

NATIONAL COUNCIL OF INSURANCE LEGISLATORS  
PROPERTY & CASUALTY INSURANCE COMMITTEE  
INTERIM COMMITTEE MEETING  
JULY 24, 2020  
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Property & Casualty Insurance Committee held an interim meeting via Zoom on Friday, July 24, 2020 at 1:00 P.M. (EST)

Representative Bart Rowland of Kentucky, Chair of the Committee, presided.

Other members of the Committee present were:

Asm. Ken Cooley (CA)	Sen. Paul Utke (MN)
Rep. Richard Smith (GA)	Sen. Vickie Sawyer (NC)
Rep. Matt Lehman (IN)	Sen. Bob Hackett (OH)
Rep. Peggy Mayfield (IN)	Del. Steve Westfall (WV)
Rep. Joe Fischer (KY)	
Rep. Michael Webber (MI)	

Other legislators present were:

Rep. Deanna Frazier (KY)	Rep. Mark Willadsen (SD)
Rep. Edmond Jordan (LA)	Rep. Robin Smith (TN)
Sen. Pamela Beidle (MD)	Rep. Amy Walen (WA)
Rep. Forrest Bennett (OK)	

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO  
Will Melofchik, NCOIL General Counsel  
Cara Zimmermann, Assistant Director of Administration, NCOIL Support Services, LLC

#### QUORUM

Upon a motion made by Rep. Matt Lehman (IN), NCOIL President, and seconded by Asm. Ken Cooley (CA), NCOIL Vice President, the Committee waived the quorum requirement without objection by way of a voice vote.

#### INTRODUCTORY REMARKS

Rep. Bart Rowland (KY), Chair of the Committee, stated that he is honored to preside over NCOIL's first ever Zoom meeting and also noted that as the new Chair of the Committee, he has huge shoes to fill. The former Chair was Georgia Representative Richard Smith, whom everyone knows and respects greatly, and has been a longtime supporter and active member of NCOIL. Rep. Smith recently became the Rules Chair in the Georgia House, which is a deservedly prestigious position but comes with enormous responsibility and demands on his time. Rep. Smith wanted to make sure that neither NCOIL nor this Committee had any hiccups due to these additional demands in GA and

selflessly stepped aside as Chair. He has committed to remaining an active NCOIL member and indeed registered for this call.

Rep. Rowland stated that since he was Chair of the Worker's Compensation Insurance Committee, a couple of other adjustments to the roster of NCOIL Chairs and Vice Chairs needed to be made. The new Chair of the Work Comp Committee will be Texas Representative Tom Oliverson, M.D.; Minnesota Senator Paul Utke will remain as Vice Chair.

Rep. Rowland noted that he knows that everyone is very busy as we all continue to deal with the realities of facing the global health crisis in which we find ourselves, and stated that that he really appreciates everyone's participation today. Rep. Rowland further stated that, as the agenda shows, this Committee has a lot of work to do over the next several months, and in the next now 80 minutes. Accordingly, he asked to call this interim meeting of this Committee because he wanted to make sure that when the Committee meets at the "Summer" Meeting in September, the Committee is not so pressed for time such that people feel unduly rushed.

Rep. Rowland stated that the Committee will get started today with an update on the work of the National Association of Insurance Commissioners (NAIC) Casualty Actuarial and Statistical Task Force (CASTF). Earlier this month the NCOIL Executive Committee met via conference call and, among other things, adopted a Resolution in response to the work of CASTF. However, while the Committee did adopt the Resolution, it was agreed upon that the Resolution would be held pending further discussion with the NAIC in the hope that the work of the CASTF might be altered. Rep. Rowland stated that the Committee today will then discuss the first draft of an NCOIL Distracted Driving Model Act, sponsored by Ohio Senator Bob Hackett and California Assemblyman Ken Cooley. This will be a good opportunity to discuss the issue of distracted driving in general and examine the Model's provisions so that the Committee doesn't have to start from scratch at its meeting in September.

