

NATIONAL COUNCIL OF INSURANCE LEGISLATORS  
PROPERTY AND CASUALTY INSURANCE COMMITTEE  
CHARLOTTE, NORTH CAROLINA  
MARCH 6, 2020  
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Property & Casualty Insurance Committee met at the Charlotte Marriott City Center Hotel in Charlotte, North Carolina on Friday, March 6, 2020 at 11:00 a.m.

Representative Tom Oliverson, M.D. of Texas, Vice Chair of the Committee, presided.

Other members of the Committees present were:

Asm. Ken Cooley (CA)	Sen. Vickie Sawyer (NC)
Sen. Jack Tate (CO)	Sen. Jerry Klein (ND)
Rep. Martin Carbaugh (IN)	Sen. Shawn Vedaa (ND)
Rep. Matt Lehman (IN)	Asw. Maggie Carlton (NV)
Rep. Michael Webber (MI)	Asm. Kevin Cahill (NY)
Sen. Paul Utke (MN)	Asm. Andrew Garbarino (NY)
Sen. Paul Wieland (MO)	Asw. Pam Hunter (NY)
Sen. Valerie Foushee (NC)	Sen. Bob Hackett (OH)

Other legislators present were:

Rep. Joe Cloud (AR)	Rep. Wayne Sasser (NC)
Rep. Deborah Ferguson (AR)	Asw. Connie Munk (NV)
Rep. Roger Lynch (AR)	Sen. Robert Ort (NY)
Rep. Brenda Carter (MI)	Sen. Bob Peterson (OH)
Rep. Garland Pierce (NC)	Sen. Roger Picard (RI)
Rep. Stephen Ross (NC)	

Also in attendance were:

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

## QUORUM

Upon a motion made by Asm. Ken Cooley (CA), NCOIL Vice President, and seconded by Sen. Jerry Klein (ND), the Committee waived the quorum requirement without objection by way of a voice vote.

## MINUTES

Upon a motion made by Rep. Lehman (IN), NCOIL President, and seconded by Sen. Paul Utke (MN), the Committee approved the minutes of its December 13, 2019 meeting in Austin, TX without objection by way of a voice vote.

CONTINUED DISCUSSION ON NCOIL E-SCOOTER INSURANCE MODEL ACT

Sen. Klein, Sponsor of the NCOIL E-Scooter Insurance Model Act (Model), stated that he appreciates the work that has gone into developing the Model thus far and noted that interest in the Model is continuing to grow. Sen. Klein stated that he looks forward to further development of the Model in order arrive at the best possible work product.

Andrew Kirkner, Regional VP, Ohio Valley/Mid-Atlantic, at the National Association of Mutual Insurance Companies (NAMIC), thanked Sen. Klein and the Committee for the work on the Model thus far and then provided the Committee with an update on the Model's development. NAMIC, its members, and others have been in discussions with e-scooter representatives in an effort to improve the Model keeping in mind the balance between consumer protection and the concern that the startup companies have relating to insurance requirements. Meetings and discussions have thus far been productive and it is hopeful that the insurance industry and the e-scooter companies will be able to come to an agreement on a Model that makes sense for both groups.

Ben LaRocco, Senior Manager of State Policy at Lime, thanked the Committee for its work thus far and echoed Mr. Kirkner's remarks regarding how meetings and discussions have been productive and that both sides are learning more every day. Edward Fu, Senior Regulatory Counsel at Bird, agreed with Mr. Kirkner and Mr. LaRocco and stated that he is happy to answer any questions.

Rep. Lehman asked for an update with regard to what has changed in the Model since the Committee's last meeting in December. Mr. Kirkner stated that the Model as introduced fell into two camps. There was a requirement for scooter riders, scooter companies, or some combination of both, to carry some type of liability insurance. There was also a secondary provision relating to what has been described as a gap in coverage – the scenario being the individuals that work as independent contractors that drive around, pick up scooters, take them to their homes, charge them, and take them back to the streets. The conversation is still ongoing with regard to what provisions the Model will contain but the focus has shifted to the independent contractor issue. The concern is that if you have a policyholder that is driving around engaging in a commercial activity when picking up scooters and charging them, there are so many insurance issues that arise such as homeowner's and renters issues if a fire were to occur when charging a scooter. In lots of policies those activities would be excluded so the goal has been to plug that gap for the people that are driving around thinking they are covered under an auto policy or homeowner's policy.

