

NATIONAL COUNCIL OF INSURANCE LEGISLATORS  
PROPERTY & CASUALTY INSURANCE COMMITTEE  
INTERIM COMMITTEE MEETING - MAY 13, 2022  
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Property & Casualty Insurance Committee held an interim meeting via Zoom on Friday, May 13, 2022 at 11:00 A.M. (EST)

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

Other members of the Committee present were:

Asm. Ken Cooley (CA)	Rep. Brenda Carter (MI)
Rep. Jonathan Carroll (IL)	Sen. Walter Michel (MS)
Rep. Matt Lehman (IN)	Asm. Kevin Cahill (NY)
Rep. Joe Fischer (KY)	Del. Steve Westfall (WV)
Rep. Deanna Frazier Gordon (KY)	
Rep. Derek Lewis (KY)	
Sen. Robert Mills (LA)	

Other legislators present were:

Rep. Deborah Ferguson (AR)	Rep. Rachel Roberts (KY)
Rep. Tammy Nuccio (CT)	Rep. Wendi Thomas (PA)
Rep. Jim Gooch (KY)	

Also in attendance were:

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

#### QUORUM

Upon a Motion made by Asm. Ken Cooley (CA), NCOIL President, and seconded by Rep. Deanna Frazier Gordon (KY), the Committee voted without objection by way of a voice vote to waive the quorum requirement.

#### INTRODUCTORY REMARKS: CHAIR ROWLAND

Rep. Rowland thanked everyone for joining the meeting today and stated that the purpose of today's meeting is for the Committee to conduct some business in advance of its July meeting in New Jersey so that the Committee is able to handle all of the issues on its New Jersey agenda in a timely manner. This Committee has a lot of work to do over the next several months, this interim meeting was called to make sure that when the Committee reaches a point of ultimately finishing its work on the issues before it, the Committee is not pressed for time and people don't feel unduly rushed.

We'll get started today with an update on the development of the NCOIL Delivery Network Company (DNC) Model Act. We had a good introductory discussion on this issue during our interim Zoom meeting in February which set the table for this issue and

officially marked this Committee's intent to develop a Model Law. We continued discussions in March where some broad concepts for the Model were laid out, and I look forward to continuing that discussion today. We'll then continue discussion on the NCOIL Insurance Underwriting Transparency Model Act, sponsored by Indiana Representative Matt Lehman, NCOIL Immediate Past President. Similar to the DNC Model, we had a good introductory discussion on this issue during our interim Zoom meeting in February, and that discussion continued in March. I, and Rep. Lehman, look forward to hearing some specific feedback on the Model today.

Lastly, we will provide an opportunity for comment and discussion on the five NCOIL Model Acts that are scheduled for re-adoption. Per NCOIL's bylaws, all NCOIL Model Acts are scheduled to be considered for re-adoption every five years. If a Model is not re-adopted, it sunsets. I note that the Models will not be voted on for re-adoption today. Rather, this will be an opportunity for comment and discussion in advance of the Summer Meeting where the actual vote will take place. It is very unlikely that the July agenda will not allow time for additional discussion on these five Models, so we will have the entire discussion now, but simply hold the vote until July.

#### CONTINUED DISCUSSION ON DEVELOPMENT NCOIL DELIVERY NETWORK COMPANY (DNC) MODEL ACT

Before discussing the DNC Model, Rep. Rowland stated that he will be sponsoring the Model and overseeing its development until it crosses the finish line in November. And I say November will be the finish line for a few reasons: First, it follows the unofficial but generally followed NCOIL timeline of developing and adopting a Model within a calendar year; Second, as some of you may know, I will not be running for re-election so this will be my last year in the legislature and at NCOIL; and Third, this issue is extremely important and timely as many states are going to be looking to enact legislation on this soon. Accordingly, similar to how this Committee acted quickly and decisively with adopting a peer-to-peer (P2P) car sharing model act to provide states guidance on an emerging issue, it's important that we do so again so that states have the Model ready to introduce next year. This is a great opportunity for NCOIL to again be a leader on an important issue – I'm confident that we will accomplish the task at hand.