Rep. Rowland further stated that the Committee today will then provide an opportunity for comment and discussion on the five NCOIL Model Acts that are scheduled for re-adoption. Per NCOIL's bylaws, all NCOIL Model Acts are scheduled to be considered for re-adoption every five years. If a Model is not re-adopted, it sunsets. Rep. Rowland noted that the Models will not be voted on for re-adoption today. Rather, this will be an opportunity for comment and discussion in advance of the "Summer" Meeting where the actual vote will take place. It is very unlikely that the September agenda will allow time for additional discussion on these five Models, so the Committee will hold the entire discussion now, but simply hold the vote until September.

#### UPDATE ON NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS (NAIC) CASUALTY ACTUARIAL AND STATISTICAL TASK FORCE (CASTF)

The Honorable Tom Considine, NCOIL CEO, referenced the Executive Committee meeting mentioned earlier by Rep. Rowland and noted that there had been some discussions at the NCOIL Spring National Meeting regarding passing a Resolution but it was ultimately decided to not do so in order to give the NAIC an opportunity to respond to NCOIL's concerns with CASTF's work. In the ensuing months, the concerns were not addressed which led to the meeting of the Executive Committee during which the Resolution was adopted. It was the decision of the Executive Committee to hold the

Resolution and not send it to the NAIC pending further discussions – specifically to add some language to the CASTF’s White Paper stating that the White Paper would not carry any weight of law or be binding on any state regulators.

Cmsr. Considine stated that the NAIC did not respond to NCOIL’s concerns for quite some time but there was some recent Officer to Officer conversations. NCOIL is not aware of any changes being made to the White Paper but the NAIC’s principles on artificial intelligence which is before the NAIC’s Innovation and Technology Task Force does contain language stating “these principles are guidance and do not carry the weight of law or impose any legal liability.” That is just the type of language that NCOIL had in mind although NCOIL did not suggest said language. It would be ideal if such language was included in the White Paper. Cmsr. Considine stated that he must note that the aforementioned language does continue “however, this guidance can serve to inform and establish general expectations for AI actors and systems emphasizing the importance of accountability, compliance, transparency, and safe, secure and robust outputs.” That language, in total, is a good step but Cmsr. Considine stated that he believes the NCOIL Executive Committee and Asm. Cooley, sponsor of the Resolution, need to consider whether that language meets the thoughts and intent of the Executive Committee when it decided to hold the Resolution.

Asm. Cooley stated that the language is interesting but the concern is that the NAIC is bootstrapping authority and trying to shape what is the relevant yardstick in different jurisdictions. Asm. Cooley stated that he needs to look at the language more closely. The first sentence is fine but the second sentence is problematic and almost reels back the first sentence.

## INTRODUCTION AND DISCUSSION OF NCOIL DISTRACTED DRIVING MODEL ACT

Sen. Hackett stated that he is very pleased to join Asm. Cooley in sponsoring model legislation that would save countless lives from the dangers of distracted driving. The purpose of the Model is not to make more traffic stops or put people in jail; it is to get drivers to put down their phones and save lives and prevent injuries. Despite increased public awareness and education efforts, distracted driving continues to needlessly kill and injure thousands of Americans every year. Sen. Hackett stated that as a lawmaker from Ohio he knows this all too well. Traffic fatalities have increased in Ohio for five out of the last six years, all during a time period of having safer cars on the road. Distracted driving crashes and fatalities are significantly underreported. In 2018, 2,841 people were killed in motor vehicle crashes involving distracted drivers. The National Highway Traffic Safety Administration (NHTSA) reports that 80% of fatal crashes and 15% of injury crashes in 2018 were distracted affected. And those numbers are likely much higher.