Mr. LaRocco stated that Lime understands that there is a gap relating to the scooter chargers referenced by Mr. Kirkner. People draw a lot of parallels between this and the transportation network company (TNC) debate of several years ago. While they are similar in that they are both new transportation technologies that have not been contemplated before, that is really where the similarities end. One of the challenges was the livery exemption. Lime understands that the scooters would not be covered under most policies and Lime wants to work on that but it wants to do it in a way that does not single out scooter chargers as compared to other industries and in a way that continues to allow utilizing folks who have a great opportunity to earn money with low barriers to entry, especially in what is a relatively niche market.

Asm. Andrew Garbarino (NY), stated that during the Committee's last meeting in December there was discussion about insurance coverage for people riding on the sidewalk when they weren't supposed to. Asm. Garbarino asked if the current version of

the Model addresses that. Mr. LaRocco stated that is something that is still being discussed. Currently, light electric vehicles such as e-scooters, e-bikes, and Segway's have no state imposed mandatory liability coverage requirements for rider liability. Companies cover their negligence but no state mandates rider liability coverage for those vehicles. Accordingly, that is still under discussion as to how that should be addressed in the Model. Asm. Garbarino asked how the rider knows that the rules are before they start riding. Mr. LaRocco stated that generally, sidewalk riding is illegal in any downtown area. For Lime's scooters, and probably Bird's scooters, a note is printed on the scooter itself telling the rider not to ride on the sidewalk. Also, city ordinance, city law, and state law typically address that. Asm. Garbarino stated that if the notice is not on the scooter then it is up for the rider to know, similar to how a renter of a car knows to not drive on the wrong side of the road. Mr. LaRocco stated that he believes there is some shared responsibility for that. The rider has some obligation, cities have some obligation, and the scooter companies have some obligation. Lime is working hand in hand with cities across the country to educate riders and make sure there is good compliance and pedestrian-scooter conflicts are minimal. Asm. Garbarino asked if this applies to where the scooters can be parked as well. Mr. LaRocco replied yes.

Rep. Oliverson thanked the panel for its remarks and stated that the Committee looks forward to hearing another update at the Summer Meeting in July.

#### PRESENTATION FROM THE INSURANCE INSTITUTE FOR BUSINESS AND HOME SAFETY (IBHS)

Debra Ballen, General Counsel and Chief Risk Officer at IBHS, stated that strategically, IBHS believes the three most important ways to reduce property risk are: lead with the roof – roofs are responsible for the vast majority of insurance claims following a natural catastrophe; solve with research – IBHS is trying to figure out problems that have not been even thought about, much less answered, so that we can help reduce losses by reducing the vulnerability of both homes and businesses; and preventing avoidable damages – talking to public policymakers who can make a lot of what IBHS talks about happen through laws, regulations or promoting good building codes in states.

Ms. Ballen stated the roof is extremely responsible. Looking at the fire at Notre Dame, the roof is what burned. There are many lessons to be learned by keeping up to date with disasters such as that fire. The roof is responsible for not only damage to the roof but more significantly, water penetration that comes inside. Asphalt shingles, which when looked at from the ground seem really secure, are paper thin and blow off in even 60-70 mph winds. So if the roof underneath them does not secure the contents, you are going to magnify the amount of an insurance claim and more significantly the displacement for a family. While IBHS's members think about this in terms of having a healthy property insurance system, public policymakers constituents think about it in terms of staying in their homes or keeping a business operating following a severe hailstorm, windstorm or wildfire.

Ms. Ballen stated that if the research IBHS does is only of value to other building science experts, we really have not prevented avoidable losses by helping policyholders by helping public policymakers. Increasingly, IBHS is trying to turn the research into something that is simple to understand. It is important to help people understand that they can make a decision in terms of making their homes less vulnerable and making their businesses more able to survive a disaster. Ms. Ballen noted that IBHS's facility

has a roof farm where it is aging asphalt roofs. They are doing that because most people do not live in a brand new home that IBHS can put in its test chamber and test the materials. They live in homes that are 5-15 years old and that have roofs that have been on the home for a time period unbeknownst to the buyer. By aging the roofs in a natural environment and then bringing in those materials to test them, IBHS is finding out how vulnerable certain products are. It is important to make people think about their roofs. They are really important and no one understands them and no one understands that they can do better with respect to the materials as well as preventing water damage.

