

“Fairness for  
Responsible Drivers  
Model Act”  
(a/k/a “No Pay, No  
Play”)

NCOIL 2021 NATIONAL MEETING

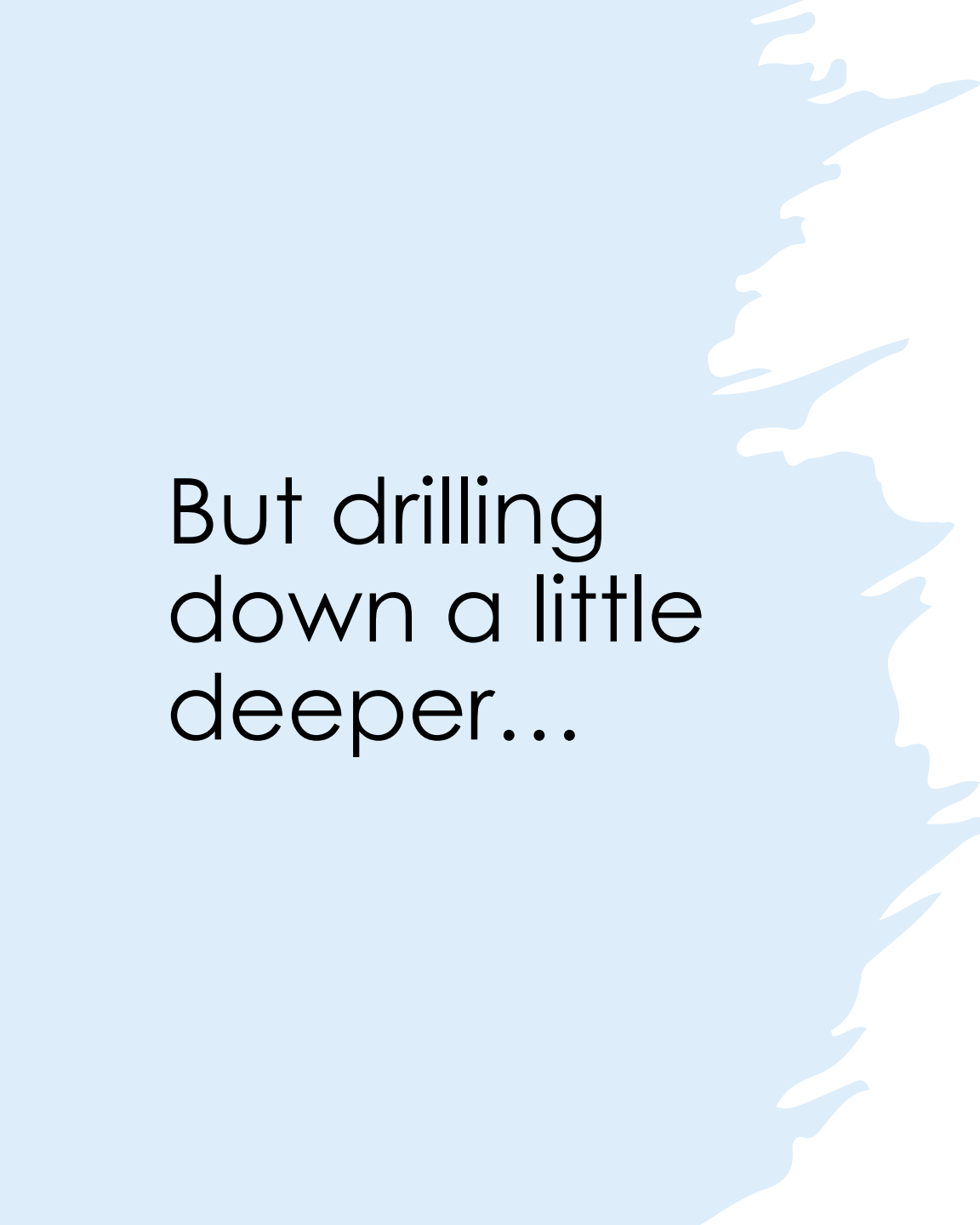
# Who am I?

