

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
PROPERTY & CASUALTY INSURANCE COMMITTEE
ALEXANDRIA, VIRGINIA
SEPTEMBER 24, 2020
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Property & Casualty Insurance Committee met at the Hilton Alexandria Old Town Hotel on Thursday, September 24, 2020 at 4:30 P.M. (EST)

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

Other members of the Committee present were (* indicates virtual attendance via Zoom):

Sen. Jason Rapert (AR)	Asm. Kevin Cahill (NY)
Asm. Ken Cooley (CA)*	Asw. Pam Hunter (NY)
Rep. Matt Lehman (IN)	Sen. Jim Seward (NY)*
Rep. Peggy Mayfield (IN)*	Sen. Bob Hackett (OH)
Rep. Joe Fischer (KY)	Rep. Carl Anderson (SC)
Rep. Dean Schamore (KY)	Rep. Tom Oliverson, M.D. (TX)
Del. Kris Valderrama (MD)*	Del. Steve Westfall (WV)
Sen. Paul Utke (MN)	
Sen. Vickie Sawyer (NC)	

Other legislators present were:

Rep. Jim Gooch (KY)
Rep. Derek Lewis (KY)

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO
Will Melofchik, NCOIL General Counsel

QUORUM

Upon a motion made by Rep. Joe Fischer (KY), NCOIL Secretary, and seconded by Sen. Bob Hackett (OH), the Committee waived the quorum requirement without objection by way of a voice vote.

MINUTES

Upon a motion made by Rep. Fischer and seconded by Del. Steve Westfall (WV), the Committee voted without objection by way of a voice vote to approve the minutes from the Committee's March 6, 2020 and July 24, 2020 meetings.

CONTINUED DISCUSSION ON NCOIL DISTRACTED DRIVING MODEL ACT

Sen. Bob Hackett (OH), co-sponsor of the NCOIL Distracted Driving Model Act (Model), stated that before we begin with hearing from our panel today, he would like to say thank you to everyone who has offered input on the Model thus far. Judging by the amount of comments

received and the amount of conversations he and Asm. Cooley have had so far relating to the Model, it is clear how this issue means so much to so many people across the entire country. Sen. Hackett stated that he knows Asm. Cooley, fellow Sponsor of the Model, who is participating via Zoom, agrees with him in saying that the current first draft of the Model is very strong, but they are certainly receptive to making some amendments to improve it. Some of those amendments have already been submitted.

Sen. Hackett stated that one amendment that both he and Asm. Cooley have already decided to include as a Sponsors' Amendment will be in the nature of making it clear that the Model is intended and was always intended to allow for primary enforcement. Distracted driving is blatant, observable behavior which makes primary enforcement the best way to enforce and make clear that such behavior is not acceptable. Accordingly, primary enforcement language will be included in the next draft. It is likely that there will be other Sponsors' Amendments included as well. Sen. Hackett stated that the Model is still a work in progress and it will probably remain such at the next Meeting and perhaps the Meeting after that. Sen. Hackett stated that in Ohio, distracted driving legislation was passed a couple of years ago and at the last minute in the conference committee they switched from primary enforcement to secondary enforcement. Sen. Hackett noted that if you speak to law enforcement about secondary enforcement they will tell you that it does not work and it can't be done.

Sen. Hackett stated that distracted driving legislation is back in Ohio and opposition testimony was recently heard. A set of attorneys who are opposed to the bill agree that the bill should allow for primary enforcement. Accordingly, there is a lot of agreement with regard to primary enforcement but there are other issues that need to be cleaned up and they are being worked on.

Asm. Ken Cooley (CA), NCOIL Vice President and co-sponsor of the Model, stated that the issue of primary enforcement is very important. Going back to the days of when California passed proposition 103 which is supposed to regulate auto insurance rates; it was a time when costs had been rising as there was a 150% increase in auto insurance in a single decade. It changed the overall regulatory structure but it didn't actually address any cost drivers. That forced the California legislature to start going in search of things that would make for safer roads to bring down the cost of auto insurance. The legislature did a variety of things, one of which was starting with a seat belt requirement but it was secondary enforcement. Within just a couple of years, it was realized that it was a change that made people dramatically safer on the roads and therefore it was changed to primary enforcement. If you want affordability of auto insurance products for constituents, you need to impinge the hazards of driving. That is what the Model does and the primary enforcement will be a great asset. We have all had the experience of driving down the road and watching other drivers weaving and doing all sorts of crazy things including on the rare occasion, seeing someone watching a video while they are driving. The primary enforcement amendment is a little technical but it really will result in reduced loss of life, physical injury, and bring down costs of auto insurance.

The Hon. Nicole Nason, Administrator of the Federal Highway Administration (FHA), thanked the Committee for inviting her to speak and for taking measures to keep roads safe especially now. FHA appreciates the challenges that state legislatures and legislators are facing as FHA is facing many of the same challenges – the challenges of having the workforce largely working from home; the 52 different approaches that each state and each local leader have been taking to protect people; and revenue and budget impacts as a result of the national public health emergency. Given the financial limitations associated with gas tax revenues, and other budget shortfall areas, it is getting harder to safeguard the communities that we all serve.