Ms. Ballen stated that wind is an amazing thing and IBHS has learned that at various speeds, different parts of a building can fail. Following Hurricane Michael, which was a small and compact storm, field research was conducted to see how certain building codes would respond to certain wind speeds. From low speed to high speed, damage would occur in this process: roof cover, soffits, fascia lost; wall cover lost; roof sheathing lost; roof structure lost; and total collapse. As a research organization, IBHS likes to develop perfect test conditions inside its research center and then test them to determine what will happen in the real world. If you can predict what happens, and then test that, those are the two critical steps to doing better in the future.

Ms. Ballen stated that before IBHS began its hail research, all research underwriting labs testing on impact resistant shingles was done with steel balls. One thing we know is that steel balls do not fall from the sky. So, IBHS went out in the field and gathered real hail stone and tested their hardness and density. In the IBHS lab, they were re-created so tests could be run against the same asphalt shingles that are available in the marketplace. IBHS saw the types of damage that hail caused, measured it, and came out with the first performance ratings for impact resistant shingles. After that was done, the two manufacturers that had the lowest performance shingles took those products off the market. IBHS verified that and tried to buy them and until you could no longer buy them they were not taken off of the IBHS rating system. The point is that consumers who are buying an impact rated product deserve to know that the product will perform as expected. IBHS is also working very closely with the roofing industry because most people trust their roofers so roofers need to be educated.

With regard to wildfires, Ms. Ballen stated that 90% of wildfire ignitions are ember-caused. There are not walls of flames hitting houses – its embers. The defensible space is critical. IBHS recommends five feet although that is something they are still looking at. All IBHS-recommended products and guidance don't guarantee that a home wont burn but they greatly reduce the risk. In this environment, not only in California but in many other states, this is critical. Defensible space is not pretty. It is not easy to convince people that vegetation next to their house is not attractive and is a fire hazard.

With regard to building codes, Ms. Ballen stated that most states have building codes. IBHS strongly supports a strong and mandatory state-wide building code. IBHS conducts a study every three years that looks at hurricane prone states from Texas up to Maine and evaluates building codes. It has resulted in improvements to building codes in a number of states. Some states only have local codes. IBHS is happy to work with state legislators in any state that would like to improve its building codes.

Ms. Ballen stated that "fortified" is an alternative to building codes. IBHS calls it beyond building codes. It is not mandatory and is something that a homeowner or business owner chooses to do. IBHS provides the standard and provides the evaluation process

and provides a designation. That is recognized in a number of states and recognized in the marketplace by individual companies in terms of their underwriting guidelines and the way they assess individual risks. Just like you can shop for a safer car, you can shop for a safer home and that is a fortified home. Ms. Ballen stated that IBHS did some work with the North Carolina Insurance Underwriting Association (NCIUA) which showed that fortified absolutely worked. There were 1,000 homes threatened during Hurricane Dorian and 99.5% kept the water out.

Ms. Ballen stated that IBHS products are available on its website and IBHS is happy to work with policymakers that want to take some of it and make it theirs by working with the state insurance department or other groups so that people understand that the next innovation in resiliency is indeed affordability. There are lots of things that can be suggested and easy for homeowners and business owners to do on their own. IBHS recognizes that do-it-yourself is important, but also, with the right contractors in place you can get this stuff done fairly quickly and maintain it.

Rep. Oliverson stated that with regard to the IBHS aging roofs, he could see obvious implications of perhaps revising guidelines as to when certain building materials like shingles need to be replaced. Rep. Oliverson asked if IBHS is able to make recommendations as far as replacement guidelines. Rep. Oliverson also stated that he sees implications in terms of folks in his communities that are exposed to hail and roof damage tend to opt for less expensive actual cash value policy riders. Rep. Oliverson asked if IBHS data can be taken to more accurately determine what the values should be for those building products years down the road for policyholders. Ms. Ballen stated that she does not believe IBHS is at that point yet. With regard to the roof aging farm and the shingles being taken off, that was at five years. The original research plan was for 5, 10, 15 and 20 years but what IBHS found at year 5 was that the roofs were a lot more brittle than they thought they would be. There are aging farms at the IBHS South Carolina facility as well in Madison, Wisconsin, Cincinnati, Ohio, Coastal, Alabama, and Kansas so that IBHS can get different climate zones and learn more. Ms. Ballen stated that one thing that is really important is the time when someone experiences a loss is an opportunity to build back better. IBHS wants to encourage the system to provide those options. Some states are putting in endorsements so people can get a fortified roof if they lose their roof. Those are opportunities to be more resilient.

