

NATIONAL COUNCIL OF INSURANCE LEGISLATORS  
PROPERTY & CASUALTY INSURANCE COMMITTEE  
INTERIM COMMITTEE MEETING – FEBRUARY 2, 2024  
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Property & Casualty Insurance Committee held an interim meeting via Zoom on Friday, February 2, 2024 at 2:00 P.M. (EST)

Representative Forrest Bennett of Oklahoma, Chair of the Committee, presided.

Other members of the Committee present were:

Rep. Cara Pavalock-D'Amato (CT)	Sen. Bob Hackett (OH)
Sen. Larry Walker (GA)	Sen. George Lang (OH)
Rep. Matt Lehman (IN)	Rep. Tom Oliverson, M.D. (TX)
Rep. Mike Meredith (KY)	Rep. Jim Dunnigan (UT)
Rep. Rachel Roberts (KY)	Del. Steve Westfall (WV)
Rep. Edmond Jordan (LA)	
Rep. David LeBoeuf (MA)	
Rep. Brenda Carter (MI)	
Rep. Nelly Nicol (MT)	

Other legislators present were:

Rep. Ethan Cha (MN)	Asm. Jake Blumencranz (NY)
Rep. Bob Titus (MO)	Rep. Elyn Hefner (OK)

Also in attendance were:

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

#### QUORUM

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

#### INTRODUCTORY REMARKS: CHAIR BENNETT

Rep. Bennett thanked everyone for joining this meeting today. I'd like to begin by saying that I'm honored to Chair this Committee this year and I look forward to building upon the great work that Rep. Edmond Jordan (LA), NCOIL Secretary, did last year as Chair. This Committee promises to again be extremely busy throughout the year, and I'm ready to hit the ground running starting with this meeting today. We have two Model Laws on today's agenda, one of which we will be voting on. For the other Model, we will be discussing which direction to take going forward.

## CONTINUED DISCUSSION AND CONSIDERATION OF NCOIL PUBLIC ADJUSTER PROFESSIONAL STANDARDS REFORM MODEL ACT

Rep. Bennett stated that a lot of work has gone into developing this Model, and the latest version was distributed and posted on the website earlier this week. I'll first turn things over to the sponsor of the Model, Rep. Mike Meredith (KY).

Rep. Meredith thanked the co-sponsors of the Model, Rep. Lehman and Del. Westfall, and thanked NCOIL for taking up this very important issue. We've had very productive discussions on this Model going back to last Summer, and I appreciate everyone's engagement and comments. As a reminder, this is based on what we adopted in Kentucky last year, and when we started working on this, the focus was: consumer protection, transparency, and preventing conflicts of interest. I'm not in any way trying to prohibit public adjusters from conducting their business – I'm just trying to ensure that consumers are protected to the best extent possible.

As you can see by looking at the latest version of the Model, we've made a lot of progress from where we first started, and I thank Committee members, insurers and public adjusters for their feedback. I know a lot of comments have been made on the fee cap provisions in Section 7 of the Model. And what I have in there now is 15% for non-catastrophic claims and 10% for catastrophic claims. That is where we ended up in Kentucky as well. I'm not necessarily opposed to lower caps. Some states do have lower caps, which is why I included the drafting note about how this Model is not meant to interfere with those states. But I think for a Model Law, the numbers you see before you are a good starting point and states can debate whether they want to go lower than that. And we need to make sure insureds are not losing too much of their proceeds in the process and having to come up with that much more out of pocket or borrow the money to make the repairs needed.

I'm happy to take any questions when the discussion opens up but before I stop, I just want to note that I think adopting this Model is a great sign for NCOIL and serves as great guidance to legislatures, and I know some are already considering the Model. So having this Model out there is very beneficial and showcases NCOIL as a leader in this space. I'll stop there and just thank everyone for all of their work on this.

Cole Kline, President of the American Association for Public Insurance Adjusters (AAPIA), thanked the Committee for all of its work on the Model. We feel strongly that the fee cap provisions take away choice from policyholders and it severely restricts policyholders with average size losses from being able to retain professional, licensed assistance on their claims. These are policyholders with claims of \$25,000 or less and we would like to see those fee caps raised to provide choice for policyholders.