Sen. Hackett stated that we know that texting and handheld cell phones used are leading contributors to distraction related crashes. These crashes are preventable but we must make the use of wireless devices behind the wheel as unacceptable as drinking and driving. The Model creates a strong deterrent and is a big step towards changing the culture of distracted driving. Currently, 24 states plus the District of Columbia have enacted laws prohibiting all drivers from using handheld cell phones. Ohio is hoping to make that number 25 as there is currently legislation pending. However, no such model law currently exists. The proposed Model closely mirrors the work in Ohio but draws heavily on the provisions and experiences in other states that have enacted handheld

cell phone bans such as Georgia, Tennessee, and Arizona, thus making it ideal to pass as a Model law.

Ohio's bill is the result of a Task Force study that began in 2018. At that time, only 15 states and the District of Columbia had enacted primary hands free laws. The task force found that 12 of the 15 states experienced a decrease in fatality rates within two years of passing hands-free laws while two states did not yet have sufficient data to report. Six of the states saw more than a 20% decrease in fatality rates, including a 31% decrease in California. Sen. Hackett stated that he is honored that Asm. Cooley agreed to co-sponsor the Model. We know that these laws are an important part of the strategy to reduce traffic deaths and crashes.

The Model defines "wireless communications device" (WCD) to include not only cell phones but all tablets, laptops, and other devices. The Model prohibits the use of a WCD while driving and the Model makes it a primary offense, allowing an officer to cite a driver if they are using a device without any other traffic offense taking place at the same time. The model includes language similar to texting bans in 48 states by prohibiting writing, sending or reading text-based communications. The Model also bans all non-navigational dealing such as watching videos, recording videos, taking photos, looking at images, live streaming, or using applications. However, the Model does provide exemptions for voice operated hands-free use, emergency situations, first responders, and a single swipe.

The Model also prohibits all WCDs used by school bus drivers. That is a common provision in bills advancing across the country. The Model also creates a tiered penalty enforcement section that establishes both monetary penalties and points. States have found that strong enforcement is key to ensuring effectiveness. Ohio attempted to align with similar dangerous vehicle infractions.

Asm. Cooley stated that the Model is very important and can be compared to similar actions taken in California throughout the years. California does have a hands-free law in place, but Asm. Cooley noted that he remembers early in his career when everyone was anxious about a mandatory seatbelt law. There was a time when that seemed like a big hill to climb – enacting a mandatory seatbelt law. It started with a secondary enforcement but it was then realized that the law saves lives and provides immediate practical value so the jump to primary enforcement was made. Now, seatbelt laws are ubiquitous. Asm. Cooley stated that he also can think back to when lawmakers had issues with whether kids should wear helmets when riding bicycles. So many injuries occurred that you could not turn a blind eye so the legislature stepped up and enacted a helmet law. Those two examples are important because when dealing with this type of legislation, people struggle with enforcement provisions, but such provisions really drive home that fact that this ought to be the new routine and people should adjust their lives accordingly. These types of laws are not revenue generators although they have financial elements in order to have an authentic encouragement for compliance.

Asm. Cooley stated that the role of enforcement in this type of statute is to drive the behavior and the practice. It is extremely significant that the American Academy of Pediatrics (AAP) is supportive of these types of statutes. Asm. Cooley noted that similar to his remarks earlier regarding how the NAIC is attempting to break new ground without any legislative authority to do so, the AAP exists to save lives and provide medical guidance. Asm. Cooley noted that in his experience, California has actually delegated

certain authority to the AAP where if they felt a standard was correct, the legislature would incorporate that into the law. The AAP is a very prestigious organization and they have stated: in the United States, primarily enforced distracted driving laws are associated with a lower incidence of fatal motor vehicle crashes involving 16 to 19-year-old drivers; bans on all handheld device use and texting bans for all drivers are associated with the greatest decrease in fatal motor vehicle crashes; and adoption of universal handheld cellphone bans in all states may reduce the incidence of distracted driving and decrease motor vehicle crash fatalities.

