

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
PROPERTY & CASUALTY INSURANCE COMMITTEE
CHARLESTON, SOUTH CAROLINA
APRIL 18, 2021
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Property & Casualty Insurance Committee met at the Francis Marion Hotel on Sunday, April 18, 2021 at 9:00 A.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)	Sen. Shawn Vedaa (ND)*
Asm. Ken Cooley (CA)*	Asm. Ken Blankenbush (NY)
Rep. Matt Lehman (IN)	Asm. Kevin Cahill (NY)*
Rep. Joe Fischer (KY)	Asw. Pam Hunter (NY)*
Rep. Brenda Carter (MI)	Sen. Bob Hackett (OH)
Rep. Daire Rendon (MI)	Rep. Carl Anderson (SC)
Sen. Paul Utke (MN)*	Del. Steve Westfall (WV)
Sen. Paul Wieland (MO)	

Other legislators present were:

Sen. Mathew Pitsch (AR)	Sen. Lana Theis (MI)*
Rep. Terri Austin (IN)	Rep. Brian Lampton (OH)
Rep. Jim Gooch (KY)*	Rep. Forrest Bennett (OK)
Sen. Brandon Smith (KY)	Sen. Ronnie Cromer (SC)
Rep. Edmond Jordan (LA)*	

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO
Will Melofchik, NCOIL General Counsel
Tess Badenhausen, Assistant Director of Administration, NCOIL Support Services, LLC

QUORUM

Upon a motion made by Rep. Matt Lehman (IN), NCOIL President, and seconded by Sen. Jason Rapert (AR), NCOIL Immediate Past President, the Committee voted without objection by way of a voice vote to waive the quorum requirement.

MINUTES

Upon a motion made by Asm. Ken Cooley (CA), NCOIL Vice President and seconded by Rep. Carl Anderson (SC), the Committee voted without objection by way of a voice vote to adopt the minutes of the Committee's December 12, 2020 and February 19, 2021 meetings.

CONSIDERATION OF NCOIL DISTRACTED DRIVING MODEL ACT

Rep. Rowland thanked everyone for their work thus far on the Model as we have been discussing this issue for several months. We will be voting on the Model today but I'll first turn it over to the sponsors of the Model, Sen. Bob Hackett (OH) and Asm. Cooley, for some brief remarks

Sen. Hackett stated I won't take up much time – I just want to say a few words before we begin and note the changes that me and my colleague and co-sponsor of the Model, Asm. Cooley, have made to the Model since we last met in Tampa in December. The Model is in the legislative binders on page 353. The changes made to the Model are on page 358 in the form of a new Section 6 titled Enforcement and Reporting. That language was included in direct response to some concerns that were raised during our December meeting about the potential negative impact that distracted driving laws that allow for primary enforcement could have on minorities. The new language is taken from the existing Florida distracted driving statute and it requires the enforcement officer when issuing a citation for a violation of the Act to record the race and ethnicity of the violator. That information must then be compiled and reported annually to the Governor, the President of the Senate, and the Speaker of the House of Representatives. We have also included new language relating to unauthorized searches and seizures of a driver's mobile communications device. I think these are very good changes and they strengthen the Model. I look forward to a positive vote on the Model. I'll now turn it over to my fellow sponsor, Asm. Cooley.

Asm. Cooley stated Sen. Hackett did a great job in describing the changes to the Model and I'll just stress the importance of the changes in that they reflect the strength and bipartisan nature of NCOIL. At our last meeting, very valid concerns were raised regarding primary enforcement and I think the changes you have before you reflect a very strong compromise in that the Model still allows for primary enforcement, but it properly recognizes that attention must be paid to how laws like these may have a negative impact on minorities. By requiring the recording and reporting of this information, steps can be taken to address any wrongs at the appropriate time. Thank you to everyone who has worked on the Model and I look forward to shepherding it across the finish line today.

Hearing no questions or comments, the Model was adopted on unanimous consent.

CONSIDERATION OF AMENDMENTS TO NCOIL POST ASSESSMENT PROPERTY AND LIABILITY INSURANCE GUARANTY ASSOCIATION MODEL ACT

Rep. Rowland stated that this is another issue that we have been discussing for several months and we will be taking a vote today. I'll turn it over to the sponsor of the amendments, Asm. Cooley, for remarks. Asm. Cooley stated that this Model was actually readopted by this Committee during its September meeting but during the buildup to that meeting the National Conference of Insurance Guaranty Funds (NCIGF) had brought forth some proposed amendments to the Model to make the guaranty fund business dovetail better with the Model. The Model is in your binders on page 359. The first proposed amendment is on page 364 and would adjust the Model to address insurance business that has been "restructured" under recently enacted laws which permit insurance business transfers (IBTs) or divisions.

