

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
PROPERTY & CASUALTY INSURANCE COMMITTEE
2023 NCOIL SUMMER MEETING – MINNEAPOLIS, MN
JULY 22, 2023
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Property & Casualty Insurance Committee met at the Minneapolis Marriott City Center Hotel in Minneapolis, MN on Saturday, July 22, 2023 at 9:00 AM.

Representative Edmond Jordan, (LA), Chair of the Committee, presided.

Other members of the Committee present:

Rep. Stephen Meskers (CT)	Sen. Jerry Klein (ND)
Rep. Tammy Nuccio (CT)	Asm. Erik Dilan (NY)
Rep. Kerry Wood (CT)	Sen. Bob Hackett (OH)
Rep. Brian Lohse (IA)	Sen. George Lang (OH)
Rep. Matt Lehman (IN)	Rep. Forrest Bennett (OK)
Rep. Michael Meredith (KY)	Rep. Mark Tedford (OK)
Rep. Michael Sarge Pollock (KY)	Rep. Carl Anderson (SC)
Rep. Rachel Roberts (KY)	Rep. Tom Oliverson, M.D. (TX)
Rep. David LeBoeuf (MA)	Sen. Mary Felzkowski (WI)
Rep. Brenda Carter (MI)	Del. Steve Westfall (WV)
Sen. Lana Theis (MI)	
Sen. Michael Webber (MI)	
Sen. Paul Utke (MN)	
Sen. Vickie Sawyer (NC)	

Other legislators present were:

Rep. Deborah Ferguson, DDS (AR)	Rep. Mike McFall (MI)
Rep. Dafna Michaelson Jenet (CO)	Sen. Gary Dahms (MN)
Rep. Cara Pavalock-D'Amato (CT)	Rep. Nelly Nicol (MT)
Rep. Rod Furniss (ID)	Rep. Amy Walen (WA)
Sen. Michael Fagg (KS)	Del. John Paull Hott (WV)
Sen. Beverly Gossage (KS)	
Sen. Arthur Ellis (MD)	
Del. Mike Rogers (MD)	

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO
Will Melofchik, NCOIL General Counsel
Pat Gilbert, Director, Administration & Member Services, NCOIL Support Services, LLC

QUORUM

Upon a Motion made by Rep. Stephen Meskers (CT) and seconded by Del. Steve Westfall (WV), the Committee voted without objection by way of a voice vote to waive the quorum requirement.

MINUTES

Upon a Motion made by Sen. Jerry Klein (ND) and seconded by Rep. Rachel Roberts (KY), the Committee voted without objection by way of a voice vote to adopt the minutes of the Committee's March 11, 2023 meeting in San Diego, CA.

INTRODUCTION AND DISCUSSION OF PROPOSED AMENDMENTS TO NCOIL MODEL STATE UNIFORM BUILDING CODE

Rep. Jordan stated that we'll start today with the introduction and discussion of proposed amendments to the NCOIL Model State Uniform Building Code sponsored by Rep. Jim Dunnigan (UT) and co-sponsored by Rep. Matthew Gambill (GA). Several states including my home state of Louisiana have enacted laws that encourage homeowners to take steps to strengthen their homes by providing them with insurance discounts if certain standards are met. And I'll just add that we just did this again with the Fortified roof program this past year. The laws do vary in terms of methods of encouragement as some states require the insurer to issue a premium discount if certain standards are met while others make the discount voluntary. And in Louisiana we do make it voluntary. Louisiana also has a program again with the Fortified roofs. Rep. Dunnigan was scheduled to be here but unfortunately he had something urgent come up and he couldn't join us. There are some technical changes to the Model that are wholly separate from the premium discount amendments that are also sponsored by Rep. Dunnigan but since he isn't here today, we're going to hold off on considering them until our November meeting.

Since Rep. Dunnigan isn't here, I'll just briefly present the amendments so everyone can follow along. The amendments are on page 317 in your binders and on the website and the app. The amendments are intended to go into the existing NCOIL Model State Uniform Building Code which is in your binders on page 321 and again, on the website and the app as well. With Rep. Dunnigan being from a state that has been experiencing an increasing amount of wildfires, he's interested in different policy approaches that encourage homeowners and renters to take steps to strengthen their property from natural disasters. As some of us know, NCOIL did discuss these amendments back in 2018 which are based on Oklahoma law but the proposal was ultimately withdrawn as a consensus could not be reached. But with the unfortunate increase in natural disasters this is a very timely topic and I'm glad that NCOIL is discussing it again. Just a couple of more notes and I'll stop. You'll see in the language that the premium discount is only required if the insurer determines that it's actuarially justified and that there's sufficient and credible evidence of cost savings which could be attributed to the construction standards set forth in the Model. Rep. Dunnigan has stressed that he thinks that's important language and protects against unnecessary discounts being issued, which could in turn significantly impact insurer solvency and end up harming consumers.

Valerie Brown, Deputy Executive Director at United Policyholders (UP), thanked the Committee for the opportunity to speak and stated that today, UP would like to highlight the differing approaches we're seeing to incentivizing, rewarding and facilitating mitigation. So, a little bit about UP. We're a national nonprofit. We serve as a trusted voice and information resource for consumers in all 50 states. We formed after the 1991 Oakland Hills Wildfire. Our Roadmap to Recovery program has served disaster survivors since that fire and Hurricane Andrew the next year and is currently serving Hurricane Ian and wildfires and flooding across the country. We're based in California with a professional staff of 15. We partner heavily with government and non governmental organizations and we leverage our team UP partners and volunteers to provide that insurance education and information across the country. What makes us unique is our

survivor to survivor volunteers. When we serve in a community, those previous catastrophic loss survivors that we've worked with continue volunteering with us to help current survivors by sharing their very unique knowledge about the insurance claims process. So right now in California, there's a lot of energy, time and money going into reducing wildfire risk. The Firewise USA program is just growing rapidly in the state. The Insurance Institute for Business & Home Safety (IBHS) is rolling out their Wildfire Prepared home and they are testing that in Paradise. We spent the last three years working on what we call the Wildfire Risk Reduction and Asset Protection (WRAP) Initiative and we have a resource center dedicated to that and what we're doing is really helping property owners know what to do in how to improve their home's chances of surviving a wildfire. We're all working on the same page to make that happen. This is our WRAP resource center, which provides those very hyper local resources and ways to assess your home and checking for those insurance discounts to motivate homeowners to take those steps and how to get started.

Some things we can't do – we can't control the weather or those earthquakes or any of these disasters. We can't put that modeling drone imaging back in the bottle. We can't force property owners to make the improvements if they can't afford to make them. And what we can't do is leave property owners and their mortgage lenders without insurance options. But what we can do is coordinate among these stakeholders and partners. We can research risk reduction. We can facilitate risk reduction and incentivize it and reward it and provide financial assistance for that. And that's one of the things we do in our WRAP resource center is not only talk about those mitigation steps, but what grants and funding opportunities are there for homeowners to make a difference. And these are the imperatives as we see them. We need to understand what is effective in risk reduction techniques and options. What's going to move the needle? What will insurers validate that will improve a home's protection? We need to establish those standards, the partnerships and viable mitigation support programs to make it. Because the goal is to preserve affordable, quality property insurance options. The options that we see are premium discounts and you can see mandatory with specific percentage, mandatory but not a specific percentage, or voluntary. California is doing a statutory limit from non renewals to provide protection in communities impacted by wildfire. Insurer funded mitigation is also an option. We're seeing some of those pilot projects. There's right now a lot of dollars being put into government funded mitigation as well and so talking about IBHS, you know the mandated discounts based on their standards, most statutes that mandate those discounts require that they meet an insurance industry standard. And as Rep. Jordan mentioned the Fortified program is a standard. There's in California also a program called Safer From Wildfires. And focusing on IBHS, what they did with Fortified really has moved the needle as far as wind events and what they're doing now in the pilot project for the campfire is taking all of the research done on fire damage and wildfire in general, and putting that into a similar program that they're piloting in Paradise, California, which was impacted by the 2018 campfire.

And I'm not going to go into detail on these as a lot of this is so you have this as reference but these are the details of the Fortified gold and silver programs. So just touching on the Mississippi code, they required the licensed insurers to provide a mandated discount rate to anyone who follows the IBHS mitigation standards. It's a very limited subset of people that are impacted and has it available to them. It's only required for policies that provide wind coverage and only to homeowners in selected coastal cities and it excludes multifamily manufactured homes and businesses. So the requirement to offer and notify, some states do require that and others don't mandate and some of these programs are just voluntary in a community and I'll touch on few of those in just a minute. And so for this one I think we all agree in the west there is a need for wildfire mitigation and so we need to provide a way to motivate people to take advantage of this. So right now in the west we're experiencing an ever growing availability and

affordability crisis and you've seen national news on insurers in California specifically that are just not taking new policies, they're not issuing them. They're raising premiums on the customers they keep. Some of them are imposing mitigation requirements in excess of state requirements that are just not feasible for people to do. I have one homeowner who was required to clear 100 feet out. Their property line goes to 30. They cannot mitigate the next 70 feet because that is their neighbors property so they're in a situation where they cannot bend. And this is leaving people in rural areas, especially rural Californians, with very limited and expensive options so they're looking at surplus lines. They're looking at the California FAIR Plan which is about 300,000 policies currently but that will grow a what's causing a lot of the issues here is this risk classification based modeling, using FireLine and CoreLogic. That's what's dominating a lot of insurer's underwriting criteria and to put it in perspective, FireLine, which is used by insurers in 13 Western states has a scale of one to 30. In California, most insurers will not underwrite a home with a score of a four. You've got to be a one to three. Two years ago, it was a six. That keeps dropping. And what's interesting, it's dropped after the larger wildfires. So in 2021 and 2022, less wildfires, more acres lost but less wildfires damaging, destroying homes. But the score keeps dropping.

