NATIONAL COUNCIL OF INSURANCE LEGISLATORS
FINANCIAL SERVICES & MULTI-LINES ISSUES COMMITTEE
2023 NCOIL ANNUAL MEETING – COLUMBUS, OHIO
NOVEMBER 17, 2023
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Financial Services & Multi-Lines Issues Committee met at The Renaissance Columbus Downtown Hotel in Columbus, Ohio on Friday, November 17, 2023 at 9:00 a.m.

Representative Forrest Bennett (OK), Chair of the Committee, presided.

Other members of the Committee present were:

Rep. Matt Lehman (IN)
Rep. Edmond Jordan (LA)
Rep. Brenda Carter (MI)
Rep. Mike McFall (MI)
Sen. Paul Utke (MN)
Rep. Nelly Nicol (MT)
Sen. Jerry Klein (ND)
Sen. Shawn Vedaa (ND)
Asm. Ken Blankenbush (NY)
Asm. Jarett Gandolfo (NY)
Sen. Pamela Helming (NY)
Asw. Pam Hunter (NY)
Rep. Tim Barhorst (OH)
Sen. Bob Hackett (OH)
Rep. Brian Lampton (OH)
Sen. George Lang (OH)
Rep. Jim Dunnigan (UT)
Del. Steve Westfall (WV)

Other legislators present were:

Rep. Deborah Ferguson, DDS (AR)
Rep. Brian Lohse (IA)
Rep. Chad Aull (KY)
Rep. Michael Sarge Pollock (KY)
Rep. Cherlynn Stevenson (KY)
Rep. Helena Scott (MI)
Sen. Lana Theis (MI)
Rep. Stephanie Young (MI)
Rep. Bob Titus (MO)
Sen. Joseph Thomas (MS)
Sen. Bill DeMora (OH)
Rep. Bob Peterson (OH)
Rep. Sharon Ray (OH)
Rep. Ellyn Hefner (OK)
Rep. Carl Anderson (SC)

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. Edmond Jordan (LA) 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. Brenda Carter (MI), the Committee voted without objection by way of a voice vote to adopt the minutes of the Committee's July 20, 2023 meeting and the minutes of the Committee's September 29, 2023 interim Zoom meeting.

CONSIDERATION OF PROPOSED AMENDMENTS TO NCOIL INSURANCE E-COMMERCE MODEL ACT

Rep. Bennett stated that we will start today with consideration of proposed amendments to the NCOIL Insurance E-Commerce Model Act (Model) which you can find on pages 158 to 160 in the binders and they are on the website and app as well. We've been discussing the amendments since our Spring meeting in March and it seems like we're now in a position to vote on this. Before we go any further, I'll turn things over to the sponsor of the amendments, Louisiana Representative Edmond Jordan.

Rep. Jordan thanked everyone who's been working on this Model and been providing feedback. In 2020 I sponsored the underlying Model that we're discussing today that set forth provisions on how certain insurance documents can be delivered to policyholders electronically. And since then, almost every state has adopted that Model in some form. I'm proud to sponsor these amendments to the Model which generally mirror laws that several states have enacted, including in my home state of Louisiana, that permit health plan sponsors to consent on behalf of covered persons for e-delivery of certain health plan notices and disclosures. Importantly, these laws preserve a person's ability to opt back into paper delivery if they so choose and there is an attestation clause and process involved that requires confirmation that employees routinely use electronic communications during the normal course of their employment. So, I'd like to thank all the interested parties that have worked with me on this throughout the year to get this to a place to where everyone is satisfied. And ultimately the version before you today has more consumer protections and safeguards in place than when it was first introduced in March. I'm very confident that this is a solid piece of policy and should be approved by this Committee and considered by other states who have yet to adopt it.

Molly Zito, Deputy General Counsel of Regulatory Affairs at UnitedHealthcare, thanked the Committee for the opportunity to speak and thanked Rep. Jordan for introducing this amendment and also Wes Bissett and his members at the Independent Insurance Agents & Brokers of America (IIABA) for working with us on it. I completely agree with Rep. Jordan that the amended language is an upgrade from what was introduced in March. I think it helps employers and employees. It allows the employers to default their employees into electronic delivery of the health insurance documents but it also gives the employees an opportunity to understand what they're receiving electronically as well as an opportunity to opt out. So I just wanted to say thank you again and we hope that the members of the Committee can support this amendment. Mr. Bissett, Senior Counsel at the IIABA, thanked the Committee and stated that I don't have much to say as I think Rep. Jordan said it all in terms of substance. I want to thank him for his leadership on this issue, not just in this version, but going back to 2020. It's been a very successful Model. I think with these amendments it's almost like version 2.0 and it allows states to build upon what they have in place already. I appreciate Ms. Zito's willingness to work with us on some of this language as well and would urge the Committee to take action on it today.

Hearing no questions or comments, upon a Motion made by Sen. Klein and seconded by Sen. Bob Hackett (OH), the Committee voted without objection to adopt the amendments by way of a voice vote. Rep. Bennett stated that the amendments will be presented to the Executive Committee for final ratification on Saturday.

EARNED WAGE ACCESS: EARLY PAYDAY OR PAYDAY LOAN?

Rep. Bennett stated that next on the agenda is a discussion relating to earned wage access providers. Essentially, these providers grant workers access to wages that have already been earned before they've hit their bank accounts. A few states have taken action and enacted laws with licensing and other provisions. And as the title of the topic indicates, one of the main issues here is whether these products should be categorized as a loan. And you can view the laws that Missouri and Nevada have passed on this on the website and the app. Today we'll hear from different perspectives on this issue and depending on how the discussion goes it's possible we could start developing a Model Law next year.

Ben LaRocco, Senior Director of Gov't Relations at EarnIn, thanked the Committee for the opportunity to speak and stated that first I'll tell you a little bit about EarnIn. Earned wage access allows you to access your pay early. We had about 1.8 million Americans use the EarnIn app last year to use this service. So, there's quite a large demand for this product. It's grown a lot. We grew about 30% last year and as we grow, it's attracted interest from legislators and regulators who are struggling to think about how to consider this product. So, once you have earned wages, and we're all working right now and we're theoretically earning money - that money is legally ours. But our employers get to hang on to it until payday because payroll is complicated. There's wage and hour laws and other things that make more flexible pay schedules very difficult. And so we've sort of settled on a two or four week pay cycle. Earned wage access providers allow workers to access that money on their own schedules. Home Depot is one of our corporate partners, so in the break room at Home Depot there's a sheet that says, “if you work today, download this app and you can get paid today.” We estimate wages based on a number of different factors and pay those out at the workers request. Again this is only at the workers request if they want to do it. And there's a few different models. We work directly with consumers, so anybody can download our app. Others work directly with employers but the legislation sort of treats these products very similarly.