This amendment aligns with the guaranty fund consumer protections included in the insurer division Model that was adopted by the Financial Services & Multi-Lines Issues Committee yesterday. The second amendment is on page 368 and would expressly permit assessments to insurance company guaranty association members to fund various expenses that maintain the guaranty funds in an "always ready" posture even when claims activity is low. This is meant to

plan in advance for insurance liquidations. It should be noted that the administrative assessment authority sought with this language, combined with any other assessments made to member insurers, would not exceed the two percent threshold already in place in most states. Overall, these amendments are important to recognize the important role that guaranty funds serve in protecting consumers. The amendments also reflect the reality that marketplaces change over time and adjustments to laws and regulations are often necessary.

Rep. Lehman asked as an overarching general question have we ever received a report on what the status of the guaranty funds are from jurisdictions. It seems to me that are talking about making sure they stay ready and we put parameters in place but I'm just curious have we seen any ticks up and down based on COVID or other issues and what's the overall status by state. Asm. Cooley stated that we can readily get one and it can be an outstanding program. You have the NCIGF as they are the crossroads for that type of info and in particular I know when they meet they are looking at national trends whether COVID related or not so I don't know when we last had a program overview from NCIGF but I'm sure they would be delighted to provide background and I think it would be good for us. My view is that the first line of consumer protection in insurance are the rating laws to keep company's solvent to pay claims and meet the expectations of the consumer but the second line of defense are the guaranty funds. They spend a lot of time making sure there are no gaps in coverage so I would think they would be delighted to put together an update on their work and recent trends of note. I see we are joined by Barbara Cox who is counsel for NCIGF who perhaps would like to comment.

Ms. Cox stated that we would be happy to deliver a presentation to NCOIL. I can work with NCOIL staff to make sure we are covering the topics that you are most interested in whether it's the levels of protection in and status of laws and assessments and solvency history, but any kind of info you would like we would be happy to make a presentation. Rep. Lehman said to add to that we've been having conversations about captives and a lot of times they don't fall within guaranty funds so as we move in that direction as well would you have data saying whether they are trusts or self-insured pools and things like that that are operating outside guaranty funds as that would be a good conversation as well. Ms. Cox stated we don't collect info on those entities and self-insured funds but we could probably do some research and put something together but I'm not sure we are the best organization to speak to those issues. I will say off the top of my head that I believe one state's guaranty fund protection is specifically excluded from captive laws. Asm. Cooley stated he will work with staff to work that out.

Hearing no further comments or questions, upon a Motion made by Sen. Hackett and seconded by Rep. Daire Rendon, the Committed voted without objection to adopt the amendments by way of a voice vote.

INTRODUCTION OF NCOIL FAIRNESS FOR RESPONSIBLE DRIVERS MODEL ACT

Rep. Rowland stated that we had a great discussion on this issue at our last meeting in December. Since that time, Senator Shawn Vedaa of North Dakota has stepped forward with a model act on this issue that he would like to sponsor.

Sen. Vedaa stated that I'm proud to sponsor this Model and I look forward to receiving feedback on it from a wide array of interested parties. The Model is in your binders on page 379 and is very straightforward. In 2014, NCOIL adopted a Resolution in support of "No Pay, No Play" laws – this Model can be viewed as the next step in support of those laws in the form of a Model law. I note that the Model is titled "fairness for responsible drivers" because I think that is the better way to frame this issue – it may seem like semantics but at the end of the day this issue

is centered around fairness. The Model, and the laws in the approximately 10 states that have similar laws, including my home state of North Dakota, prohibits uninsured drivers from collecting the benefits of a system in which they do not participate. Specifically, the Model prohibits a person, or personal representative of a person, who was an uninsured motorist and who sustained bodily injury or property damage as the result of a motor vehicle accident from recovering non-economic damages for the person's bodily injury or property damage or death. It's important to note that such prohibition does not apply to economic damages, and there are exceptions as set forth in Section 5. Also, the prohibition does not apply to an uninsured motorist who at the time of the automobile accident has failed to maintain coverage for a period of 45 days or less and who had maintained continuous coverage for at least one year immediately prior to such failure to maintain coverage. I look forward to working with everyone on the Model.

Asm. Cooley noted that CA has a similar law that was adopted by the voters in the 1990s and it was certainly seen as fairness when presented to voters and they took it up.

Sen. Rapert asked if there was information as to how many states have adopted this type of law in addition to ND and CA. Sen. Vedaa stated approximately 10 states have already adopted this type of law.

Rep. Jim Gooch (KY) stated that regarding non-economic damages, I understand that the driver/owner of the vehicle may not be insured and they could be excluded from recovery but you may also have some who are passengers in the vehicle who may not be insured – is there a distinction there? Sen. Vedaa stated that I believe but am not certain that those individuals in the vehicle would be held harmless and would have some sort of recovery from the driver at fault.