Rep. Brenda Carter (MI) stated that in Michigan there is a lot of damage to roofs because of snow and ice and asked if IBHS has any programs and products for that. Ms. Ballen stated that IBHS has guidance for that and frozen pipes. Since the facility is in South Carolina, IBHS can't really research extreme winter weather because it is not cold enough but there is guidance on the IBHS website for how people can protect themselves better for such conditions.

Asw. Maggie Carlton (NV) stated that she experienced significant wind damage and when she was looking at how to replace it, nothing was really rated for zones – everything was talking about rain, hail, and snow. Her roof has to sit through 130 degrees for two or three months every year. Accordingly, Asw. Carlton asked if IBHS will start thinking about ratings or zones for those who live out west in the desert. Ms. Ballen stated that with regard to the roof farms, member companies had campuses that allowed IBHS to put its roof farms on those campuses. If an appropriate location can be found, IBHS would be happy to set up a roof farm in other locations. Ms. Ballen stated

that you would be amazed at how hot it gets on a roof in South Carolina in the middle of summer. Those temperatures are measured and it is extreme on a lot of roofs. With regard to wildfires, IBHS is working to apply building codes to states other than California so that better products are put on roofs – it is not a guarantee against burning but it helps. For example, cedar shakes look great but they burn.

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

Before the panel discussion began, Rep. Oliverson noted that Frank O'Brien of the American Property Casualty Insurance Association (APCIA) was scheduled to be part of the panel but he was unable to attend the meeting due to company-level travel restrictions surrounding the coronavirus. A comment letter from APCIA regarding CASTF has been distributed.

The Honorable Chlora Lindley-Myers, Director of the Missouri Department of Insurance and NAIC Secretary-Treasurer, stated that the NAIC realized that computing power has grown exponentially and has opened up a door for actuarial modeling which is new and sophisticated. Accordingly, the NAIC is reviewing that data within the individual departments of the states and territories which results in insurance companies seeking increasingly predictive or potential losses by employing evermore complex modeling methods and establishing and justifying their premiums since they have to tell regulators why they are going to be charging a rate. What they do through predictive modeling and predictive analytics involves a number of techniques such as data mining, statistical monitoring and machine learning which allows insurers to use big data to more precisely forecast future events. These evolving techniques have made it increasingly challenging for insurance regulators to evaluate filed rating plans that incorporate complex predictive models.

Compounding that issue is the fact that many state insurance departments don't have sufficient resources in house actuarially and nor do they have the expertise to review the filings. While the insurance regulators recognize clearly that there is a great potential of emerging technology to positively affect the insureds and consumers that they serve, the regulators have grown concerned about how the insurers might use the treasure trove of information and new data sources and predictive modeling in the marketplace. That includes the lack of transparency and potential for bias in the algorithms used to synthesize big data; highly individualized rates that lose the effective benefit of risk pooling; cyber threats to stored data; complexity in volume data that may present hurdles for smaller sized insurers; collection of information sensitive to consumer privacy; and the potential for discriminatory practices such as price optimization which is varying the rates based on factors other than the risk of the loss such as the likelihood that a policyholder will renew their policy and the willingness of certain policyholders to pay higher premiums more than other policyholders.

To address this concern, the NAIC at its 2018 Spring Meeting in the Big Data Working Group asked the Property & Casualty (C) Committee to adopt charges to the CASTF to look at changes to the product filing review handbook to include best practices for review of predictive models and the analytics filed by insurers to justify rates; and draft and compose state guidance regarding information and data. It is just state guidance, not anything that regulators have to do but just gives regulators another opportunity to look

at things. CASTF began developing a white paper on regulatory review of predictive models and assembled a drafting group of a variety of regulators and began to work on this initial draft. At the end of 2018 at the NAIC Fall National Meeting, CASTF exposed for comment the first draft. There have since been two additional drafts, the latest one being Oct. 15, 2019. CASTF wants to hear comments and has received presentations from interested parties on the issues, both at NAIC meetings and during various conference calls.

The objective of the white paper is to identify best practices to serve as guidance to state insurance departments and insurers in their review of complex models and underlying rating plans. The focus is on the private passenger auto and homeowners insurance rate filings. These are usually done at the NAIC open meetings and usually done during open conference calls. The NAIC is hoping that with this last bit of review and exposure, CASTF can present at the NAIC Spring National Meeting later this month the results of the last discussion which was on Oct. 16, 2019.