Admin. Nason stated that in the past several months she has spoken to almost all of the secretaries of transportation in each state. Some state departments of transportation have had to take immediate action and have had to furlough staff and postpone highway projects and delay maintenance. Others are doing their best, at least initially, to accelerate and are now trying to hold steady. All state DOTs have expressed budget concerns in the next six to 12 months as revenue decreases will begin to clearly manifest in day to day operations. FHA understands the problems that many state DOTs face especially with the now expected extension of the Fixing America's Surface Transportation (FAST) Act which is the current service transportation reauthorization bill. Whatever the situation come October 1, FHA is ready to support states and all of its partners and stakeholders despite the fact that most of FHA's staff, 2,700 plus, are tele-working. FHA is here to support state and local and tribal partners and communities to deliver the federal highway program.

Admin. Nason stated that she truly believes that transportation – planning, construction, financing, safety – is a team sport and everyone needs to work together, perhaps now more than ever. Federal and state and local and industry leaders need to collaborate and that will be critical to the success in delivering transportation programs. Admin. Nason stated that she is very proud of the actions that the FHA has taken in the past few months to ensure the safety and efficiency of our roads. As just one example, when restaurants began to close or limit access, FHA issued a notice to temporarily allow states to permit food trucks at interstate rest areas. Commercial activity is normally prohibited in such areas but unusual times call for unusual solutions. We now find ourselves in the next phase as many communities have begun to return to normal. The return is slow but normal economic conditions are beginning to return as some schools are re-opening with small in-person classes and some businesses are re-opening and allowing more customers in. FHA is currently permitting states to use rights of way to social distant restaurant tables. Tables have been in roads and parking spaces – a blanket federal approval was issued for that. While we are far from being back to normal, we are definitely headed in the right direction.

Admin. Nason stated that we may soon even see increased pressure on our highways which is relevant to state legislators and the work they are doing. We know already that people feel comfortable in their cars. We know that aviation, transit and rail numbers are not close to being back to normal but from a low in April we are now back to almost 90% of where we were at this time in 2019 – people feel safe in their cars. That means that there will be more people on the roads as they are reluctant to use other options of transportation. The safety of the traveling public will always be the top priority at the DOT and it is the top priority of Secretary Elaine Chao and it is Admin. Nason's top priority. Despite improvements in roadway and intersection design and work zone management and traffic incident management and even more safety features on vehicles than ever before, we still lost more than 100 people per day on the roads – that is unacceptable. As everyone knows, there is much work left to be done to reduce fatalities and injuries on roads. Driver distraction remains a continuing problem and Admin. Nason stated that she is glad to have the opportunity to discuss that issue as NCOIL is one of the most influential groups to help address the issue.

Admin. Nason stated that over a decade ago, she led the National Highway and Traffic Safety Administration (NHTSA) – a sister agency to FHA. It has the primary responsibility within the DOT to reduce distracted driving and yet as with so many issues that we are facing right now it is too big of an issue for one agency to handle and it is too big of an issue for just the federal government to handle. It is a coast to coast problem so we need to partner with state legislators. FHA considers distracted driving as nothing short of a national epidemic. According to NHTSA's data, 23,000 people died in crashes involving a distracted driver between 2012 and

2018 which is the most official data that we have right now. Nearly 10% of all highway fatalities involve a distracted driver and many people feel that the numbers are under-reported. Besides the work that NHTSA does with groups like NCOIL, it works closely with states, law enforcement agencies, the academic community, and the media to ensure that drivers focus on driving. We want them to concentrate on that and to resist talking on a phone or texting or any of the other unwanted distractions out there.

Distracted driving can take many forms: putting on makeup; playing with the radio; talking on a phone; talking with other people in the car. Texting has become one of the most common and pervasive forms of distracted driving. Too many drivers learn how dangerous it is too late and often at the expense of someone else's life. Everyone at DOT is fighting this problem and that includes all modes of transportation. For a host of great reasons, all federal employees are prohibited from texting while driving on official business while using government provided personal electronic devices or when using a government vehicle whether they are on duty or not. DOT also requires annual training for all U.S. DOT employees on the danger of distracted driving. Admin. Nason stated that she would like to thank anyone and everyone who have drafted or sponsored or worked to pass state bills on this issue as their commitment to safety is very much appreciated.

The use of a handheld cell phone while driving is illegal in 25 states as well as D.C. and Puerto Rico and Guam which means there are 25 other states that do not have such a law. Accordingly, Admin. Nason stated that she appreciates NCOIL focusing on this continued problem. Admin. Nason stated that she is the daughter of a highway patrol officer and that is how she got into this field in the first-place and that is a big reason why she is a big supporter of traffic safety enforcement. We need our law enforcement partners. Admin. Nason stated that just yesterday she was dropping her son off at school and on the way back the car in front of her was moving very slowly in a 25 mph zone. The car gently swerved and eventually went up on the curb and came back. Upon driving next to the car, the driver was a young dad and had a child passenger seat in the back and he was on his cell phone. Admin. Nason stated that she thought he was probably working and he probably did not realize until he hit the curb how much danger he was in and how much danger everyone around him was in. The curb did its job by scaring him but it is very important to focus on education and engineering in addition to enforcement. There are important roles for each of those pieces to play when talking about messaging to the public as to how serious this issue is.