Ken Klein, Professor of Law at California Western School of Law stated that I appreciate the opportunity to speak to NCOIL and it has made me think deeply about this interesting issue. I grew up in TX where one of the greatest country songs written said “the road to hell is paved with the good intentions” and I think that may be a preview of where I come out here. I've spent most of my career defending companies in business litigation and basically what my varied background has taught me is that I should test intuition with data because as I've become older I've concluded that most things that are intuitively true to me turn out to be unsupported by data. Regarding the big picture of the Model I note that the title has changed from no pay-no play to focusing on fairness and I take it the point being made is that primarily this is about uninsured motorists making insurance too expensive for the rest of us. So this is now framed as a proposal to reduce the cost of insurance by decreasing the percentage of uninsured motorist by passing a law that penalizes uninsured motorists should they be in an accident and in response to the question asked as currently framed the model is talking about uninsured motorists and that probably does mean it doesn't act to exclude recovery by a passenger.

Intuitively this seems like a perfectly good idea but there is another side of the question which is depending on whether your state is a comparative negligence or contributing negligence state as a general matter you cannot recover any form of damages as a driver unless you are not at fault or someone is more at fault and you don't pay any damages unless you are at fault and the structure of this law is to create a penalty to an innocent or relatively innocent driver and to give relief to a driver who is actually at fault and give them a windfall of sort so if you think about it that way its intuitively troublesome. So I've tried to go to the data and see where it breaks on these two conflicting intuitions.

The starting point is to look at the goals of the proposal which are set out in NCOIL's 2014 resolution starting all of this it calls out three goals: to increase the percentage of folks who have insurance; lower insurance premiums; and reduce fraud. I will note by the way that except as expressions of fairness, fairness isn't on that list. Here is what the data tells me on these things and we'll get into the details of this after this slide. You're going to reduce the percentage of uninsured motorists if you pass this but only by a trivial amount; your premiums are going to go down but again only by a trivial matter; you're probably not going to touch fraud at all and all of this will be with some fairness costs all of which are largely innocent drivers will actually not get full compensation of their actual damages; there will be windfalls to at fault drivers and you're facing a real likelihood of disparate impact by race so let's go through that.

Twice the insurance research council (IRC) in recent years has looked at these issues and provided us a good database once in 2012 and the second time in what is styled a 2020 report but came out last month. I contacted the people at IRC and they have confirmed that I am reading their reports accurately as I derived these numbers: 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. The bottom line is that the percentage of reduction in uninsured motorist rates that you should expect from the model is two tenths of one percent and that could still work out to be big numbers so you might be asking yourself well what about dollars and cents. Well, this is what you will get – if adopted the proposal will result in an average premium reduction of auto insurance per car per year of 16 cents.

So, what about fraud – fraud is a real concern. NCOIL is a member of the Coalition Against Insurance Fraud and I asked their Executive Director Matthew Smith about fraud and he noted that there is a concern as there always is of staged accidents and medical fraud rings and vehicle jump ins but he also confirmed for me what I believed to be the case which is that there is actually no data at all that a law such as this will reduce fraud and why is that? That's because the model assumes there are fraudulent claims – either accidents that didn't happen or non-economic damages that didn't happen and they aren't getting sniffed out by insurance professionals or litigation issues and they are getting paid and I'm sure that happens but I'm also sure there are legitimately uninsured motorists who get hurt who have true pain and suffering and this is a baby with a bathwater problem. You can't quantify as there is no data to quantify how much of this is one and how much of this is the other but if you adopt the model what you end up doing is actually trying to disincentivize fraudulent actors by punishing non fraudulent actors and that at least should give you some pause.

So now let's turn to the newly titled concern of fairness because fairness is really the core of what is underlying this question. The next speaker will be Andrew Kirkner, Regional VP, Ohio/Mid-Atlantic Region at the National Association of Mutual Insurance Companies (NAMIC), who just a few months ago described in your last NCOIL meeting fairness this way – individuals who do not participate in the system should not be able to have the benefit of that system. But if you press on that its mixing apples and oranges because the proposal doesn't block an uninsured motorist from recovering any damages, it simply blocks them from a class of damages – non-economic damages. Back when I played cards in college, we would call this a tell because the concern here really is with a category of damages, not a category of victims and its just missing two things. I understand the concern but there are real fairness costs here: you will have some degree of punishing innocent victims; you will have some reward for the guilty; you're actually creating a moral hazard problem which in the world of insurance is not a trivial phrase because you as the IRC says will relieve at fault drivers from having to compensate uninsured drivers which is a moral hazard incentive for at fault drivers to drive a little more

recklessly. I'm not personally a big fan of moral hazard as I don't think the theory holds but it either holds or it doesn't and if you think moral hazard is a real thing that's how it plays out here but most importantly this does play out probably disparately by race and that ties into a great deal of what you heard among other things this past Thursday.

Here is the bottom line – for a 16 cent reduction in premiums at a two-tenths of a percentage decrease of the percentage of uninsured you're going to give some real windfalls to at fault drivers, largely innocent drivers are going to be punished and some disproportionate harm falls on minority communities. I welcome any questions. I acknowledge some may disagree with me but I'm here to simply provide the numbers and that is what they are -16 cents.

