance with the Standard Nonforfeiture Law.

**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

**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" 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 r

**WHEREAS, BE IT FINALLY RESOLVED THAT**, that a copy of this Resolution shall be distributed to the American Council of Life 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.



TO: Judith L. French (OH) Chair  
Life Insurance and Annuities (A) Committee

FROM: NAIC Legal Division

RE: Certain Enhanced Cash Surrender Value Endorsements

DATE: October 24, 2022





a change to a new policy; the adjusted premiums and present values shall initially be calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy. At the time of any change in the benefits or premiums, ~~future~~ adjusted premiums, nonforfeiture level premiums and present values ~~shall~~ shall be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change [Emphasis added].

Enhanced Cash Surrender Value Endorsements are