Admin. Nason stated that there were recently two girls outside Pennsylvania who were in a terrible crash and they rolled their vehicle twice and their first instinct was to take a tiktok video. They filmed themselves right after the crash and one girl held up her phone to survey the car and showed the windshield shattered and the car was on its side and her friend was pinned against the road. Their instinct was to film a video and they got a lot of attention for it. Admin. Nason stated that in an article she read about the crash, a commenter congratulated the girls because after his crash he was so nervous he could barely function and he said he respected them that they had the presence of mind to film a video. Accordingly, Admin. Nason stated that as the Committee works on the Model, it is imperative that everyone keeps on educating – we always need to continue to educate the public. At NHTSA, it was always said that educating parents on child safety was never finished because very day there is a new mother born when a new baby is born. With every new generation we need to educate the drivers. Accordingly, Admin. Nason stated that she hopes education is part of the Committee's discussions going forward, and thanked the Committee for the invitation to speak.

Andrew Kirkner, Regional VP, Ohio/Mid-Atlantic Valley at the National Association of Mutual Insurance Companies (NAMIC) stated that NAMIC members support the reduction of distracted driving and NAMIC is supportive of the Model, understanding that there are of course additional language and amendments to be worked on. Mr. Kirkner stated that this effort is very timely and Admin. Nason just touched on something that he had not considered before which is that it is hard to pick up a newspaper or turn on the news without seeing a local city or municipality that is expanding the eating options for folks whether it be on previously open streets or sidewalks or whatever the case may be. Those municipalities are doing outreach and trying to help the restaurants in their area and accordingly there is not a more pertinent time to be talking about distracted driving with increased areas where pedestrians are more at risk of the dangers of distracted driving.

NAMIC believes that the Model contains some important provisions, specifically prohibitions on streaming videos as in the early days of some distracted driving legislation, bills focused on texting so folks could legally be watching YouTube videos. NAMIC also believes that the upcoming sponsor's amendment regarding primary enforcement is appropriate and will strengthen the Model. NAMIC is excited to work with NCOIL on the Model and hopefully once it is adopted, NAMIC looks forward to having states adopt the Model.

Jennifer Smith, CEO and co-founder of StopDistractions.org (organization), thanked the Committee for inviting her to speak and stated that the organization consists of victim's families and someone in their lives that has been impacted by a tragedy involving distracted driving. The organization builds relationships within communities with law enforcement and elected officials and tries to bring change to the deadly epidemic of distracted driving. Currently, 24 states plus D.C. have hands-free laws as well as Puerto Rico and Guam and the U.S. Virgin Islands. However, in the past two years there has been a huge groundswell in these types of laws passing – 9 states have passed such legislation in the past two years: GA, MN, AZ, TN, ME, MA, VA, IN, and ID. Also, in 2020 there was another groundswell of legislation filed. Out of the remaining 26 states, nearly all of them did have legislation filed and many of the bills have a good chance of passing. Three of the states that did not have legislation were not even in session so that only left 5 states not currently working on such legislation and as you know COVID hit and everything stopped in its tracks so it is expected that next year will be a big year for this type of legislation.

Ms. Smith stated that there have been distracted driving laws on the books for several years but it continues to be a big problem because the big thing is the evolution of technology. How we use our phones changed so the way the laws were written in the beginning didn't really encompass everything. Texting is always talked about but when you talk to kids and others they say that they are not texting but they are on Instagram or TikTok or something else involving streaming and data. So everything that we are doing with our phones is causing a big increase in data transmission and that is where we need to get these types of laws to be more encompassing. The Insurance Institute for Highway Safety (IIHS) was also able to document this by looking at what drivers are doing behind the wheel and they showed that drivers are manipulating their phones more than they did in 2018 because of all of the new things with data. In general, we are also just on our phones more and there is a new group emerging called cell phone addicts who spend actively 28% of their time ignoring the road. That now accounts for about 8% of drivers and that group is doubling every year. Ms. Smith stated that she is afraid that with COVID and being locked in houses and on devices so much, that number may have been sped up and we could see a much bigger increase next year.

Ms. Smith stated that, speaking of COVID, distracted driving is another issue that we really need to address head on because even with less drivers on the road, drivers are on their phones a lot more. Zendrive, a telematics company, looked at this data comparing one month before and one month into lockdowns and they were showing there was a 38% increase of drivers phone use when behind the wheel. Another thing that is well known with regard to insurance is that insurance rates have been constantly increasing across the country. Georgia had seen a 12.6% increase in their insurance rates in the years before passing their hands-free law. That is being seen across the country. As of a couple years ago, it was about a 16% increase since 2011. We are also seeing the public threat and the loss of life and the damage to communities and families and medical costs and property damage.