CoreLogic has a scale of one to 10. It's used in 15 western states and Florida. And I met a gentleman at a presentation before flying out here who was not renewed by his insurance company because he has score of a two. He's 20 blocks in from the wild urban interface area. There's nothing he can do to improve his score. He's done all the mitigations and he has a two on a scale of one to 10 and he can't get insurance. So talking about California just briefly as a case study. The tree mortality was a big driver of this beginning. Climate change is obviously pushing it over and this over reliance on the use of risk classification models. They're just creating this perfect storm we're seeing of insurance unaffordability and unavailability in those brush areas that wild and urban interface. So from our 2017 survey, 47% of homeowners were told that high FireLine score made them uninsurable. Most of those people, their insurance companies were not making recommendations of things they could do to mitigate that risk in order to reduce that risk. The survey we just completed in 2022 saw 72% of the homeowners were told a high FireLine score made them uninsurable. Bear in mind, when you look at a scale of one to 30 and you tell me high I'm thinking 15 or 20 as a score. The idea that it's a four is very confusing for consumers. And then 94% of those said that their insurer had still made no recommendations on what they could do to reduce that risk. During this time from 2020 to 2022 in the state of California we've seen an explosion of activities to define that science including the IBHS program that has rolled out but it hasn't translated yet into insurers providing some guidance on what people can do.

So who can be part of the solution? The Fire Safe Councils and Firewise communities. Obviously government and community organizations. Very much so insurance commissioners and we believe heavily that insurer-insurance partnerships and working with the community are key to making this happen. And so here are three successful programs that we've seen. Wildfire Partners in Boulder, Colorado is doing a really good job. I'll talk about them a little more in a minute. The Firesafe Council Program does an excellent job and they're good at securing community grants to help leverage what individuals are doing for the community and we're seeing in the western states, the western fire chiefs are putting in a lot of effort into coming up with programs where they're helping their communities and leveraging federal and state dollars to make that happen. Talking about Wildfire Partners, it's a partnership between Boulder County, the Federal Emergency Management Agency (FEMA) and the Colorado Department of Natural Resources. They provide an inspection looking at vegetation in the defensible space. They do a 50\$ cost sharing up to \$2,500 if you hire one of their contractors and this is certification that USAA and Allstate recognizes as proof of proper mitigation. State Farm uses it

for renewals, not for adding new clients. And they presented to us last time that we checked with them last week that no insurer has denied coverage for a homeowner who has presented that certification so it's very good news for those consumers but it's a small program. It doesn't even cover the whole county. Nevada County, California, their Fire Safe Council has two pieces. They have their Advisory Visit on Defensible Space and so they're going to check compliance with our Public Resources Code there and that's 100 feet of defensible space. And then they'll provide grants for people who have financial need and so in that safe area is a unique partnership where Allstate and insurers actually are providing part of the dollars for those grants.

And then there's the Defense Space Verification Service and so they're coming back to see that they complied because for insurance purposes the insurer wants to know with that vegetation mitigation that it is ongoing, that it's not a one and done. Replacing your vents, doing home hardening actions are a one and done or a one and done for many, many years but for that vegetation management that needs to be done at least annually. And what we found in Nevada County the defensible space verification has usually been accepted as proof that they've done enough but now we're starting to see denials and as part of this we were finding just like with the Firewise program and the Boulder program that the insurers are offering that 5% discount but it's not mandatory, it's voluntary. It's not uniform and it's very much subject to change. This is just the chart we have. We spent those three years when everybody was locked down with COVID working on this project, the WRAP Resource Center. And these are the mitigations that we came up with that the Department of Insurance did and Cal Fire and they also align very closely with what IBHS rolled out last year in Paradise, California. This is the Firewise USAA program. This is where a community comes in and they become "recognized community" and so this again provides some discounts that are voluntary in there for consumers but it involves a larger process. It's not what an individual consumer is going to do. It's a larger effort and they have to do very specific Firewise actions for the year and get their application approved. And so here are the discounts available on policies and the states that honor them. You can see the years that they came into being. And so here are the problems and the potential solutions that we see. So these are all good examples of voluntary programs, but without legislation that mandates compliance as automatically eligible, homeowners can and are mitigating all that they want, but it doesn't matter to insurers. That's what we're finding. So, there's no reward for taking those steps to be a partner with an insurance company. Insurance Commissioners need an increased oversight over the use of wildfire models that don't account for mitigation or local firefighting capacity. Because we're seeing that FireLine score or CoreLogic score is being presented as the sole underwriting criteria for these issues. And then going back to just overall the big picture, establishing uniform mitigation criteria just like with Fortified homes that's accepted by all insurers so it's not mickey mouse across different states in different jurisdictions can help prevent market disruption.

And so just to talk about wildfire specifically, the pullbacks we're seeing feel very oversized compared to the damage. So between 2005 and June 2022, Headwaters Economics reported that 97,000 homes, businesses and other structures were destroyed by wildfires. The top 10 of those wildfires occurred in California, Tennessee and Texas. So just compare this to one hurricane in one year. Katrina, 850,000 homes damaged or destroyed. Sandy, 650,000 homes destroyed. So over 17 years you're looking at less than 100,000 homes having been destroyed but the market is reacting as if our stats are this is every year we're having these major disruptive events. So just keeping that in mind as you're thinking about mitigations and about the uniform mitigation criteria, without that insurers are going to have no faith in the system so setting a level playing field that consumers know where they're aiming to be so that insurers have faith they are actually doing those steps that are realistic and follow science is key.

Hilary Segura, Assistant VP and Counsel, State Gov't Relations at the American Property Casualty Insurance Association (APCIA), thanked the Committee for the opportunity to speak and stated that I would say that the key to improving insurance affordability and availability is by reducing overall losses and insurance discounts can provide a helpful financial incentive but the focus should not simply be on providing a discount. Insurance rates must accurately reflect the risk and be developed through sound actuarial standards of practice for the system to work properly and not result in harm to the market. An effective insurance based mitigation program must be carefully considered to ensure it incentivizes the right actions that ultimately benefit consumers and facilitates a healthy insurance marketplace. There are in our view three keys to an effective insurance based mitigation incentive program. First, APCIA does oppose any sort of mandate, so any program should be voluntary, flexible, and limited in scope. But we also say that laws and regulations should also be limited to residential property lines due to the complexity of large commercial line accounts. Second, it should be verifiable, grounded in science and risk based. Prescribed mitigation actions must scientifically demonstrate a reduction in risk with premium credits actually reflecting the actual level of risk reduction. Discounts must be based on actuarially credible data and applied to actuarially supported premium components for the peril. And third, any program must be cost effective, consistent and complementary. The costs and measures needed to implement an insurance based mitigation incentive programs shouldn't be excessive, thus negating any potential savings the mitigation program would provide for a consumer. It also should be consistent with any local codes and ordinances so insurance incentives help reinforce efforts of the state and local government officials and amplify other financial incentives. As Rep. Jordan mentioned, Louisiana did take steps hand in hand with encouraging the discounts on insurance. The state did fund a program to incentivize residents to take steps to fortify and helped fund it. We would certainly encourage states while they're looking at this proposal to also take a look at providing funding and incentives in grant form to residents to take proactive actions. APCIA has been proactive in this mitigation space and we're looking forward to being a constructive partner with NCOIL as this proposal moves through the process.

Matt Overturf, Regional VP, Ohio Valley/Mid-Atlantic Region at the National Association of Mutual Insurance Companies (NAMIC), thanked the Committee for the opportunity to speak and stated that to begin today's conversation, it's important to point out that insurer's core responsibility is to understand and mitigate or manage risk. Disaster mitigation is not a new issue for property casualty insurance which since its inception has concentrated on extreme weather and focused on seeking ways to minimize the physical and financial effects of weather events on policyholders. From a public policy standpoint, the property casualty insurance industry has focused on extreme weather events for decades and has been working to advance resilience in policy, and reduce the effects of weather events in the states and on Capitol Hill. With this in mind, however, NAMIC opposes the concept of mandatory discounts. Mandatory discounts effectively do little to mitigate risk. In order to effectively bend the risk curve a broad adoption of comprehensive mitigation action is required and state experience illustrates this. So looking across the states, states that have adopted only a mandatory discount have far fewer Fortified designations than states that adopt a more comprehensive approach that includes grants, building code supplements and tax deductions for example. In addition, we are also concerned with the impact mandatory discounts could have on innovation and competition in the property insurance market. If all insurers are required to offer a discount it is likely to look similar across the marketplace whereas a permissive approach would allow and encourage an insurer to offer programs in a given state to differentiate themselves among their competitors. And finally, we are concerned about the potential costs to implement such a program, specifically on smaller insurers and in smaller states. It is with this in mind that we oppose including mandatory discount language in the Model, but we do support the continued dialogue

around disaster mitigation in a comprehensive manner. And I'll just close by stating that we've had several conversations with Rep. Dunnigan and other members of the Committee and we look forward to continuing those conversations as we go forward.