- Business litigation defense attorney from 1984-2008, often representing insurance companies
- Law professor 2008-present teaching civil procedure and evidence (the core civil litigation courses), and a course on natural disasters (largely, an insurance course)
- Researcher, author, and advocate on insurance
- Consumer Representative to NAIC
- Frequent volunteer and partner with United Policyholders

# The Big Picture

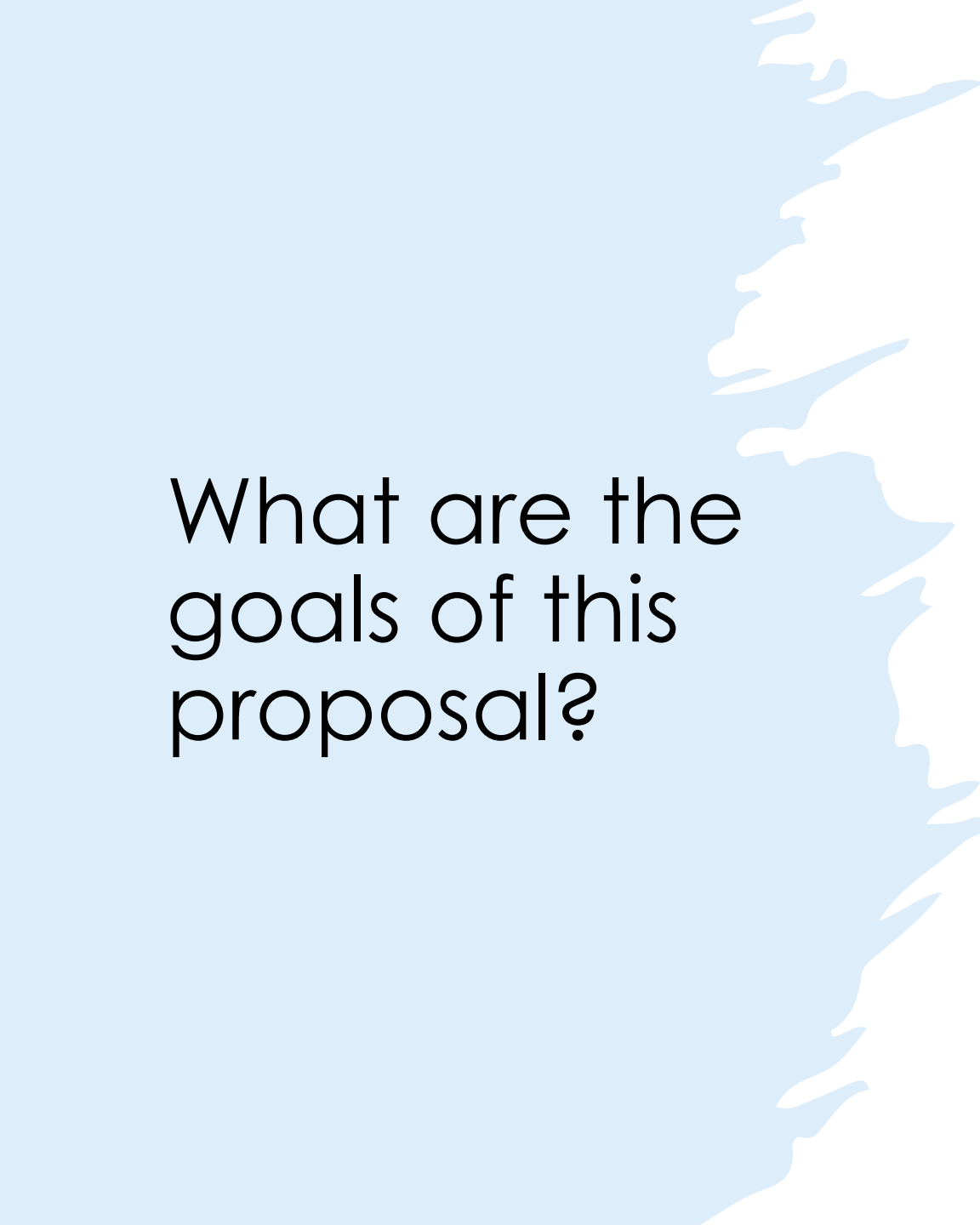


- As a result of the 2020 NCOIL National Meeting, and I assume the comments then of the person you will next hear from today—Andrew Kirkner of NAMIC-- this Model Act now is titled as 'Fairness for Responsible Drivers' rather than as 'No Pay, No Play.' The point being made is that this primarily is about uninsured motorists making insurance too expensive for the rest of us.
- As now framed, this is a proposal to reduce the cost of insurance by decreasing the percentage of uninsured motorists, by passing a law that an uninsured motorist cannot recover non-economic damages.
- Intuitively, this seems a perfectly sensible idea.