Jon Schnautz, Assistance Vice President of State Affairs at the National Association of Mutual Insurance Companies (NAMIC) thanked the Committee for all of its work along with the sponsors and co-sponsors of the Model. The Model is not perfect and no Model ever is but we do think a lot of improvement has been made and we are here today in support of the Model and ask that the Committee vote in support of it, particularly because at this point in the year a lot of states are in session and the blessing of NCOIL would allow the Model to be deployed more around the country. Since it was raised, I will speak very briefly to the fee cap provisions - we do think it's an important part of the Model. I would note that many states including my home state of Texas have fee caps.

Texas has had a 10% across the board fee cap for 20 years and I went back and looked at the legislative history on that and there has been no bill filed to raise that cap since 2011 and I think that speaks to the fact that it doesn't restrict the ability of people to hire public adjusters. Last time I checked we have 1,500 licensed public adjusters in the state. The other point I would make is the percentage is a percentage of the entire claims settlement, it is not a percentage of what the public adjuster is getting the policyholder on top of what the insurer is already not contesting.

Del. Westfall stated that I'm very pleased that the Committee is considering this Model today as it has already passed out of the WV Banking & Insurance Committee and we made some minor modifications as some of it was already in WV code. I think it's a good consumer protection Model and I'm glad to hear that TX had 10% caps across the board for 20 years and it hasn't been touched and in WV we're looking at 10% across the board as well. We currently in WV have 10% for catastrophic claims but unlimited for other losses and I think that's where the problem is. It's happening in the eastern panhandle in WV coming across from MD and PA, it's not happening in other places but I think it will. I support this Model and encourage adoption.

Rep. Lehman stated that I support the Model and in Indiana we passed a similar law but in Indiana we don't have fee caps. I think what we really wanted to do was focus on transparency and we wanted to make sure we had some very bright lines as to what the public adjuster's role was and what an insured's role was as the lines were getting blurred. We saw insureds losing their right to file a complaint and losing their right to file a claim and there are bad actors in every industry but we just wanted to make sure that it brought some clarity to what their role is and I think, as Rep. Meredith said at the beginning, we didn't want to necessarily eliminate the industry but we did need to put some pretty strong parameters around them. I do think the issue of fee caps merits a discussion but I will end with what my philosophy at NCOIL has always been – we're all going to be different back in our states. NCOIL's role is to build the strong foundation to put a piece of legislation that I can take back to my state and I can put the windows in and other things but each state needs to know this is what has been vetted through a process with multiple stakeholders and this Model has gone through that process and I support the Model being adopted.

Rep. Bennett stated that two years ago my childhood home caught fire and my parents were beside themselves and I wasn't well versed about public adjusters and they used one and I was skeptical at first but at least in my parents case it was a big help. That said, I understand concerns about things like fee caps and that's the great thing about model legislation - we are setting an example and states can take it back and I think in OK we're going to be running some version of this at some point. I appreciate the work that has been done on this with all types of different stakeholders.

Hearing no further questions or comments, upon a Motion made by Del. Westfall and seconded by Rep. Lehman, the Committee voted without objection via a voice vote to adopt the Model. Rep. Bennett thanked everyone and stated that the Model will now be placed on the Executive Committee's agenda at the Spring Meeting in Nashville for final ratification.

CONTINUED DISCUSSION ON NCOIL CATALYTIC CONVERTER THEFT  
PREVENTION MODEL ACT

Rep. Bennett stated that the next item on our agenda is a continued discussion on the NCOIL Catalytic Converter Theft Prevention Model Act (Model). We've been discussing this issue since our Spring Meeting of last year, and during the Committee's last meeting in November, there was a discussion surrounding whether this Model is somewhat outside the scope of the Committee's normal work. It was stated that while it certainly can be argued that there is a downstream insurance consequence to stolen catalytic converters, you can really say that about anything that's stolen. And also, this issue really gets into the territory of a state's criminal code, and therefore the Model would likely not be presented to a state's insurance committee. To that end, some have called for the Model to be withdrawn and instead have the Committee adopt a Resolution encouraging states to enact stricter laws governing catalytic converter theft.