Mr. Kirkner stated that on behalf of NAMIC I am here today in support of NCOIL's effort to address affordability and fairness in auto insurance via the model before the committee. As mentioned when I testified before the committee in Tampa our support for the concept of the Model comes from a simple maxim and that is illegally uninsured drivers should not receive a windfall as a result of their unwillingness to participate in a system of pooled risk. The model before the committee largely accomplishes this goal by prohibiting the collection of non-economic damages for illegally uninsured drivers. In addition, the model also provides safeguards even for those same illegally uninsured drivers where they are injured through another party's bad act for lack of a better description whether that be DWI, fleeing from the police or intentional conduct so there are exceptions for those scenarios. I will just briefly respond to Prof. Klein saying I agree with those points that he said very clearly which was that the model will lower costs and it will decrease the amount of uninsured motorists – I think whether that's 16 cents or \$16 dollars or \$1,600 this group knows very well there are a number of downward pressures on premiums and a number of reasons for uninsured motorist populations and what we should be doing in everything we look at is trying to decrease those numbers. What the NV study for 2012 that I outlined at the last meeting tells us is that there will be some drop in these two metrics and I think anything we can do to put downward pressure on premium and the uninsured motorist population is a good thing.

The other quick point I'd like to address is Prof. Klein indicated that it would be intuitively troublesome to punish not at fault drivers. This is not about assigning fault this is about insurance as a pooled risk system – we pay into a system and that system pays us out when we have a covered accident. That is about as fair as it can get and folks that decide to not participate in that system should not be paid out. Finally, I would simply say that Prof. Klein went into great detail about how we should use data to support our assumptions and he then concluded his testimony by saying that this probably has a disparate impact and I think that's irresponsible and we need to look at the model with the data that is in place and absent some showing that it's not the case the model will in fact align the concepts of fairness for those drivers who decide to participate in the pooled risk system.

Rep. Lehman stated that one word that stuck out to him in Prof. Klein's presentation was "the innocent driver" and I want to focus on "innocent" because I look at this and these are all people who you can make an argument are violating the law because every state has a financial responsibility law so if I'm choosing to drive with no insurance am I not choosing to violate the law and if so then I'm not really in my opinion an innocent victim. How do I marry those terms of an innocent victim and someone who is violating the law because everybody knows insurance is required by law because the minute they get caught they admit they knew they should have had insurance they just didn't want to pay the premium or they don't have the money to and there are issues there but help me bridge that gap I mentioned. Prof. Klein stated that I appreciate that question and the time constraints prohibited me from getting into nuance. Of course no one

is wholly innocent so for example in this situation we're talking about two actors who are not wholly innocent – one is the person who doesn't have insurance and the other is the one who has violated the law by driving in such a way typically negligently that has caused an accident because you have to have a lack of innocence on both sides of the equation for the model to be triggered and what I would say to you is you have passed legislation in each of your jurisdictions saying that people must have insurance and therefore all uninsured motorists have violated those laws and you have set penalties for that and that's fine but now you are changing the laws by taking away a class of damages. You are not saying that they can't recover damages because they are not paying – you're letting them play with some damages but not as to another set of damages so my question is what is the basis for that decision. What's the basis for saying you can recover for these damages but not for these others. You're not simply saying you are barred from the system. What's happening is you are focusing on non-economic damages because you suspect those aren't real damages and the reality is some of them aren't but some of them are.

Rep. Lehman stated that we put in exceptions for the person driving have violated the law but I don't think negligence is a statutory violation – if I slide on the ice and hit you I'm negligent; if I'm going 100 mph and I'm intoxicated now I'm violating the law as well as being negligent and we carve those exceptions out of if I'm truly a lawbreaker on my side then you can still get those damages but if I'm just negligent then you would not be entitled to those. Prof. Klein stated that I reach law and in my view of the world whether a law comes from a court decision or a statute its still a law in other words that's not a distinction of whether one is breaking the law if the source of the law is a court decision or a statute.

Asm. Cooley stated that I think this is a good discussion and I would grant that you can't really talk about insurance and an impact on rates without talking about other things as it's a multi variant conversation. With respect to no-pay no-play it's an interesting issue in so much as the voters adopted this policy in 1996 and the interesting fact in that is that in the 1980s CA saw average auto insurance rates increase that decade by 150% - very dramatic increases in rates across a decade. By the time we got into the 1990s it started to fall and after 1996 there were significant impacts in terms of the volume of uninsured motorist claims, bodily injury claims and auto insurance rates so I just want to say I do understand there is reality to Prof. Klein acknowledging that its hard to pin down the exact cost associated with improvement but when I stand back and look at what happened to auto insurance rates in CA over the 80s and 90s and specifically looking at what happened after the voters approved this doctrine in 1996 you do see rates falling and that's quite striking. I just feel that there is an aspect of you sort of just what do you find compelling – ensuring that people who are in their marketplace play by the same rules does support our system and this rule is designed to reinforce that and there is definitely a record of declining auto insurance rates and many other factors associated in the 80s and 90s in CA.