Rep. Mark Tedford (OK) stated that the question I would have as far as your comments on the wildfires and the damage - I think the reason why the industry looks at wildfires differently than hurricanes is because the wind pools in those states bore the brunt of it. So, in California with the FAIR Plan there's been consideration to develop a market around the FAIR Plan like some of the coastal states have done to where you're buying an insurance product that excludes the peril that's the problem and then just buying that peril from the pool in that state. Is a Model being considered for that in California? Ms. Brown replied yes and stated that with the California FAIR Plan what we have are difference and condition policies where you can add those additional perils. And like I said, currently the California FAIR Plan is only about 300,000 policies. Most people in this state are able to find insurance elsewhere so it's not that it's a huge risk that there are a lot of people being impacted by it currently. But as the market tightens they're going to see more business. And so there's that piece. But the reason I brought up the Hurricanes is just the scale. When I talk to people about wildfire risk in their head, they're equating it with every fire is disastrous where you're looking at 20,000 homes destroyed and that's not the case and so putting it in perspective is helpful to look at the scale of the disaster that actually happens. Because it's not a lot of people impacted overall but it's having a very outsized impact in the areas that most likely will not face a wildfire and I'm not going to say will not because we all saw Malibu burned all the way to the Pacific Ocean in 2018.

Rep. Deborah Ferguson, DDS (AR), NCOIL President, asked if there was any data on whether the discount is more effective than the loan program in terms of participation? Mr. Overturf stated that IBHS has a list they keep of who has the Fortified designations in each state. Looking at those, the states where it's just a mandatory discount they have a far fewer number. Oklahoma for example has 17 Fortified designations in the entire state. They've had a mandatory discount for six or seven years. Whereas Alabama has a more comprehensive program that includes grants and some of those other things and they have over 41,000 designations in the state. Ms. Brown stated that and I'll add for wildfires because it's not mandatory in California that you get the discount, for California we have a lot of utilities, because utilities sometimes cause the fires and a lot of jurisdictions that invested very heavily in grants and loan programs from mitigation. And those homeowners when they take those steps then are still often dropped because they're in those wildfire risk areas that are very high severity. And so you've got people who are taking the steps and then not able to get insurance. So from their perspective, having the guarantee of if I take these steps and I take advantage of these loan programs, if I can retain my insurance because again, it's affordability and accessibility, right? So in California it's a little different that we're looking at accessibility is just as big an issue as affordability.

Rep. Ferguson stated that my daughter lives in California and her insurance after the fire went from \$4,000 a month to \$13,000 a month and \$6,000 of that is FAIR fire. What about people who have mortgages on their house, are the bankers still requiring them to have homeowners insurance? Ms. Brown replied yes and stated that for UP, we've been meeting with Fannie Mae for a couple of years now working on what that looks like and how that impacts the market and actually we just finished a white paper project with them on manufactured home insurance because that's a different animal but with wildfires it's incredibly not helpful as far as giving people the tools they need to recover.

Rep. Stephen Meskers (CT) stated that I haven't delved deeply into property-casualty but I'm certainly interested in your views here and I'm trying to understand the argument and discussion we're framing. And one is between either a mandate on the insurance companies in terms of offering discounts and providing preventative measures for property casualty damage whether it be for fires or for hurricanes, etc. The second is whether or not we as legislators should be looking at mandating practices for homeowners for that same issue. That seems to be part of the argument and I wanted to have that discussion and the second question is in terms of if we're having trouble with access to insurance, does that become a legislative issue in terms of where we mandate the level of coverage or the pooling for a certain catastrophic insurance? Because if you've got hyper local risks of fires, do you subsidize that with the assessment on the general pool.?

Ms. Brown stated that for the second piece I would actually defer to our Executive Director who I believe is going to be presenting in one of your upcoming meetings, because I know a little bit about property casualty but I'm long term recovery and wildfire stuff. I've been doing that for 15 years so I know this piece for the consumers very intimately. That piece is above my pay grade to be quite honest but I will say if you notice our presentation we didn't make a recommendation on what to do because it needs to be a very collaborative process to figure out what's going to work in your State. But having that framework that has uniform standards consistency, at least in your state so that insurers know what the playbook is and your consumers do and pairing that with you as legislators looking at providing those grant pools and getting those FEMA grants and then doing matches to make that work to help consumers do that, I think that's going to be very key to what you're doing. I met a gentleman who did \$75,000 worth of repairs two weeks ago. He replaced the vents in his house. He put a class A roof on. He did all of these things to meet what the state standards by the California Fire Department are and it matches what IBHS requires. So he met the standards for the new home construction in California. He met the IBHS standards and he's looking at that saying, "Okay, I'm doing everything the science says I can do, including what the insurance companies research body says I can do to mitigate wildfire risk." He was still dropped and so his resource is to go to the California FAIR Plan which is just fire and then you have to add your additional, your living expenses, your content, any of those other coverages are not included. You have to add all of those on. I have a consumer two months ago who gave me a \$36,000 policy per year and they can't afford it. And remember, for people who have a mortgage, they don't have an option not to have it and if they don't, they're going to get a forced lien policy. It's the bare bones policy that just covers the loan. They cannot rebuild. They've lost all the equity they've put in that house over the years. They have no additional living expense coverage. They have no contents coverage. No liability. So, they're stuck and so what do they do? And that's one of the reasons why the lenders are looking at this issue. We've met with Treasury on these issues and everybody's concerned because if we can't come up with the solution it's going to impact the larger financial market in the country.

Mr. Overturf stated that I'll just add really quick on wildfires from our perspective. It's probably the most unique of these disasters that we talk about because when it comes to wind and hail, you can mitigate your own individual property and that can help you. When it comes to wildfire it is much more community wide where you can do things to your individual property but at the end of the day to really make that impact you have to kind of go from the top down from a community across the board. You could do whatever you do to your house on a wildfire but if your neighbor has done nothing you might be a little bit protected, but still there's going to be a higher risk of damage and negative consequences to you even though you've done what you can do. You kind of have to look around you as well.

Ms. Brown stated that one final thing to throw on the uniqueness of wildfire - in most other disasters that we're talking about with these risks that you can mitigate, wildfire recovery is more expensive. Because an insurance policy is not looking at you've got to replace that foundation. There are unique costs related to total loss with a wildfire that you're not seeing in most other disaster insurance claims and so preventing those houses from burning down to the ground is incredibly helpful to everyone involved - the insurers and all of us.

Rep. Jordan thanked everyone for speaking and stated that if there are any other questions or comments on this please reach out to Rep. Dunnigan, myself or the NCOIL staff.

INTRODUCTION AND DISCUSSION OF NCOIL CATALYTIC CONVERTER THEFT PREVENTION MODEL ACT

Rep. Jordan stated that next on our agenda is the introduction and discussion of the NCOIL Catalytic Converter Theft Prevention Model Act (Model), a Model that I am jointly sponsoring with my good friend, Rep. Tom Oliverson, M.D. (TX), NCOIL Vice President. You can view the Model on page 346 of your binders and on the website and the app. And as a reminder, we had an introductory presentation on the issue at our last meeting in March and we're now proceeding with the development of the Model. I think it's a good issue for NCOIL to get involved with. I can tell you in my home state of Louisiana, we have had some issues with this and we have tried to address it with some legislation but although we've done that a couple of months ago, some data was released showing that Louisiana has had a near 3,000% increase in catalytic converter thefts since 2019 so I'm not sure how effective we've actually been. It's one that we're continuing to address.

Rep. Oliverson stated that it's an honor to work with you again on some good policy here. My home state of Texas actually is ranked number two nationally in terms of the total numbers of catalytic converter thefts occurring annually. So, this was brought to a head in our state with the tragic and untimely death of Harrison County Sheriff Deputy Darren Almendarez who was gunned down in a grocery store parking lot by three men who were attempting to steal the catalytic converter from his personal vehicle. Texas recently passed a law very similar to the Model which essentially not only increases the penalty for theft of the catalytic converter to a felony but also allows district attorneys to prosecute offenders under the organized crime statutes. This is obviously a serious problem. This is a high number of claims. It's leading to a tragic loss of life and so I'm honored to work with you on this. I would throw out one other interesting tidbit and that is that in my home county, having recently visited with the Chief of Police for our third largest school district which is almost 200,000 students and close to 100 campuses where they actually apprehended one of these catalytic converter theft rings in one of the high school parking lots they ran into an issue where the district attorney decided that because it was a property crime and they had bigger priorities even though they'd sort of caught the main guy red handed, they decided not to accept the charges and so one of the other things that may be of interest to you in your states just depending on your appetite for this is that in Texas we recently passed House Bill 17, which added to the list of reasons why the district attorney could be removed from office through a judicial process, an unwillingness either publicly expressed or through a matter of policy to refuse to prosecute entire categories of criminal activities. So, sometimes you need the carrot and sometimes you need the stick but it's an honor to work with you on this.