Asm. Cooley stated that he believes primary enforcement is very important. Secondary enforcement means that an officer can only issue a citation for distracted driving if the driver was pulled over for another offense. It is commonplace when driving to see people watching movies, talking on their phone, watching videos. It is blatant, observable behavior which makes primary enforcement the best way to enforce this and make clear that such behavior is not acceptable. Distracted driving will always remain a part of our lives but the Model is very strong and important. California has already enacted similar legislation. The job of lawmakers is to work on the future and this is a new phenomenon and WCDs are everywhere. This is an opportunity to recognize that action is needed and to be bold in providing guidance to states seeking to develop distracted driving legislation.

Cathy Chase, President of the Advocates for Highway and Auto Safety (Advocates), thanked the Committee for the invitation and stated that in 1997, NHTSA issued its first report on distracted driving. In 2001, New York became the first state to address distracted driving by enacting a ban on handheld cell phone use. In 2003, research determined that merely talking on a cell phone while operating a vehicle disrupts the driver's attention which can lead to inattention blindness or the inability to recognize objects in a driver's field of vision. In 2007, Washington became the first state to enact an all driver texting ban, and returned in 2010 to upgrade the law to primary enforcement. In 2009, the National Transportation Safety (NTSB) announced a ban on text messaging while talking on cell phones for their staff. In 2011, NTSB became the first government agency to call for a complete ban of non-emergency use of portable electronic devices including hands-free devices while driving.

Ms. Chase stated that the NTSB has also repeatedly included ending distraction on its most wanted list of transportation safety improvements. Between 2011 and 2020, state legislatures have addressed distracted driving by enacting all driver texting bans, graduated driver licensing (GDL), cell phone bans which are complete prohibitions on use, and bans on the use of handheld cell phones.

Ms. Chase noted that Advocates is a unique alliance of consumer safety, law enforcement, medical and public health groups, and insurance companies working together. Created in 1989, Advocates' mission is the adoption of federal and state laws, policies and programs that prevent motor vehicle crashes, save lives, reduce injuries, and contain costs. Advocates targets improvements for safer occupants and road users, safer vehicles, and safer roads. By addressing those aspects of road safety through its three program areas, Advocates pursues a comprehensive approach to yield the greatest benefits.

Ms. Chase stated that the improvements to vehicle and road safety throughout the years were realized by collaboration among many partners including victim advocates, other

safety organizations, insurance industry members, state legislators, and Members of Congress. Some of the successes were realized after decades of consistent and dogged advocacy. This work is vital, considering that 36,560 people were killed on our nations roads in 2018 at an annual cost of \$836 billion dollars. To drill down on distracted driving crashes, in 2018, nearly 10% of drivers were using a handheld or hands-free cell phone at any moment during the day; 8% of fatal crashes and 15% of injury crashes were reported as distraction effected crashes. 2,041 people were killed and 400,000 injured in crashes involving a distracted driver.

Distraction effected crashes impose an economic cost of \$40 billion dollars. As mentioned earlier, these crashes are very well known to be underreported for multiple reasons including issues with police reporting and data bases. To get a pulse on how the public is feeling about distracted driving, Advocates commissioned a public opinion poll in January which shows the public both supports state laws and the issuance of grants to states to improve their current laws. That was tied in with other advocacy efforts.

Ms. Chase noted that the question is: what do we do to address this problem? On the state level, every January Advocates releases its annual report titled Roadmap of State Highway Safety Laws in which the states are rated on the adoption of 16 optimal laws including addressing distracted driving. The report also highlights the issue of distracted viewing and the need for laws to be updated to ban such use. Highlighting an issue is a signal that Advocates may be rating it in future reports. The current report showed that 46 states and D.C. have enacted primary enforcement all driver texting bans; 31 states and D.C. have enacted primary enforcement GDL cell phone bans. The Insurance Institute for Highway Safety (IIHS) has found that 25 states and D.C. have enacted primary enforcement handheld device bans. Some states that have passed all three distracted driving laws are upgrading their laws by banning distracted viewing such as Illinois in 2019, or are considering bills to do so such as New Jersey and Ohio.