Rep. Edmond Jordan (LA) stated that LA passed a no-pay no-play in 1996 as well and I think there is a difference between correlation and causation because I can tell you we still have the second highest rates in the country right now so we have seen no reduction because of that. I will say our law is a little different in that we initially excluded the first \$10,000 of damages and now it's the first \$15,000 of damages but I heard Mr. Kirkner say this is not about fault this is about risk pool but I totally disagree with that as our tort system is based on fault so when you talk about relieving an at fault driver the uninsured motorist may not be innocent but innocent and guilty to me applies to the criminal code but we are talking about civil law and talking about fault or not at fault so now you are taking someone who is not at fault and punishing them for the acts of someone who is at fault and so maybe there should be some penalty and I think our

provision is a little fairer when we say we are going to take a certain amount off the top that you will get a reduction in what you can recover but to say no recovery at all I don't think that's fair and to me it's totally unfair and I think if we look at some of the things that Doug Heller of the Consumer Federation of America and some other people spoke about I think there are other ways to reduce insurance rather than this. If we're talking about doing this for 16 cents then is it really worth it but my bigger point is that LA is a comparative fault state and somebody who is at fault should not get a free pass as that's not fair at all. I do agree with some of the things that Prof. Klein talked about as it related to race and insurance and some of the costs as we get to the point of why people are uninsured I think we have more at play than meets the eye here. I disagree with the title of the model and somewhat disagree with the premise and I'm not sure exactly what we are trying to accomplish.

Asm. Kevin Cahill (NY), NCOIL Treasurer, stated that first I respectfully disagree with Asm. Cooley as I don't believe Prof. Klein stated that the economic impact was not easy to determine – he specifically said that the economic impact was a savings of 16 cents on an average premium and he also said that the impact on the number of uninsured motorists was negligible and that is truly negligible as two tenths of a percent is a rounding error. There is no real way of telling whether that would actually be the impact of it. I would like to ask the two panelists about innocent parties here because innocent parties are not always the people who are in the accident as sometimes they are the families of the people who are in the accident and how would this impact the rights of the families to seek recovery from the negligent driver in an accident that perhaps cost the life of the uninsured motorist. Prof. Klein stated that's a tricky question and a lot of it turns on how much you read into the word motorist in the model because the model seems to only apply to the driver who was uninsured by the use of the word motorist – I take it that's the case but the kinds of damages you are discussing are often what we call derivative or dependent in other words the family's damages are dependent on the driver the primary injured to recovery and so to the extent the tort system in your state has a structure of recovery law that makes the families members harms flow from the ability of the primary driver to recover the moment you block the primary driver you block everybody else and of course the winner in that equation is the at fault driver who doesn't have to pay for the damages they caused however large they are and their insurance company who doesn't have to pay for the damages that were caused by their insured.

Mr. Kirkner stated that I don't disagree with anything Prof. Klein just said except for the focus on at fault and not at fault drivers. Again, it seems to me that Prof. Klein is completely disregarding the fact that this is a scenario where a person has refused to pay into a system that is designed to cover their losses for covered claims. Another thing I would like to touch on very briefly is something Rep. Jordan mentioned about the model barring recovery and that's not true. As Prof. Klein noted the model does not bar recovery what it bars is the recovery of non-economic damages. I think what the intent there is to strike some balance between damages that would make someone continue to live their life without having non-economic damages, the windfall aspect of this, from a system that they don't pay into. Again, this is a system that you pay into to ensure the benefits and this is scenario where those folks have not paid into that system. Asm. Cahill stated that my question was about the families of accident victims, can you answer that question. Mr. Kirkner stated that I think Prof. Klein did as I think it depends on the tort system in a given state but the maxim would remain the same – if the individual has not paid into the system the non-economic damages would not be accessible.

Rep. Brenda Carter (MI) stated that I have two questions, the first to Prof. Klein. You mentioned that disparate impact would definitely affect races but what about those who are in poverty as we are going through a pandemic where many people have lost their jobs and lost their ability to

feed themselves let alone purchase auto insurance and to Mr. Kirkner you mentioned that those who initially decide to circumvent the system I agree with that 100% but what about those who cannot afford to participate in the system? Why is this legislation punitive to people who for economic reasons are unable to participate even if they want to – this seems to be punitive for those who cannot afford to participate in the system. Mr. Kirkner stated that I think it's a good question and it's a catch-22 of what we try to do when we talk about insurance laws. Part of the impetus for efforts like this is to lower insurance costs and drive costs down and I would push back a little bit at the earlier comments saying that the reduction in uninsured motorist population is a rounding error. I don't think it's a rounding error and depending on the population of your state it could be a very substantial number even if we accept Prof. Klein's numbers at face value which I don't have a reason to dispute. Then you start talking about the corollary benefits that come with reducing the uninsured motorist population the potential for some real positives here.