I'm encouraged so far by the dialogue that has been ongoing among key interested parties on this issue. I know there has been an informal working group that has met a couple of times and it's great to know that a lot of the important voices in this area are engaging and being heard. Those include: Uber, Lyft, the American Property Casualty Insurance Association (APCIA), DoorDash, UPS, Amazon, Shipt, Instacart, Shelter Insurance, Buckle, and the National Association of Mutual Insurance Companies (NAMIC). I look forward to hearing comments from everyone today as to how the Model should be developed so that we can have a solid first-draft ready for inclusion in the 30-day materials which will be distributed a month from today. Rep. Rowland then opened the conversation up to interested persons present.

Brad Nail, representing Lyft, stated that Rep. Rowland summarized the stakeholder meetings and the participants in the stakeholder meetings so far, and noted that they have been very productive. We are accounting for all the different business models where personal autos, which are normally insured under a personal auto policy, are used to make deliveries commercially. That's been a focus of the discussion. It is not limited to just on demand food delivery from restaurants as it goes a little beyond that so

I think we are going to be borrowing from the Transportation Network Company (TNC) and P2P Models where appropriate since both of those involve personal autos in a commercial context. Everyone, I think, acknowledges that there is going to be some differences between them. We started with first drafts of language from Uber and APCIA to give us something to work off of, and we are currently circulating more ideas on language following the first couple of discussions. We'd like to continue the discussions to try and achieve consensus as much as possible going into the July meeting and prepare to continue to work on the outstanding issues from there on.

Frank O'Brien, VP of State Gov't Relations at APCIA thanked the Committee for the opportunity to speak and stated that I just want to reiterate what Mr. Nail said - that all parties of interest are represented in these discussions and we've had two conversations and a third is upcoming. We are heading in the right direction and one of the things that I would say is the fact that most of the people in this group have worked on prior NCOIL related sharing economy models, so there's familiarity with each other and with the issues that each party brings to the table. So, for our part, APCIA is quite optimistic that we will be able to bring to NCOIL a Model that will have widespread agreement.

Rep. Rowland stated that one item that has been pointed out to me is that we might want to clarify the definitions section of the Model when it is drafted to say, instead of a personal vehicle for delivery, a network device so we make sure our Model is not applying to someone who is delivering drugs for a pharmacy or the local pizza delivery place. If there's a way to distinguish that in our definitions section, please give some thought about that.

Jon Schnautz, Regional Vice President at NAMIC, stated that I'll echo what was said by the previous two speakers and with regard to the issue that you just stated, I'll briefly outline a couple of points where there may be a divergence or some new language needed from the TNC model. One of the issues that we have been trying to discuss is how this Model would dove-tail with existing state regulations on deliveries. The other two issues that I think we have spent most of our time talking about are what the start time would be for these - if you recall in the TNC model there's a log-on sort of trigger to log onto the app and that may or may not be the appropriate sort of thing you use here. And then finally, coverage minimums. I think that's the other issue where we're trying to reach consensus. We haven't quite gotten there yet, but we are optimistic that we will.

Hearing no further comments or questions from any interested persons or legislators, Rep. Rowland stated that my hope is that the group will continue to keep working together unofficially until we meet again officially in July and if you have any comments or any thoughts please put those in writing for NCOIL staff as that certainly will be helpful in advance of our July meeting. Before we move on, as sponsor of the Model and Chair of this Committee, I have some thoughts on where we should go with this. I don't see how we could possibly have a DNC Model that is wildly different from State-to-State, so some thoughts for you all to think on before we meet again: should we include uninsured and under insured motorist coverage and set the level of coverage requirements in our Model, rather than just saying the minimum financial requirements of each state? In Kentucky we just increased the property damage limit a couple of sessions ago, so now we're at \$25,000/\$50,000/\$25,000. Perhaps NCOIL staff could get together for us what those limits are from state-to-state and we could possibly pick a good number there that makes sense. Second, there has been some discussion about an exemption from the Model for commercial coverage - should that exemption be subject to scenarios where

the commercial coverage has limits that satisfy the requirements of the Model? So, those are just some things I'll throw out there for possible discussion or thoughts and if the working group could digest that and get back to us with your thoughts around those items it would be helpful before July.