Ms. Chase stated that as technology has evolved, so must our laws. Laws banning texting while driving remain critical but they must now be expanded to also ban the breadth of distracted platforms and uses such as video chatting like Facetime, streaming video, taking photos, playing games, and using social media apps. Ms. Chase stated that on the federal level, Advocates is recovering from a herculean effort on H.R. 2, the massive House bill called the Moving Forward Act. It included a provision to incentivize states to ban distracting viewing by offering a grant award and a provision to require automatic emergency breaking (AEB) in all new vehicles. AEB in particular will be very helpful to preventing crashes when a driver is not paying attention. Unfortunately, the bill is DOA in the Senate so Advocates will continue to push to accelerate the adoption of proven crash-avoidance technologies. Those systems can help prevent crashes from occurring as well as mitigate crashes that do occur, potentially lessening the severity. Unfortunately, the systems are mostly in high-end vehicles or sold as expensive packages which often include non-safety items and luxury upgrades. Advocates believes that everyone should benefit from improvements in safety technologies and as such, there should be standard equipment with compliance with minimum performance standards.

Ms. Chase stated that the issues covered in H.R. 2 include: technology to prevent impaired driving; updates in the New Car Assessment Program (NCAP) to educate consumers about safer cars; limo safety; potentially fatal issues regarding keyless

ignition and pushbutton starts; the incidents of children dying in hot cars; truck safety; and AEB and other crash avoidance solutions.

Ms. Chase stated that Advocates works closely with IIHS and relies on their great work to inform and support Advocates positions, particularly with vehicle safety technologies. Vehicle safety technologies represent crucial stepping stones to autonomous vehicles (AVs) – not only for performance standards but also to get customers accustomed to the technology. However, distraction associated with partially autonomous vehicles and vehicles with driver assisted technology is a growing concern. The problem is completely predictable considering it is human nature to do something else if you think the car will handle the driver components. That underlies why performance standards for driver monitoring engagement systems are needed. In fact, the NTSB has also called for performance standards for driver monitoring engagement systems for partially autonomous vehicles to ensure driver engagement. That recommendation followed their investigations into multiple crashes in which automated driving systems were used or were being tested and the driver was distracted by device use, including the Uber crash in Tempe, Arizona and the Tesla crash in California which both resulted in fatalities.

On the issue of automation complacency, Ms. Chase shared two quotes from two industry leaders. From Dr. Missy Cummings of the Duke Pratt School of Engineering: “not only do drivers get distracted by self driving technology, not understand its capabilities, and ignore its alerts, it also gradually erodes their skills, leaving them unprepared to handle regular operations when the time comes.” Costa Samaras of the Carnegie Mellon College of Engineering: “robots make excellent backup drivers to humans. Humans make terrible backup drivers to robots.” Looking further down the road with highly autonomous vehicles, it will be essential that proper safeguards and oversight are put into place. Advocates has been working with a broad coalition to ensure AV legislation and regulation include provisions to best ensure public safety.

Ms. Chase noted that the Model includes provisions that retain the ban on the most distracting activity - texting – which involves manual, visual and cognitive distraction, while banning new distracting uses that have become available as the technology has developed. Advocates supports the Model with two essential changes. Primary enforcement should be required; secondary enforcement is weak and unnecessarily difficult to enforce. In fact, pending legislation in Ohio to update its distracted driving law would make it a primary enforcement and that is a change that Advocates has weighed in to support. Also, language to require complete GDL cell phone bans should be added – this age group has the highest proportion of drivers and fatal crashes reported as distracted. Recent research on distracted driving found that states with primary enforcement distracted driving laws had lower rates of fatal crashes involving 16-19 year old drivers and passengers, and reinforces Advocates recommendation for primary enforcement. From a purely safety point of view, Advocates would also of course prefer that use is not permitted hands free. However, Advocates understands the political reality and appreciates the effort made to restrict hand free use.