I think though to your question about folks who are not making a decision but rather circumstances have placed them in a position where they cannot participate I think the states have remedies there so whether we're talking about residual markets or state run low cost auto insurance programs there are remedies available in the states even if you went so far as to subsidize insurance in some way for those who can't afford it there are remedies available to the states. I think those remedies would exist in a world where the model was passed or where it wasn't passed as those questions exist regardless of this model passing in a given state or not passing. Prof. Klein stated that I'm really glad you asked this question because there is an underlying assumption in this whole conversation which is that most people who are uninsured have the money to do it and they are just choosing not to pay and look I have very little sympathy for such people I truly do but I suspect that, and I don't have data to support it, that most people who don't have auto insurance or at least a significant chunk of them are because they can't afford it because the base level of auto insurance is not to insure me for my harm what I'm required to do is to insure for harm I cause and what the model is doing is its saying I didn't cause harm in other words the insurance I should be getting I didn't get but that's not the accident that happened. I didn't cause harm but I'm still going to suffer a penalty and it's just frankly I suspect everyone here can afford auto insurance and has it and we have a deep lack of appreciation and empathy for what most of this country actually looks like and how close to the edge most of us are living and I hope the pandemic has taught us a little something about that as to just how on the edge most of this country is and those are the people who are going to actually be hurt by this law.

Asw. Pam Hunter (NY) stated that after listening to this presentation and knowing we spent several hours on Thursday talking about disparate impact I would like to offer that the models we present are purposeful and I'm looking forward to ensuring that we're not on one hand working towards policies that are not discriminatory and then putting forth models in some ways that may impact as our last speaker made reference to whether its minorities, people of color, impoverished communities I think we always need to be looking at the steps further not just the language in the model but the impacts on the communities that this can affect. I have a very diverse population of folks that I represent from the very wealthy to native Americans and very poor and I believe Prof. Klein's comments speak to that in the state of our current situation in the pandemic. If we were to vote on this today I would not be supportive but going forward models that we present I think definitely need to take a look at some of the impacts that obviously we are spending hours talking about at NCOIL.

Rep. Rowland stated no vote will be taken today and I think this is a topic that will create considerable conversations at future meetings.

CONSIDERATION OF AMENDMENTS TO NCOIL PEER-TO-PEER (P2P) CAR SHARING PROGRAM MODEL ACT

Rep. Rowland stated that In December of 2019, NCOIL adopted the P2P Sharing Program Model Act which he was proud to sponsor. The Model has been very successful and has been introduced and adopted in several states across the country. Since the Model has been adopted, some amendments to the Model have been agreed upon by both the insurers and P2P car sharing companies which I am sponsoring and are included in the version of the Model you see in your binders on page. 382. Overall, the amendments aim to provide clarity and standardization of insurance coverage during the peer-to-peer car sharing transaction and deal with amending certain definitions in the Model; clarifying state insurance limits, primary liability, and underwriting issues; and providing additional recordkeeping requirements on the car sharing program. The amendments are very simple and I look forward to the Committee's support today. I'll turn it over to Mr. Kirkner now who would like to say a few words.

Mr. Kirkner stated that I will be very brief as Rep. Rowland just outlined the amendments which came as result of negotiations between insurers and P2P programs and other stakeholders over a number of months and we think the amendments make a lot of sense at the state level. We had the opportunity to go into states and have these discussions and see what worked and what didn't work and I think these amendments specifically relating to underwriting freedom, definition tweaks and more clearly defining the lines of liability where termination time is in dispute really help clarify the insurance coverage that is in place so I want to thank Rep. Rowland for this work and NCOIL more broadly. We support the amendments and hope the committee will approve.

On behalf of Enterprise Holdings, Enterprise Rent-a-Car, Alamo Rent-a-Car, and National Car Rental, Brad Nail stated that we are fine with these changes and will support them. I just want to take the opportunity as a reminder to the members here that this model is limited in scope to the insurance provisions of any bill that you might see in your state and if you look at chapter 2 of the model it addresses the scope issues and spells that out. In the case of this particular issue, the insurance provisions are relatively non-controversial in the broader scope of this issue. You should also expect to see and hear language addressing equitable taxation of these transactions, airport issues, consumer protection issues and we're working hard to find compromise language on all of those issues as well but that's a discussion that's continuing. We support the NCOIL language and we expect all the parties involved to promote the language within your states but the debate is not going to be limited to that language.

Sen. Rapert asked if this Model now replaces the NCOIL Transportation Network Company (TNC) Model or if they remain separate. Mr. Nail stated that they remain separate Models.

Del. Steve Westfall (WV) stated that I support the amendments as they make the Model better and in 2020 WV passed P2P car sharing legislation and most of the amendments offered today are in the WV law. Rep. Rowland stated that he looks forward to enacting the P2P law in Kentucky in 2022.

Hearing no further questions or comments, upon a Motion made by Del. Westfall and seconded by Sen. Rapert, the Committee voted without opposition to adopt the amendments by way of a voice vote.