In looking at the particular models, CASTF was looking at best practices which is to provide to state insurance regulators in their essential and authoritative roles over the rating plans in their respective states to identify various elements of a model that may influence the regulatory review as to whether modeled rates are appropriately justified and compliant with all state laws. It aids in the speed to market and competitiveness of the state marketplace and provides a framework for the states to share knowledge and resources to facilitate the technical review of complex predictive models. The best practices which will eventually be included in the NAIC product filing review handbook are being drafted in the form of guidance designed to break down the review of these complex models and to various considerations or information. There are comments on what is important about such considerations and there is insight as to when the consideration will become an issue the regulator needs to be aware of or what they might need to explore further.

CASTF has received a number of written comments from regulators, consumer representatives, and industry. Overall, industry expressed a number of concerns many of which are unjustified and without merit. For example, the white paper is not establishing rate filing requirements. The white paper is collective opinion only. State regulators will decide in their own state what they would want to require based on state law. The white paper is not creating any requirements but promoting regulatory best practices of what to look for based on a collection of current practices in the various states. Another comment is that the white paper documents current practices and therefore there is no need for field testing. A lot of the industry is saying field testing is needed as there is a need to figure out what is going on. Dir. Lindley-Myers stated that this is already going on in the individual states and so the states are looking at that and making a determination as to whatever the model is, whether it is compliant with that specific state's law.

Another issue is that of correlation vs. causation which is the requirement of rating variables that they be reasonable and not unfairly discriminatory. CASTF is looking at three main areas of state law. Generally speaking, state laws state that any rates that are issued shall not be unfairly discriminatory. In almost every state, a rating variable must be related to claim losses or expenses – that's the correlation – and not be unfairly discriminatory. Risk classes must be reasonable – companies have to decide if that state law includes the requirement that risks cannot be classified in an unreasonable

way or that the risk must be reasonably related to the issues that are afforded in that particular policy. The point of that is that reasonableness is usually defined in the law so regulators look at the law and see whether or not the rates might be reasonable based on what the company is saying that they are collecting this data for and utilize it. Regulators will abide by confidentiality of state law as it relates to trade secrets. Regulators are not seeking to change that by coming up with this model. The hope is that if it is already a state secret in a state, they will be able to use it. Some states have tougher laws than others as to what is a trade secret or confidential. The NAIC will abide by those state laws and wants to make sure there is a speed to market. In some states it is file and use and in other states it is prior approval. Utilizing those models that are already in the states, CASTF is looking at what is already there and whether or not it would be advantageous to look at that.

When comments are submitted, there is then a specific answer to that particular comment as to why that is not important in a particular jurisdiction. Each state will make that determination on their own. Dir. Lindley-Myers stated that she has worked in five different states and the laws have varied in five different ways. CASTF is looking at that and trying to see whether or not it is able to utilize that and how they able to utilize it and work with other state regulators as to whether or not something should be approved in a particular state or whether there should be more information. CASTF is gathering that information and in some of the filings the information is already there so there is no need be gathered. So, this is an ongoing process of the NAIC and the process is open and transparent to allow any of the stakeholders to weigh in on what they think should be important when looking at these models.

Erin Collins, VP of State Affairs at NAMIC, stated that Ms. Ballen's presentation really outlines all of the reasons why the industry needs to continue to study risk factors in all area of insurance and how it can measure risk and predict risk through the underwriting and rating process. That is a conversation that NAMIC firmly believes needs to happen in the states. Most recently in Congress earlier this week, NAMIC advocated that these conversations do need to happen in the states and they need to continue to happen in the states as opposed to anywhere else. To that end, NAMIC has concerns that the CASTF white paper goes further than state law and creates hurdles and challenges that very few if any underwriting factors could survive. NAMIC has partnered with The Honorable Nat Shapo, Partner at Katten Muchin Rosenmann LLP and former Director of the Illinois Department of Insurance, for an analysis of this issue by means of developing an issue analysis white paper ("The State Rating Statutes and Constitutional Policymaking: Causation and Disparate Impact Standards in NAIC's Draft White Paper").