Pat Martin, Senior VP & General Counsel at the National Insurance Crime Bureau (NICB) thanked the Committee for the opportunity to speak and stated that in this presentation, what I'd like to do is just touch on what was covered in the last meeting in March but also go into a little

bit more detail on the Model and then also answer any questions you may have. We know that a lot of your jurisdictions have either considered or are continuing to consider legislation, either new or enhancements to existing legislation in your jurisdiction to address this important problem. And we think the Model and what Rep. Oliverson said goes a long way giving your jurisdictions some additional tools to deal with this very devastating problem. So just in terms of background, not news to anyone here, there's an explosion in this type of theft since 2016. It has gone up 1,200% since 2019. What that means in terms of numbers as reported to NICB through really the claims process we have access to claims as to catalytic converter thefts, it's over a 110,000 thefts that were reported. And we don't know whether that represents a majority or just a portion of the theft problem because not all thefts are being reported obviously. Some victims of this crime are not reporting them because they don't want it to be part of their insurance claims history which may impact their premium. So, we think it's a much more significant problem but what we can tell this body is that of those 110,000 thefts since 2016 about two thirds of those have occurred in 2021 and 2022 and we don't have the numbers yet for 2023 so the problem's not going away and if anything that's going up. The other thing we can say with certainty is that the consumer impact is significant. So, your constituents are out there. They need their vehicles obviously to go to work, bring your kids to school. Go to extra events. To just live life. And when a converter is stolen from their vehicle, it can take weeks, sometimes months to get that vehicle repaired.

So this is a significant quality of life issue that goes well beyond just the loss of the value of the catalytic converter because the cost to make a person whole sometimes can be captured in terms of lost time at work in terms of inability to bring their children to school or not have to arrange for alternative methods or for the the cost of the insurance industry as well in terms of getting their policyholders back the whole. So the impact could be fairly devastating in some instances, not to mention sometimes these catalytic converter thefts lead to violence as Rep. Oliverson mentioned and I think as was mentioned by my colleague in the previous session where it resulted in a law enforcement officer who was trying to prevent a theft dying at the hands of these criminal actors. So, it's a significant issue and we're glad to see that many of the states are interested in addressing it. We'd just like to help you have tools to bring back to your legislative bodies to enhance the ability to address this very significant problem. I'm not going to cover what a catalytic converter is but if you have any questions regarding that please just direct them to me either in the open session or after the session. So very quickly on this, this is just to represent that the states have taken action on this both in the past and more recently in 2022 and 2023. You'll see that the majority of the activity occurred in 2022 and 2023 to address the increasing threat of the crime and the impact of the crime in the last several years. What this is also supposed to represent is the variety of ways in which states have to address this, either in short form or long form and in some ways, maybe not a comprehensive way, consistent with the Model that's being proposed. And so there's a lot of variety out there in terms of how it's being addressed and importantly, the criminal rings that deal in this fairly lucrative crime, they don't operate within state borders so a lot of this is multi district and oftentimes, even though the thefts occur in one place, perhaps the sales occur in other places because in those states there are not as many restrictions on buying and selling catalytic converters and so the bad actors are smart and they're going to limit their exposure and the patchwork of laws across the U.S. makes it easier for these criminal rings to operate. So, one of the efforts here with the Model is to bring everybody up to the same level of preventive and deterrence through this Model and to the extent the uniform Model can be adopted in large part across the many states, it would make law enforcement response to this crime more effective.

Basically, there's been four themes to addressing this problem: new or enhanced criminal statutes; scrap yard regulations like record keeping type regulations to make those transactions

a little bit sticker so that law enforcement and other regulatory bodies after the fact can get the information they need as to whether a seller or buyer is a legitimate seller or buyer or is involved in some unlawful activity; buyer-seller restrictions including identifying where the catalytic converter was recovered from or taken off of; and then in some instances including Texas, presumption of guilt or really inferences of criminal intent which is sometimes hard to establish. Just real briefly on the federal response, it's become such an issue that Congressman Baird has introduced a bill that would provide for a unified response across the U.S. and it includes certain themes that I discussed on that previous slide and are in the Model. I'm not going to go into great depth here because even though it's been introduced and there is a lot of support for it on the House side and the Senate side it's just not getting a ton of traction right now and as it goes with many things in the federal government they are probably going to address it after many of the states have. So, it's really incumbent upon this body and state legislators to take action in order to curb and deter this problem. Real quick, and this is where I want to spend a little bit of time here. We have four different buckets, or themes for the Model overview, now only one component of it is really to enhance the criminal penalties. For some states, a new statute is required but for most states it's an enhancement. Many of the states for property crimes, not surprisingly, will have a threshold amount that differentiates between a misdemeanor offense and a felony offense. The Model would make the theft of a catalytic converter a felony offense and that's important for reasons similar to what Rep. Oliverson alluded to, which is when prosecutors, law enforcement are trying to decide where to dedicate their resources they are seeking to follow what legislators are deeming to be more significant crimes. Clearly, when you identify a crime as being punishable as a felony, legislators are saying this is a more significant crime and you should prioritize that over misdemeanor offenses so making it a felony offense is an important move for many states not only for the thieves, but also as you see there below for receiving stolen catalytic converters, in many jurisdictions receipt of stolen property is a misdemeanor offense or there are less penalties associated with that. By bringing the receipt of stolen catalytic converters up to the same level of punishment as the unlawful seller it allows for greater enforcement mechanisms and increases and enhances the importance of the enforcement mechanism. There's also an aggravated theft provision in the Model for repeat offenders and those individuals who commit the theft while armed.

The Model would also provide for limitations on buyers and sellers. I'm not going to spend much time on buyers. It's typically record keeping restrictions as well as identifying the seller and putting some onus on the buyers so that the buyers can't claim to be unwitting recipients of these stolen catalytic converters. Where a lot of the action takes place in the Model is on the sellers. There is a bevy of different types of provisions that can require certain additional record keeping requirements of the sellers and some verification requirements on sellers that they be licensed or otherwise registered to be able to sell catalytic converters. That can occur with existing regulatory requirements but also certain a stickiness on, or example, the sales. Not on this slide, but one of the proposed provisions is a limitation on sellers that they not be allowed to be sold to individuals under the age of 18. Why is that - so that bad actors are not using juveniles to commit their crimes. There's also a proposed restriction in terms of regular business hours so sales occurring in the dark of night after 9:00 PM or before 6:00 AM when some of the nefarious activity may occur so trying to bring this back into the transparency of daylight and regular business hours and seek to regulate sellers so that it becomes more of a regular business that can be regulated and also for law enforcement after the fact when they're looking at this they can hold non compliant sellers responsible.

And then finally, and we think this is an important a part of the program, is an etching program. So previously I showed the federal legislation and it includes a stamping program. There's just a small difference between stamping and etching. Many of you may be aware that stamping is

more of like a typeface and requires certain specific machinery to do, mostly with manufacturers. You can get it elsewhere, but mostly with manufacturers. Etching would allow for ease of execution on this for our etching tools that can be used to etch in the vehicle identification number (VIN) on these catalytic converters. It's much easier for regulators and law enforcement to track illegal converter sales and illegal activity if there's a way to identify the actual part and so part numbers and VIN numbers etched on the actual catalytic converters, sometimes with the anti-theft spray paint can be a very effective tool for law enforcement after the fact when they're trying to identify bad actors. And importantly, this would not be funded by appropriations. It would be funded by fines coming out of violations of these offenses so it would be a self funding type program and it would allow for any number of individuals and entities to provide the etching service. I know NICB is actively involved in this area. We just do it as part of one of our many services we provide the public and our members and we work with law enforcement closely to do this on Saturdays and it's not actually that surprising how many consumers are willing to take a little bit of time out of their schedules to come in and get their catalytic converter etched so that when some bad actor gets underneath that vehicle and looks up and sees the etching decides I'm just going to go to the next house. It doesn't take long to remove a catalytic converter, it could be less than two minutes if you have the right tools and so it is actually a fairly effective way to turn would be thieves of a catalytic converter to see that there is actually some identification on the catalytic converter that they're thinking about stealing.

Sen. Arthur Ellis (MD) stated that I'm always aware of unintended consequences to legislation so in making the buyer of a stolen catalytic converter subject to felony penalties, if you have a legitimate buyer, a legitimate business, what responsibilities will they have to verify that that seller is legitimate also? I mean someone with our modern technology and computer knowledge can easily forge things and make their documents look like they are real so how would you address that particular scenario? What type of responsibility would the buyer have to do due diligence in dealing with the seller? Mr. Martin stated that is a great question because it's harder on that side of the equation. For sellers, folks who have ongoing business, and most who are licensed are regulated there already by the state. It's going to be easy for them because they have existing systems. On the buyer side maybe it's a one-off buyer or maybe it's a scrap dealer. But the suggested buyer restrictions would be a validation that you have a business that is licensed or regulated and most of that can occur through open source. You can go on the internet and you can see where a particular individual or entity is licensed with the state to conduct that type of business. Also the seller under the Model is required to provide the purchaser with certain validation documentation so the buyer should also be receiving that documentation and that includes things like a valid ID, maybe proof of their licensure an also information regarding where the catalytic converter came from. So it's a very appropriate question to ask. How much are we going to actually require of our buyers and how much will they actually do? But I think in combination with the seller restrictions and the transaction documentation that would go to the buyer and then the buyer has kind of minimal requirements to make sure that they have a legitimate seller, it provides some mechanisms to put some onus on the buyer as well.