## CONTINUED DISCUSSION ON NCOIL INSURANCE UNDERWRITING TRANSPARENCY MODEL ACT

Rep. Rowland then turned the discussion over to Rep. Lehman, sponsor of the NCOIL Insurance Underwriting Transparency Model Act. Rep. Lehman began by stating he is sorry to see Rep. Rowland leaving the legislature as it was good to have insurance people making insurance laws. You will be missed. Rep. Lehman stated that I want to thank you first of all for bringing this up today on your meeting, and stated that I don't know who is here today, but I know many of you have reached out to me with some thoughts on this Model and I really appreciate that. So, I want to thank you for your engagement with this before I walk through the Model. Similar to what Rep. Rowland said, I think this is an issue we need to keep moving forward on. My target is still to try and have something in place here by the November meeting so that if we take this back to our states, we're within that time frame for getting bills drafted for pre-filing deadlines. So, my goal is still a November date on this and I want to continue to work with the industry and interested parties as we move forward.

I think this issue has gained some momentum and you've seen what the National Association of Insurance Commissioners (NAIC) has done and you saw what happened in Washington State with their regulatory approach. So, I think it's a timely issue and I want you all to understand that none of this is carved in stone. This Model is not a take it or leave it approach, and there's been a lot of good input so far. So, I want to continue this conversation with interested parties and legislators. I'll now go through my notes on my Model and note what I've heard from the industry and from others and tie-in my thinking. First, in the definitions section we talk about "adverse action" - there's been some discussion on what defines an adverse action, should that be a percentage of an increase? So, if a carrier makes a 2% increase, is that considered adverse? A lot of states have some threshold such as anything 10% or more so maybe 10% is where we start our conversation. I think that it's a fair issue that was brought up on the definition of an "adverse action" as it needs to be more than just a carrier took a rate increase. Maybe they took an across-the-board rate increase. We're really trying to focus and get on that piece of the puzzle that is my rate is being affected when it comes to this collection of data.

The next thing is that I've had a lot of people say to me that we want to make sure this stays focused on personal lines insurance, namely home and auto. I agree, and the Model says "underwriting of personal insurance", but maybe that should be made more clear. There was also some discussion around the Model applying to renewals, new issues and denials and I still want to continue that conversation. I think that if you came into my office today and I said "here's your new premium with this carrier or that carrier", you're choosing that premium as it is right now and there really would be no disclosure necessary of which data was used because you can choose what you want to do. This Model is more on the actual renewal and when that renewal comes back a year from now and it went up 18% and I can't explain at all why it went up 18% - that's the issue I think we're talking about here. But on the issue of being denied a policy, and we do have that, some carriers just say he's not eligible based on tangible things as it's always

been such as your driving record is bad, or you hit ten people last year with your car - those are things where we would say I can disclose that and say “you can’t get insurance with this company because of these things.” So, somewhere on that we need to continue to have some discussion around that denial piece.

And then the next issue is the definition of “external data.” There was some conversation around that and what is supplemental data from a third-party vendor? There are things in the “black box” that we don’t know about but there are things that companies use in their external data such as flood maps or insurance services office (ISO) ratings. If an ISO rating changes and that creates a premium change, does that trigger a disclosure? So, we need to have some discussion around that definition of “external data.” We’ll now get into Section Three on the transparency requirements and one of the discussions I’ve had is around the number of factors. We have in the draft Model ten. Should it be 15? Should it be five? Should it be four? I think we can continue that discussion but I do think that there needs to be enough there that the client or the broker can extrapolate out really what were those driving factors that created that additional premium.

I’ve also talked about the issues around underwriting and rating of risk. Some data might be used from an underwriting standpoint, and some might be used actually to calculate a rate. Again, those are things I’m willing to have that discussion on to recognize what those realities are. There’s also been some discussion around what I think is the lynchpin of the Model: disclosure. And I’ve heard from several in the industry that have said we have to be very sensitive to the fact that some of this is proprietary and maybe we have found our “secret sauce” that we hold very near and dear to us and we don’t want that to be disclosed and we don’t want that to get out to the competitor. I think we have to be careful on how we protect that and at the same time still move forward with the fact that I think this has to be disclosed to the inquiring client with that rate increase. Is that something that can be worked through a broker? Because we are on contract already to hold those things in confidence so that is an issue I think we still have to work through.

