

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
PROPERTY & CASUALTY INSURANCE COMMITTEE
INTERIM COMMITTEE CONFERENCE CALL
NOVEMBER 19, 2019
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Property & Casualty Insurance Committee held an interim meeting via conference call on Tuesday, November 19, 2019 at 12:00 p.m.

Representative Edmond Jordan of Louisiana, Chair of the Committee, presided.

Other members of the Committees present were:

Rep. Richard Smith (GA) – Vice Chair
Rep. Joe Fischer (KY)
Rep. Bart Rowland (KY)
Del. Kris Valderrama (MD)

Sen. Paul Wieland (MO)
Asw. Maggie Carlton (NV)
Asw. Ellen Spiegel (NV)
Sen. Bob Hackett (OH)

Other legislators present were:

Rep. Paul Baumbach (DE)

Also in attendance were:

Commissioner Tom Considine, NCOL CEO
Paul Penna, Executive Director, NCOIL Support Services, LLC
Will Melofchik, NCOIL General Counsel

QUORUM

Upon a motion made by Rep. Joe Fischer (KY) and seconded by Asw. Maggie Carlton (NV) the Committee waived the quorum requirement without objection by way of a voice vote.

DISCUSSION ON NCOIL PEER-TO-PEER CAR SHARING PROGRAM MODEL ACT

Rep. Edmond Jordan (LA) thanked everyone for joining the call and stated that the Committee had a very good meeting on peer-to-peer car sharing at its last meeting in July in Newport Beach. It was clear from that discussion that several members of the Committee had interest in developing an NCOIL peer-to-peer (p2p) car sharing program model act for states to adopt, or at the very least, to have a baseline to work off of as they consider enacting this type of legislation. Rep. Jordan applauded Rep. Rowland (KY) for stepping forward and sponsoring the NCOIL p2p car sharing Model (Model).

Rep. Rowland thanked everyone for joining the call and agreed with Rep. Jordan's remarks that the Committee had a very good discussion on this issue at its meeting in July. At that meeting, what guided the discussion was a document which was the culmination of a year's worth of discussions by a large group of stakeholders including p2p car sharing companies, departments of insurance, and multiple insurance company leaders led by the American Property Casualty Insurance Association (APCIA). The

year-long negotiation resulted in widespread support for the passage of p2p insurance related provisions in Maryland, Colorado, and Indiana. Rep. Rowland stated that he decided to use that legislation as the basis for an NCOIL p2p car sharing program model act.

Rep. Rowland stated that with the prospect that dozens of states will be seeing this type of legislation next year, the need for model legislation endorsed by NCOIL needs to be finalized before this year ends and before states start their legislative sessions in January. Rep. Rowland then noted that he had asked NCOIL staff to circulate a proposed amendment to the current draft of the Model in the form of a “statement of scope” for consideration and to help clarify what NCOIL’s intent as an organization is when it comes to legislation such as this. Accordingly, the proposed “scope” section of the Model states: “This Act is intended to govern the intersection of peer-to-peer car services and the state-regulated business of insurance. Nothing in this Act shall be construed to extend beyond insurance or have any implications for other provisions of the code of this state, including but not limited to, those related to motor vehicle regulation, airport regulation, or taxation.”

Rep. Rowland stated that he believes a Model along those lines represents the vast majority of interests of the insurance industry and the p2p car sharing industry. In order for an NCOIL p2p Model to provide states direction for 2020 legislative sessions, NCOIL must act judiciously and swiftly to work through any outstanding questions on the Model. Hopefully after the call today there can be an agreement among the members of the Committee as to what the final version of the Model will look like so that when the Committee meets again in December, a vote can be taken and the Model can be adopted for states to consider.

Rep. Jordan then began taking comments from legislators and interested parties present on the call. Sen. Bob Hackett (OH) stated that Ohio passed p2p car sharing legislation through Ohio’s budget process and noted that he believes the Ohio legislation is stronger than the NCOIL p2p Model. Sen. Hackett asked Rep. Rowland if he knew the main differences between the Ohio p2p legislation and the NCOIL p2p Model. Rep. Rowland stated that he is not familiar with the Ohio p2p legislation but asked Dannielle Lenth of Allstate to make comments on the Ohio-NCOIL p2p comparison.

Ms. Lenth stated that the Ohio p2p legislation went through the budget process and therefore moved a little more swiftly than Indiana’s or Colorado’s p2p legislation which went through the full legislative process. The major distinction is that the NCOIL model before the Committee represents a consensus that has had sign-off from all of the major insurance players as well as the insurance trades and the p2p car sharing industry. Accordingly, the Model represents a compromise among all parties that has had a lot of thorough vetting.

