NATIONAL COUNCIL OF INSURANCE LEGISLATORS
FINANCIAL SERVICES & MULTI-LINES ISSUES COMMITTEE
INTERIM COMMITTEE MEETING – MAY 31, 2024
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Financial Services & Multi-Lines Issues Committee held an interim meeting via Zoom on Friday, May 31, 2024 at 12:00 P.M. (EST)

Senator Mary Felzkowski of Wisconsin, Chair of the Committee, presided.

Other members of the Committee present were:

Rep. Rod Furniss (ID)
Rep. Matt Lehman (IN)
Rep. Brenda Carter (MI)
Sen. Paul Utke (MN)
Asm. Ken Blankenbush (NY)
Asm. Jarett Gandolfo (NY)
Asw. Pam Hunter (NY)
Del. Steve Westfall (WV)

Other legislators present were:

Sen. Lana Theis (MI)
Sen. Natasha Marcus (NC)
Asw. Shea Backus (NV)
Del. Walter Hall (WV)

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 FELZKOWSKI

Sen. Felzkowski thanked everyone for joining the meeting and stated we have two model laws on today's agenda to discuss, both of which we would like to try and get across the finish line by our annual meeting in November. That may seem like a tall order given the complexity of the issues today, but I think that's why we're meeting today as these interim meetings are a good tool to continue conversations on models in between our national meetings.

CONTINUED DISCUSSION ON NCOIL TRANSPARENCY IN THIRD PARTY LITIGATION FINANCING MODEL ACT

Sen. Felzkowski stated that we'll start with a continued discussion on the NCOIL Transparency in Third Party Litigation Financing Model Act (Model). We had a very productive discussion on this Model at our spring meeting in Nashville. We heard several different perspectives on what the best approach is for the Model going forward.

And I'll first turn things over to the sponsor of this Model, Rep. Matt Lehman (IN) for remarks.

Rep. Lehman thanked everyone who has reached out to discuss the Model. We've had good participation and I've got a lot of feedback since this first came out for discussion. As Sen. Felzkowski noted, we had a productive meeting in April and many of you have reached out since then so thank you. As you can see on the website, included in the materials today is a copy of the West Virginia litigation financing law that passed earlier this year. I've included that in the materials at the request of my colleague and co-sponsor Del. Steve Westfall (WV). Please look at that and if you have suggestions when you look at that as to what might need to be brought over into this Model I'd like to hear from you. So let me take a step back for a second. It seems like from what came out of the Nashville meeting there's three core issues that have really been the theme of a lot of your comments to me. One has been the splitting of the Model between the commercial and consumer. And we can have that discussion but what we try to do at NCOIL, and you've heard me say this before and I'll say it again, is to have a good foundational piece of legislation that you can take back to your States. If you take this back to your state and split it in two, so be it. But right now, I would like to see us continue this discussion as one Model. We've had a lot of discussion on the amount consumer lenders can charge. Currently the Model is set at 36%. Or should we just be silent on that and let the states decide? Some states have different usury laws than others and so maybe we take that approach of let your state meet whatever standard they have. And then the last thing has been under what circumstances should the litigation funding agreement be disclosed? I think that's a discussion we need to continue to have. I think that's a valid discussion because I do think there are things within those agreements that may play a part in all of this.

Those aren't the only comments that have been out there. Those are the three main buckets, so to speak. A few other factors that have come out that I think are worth discussing - one was around the definition of who the bad actors are. We have certain foreign governments and countries included but should that be expanded to include bad actors individually? We have Russian oligarchs that the federal government says you can't do business with these people, not the entities, not the governments, the individual people. And there's data out there and resources out there to reference so maybe we look at expanding this to the bad individuals, not just the bad countries. Montana had some language on capping the amount of fees funders can collect. So maybe that's a different incentive as you're going to put money in is to know your return on your investment may not be what you think it's going to be. And then just some miscellaneous changes to definitions for some clarity and consistency.