But drilling  
down a little  
deeper...

- As a general matter, no driver can **recover** any form of damages unless the driver themselves either is **not** at fault, **or** someone else **is** at least more at fault.
- So, the structure of this law is to **punish an innocent (or relatively innocent) person** and give **a windfall to an at fault person**.
- Which intuitively is troublesome.
- So, I have tried to see which side of this the data supports.



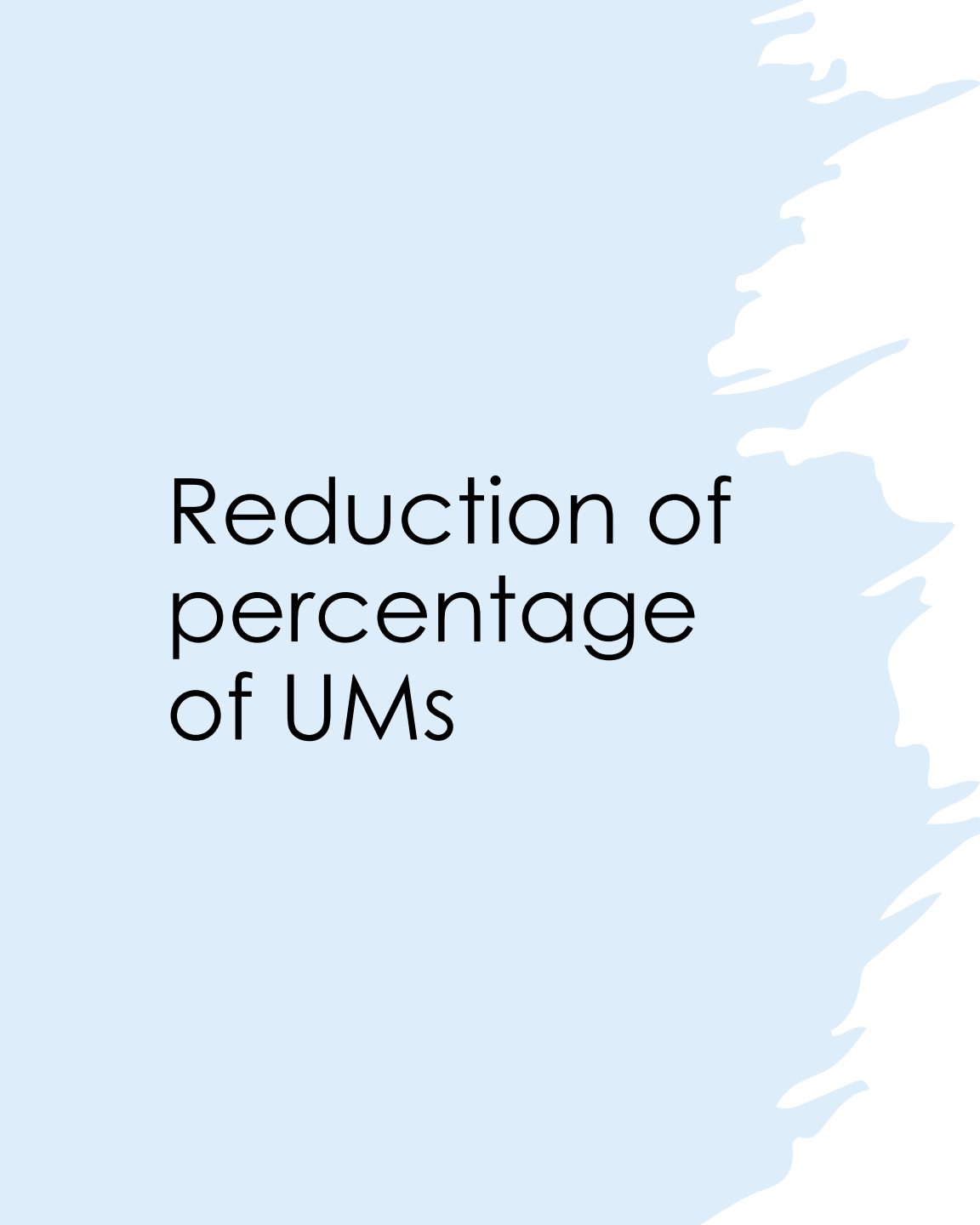
What are the goals of this proposal?