Frank O'Brien, VP of State Gov't Relations at the American Property Casualty Insurance Association (APCIA) thanked the sponsors for introducing the Model and stated that APCIA has long been active on distracted driving issues in a number of states and APCIA views the Model as a worthy addition to the arsenal of legislation that would deal with this issue. Fighting distracted driving is important both from an insurance perspective but more importantly from a societal perspective – it is the right thing to do.

APCIA looks forward to participating in the process leading to further development of the Model.

Rep. Smith stated that Georgia passed distracted driving legislation two years ago and a report was issued this past Spring stating that the Georgia Highway Patrol issued about 50,000 distracted driving tickets. The highway patrol probably could have written 2 million tickets if they so desired as distracted driving is indeed that prevalent. Rep. Smith stated that he was adamantly opposed to the penalties provision in the Georgia legislation. There was a \$50 penalty and if you went to court and showed that you had bought a hands free device, the penalty was removed. Rep. Smith recommended, and he still does, that in order to get someone's attention you have to get in their pocket book. Rep. Smith had proposed to impose a \$300 penalty for the first violation, \$500 for the second, and \$700 for third combined with a loss of license for six months. Distracted driving remains as serious a problem there as it was before the legislation was enacted.

Andrew Kirkner, Regional VP, Ohio Valley/Mid-Atlantic at the National Association of Mutual Insurance Companies (NAMIC) thanked the sponsors for introducing the Model and stated that NAMIC supports the Model. Upon review, NAMIC has received some technical comments from its members and looks forward to working with the Committee and NCOIL staff to make technical corrections. Overall, the Model is a big step towards improving safety on roads throughout the country and NAMIC appreciates NCOIL's leadership in this area.

Wayne Weikel, Senior Director at the Alliance for Automotive Innovations (Alliance) stated that the Alliance represents 99% of the all the manufacturers selling in the U.S., as well as tier 1 suppliers and other automobile technology companies. Mr. Weikel thanked the sponsors for introducing the Model and stated that Alliance members have been working for years to improve roadway safety and the first step in doing so is helping consumers keep their hands on the wheel and eyes on the road. As such, they have supported texting bans and handheld bans all across the country, and they are supportive of NCOIL's efforts. There are some concerns that some of the Model's language may inadvertently loop in some vehicle systems. Vehicle systems have been designed by engineers to be used safely while driving. For example, the prohibition on entering in a new address while driving is something that is worked into vehicle systems but not in an actual handheld phone. Alliance would like the opportunity to work with the sponsors and NCOIL staff in advance of the September meeting and is supportive of NCOIL's efforts in this space.

Eric Henning of General Motors (GM) stated that GM is supportive of the Model and noted that he has worked on this issue in a number of states including Georgia, Virginia and Tennessee, and Florida. If the language is worded correctly, GM likes to see these efforts pass, not only from a company perspective but also from a personal perspective as the son of GM's President of International Operations was killed by a driver that was texting. Accordingly, he has made this a very personal mission for these laws to pass. GM has proposed some clean-up amendments to the Model that do not take anything away from the Model's intent. GM looks forward to working on the Model with the sponsors and NCOIL staff.

Kristin Smith, Head of Global Road Safety Policy at Uber, stated that distracted driving is a very serious road safety issue in this country and Uber is committed to working with partners to address these issues. Uber designs its app with safety in mind in terms of



riders, drivers and other road users. In general, Uber supports the aims of the Model. Uber has a few recommendations for clarifying the Model. In general, Uber is very supportive of hands free legislation that prohibits individuals from interacting with devices in a way that could cause them to be distracted while driving. But at the same time, Uber wants to make sure that any hands free legislation is carefully crafted to ensure that individuals continue to use technology that they rely on in a safe way.