So, what I want to hear today from comments really are anything we need to change in the Model before we meet again in July. They don't necessarily have to relate to these specific issues I just listed but I want to hear suggestions on how we can make this Model more effective. I feel we all agree that we must address at some level the potential disruption of this in our balance of scales of justice. I think you're seeing more and more evidence that this is distorting our judicial system and return on investment should not drive litigation. So, I can't stress enough my willingness to hear your comments and if you worked with me in the past you know I'll listen to everybody. We may not agree but give me your ideas and we'll try to find a place we can all land successfully. So, I want to continue the conversations. The Model development needs to be fluid and collaborative. And again, thank you to everybody who's already provided

comments. I look forward to the discussion today. I think this is a great opportunity for NCOIL, on an issue that's getting a lot of national attention, to take the leadership position and get the states to a place where they have the ability to act on this. And so while it may take another meeting even after July, I do want to get this to a place where we can go back to our respective chambers and get this out next session. So, with that I hope we're ready to vote on this come November.

Del. Westfall stated that we did pass this year Senate Bill 850 with bipartisan support. It passed the Senate unanimously, and overwhelmingly in the House. I think the West Virgnia bill is a pretty good one to go with and it has some similar provisions to Indiana's bill. And the U.S. Chamber of Commerce and the West Virginia Chamber of Commerce helped a lot with the West Virginia bill and I think it's a pretty good piece of legislation.

Jack Kelly of the American Legal Finance Association (ALFA) thanked the Committee for the opportunity to speak and stated that ALFA is the association of companies that do consumer funding, not commercial funding. And the provisions that I'm talking about are on the commercial side of the disclosure of foreign money. If we want to address bad actors, you can just go to the sanction list. The sanction list issued by the U.S. Department of Treasury delineates individuals besides delineating countries and enterprises. I think that would in a major way address what Rep. Lehman is talking about and get to a much broader parameter to get to the individuals. On the consumer side I have suggested a couple of changes which are truly technical. And I don't want to belabor the members of the committee with those type of issues that I think we could work with staff on. A very similar bill passed the New York State Senate sponsored by Sen. Jeremy Cooney, a member of NCOIL, two days ago 62-0 which addresses the consumer side. It does not address disclosure because to be very honest if anybody knows anything about New York, the New York trial bar is very challenging to deal with.

Dai Wai Chin Feman of Parabellum Capital which is a commercial legal finance provider, thanked the Committee for the opportunity to speak and stated that I'm here on behalf of the International Legal Finance Association (ILFA) which is the trade association for the commercial litigation funding sector. I was invited recently to participate in this. I'm very grateful to have the opportunity. I just wanted to speak very briefly about where I come from and kind of the commercial sector's perspective on this. And I look forward to working with everybody. I will have a colleague who's coming to Costa Mesa in July to participate. But generally, just some background about what we do. We do mainly business to business litigation investment. It is not personal injury in nature. So, I think that's a pretty easy place to draw the line between consumer and commercial - personal injury, non-personal injury. Either is fine with us. We don't really have a dog in the fight on the consumer side. That's really issues of consumer protection as far as we're concerned. We do pre-settlement business to business litigation predominantly. These are cases where there is rarely and almost never insurance on the other side because these are things like breach of contract, antitrust, international arbitration and patent infringement. So, there isn't really a lot of intersection with insurance. On the other hand there's a lot of insurance companies that invest on our side doing judgment preservation insurance or collateral protection insurance for plaintiffs. So, there's actually a lot of overlap positively and synergies with insurance and funding.

So, I wanted to make that clear. And also, that I don't think we're really on the other side here of insurance interests given that there really isn't insurance on the other side of the types of things that we do. We also don't object to anything about foreign adversaries

dismantling our legal system. Really the issue that's important to us is disclosure. This is a model law I'm actually kind of confused about because this looks not to be an insurance law it looks like a litigation funding bill. Just so everyone knows the litigation funding regulatory push is Chamber of Commerce driven. If you go to their website it's a big priority. I'm surprised this is being considered as a model bill given that only a few outlier states in the country that are not major hubs of commercial litigation funding have passed these bills. I think it's no surprise to know that there's almost no documented proof of any litigation funding on the commercial side happening in Indiana, Montana or West Virginia. And that's no coincidence these are states that our industry doesn't particularly have a big interest in given that there isn't a lot of commercial litigation there, big ticket stuff that's worth tens and hundreds of millions of dollars. And so the Chamber has sponsored dozens of bills over the past couple years and they've succeeded in four or five states and none of these tend to be the ones where there's really any proof that this industry even exists. So, I'm confused why this would be model legislation.