Ms. Smith stated that all of those things working together are really increasing the public support. Ms. Smith stated that when she first lost her Mom in a distracted driving crash in 2008, there weren't too many families out there who had lost someone. Now, everyone pretty much knows someone who has lost their life due to distracted driving. So, public support is growing. Using Tennessee as an example who recently passed a hands-free law, their polling came back at 91% support statewide therefore showing bipartisan support. Looking at Arizona, their situation is interesting because they could never even pass a texting law. They had been the first state in the nation to try and had tried for 13 sessions but recently they did pass a hands-free law with widespread support. Arizona also has, in a two year timespan, passed about 29 local ordinances passed in order to help boost that statewide law. Also, in Michigan there is polling indicating 88.3% in support of hands-free laws. Many states are showing support rates for these laws in the high 80's% and low 90s%.

Ms. Smith stated that it is important to have hands-free laws as opposed to just texting laws because with texting laws there are so many grey areas. People can provide many excuses such as saying they were just using GPS. There are always loopholes with those laws so cleaning those laws up and making it very clear that if a phone is in your hand you are in violation, that makes it much easier for law enforcement and easier to educate the public. The American Academy of Pediatrics just released a study concluding that bans on all handheld device use and texting bans for all drivers are associated with the greatest decrease in fatal motor vehicle crashes. If you look even further into the data, the Georgia study committee before passing their law analyzed data from the 15 states that currently had hands-free laws. Representative John Carson of Georgia compared the calculations from the years before and the years after implementation of the laws. He found that 12 of the 15 states did see a 20% decrease in fatalities within two years of passing their hands-free law. Looking even further into that, you can see in Georgia those results are happening in real-time. When looking at Georgia, it had seen a 34% increase in fatal crashes from 2014 to 2016 and a 12.6% insurance increase so they wanted to look at why fatalities and insurance rates were rising. They concluded in the study committee that there needed to be a hands-free law passed. The law passed with a vote of 144-18 in the House and 52-1 in the Senate and it went into effect on July 1, 2018.

The day the law went into effect, there was a 22% drop in use by drivers typing and swiping on their phones based on telematics data. There was also a 90 day grace period to give the public an opportunity to learn about the law and there is now a 98% awareness about the law. Within the first year, after having been in effect for six months, traffic fatalities were down 3.4%. There was a 15% reduction in commercial motor vehicle fatalities. The telematics data shows a reduction in phone use by drivers and there was a big drop when statewide enforcement of the law picked up. There are normal fluctuations for seasonal traveling but that used to not really go back up which is why you are seeing the reduction in fatalities and crashes. Looking at a smaller scale, if you look at one county in Georgia – in 2017, Cherokee county in Georgia

investigated 34 fatal crashes. In 2018, when the law went into effect halfway through the year they investigated a total of 18 crashes that year and in 2019 with the law in effect all year they investigated only 9 fatal crashes. Overall, since 2018 Georgia is seeing even greater significant declines. As of 18 months into the law, fatalities are down 7% in the state (after a 34% increase). The state is also seeing vulnerable road users benefit as bicycle fatalities are down 30%; pedestrians 11%; ages 15-24 and 55-65 10% and 11%. Intersections and lane departure crashes are down 10% and 12%.

Georgia is not just a one-off. In Minnesota, their law went into effect on August 1, 2019. Comparing their driving fatalities for distracted driving, they were down 2% and overall down 4.6% within that first small period. All ages are also being cited in these statistics – not just the teens. Tennessee passed their hands-free law which went into effect on July 1, 2019. Looking at their data from this past February before COVID really hit, you can see distracted driving crashes year over year were down about 4% and as of February, fatalities were down 9.6% and crashes overall were down 4.1%. Ms. Smith stated that a common question that arises is whether these laws cost constituents any additional money to comply – they do not. With any smartphone, you can download an app to make the phone work with voice activation for free. If mounts are required for compliance, the mounts now cost about \$1 to \$5. The texting laws as they are, are pretty much unenforceable – you need a clear law saying if the phone is in your hand you are in violation.

Another question that arises is how will law enforcement enforce hands-free laws if they couldn't enforce texting laws. There is training developed for them – the International Association of Chiefs of Police just developed a specific training package as well as the traffic safety institute from DOT has some virtual training. These are laws that have been enforced the past decade so they are pretty much easily enforced if there are clear laws saying you are in violation if the phone is in your hand. There is not a lot of opposition to these types of laws as they have broad coalitions of support. Data is showing that the laws will save lives.

Bri Jesionek, P&C Product Development at Nationwide, thanked the Committee for inviting her to speak and thanked Sen. Hackett and Asm. Cooley for sponsoring the Model. Ms. Jesionek leads Nationwide's distracted driving efforts through their P&C product and telematics teams. As a mother of a high-schooler who is about to get his license, Ms. Jesionek wants to do everything in her power to make sure he is safe and protected when he gets behind the wheel without her. Ms. Jesionek stated that she worries that the combination of phone distractions and inexperienced driving will create a dangerous and potentially deadly recipe and without sitting in the passenger seat, will he make the right choice or will he feel pressure to respond to text messages and send snapchats to his friends? Will he have the help of local law enforcement when she cannot be there? In February of this year, Nationwide CEO Kurt Walker published an article "Hands-free Laws would make safer roads." That public call to action aligns with Nationwide's belief as a mutual insurance company that exists to serve and protect its members that now is the time to bring consistency to roadways across the country. Nationwide is committed to reducing distracted driving through heightened public awareness, development of technology to mitigate risks, continued targeted research, and the enactment and enforcement of hands-free laws that ban texting and handheld cell phone use while driving.