For example, Uber agrees with the language in the Model that would clarify that individuals can engage with an app with one swipe or tap which mirrors language in key state distracted driving laws. In this modern world, we know there is a range of different apps that people might be using for navigation and Uber is concerned that as-is, the Model could be interpreted as limiting an individual's access to obtaining basic text information or visual cues from the ride-sharing or navigation apps. This goes beyond ride-sharing as drivers of all types are using an array of navigation and other apps to get around safely whether that is google maps or Waze and those products can make it easier and safer and convenient to travel.

Ms. Smith stated that Uber does not believe it was the intent of the sponsors of the Model to limit these types of tools, and Uber plans to submit some proposed technical edits to make sure that the Model does not have unintended consequences that could prevent information that the driver may need in order to safely navigate the vehicle.

Cmsr. Considine stated that it is his understanding that the intent of both Sen. Hackett and Asm. Cooley was to have people not fumbling with things such as Waze. Asm. Cooley stated that he agrees and noted that the sooner the legislature sets some boundaries and rules, people who are innovators will integrate that into their product design. It is important for the Committee to listen to GM and it would be asinine to invalidate systems built into cars to be safe. The sooner we have a clear set of rules, other innovators making apps and other things can factor these sorts of rules into their product design. That is another reason why it makes sense for setting some legal standards across the U.S. to shape the marketplace and even product design.

Sen. Hackett stated that when looking at the Ohio legislation, it does ban a lot of viewing but it's all non-navigation viewing. Sen. Hackett stated that he believes Uber may want to talk about more navigational issues and how their systems work in day to day operations. Sen. Hackett stated that it is important to be careful when creating language for inclusion in the Model and noted that he agrees with Asm. Cooley that innovators will probably incorporate the rules into their design to make the equipment work. In Ohio, it was important to make sure that navigational viewing was permitted.

#### OPPORTUNITY FOR COMMENT/DISCUSSION ON NCOIL MODEL LAWS SCHEDULED FOR RE-ADOPTION AT NCOIL "SUMMER" MEETING

*a.) Post-Assessment Property and Liability Insurance Guaranty Association Model Act  
(originally adopted November 2007; amended March 2015)*

Rep. Rowland stated that this Model has been very successful. Essentially every state's property and liability guaranty association laws have adopted provisions from the NCOIL Model, the NAIC's Model, and the National Conference of Insurance Guaranty Fund's Model (NCIGF). Rep. Lehman stated that he had to leave the call early but noted that if anyone had any questions or comments on the Model Act to Regulate Insurance

Requirements for Transportation Network Companies and Transportation Network Drivers to please reach out to him as he sponsored that Model in Indiana.

Barbara Cox of NCIGF stated that NCIGF has some language for NCOIL to consider including in the guaranty fund Model. NCIGF has some language that would permit a guaranty fund explicitly to assess members in certain situations which is a matter of keeping the guaranty fund safety net open and operational. As much as everyone tries to pre-plan with insurance departments, liquidations do often happen suddenly and NCIGF feels that the always-ready posture is what's best for the policyholders and policy claimants. An additional amendment would address restructuring transactions which is something that has been much discussed at NCOIL. The position of NCIGF is that claims that would have been paid by the guaranty fund before the transaction continue to be covered after. Conversely, restructuring transactions such as an insurance business transfer should not create guaranty fund coverage where there was none before. NCIGF has language it can submit to NCOIL on both of those issues. NCIGF supports re-adoption of the Model.

Asm. Cooley stated that it would be helpful to have the amendments suggested by NCIGF submitted to NCOIL. In general, guaranty funds are doing their work in a constantly changing marketplace and new ideas emerge. It is very important to listen to the guaranty funds as to what they feel is the right set of current authorities for the NCOIL Model to incorporate with their understanding of their operating environment. It is important to see those amendments before the Committee's next meeting.