I do note that since the Committee's last meeting in November, an amended version of the Model has been submitted by the National Insurance Crime Bureau (NICB) in consultation with other interested stakeholders that aims to make the Model more insurance-centric. That Model has been distributed and is posted on the website. The amendments are in the form of two added sections: one would require the designated Department to begin a study on the economic impact of catalytic converter thefts on the insurance industry. A report and recommendations for legislative action would then be submitted to the Governor and legislative leadership. The other section would require the Department to establish a catalytic converter theft task force for the prevention, reduction, and investigation of catalytic converter theft. The task force would have the authority, subject to authorization and appropriation, to establish a grant program for the provision of funds to state and local agencies to provide grants to do a number of things aimed at preventing and reducing catalytic converter theft.

So that's what has been presented to this Committee. Today, I'd like to hear from both legislators and interested parties as to what direction they would like to take: either continue development of the Model Law, with the new provisions; or develop a Resolution.

Rep. Tom Oliverson, M.D. (TX), NCOIL President and sponsor of the Model, stated that I understand the sentiments that perhaps the Model wouldn't necessarily go through an insurance committee but the reality is that this is a significant cost driver for a lot of our property & casualty insurers and policyholders within this space. It is not a victimless crime and I think it is one of those crimes that we do a great service to the industry as an organization by just reminding everybody and taking a position and saying this needs more attention. It doesn't take that long to steal a catalytic converter and it ends up costing a fair amount of money to replace and a fair amount of time and it's taking people's cars off the road. In Texas, our legislation that concerns catalytic converter theft was named after a Harris County deputy who was shot to death by confronting these thieves that are undoubtedly organized crime participants. It's a significant cost to the industry and I think we have a situation where there is an obvious stressor to the property & casualty marketplace that we can point to and recognize, whether it's crime related or not really shouldn't be a factor in whether or not we take a position on it because we are in the business of ensuring stability in the state based system of insurance and making sure our constituents have access to affordable policies and if this is a significant factor in disrupting that then I think we owe it to the people of our states to take a position on it. I'm strongly in favor of the Model and will push for it and I look forward to seeing it adopted.

Rep. Edmond Jordan (LA), NCOIL Secretary and sponsor of the Model, stated that I think the Model itself has purpose and it's well intentioned but it really doesn't fall under the purview of state insurance committees so while I obviously support the overall issue as I'm sponsoring the Model, I think that a Resolution is the best path forward here. I think that's an "everybody wins" scenario as NCOIL is still taking a position and offering guidance to states, but the organization isn't getting into the position of producing Models that are outside the scope of insurance committees.

Eric DeCampos, Director of Gov't Affairs at NICB, thanked the Committee for the opportunity to speak and stated that the language submitted by NICB is an initial attempt to address some of the Committee's concerns regarding whether the Model is related enough to insurance. I do want to reiterate a point I made at the November meeting which is that the Model will set a precedent to address a key concern within the insurance industry and is within the scope of this Committee's consideration. It can be argued that this Model falls under the purview of other non-traditional Models that have been adopted by this Committee such as the Model Act Regarding Auto Airbag Fraud and the Consumer Protection Towing Model Act which were both recently re-adopted in 2023 and are often considered in judicial and transportation committees in states. Given the precedent set by this Committee through the adoption of those Models we respectfully request that the Committee consider continued development of the Model with potentially voting on it in Nashville.

Brad Nail, on behalf of Enterprise Mobility, thanked the Committee and the sponsors for their work on this Model. All told, Enterprise and its subsidiaries have a fleet of over 2.3 million vehicles making it the largest fleet owner in the world so we feel the effects of catalytic converter theft at a large scale. I thought it might help the Committee to hear some real data on the impact of this crime from a perspective of an insured or in our case a self-insured victim. From January, 2023 to January, 2024 we had approximately 3,000 catalytic converter theft losses for a total of over \$8.5 million. And if anything those numbers are low because not all catalytic converter thefts get categorized in a way that makes them easily identifiable in claims systems so that is a low end estimate. So as one company with over \$8.5 million in unrecoverable losses to our bottom line we would like to see the law reflect the scope and impact of the criminal operations engaged in these thefts. The data from NICB shows that thefts are still on the rise. Of the top states for thefts, almost all lack a statute making catalytic converter theft a crime meaning they are relying on their general theft or larceny statutes. And we have seen statutes in some states that specifically address catalytic converter theft result in fewer incidents so I think there is value in putting the statutory spotlight on this issue. North Carolina is a good example of a state that established felony penalties for catalytic converter theft in 2021 and saw an immediate decrease after enactment. As to the appropriate role for NCOIL on this issue, there is precedent for this Committee to adopt model laws addressing criminal liability for certain actions. The Distracted Driving Model Act includes misdemeanor criminal penalties and the Model Anti-runners Fraud Bill included felony penalties. Insurance and anti-fraud efforts and special investigation units frequently deal with criminal activity and we think this issue is analogous to other legislative anti-fraud efforts. So given our experience we urge the Committee to pursue model legislation that will have an impact in deterring this crime.