Rep. Jordan then recognized Nick Steingart, Director of State Affairs at the Alliance for Automotive Innovation (Alliance) for comments. Mr. Steingart thanked the Committee for the opportunity to speak and stated that the Alliance represents the manufacturers that produce nearly every new vehicle sold in the U.S. on an annual basis. We heard from NICB both in San Diego and now so I won't rehash short of the issue and the trend and what's causing the uptick in the catalytic converter thefts. I think they have very thoroughly explained why there has been this increase over the last couple of years. Obviously this is an issue that's touched and hit the

automotive industry and consumers hard over the last couple of years so we're glad to see NCOIL working on a Model. My comments are relatively brief. We think by and large this is a fantastic Model. I would urge a bit of caution against the VIN program in the final section of the Model. Now, we understand this is voluntary so there's no mandate or requirement of consumers to have their catalytic converter etched or stamped or marked or whatever method you want to use. But in our experience, it's potentially a costly program that delivers negligible returns and that's for a couple of reasons. One, if your catalytic converter is stolen it doesn't really do you any good if it was marked or etched or stamped - your vehicle is virtually undrivable, if not illegal in most places and thieves can simply deface or scratch off the etching without damaging the valuable parts of the catalytic converter which are on the inside of the part. Two, we don't think it serves as a really meaningful deterrent. Let's say in a generous scenario, one out of every 100 vehicles is stamped with a VIN or a tracking or a serial number, it might on an individual basis save you from having your converter stolen but is it going to make a widespread impact if a thief knows he can just slide under the car next door and steal that converter? Maybe not. We think that the best way to target these thefts is by cutting off the illegal market which the rest of this Model does a good job of dealing with those limitations and restrictions on purchasing and selling of catalytic converters. So, there are a lot of layers in the Model that we think do serve as a good meaningful widespread deterrent to crack down on catalytic converter thefts and we think that's the best way to target this illegal market is by going after those unsavory actors who might be purchasing and reselling these converters for the contents. So as I mentioned I think 95% or more of this Model we completely agree with and is in line with legislation that we've supported in the states over the past couple of years and focus on those chain of custody requirements and those record keeping requirements. So we're happy to see NCOIL work on this and thank you, Chair Jordan and Rep. Oliverson for bringing the Model forward. We think it's certainly a step in the right direction. There's by our count 40+ states that have dealt with this in some way, shape or form and this is a really good comprehensive way to address this issue.

Rep. Kerry Wood (CT) stated that as an insurance legislator my question is really to our colleagues here. So, your catalytic converter gets stolen and what I have been hearing is that people are paying \$500 and \$600 out of pocket to get their cars back online. So, what Model language regarding insurance or what have you done in your districts to kind of help people get their cars up and running? My colleague is an attorney. One of her constituents' catalytic converters was stolen and the insurer deemed it as a total loss. So, we can do all these things to make the penalties tougher and try to go after the illegal industry but on the insurance side how are we helping our constituents get to work as soon as possible without having to pay all this out of pocket if you're experiencing this crime? Mr. Martin stated that I don't think there's a clean answer to that. I think that it's a tough question. The reality is just as you said, which is when the consumer has a catalytic converter stolen they have a couple options to just take it into an automotive dealer and try to get the part replaced at extensive cost, which is probably not really an option, or to make a claim with insurance and then potentially impact their premiums somewhere down the line because every claim will ultimately find its way back into a premium somewhere down the line. We know that. So there isn't I don't think a really great answer, at least from our perspective and we're focused on the enforcement side of how the insurance industry can make the issue a little bit easier. Those deductibles can be significant, \$250 to \$500 and then getting it back online still takes many weeks although the insurance industry from my understanding has been pretty good about when a vehicle goes down if the coverages are there providing rental vehicle and other means of getting around, but I don't think from my position I can add much to your question.

Rep. Oliverson stated that Rep. Wood's question is a really good one. I would say at least from what I'm hearing and what I'm seeing in my home state the real issue right now isn't the ability of the policy to cover that as a loss. I think the sticking point at least in Texas right now is that it takes about literally 15 seconds for them to steal the catalytic converter by sliding under the vehicle, getting it, cutting it off and they're gone. And unfortunately I'm sure everybody's heard this 1,000 times but because of supply chain problems, consumers are finding it difficult to get that catalytic converter replaced in a timely fashion. And so, I can't speak to the individual situation of having the car totaled but I know my office has heard from auto dealers and from consumers alike that the actual getting the vehicle back on the road is a lengthy process, mostly due to lack of supplies because these devices have a certain amount of rare minerals in them that are metals and that's the reason they're stealing them. So I'm just telling you what we've seen so I think it's more on the supply side. One of the other things that we've seen fortunately is that a growing number of auto dealers, particularly cars and trucks in Texas at least, the one that everyone knows about is the large Toyota truck, the Tundra which actually has two catalytic converters. That's sort of the goldmine for a thief and so what the dealers are doing a lot of times is prophylactically before they sell a vehicle they're installing these metal cages on the underside which don't make it impossible to steal but makes it to where somebody goes under the vehicle and sees the cage there and now it's going to take five minutes to remove it so they just move onto the next vehicle so it serves as a bit of a deterrent. And so we're starting to see that happen a lot where dealers are either doing that as part of a dealer charge for the vehicle putting the cage on or they're talking to you when you purchase a vehicle and saying would you like us to add that. It's \$150 or \$200 for us to get under the vehicle and put this theft deterrent device on so kind of like putting a security system on your car I guess.

Rep. Camille Lilly (IL) stated that I have two questions. One is - is there a study or profile of these bad actors who are taking these catalytic converters? And then two - have you heard that this type of program would be somewhat of a penalty enhancement issue in some states that are trying to get away from that? Mr. Martin stated that I think the short answer at least in my knowledge is no to your first question. I think it's a crime of opportunity based on what we've seen and all types of criminals are just seeing this as an easy, quick way to make money if it takes less than two minutes to remove a catalytic converter and the rare metals within them can be sold for \$500 or \$600 per pop. It's a pretty lucrative way of doing things and it doesn't take a high deal of skill so it literally takes a reciprocating saw and your willingness to go underneath a car and jack it up and remove the catalytic converter, sometimes not even jack it up. So it's just kind of a very low resistance crime. I think what we've found in terms of those who have been caught is that it's a gamut of bad actors. I don't think there's a profile for that necessarily. It's just a crime of opportunity. For your second question, I don't think we have received direct outreach from legislators saying "hey our legislative body is really against increased enhancements to criminal penalties across the board" but we're aware of it certainly and I think you as a legislator and other legislators are very much aware of various jurisdictions trying to get away from just enhancing penalties without covering the other side of the house and so we're sensitive to that and ultimately it would be a matter of enforcement as well. So, it does give additional tools to law enforcement but they still have to make the decision to dedicate resources towards it and avail themselves of those tools and potential enhancement through sentencing. So I think it's more of expand the toolbox versus dictating, mandating that they enforce that way and so certain jurisdictions would probably take advantage of it and certain jurisdictions would not, I'm sure.

Rep. Forrest Bennett (OK) stated that Rep. Wood's comments made me think about this from a constituent standpoint. We're trying to cut down on the instances of theft but on the other end of it if a catalytic converter is stolen and a claim is filed you know as an insurance agent we always

have to decide whether the claim is worth the chance of their rate going up. So, do we have any protections for consumers as far as if their catalytic converter is stolen, an assurance that their auto rates are not going to increase at a time when they're already increasing and I don't know if we've already had this conversation and I just wasn't here for it but that's just something that Rep. Wood's comments sparked for me. Mr. Martin stated that there's nothing in the Model that would address that aspect of the potential order of events or consequences if somebody would make a claim on a stolen catalytic converter. Rep. Matt Lehman (IN), NCOIL Immediate Past President stated that regarding Rep. Bennett's question, when a claim is filed normally this would be a theft claim so it would be a comprehensive claim and comprehensive claims don't normally count against you from a loss standpoint. Frequency could be a problem. If I have a catalytic converter stolen 18 times in a row, there's going to be a problem with my carrier but one claim of I lose my converter, that claim's not going to affect my premium and I say no carrier would really have an adverse effect. The bigger issue goes to the question on coverage and that is, it is a comprehensive claim and there's a lot of people who do not carry physical damage on their vehicle so they're out completely and I don't think there's really a way to fix that. That's their decision. But to your point of is it going to affect a claim, the answer is no.

Rep. Jordan thanked the Committee for speaking and stated that the questions from Reps. Wood and Lilly and others were great. If you have any questions on the topic or if you want to provide any information you can please reach out to me or Rep. Oliverson or NCOIL staff and we look forward to furthering the discussion.

INTRODUCTION AND DISCUSSION ON NCOIL PUBLIC ADJUSTER PROFESSIONAL STANDARDS REFORM MODEL ACT

Rep. Jordan stated that next on the agenda is the introduction and discussion of the NCOIL Public Adjuster Professional Standards Reform Model Act (Model), sponsored by Rep. Michael Meredith (KY) and co-sponsored by Rep. Lehman. You can view that Model on page 327 of your binders and on the website and the app.