*b.) Model Act Regarding Medicaid Interception of Insurance Payments (adopted November 2014; amended March 2015)*

Rep. Rowland stated that this Model is based on a Rhode Island statute, and Texas also has a similar system. No comments from legislators or interested persons were offered.

*c.) Storm Chaser Consumer Protection Act – (adopted July 2015)*

Rep. Rowland stated that about half of the states have either adopted the Model or a similar statute regarding contractor fraud and abuse. No comments from legislators or interested persons were offered.

*d.) Model Act Regarding Use of Credit Information in Personal Insurance – (originally adopted November 2002; re-adopted November 2005; amended 2009; re-adopted November 2015)*

Rep. Rowland stated that this Model has been one of NCOIL's most successful, having been adopted in approximately 30 States. Cmsr. Considine noted that the original sponsor of the Model, Rep. Tim Osmond of Illinois, unfortunately cannot speak to the Model as he passed away shortly after the Model's passage.

Mr. O'Brien stated that this Model is one of, if not the most, influential Models that NCOIL has ever adopted. The Model has been debated and passed in a significant number of states. Vermont was the most recent state to adopt the Model in 2018. The fact of the matter is that when states consider this issue, both on the legislative and regulatory side, the Model's provisions are always considered. The most recent example is just this past May when Maine Superintendent of Insurance Eric Cioppa

pointed to the Model's extraordinary life circumstances provisions when issuing a bulletin encouraging insurers to work with customers whose credit may have been affected by the pandemic. Supt. Cioppa did so notwithstanding the fact that Maine is one of the states that has not adopted the Model. NCOIL has carved itself out a leading role in this issue. The Model has been a key feature of the debate and that has been the case for a long time. The Model has been re-adopted several times and given its influence and the attention that the issue is getting, APCA urges NCOIL to re-adopt the Model once again.

Wes Bissett, Senior Counsel of Gov't Affairs at the Independent Insurance Agents and Brokers of America (IIABA) stated that IIABA has been a strong supporter of the Model since it was first adopted and supports NCOIL re-adopting the Model once again. The chief proponent and sponsor, Rep. Osmond, was a great legislator and also an independent agent. What he saw in the late 1990s when insurers began using credit in underwriting was some troubling business practices. As a legislator and insurance agent he was able to do something about that. He came to NCOIL and developed a Model that has arguably been NCOIL's most successful Model. The Model imposes guardrails and allows for the use of credit information in underwriting in responsible and customer-friendly ways. The Model remains as important and viable today as it did when first adopted. Given its success and relevance, IIABA encourages NCOIL to re-adopt the Model at its September meeting.

*e.) Model Act to Regulate Insurance Requirements for Transportation Network Companies and Transportation Network Drivers – (adopted July 2015)*

Rep. Rowland stated that this Model has also been one of NCOIL's most successful. Nearly every state has enacted TNC legislation which either mirrors or is similar to the NCOIL Model – some of those statutes were enacted before the NCOIL Model. No comments from legislators or interested persons were offered

Rep. Rowland noted that were some technical difficulties with Zoom earlier in the meeting and offered anyone that was not present during the discussion of the Distracted Driving Model to offer comments. No comments from legislators or interested persons were offered. Rep. Rowland again noted that since the Models scheduled for re-adoption were offered for discussion today, the plan is for the Committee to simply vote on them without further discussion during its September meeting.

#### ANY OTHER BUSINESS

Rep. Rowland stated that registration for the NCOIL "Summer" Meeting is now open. The meeting will be a hybrid format such that there will be both in-person and virtual attendance options available. However, for those who plan on attending in-person and have not yet registered, they are urged to do so as soon as possible as there is a limited amount of space available due to capacity constraints required by social distancing protocols at the hotel. All registration information can be found on the NCOIL website or by reaching out to NCOIL staff.

#### ADJOURNMENT

Upon a Motion made by Asm. Cooley and seconded by Del. Steve Westfall (WV), the Committee adjourned at 2:15 p.m.