Lastly, I think the biggest thing I have heard is the “impossibility” of transmitting this amount of data. Everybody is going to be unique so if there are 50 people on this call we may have 50 different matrixes we use to calculate our premiums so how do you disclose that to 50 different people? We have got to figure out a way because I think it comes down to there’s one thing of “we can’t do it and want to find a way” vs. “we just don’t want to do it.” Several people I’ve talked to have said “we want to engage, we just don’t know yet where all this is going to end up, we don’t know what we can share and what we can’t share”. I want to keep moving forward, but I want to note that because this is referenced as a transparency Model, none of this is saying we’re going to prohibit things. But we are also policymakers and we have an obligation to our constituents to make sure that what the industry is using with its data is good public policy and actuarially you can make that argument and that’s been happening through the years.

And I don’t think anything nefarious is going on. In fact, that was brought up at a meeting and I said absolutely not. I don’t think anything is being done that would cross that line - we just want to make sure that we, as public policymakers, understand what’s going into these that makes this an actuarially and insurance driven product. The one thing I think we will really have to get a handle on and work together on is going to be on the disclosure aspect and true transparency of this Model so I’d love for you to reach out

to me or NCOIL staff with feedback. I've had a couple of people say to me that they can share some things that might be proprietary but we don't want to necessarily bring that up at a big, public meeting. So, they are willing to sit down with people and try and figure out a way to have this dialogue that maybe has some confidentiality. I want to continue moving forward with this and I am looking forward to more input and if you have any please send it to me or NCOIL staff. I have received some good input already but again, it was tough to get around that transparency aspect and that's, I don't want to say hard line in the sand, but the one thing that we need to really stay focused on: how are we disclosing this and being transparent to our constituents and our clients? When they ask that question of why am I getting an increase, today it's difficult to answer.

Andrew Kirkner, Regional Vice President, Ohio/Mid-Atlantic Region at NAMIC thanked the Committee for the opportunity to speak and stated that I think the introduction of this Model has been a really good launch point for discussion inside of our membership. I've learned a lot about this issue candidly and learned a lot about what companies are already doing and kind of the way they conceptualize this issue. I would start by saying that we've had a lot of positive feedback from our members and they understand the desire to see some increased information to consumers. From an insurance company's perspective, you want to keep consumers, you want to write business, you want to have folks in the door. This is not one of those areas where there is a conflicting desire on behalf of the insurer and the consumer from a 10,000 foot perspective and so our members are looking at this really as a customer service issue.

We do have some concerns about the draft as it's been introduced, and I'll be pretty brief because Rep. Lehman went through most of the points of contention, so I don't want to belabor those. I would just say that our members really firmly believe that the "adverse action" as it is defined in this Model is really too broad. If the goal of this Model is to tell consumers why they have seen a significant premium increase or why they have been denied coverage, we think there is a much more narrowly tailored way to do that. Whether it is to establish a threshold like it was just spoken about or whether there is some other trigger, we think that the language can be tightened up somewhat. Getting right to the heart of the matter is really that question around the "primary factors" language and I would refine that even a bit further. The draft as introduced would require insurers to disclose all primary factors up to ten and that is concerning for a couple reasons. One, there is a logistical problem. So, let's say that whatever trigger is established, if its 10%, you could have an across the board 11% increase and then you may have 20,000 or 30,000 policyholders that would, under the draft as introduced, be due one of these notices. So that's sort of a logistical issue, and to Rep. Lehman's point, a question of resources and desire versus ability.

I think that would be a fair statement, but it does become a bit more than that when we start talking about some competitive issues. Here, I point to Section 3(a) of the Model which would require a disclosure of all primary factors when an insurer uses external data. That's concerning to us for any number of reasons but it's not very hard to envision a scenario in a fiercely competitive industry where insurer A might mine insurer B for what the primary factors they are using might be. So, we have concerns and obviously we are a trade association comprised of many members so we are concerned about that, both from a small company perspective and a large company perspective candidly. We have some suggestions and we've certainly had a number of conversations with stakeholders and produced a draft proposal and we think there is potential to continue the conversation. And I do think we share the goal of transparency and I think from our

perspective we just want to make sure that there are guardrails around proprietary information and then making sure that we are balancing a consumer's ability to learn more about their insurance rating and also not making the cost of said knowledge so high that it ultimately has a negative impact on consumers.