As Ms. Smith stated, we know that states that implemented hands-free legislation experienced on average 15.3% decrease in fatality rates within two years of their laws being enacted. That is a number Nationwide can support. As a leading provider of auto insurance in this country, Nationwide strongly supports and applauds NCOIL's work to adopt the Model. We need to create a mindset where distracted driving is viewed just as culturally unacceptable and

undesirable as driving under the influence of drugs or alcohol. A combination of education, public awareness, and public policy will help bring about that mindset.

In addition to supporting efforts to curb distracted driving around the country, Nationwide is working to raise awareness by providing in-app distraction feedback and tips on how to become a safer driver through its telematics mobile program SmartRide. That program provides an opportunity for Nationwide members to save money while becoming safer drivers. Operating system sensor data is captured to provide customers insights into their phone use behind the wheel. By doing so, the call to action can be elevated to eliminate active phone use and create safer roadways for drivers, passengers and pedestrians in all communities.

Ms. Jesionek stated that safety advocates will tell you that distracted driving fatalities and crashes are underreported. That is exactly what is being seen in Nationwide's partnership with Cambridge Mobile Telematics (CMT) who is currently the largest mobile telematics provider in the industry. While NHTSA estimates that 4.2% of drivers are distracted at any given time between 7 a.m. and 7 p.m., we know based on CMT's data that 41% of car trips between those hours in 2019 involved significant cell phone distraction. That figure was 26% in 2017, representing a substantial increase in just two years. You could also say that roughly four out of ten cars passing you, a family member or a friend was involved in a significant cell phone distraction. As we are all aware, all it takes is one vehicle to change someone's life forever. Additionally, CMT's analysis of crash data determined that 19% of crashes were attributable to phone based distraction. Reducing active distraction will have a significant impact on accidents and could help to save lives.

Starting in January, 2017 CMT has recorded and analyzed 54 million trips across the U.S. In 2019, that data showed 37% of all trips involve significant driver cell phone distraction and that number is trending upwards. In 2018, the national average was 35%. In some states, the analysis showed more than 50% of trips involved significant phone distraction. These numbers confirm what we all see on the road on a daily basis and it is only getting worse. The increased prevalence of smartphone technology has accompanied an increase in active distraction and all road users are impacted. A CMT analysis of roadway fatalities and injuries in the U.S. shows a direct correlation between the increase in owned smartphones and fatalities. The current pandemic has only increased society's reliance on technology and while vehicle miles driven have decreased in 2020, the national safety council announced that motor vehicle deaths were up 20% in the first six months of the year. We need to move swiftly to protect futures. Smartphone ownership and use in the U.S. are at a record high and the data analysis at CMT shows that by 2025, 4,000 people per year will lose their life from smartphone distraction-related crashes. By that time, 500,000 crashes will have been associated directly with smartphone distraction and we cannot allow that to happen.

Ms. Jesionek stated that in her home state of Ohio, the Governor called for passage of a distracted driving bill similar to the NCOIL Model after it was reported that July was the deadliest month on Ohio's roadways since 2007. Nationwide believes that drivers should have their eyes on the roadways instead of e-mailing, texting, shopping, posting, liking, viewing, watching or any other distraction caused by viewing a cell phone. As a company committed to protecting people, businesses and futures with extraordinary care, Nationwide looks forward to continuing to work with NCOIL and its members and officials across the country to raise awareness and to advocate for change to keep all eyes on the road and both hands on the wheel.

Annalia Michelman, Senior Legislative Attorney at the American Medical Association (AMA), thanked that Committee for inviting her to speak and thanked NCOIL for its work on distracted

driving. The AMA takes the problem of distracted driving very seriously and it considers it to be a wholly preventable public health hazard. The use of a handheld wireless communication device is the leading source of distraction for drivers. The act of composing, sending, reading messages, photos or videos or anything else interrupts driver's cognitive attention and causes vision to be directed away from the road and compromises manual control of the vehicle. The AMA encourages its physicians to educate patients about the public health risks involved with using a handheld device while operating a motor vehicle and they advocate for such legislation prohibiting such use while driving. The AMA in fact has its own model legislation on distracted driving which mirrors the NCOIL draft Model in many ways. The AMA supports NCOIL's Model and appreciates the work thus far. Legislation to prohibit use of a handheld wireless device while driving is absolutely vital to improving roadway safety for motor vehicle drivers as well as passengers, bicycles, pedestrians and other road users.