Todd Foreman, Director of Law Enforcement Outreach at the Institute of Scrap Recycling Industries (ISRI) thanked the Committee and stated that all states except for WY have laws related to catalytic converters. They are different in various ways and as

was mentioned earlier TX and NC have some good laws with felonies for possession and VA has that as well. What we would ask is to make this a point where the Model would be included in current laws instead of creating a new law because it could make it more confusing for law enforcement and industry. So we would ask that you continue work but there are some edits to add to incorporate into current law if they already exist.

Jorge Conforme, on behalf of LKQ Corp., thanked the Committee and stated that he is here wearing LKQ's automotive recycler hat. As part of the established process, LKQ acquires vehicles from insurance companies at insurance auctions and these vehicles come with attached catalytic converters. In reviewing the Model language we wanted to raise the question of whether or not a scrap motor vehicle would include a vehicle that is acquired for purposes of dismantling or recycling. We also wanted to discuss "covered activity." Companies like LKQ don't purchase catalytic converters. The only ones we acquire are ones that come with the vehicle and then we do detach and we don't sell them to the public, we send them to a remanufacturer facility. So I just wanted to ensure that legal, proper industries like automotive dismantling and recycling are covered under "covered activity" and that scrap motor vehicles does include motor vehicles acquired for purposes for recycling an dismantling.

Del. Westfall stated that I took this Model and tried to incorporate it in current WV law and we came up with something and it got a few people's attention. It didn't get sent to the insurance committee, it was sent to the judiciary committee and we discussed and held it for this year hoping that we could deal with it and finish it at NCOIL. This theft is a problem across the entire country and with the Model I think we have a better chance of passing good legislation in the states and incorporating it into current codes. I think we should move forward with this Model and this is a big problem in WV. Rep. Benett noted that catalytic converter bills usually don't go through the insurance committee in OK either.

Rep. David LeBoeuf (MA) stated that I may be missing some context since I wasn't at the Committee's November meeting but looking at the Model, it's a great Model and the real sticking points that I see are sections 5 and 6 because it's prescriptive on the offenses. Section 5 automatically categorizes this as a felony and in MA, a hit and run, first time driving under the influence (DUI), and assault and battery are misdemeanors so I wonder if there is a way to find a happy medium where you focus on the processes in the other elements of the bill and maybe have some attachment or statement explaining the logic of the need for some type of progressive offense because I can see where you have provisions like the Model you can have criminal justice advocates come against it if it's an automatic felony and then it also gets into the 17 year old that's at the bottom of the chain, should they be treated the same as someone who is leading the ring.

Rep. Lehman stated that I've been around NCOIL a long time and we've danced on this line before in terms of a criminal act versus an insurance act and I'm in favor of doing this and we should discuss it more in April and I'd be curious to know which Committee this would go to in states across the country. In Indiana, the majority of this would fall in the criminal code and would go to that committee but I do think there are parts of this that do touch insurance so we may end up with a situation where it's in the insurance committee or reassigned there so I think because of that we should continue the conversation and then make a decision. I do think it's a hugely important issue and a problem we need to continue to address.

Rep. Bennett stated that there will be a robust conversation in April and I'll be following up with staff and the sponsors to discuss what we plan to do and we'll be revisiting this in April.

Jeff Klein stated that I don't really have a dog in this fight as I'm representing the American Bankers Association (ABA) but frequently the National Association of Insurance Commissioners (NAIC) includes dating notes in models and given the comments today about the necessity for this model, perhaps a drafting note could bridge gaps in giving states discretion to assign the module to insurance committees as opposed to other committees.

Rep. Bennett thanked everyone for their comments and stated that he looks forward to continuing the discussion in April.

#### ADJOURNMENT

Hearing no further business, upon a Motion made by Rep. Lehman and seconded by Del. Westfall, the Committee adjourned at 3:00 p.m.