- NCOIL said in its 2014 resolution starting all of this, the idea behind this is three-fold:
  - increase the percentage of folks who have insurance,
  - lower insurance premiums,
  - and reduce fraud.



Here is what  
the data tells  
me on how  
these  
competing  
intuitions play  
out:

- You are going to reduce the percentage of uninsured motorists by a trivial amount.
- You are going to lower premiums by a trivial amount.
- You are not going to touch fraud at all.
- And all of this:
  - will be at a cost to innocent, actually harmed drivers,
  - windfalls to actually at fault drivers,
  - and will probably have disparate impact by race.



# Reduction of percentage of UMs

- The combined findings of the 2012 and 2020 IRC reports is that the percentage of motorists who are uninsured will reduce from 12.6% to 12.4%; in other words, you should see **an increase of insured motorists of two-tenths of one percent.**
  - 1.6% (2012 IRC calculation of reduction in uninsured as a result of No Pay, No Play) x 12.6% (2020 IRC calculation of percentage of uninsured)

# Lower premiums

- If adopted, then this proposal will result in an average premium reduction for auto insurance, per car, per year, of **16 cents**.
  - This calculation is based on a 2012 IRC study that calculated that in the 12 states that adopted laws such as this, of the pool of people previously uninsured, 1.6% then insured.
  - Last month, the IRC published its finding that the current percentage of uninsured nationwide is 12.6%.
  - That study last month also found that the average carry cost of the uninsured on the insured was a per year, per car, premium increase of \$78.
  - Put all those figures together and what they add up to is that if you adopt a law such as this, you should expect an average premium reduction for auto insurance, per car, per year, of **16 cents**.



# Fraud



- There simply is no data to support the conclusion that a law such as this will reduce fraud.
- And this law is not just blocking fraudulent damage claims, but legitimate claims. It's a "throw out the baby with the bath water" problem.
- It perhaps is true that in relatively small dollar claims circumstances the prudent insurer will just settle even a suspicious claim.
- But that is not a problem with UMs who are innocent victims. It calls perhaps for re-visiting of whether you believe in and will ever allow in any context non-economic damages; or how claims settlement is approached by insurers. But it does NOT support trying to disincentivize fraudulent actors by punishing non-fraudulent actors.



# Fairness Gains

- In last year's NCOIL Meeting, Mr. Kirkner described the fairness concern as: "Individuals who do not participate in the system should not be able to inure the benefits of that same system."
- But for this proposal, that is mixing apples and oranges.
- Because this proposal does not block a UM from recovering ANY damages; it only blocks them from recovering non-economic damages.
- The question of who should be forced to buy what kind of insurance simply has nothing to do with the question of what kind of damages the law should recognize.

# Fairness Costs

- Punish the innocent (or relatively innocent)
- Reward the guilty
- Be an incentive (probably small) of moral hazard by *insureds*
  - IRC: “The intention of ‘no pay, no play’ laws is to **relieve at-fault drivers...from having to compensate** uninsured drivers....”
- Disparate impact by race
  - If we assume
    - Price sensitivity is race neutral
    - The more expensive insurance is the more people will be uninsured motorists
  - Julia Angwin spoke to NCOIL just this past Thursday about how auto insurance in minority neighborhoods often costs more than seems to be warranted by risk. (<https://www.propublica.org/article/minority-neighborhoods-higher-car-insurance-premiums-methodology>).
  - Which all adds up to price-driven instances of Uninsured Motorists is not race neutral
    - There is not data on what percentage of UMs are because of cost, but if it were zero then this model law wouldn't work anyway
  - Which means penalties on UMs are not race neutral



## The Bottom Line:

For a 16-cent reduction in premiums and a 0.2% increase in the percentage of insureds, windfalls are given to at-fault drivers and largely innocent victims are punished, with some likelihood of disproportionate harm falling on minority communities.