But in any event I think I'm excited to kind of correct misconceptions and hopefully take a data driven approach to some rational regulation here. We totally support limited disclosure to identify conflicts of interest and things like that. But any disclosure of an actual funding agreement is going to be highly prejudicial to the parties. It's a road map for the defense to know the litigation budget and the return. It's the equivalent not of getting an insurance policy done before the case arose but instead of getting the defense budget and the defense strategy and insurance and information on the reserves. It's not in parity with insurance disclosure requirements. It's very different for a lot of reasons. I can explain. We don't have control over these cases. We're not indemnitors. And generally it's just very different. So, I think rational regulation recognizes that we don't want to prejudice the parties that need the funding to begin with. We don't want a David suing a Goliath and having to take outside money because they can't otherwise afford lawyers but then their defendant now has a road map to bleed them dry. Because when a case is funded, it's not funded with unlimited dollars. Investment funds have limits just like everybody else. We have duties to our own investors and can't overcommit the money. And so there's just a lot of differences with insurance. And we need to protect against prejudice. So, if there's discovery about a litigation funding agreement it should be clear that there's nothing prejudicial that gets disclosed. All sensitive terms must be able to be redacted but important things like who the funder is so there's no conflicts of interest, statements that the funder is not unduly controlling the litigation, that's all fine.

Again, as long as there's protections against prejudice and I look forward to working with everybody towards kind of a reasonable solution here because I do think there's an opportunity to do something new, not like Indiana or West Virginia which are outlier states but things kind of in the middle that recognize this prejudice. It's something that actually the federal rules civil advisory committee has been grappling with since 2014. This very issue sponsored by the Chamber of Commerce, they've done nothing that whole time. And if you read their agenda books they're not really interested in it because it's pretty clear that this is a Chamber driven initiative that is only intended to help big business. And in light of that it's a very partisan issue. But I do think if there's a rational approach that recognizes both sides and the legitimate interests here then it is a real opportunity. I look forward to working with everybody and answering any questions here or offline. As representatives on the consumer side know, we're both out here in the game of education largely and just making sure people know there's a lot that can be

said about our opaque industries. We're really just trying to protect the interest of those that we fund because they need us from an access to justice perspective.

Eric Schuller of the Alliance for Responsible Consumer Legal Funding (ARC) thanked the Committee for the opportunity to speak and stated that to address some of the things that Rep. Lehman said, first of all we hope to see the Model divided into two separate pieces of legislation. I've had some conversations with some of the members of the committee and there still is a lot of confusion as to what it is that the consumer side does and what it is that the commercial side does and I think that confusion would just be exasperated if it went into one piece of legislation. So, that's one of our recommendations. The second recommendation that we've had is again what Rep. Lehman brought up - maybe toning down on the disclosure aspect of it in that it would just be acknowledged that yes the consumer has one of these transactions. Secondly, that then follows a normal course of rules of discovery for that particular state, not giving more weight or less weight to either side. But then finally in the end then it's inadmissible against the consumer because we don't want to have someone being able to go into court and have that piece of information if they had to get some financial assistance to pay their rent or mortgage or keep a roof over their head to be used against them in the courtroom. And then finally I've looked at several model bills from NCOIL and have not seen any in which they limit the profit restrictions of a particular company in it. And I don't know if necessarily that NCOIL wants to kind of go down that route a little bit of limiting the profits of companies, what they can and cannot do. As Rep. Lehman has said, and you can look at our website, there have been a variety of different types of legislation passed on this. Some with restrictions, some without restrictions. And I think that should be something that should be left up to the individual states to make that determination. We believe in a free market solution that the market should dictate what that is.

And then finally, a couple of issues to kind of reiterate my initial point of being put into two separate pieces of legislation. The bills that were highlighted talking about Montana and also the bill that passed this year on West Virginia. Those specifically were on the commercial litigation financing end of things. And by putting it into one piece of legislation it really muddies the waters as to what can and cannot happen and I think it just puts a lot of confusion as to what things are being talked about. I've heard things of people talking about well you give someone on the consumer side $3,000 so they could pay their mortgage and keep a roof over their head and now it's leading into $20 million verdicts. That's just not the case. So, I think we just need some clarity on that and again, as a model bill it should be as generic as possible and then let each individual state take it as they need.

The Hon. Tom Considine, NCOIL CEO, stated just factually in terms of NCOIL models, the prior statement wasn't correct so I just would like to get that into the record.

