

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
PROPERTY & CASUALTY INSURANCE COMMITTEE
INTERIM COMMITTEE MEETING - SEPTEMBER 29, 2022
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Property & Casualty Insurance Committee held an interim meeting via Zoom on Thursday, September 29, 2022 at 11:30 A.M. (EST)

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

Other members of the Committee present were:

Asm. Ken Cooley (CA)	Sen. Vickie Sayer (NC)
Rep. Tammy Nuccio (CT)	Sen. Walter Michel (MS)
Rep. Rod Furniss (ID)	Sen. Bob Hackett (OH)
Rep. Matt Lehman (IN)	
Rep. Deanna Frazier Gordon (KY)	
Rep. John Illg (LA)	
Del. Courtney Watson (MD)	

Other legislators present were:

Rep. Jim Gooch (KY)	Asm. Jarett Gandolfo (NY)
Rep. Rachel Roberts (KY)	Sen. Eric Neslon (WV)

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 and stated that the purpose of today's meeting is for the Committee to discuss pending Model Laws in advance of the upcoming NCOIL Annual Meeting in November. I know I have set an ambitious timeline for this Committee in terms of working on the Models to ensure they are ready by the November meeting - we're making great progress and nearly there. We'll get started today with a continued discussion on the development of the NCOIL Delivery Network Company (DNC) Insurance Model Act. We've been making good progress with the Model and I look forward to continuing the discussion today and hearing everyone's thoughts on the latest version. 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've been making good progress and I, and Rep. Lehman, look forward to hearing some feedback on the Model today.

Lastly, we will continue discussion on the NCOIL Dog Breed Insurance Underwriting Study & Breed Protection Model Act, sponsored by Asm. Kevin Cahill (NY), NCOIL Vice President, and co-sponsored by Rep. Tammy Nuccio (CT). Unlike the previous two Models just referenced, there is no updated version of this Model to discuss but the co-sponsor, Rep. Nuccio, would like to discuss some possible changes to the Model in advance of November. The prime sponsor of the Model, Asm. Cahill, unfortunately couldn't join us today as he had a scheduling conflict. One last thing before we get started just to be clear. The latest versions of the Models are not necessarily what will be considered by the Committee in November. We'll likely make more changes between now and the 30-day materials deadline which is a little less than 3 weeks away. And more changes can be made between that deadline and the November meeting.

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

Rep. Rowland stated that we've been discussing this issue now for several months and I've really enjoyed overseeing the Model's development with the goal of getting it across the finish line in November. There has also been a working group formed consisting of industry members and they have been doing a great job during their meetings from what I have been told. As you can see from the latest version of the Model, I've made some changes to the Model, mainly related to the applicability of the "Delivery Availability Period" and the "Delivery Service Period," and the coverage limits. Other changes are minor and relate to the definition of "personal vehicle," commercial insurance coverage, and the removal of duplicative language in Section 3(h). Regarding the coverage limits, I decided to increase the limits from 25/50/25 to 50/100/25 and I removed the requirement for uninsured and underinsured motorist coverage (UM/UIM). However, I did add a drafting note that is meant to account for different state coverage requirements. For example, in my home state of Kentucky, UM/UIM is required to be offered but not maintained. Also, the drafting note is actually pulled verbatim from the NCOIL Transportation Network Company (TNC) Model which is arguably NCOIL's most successful Model so I think it makes sense to follow that same approach here. I look forward to hearing comments from everyone today so that we can make any necessary changes to the Model for inclusion in the 30-day materials. Let's go ahead and hear from interested parties first. I'm going to start with Brad Nail, who has been leading the interested persons' discussion group on this issue.