Dir. Shapo stated that the white paper is on NAMIC's website and is publicly available. The paper focuses on core questions about the state unfair discrimination statutes and what they require and how they were made. NAMIC has articulated other specific concerns about CASTF's white paper but they are beyond the scope of the NAMIC paper. A lot of the issues discussed today present core questions about insurer risk discrimination practices which is what the NAMIC paper focuses on. Dir. Shapo stated that it is not clear to him from reading the CASTF white paper that we have established that there is a qualitatively different method of classifying risk that would require a substantial change in public policy which NAMIC believes parts of the CASTF white paper do in fact suggest. It is still risk classification – using technology to try and classify risk based on future expected losses. That is what insurers have always done. Clearly, there are quantitative differences every year as there is more and more computer power



every year that can do these things more quickly. With regard to increasingly predictive models, Dir. Shapo stated that is something that the laws have always encouraged. They have always encouraged the best risk classification practices which have two public policy norms: it is fair for people to pay according to their expected losses; and there is a solvency issue that has always been at the heart of risk classification – that the better you can predict risk, the more solvent the insurer will usually be which is in the interest of consumers and society.

Dir. Shapo stated that there are two substantive policy issues in the current draft of the CASTF white paper that insurers have seen in state legislatures and state rating reviews and state market conduct exams and proposed bills in Congress and even in other NAIC committees. They go to the heart of unfair discrimination principles which is part of almost every state's rating law. The first substantive issue is that of causation vs. correlation. In several instances, the CASTF white paper calls for an evaluation of causation. It directs a rate filing reviewer to demand a narrative from each company for each rating factor as to how they believe that the rating factor is causative. Causation is not a standard established by any legal authority. The basic standard is correlation which is an objective standard. The question is not whether a rating factor causes a loss but whether or not it correlates with a loss. A good example would be the American Academy of Actuaries (AAA) when it was asked to do a causality study by the NAIC with respect to credit scoring said "any finding of causality in any context or field of study is a statement of a theory or conjecture based on the observation that there is a strong statistical relationship between the 'cause' and the 'effect.'" Basically, what they are saying is that when you unpack it and when you think that a factor causes losses, it really doesn't. Even driving record is not causative, it is correlative. If you had four accidents last year, those accidents themselves are not going to cause your accident next year. They usually correlate and statistics will show that they correlate. It probably has something to do with your physical reflexed or maturity or personality which are things that have never been and never will be rating factors. Every rating factor is correlative, not causative.

The second substantive issue is that the CASTF white paper asks the regulator to try and identify so-called proxy variables for prohibited variables. This goes to the way the unfair discrimination laws are constructed. The basic, core rule of the unfair discrimination principle is correlation. If you can show a correlation with loss based on actuarial principles then the factor is presumed to be legal. There is a public policy overlay on top of that and legislators, after careful study and review, have identified certain specific, discreet rating factors that are further regulated even if they are correlative such as bans on the use of race, religion and national origin as rating factors. Even if those are correlative and meet the basic unfair discrimination provision, they are seen as being unacceptable from a social perspective so legislators, after considerable review, have said they are prohibited. In some cases, such as with the NCOIL credit scoring model, there is further regulation but not a ban. The model puts certain restrictions on how credit scoring is used but that is a social policy overlay over the core rule of correlation.

With regard to the proxy disparate impact question, that is typically addressed in courts by saying if you have a ban the use of race as a rating factor, the ban would apply to intentional and knowing use of race as a rating factor. A so-called proxy variable that may lead to a disparate impact on a protected class like race, national origin, or religion, the law does not recognize a disparate impact standard unless the statute specifically

has language addressing that. The state unfair discrimination laws do not have such language and in fact that is why the NAIC has previously filed an *amicus* brief with the U.S. Supreme Court opposing the disparate impact liability being recognized in the state unfair discrimination laws.

Dir. Shapo stated that opinions will differ in terms of whether or not the CASTF white paper is imposing requirements or just best practices, but the main concern that the NAMIC white paper addresses is that there are actual legal standards being imposed in the CASTF white paper. As a matter of policymaking, the way the core unfair discrimination law is made is that the legislatures pass a rating statute that says rates shall not be inadequate, excessive or unfairly discriminatory and then legislatures add a social policy overlay in a considered way rating factor by rating factor. The concern here is that with the causation and disparate impact standards, the CASTF White Paper in its current draft proposes those standards which are things that cannot be done by a white paper or by regulators -they would have to be a statutory decision made by legislators.

Brian Fannin, Research Actuary at the Casualty Actuary Society (CAS), stated that the CAS is not a policy-making body - it educates and credentials actuaries and then continues educating them. CAS does not issue public policy statements. It is an international body. The AAA in the U.S. is body which speaks for the actuarial profession in a public policy context. Nevertheless, CAS does have an active membership that is interested in engaging with these types of discussions and wants to be able to look for opportunities where it can contribute its experience and knowledge to help further discussions. CAS is happy to take part in a process that is open, collaborative and deliberate in an appropriate way.