So what are the benefits of this? It allows a better connection between work and reward. If you're a bartender or a server and you need some extra money you can just go and pick up an extra shift and you go home with that cash. If you're a warehouse worker or a retail worker and the boss says, “Hey, can you pick up this shift?” - you might not get that pay for two or three weeks. And so the ability to say, “Yes, I'll pick up that shift” and then download those funds at the end of the day can really provide positive incentives for both workers and employers. It's access to your own money, similar to an ATM. And the way the business model works is it's a premium service. So, all providers offer a free mechanism to access their funds. So, the way EarnIn works is if you access your funds over ACH that takes generally one to three business days in order to get those funds. There's no cost to that. If you want it immediately, there's a charge of between $1.99 and $3.99. If something goes wrong and you can't pay us back, there's no recourse so there's no reporting to a credit Bureau. There's no late fees or interest. So if somebody accesses $100 of their pay and for some reason we don't get paid back, six months later they would still not owe us more than that original $100. And I think one thing that's important is there's no selling of data. Data is always a very lively topic in state legislative circles but the way we operate and the data frameworks that we operate under are very different than companies like Google or Facebook so there's no monetization of data in any way. So, I talked a little bit about how we make money. It's that expedited fee. EarnIn also askes for voluntary tips. So, if we say, “Hey, if you like the service give us a couple bucks.” The average tip is less than

$2 and less than half of our transactions have a tip. So, on average, we're making $4 to $5 per transaction. And just to reiterate, we don't make money when something goes wrong. So, there's no late fees, no penalties, etc. We only make money when our customers succeed. We don't make any money when they fail. Which is great for aligning incentives.

So why are we here talking to you about regulation? So, as this industry has grown, we don't really fit into any legislative frameworks. We believe there are characteristics of a loan but the fact that it's non-recourse and there's no finance charges, we feel like that's not a great bucket for us. There's some characteristics of money transmission and some characteristics of payroll. So rather than trying to force us in any one of those buckets, we think it's important to create a purposeful framework which is what Nevada and Missouri have done. And as a company, we're funded by venture capital. Our investors want more certainty and we want more certainty in our ability to serve customers, and our business partners like Home Depot and other companies want more certainty that this benefit that they provide their employees will be around for a long time. I think there's also a lot of other reasons around compliance and other things where having a more definitive framework makes sense. So just on the screen now, there's how earned wage access looks compared to what other people would be using if earned wage access was not around. Typically, what our customers tell us is the two main alternatives are overdrafts or late fees on bills. So, we think that both from an upfront cost standpoint and what happens when something goes wrong standpoint, earned wage access is quite a bit more friendly compared to a lot of our competitors or the other things that our customers would have access to. So, there are a couple of legal considerations. We've been around for around 10 years. There hasn't been a ton of scrutiny on this industry until the last couple of years. We talked a little bit about why we think it's not a loan. There have been a couple of statements about why. The Nevada Attorney General put out an advisory opinion saying that we're not subject to the Arizona lending laws. The Biden Administration has put out some guidance saying we're not subject to tax laws for on demand pay arrangements which is a little different than earned wage access but a common parlance for the two.

So, getting into sort of the regulation of earned wage access specifically. Government action really started in roughly 2017. The Consumer Financial Protection Bureau (CFPB) under Richard Cordray, who was appointed by President Obama, put out a payday rule which was meant to regulate the payday loan industry. There was a carve out for earned wage access providers that basically said, “if your service is non-recourse, if it doesn't charge any mandatory fees, then you're not subject to the payday loan rule and you guys are something different.” The first state bills were introduced in 2019. The industry was pretty fractured and those bills I think left a lot to be desired. So, we've been working since that time to get the industry and a lot of folks on board to come together with what we've seen today. In 2021, California signed Memorandums of Agreement with a bunch of companies sort of laying out a framework for the product. And in 2023, about 14 states have introduced some version of a bill. Those are the states that it's been introduced. It's a little different in each state. We're hopeful that the version that Missouri and Nevada passed will be what other states consider. Nevada is a supermajority Democrat state and our sponsor was the Senate Majority Leader. And Missouri a very red state and very similar laws passed in both states so we hope that it's not a partisan issue. And then at some point, the federal government is likely to act on this issue but based on recent conversations that would really only apply to federal law. As you know, a lot of financial services and insurance issues have some purview that's federal and some purview that’s state so on the federal bill, there wouldn't be any preemption.

So what's in the bill? It provides clear definitions of what an earn wage access provider is. It creates a new category, so saying there's some components of the lending law, some components of money transmission, some components of payroll. And all of these combine to create this new framework. It explicitly defines what non-recourse is. It requires that free option to differentiate it. And it requires a lot of very robust and transparent disclosures. One thing that's new for this is if an earned wage access provider debits bank accounts. So EarnIn, we can get paid back in a couple different ways. One of those is an ACH debit. If we caused an overdraft because we debited the wrong day, we would have to look - and we do this already - but in the law we would have to reimburse that overdraft. It allows for capture of costs - if regulators are incurring costs to regulate us, they can capture those costs. And it can include data sharing with regulators. We share data with California. Some other state regulators want that data, some don't.