Brad Nail, representing Lyft, thanked Rep. Rowland and stated that he summarized the changes to the Model well. There are really three major changes from the language discussed in Jersey City in addition to some cleanup language changes. The three major areas are the required insurance limits and also the change to the structure of those insurance limits where the previous version had an attempt to default to state minimum financial responsibility (MFR) but at a minimum threshold level. Here, the new changes just set forth a limit that is I think clear and is consistent with the TNC model that is tested and consistent with the way DNCs operate. It's clearer and more straightforward and among the stakeholders I've spoken to I've not heard any objections to the amounts or the way its been presented. The changes to the UM language was important and it reads in a very positive way. The second major area is the removal of references to commercial auto and commercial insurance so that all vehicles are treated the same. The definition of personal vehicle had largely carried over from the TNC model but it really wasn't needed in that way so we feel good that removing it treats all vehicles the same and if there are any conflicting requirements on vehicles that may be commercially operating those are addressed in section 2 that deals with conflicts of law. The third major area are refinements in the delivery available period both in the definition and its effect. We're trying to

make sure we don't accidentally capture activity that is not intended to be subject to these insurance requirements. We've had additional stakeholder meetings since July and I know some DNCs have more suggestions on how to further clarify the delivery available period just to make sure we're not capturing activity that's not intended to be captured and therefore imposing a requirement that's not needed. The challenge there and the goal universally is to make sure there are no coverage gaps and that's shared by the insurers especially and other stakeholders and that's also the challenge in making further refinements. Because the personal auto policy may exclude coverage there is the potential to create coverage gaps. If any further changes are made they must be analyzed from that perspective – is it clear that there will be coverage at all times and I think most folks will support further clarity without sacrificing the uniformity of the coverage in that way. That's where we stand, and I think the changes that have been made are fantastic and we are that much closer to having a finished model.

Marty Young, Co-founder and CEO of Buckle, stated that Buckle is very supportive of the latest draft and we thank the Committee for all of its work and we thank Mr. Nail's leadership in getting where we are.

CJ Stolle, Public Policy Director at Amazon, stated that we do have some concerns about the delivery available period and we're trying to work through what an amendment might look like on that. I understand there are some concerns to what we presented and so we're working through the language and we'll continue to work through the stakeholder group. Rep. Rowland stated to Ms. Stolle to please continue to communicate to NCOIL staff and me regarding that language. Cmsr. Tom Considine, NCOIL CEO, stated that we really would like to hear that because the way the language appears now is that in order for that period in question to be triggered you need to be in your personal vehicle, operating your personal vehicle, and operating the app so that's pretty tightly crafted. Frankly, if you're doing all of those things there should be insurance coverage for it.

Jon Schnautz, Assistant VP, State Affairs at the National Association of Mutual Insurance Companies (NAMIC) stated that we've been part of the stakeholder group and we're still looking at the new changes but I will say at first glance we don't have any concerns with them and we will be looking for any further changes proposed. For those who may recall I had raised an issue back in July that we wanted an explicit recognition of differences in limits that may exist across states but we can put a pin in that because with the new version if you go to a uniform 50/100/25 you won't have cross state differences anymore and that obviates the need to go there.

Hearing no further questions or comments from any interested persons or legislators, Rep. Rowland thanked everyone for their comments and stated that if you do have suggestions on language or any questions please communicate with me or NCOIL staff.

CONTINUED DISCUSSION ON NCOIL INSURANCE UNDERWRITING TRANSPARENCY MODEL ACT

Rep. Lehman thanked everyone for their input on the Model thus far. We're making progress and I'm confident we'll be able to adopt something in November that can provide guidance to states. I think a lot of groups have been holding their cards close to vest on this issue and I would love to see strong engagement because I encourage everyone to weigh in before November. I do want to draw attention to some changes made to the Model since our last conversation in July. I'm not getting deep into the weeds right now so I'll do a high level review and then we can discuss. Who is entitled to receive the explanation from the insurer has been

clarified to make clear that in some instances, it's those who have been denied coverage, and in other instances, it's existing insureds; in no case does it extend to "consumers" generally. We also changed the word from "charge" to "rate" as there was some issue with if there is a change in premium because of a client generated change like I maybe added additional coverages or I added on to my house my rate may stay the same, but my premium is going to increase so we want to make sure we're focused on the rate changes and not the premium changes.