Ms. Michelman stated that the one suggestion AMA has is to encourage the Committee to include an exception for a physician or other healthcare professional acting within the course and scope of their employment. Those professionals do not necessarily fall within the definition of emergency medical service personnel which is included in the NCOIL draft Model. AMA's physician members often must use a handheld device to respond to an urgent medical matter remotely while they are in transit to a healthcare facility to respond in person. Of course, it is important that physicians and others take all safety measures available to avoid handheld use such as turning on hands-free mode but sometimes as is the case with other first responders, hand held use is simply unavoidable. Ms. Michelman reiterated AMA's support of the Model and stated that the AMA looks forward to working with NCOIL going forward.

Sen. Jason Rapert (AR), NCOIL Immediate Past President, stated that NHTSA invited him to speak a few years ago regarding the drowsy driving issue as Arkansas had developed a law similar to Maggie's law in New Jersey. Sen. Rapert stated that he supports the concepts of the Model and supports the direction of the Committee. Sen. Rapert stated that with regard to GPS maps, he is not sure how much different it is when looking at a GPS map and looking at a video screen. Sen. Rapert also stated that a lot of the content that he likes to listen to is not on the radio and consists of old, archived video. Accordingly, he will turn that on when driving down the road but he is not watching the video but just listening to it. That raises interesting questions as to how that will be considered in terms of distracting driving laws, particularly in situations where after an accident law enforcement investigates the phone use.

Sen. Hackett stated that the equipment continues to get better to protect against this and one of the things to watch is that systems in cars are getting louder and people want to be told what to do without visually looking at things. Admin. Nason stated that these issues involving privacy and new technology are ones that we hear all the time at FHA especially as handheld devices become more and more sophisticated and the vehicle also becomes more sophisticated. That is one of the reasons why it is stressed that numerous steps are needed to combat this, including education. Enforcement and education and then the improvements in new technology can work against us but they can also work for us and that is something that FHA has looked at – how do we have the technology work with us; we don't need to be at war with it. There can be places where it can help. There are ways to approach the industry to talk about some of these issues without only focusing on one leg of the stool.

Asm. Kevin Cahill (NY), NCOIL Treasurer, stated that a number of statistics were cited and in some instances the entity that developed those statistics was also cited. What was not really developed was the methodology used to arrive at those statistics. Also, in drilling down into those statistics, Asm. Cahill asked if the methodology of distraction and the mode of distraction

make a difference in terms of how much it puts the motoring public at risk. Further, Asm. Cahill stated that with regard to the AMA's request for an exemption, he has seen a lot of people who are exempt from current distracted driving laws in NY and they are not using exemptions for emergency purposes but rather using them because they don't have to pay attention to the law as the rest of us do and should and they are as distracted as any other driver. Asm. Cahill asked if the AMA would accept something more akin to an affirmative defense as opposed to an exemption so that if someone were to establish that they were in fact on an emergency call they could be forgiven for putting us all at risk. Asm. Cahill closed by stating that the Griffith Institute several years ago conducted a distracted driving presentation for legislators and it was the most enlightening program he has participated in at NCOIL. It established firmly in his mind that humans are not actually capable of multi-tasking; we can only mono-task and we have a very easy tendency to lose our focus on what is before us if we allow something else to take over.

Ms. Smith stated that for the statistics she cited, they just looked at the fatality numbers of crashes and compared year to year and then within those numbers it was state DOTs that did analysis of their distracted driving crashes per se. Ms. Smith stated that she could get Asm. Cahill more information as to more detailed methodologies used.

Ms. Michelman stated that the idea of an affirmative defense makes sense. Physicians en route to a hospital are not identifiable as such when they are driving their cars they are not driving an ambulance so she thinks that they would be pulled over for being on their phone or whatever it may be so they would already sort of be in the situation where there would only be a citation. Ms. Michelman stated that she would be happy to discuss this issue further with her members but at first glance, the idea of an affirmative defense makes sense.

Ms. Jesionek stated that the statistics that she shared are all in direct correlation to phone use and crash data through CMTs analysis.

Rep. Tom Oliverson, M.D. (TX), stated that in Texas there is an app that has grown outside of Texas that is called Safe to Save. It is very popular with the high-school and college crowds and you basically put it on your phone and it uses telematics data to figure out when you are driving and as long as you are not touching your phone when driving you are earning points that can be used as discounts at restaurants and shops and an extensive network has been built. Rep. Oliverson stated that he brings that up because there is a carrot as well as a stick method of solving this problem that we need to think about as well.

Sen. Hackett stated that education is very important. At Ohio's last hearing on this issue, the public defenders testified and their big issue was what is the intent? When you talk to the people that have been in the crashes they will say "I would never have thought that." When you look at alcohol and DUI's, people who drink too much know that they are breaking the law so they choose to break the law and the intent is there. Accordingly, a combination is important. The NCOIL Model basically leaves it up to the individual states to create penalties. There are dollar penalties listed but whether it's a felony or misdemeanor is left up to the states. In Ohio, for a felony one, two or three you go to jail but there are always issues of intent such as what the public defenders raised. Therefore, education is extremely important but we also have to learn from the past such as with DUI's. The number of DUI's has decreased significantly but part of that is because of the stiff penalties. Every public defender will tell you that every case they have on distracted driving involves someone not knowing about any distracted driving law because they don't realize it because they have been doing it for such a long time, albeit with different phones. Education combined with a carrot and stick approach is a great idea.