CAS has engaged volunteers from its memberships on three separate occasions in response to three separate exposure drafts of the CASTF white paper. They were made up entirely from the ratemaking research committee which is the standing research committee that the CAS has. There were about eight or nine members that reviewed the drafts and then convened to share thoughts. CAS eventually developed a draft that was shared with the NAIC. Those comments were shared with CAS leadership but it should not be construed as an official policy statement of the CAS although they are aware of the conversations that have been taking place.

Mr. Fannin stated that CAS has raised a few issues with regard to the CASTF white paper. There is a focus on generalized, linear models (GLMs). There are other models which insurance companies do use but they are discussed with less attention than GLMs. That means that the language and guidance starts to construe itself with regard to that particular class of statistical model. GLMs date from 1972. That greater maturity means there is a larger use of them in the field in insurance and elsewhere. That maturity somewhat penalizes them. For newer models like "deep learning" there may be less awareness as to how one would evaluate such models. GLMs get a little but more attention because they have been part of the conversation for a much longer period of time. There are a few comments in the draft about credibility, in particular a comment which one might read as suggesting credibility techniques are not consistent with the use of GLMs. CAS takes issue with that as it feels that you can apply credibility procedures with GLMs in any number of ways. There are some technical points to discuss in that issue which Mr. Fannin stated that he is happy to discuss afterwards.

In terms of model assessment, there were repeated references to analysis of p-values which is a statistical concept that Mr. Fannin stated he is happy to discuss further afterwards. There is a 5% threshold as to whether a rating factor would or would not be significant. There is a great conversation taking place now within this statistical community. A few years ago, the American Statistical Association issued guidance about the use of p-values and they are not necessarily a one size fits all technique. They are a diagnostic technique which should be used in light of others such as cross validation or regularization which are other ways to look at how effective a model is at gauging the importance or utility of rating variables. CAS also had some discussion with regard to the definitions in the white paper and it would welcome a little bit more clarity with them. Actuaries are mathematicians who are accustomed to very crisp, clean definitions. For instance, "insurance data" was one of the first speed bumps hit. Insurance data is data used by an insurance company which kind of suggests anything but are there other exogenous types of data that would or would not fall out of the guidance like census data or credit data. Also, "predictive power" was discussed and perhaps there should be further discussion about the technical elements and what is meant by "predictive power." Lastly, "test validation" was discussed but Mr. Fannin noted that is somewhat nitpicky.

Sen. Bob Hackett (OH) stated that those who have been involved with NCOIL for awhile have seen the NAIC often come to a line in the sand in terms of trying to do legislation but they don't step over the line. Sen. Hackett stated that it seems to him that the NAIC is trying to take correlation away and operate on causation. As the world develops, there are constant technological advancements and the current system is setup to protect against discrimination. That system should be tested at different times but it looks like the NAIC is coming in and trying to force individual legislation in different states. The country is become very liberal and some places and very conservative in others. If you are an insurance company, are you going to then create underwriting rules that are drastically different in different states? Sen. Hackett asked if the NAIC believes it is acting in a manner that is trying to push legislators to create certain types of legislation with these issues.

Dir. Lindley-Myers replied no, and stated that she believes that the CASTF white paper is allowing the laws that are on the books right now to be reviewed with what is happening right now, which is that companies are using predictive modeling to make certain determinations. The white paper is asking insurers whether by using predictive modeling, are they trying to discriminate through the back door. Accordingly, regulators want to be able to look at what insurers are looking at. The white paper will be looked at by each individual jurisdiction and they will make the determination as to whether they will even look at the paper or not. They may continue to just operate how they are currently operating. The white paper is not changing any laws but is rather looking at existing laws and determining how regulators can utilize the new materials that are out there to continue to do the job regulators have always been doing.

Sen. Hackett asked Dir. Lindley-Myers if she thinks the current system is already set up for new predictive models to come in and to determine whether or not they are unfairly discriminatory. If they're not, then it is up to legislators to create laws to protect against that. It is almost as if the NAIC is handicapping the insurance industry by coming in and trying to radically change the underlying models. Sen. Hackett asked Dir. Lindley-Myers if she wants consumers to be rated properly. Dir. Lindley-Myers stated that she does and she wants to make sure that if a legislator comes to her and asks why is it that a

specific zip code in St. Louis is being charged a particular rate, she is able to tell him that it is because of, x, y, and z which is not causation, it is a correlation. The white paper is not a change in law, it is basically utilizing the laws that are already on the books and making sure that regulators can explain to legislators and consumers any questions about rating variables.