I changed the trigger from 7.9% to 9.9% as I think that brings us closer to where a lot of states may be on automatic triggers of notification but I'm of course open to discussion on how this would play out in your state. Also, to avoid confusion and ambiguity, the term "primary" when talking about the factors that must be disclosed has been removed from the Model – the concept is achieved by requiring those most heavily weighed. And one thing we changed that I think is significant is that we had put the 10 most weighted factors and this is all about transparency and making sure the consumer is seeing what is being used so we changed it to that disclosure being made in no particular order. There is some concern within industry that they might show their hand and secret sauce if they show how they weigh them so in this case you can simply say these are the 10 heaviest factors and they are weighted however you want to disclose those but I would note they are the main 10 but not necessarily the 10 in any particular order. I think that it makes a little more carrier friendly. We also put a drafting note in section 3 to emphasize the point that we're really trying to provide to the consumer more than just a three word phrase such as yes, "we use data." So, I think those are some of the significant changes and I really want to hear everyone's thoughts. As I said before I'm open to changes and I want to hear feedback. I was at the National Association of Insurance Companies (NAIC) Insurance Summit last week in Kansas City and I was surprised at the multitude of sessions that focused on the use of, protection of, and transparency of data so it's an issue that's getting a lot of attention and can't be ignored and we want the opportunity to provide states guidance before they go down their own road and if you've seen some states so far its not that good. I'm trying to strike a balance and I think we're getting to a better place.

Mr. Schnautz thanked Rep. Lehman for all of his work and stated that NAMIC is glad to hear the Model is a work in progress and we acknowledge that there has been progress and we also think there is remaining work to do. Sort of as broad context for comments, one of the things that we emphasize is that whatever NCOIL passes is plowing new ground as there isn't a state that has a law like this – there are some proposals out there but on the current trajectory you'd be the first to do so and we think it's very important to get it right. One of the other general themes of the remaining changes that we think should be made is to really focus on the value to the policyholder. It came up in July that in many cases the result will be that the policyholder goes out into the market and tries to find coverage that they either like better or charges them less – that's the way the market works as you well know and that's totally appropriate. Transparency is valuable in its own right but it never comes free and we want the value to be there.

I do want to acknowledge the changes that have been to the Model as we noticed them and we're continuing to look at them. I'll quickly note where we see the potential for further changes. The Model uses in a drafting note the concept of something being not inherently part of the risk – we fully support the intent there which is to carve out traditional underwriting factors but what we would prefer and we're happy to provide language is just explicitly carving those things out from the definition of external consumer data and from our standpoint it's really three categories. One is traditional rating and underwriting such as motor vehicle records (MVR), or a Comprehensive Loss Underwriting Exchange (CLUE) report. The second is data or information that the policyholder is providing and that would include what they include on an application to

participate in programs such as telematics. The third category is that while I mentioned this is plowing new ground there is an analog here with the NCOIL credit model which I think over 30 states have adopted and we do think it provides a good framework for some of this because there is a disclosure provision in that model but at the same time we do think information that's subject to Fair Credit Reporting Act (FCRA) and credit model ought to be specifically carved out so it's not duplicative and each has its own spirit.

Just briefly I'll point out some other things: in the adverse action part of the proposal we would prefer that it be limited to renewals - situations where you have an existing contractual relationship with the consumer. Also, we would like to clarify that on the premium portion of the model, increases in the insurer's statewide rate and any additional premium due to a policyholder-initiated change in the insured's coverage should not be part of the model. On the transparency requirements themselves, I mentioned the credit model and we appreciate the change in phrasing to the most heavily weighted and frankly the credit model uses the term "primary influences" and we think its analogous enough to say the same thing. The credit model also requires four things to be disclosed. We proposed five in an earlier version and we think it provides a balance. Finally, it's important that the model focus on things being made on request. I talked about at the beginning of the call what the value is here. Policyholders are going to know when they are concerned about this so we think making it on request will address needs of people to get more information without flooding them with information they may or may not have interest in. We do have some more procedural issues and we think the effective date of the model should be expanded along with some other things as well and we'll provide those concerns to Rep. Lehman.