Asm. Cooley thanked Mr. Kirkner for his comments and Rep. Lehman for his summary of the issue and stated that things like this are hard conversations to have but I just note that we are very fortunate to have this conversation in the context of an organization like NCOIL. Of course, I come out of California and in California we have the crazy ballot proposition process where if an idea takes root you have no idea where it's going. Of course that was our big insurance wars in 1980 and \$50 million was spent and dramatic changes to the marketplace were made just because some idea appealed to the public, and I don't mean that in a pejorative way it's just that's how things can lurch in dramatic directions. I do think with something like this we sort of roll up our sleeves and just try to work through the issues and include everyone at the table and I do think having everyone at the table is so important. We just discussed the DNC Model and had DoorDash submit a letter pointing out that not every one of these companies has passengers. So, whatever we do in that area we have to acknowledge that little nuance. I just want to thank everyone for their participation, because we do know that there is value and opportunity to, in a collegial way, have serious conversations and try to knock things off of a set of ideas and work together in NCOIL before it sort of jumps out in some other form and gets wound up without the reflection and measured judgement that we typically strive for.

Wes Bissett, Senior Counsel for the Independent Insurance Agents and Brokers of America (IIABA/The Big I), thanked the Committee for the opportunity to speak and stated that the Big I is very supportive of this Model and we think that Rep. Lehman has identified an issue that definitely needs to be addressed by legislation or regulation. It addresses that increasingly common situation where, with increasingly complex models, rates will go up to a certain degree that just sort of defies common sense. There is an output from these models that the agent can't explain and it's got the customer kind of scratching their head. There's no real confidence when you go to the company and the company front-line people can't explain it, so we've got a situation where in some cases this is increasing and there is a lack of confidence that is sort of building as a result that is incredibly unfortunate. We have heard from the sponsor that there are a number of issues that he and others are looking at and we think that figuring out the scope and the appropriate trigger for the Model makes sense. We would be worried though if this got watered down to an extent that it wasn't meaningful. We do worry to some extent that the ultimate proposal would be you have to disclose up to X number of factors that had an impact on the rating and that when you say "up to a certain number of factors" that could be one factor then you move on. So, that language has to be sorted out.

Looking at the penalties provision, in our view, it does seem particularly punitive to suggest a violation of the Model could be perhaps a well-intentioned effort to comply with the law and you maybe didn't technically do so that that could result in a violation of the Unfair Trade Practices Act. Also, for the companies that argue that they do need time to sort this out before they could comply maybe there does need to be a longer effective date than six months. Another thing we would urge you to take a look at is in Section 3(a) - some of this information is only provided upon written request which seems a little bit formal in 2022, so maybe it should be just by request or in some other way. We've had some back-channel conversations with some of our insurer friends on this issue

already and one thing I'd point out is that there is a precedent for this. In today's world, under both state and federal law, if there is an "adverse action" that occurs as a result of someone's credit history/information, companies are obligated to provide these very same notices today. I think what Rep. Lehman is essentially saying is that it used to be the models were very credit-focused and as the marketplace has evolved and other criteria are being now considered we've got to extend and enhance regulation in the same way we need to catch up. So, we'd urge you to take action on this hopefully this year and not water it down too much and we look forward very much to being part of the process going forward. We definitely want something that's workable and not punitive to the insurer community, but this is an area where enhanced transparency would be greatly appreciated by both agents and consumers.