Asm. Cooley stated that the testimony has made clear that we have an activity of driving in a motor vehicle that has been around for a long time. Technology has made it subject to a sort of creeping recklessness. Phones get smarter and there are more capabilities and people don't put them down. They are not designed to be reckless but that is the net effect. There is a dramatic amount of activity happening in the driver's seat beyond what was the case 5, 10, and 15 years ago. The technology is improving things. The map functions are excellent but most of the map functions will provide verbal audio directions once you program it – you don't necessarily have to hold the map or look at it. The virtue of the Model is that when NCOIL passes a Model and it gets introduced across the country, that gives clear signals to the technology companies and designers of phones and lets them understand where they want to be designing their products to anticipate the state of the law during the service life of the product they are designing now. This is where a clear Model law that gains national support that is seen as saving lives will be a very clear signal to manufacturers. This issue is somewhat unique compared to other NCOIL models as other models show what the best path is but this Model can actually shape capital investment and innovation in a more safe manner and start to confront the creeping recklessness. The conversation is extremely important on all sides to understand how to make this a transition people feel is constructive. It will transform into lower insurance premiums just like seat belt laws did across the country.

Admin. Nason thanked the Committee again for inviting her to speak and noted that although she could not comment on the Model specially, she hopes her remarks conveyed that FHA and DOT is committed to working with state legislatures and legislators on these important issues. Admin. Nason stated that she spent several years on the board of Mothers Against Drunk Driving (MADD) and she spoke at their 25th anniversary. When MADD first started, it was a joke as Jonny Carson told jokes about how drunk people were driving. So, it was a combination of passing laws, enforcing laws and educating the public combined with new technology such as breathalyzers.

Rep. Rowland noted there will be no vote on the Model today. The Model will be discussed again in December at the Annual Meeting and when the sponsors feel the time is right, a vote will be taken.

DISCUSSION ON THE FUTURE OF TRANSPORTATION AND IMPACTS ON THE P&C INDUSTRY

Robin Chase, Co-founder and former CEO of Zipcar and founder and former CEO of Buzzcar, thanked the Committee for the opportunity to speak and stated that every time she founded new mobility companies insurance has been a big issue and in some instances it took three years to obtain insurance before a company could be started. Ms. Chase stated that policy and insurance regulation needs to build on solid ground. In 2000, when Ms. Chase co-founded Zipcar, the questions for insurers was is this a fleet? But the users for the fleet are not employees so they could not think of it like that. From a state standpoint, questions arose like is it a car rental service? Boston, where the company had launched, had recently enacted a law that was a \$10 surcharge on every car rental in order to pay for their new convention center. When they created the law they said "oh, well these are out-of-towners who are renting cars so it's great." But Zipcar and car-sharing is used by people in the neighborhood instead of owning their own car and it's by the hour and by the day so if Zipcar was a car-rental service, a one hour transaction would then incur a \$10 charge which would double the charge of that hour.

Then there is a whole issue regarding whether Zipcar cars should get commercial or personal plates. If commercial plates were obtained, would the cars then be allowed to park in loading

zones? Then when the company moved to Washington D.C. another issue arose involving for every retail entity in the city there was a \$300 fee and they questioned whether Zipcars were retail entities and another issue arose involving not being able to have Zipcars in residentially zoned areas because they are commercial vehicles. Yet, Zipcar is actually used by people everywhere around you instead of their own cars so they should exist and get the same treatment in all ways as personal cars. This all created a huge amount of anxiety for both Ms. Chase, the insurers, and policymakers at the state and local level.

Ms. Chase stated that in 2007, Velib, which is probably the first very large bike sharing company, started in Paris. When they went onto Paris streets, there was a huge issue with people saying “why is the city giving so much space to this private company?” “Why are shared bikes being called public transportation when shared in public space but then owned by private companies?” “Is my personal bike as good as public transportation and are there age limits as to who gets to ride them even though there is no age limit for personal bikes?” “Who is responsible for liability?” Those are all questions that arose as shared bikes had never been seen before.

Then, in 2012, Uber and Lyft started to get going and they claimed they were not taxis when in reality they are taxi’s. And we still continue to argue over whether the drivers are employees and whether the vehicles, which are personal vehicles, need to undergo all of the laws applicable to taxi’s – should they have special types of inspection? With regard to insurance, when I am driving my car for my own purpose, my insurance controls but when I am using it for a commercial purpose, it now has to trigger over to a private commercial insurance policy. Ms. Chase stated that it drove her crazy that during the first few years that they operated, they completely lied stating that the insurance industry was covering them and whether a personal insurance policy would cover the driver. There was a car accident in San Francisco where the person who had been driving ran someone over at a crosswalk and the question was whether the app was turned on or not. Accordingly, there has been so much thought put into what the right policy recommendations should be for transportation evolution and insurance.