Andrew Kushner, Policy Counsel at the Center for Responsible Lending (CRL), thanked the Committee for the opportunity to speak and stated that CRL is a nonpartisan, nonprofit advocacy organization that works nationwide, you know, both at the federal level and in various states combating predatory lending practices like payday loans and other credit products. I'm excited to speak to you all about earned wage advance. I think my colleague, Ben, talked about this a little bit but there really are two very different types of earned wage advance. And on their side they say access and we say advance and I'll have a slide about why there’s slightly different terminology in a second. And I've got the direct to consumer company over here on my left and the employee integrated company here on my right. I think one main difference that I just want to highlight is typically, with the employer integrated product, there's repayment through payroll deduction. So, the money comes to the earned wage advance provider directly from the employer. In the direct to consumer product, that repayment is actually coming from the bank account of the user. So, the money transfers from the employer to the user, and then it's recouped from the user to the lender. And so in that context there's the potential for overdraft fees and other types of problems that you don't see with the employer integrated model. And these are examples of companies that offer these employer integrated products. I think EarnIn may really be the one direct to consumer product. There's some other logos on the screen, there of companies that offer other types of sort of “non-recourse direct to consumer loans” but don't proport to make those loans based on earned wages. Companies like Dave, Brigit, and MoneyLion - we call those FinTech cash advance providers rather than earned wage access providers. But like EarnIn, they're not integrated in an employer’s time keeping system which is a key difference in our view.

And so, this is why we tend to think of these products as loans and as advances because it's the case that in neither of the models that we're talking about here today do consumers actually receive or access their earned wages. In the first instance in the employer integrated model, the money, the advance, which is in red on the screen is actually coming from the lender to the consumer. The next step in the process is that the employer through payroll deduction repays the lender on payday. And then this transaction is settled or completed with the consumer receiving less on payday. In the direct to consumer model, there actually is no connection between the employer and the earned wage advance lender. The advance is directly from the lender to the consumer. On payday the employee receives their entire pay and then the transaction is settled with the lender debiting from the employee’s bank account to finish the transaction. And so that's why we think of these products as loans. There are a receipt of money not from the employer in most cases but from a third party that is ultimately repaid. We heard a little bit earlier about non-recourse and I think it's important to understand what non-recourse means in this context. Non-recourse doesn't mean that the consumer has not agreed to repay what they receive from the earned wage advance provider. It simply means that provider’s debt collection strategies do not include suing a user for an unpaid debt, selling that unpaid debt to a debt collector, and reporting to credit agencies. And the reason why, in our view, companies don't use these strategies is that they simply do not make sense with their business model and a little bit later I'll show some data about these sort of average size of transactions but the average earned wage advance is something like $85. And I think we can all understand it doesn't make sense to initiate a claim in small claims court for an unpaid $85 advance. The cost of trying to recoup that isn't worth it. But these providers do have other ways of collecting on these loans, including a payroll deduction which is almost always going to be repaid because the employer integrated providers have access to real time, time and attendance data. They know the money exists. The money is coming directly from the employer. There's kind of no question of repayment there or debiting a bank account in the case of direct to consumer lenders. And we know from litigation involving some of these companies that if the transaction is not repaid upon the first attempt to recollect that the providers will re-present that transaction in some cases multiple times which can incur overdraft fees for users.

One of the main ways that the direct to consumer and other Fintech cash advance providers make money is through tips which from our perspective is a little bit strange. This is not the case like when you're in a coffee shop and you're tipping a service industry worker who performs a service for you. This is just functionally money that goes up to the company for providing the service and in our view it's clearly a finance charge and a cost that should be considered in evaluating the product. So, these lenders use, in our view, kind of pressure tactics to induce users to tip. Like a sort of sad looking person saying, "Looks like we didn't get a tip last time." Or sort of suggesting that a tip kind of benefits the community or in some way supports other users of the product. We think the company should just call these charges, fees or finance charges. We've learned a lot about the product in the last year mostly thanks to the California Department of Financial Protection and Innovation (DFPI) Memorandum of Understanding with earned wage advance providers. And what we learned was quite striking. Consumers use these products a lot. The DFPI found that on average people take out nine of these advances a quarter. So that's 36 times a year. The DFPI also found on the average across the entire industry, the annual percentage rate (APR) is over 330% for both the companies that solicit tips and those that do not solicit tips. That's squarely in payday territory and when you also look at the frequency of use this is when it becomes very concerning for advocates like us. Most users tip. It's like something like in 74% of transactions where a tip was solicited the user did tip. And while there is a theoretical free way to get these advances without paying to sort of expedite fees you see that in the vast majority of cases people are paying these fees. And they need to pay these fees because they need the money now. I mean, that's the whole point of the product. So, it isn't surprising. And so, from our perspective, what these products are, are nothing more than an agreement to receive money now and pay it back in the future, usually with an additional cost to be paid to the lender. And I think in every other context that's credit. You receive money from a third party and you pay it back in the future. We think of that as credit. And I think kind of pulling back the frame here a little bit I think you all as legislators have an opportunity to really think about how to solve the underlying problems that I think are leading people to use these products. From our perspective, financial innovation cannot solve a structural issue which is that people just don't make enough money to get by. But if you have a structural deficit between expenses and earnings like by borrowing against your future pay, you're never going to close that gap. And so the underlying problems are much more difficult to solve but creating a carve out for these types of products isn't actually going to get anyone any closer to sort of paying their rent on a long-term basis.

So, a little bit about the legal landscape. I think we've heard about this a little bit. In 2020, the CFPB exempted a very narrow class of these providers from the federal Truth in Lending Act (TILA). The key criterion in this guidance is that the employee makes no payment voluntary or otherwise. So, no tip or no expedite fee whatsoever. The CFPB has said those are not credit products under federal law. And we have seen industry kind of use this guidance in state legislative fights saying that the industry is exempt more generally from TILA but that's simply not the case. We've also heard a little bit about the bills. As mentioned, the legislation did pass in Missouri and in Nevada. There are bills still pending in a number of states. And then legislation did fail in Texas and Virginia last year. I just want to say a quick word about Missouri and Nevada. Missouri and Nevada essentially do not regulate payday loans. They don't have any sort of rate caps on payday loans and they have some of the most lax laws and highest interest rates on payday loans in the country. And so I would say we think the Missouri and Nevada model is a bad model but it's particularly a bad model in a state that has decided to outlaw expensive short term small dollar credit. And so, if you're seeing that model touted, I think you can say we do things differently in Illinois or in Georgia or in Montana, for example. So just to wrap up, we, along with the National Consumer Law Center, have put out a joint guidance on state earned wage advance regulation the upshot of which is that we think these products should be regulated as the credit products they are. The QR code on the screen will take you to that joint guidance if you want to take a look. We also in that report point to specific consumer protections that advocates think and need to be the case for these products to be safely regulated outside the credit system. And those protections are very different than what is in the bills that industry is trying to move at the state level. I mentioned this a little bit earlier from the non-recourse standpoint - we don't think that it makes sense that no provider sends their claims of unpaid debts to small claims court. It just doesn't make sense from a financial model. So, from our perspective, the industry coming in and saying, “we need this consumer protection law that prevents us from doing something that we don't already do” is sort of like the cable company saying, “we want to be exempt from consumer protection law but ban us from putting a boot on your car if you don't pay back the cable bill.” That's not a tactic they use. And so, we don't think the consumer protections in those bills are particularly meaningful and any bill that does specifically regulate earned wage advance should have protections like these on the screen.