Frank O'Brien, VP, State Gov't Relations at the American Property Casualty Insurance Association (APCIA) stated that I want to echo Rep. Lehman's comments relative to the NAIC insurance summit. There was indeed a tremendous amount of information on the part of the regulatory community as well as others so its clear that something is coming on down the pike and Rep. Lehman recognized that early on and we're looking as public policymakers to provide the sweet spot in terms of appropriate policy in this area for state legislators to pursue. In that regard I thank Rep. Lehman for spending over an hour with me at the NAIC summit discussing this issue. APCIA has been working for months on a comprehensive re-draft of the model and that is going through the APCIA committee process and will continue to go through that so I'm constrained from providing any specific details but at this time I can say that APCIA will have a proposal for NCOIL and Rep. Lehman prior to the November meeting.

I believe there is a strong likelihood that a consensus can be reached on this particular issue. We are viewing this particular matter with some overriding principles which are simplicity in terms of the operational requirements for insurance companies limited to personal lines and limited to a request in writing and limited to certain specific situations involving a rate increase or changes in things like that. Also, simplicity in terms of notice given to consumers and insurance producers in the sense of making that disclosure something that would be useful. We don't think that it's useful or appropriate for a company to provide reams of documents that would be indecipherable for anyone that is not a fellow in the Society of Actuaries. So, we want to have something that would address the ability of agents or others to provide answers to questions such as "how come my rate went up" which is the basic idea here. And then finally, provide an opportunity for the affected consumer or affected policyholder to have further discussions if needed with a person at a company who would have more information and is in position to answer more specific questions relative to that. This proposal that I've outlined I think meshes well with some of the provisions within Rep. Lehman's model particularly with the new draft. It does avoid new ground because there are a number of terms in the proposed model which are

new which could be subjective and could cause confusion initially. The bottom line is that we will have a proposal and we intend to engage extensively with Rep. Rowland and the committee.

Wes Bissett, Senior Counsel at the Independent Insurance Agents and Brokers of America (IIABA) stated that Rep. Lehman spoke quite a bit about the conversations at the NAIC summit last week on this topic and related issues and it was mentioned the amount of regulator interest here. I'll say that it's not just regulators interested in this, it's also the agent community and for that reason at IIABA we've been supportive of Rep. Lehman's work on this issue and proposal and we thank him for his leadership and work as we think it will help increase faith and trust in the underwriting and rating process and it will be an extension of what's been required for a longtime in terms of FCRA related disclosures. I want to make some comments on substantive issues. One of the big issues that the drafters and NCOIL will have to address is the universe of factors that this disclosure obligation applies to. I agree with Mr. Schnautz that the term "inherently part of the risk" is very subjective and unclear and I think NAMIC's approach in terms of defining elements or factors that would be excluded is probably the best way to go because its unclear how the term meshes with the term "external consumer data" so the way to think about it is exactly what factors will this apply to and then go from there. Also, if it's decided to limit this to upon request only, we would urge it to enable not just consumers that are the subject of underwriting or rating but also that person's agent to request it as that person is more closely wired in and there are probably some efficiencies to allowing that to happen. We appreciate the work and are intrigued by some of NAMIC's suggestions and think that things are on right track.

Cmsr. Considine stated that to follow up on earlier comments made regarding the NAIC, the level of activity around this at the summit was indeed very high. To add to that, there are regulators who seem inclined to want to go really far here and if there's a void in the legislative field with no activity at all then they will be inclined to go as far as they want to go but if there is legislation out there, although legislation doesn't always limit how far regulators are going to go, at least it's an amber light and will give some of them some pause if it is realistic and practical so I would just caution to not let the prefect be the enemy of the good.

Rep. Lehman stated that I think there are several things that were brought forth today that are really about wordsmithing and I'm all for that and I look forward to working with everyone. I am hearing a lot from agents that they are just looking for something to convey to clients and the thing I noticed at the NAIC summit was that there was one session talking about the loss of trust in the industry and needing to make sure that people continue to use the industry and we will do that I think and several of the regulators are saying we are looking for guidance because we're out on an island and many departments don't have staff or resources to hire folks to look at this actuarially and say it's being used properly so I think guardrails need to be put up to allow carriers to operate but at the same time provide transparency to consumers and that will take us in the right direction.