Hearing no further questions or comments, Rep. Rowland turned it back over to Rep. Lehman for closing comments. Rep. Lehman stated that he appreciates the input on the use of "all primary factors" and noted that's kind of where he was going when he was talking about this regarding too much disclosure could harm insurers from a competitive standpoint. Rep. Lehman stated that Mr. Bissett made some good points on the punitive aspect of the penalties and the effective date but as I've said multiple times at NCOIL, we build the house and the states furnish it. I think that every state is going to be a little different as you may have some states that have already begun to take regulatory action and they may ramp this up quicker than others that have taken no action. So, I think that those points are well taken and I look forward to continuing this. I'll also repeat what I said at the beginning of this meeting - please reach out to me as I'm easily accessible. Also please reach out to NCOIL staff. I look forward to bringing this up again and dealing with this when we get to New Jersey.

#### OPPORTUNITY FOR COMMENT/DISCUSSION ON NCOIL MODEL LAWS SCHEDULED FOR RE-ADOPTION AT NCOIL SUMMER MEETING

*a.) Auto Insurance Fraud Model Act – Originally Adopted July 22, 2006; Readopted February 26, 2012, and July 15, 2017.*

Asm. Cooley stated that the whole issue of having strong anti-fraud laws is extraordinarily important in the insurance field and its sort of on my mind this year. Here in California, and this has nothing to do with auto insurance, but you've seen a lot of conversation around the whole notion of single-payer health care which brings a lot of controversies to the surface. But it was striking to me this year that a very strong outside impartial observer was looking at an agency that actually is tasked with analyzing all healthcare proposals and they were taking a peek at what was the big proposed single player bill which actually did not advance this year and they remarked that they were a little worried that all of the alleged savings that are supposed to arrive from a single-payer system was at risk of failing to deliver on its expectations because it did not have anti-fraud provisions.

So, I think an issue like this particular auto insurance fraud model act is a very basic thing but it plays such an important role ultimately in maintaining an affordable auto insurance marketplace and it's true across all lines. And the fact that was seen as a major Achilles heel in the single payer bill because they didn't have fraud rules is striking and it's just terrific we're bringing this forward. It's kind of sticking to way of doing things and taking care of business and it's kind of low-key but fundamentally important to a sound system.



Hearing no further questions or comments from legislators or interested persons, Rep. Rowland proceeded to the next Model.

*b.) Asbestos Bankruptcy Trust Claims Transparency Model Act - Adopted July 15, 2017.*

Hearing no questions or comments from legislators or interested persons, Rep. Rowland proceeded to the next Model.

*c.) Certificates of Insurance Model Act – Originally Adopted November 18, 2012; Readopted July 15, 2017.*

Mr. Bissett stated that IIABA urges NCOIL to readopt this model as its proven to be very successful and helpful. When I last checked, there were over forty states that had adopted some form of legislation based on significant part on the NCOIL model and in the five years since it was last adopted there have been states that have still periodically looked at this as a model. West Virginia and Tennessee come to mind and Colorado is looking at something similar right now so it continues to remain relevant and important, so we'd urge readoption in the summer.

Hearing no further questions or comments from legislators or interested persons, Rep. Rowland proceeded to the next Model.

*d.) Travel Insurance Model Act - Originally Adopted November 18, 2012; Updated Version Adopted March 5, 2017; Amended Version Adopted July 15, 2017.*

Duke de Haas, Vice President, Deputy General Counsel, USA at Allianz Partners stated that Allianz and the United States Travel Insurance Association (USTIA) are very supportive of this model and its readoption. NCOIL did great work back in 2016 and 2017 to assist everybody - the industry, consumers, and regulators with getting some regulatory certainty for this industry which was under a regulatory assault. Since that time, the NAIC jumped on after the fact and worked from NCOIL's excellent model and eventually passed the model as well. We now have been successful in getting this enacted in 27 states including nine this year. So again, I want to thank NCOIL for all the work they did. It's a small industry but very important and we appreciate all the work NCOIL has done and support readoption.

Hearing no further questions or comments from legislators or interested persons, Rep. Rowland proceeded to the next Model.

*e.) Model Act Regarding Use of Insurance Binders as Evidence of Coverage – Originally Adopted July 15, 2012; Readopted July 15, 2017.*

Hearing no questions or comments from legislators or interested persons, Rep. Rowland proceeded.

ADJOURNMENT

Upon a Motion made by Rep. Lehman and seconded by Asm. Cooley, the Committee adjourned at 11:45 a.m.