Ryan Naples, Director of Public Policy at DailyPay, thanked the Committee for the opportunity to speak and stated that DailyPay is an employer integrated earned wage access provider. We were founded in 2015. We like to start when we talk about earned wage access to discuss how this is really solving for a frequency of pay issue. This is not solving for income insufficiency which is a much more intersectional and much more complicated problem to solve. We were started because when people worked in small businesses and they were about $100 short they were able to go to the general manager of the store or an owner of a store and say, “I need $100 before payday.” And that $100 could be physically taken out of the cash register and then put back. And as big box stores started proliferating and Target is our largest customer at the moment, the general managers at Target couldn't do that. And they would try to. And so a request for proposal (RFP) was drafted both by Target and by Walmart in order to solve this problem using a financial technology. So, this is essentially the financial technology equivalent of being able to go and take money out of the cash register for an employee. We are an employer integrated earn wage access provider. So, we signed a contract with businesses. We then take about four to six weeks to integrate with their payroll on time attendance system. At that point, we are kind of like inside the computer, if you will, and anyone who has a job with the employers that we sign up with has the ability to actually download our app. People can then see how much they make throughout the workday. This is an entirely optional service. Our platform updates four times a day with data. Everyone is eligible if they work for a provider we have contract with. About 36% of employees actually end up downloading the app. If someone does want to take access to the money that they already earned, they do have to earn it first. So, you can't access anything that's in the future. We get a lot of complaints that they can't access anything over the amount that they work on the first day, and that’s because you have to work in order to access anything.

About 50% of people on our platform do not ever access their wages. They just really like the platform to look to see how much they make throughout the day and throughout the day period. There is also on our platform a one to one financial counseling and coaching service available through the Coordinated Assistance Network which is a nonprofit that's based in Florida. They also do a lot of work on mental health counseling and coaching and do referrals to that too because financial stress also leads to a lot of mental health stress. We did actually get them from a larger consumer group. If someone does decide to access their wages it's typically about $100. We continue to track how much someone makes throughout the remainder of the pay period. Because we're integrated with time and attendance, we don't have to really even ask the employer. And then on regular payday the paycheck goes in the normal course to the employee however they normally set it up just less whatever they've already accessed. People have three options on our platform to move their money. There is the standard delivery which is essentially like Venmo. So, to be honest, it's exactly like Venmo, except we also have a debit card so people can transfer their wages for no cost if they can wait one to three business days and expedited delivery fee is $2.99 to $3.99. Employers have the option to pay for this for their employees and so that's why there is a range. It's entirely based on what employers want to be contributing towards the service. During the pandemic this was a big employee recruitment and employee retention tool. We don't have any other fees. We don't ask for tips and there's also no membership fees or subscription fees. It is a flat one-time transaction fee, more similar to an ATM fee really than an installment payment because it's $3.49 which is extremely low. Nationally, we have about 1.4 million users. Our average transfer amount is $108.00. The number of employers we have access to that we have signed up with continues to grow. Target and Hilton and Dick's Sporting Goods and Krogers are our largest partners. UnitedHealth just signed up.

We do research about every year to see what is the financial health impact on our users. In 2021 we worked with an economist who previously was at the CFPB. Then she was in the private sector. Now she's back at the CFPB. She was not there in 2020 when the federal guidance letter was issued that talked about how earned wage access is not actually credit if we're not charging people anything. There was a footnote to that note about as long as there's no charge. The footnote says nominal processing fees are likely sufficient for compliance with the guidance. But they didn't actually define what a nominal processing fee is. So, that’s definitely part of the reason why I think we're so active legislatively and regulatorily is because there's not a lot of clarity. Because who's ever heard of saying here's a footnote and we're not going to define anything. So the people that we've spoken to who've used our service previously were paying bills late. Again, we're solving really for the frequency of pay problem - we can't solve for the income insufficiency problem. About 20% of people were taking out payday loans. About 40% of people were overdrawing their bank accounts. And over half of people were paying bills late. And of course there are costs with that. So, what we saw was that after people had access to DailyPay they were able to no longer use payday loans and 88% of them credited this to DailyPay. And the same with overdrawn bank accounts. A high percentage of people who previously had done a lot of really expensive things just did not have to do them anymore because they had access to the wages they already earned and they didn't also have to take on any debt.

So again, we're not solving for income insufficiency, but we are saving people money if they're using much more expensive financial strategies. And so these are conservative estimates of how much we saved with people if they were previously in payday loan debt or over drafting their bank account regularly. We do have a small average transfer amount of about $100. So even though people have access to their whole paycheck they almost never access more than about 40% of it. California does have everybody's data. Our data is different than what was in their report. We don't see people using it as frequently per month as California does. And the large majority of people are doing fewer than 10 times per month. Our average per person is less than once a week which obviously means very little but really we're seeing people most often do about one transfer on the first Friday of a two Friday pay period if that makes sense. Most people want to get paid every week or need access to money every week. And in terms of people who are high frequency users, we do not have any high frequency users that are high frequency users for longer than a month and the people who are high frequency users for two months is much smaller. And there are no such thing as high frequency users really on our platform for three months. And people often don't stay using DailyPay, and this I think shows that people use access to these services really when they need it. The majority of people are not using this for longer than three months to a year. It is true that we do not consider ourselves a credit product. I think credit laws are defined in different states. We are active in all 50 states. Jamming us into the credit bucket let's say like in Wisconsin where loans can charge for unpaid debits or they can charge a whole bunch of fees – there are a lot of things that can happen to people who take out money that is not good for them. And we're really helping people escape those practices. And I also should say the bills in the states that were passed, they do have earned wage access specific consumer protections around tips and other things like that, that the credit laws obviously are silent on.