Asm. Cooley stated that the traditional problem that the insurance industry has is the way it operates, people don't understand it and from time to time industry gets in all kinds of crosshairs out of that failure to understand how it operates and how rates are constructed and sometimes people have a bright idea that they want to revamp it and provide for different outcomes and it ends up being very disruptive to the underlying work of insurance. I do want to note ultimately how its very important how rates are established. And the adequate rate concept, which most people don't understand, is very important as the insurance code is set up to protect the adequate rate concept and it is the first line of defense to a healthy insurance system and we

have guaranty funds set up if rates are not adequate and this conversation focusing on transparency in the rating system ultimately I think is a conversation that I commend Rep. Lehman for jumping in to and I do think it gets into conversations that relate to how the rating system works and what's in a rate and it's an opportunity as an educational tool of how rates work and how it makes sense that adequate rates are important and acknowledging that some things are minutia that we can have transparency around and should not have a big impact on a rate. Industry should view this conversation almost opportunistically to see it as an educational tool to talk through the basis that the industry operates on so if truly bad ideas come around, those policy outcomes are avoided. I think there is so much that is fundamental to the insurance industry that this conversation gets into and sometimes you may not like it but when focus happens you need to use it opportunistically to educate and I think this cross section of issues makes it a good time to do that.

Rep. Rowland closed by stating that anyone seeking to comment on the Model, please reach out to Rep. Lehman or NCOIL staff.

CONTINUED DISCUSSION ON NCOIL DOG BREED INSURANCE UNDERWRITING & BREED PROTECTION MODEL ACT

Rep. Rowland stated that as noted earlier, the sponsor of this Model, Asm. Cahill, couldn't join us today due to a scheduling conflict so I will now turn things over to the co-sponsor of the Model, CT Rep. Tammy Nuccio. Rep. Nuccio stated that I'm proud to serve as co-sponsor of this Model and I appreciate the conversations that we've had on it thus far. The biggest thing that I took from our last meeting in July was that both the insurers and dog advocates supported the removal of Section 3 of the Model which focuses on data collection. I agree with the removal of that Section, as does Asm. Cahill. However, we also both believe that the data collection section could be set forth as a separate Model for further discussion next year. We have asked Will Melofchik, NCOIL General Counsel, to prepare the data collection section in such a standalone format in the event this committee or its new chair wishes to pursue it next year. But for now, the best path forward is to proceed with focusing on Section 2 of the Model. With that change, I do think the title of the Model could be better suited as something along the lines of "Equity in Liability Coverage for Dog Owners" since the data collection section would be removed.

I have had some very good discussions with people from both sides who are very passionate about this issue and a few things that I would like to offer for discussion are: whether the Model should also apply to commercial insurance policies - my inclination is that it should not but it may be further discussed later; whether there should be a "don't ask don't tell" provision which would state that an insurer can't ask or inquire about the specific breed or mixture of breeds of a dog, but can ask if the specific dog is known to be dangerous or vicious or has been declared to be dangerous or vicious in accordance with state law - my inclination is that we maybe could include this as its relative to the specific dog and not breed; and whether the effective date of the Model should be lengthened so that insurers have some more time to comply. The current version states that it shall take effect immediately - my inclination is that some additional time is warranted but I don't want it to be too long.

Ledy Vankavage, Senior Legislative Attorney at Best Friends Animal Society, stated that we appreciate the continued work on this and we support the model and we're glad that the data collection section is out and we do think a better title is needed as it's a consumer bill and about equity so discrimination should be struck from the title. We also agree with the effective date

being lengthened as that would be hard for insurers to immediately change policies and I would support a “don’t ask don’t tell” provision that is similar to what Nevada has.