Fast forwarding to 2017, the rise of e-scooters started and questions arose as to whether they are safe and what rules govern them. Ms. Chase stated that she thought it was funny that there has been so much discussion around the safety of e-scooters but not around very large SUVs and their grills, particularly since 33% of motor-vehicle fatalities are people outside the vehicle. When you look at e-scooter accidents, very few are self-induced – it is cars that are hitting and killing these people. The rise in pedestrian and cyclist fatalities is enormous and a good piece is contributed to distracted driving and another good piece is contributed to the large number of SUVs on the roads such that when they hit pedestrians and cyclists there are fatalities. This is all to say that this entire brand new mobility service arrived and a lot of drama was experienced. Further, it is important to consider what will happen in the future when autonomous vehicles are introduced and we know that there is a very strong push to rent out a personal autonomous vehicle – is that going to be considered a taxi or will it be under a special new silo created for Uber and Lyft? Will it be considered public transportation if it is filled with four people? What about one person; is it still doing good things for the public? It is going to introduce new issues of commercial vs. personal use.

Ms. Chase stated that about two years ago as she traveled providing transportation policy recommendations, particularly urban transportation policy, and during conversations with several companies, she worked with NGO’s on shared mobility principles for livable cities. The idea was to get an alignment between all the stakeholders so city governments, service providers and individuals could agree on a joint vision as to where we should be moving

forward. Under New Urban Mobility Alliance (NUMO), something was created coming to this assessment of new mobility and asking how to legislate for it and insure it. Ms. Chase stated that she realized that we need to get down to the foundation of risks and public benefit. The last 100 years have been spent creating silos for bicycles, taxis, personal cars and trucks. What we know is that those silos have been completely obliterated and are going to be increasingly obliterated. For Zipcar, it was very annoying having to debate over the personal vs. commercial vs. car rental issues. We cannot think in these silos and instead need to think in vehicle-type and risk-type silos such as weight, speed, footprint and emissions.

Ms. Chase's colleague, Carlos Prado, stated that NUMO started with an analogy to the periodic table which we know from chemistry was the evolution of alchemy and we are currently involved in the alchemy of transportation. The goal was to find a way to identify those attributes of vehicles and then find something that is much clearer in terms of distinguishing very minute differences. What is being worked on now is a much more detailed tool that can help identify certain characteristics. There are about 40 different vehicles on the platform being developed and you can choose based on the characteristics or attributes of a vehicle, even if it is something fantastic like a dragon and whether it is being used for commercial or personal purposes. Then you can start to generate an insurance risk assessment through a series of algorithms including what type of driver's license would be needed, what type of data requirements are needed and whether it needs a subsidy or not. A lot of work has been done getting into the details and weeds and work has begun to link the vehicle to see whether or not it could be used on a segment of a street such as near or far away from the curb and what the rules are associated with that.

Mr. Prado stated that there are currently 40 vehicles integrated into the platform and the algorithms are then linked to policy recommendations for licensing, space allocation, and fees/fines based on risk assessment. The way forward for the tool is to improve the usability of the platform and the reporting so that data can be obtained from cities and it can be linked to curbside management with service providers and legislators and companies with insurance expertise so that risk assessment can be improved. That way, we can start to understand and address these very siloed ways of learning and acting upon transportation. Mr. Prado stated that the initiative is completely open and free and urged anyone interested to reach out to him.

Ms. Chase stated that the bottom line is that legislators should recognize that we are moving and have been for the last 20 years, away from very siloed, defined vehicle types. There is so much technology now and so many different ways to share in many different ways that the industry is being transformed. Ms. Chase stated that her recommendation, especially from the perspective on trying to get insurance on new vehicles, is to have policy written on the basis of key risk figures such as weight, speed and emissions. That would make the future of transportation regulation much simpler.

RE-ADOPTION OF MODEL LAWS

Rep. Rowland stated that the following Models are scheduled for re-adoption: the Post Assessment Property and Liability Insurance Guaranty Association Model Act; the Model Act Regarding Medicaid Interception of Insurance Payments; the Storm Chaser Consumer Protection Act; the Model Act Regarding Use of Credit Information in Personal Insurance; and the Model Act to Regulate Insurance Requirements for Transportation Network Companies and Transportation Network Drivers.

Rep. Rowland noted that the Models were on the agenda of the interim meeting of the Committee on July 24, 2020 and the opportunity for comments on the Models from legislators and interested parties was given during that Meeting so that the Models would be voted on today without further discussion.

Upon a Motion made by Rep. Tom Oliverson, M.D. (TX) and seconded by Rep. Dean Schamore (KY), the Committee voted without objection by way of a voice to re-adopt the Models.

ANY OTHER BUSINESS

Rep. Lehman stated that the Special Committee on Natural Disaster Recovery will now sunset since the Committee accomplished its goal – adopting the Private Primary Residential Flood Insurance Model Act. Rep. Lehman then appointed the Chair of that Committee, North Carolina Senator Vickie Sawyer, to serve as Vice Chair of this Committee as that position is currently vacant.

ADJOURNMENT

Upon a Motion made by Asm. Cooley and seconded by Del. Westfall, the Committee adjourned at 6:00 p.m.