Rep. Meredith stated that I appreciate the opportunity to bring this Model forward today and work alongside Rep. Lehman. This is representative of a bill we passed in Kentucky this year with a couple of minor changes that came from an Indiana bill that passed as well. At this time I will turn it over to Anne Marie Franklin, Gov't Affairs Manager at the Kentucky Farm Bureau, to start the presentation.

Ms. Franklin thanked the Committee for the opportunity to speak and stated that I just want to give you all a little bit of background on why this bill was important to us in Kentucky and a little bit of the background on where it came from. So as most of you know over the last 18 months Kentucky has been hit time and again with natural disasters. It started in December 2021 when the western portion of our state was ravaged by tornadoes. Rep. Meredith's District was impacted, as was Rep. Michael Sarge Pollock's (KY) who is here today. Many of you probably saw on the news the tornado that hit Mayfield, but the damage didn't stop there. It spread from the very western portion of the state all the way up into the south central portion of the state. Many counties were impacted and many insureds were impacted. This happened in the middle of the night and the next day I can say our Governor was boots on the ground immediately. Many of our folks in the General Assembly were out checking on their constituents. We had our Congressmen in town and on the ground the very next morning. But more importantly, our insurers were on the ground. We had independent agents out checking on their people. Our CEO was out checking on our insureds. It was an all in approach from everybody in the state of Kentucky and then that continued on into July of 2022 when Eastern Kentucky was flooded.

Again, everybody came out, everybody was helping. Flood insurance is a different story in that part of the state than the coverage that was able to be applied in the western portion of the state. But we were all in again. With that came some new things to Kentucky. Some things that we hadn't really experienced before. Some background, we adopted portions of the National Association of Insurance Commissioners (NAIC) Public Adjuster Model to license public adjusters in the state of Kentucky. There weren't guardrails really put into place. There were no real regulations around some things. We only had 22 residential public adjusters according to our Department of Insurance back in February of 2023.

Since the bill passed in Kentucky, we have gained one licensed residential public adjuster and we work with them all the time at the Kentucky Farm Bureau. I know a lot of other insurance companies work with them as well but the problem wasn't necessarily that we had very few public adjusters. The concern came that we don't have very many, but we got inundated with public adjusters from outside of our state that weren't necessarily familiar with our people and our people weren't familiar with them. We also had a wide range of Western Kentucky, a wide range of Eastern Kentucky, filled with vulnerable consumers who had just lost everything they had. In the east, everything was gone. In the West, everything was gone. So just to kind of cover a little bit about how our statute reads as it defines public adjusters. They are hired by the insured. They are not hired by an insurance company. They don't represent the company, they represent the insured in resolving the claim. They do have a contract that is signed typically. The contract will outline the compensation and things of that nature. Public adjusters are the only adjusters who can receive compensation from an insurance settlement. So, your staff adjusters and independent adjusters represent an insurance company and are paid by an insurance company and they do not receive any funds from the insurance settlement that is paid to the insured to make repairs or rebuild their homes. So some concerns that came from that over the last 18 months, in Western Kentucky, as I mentioned, we were boots on the ground the very next day. It happened in the middle of the night. A lot of folks didn't know what they had lost. A lot of folks didn't know what they had left and talking about some of these concerns that our insureds had brought to us and our claims staff, we are very fortunate that the Kentucky Farm Bureau has 14 claims offices around the state and a large number of staff adjusters were very much grassroots oriented. People were coming to us with lots of questions around the public adjuster realm.

We started educating folks and talked to the Department of Insurance and they also shared some stories with us of things that had come up and I will share one of those with you today. We had an insured who got up the next morning, was looking at the damages and a vehicle pulled up out front of her home and there was a magnet sticker on the door that said insurance adjuster. That's all it said. And this individual got out and was empathetic to her situation and was talking to her and offered to help her resolve her claim and I think that noble intent was very much there, and I know they'll share with you that that is their intent, and that can be helpful. But in this situation, she was vulnerable. She signed a contract on an iPad that she didn't have time to review. She probably wasn't really in the best mental state to review a contract. When she got her insurance settlement check, 35% of her money was gone and she could no longer rebuild her home because in that contract that public adjuster's compensation was 35% of the total insurance settlement. In that moment I don't know of an insurance company that wasn't paying limits on everything in Western Kentucky following those tornados. Some may say it was justified and it was needed. That insured wasn't truly aware and she didn't receive a copy of that contract to even go back on. There was nothing our Department of Insurance could do, so that's where this came into play and we were very stern regarding charging an unreasonable fee. That insurer felt 35% was unreasonable to file a few papers because she was going to get her limits paid anyway. So that hits the percentage of compensation paid from the claims

settlement, the transparency portion. We didn't get a copy of the contract. Her insurance company didn't get a copy of the contract. It's typically, we get a phone call from a public adjuster that says I now represent your insured. You need to make all communications through me and I will represent them in all aspects of the claim.

Again, we do that. We have no problem if our insured has entered into a contract with someone else, we will honor that contract. But we also have a contract with our insured that we will honor too. We have been paid to do that and we have to provide a service and we want to do that. So, actually, while this bill was going through the process, some of our claims staff called and said, "hey, I just got a call from a public adjuster. They're representing one of our insureds. I haven't even heard from our insured to see if a claim is needed. What do I do?" And so we'll reach out to the insured and make sure everything's okay. Double check. Turns out that contract, that public adjuster had forged our insured's signature. So once we were able to obtain a copy of that and our insured, we found they really hadn't entered that contract legally and so we wanted those contracts to be able to be shared with the insurer so that we can honor our contracts with our insured just as the public adjusters are there to honor theirs and to provide the best service that we can. The last point I really want to make is that we have to be able to communicate with our insureds. They came to us and purchased our services. We want to be able to continue that. We are a grassroots organization and work very closely with our insureds. We're very hands on, as I'm sure many other insurance companies are as well. So we added language into our bill in Kentucky that says we can still communicate directly with our insureds and that we would include the public adjuster on that correspondence so they can also stay in the loop. We have no intention of cutting them out of the process but we had the first contract, so we shouldn't be cut out of the process either. And just to kind of go back, this bill came again from concerns brought to us by our members and our claims staff. We did work with the insurance industry in Kentucky. We worked with the Department of Insurance. In Kentucky they were very supportive of this measure as were then members of the General Assembly and I'll now turn it over to Rep. Meredith.

Rep. Meredith stated that when we brought the bill and what we wanted to bring in this Model is there were three focuses and that was consumer protection, transparency, and preventing conflicts of interest. From a consumer protection standpoint in our bill what we did was we set caps on compensation thresholds and so 15% was the cap on non-catastrophic claims and a 10% cap on catastrophic claims. We had started with a 10% across the board when the bill moved through the House. The final in the Senate ended up with 15%. I know there are a few states that have already adopted laws that have lower fee caps than that and so we don't want to obviously limit them in our language in the Model from that perspective. We also make sure that the contracts that a public adjuster is going to have with the insured is reviewed and approved by the Department of Insurance before those contracts go out so that we know that the consumer's being protected through that contracting process. And we also allow the Insurance Commissioner to use the NAIC database to check the status of the public adjusters who may be coming in from another state to make sure that they are in good standing and don't have enforcement actions or things like that against them. From a transparency standpoint, we make sure that within 72 hours of the contract being signed that the insurance company has the ability to get a copy of that contract and ensure that the insured does still have the opportunity to communicate with the insurance company. Also, and this was from the Indiana language about prohibiting a public adjuster from filing a complaint without the express approval of the insured. And then from a conflict of interest standpoint and preventing conflicts of interest, we made sure in the Model and in the Kentucky legislation that a public adjuster can't have a stake in a company that's working on the home or the automobile whether that be a restoration contractor or a roofing contractor. They can't be a part owner of that or be getting a kick back from them in

the process. And so that is what we tried to do when we did our law in Kentucky and what we seek to do in the Model that we bring before you today.

Holly Soffer, General Counsel for the American Association of Public Insurance Adjusters (AAPIA) thanked the Committee for the opportunity to speak and thanked Rep. Meredith who brokered the negotiations over the Kentucky legislation and for the most part, we think it's a really good law. We agree with a lot of the provisions in there which are fair to both parties and provide a lot of consumer protection. We really only have a few issues where we would like to see the Model be optional to allow the individual states to decide what's best for them on some of those particular issues and then for the most part we think that the Model will really work. So, I'm going to turn it over to Tony DiUlio who is another attorney for AAPIA and then we're going to have Cole Kline speak who is AAPIA's President who's a public adjuster just to give you all a little more information on what a public adjuster does and how a claim works so that you can have more information and education.