Rep. Deborah Ferguson, DDS (AR), NCOIL President, stated that the reason so many states are looking at regulating this is because there's been a lot of predatory practices in the industry. As NCOIL perhaps looks at developing a Model Law, I know there was criticism of the Nevada law because it didn't define it as a loan. Can you address whether it's a loan or a credit? How are those being defined across different bills being considered in different States and what’s your opinion on that? Mr. Naples stated that we don't do any underwriting. We don't do any credit checks. There's a one-time flat fee. It’s not based on credit worthiness. There's not an installment agreement. Every state is going to be different but we don't send any uncollected funds to debt collection - that's because we're employer integrated. When we don't get paid back or made whole it’s because an employer to be honest has gone out of business mostly and not made payroll and the employee doesn't have to pay us back for that. We don't go after the employee. So, there are a whole host of reasons why we are different from a credit product and, if we were forced into the lending law bucket depending on the state, there would be really negative consequences for consumers but also for our own businesses and this service would go away. And in terms of the number of complaints that are received on this there are not a lot and I wouldn't say that this industry has been characterized by as predatory but all of our bills passed with wide bipartisan majorities and I think we're very collaborative like in the state of Nevada our negotiating partner was the Nevada Legal Aid Society and in New York we talk regularly with the Legal Aid Society of New York as well. So this is an industry that is very mission driven and collaborative.

Mr. Kushner stated that I think structurally, these products are loans just simply because it's an agreement to receive money from a third-party company, not your employer - not directly from your employer, but a third-party company and to pay that back. And so we think really in all States and at the federal level, you know that triangular relationship that I put up on the screen that's just a quintessential loan and a credit product. I didn't mention and I probably should have, Maryland and Connecticut and California are all at various stages of a regulatory process that defines these products as loans. And so it is true that there's some variation of the definition of a loan under state law that does differ to some degree state by state but there are states that have taken up kind of the opposite track and trying to regulate these products as loans. I think the danger with these bills the industry is pushing is that they say they're not loans and they have no regulation whatsoever of what providers can charge. They do have to have a free option. I admit that. But there's no usury cap or fee cap and so kind of theoretically the sky is the limit in that regard. And from our perspective, the number one most important thing about our credit regulations is the usury cap - regulating the amount that consumers can be charged to access credit. That's what's important from our perspective. I sort of disagree with Mr. Naples that there's nothing about being a lender that requires you to use debt collection strategies - that's a choice. It really just means in most states although not in Nevada and Missouri that there's a cap on what you can charge and that's a massively important consumer protection that is missing from these bills.

Mr. Naples stated that California has an exception - their regulatory proposal is for credit but we can all get an exception from needing a lending license if we do a couple of things. And that does not include a fee cap. It includes just kind of existing the way we already are. Connecticut did put out regulations saying that we were a loan but then they pushed back the compliance date from October 1st to January 1st. And we've been talking to the regulator about working on a bill together with the legislature. And Maryland did put out guidance and they did not ask us to get a lending license. So it's definitely in flux.

Mr. LaRocco stated that in Nevada, we literally worked on the Nevada bill for three years. We listened to dozens of people - Attorneys General, consumer advocates, banking regulators - not only in Nevada, but across the country and they put in feedback on that bill and it did pass almost unanimously. I think there were three votes against it. A lot of time and effort went into that to make sure that the appropriate protections were in there for both providers and operators. Connecticut, California, Maryland - none of those were legislation. Those were all regulatory either guidance or rulemaking. And again, California exempts us from the lending law as long as we register under a separate law in California. I'm going to give you an example: I give you $100 and you pay me back $100 plus $4. That's how ATMs work. When you go to the ATM, you take out $100 - that's not your $100. The ATM company pays you $100 and then they get paid back from your bank later. That's how the interoperability of our financial system works. So, just to say will you give me money and agree to repay it later is a loan - that's just not how our financial service works when you actually get down to the details. The final thing I want to talk about is the usury cap situation and I think the free option provides very important competitive benefits where not only do we have to compete with each other but we have to compete with ourselves. So, anything that somebody asks you to pay has to be a good enough value that somebody wants to opt into it and it has to be more valuable than the free option. So, one of the reasons why payday loans get a bad name - there is a very important need that is being served and that's why this industry is growing – is they have a lot of things that require payment that are very bad that are not present in our product. So, I think that's a very important distinction that the competition that is inherent in the product is very consumer friendly and long lasting. We've all been operating for 10 years and there's robust competition. Our fees are still low in the absence of regulation so it's hard for me to see how having legislation would cause our fees to increase for some other reason.

Mr. Naples stated that there's a lot of top down pressure on companies like ours, especially ones that are new and industries that are small. And so it's true that there are companies like the buy now pay later company Affirm that will get a lending license and continue to do all the great things for consumers like it's credit invisible. It's non-recourse. All the fees stay really low. But Affirm is a $5 billion dollar company and in a different ball game essentially than all of our other companies that are much more affected or impacted by the demands of our funders. I do think that there is a lot that we actually agree on even though it sounds like we agree on nothing in terms of no one really is opposed to a fee cap. And our fees are really so low. It's really always a question of what do you set it at? And in Nevada there is a six year sunset and there is robust reporting required so that if a fee cap is actually necessary or a frequency cap the regulator can set it based on the data of what everybody is actually charging because there's really never going to be a fee cap lower than like $3.50. But if it's $5, the way that businesses work is folks will raise their fees to whatever the cap is going to allow for. And so if there's going to be a cap it needs to be based on something other than just picking a number out of a hat. And I do think it's impactful to think about how California has everybody's data. They've had it for two years and the regulations they've put out includes no caps and no frequency caps. In fact, they actually did have a requirement that we follow California's own small dollar loan transaction fee cap which is higher than what most people charge and they took it out because it would have caused companies to raise their prices. So, I do think we all actually agree on a fee cap, it just depends on what it is. Mr. Kushner noted that California said nothing about why they removed the fee cap from the regulatory package. The idea that they said it was because companies would go to that level is inaccurate. The exemption from state credit law under California is for a maximum of four years under the regulatory package so this is not like an all time thing.