Sen. Hackett stated that he fully supports the predictive models going through the system to make sure they are not unfairly discriminatory, but at the same time it is important and beneficial for everyone that rates are accurate. Dir. Lindley-Myers stated that insurers are saying that the rates are accurate because they are using certain variables and regulators want to be able to understand what things they are using to say that they are accurate.

Dir. Shapo stated that currently, the CASTF white paper directs the rate reviewers to require a documentation of the insurance companies understanding of causation. Dir. Shapo stated that he reads that as an erosion of the correlation standard. In the insurance context, fair discrimination is a term of art. The Massachusetts Supreme Court has stated that “the statutory pattern which deals with insurance regulation requires the commissioner to treat equally insureds who are of the same risk classification. This may result in ‘fair discrimination’” - that is the correlation standard. So, in the context of this industry, that is what the term fair discrimination means and it is supplemented by prohibitions in each state law on explicit discrimination against protected classes. The notion that you can unpack and get into a particular rating factor’s impact on a protected class is not recognized by the law and that would be a substantial sea change in the law and would require a legislative determination.

Rep. Lehman stated that is not a big fan of predictive modeling and he remembers this conversation happening in Indiana several years ago regarding magazine subscriptions and which stores people shop at. But, at the same time, that technology has started to in some cases prove to be accurate and we have started to see companies say “look at the data.” Rep. Lehman stated that there is a technology clash right now with carriers being innovative in how they rate but also questioned when the law or large numbers was thrown out the window. Today, some rates get down to underwriting each individual such as those who have their rates measured on driving safe. We are on a collision course with individual underwriting and a regulatory body still regulating with the law of large numbers. Legislators needs to be sure that they are doing what is right by the public. Rep. Lehman stated that he understands that certain protections need to be in place but noted that he is concerned that the white paper may be imposing requirements that, if necessary, should come from a legislative body.

Kris DeFrain, Director of Research and Actuarial Services at the NAIC, stated that the white paper does not require causality – it requires a correlation. What the regulators are asking for is some kind of explanation/rationale as to why they think the rating variable is not unfairly discriminatory. Accordingly, the white paper is asking for help with that analysis. There is no commissioner that is going to not approve a rate filing because a rationale was not provided for something that met their standards; it is still going to be correlation. But, what you’re finding is that there are thousands of very specific rating variables out there right now and there has to be some sort of finding as to whether they are unfairly discriminatory or not. When things like territory come into play, the correlation there is pretty clear and a rationale explanation is not being pushed for there. The rationale explanation is being asked for the odd and unique variables.

Asm. Cooley stated that when he looks at this he tries to look at it in the larger scheme of the NAIC. Asm. Cooley stated that he was Chief Counsel for the State Assembly in the late 1980s when the accreditation statute was adopted. The whole object of the accreditation statute is to support the solvency of insurance companies. We got to accreditation because of problems in the 1980s with the solvency of carriers. Asm. Cooley stated that he feels we are going into an area where we are starting to unwind the fundamentals of the insurance business with rate setting and doing it on the basis of a correlation. The NAIC needs to look back and ask "how does this fit into our mission?" With long term care, everyone thought they had the rate right and now we have a heck of a problem. Now, we have a white paper that is starting to ask questions about the basis of how rates are established more generally. Asm. Cooley stated that undermines the rating system and it goes contrary to the purpose of the NAIC.

There was big debate in CA in the 1980s with the accreditation statute – are we going to let a non-elected entity start providing guidance to insurance departments? Traditionally, insurance companies innovate through their rates. Asm. Cooley stated that he spent 18 years as in-house counsel for State Farm. State Farm was founded in 1922 on a different rating model that defied what people thought of rating. In seven years, they were the largest auto insurance company in the country. They innovated through their rates. Asm. Cooley stated that he feels that there is a product being discussed within the NAIC, which is the bulwark for solvency, that is starting to undermine innovation and rating. This could cause problems and could cause people to ask questions if the NAIC, through a white paper, is introducing systemic risk to the insurance industry because they are trying to force a rethinking of rates. It is very problematic and spells trouble for the delegation to the NAIC that has been made by legislators. Questions may come from the Congressional level as to what is going on with the basic fundamentals of solvency and ratemaking. It is important to always pursue new ideas but you cannot lose track of the real landmarks that are important in insurance regulation.

#### ADJOURNMENT

There being no further business, the Committee adjourned at 12:15 p.m.