Mr. O’Brien stated that it may have seemed impossible when this issue was first discussed but we believe that we are poised to support the model at the November meeting. We thank Rep. Nuccio for her comments regarding removal of the data provision and I think there is widespread agreement on removing that language. We also appreciate Rep. Nuccio’s comments regarding changing the title of the model and we’re supportive of that as well. Relative to the commercial insurance issue as well as the “don’t ask don’t tell” language, we would caution on both and we agree with Rep. Nuccio that at least on commercial lines let’s not let the perfect be the enemy of the good on this – this is a hard fought compromise and while there is a possibility on having discussions on this down the road, commercial is significantly different than personal lines so we would like to at least see this initially limited to personal. The most significant concern would be a “don’t ask don’t tell” provision being included – I haven’t had an opportunity to review the Nevada language but again in the spirit of not letting the perfect be the enemy of the good, we do have significant concerns with language that goes into realms of limiting commercial free speech which is a big concern and should be for all public policymakers as there is U.S. Supreme Court language on this and basically to paraphrase, the language has to be narrowly tailored to support a state interest so you’re getting to significant First Amendment issues when you do put in that type of language and we would caution NCOIL relative to that. Having said that, with the removal of Section 3 and title changes, this is language that APCIA could support.

Mr. Schnautz stated that NAMIC is really glad to hear section 3 is out. My initial reaction to everything else is similar to Mr. O’Brien’s but I look forward to seeing further language and I’m happy to engage in conversations from there.

Jennifer Clark of the American Kennel Club (AKC) stated that AKC echoes previous comments made by others regarding section 3 being removed. That being said, we’re happy to work in the future on data collection and we’re happy to provide expertise on that. At this time, we’re happy with the model and look forward to working in the future on other language regarding “don’t ask don’t tell” and the title. We appreciate all the work being done here to make this fair for dog owners and protecting public safety and property.

Susan Riggs, Sr. Director of Housing Policy at the American Society for the Prevention of Cruelty to Animals (ASPCA) thanked the Committee for its work on this and this model is helpful for consistency across states. That said, I’ll focus on the outstanding issue of the use of breed as a criteria generally. We provided a letter with citations and what we are most concerned about is the inaccuracy of identification of breed and the lack of correlation between breed and risk and as long as breed can be used in underwriting then it’s still a very opaque way of determining how a policy was written and at what cost. Breed needs to be limited and you can look at any study of aggression in dogs and they will cite a number of other factors leading to aggression and those factors are fair game and the problem is that breed is mis-identified and it doesn’t correlate and it doesn’t need to be a consideration and from a consumer standpoint its harmful and it trickles through and at a time of housing instability generally to have breed as a criteria is so hurtful to so many people and we see it everywhere we go and especially now with evictions it’s detrimental without any basis in science or data to justify.

Jessica Simpson, Sr. Public Policy Specialist at the Humane Society of the United States stated that she appreciates the committee’s continued work on this issue and echoes Ms. Riggs’ and Ms. Vankavage’s comments. We support the removal of section 3 and updating the title to

accurately reflect the model's purpose. We also support inclusion of a "don't ask don't tell" provision.

Ngozi Nnaji, Principal of AKO Brokerage Services stated that at this committee's last meeting in July I represented the black and brown agent population without our industry. We do some work with the African American Insurance Association and Best Friends Animal Society and we support those things that have been indicated as changes to the model and we appreciate the recognition and implication that the use of breed restrictions in underwriting can lead to implications of discrimination and racial bias and we appreciate recognition of that. Also, as an independent agent I do appreciate the concern about commercial insurance and we are seeing more small businesses be pet friendly so that is a consideration around risk and appetite and questions that are being asked by underwriters and we want to put that on the horizon and hope we can have future discussions around it.

ANY OTHER BUSINESS

Rep. Rowland stated that there is one last piece of business before we adjourn. Registration for the November NCOIL Annual Meeting in New Orleans is open. If you haven't yet registered, please do so. Also, as a reminder, on the first day of the New Orleans meeting, we'll be holding the first Annual NCOIL Golf Outing to Benefit the Insurance Legislators Foundation Scholarship Fund. If you haven't yet registered, please do so before it sells out. You can find all meeting and golf registration information on the NCOIL website or by reaching out to NCOIL staff.

ADJOURNMENT

Upon a Motion made by Rep. Lehman and seconded by Asm. Cooley, the Committee adjourned at 12:30 p.m.