Mr. DiUlio thanked the Committee for the opportunity to speak and stated that I'm an attorney that focuses my practice on first party litigation so I'm helping insureds on a daily basis try to make sure that their insurance coverage is appropriately interpreted. By a show of hands, before reading this Model who actually knew what a public adjuster was and what they do? Who here's actually dealt with that? Alright, there's a good number. It's surprising though, when you're working in property and casualty I ask that question often and people don't have an understanding of what public adjusters actually are or what they help with. So, we wanted to make sure we understood as an organization what they do. Public adjusters are substantive assistance for policyholders when they're dealing with losses and catastrophic losses are a large portion but really the mass majority of what public adjusters deal with are everyday claims. Plumbing losses when a pipe breaks into the home. Hail damage from a storm that comes by. A wind that damages shingles on your roof and your siding. Dealing with those types of claims are really what public adjusters do on a day to day basis and AAPIA represents all of those from the small claims adjusters that are dealing with \$10,000 or \$15,000 claims and helping policyholders to the large loss million dollar commercial claims as well. We are helping ensure compliance with policy conditions. You've got to remember that an insurance policy is just a contract, a very complicated contract, and very confusing for policyholders. So when you have a public adjuster they help understanding with that homeowner to know, "hey, this is what your policy covers, this is what it does, and I'm going to help represent you." Because when you have these losses and this is something we can all agree with, the policyholders are often in a state that they don't know what to do, they are confused. They are overwhelmed by damage to what is often their only major asset. So public adjusters step in and say I don't want you to have to worry about that. We're here to help you. They provide that professional knowledge and assistance in that stressful time. Public adjusters do a ton on these claims. Now, I put a key fact out that I need to make sure I point out. Between 2016 and 2018 the average property damage claim was just \$13,000. So we are not dealing with an industry that is overwhelmed with million dollar losses. We're dealing with much smaller claims – 92% of all insurance claims are under \$25,000 and that's going to be important that we're talking about these fee issues because the reality is when you have a fee that is too low, you leave homeowners and consumers with no ability, no protection to have any assistance at all.

There is certainly an argument to be made and we'd support it of saying, look, if someone's coming in and charging an exorbitant fee on an extremely large loss, the insurance departments can review that. Most of these insurance departments have a reasonableness requirement for public adjuster fees and that can be reviewed without any other language within those provisions but when you have those fees you've got to recognize what it represents. You've got

public adjusters who understand the policy language first and foremost. Consumers don't. If you talk to your constituents, you're going to realize they have no idea what their insurance policy covers. That's why you need a public adjuster. They help identify damages. They outline repair methods, present a loss for inspection so that the homeowner doesn't need to be there. They step into those shoes, to be the assistance for the property owner. They advise the insureds on duties like mitigating their damages realizing "Hey, you can't just sit back and let this get worse. Let me make sure you know what you need to do to protect your interests and comply with the policy." They coordinate those mitigation efforts, bringing in mitigation companies to help protect that property and document the claim through the entire process and communicate with the carrier. They are the representatives of the insureds. Just as a brief background, AAPIA represents all of those adjusters. The small guys to the big guys. Also invited here today is the National Association of Public Insurance Adjusters (NAPIA). They represent the large loss public adjusters across the country. They apologize that they couldn't make it. They had a plane issue getting out here and weren't able to make it. I'm going to skip through these slides as you guys kind of know who we are. I even put those nice little QR codes in there if anyone reviews these later you can feel free to take a look. But what really this comes down to is how does a public adjuster day to day help these insureds? And I want to pass it over to Mr. Kline to discuss exactly what he does just by way of some examples so that you can see first hand how they're able to help with these claims.

Mr. Kline thanked the Committee for the opportunity to speak and stated that I'd like to talk to you about just what public adjusters do on a day to day basis with residential properties or average size losses that we handle every day and as well, commercial property losses and what those look like. An important point is insurance companies only pay for damage that is covered by the policy. No claim is ever overpaid because a public adjuster's involved. Insurance companies pay more on claims that are increased because a public adjuster's involved because they present the claim properly or find damage that just wasn't presented prior. So this is a loss that gives you a real example of where a public adjuster can really provide value. This is a loss where a vehicle impacted the side of a home and the initial offer for settlement from the insurance company was around \$23,000. The carrier in this specific claim offered to patch a portion of the brick on this exterior. With further documentation and investigation of property, we learned that the building had just older building materials. Instead of sheathing, underneath the brick they had a product all the Celotex. This particular adjuster that worked this claim found that and most involved didn't know what Celotex was. It's just a product that's no longer is used anymore and the way the brick is tied into the side of the structure it wraps around the entire structure. So, with proper investigation and documentation presentation from a public adjuster we were able to present the claim and the insured was able to be made whole which brought the claim from an initial settlement offer of \$23,000 to \$92,000 where the insured wasn't able to repair their property before they hired the public adjuster and gained their assistance. It's a really complex process. This homeowner also was a construction professional and they didn't know the difference between sheathing and Celotex material or the variety of other building components. So we performed a study of 129 claims in 2022 and the average residential roof increase after hiring a public adjuster was about \$57,000. The average number of days to work that claim was over a year – 377 days.

The average residential increase on a fire insurance claim was \$119,000 and the average number of days from the time they hired the public adjuster to reach a final settlement with the insurance carrier was just under a year, 332 days. And of those 129 claims, the average residential water damage increase was \$52,000 and average timeline of 254 days. Of those 129 claims, if a 15% fee cap was in place, 43 of those policyholders would not have received help and so the average starting amount of those 34 claims was just above \$300,000 and after

working with a public adjuster had an average ending amount of \$30,000 and an average number of days from hiring the public adjuster to completion of the claim of 320 days. So, to give you a couple other examples. We recently had an insured who received an estimate after they had a fire and the insurer included drywall in their estimate but the policyholder had plaster over metal lap as well as the adjuster detached and reset base shoe in the house but because the base shoe was made of a just a lesser product, they weren't able to do so. The homeowner didn't know what plaster was, how it was repaired and attached to the wall or what was behind the plaster. And with the help of a public adjuster, we were able to fix the errors that the insurer made and was able to help the homeowner navigate the claim. A lot of these issues were not due to inaccuracies or intentional fault of the insurance company but just the skill set of the insurance company adjuster a lot of times, especially in storm situations there are just newer adjusters that are entered into the field.

Ms. Soffer then stated that for the most part we think the Model really works. There are uniform procedures for licensing and definitions of terms that help as you go from state to state. One just quick point, this is very minor, the Model requires the \$50,000 bond. Most states have \$20,000 and what we've suggested recently is that public adjusters form entities like limited liability companies (LLCs) or corporations and those also need the license in most states. They should require a license in every state. We're 100% in favor of that but maybe just put the \$50,000 on the company and then allow the individuals to only have a \$20,000 bond. This isn't really clear as to whether it would apply to the individuals or the company. We're really okay with it either way, but we think the company should have the \$50,000 so just maybe tighten that language a little bit in the final version. Next, the contract issues. This Model requires the public adjuster to have their contract pre approved by the Insurance Commissioner and the reason we wanted this optional is that it won't work in a lot of states. Every state has different rules as to what should be in the contract. Some make it really easy and just put out a form and they say you must use this form. Texas, Pennsylvania, and California have an optional form that makes it really easy on the public adjusters. The Department decides ahead of time what the contract should look like and that's it and they don't have to worry about it. Requiring individual approval as the Kentucky Department of Insurance is learning because I've been talking to them on the phone almost every day for the past two weeks. because one thing I do is write contracts for public adjusters. It's a lot of work. It's a lot of manpower. And a lot of the Departments just don't have the budget for it and I've talked to them and they just refuse to do it. So we thought if you could just make that part optional so either put in certain required language or a form contract but requiring pre approval should just be optional because I don't think that the Insurance Commissioners are all going to want to have to do that so we would just stick in optional in front of certain provisions and we'll get to some of the others.

The contractor issue has been brought up and is another issue that varies tremendously by state. Some states have a complete prohibition on a public adjuster being a contractor. Some allow it with required disclosure. Some say you can do it and there are no restrictions. It's moving in the direction of more restrictions. The problem we have with this language is that it's not clear enough. So one business model that some public adjusters use is that they're hired by contractors to do the adjusting on a claim, especially a lot of commercial claims. Contractors are not public adjusters and I know all of you and all of us are in favor of people having to be licensed to be a public adjuster so we don't want unlicensed contractors to be adjusting claims. So very often they will say we have this repair job, it's an insurance claim. We would like to hire a public adjuster on behalf of the insured and we will pay the public adjuster. That's the model in a lot of states so we don't think this language is clear enough so we can talk after this about tightening up that language to allow that and some other things. The really important issue that we wanted to talk about is the fee caps. Again, fees vary by state. There are only a handful of

states that have caps on fees. Some are 20%, some are 33%. There are a few that are 10%. We are okay with the fee cap on the catastrophic losses for 10%. Those are big storms with widespread damage and I know that Ms. Franklin talked a lot about the aftermath of a catastrophe. We're completely on board with that. It's just on those regular small claims that we talked about, public adjusters can't afford to help people on claims that are small if they're fee is limited to 15%. As Mr. Kline said, they're just going to walk away from those claims and those people are left without any professional representation and we've talked to you about the value that public adjusters bring. And again, different states have different situations with regards to different weather patterns and the different needs for public adjusters and different laws so we would like to either remove this or just see it as optional and let each state decide what they want to do with regard to public adjuster fees and do what works in their individual state in order to protect the consumers.