PRESENTATION ON COMMUNITY-BASED CATASTROPHE INSURANCE: A MODEL FOR CLOSING THE DISASTER PROTECTION GAP

Dan Kaniewski, Ph.D., Managing Director at Marsh & McLennan, stated that it feels like just yesterday I was addressing you in a different capacity when I was deputy administrator of Federal Emergency Management Agency (FEMA) until about a year ago. Back when I was at FEMA when I spoke to this Committee I said we were looking to the insurance industry for innovation and I hope what you'll see is an example of that kind of innovation in the industry and its largely due to experts like my former FEMA colleague Andy Read who is with me here today. We'll talk about community-based catastrophe insurance (CBCI) which we believe can help to fill the protection gap.

As we all know the protection gap exists and its growing for two big reasons – reduced funding and rising costs. Reduced funding because of all the challenges that I'm sure you are more aware of than I am which is funding shortfalls in state and local governments and on the rising costs its increased intensity and damage of disasters both of which are making the protection gap grow all the time. The financial impacts of catastrophic events are something that is hard to overcome or overlook. We know that from an insurance standpoint that take-up rates are low. We know that homeowners in CA have far too little insurance and we know that those in the central part of the U.S. have far too little insurance. We know that the National Flood Insurance Program (NFIP) is struggling to increase its take-up rates. The fact that only 30% of homeowners in high risk flood areas have flood insurance is a problem. Overall nationwide it's in the single digits of homeowners having flood insurance. So what can we do – well CBCI is insurance arranged by a local governmental or quasi-governmental body to cover a group of designated properties or individuals within the community's jurisdiction. To talk about this in a little more detail is Mr. Read.

Mr. Read stated that to also elaborate a little bit about what CBCI is when we say community what do we mean. It could be any special purpose district, neighborhood association, there is flexibility around which type of entity could actually implement a program like this. If the entity has a financial relationship through tax or other means or other regulatory authority it certainly makes things easier so there is a broad definition of community as we talk through the specifics. Lets talk about where CBCI fits in the protection gap and comes channels which communities can buy down their protection gaps or increase their resilience. Looking at the waterfall graphic here, the first way by which communities can reduce their risk of course is through physical resilience enhancements so investments in risk reduction or mitigation or other preparedness investment to be better equipped to respond. The second way is through broader risk financing so enchanting the insurance market pursuing risk transfer or other financial resilience means to help buy down the economic losses and really shrink that protection gap component which is the third slide on the graphic. I would say in many case the protection gap is actually quite large and communities in many instances are facing a lack of insurance uptake and so proportionally this would probably be bigger for a lot of communities but we do see opportunity for CBCI to paly a role in both physical risk reduction and investments in mitigation and also obviously in disaster risk financing and enhancing the insurance market.

So what are the benefits of a CBCI program. As I mentioned, naturally there are incentives for risk reduction built in. When you are investing in disaster risk financing premium reductions or investment in physical resilience are naturally incentivized so you can better monetize those mitigation investments through those premium reductions rather than just relying on losses avoided which we find is kind of uneven in longer term return on investment so this provides a more near term return for communities who are actually investing in disaster risk financing through CBCI. Of course through the process of developing and implementing a CBCI program the community also would receive enhanced risk info and be better equipped to communicate

that risk to the community and it would help them prioritize those mitigation investments and we believe very strongly in prioritizing community scale mitigation projects.

Additionally another benefit of CBCI programs is that they can allow the community to deliver targeted assistance so there could be affordability programs that could be implemented for low income high risk individuals within the community that could help them incentivize or support the purchase of insurance and that can be effectively done through these types of programs. Additionally a community could help sustain and maintain the availability of insurance throughout loss volatility so somewhere between a market of last resort and an existing robust insurance market within the community the community could be in the middle helping to offer coverage and sustain that coverage through losses and of course intuitively more insurance in a community or risk transfer protection at the community level enhances the financial resilience of the community so it improves their credit risk profile and access to capital and can also speed up recovery significantly and allow for fast time to return to economic vitalization after a catastrophic event.

So what types of models are there and how do these CBCI programs get implemented so lets talk about the specific mechanics. Through our research we outlined four broad models by which communities could engage in a CBCI program. Across the models they allow for great flexibility for the community to tailor their program to the specific risk the community is facing and there are varying degrees of community control and varying degrees of expertise and resources required to implement so if you look at the graphic the four models we've outline from left to right increase in level of community control but also in expertise and potentially resources to implement. Notably the two programs on the left require a partnership with insurance carriers within the community whereas the models on the right allow the community to more directly engage capacity providers so lets talk about the specifics of each model.

The first is the facilitator model which is where the community essentially establishes a financial arrangement with an insurance carrier or carriers within the community to either partner on communities and marketing or to potentially go as far as to incentivize coverage through a tax credit or reimbursement or something of that nature or potentially even mandate coverage for a portion of the community so there is a lot of flexibility here and this is the least intense type of arrangement as the community is playing a facilitative role and the insureds community members are engaging directly with an insurer for both premiums and claims payment. There is a notable example of this type of structure in upstate NY with a community that offered a tax credit to incentivize high risk individuals who are low income to purchase flood insurance so that's kind of a means by which this can be affected at the community level a reimbursement backwards making incentives to purchase and partnering with an insurer to communicate and help distribute that within the community.

