



May 22, 2018

Chairman Richard Smith
National Council of Insurance Legislators
Property-Casualty Insurance Committee
2317 Route 34, Suite 2B,
Manasquan, New Jersey 08736

Via Electronic Delivery

Chairman Smith and Members of the Committee:

Thank you for the opportunity to submit comments from the National Auto and Travel Organization (NATO), a non-profit corporation comprised of thirteen automobile clubs that operate throughout the United States. As counsel to the NATO, please accept my apology for missing the meeting today, but I have a previously scheduled hearing in Austin, Texas.

I have served as general counsel to the NATO for almost 20 years. Over that time, I have kept the organization abreast of statutory and regulatory changes throughout the country. Currently, twenty-two states provide a regulatory framework for automobile clubs, but several more define such entities and expressly exclude them from regulation as insurers. In fact, Senator Joe Hune (R-Michigan) is currently working on Senate Bill 985, a bill to define automobile clubs in Michigan (heretofore not defined in statute but referred to in regulatory bulletins) while clarifying that the services provided are not to be regulated as insurance.

I first became aware of the *Consumer Protection Towing Model Act* at the spring meeting of the National Council of Insurance Legislators (NCOIL), during my attendance for another client. When I saw the definition of “automobile club” in the *Consumer Protection Towing Model Act* draft, I realized that some changes to the language could prevent unintended consequences in a number of states.

Currently, the definition in the Act is as follows:

“Automobile club” – a legal entity which, for consideration, promises to assist its members or subscribers in matters relating to motor travel or the operation, use, or maintenance of a motor

vehicle, by supplying services, which may include towing service, emergency road service, or indemnification service. The term includes: a motor vehicle dealer; or an insurance company; operating as an automobile club to provide any of the services described above.

Recommended Change #1

Thirty-two states currently have a statutory definition for “automobile club” / “motor club” that differs from the proposed definition in the *Consumer Protection Model Towing Act*.

Suggested solution: In those states that already define “automobile club” or “motor club,” add a drafting note to harmonize the definition for the *Consumer Protection Model Towing Act*:

- a. Drafting Note: Legislators should consider existing statutory and regulatory provisions that define “automobile club” or “motor club” in the State of XXXX.
- b. In those state that have not adopted a regulatory framework for automobile clubs nor have defined the term in statute or rule, utilize a definition that more accurately reflects the current state of the industry.

For example, the language in Senator Hune’s Michigan Senate Bill 985:

"Automobile club services" means services that assist a member or subscriber of an automobile club in matters relating to motor travel or the operations, use, or maintenance of a motor vehicle by supplying services that may include, but are not limited to, towing service, emergency road service, bail and guaranteed arrest bond certificate service, legal service, insurance service, discount service, financial service, theft service, map service, and touring service.

Another alternative would be the statutory definition from Georgia which was carried by Chairman Smith in 2006 (House Bill 1291):

Ga. Code Ann. §33-61-1.

(2) "Automobile club services" shall include, but not be limited to, the assumption of or reimbursement of the expense or a portion thereof for towing of a motor vehicle, emergency road service, matters relating to the operation, use, and maintenance of a motor vehicle, and the supplying of services which includes, augments, or is incidental to theft or reward services, discount services, arrest bond services, lock and key services, trip interruption services, and legal fee reimbursement services in defense of traffic related offenses.

Should changing the definition not be acceptable at this time, we would respectfully request that you conform the current definition by including as follows:

*“Automobile club” – a legal entity which, for consideration, promises to assist its members or subscribers in matters relating to motor travel or the operation, use, or maintenance of a motor vehicle, by supplying services, which may include, **but are not limited to**, towing service, emergency road service, or indemnification service. ~~The term includes: a motor vehicle dealer; or~~*

~~an insurance company; operating as an automobile club to provide any of the services described above.~~ (The basis for the deletion is reflected in Recommended Change #2).

Recommended Change #2

In Section 3, strike “~~The term includes: a motor vehicle dealer; or an insurance company; operating as an automobile club to provide any of the services described above.~~” from the definition of “automobile club.

The term “automobile club” currently includes ‘a motor vehicle dealer’ or ‘an insurance company,’ if such an entity is “operating as an automobile club . . .”

Motor vehicle dealers and insurance companies are distinct from automobile clubs. In fact, the majority of the existing automobile club statutes distinguish between insurance companies and automobile clubs and specifically exempt automobile clubs from regulation as insurers. And because you have differentiated these entities in the following sections, we would suggest including “a motor vehicle” or “insurance company” in the definition of automobile club is unnecessary and could have unintended consequences.

Language highlighted for emphasis.

Section 4.

General Provisions The provisions of this Act shall be applicable to any entity or person engaging in, or offering to engage in, the business of providing towing service in the State of XXXX. The provisions of this chapter shall not apply to vehicles towed into the State of XXXX or through the State of XXXX if the tow originates in another jurisdiction. **The provisions of this Act are not applicable to the towing of motor vehicles by or on behalf of an “automobile club”, car dealership or insurance company.**

Section 5

D. Except as provided in Sections 5 (E) and (F), the owner or operator of a disabled motor vehicle may, in consultation with law enforcement or with authorized state, county, or municipal personnel (if appropriate): (1) summon to the disabled motor vehicle’s location the towing company of the owner’s or operator’s choice, either directly or through an insurance company’s or an automobile club’s emergency service arrangement; and

Conclusion:

Because the three terms are distinguished in the Model Act, and because insurance companies and car dealerships generally are regulated in separate parts of each state’s law, we would ask that these entities not be considered as automobile clubs, even for the purposes of this Act.

Thank you for the opportunity to present these comments. Please do not hesitate to call on me if you need input on the upcoming final draft.

Sincerely,

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