Rep. Ferguson asked do you have any idea where the CFPB is leaning on this? I know they've not really addressed regulation, but do any of you have any idea where they might be leaning? Mr. Kushner stated that we both talked a little bit about the 2020 guidance that basically says if you don't charge a fee you're exempt from TILA. I think for me that implies the converse that if you do charge a fee or there's any money received by the lender that you should be subjected to TILA. I have no inside intel that the CFPB is leaning in that direction. It seems to me implied from the 2020 opinion. I won't proport to have any inside knowledge except that as I think both of us discussed there have been some news reports that the CFPB is in the process of creating additional guidance on these products which I think should be released in 2024. There is federal legislation pushed by the industry to basically stop that effort in its tracks but we expect the guidance in the future. Mr. LaRocco stated that I would say we actually partially agree on that one. We think that guidance probably will come out from the CFPB in early 2024. We also have no idea what that will say. I think a couple of things to consider as state representatives. One, any guidance that comes out will be non-binding. It'll just be an advisory opinion. Second, what is in the purview of federal law is very different than what's in the purview of state law. So things like state credit laws and usury caps and those kinds of things are not in the purview of the federal government. So the CFPB, really any guidance that comes out of them would not really affect state laws specifically.

Asw. Pam Hunter (NY), NCOIL Treasurer, stated that I chair the banking committee in New York, so I know a little bit about this and I feel like the conversation not just today, but just in this space is that we're normalizing being nickeled and dimed every single day. Every one of us has a phone right now with us that we could make transactions with like Venmo or Zelle and there's a fee if you want your money early. The bottom line is really we're talking about financial literacy and also low wages and I don't necessarily know if this is the place or space that we're ever going to fix either one of those but it seems to me that if, and I'm not touting this as a great example, but I know this to be a fact that an employer could do this themselves. They could pay their employees every day. And one of the employers in my area, a large global employer we all know, actually offers this option that the person could get paid daily. And many times when we're having this daily pay conversation, it is for people who are on the margins, who need their money today. In the examples that I received in my district is I need to get paid every day because I am literally homeless and I need this money to pay for the hotel I stay in everyday. So what happens when we get in a situation where you're fronting this money from your employer every day and payday comes and you're down 40%? This is not a sustainable model for people to live in. So, I guess my challenge is because this is not going away and I'm not trying to over regulate market, I want to make sure that our consumers are protected and that normalizing $4 on $100 is not where we need to be. But how can we move forward so that these consumers who are on the margins are not going to be preyed upon and can be protected. How do we make employers do daily pay for their employees? I work today. I earned my pay today. Why can't I get my pay today? How do we work that out? Also, we are assuming that everyone lives in this traditional bank space and they do not. I have a phone, I have an app. I'm getting direct deposit fronted to my phone. It's all electronic transactions. So what happens when I lose my job or I stop my direct deposit going to your app based system? And I'm fronted money from you and then I just walk away from it. And I've had conversations with some of these organizations and they've given me different answers. So, it's ripe for all sides to have issues and I think it really needs to be vetted a bit better for protections for consumers and also not being predatory. But there are bigger problems relative to this whole banking space and really it does come down to financial literacy and low wages. But if someone can answer for me my question that would be great - why can't I work today and get my money that day.

Mr. LaRocco stated that we know of two employers that provide this on their own, Walmart and Amazon. They each have more than 1 million employees. Even very sophisticated employers like Target and Home Depot can't do this on their own. And they looked at third parties. It's very difficult for a lot of reasons. Wage and hour laws are very complicated. I think there are a lot of companies that would love to do it. But it's just too complicated and they can't. I think there may be something else that could be done on that but the fact is that right now it's very difficult for employers and we don't know exactly why because we're not in their position. But they have chosen to look to third parties. Just the quick point on what happens if you change your bank account - if you use EarnIn and you change your bank account, literally thousands of people do that with EarnIn a year, nothing happens to them. They use their bank account, they change their account, they don't pay us back. They just don't get to use EarnIn anymore until they pay us back and that's just a fact of dealing with the business. We've done more than 250 million transactions. When you do that many transactions, a certain number of people are not going to pay you back. It's built into our business model. So there's basically nothing else that's done.

Mr. Naples stated that from what we see from the data from our app is, despite our name of DailyPay, no one is using us every single day. And I think that the importance of these licensing laws is that they do require robust reporting so that regulators actually know how people are really behaving on this app. And we're the two largest probably in the country and we're actively engaging constantly with regulators. We think that transparency is important. And what we see is that people use platform when they need it for a discrete period of time and then they don't use it again. And we do not see the regular reliance that would really be extremely problematic. And I do think that in terms of having employers also cover the cost of these transactions again is something that we invested in and pushed for. There was a provider that tried to only work with employers that did that, a competitor of ours, and they essentially went out of business. Their technology was bought by Walmart because they were Walmart's provider that doesn't charge people if you get their NEO app. So, this is a space that's in flux but wants to be regulated for these reasons.

Rep. Stephanie Young (MI) stated that in Michigan we have an issue with our payday loans. We have been fighting to regulate how much they're able to charge. They call them fees. When we look at the interest, it can be up to 300% interest on these loans and we're looking at how we can do that. But it's back to what Asw. Hunter said - it has to do with low wages. And we find people get caught up in these cycles. How do you get out if you start with early loans or early pay and then by the end of your two week period when you're supposed to get paid now you're 40% less or you're 50% less. I know it's all so tricky. But I do have a specific question. There was a slide and I want to be certain I understood this slide where you had the percentages of the companies how they run their payroll.   So, there are companies that run it monthly, biweekly, or weekly and then, of course, there's daily pay. And I'm wondering do you all have data on the people who are on each of these types of pay cycles and how many of those people actually use these products? Because it seems to me that the folks that are on that monthly pay, which I am adamantly opposed to but I don't run these businesses, would be using these types of products more because it takes them longer to get access to the money that they've already earned. And I'm just curious to know, does that data exist? Have you all collected it?