Ms. Lenth stated that the Ohio p2p legislation did not have the same consensus and the p2p car sharing industry had some practical concerns in terms of how they would implement some of the provisions and are therefore looking to come back to Ohio to work out some of those issues. Ms. Lenth stated that she also believes that some of the coverage limits are different in the Ohio p2p legislation as compared to the NCOIL Model which creates a division among different insurers as well as the p2p car sharing industry as to whether or not they are appropriate. Ms. Lenth stated that above all, while there

are some provisions in the Ohio p2p legislation that various parties feel different about, the NCOIL Model represents a consensus among different members of all industries.

Rep. Jordan then asked if any other legislators present on the call would like to make comments. Del. Kris Valderrama (MD) noted that based on conversations she had it is also her understanding that the NCOIL Model represents a consensus among different members of all industries.

Andrew Kirkner of the National Association of Mutual Insurance Companies (NAMIC) stated that the NCOIL Model is a great starting point and that he has worked on this type of legislation in Maryland, Indiana, and Ohio. However, Mr. Kirkner noted that the NCOIL Model does not represent a full consensus. NAMIC has heard from some of its members that have concerns with the NCOIL Model and would prefer the approach that Ohio took. Mr. Kirkner stated that NAMIC's position on this issue has not been fully fleshed out and noted that NAMIC is committed to improving the NCOIL Model. Mr. Kirkner noted that the Ohio p2p legislation was fully vetted and does include higher limits on the p2p car sharing companies. The Ohio p2p legislation also includes a statement of legislative intent that would make sure that insurers are still permitted to cancel or non-renew insureds for participation in the p2p program. Mr. Kirkner also noted that he believes Indiana's p2p legislation has a similar cancellation provision. Mr. Kirkner stated that NAMIC is certainly not opposed to the NCOIL Model and is committed to improving it, and wanted to clarify that that NCOIL Model does not represent a full consensus.

Frank O'Brien of APCIA stated that APCIA has worked very closely with all parties concerning this particular Model. Mr. O'Brien stated that APCIA agrees with the comments made by Allstate in that the Ohio p2p legislation has some differences from the NCOIL Model in terms of coverage limits and phrasing, but generally speaking they are in line with each other. APCIA supports the NCOIL Model. As things proceed and individual states look at these issues there may be some changes relative to local conditions but that is to be expected.

Tomi Gerber of Enterprise Holdings (Enterprise) stated that Enterprise is very supportive of the NCOIL Model, particularly the new "scope" section. Ms. Gerber noted that the state p2p legislation referenced earlier on the call is different from the NCOIL Model in that such legislation was a comprehensive treatment that dealt with motor vehicle regulation, taxation, and consumer protection issues. Enterprise believes it is appropriate that the NCOIL Model be limited to p2p insurance aspects so that the Model does not inadvertently undermine the treatment of areas that committees of other jurisdiction would have an interest in apart from insurance.

Ethan Wilson of Turo stated that Turo appreciates the opportunity to be a part of this process and noted that Turo also is very supportive of the NCOIL Model, particularly the new "scope" section. Mr. Wilson stated that the Ohio p2p legislation has some problematic provisions for those seeking to participate in p2p car sharing. That is something that should not be lost in the discussion because in addition to insurers, it is ultimately the p2p car sharing companies that will be seeking to operate in the states where p2p legislation has passed. Mr. Wilson noted that the Ohio p2p legislation, which did not go through the normal legislative process, had no support from the p2p car sharing industry. That lack of support was not for one particular reason as there are a number of mandates in the Ohio p2p legislation that are not contained in any other state which make it very difficult if not impossible for p2p car sharing companies to operate.

That stems from a number of mandates ranging from insurance to privacy and data retention.

Mike Lane of State Farm stated that State Farm is supportive of the NCOIL Model. While there are some minor issues in the Model that could be addressed, they are not of a significance that would require the Committee to amend or hold the Model. State Farm understands the need to have a Model adopted this year as this issue is expected to be addressed in several states next year. Mr. Lane noted that any outstanding issues in the Model can be addressed in the state in which the Model is introduced. Overall, State Farm is supportive of the NCOIL Model and the outline it provides for these issues.

Ian Adams of Getaround stated that Getaround supports the NCOIL Model as it is a good compromise that offers a robust and consumer-friendly insurance framework. Getaround would like to see this Model introduced in states during upcoming legislative sessions.