The group policy model is kind of think of an employee benefits type structure where the premium is paid into the employer or the community in this instance and then the community would work with a carrier to essentially acquire a group policy. Claims would then be administered and engaged with directly with the insurance carrier by community members. This allows for a little bit more control and certainly more leverage in terms of negotiating premium discounts for mitigation investments so there is a little more control for the community perhaps in that dialogue and conversation. They also probably get access to some better risk information at the community level with this type of model that they could use to communicate risk more broadly to the community so a little more engagement here. There is a notable example of this or pilot project that is pursuing something aligned with this model in NC where the state is looking at a potential means by which they could purchase insurance on behalf of

low income individuals who are affected by recent flood disasters to purchase flood insurance on their behalf and they would be listed as informed so they would know if the policy is maintained by the individual or cancelled or non renewed but the insured is the low income resident who has experienced flood damages and so they would work directly with the carrier on the claims. We certainly see opportunity for private insurance carriers or other private interest to engage in a similar manner with communities in this type of model.

The next model is the aggregator model which is where a community would buy a bulk parametric policy so you can think of this as potentially a parameter structure backed assistance program or insurance program or grant program so that community is engaging likely more directly with capacity providers in this case to acquire an innovative parametric insurance policy in bulk and this allows for flexibility for them to target how they would structure the payouts as they could determine it would be most appropriate to fund an emergency relief grant program and we are actually working with a community actually a large metropolitan area to help frame out and design a parametric structure that would allow for them to fund emergency relief grants for low income individuals at an event so there is real flexibility here. Parametric structures are unique there is what we call basis risk so the potential for a triggering event to occur and the structure not allowing for a payout or vice versa where a payout is triggered and you have experienced a loss event so these types of things need to be managed and the community would certainly need to work with some sort of broker in this instance to manage that risk.

The payout structure by which any payouts would be made after a disaster certainly need to be well defined and clearly communicated so there are clear expectations and the community would collect the premium through their tax relationship or other financial means surcharge within the community and I'll just say parametric structures have been implemented globally for these types of mechanisms in other countries and regions perhaps most notably nearby with Mexico's disaster relief program they leveraged parametric structures and we have seen in the U.S. a number of entities pursue parametric type structures as UT had an earthquake parametric that augmented their property insurance program and paid out after the spring earthquake last year and helped paid for deductibles and other expenses related to that and they ended up having coverage for a large amount of the damages there. The metro transit authority has also leveraged parametric structures to support their protection for their assets in the NY region so there is kind of precedence for those being applied. A community could leverage this to help cover individuals within the community but they also could bolt on and augment their existing property coverage to cover deductibles or the gaps that there might be with a parametric structure like this.

The last model is the community captive model and in this instance the community would establish its own risk bearing entity and potentially work with a fronting carrier or pursue outright licensure to offer some coverage within the community. We are working with a metropolitan area that has taken an innovative approach to their captives in the past where they have actually offered a subsidy for non profit healthcare providers when malpractice insurance was challenging and they are looking at expanding their authorities to help cover low income at risk individuals for flood so many communities and cities do have captive infrastructure already and we are using pilots down this line to see how a community could offer coverage. This is certainly the most intensive in terms of resource and expertise commitments at the community level and that's something obviously there is capitalization requirements and captive mgmt. but it certainly allows a lot of flexibility for the community to access reinsurance capital markets so there are benefits to accessing different forms of capacity but this is certainly the most intense of the four models but allows for a greater degree of control over the coverages offered and there is potential for the community to deliver assistance through a captive as well so that is

something else that could be beneficial. I'll turn it back to Dr. Kaniewski to talk through the five part framework we have for implementation.

Dr. Kaniewski stated that this is the how slide – how can we collectively or as a firm go through this effort. The importance is resilience as we are trying to have a more resilient community with more resilient community members so that when a disaster happens there aren't the financial and physical losses and to do that you need two things. You need insurance but also hazard mitigation and that's how we see this coming together with CBCI is bring both the investments in physical infrastructure called hazard mitigation with both the risk transfer mechanisms of insurance like products. In general, there is a five-part framework for implementation and the steps are not necessarily sequential, and it may be necessary to go back and forth among them. First you need to define the need and to do this it's a bespoke offering there's no one size fits all approach for all communities; you have to sit down with community members and define the need; then you need to determine what authorities they have as every local jurisdiction is going to have something different. Then you engage a diverse set of stakeholders who need to provide input for it to be successful. Then you need to analyze the risk and understand what you're looking to transfer and then finally transfer the risk either through a radiational carrier model or an alternative model.

ADJOURNMENT

Hearing no further business, upon a motion made by Rep. Lehman and seconded by Asm. Cooley, the Committee adjourned at 10:30 a.m.