Jon Schnautz, Ass't VP of State Affairs at NAMIC thanked the Committee for the opportunity to speak and stated that NAMIC does think the time is right for another look at a national public adjuster Model. As many of you heard yesterday, there is an existing NAIC model but we think there are some good opportunities here and have appreciated the conversation with Rep. Meredith about areas where we think this Model might be strengthened. I think the context that he laid out in the bill in Kentucky is important. So in Kentucky, they were writing on a canvas there where there was very little restriction. I think the example Ms. Franklin gave of a 35% commission on a policy that was going to be paid limits regardless is a pretty good example of how little Kentucky had on the books before his bill. Not every state is that way. Texas was mentioned. Texas has had a comprehensive public adjuster statute for 20 years. It predates the NAIC model. In our opinion it is stronger than the NAIC model. And a couple of factors that I'll point out. So we do think it's important to look at the context of the Kentucky bill. A few specifics. So the fee issue has come up. I want to address that specifically. Texas since 2002 has had an across the board 10% limit on public adjuster fees. It applies to catastrophic and non catastrophic claims. We have no shortage of public adjusters. The last time I looked at the licensure count, we have more than 1,400. In fact, we have a state public adjuster trade association which most states don't have. We work with them often on legislation. So, I think the idea that that has prevented public adjusters from helping people is proven otherwise in Texas.

We also have a form contract. It is the only contract that a public adjuster can use. That's a very easy way to simplify the department approval process is have one contract and that's it. You don't have to worry about reviewing. A few other specific provisions. There is a prohibition in the Model very appropriately on public adjusters giving legal advice. They should not be doing that hard stop. The way the language from the Kentucky bill is phrased it has a little bit of wiggle room that maybe we're only talking about bodily injury claims and that shouldn't be the case. Public adjusters are not lawyers unless they happen to be lawyers so we want to clarify that provision. Finally, I want to address a specific provision in the Model that hasn't come up yet that we think is potentially problematic and that is Section 3(1)(b) that creates a circumstance in which a public adjuster can be compensated by the policyholder prior to a written contract being in place and it references this happening in an emergency situation. That really raises a red flag for us. We think it needs a second look or a third one or however many looks to change it because frankly that provision is directly contrary to some things both in the NAIC model and Texas law where public adjusters can't even solicit during a loss producing event, much less collect money. The NAIC model has an optional provision and the Texas law has a provision that prevents them collecting money pre-settlement. This provision isn't even pre settlement. It's pre contract and that we think is a potential abuse and ought to be looked at. There's some other good provisions we think from the Texas law that might be put in.

We've talked about some of these with Rep. Meredith. Prohibitions or controls on referral fees – that's a common area for abuse. And then finally the Model we think should cover entities who are holding themselves out to be public adjusters but are not actually licensed and there's a provision in the Texas law that says if someone is doing that the policyholder can void the contract so we want that in place just to make sure we don't reward people who don't actually get licensed.

Rep. Jordan stated that in the interest of time I'm going to make a few comments and then we'll go to Del. Steve Westfall (WV) and then I'm going to go to Rep. Meredith and then Rep. Lehman to close. We've had this issue in Louisiana. In Louisiana we don't allow for contingency fee contracts at all. Two of the things I saw on the slide disturbed me and I can tell you is part of the issue that we've had. When you're interpreting contracts and you're talking about understanding policy language and advising on duties, in Louisiana that would be considered the unauthorized practice of law so we don't allow that either. So those are two of the big issues that we've had with that. I'm not necessarily asking for responses. I'm just telling you those are some of the issues that we had. Ms. Soffer stated that ties into her earlier remarks about how there are differences in difference state's laws and how some of the Model's provisions won't work in Louisiana.

Del. Westfall asked if he could be added as co-sponsor of the Model as he plans to run the Model in West Virginia in January. Rep. Jordan stated that is up to Rep. Meredith. Rep. Meredith replied yes to Del. Westfall and then stated the issue of fee caps keeps coming up and it's been talked about over and over again. I think it's really important that the fee cap is a low fee cap. I know what they're saying but you got to understand any of this contingency money is coming out of the claim that is being paid for the repair on a piece of property or on an automobile or whatever it may be and whatever less money that insured is getting is the money they don't have to restore their loss and so I think that fee cap is extremely important.

Mr. DiUlio stated that I understand the concept but the concern we have is when an insured is owed let's say \$20,000 on a claim but the carrier for whatever reason might miss something and the insured is paid \$3,000. Isn't it better to have a professional come in to assist them to make sure they get the additional \$17,000 on that claim that they are owed even if it's above 15% on the contingency fee. Otherwise we are leaving potentially 92% of insureds who have claims without any way to get professional assistance in the event that things are missed and we are really as much as you are concerned about protecting the consumer here. This isn't about public adjusters, it's about protecting that consumer and giving them an option.

Ms. Soffer stated that the fee cap works in states like Texas and New York that have the fee caps but sometimes there are other provisions in the law. For instance in Texas, a lot of public adjusters will do what's like an over and above fee. They'll charge 25% on what they recover as long as it doesn't exceed 10% of the claim and actually on small claims, and I'm familiar with the Texas Association of Public Insurance Adjusters (TAPIA) as we work with them, what happens is the public adjusters don't take the claim at all and then they get a referral fee from a contractor because they're not the public adjuster. We think that shouldn't be allowed and it really doesn't help the homeowner in the end because they're not having professional representation because the public adjuster would walk away from those really small claims which are the majority of claims.

Rep. Lehman thanked Rep. Meredith for bringing this Model forward and stated that I want to kind of take a 30,000 foot view as we wrap this up and that is, I think that first of all, thank you to the industry for being here and giving your opinion. I think what I heard when we did this in

Indiana is even this industry wants to get the bad actors out. Mr. DiUlio, Mr. Kline and Ms. Soffer replied yes. Rep. Lehman stated that when you talked about confusion, what we have seen as an independent agent and what I've seen over my career of 30 years has been the confusion begins when they signed these contracts. So again bad actors have to be out. I think the philosophy at NCOIL has been we try to build a strong foundation that you can take back to your states and then implement where you think it best fits your constituency. So, I'm looking forward to continue to build on this foundation and I think there are issues around like the bond amount and you know the Department review and even fees that maybe is going to be unique to different states based on different pieces. We'll continue to work on that. I think within this Model there's issues around when payments can be paid and not taking all of my money up front. The big issue we had in Indiana and with the department and the NAIC was complaints. I brought this up at an NAIC meeting and everybody looked at me like they didn't want to talk about it but the reality was when they finally spoke, they said we're getting multiple complaints from the adjusters, not from the insureds and we have to respond to those. And so in this Model it talks about that it has to be written consent there for complaints. My only concern there is does it just get put into the contract? So, when I signed this contract and it says I have a right to file a complaint now I never have to get your consent in the future. So I think those are just some things I think we'll continue to work on because I think at the end of the day, we all want the same thing and that is to get the bad actors out because they created quite the havoc in this industry.

Rep. Jordan thanked everyone for speaking and stated that responses to the comments from Reps. Meredith and Lehman can be made to them after this meeting. If you have any comments in the future you can certainly reach out to me, Rep. Lehman, Rep. Meredith and now Del. Westfall, or the NCOIL staff. Again we apologize on time. Mr. DiUlio stated and we of course encourage everyone to reach out to us as questions arise. We are here to be a resource. We are in agreement with most of this, transparency is a good thing for everybody, and we all want to protect the consumer.

CONSIDERATION OF RE-ADOPTION OF MODEL LAWS

Rep. Jordan stated that last on our agenda is the consideration of the readoption of existing NCOIL Model Laws. Per NCOIL bylaws all Model Laws must be readopted every five years or else they sunset. Those Models appear in your binders starting on page 321 and are: The Model State Uniform Building Code, Consumer Protection Towing Model Act, Model Act Regarding Auto Airbag Fraud, Model Act Regarding Disclosure of Rental Damage Waivers, Model Anti-Runners Fraud Bill and the Property & Casualty Insurance Domestic Violence Model Act.

Hearing no questions or comments, Rep. Jordan stated that he will entertain a Motion to re-adopt the Models for the full five years except for the Model State Uniform Building Code because we still have some work to do on that one. Upon a Motion made by Rep. Lehman and seconded by Rep. Carl Anderson (SC), the Committee voted without objection to readopt the Models for five years.

Rep. Jordan then returned to the Model State Uniform Building Code and, hearing no questions or comments, he said he will entertain a Motion to readopt that Model until the Committee's meeting in November rather than the full five years as amendments to that Model continue to be worked on. Upon a Motion made by Rep. Anderson and seconded by Del. Westfall the Committee voted without objection to readopt that Model until the Committee's November meeting.

ANY OTHER BUSINESS

Del. Westfall stated that in November if possible I think we need to re-look at the NCOIL Delivery Network Company (DNC) Insurance Model Act that was adopted last November. I was co-sponsor of that Model with former Kentucky Representative Bart Rowland being prime sponsor. There has been some language that I think was agreed to by different parties but there's only one state that has passed that so far, I think North Dakota. We tried to in West Virginia and I think Kentucky tried also and there's a stumbling block on the delivery part for the bigger carriers. I think there's language out there now that both sides agree to and if it's possible I would like to offer an amendment to the Model in November and if possible have an interim Zoom meeting of this Committee in advance of November. Rep. Jordan stated that an interim meeting will be set up to discuss that amendment.

ADJOURNMENT

Hearing no further business, upon a motion made by Rep. Anderson and seconded by Rep. Lehman, the Committee adjourned at 10:45 AM.