Sen. Hackett stated that he is not strongly opposed to the NCOIL Model and noted some differences between said Model and the Ohio p2p legislation such as coverage limits and commercial activity issues. Sen. Hackett also noted that some of the issues in the NCOIL Model are already handled by common law contract law.

Asw. Carlton stated that she is supportive of the NCOIL Model, particularly the new "scope" section. Nevada, specifically Las Vegas, suffered through a lot of disruption when Uber and Lyft came in and asked for forgiveness rather than permission before they started operating. That had some devastating effects on the cab industry which is very important in Nevada. Asw. Carlton stated that she is pleased to know that the NCOIL Model is insurance-specific and that the other issues related to the p2p car sharing industry will need to be addressed by legislatures so that a p2p legislative package will be created. Rental car taxes in Nevada are significant due to tourism demands and a number of said taxes go to support cultural aspects of the state. Accordingly, any damage to those fees and taxes would have repercussions in a lot of different areas. Asw. Carlton closed by stating that she supports the insurance-specific NCOIL Model and looks forward to working on it in Nevada with the Insurance Commissioner to make sure everyone is on the same page.

Rep. Jordan stated that while he sees some similarities between p2p car sharing companies and ridesharing companies such as Uber and Lyft, there are differences as well. Rep. Jordan noted that he used to be an attorney for Louisiana's Public Service Commission and they dealt with common carrier issues which is actually embedded in Louisiana's Constitution.

Mr. O'Brien stated that it is important to point out that during the course of this call, while there may be some difference of opinion regarding some of the specific language within the NCOIL Model, at a higher level there is not a lot of, if any, controversy on the basic insurance issues. Limit amounts are a public policy issue that can be debated in states, although APCIA does support the limits set forth in the Model. There is a litany of groups that are prepared to support the Model, including APCIA and other groups that are traditionally at the opposite ends on many issues. NCOIL should be commended for moving this issue forward and for crafting cutting edge public policy regarding the sharing economy space. While, as always, there will be additional discussion at the

December meeting, for purposes of this call there seems to be a consensus of support for the Model. Mr. O'Brien congratulated Rep. Rowland for his efforts.

Rep. Jordan then asked Rep. Rowland for his thoughts on what he sees as the next steps for the Model. Rep. Rowland stated that there seems to be a consensus of support for the Model and asked Rep. Jordan to consider putting the Model on the Committee's agenda in December for a vote. Rep. Jordan stated that he will certainly consider that and noted that he understands that certain states will start their legislative sessions soon and would therefore like to have a Model to introduce.

Commissioner Tom Considine, NCOIL CEO, stated that at the meeting of the Workers' Compensation Insurance Committee in December there is a model act scheduled for a vote. The sponsor of the Model had said during an interim conference call meeting of that Committee that for those states that have pre-filing deadlines for legislation, due to the amount of consensus on the Model, legislators in those states would not be misguided in filing the version of the Model discussed during the conference call as it is likely to be voted on in December in largely the same form. Cmsr. Considine stated that it seems like the same level of consensus is being reached for this Model discussed today. Rep. Rowland agreed.

Rep. Jordan then asked Sen. Hackett if he had any further comments. Sen. Hackett stated that he is looking forward to reviewing the differences between the Ohio p2p legislation and the NCOIL Model. Sen. Hackett further stated that there seems to be a majority consensus of insurers that support the Model, but it is not unanimous. In response to Sen. Hackett's statements, Rep. Jordan stated that the Model will be put on the Committee's agenda for its December meeting, but it can always be tabled. Sen. Hackett stated that he is fine with that but noted that he understands that a lot of work has went into the NCOIL Model and that states should have something to work off of as they work on this type of legislation in upcoming legislative sessions. Sen. Hackett stated that he understands that the NCOIL Model is insurance-specific but noted that some of the major insurers would like it to be stronger.

Cmsr. Considine stated that since the time the NCOIL Model was amended to be insurance-specific, any companies that may have had reservations on the NCOIL Model in the past have not expressed such reservations towards the current version. Accordingly, there is no company in any industry that is on the record as having any reservations about this version of the Model. Rep. Jordan stated that he understands but out of deference to Sen. Hackett he would like to leave the option open of tabling the Model, with the understanding that the Committee has every intent of voting on the Model at its meeting in December. Sen. Hackett stated that he will advise the companies that prefer the Ohio p2p legislation to contact Rep. Rowland and NCOIL staff. Rep. Jordan noted that if no one hears from those companies then it should be clear to said companies that the Committee has every intent of voting on the Model in December.

ADJOURNMENT

There being no further business, the Committee adjourned at 12:30 p.m.