Mr. Naples stated that we don't have that data. I think we do hear, though, that the people that are paid monthly use it, anecdotally, more frequently. I know in Washington. DC, the U.S. House of Representatives' staff is all paid monthly and so when we'll be in meetings they are the people that actually have heard of earned wage access because they themselves are using it because their paycheck is only once a month. Mr. LaRocco stated just two quick anecdotes. We have over 100 congressional staffers that use EarnIn. And I would also say we've met two state representatives in the last couple of weeks that both used EarnIn and I thought that was very interesting in our conversations. Mr. Kushner stated that I don't know either and it's a very good question but I do think your concerns are spot on that in a way the use of these products can sort of generate their own demand because there's less available on payday. And really quickly I just wanted to say in response to the previous question, people ask us all the time what's the solution here? I think ideally employers would just provide this as a benefit for free. And I think some do shoulder that cost for their providers. I think it's a major disincentive for that to happen to allow these bills to pass that effectively carve these products out from state credit laws and allow the cost to be put onto the worker. I think that's the wrong approach. Mr. LaRocco stated that if anybody in your states have connection with researchers or something like that I think it actually would be interesting. We do have operations in all 50 states so we absolutely could do some research like that so it could be an interesting collaboration.

Rep. Jim Dunnigan (UT) stated that on DailyPay, you had three formulas of fees. The standard delivery, there's no fee. You can have instant gratification if they use your debit card right? Mr. Naples replied, yes, for no fee. Rep. Dunnigan stated then on the third one, it's instant, but there's maybe up to a $3.50 fee. I'm interested to know of each of those what percentage of your customers use those? Mr. Naples stated it's about 70% are doing the instant with for the $3.49. Rep. Dunnigan asked why don't they use your free card? What's the downside to using your free card and getting it? Mr. Naples stated they need to put their direct deposit on the debit card so they need to use it more regularly so they have to be comfortable using the card more regularly. Rep. Dunnigan asked who determines the fee up to $3.49? Mr. Naples stated our standard instant fee is $3.49 across our whole platform and then the employers, well ask them how much if they're willing to cover the fee for their employees or how much of it. Rep. Dunnigan asked so what do the employers receive from this? Do they get a cut? Do they get anything? Mr. Naples stated they don't get anything. It helps with employee retention and reduces times for recruitment and reduces employee absenteeism because so much of the app is just visibly showing people how much they can make and how much they're making. Mr. LaRocco stated that's actually one thing that's in the bill. There's a prohibition against any revenue share or anything like that so it doesn't incentivize employers to push somebody to one particular service that might have higher fees. Rep. Dunnigan stated and to clarify, you said that Walmart's offering the daily pay. Do they charge their employees a fee for that service? Mr. Naples stated they have a NEO bank called One, and so Walmart employees download One and use One as their bank. Then they can get earned wage access for no cost. And Amazon, we believe, does it themselves on their own platform but we're actually not really sure. But they're the only ones that are offering it themselves. They're obviously very well capitalized.

PRESENTATION ON INFLATION'S IMPACT ON THE INSURANCE MARKETPLACE

Douglas Ruml, Assistant Professor, Finance Program Director at the Ohio Dominican University, Division of Business, thanked the Committee for the opportunity to speak and stated that I was asked by the Institutes Griffith Foundation to speak today and to that end I was also asked to say that I'm going to keep my comments and contributions to today's program unbiased and purely educational so there's no political slant to anything I'm going to say. And I'm going to talk about inflation in the area basically of insurance. There's four different measures of inflation that I'm going to talk about. There's general inflation, there's claims cost inflation which would also includes social inflation, another new term maybe for some of us. There's wage inflation. That's the one I won't spend a lot of time on. And there's also interest rates. So, we'll talk about these four things fairly briefly. And I've got my first slide and you can see the lines there. I want to call your attention to the green one that's in the middle of this slide. And that is the inflation with when you take out the energy and food and things that are very volatile. So that's the type of inflation that they call core inflation and that's the thing that gets reported by the government every month. And we just had the last months, year on year just came out. So, this slide is actually a little bit old because this is the September numbers and in fact the October numbers were down one half of 1% which doesn't sound like much, but people are really excited about it and the stock markets went bananas for a couple of days.

So that's where that's at but we have to drill down in this because even if it went down a little bit it's up very high compared to what's considered normal. So, it has been around 5%. It's been as high as 9.x% and normal is considered 2% or less. So, in the last few years, there's been a high level of inflation. So even if it's gone down a little bit or if it's flattened recently, it's still at a higher level than it was three or four years ago. We've been through an awful lot with that. On the right side of this slide I also give you a definition of what inflation is. So, really, inflation means that you can't buy as much with your money this year as you could have bought with the same amount of money in previous years. That's really what inflation means. You don't see it. You're still getting the money but you're just not able to buy as much. We think about that as the prices have gone up but another way of looking at it is that our money doesn't go as far and so that's sort of the problem that people have to face with this. And one of the things that insurers have to do when that's the case because they have expenses as well and those expenses include people that are policyholders that have had accidents or damage to their homes or you know they're going to the doctor. Those people have to stretch their dollars out and the insurance companies are saying, "Well, we have to take care of their needs and pay for that house that we said we would replace the value of." And so, insurers are saying, "We're paying more than we thought when we did the mathematical models 10 years ago on this particular person. And so, we're going to have to charge them more in the future." So, that's kind of where that gets scary.

Let's talk a little bit about another chart and you can see the line going up and down. If you'll notice over on the left side, there's kind of a gray area where it was going up and then it went way down. And that was the Great Recession right there. So, the inflation rate, again this is the core, every 12 months, year on year. It went quite a bit down during the recession. That's what happens when companies and businesses organizations don't have a lot of money. There's not a lot of money working in the economy. It tends to make the interest rates go lower. So, that's what happened then but if you look it's kind of hovered around the middle and then in the last couple of years over on the right side you'll see it spiked up quite a bit and the level it's kind of bounced around it since then is still higher than that average was from before. So, this is again general inflation, inflation in the economy so that's the overall inflation and the first type of inflation that we were going to talk about. Let's talk about the second kind of inflation, which has to do with insurance and this is claims cost inflation. Sometimes people ask, "why did my insurance rate go up this year? Why are my rates going up? Why are they higher than they were before?" And I've put five bullet points here that have to do with some of those issues. The first one is housing material and labor costs have gone up. So, somebody has damage to their home. They need to get it fixed. They find out those costs have gone up. So, in the general economy those costs may have gone up over three years, maybe 15%. But specifically to the housing market, they went up around 45% so in some areas it's really expensive. You see that a lot with construction. You see it also with anything related to microchips which unfortunately was automobiles so you had a big issue with that as there was a shortage of microchips.

Thirdly, there was just general auto repair and labor costs going up. Again, getting your car fixed. When people are not buying new cars, they're using their old car for longer and they need to be repaired more often and you get sticker shock when you go into get it fixed because the cost is going up by a considerable amount. We also have healthcare trending upwards. So, healthcare costs, labor and other things that have tended to cause that to go up. And then finally, supply chain issues. So, especially in the aftermath of the pandemic, we had a lot of issues with just not being able to get stuff to where it needs to be. Let's talk a little bit about social inflation because this is a terminology that has to do really with a lot of time with legal costs. So quite often when we're talking about social inflation, we're talking about these five things. The first is that juries, the attitudes of people sitting in juries tend to have changed and now they feel more likely to say, "well, there's a tort case that I'm seeing and we think that this entity that's being sued is a big one and so, they can afford it." And so there tends to be inflation with especially noneconomic damages. That's just the nature of the beast. Secondly, third party litigation funding - this is a new thing. It's for law firms to be able to get funding and allow them, if their plaintiffs, to pursue cases for a longer period of time and mass growth torts would be a primary issue with that. Number three is additional capital. So, additional capital is there because they're making more money, law firms are able to spend more on legal advertising and so that tends to cause more lawsuits to bubble up in the economy. Number four, social sentiment. Trust in institutions has declined. So, people tend to just think that companies or other institutions should be held more accountable for things. So that's again related a little bit to the juries but just the fact that everybody sort of agrees with that in society. And then finally, expanding legal concepts. So, there's a lot of work that's been done that has to do with what you're liable for which wouldn't have been the case two or three or four or five years before. But now you are liable and so a lot of the times companies and their insurers have to get their arms around what those future costs were going to be and now the future's arrived and we have more costs with that sort of stuff.

This is the one I don't want to spend a lot of time on, it's wage inflation. We've touched about it already with medical, with auto repair, and with other companies but it also affects insurance companies. So, they're a service provider and a lot of their expense is actually wages. So, let's talk about the fourth and final thing - interest rates. So, the Federal Reserve, they try to stop rising inflation like what's going on right now or what has been going on and one of the things they do, one of the major tools in their arsenal, is to be able to raise rates. And what that means is that it costs you or I or any entity a company to borrow money. It costs more to do that. And so, when the rates are raised that tends to ripple through the whole economy where you have things costing more. It costs also more for insurance companies to raise capital in the market when they go out and they say, "well, we want to issue a bond." Maybe four years ago, that bond would have paid a bondholder 3% or 4%. Today it might pay them 6% to 8% or 10%. So they have to pay a lot more to borrow money from people. Now, I mentioned briefly at the beginning that currently we have disinflation which is it's seems like it's stabilized. We'll see how that lasts. That line was going down. That's a good thing but it's still at a higher level than it was before all this started.

Rep. Matt Lehman (IN), NCOIL Immediate Past President, stated that in the space of social inflation, when you talk about increasing of larger sums awarded in that, are we seeing a percentage there? Are those up 10% or 20% or 50% an award? Is there a tangible number that you can cite that those are up? Prof. Ruml stated that yes - at least with third party litigation. Westfleet Advisors which is a brokerage firm, they're findings were that this one particular area of third party litigation grew by 44% between 2019 and 2020. Rep. Lehman stated ok so the funding mechanism has increased 44%. The jury awards, the jury who gave him $1 million now they're giving him $4 million - is it that kind of a shift? Prof. Ruml stated I don't have the data recently. I know it was going up fairly steadily and it was greater than the level of inflation.

DISCUSSION ON RESOLUTION IN SUPPORT OF ESTABLISHING NATIONAL STANDARDS AND PROCEDURES FOR THE REPORTING AND PAYMENT OF PREMIUM TAXES DUE AS A RESULT OF DIRECT PROCUREMENT

Rep. Bennett stated that last on our agenda is a consideration of a resolution in support of establishing national standards and procedures for the reporting and payment of premium taxes as a result of direct procurement. You can view the resolution on page 166 in your binders and it's on the website and app. Rep. Tom Oliverson, M.D. (TX), NCOIL Vice President, is sponsoring the resolution but he had to leave first thing this morning to get back to Texas for a special session. Before I go any further I just want to note we have been discussing this issue since our March meeting and as you can see by the amount of edits to the resolution before you there has been a tremendous effort to listen to suggested feedback and make the appropriate changes. So, it seems to me that given the heavy amount of changes that we've made any further suggested changes made in opposition to this issue are made by those that don't want the resolution at all. And as I said during our last meeting what we're dealing with here is simply creating a mechanism by which states can collect unpaid tax revenue. That seems like an issue that everyone can agree on no matter what you think and who you represent and no matter what side of the aisle you're on.

Bill Bryan, Director of Providence Insurance Partners, LLC, thanked the Committee for the opportunity to speak and stated that I really don't have much to add. We have been before the committee several times on this issue and as you mentioned in your comments, the reason for that repeated appearance has been to address the concerns that were raised by some people about the original version of the resolution. And it's been steadily sort of reduced and whittled down to what really is kind of a minimal addressing of just this very specific narrow provision to ask that there be clarification on the methodology of paying premium tax. It's not inventing anything. It's not adding anything. It's not changing anything. It's just asking for some standardization and clarification of that process by the states.

Rep. Lehman stated that as Rep. Bennett noted, this is very narrowly tailored and it's really focusing on the taxes that are due. And I think we'd all agree that it's always better to collect taxes that are owed and taxes that are due than it is to create new taxes. So, all this simply does is put that mechanism in place. Also, I know there's been some opposition to this but I think with the edits, we're not even addressing the industries that have had concerns. And as legislators, we don't put our thumb on the scale of competition so I think this is a good resolution and I would ask for its favorable adoption.

Upon a Motion made by Rep. Lehman and seconded by Sen. Hackett, the Committee voted without objection by way of a voice vote to adopt the Resolution. Rep. Bennett stated that the Resolution will be presented to the Executive Committee for final ratification on Saturday.

ADJOURNMENT

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