Danielle Waltz, and attorney at Dinsmore & Shohl LLP in Charleston, West Virginia thanked the Committee for the opportunity to speak and stated that I'm here in my personal capacity but I did work with several clients in West Virginia including the U.S. Chamber and the American Property Casualty Insurance Association (APCIA) on the bill and I want to echo what Del. Westfall said that in West Virginia the bill that included the disclosure requirement was supported by a number of parties included the American Association for Justice (AAJ) who actually testified in favor of the bill. I worked on the bill in 2019 in West Virginia with Mr. Schuller and then again on these revisions. And

primarily, I believe the legislators thought it was important to extend the disclosure requirements to commercial funding. This litigation financing is something that sunshine's just beginning to shine on and by allowing the disclosure and making the disclosure mandatory as the West Virginia legislators chose to do it just puts sunshine on the information and gives all parties a level playing field in litigation.

Mr. Feman stated that Mr. Schuller's comments reminded me that in 2020 the Uniform Law Commission (ULC) conducted a study as to whether to issue model legislation similar to this. It was also a Chamber sponsored initiative. And the Uniform Law Commission, we had a process run by Professor Cassandra Burke Robertson at at Case Western Reserve School of Law and there's a memorandum associated with the ULC's conclusion that due to the so many differences in state laws on these issues ranging from champerty to usury, they said it wouldn't be appropriate for uniform law. I'm going to dig that up and circulate it to NCOIL just so it's added to the library for everyone to consider.

Del. Westfall stated that I hope we can pass something. I really like what we did in West Virginia and Indiana's version as well. I think disclosure needs to be a part of it. We were really concerned of any type of suit who was funding it and we saw some cases or heard of some cases that there were some countries and people that we shouldn't be doing business with and they shouldn't try to wreck havoc with some businesses in West Virginia. That's why we passed it and it passed pretty overwhelmingly. I hope we can get some amendments to the Model and then vote on this in November.

Rep. Lehman stated that I appreciate all the comments and we'll continue this discussion. A couple of comments kind of bothered me when I hear the terms being used about well we're not interested in the non big-ticket states. You know, Indiana, Montana, West Virginia that's okay there because we're not doing litigation funding there. We talk about elimination of profits, return on our investment, free market. Can you please help me understand where our founders said we need to create a judicial system that's fair and balanced where you can get a good return on your investment. That's the one area that I don't think capitalism and free markets really should reign is in our judicial system. That's me personally. I hear from people saying we need to make more money. I don't think the judicial branch is where that should be. I do think there's true evidence too of where you need to make sure that everybody has access and there's going to be times I need to be able to have that access. That's why we're not doing a total prohibition. There needs to be some parameters around this. So, I look forward to more discussion. I look forward to Costa Mesa and I think that we're going to have a good result in the end.

Sen. Felzkowski thanked everyone for their comments and stated that for anybody that's interested if you have some other comments or questions you can always reach out to the legislators on the committee to further discuss in between now and Costa Mesa. And please be sure to reach out to Rep. Lehman, myself or NCOIL staff with any other comments on this.

CONTINUED DISCUSSION ON NCOIL EARNED WAGE ACCESS MODEL ACT

Sen. Felzkowski stated that next on our agenda is a continued discussion on the NCOIL Earned Wage Access Model Act (Model). We had a very good discussion on this issue at our spring meeting in Nashville and since that time the first draft of the model has

been distributed which you can view on the website with our meeting materials. I'll turn things over to the sponsor of the model and NCOIL Vice President, Asw. Pam Hunter (NY).

Asw. Hunter thanked everyone who has participated in the discussions on this issue since we first introduced it in November. A lot of what Rep. Lehman said regarding his litigation financing model applies here in the sense that it's a great opportunity for NCOIL to provide guidance to states looking at this issue. You can't watch anything on television without hearing about earned wage access (EWA). You don't hear those specific terms but it's basically getting paid early for work that you've already done. And our conversations here come at a good time because when you look at the states that have taken action on this issue and passed legislation, they've taken different approaches. So, we can use this model as an opportunity to review and discuss what states have done and what should be included in the model and what shouldn't. Earlier this month South Carolina became the latest state to pass an earned wage access law and last month Kansas did. That brings us to five states that have earned wage access laws. So, our conversation here is very timely. Turning to the model itself, it essentially mirrors a bill that has been introduced in my home state of New York. But I want to stress that I'm open to suggestions on anything that should be changed and I know that some redline changes were already distributed from some interested parties. We can use this New York bill as a starting point and I hope that we can get something discussed again at our July meeting and then get something to vote on in November.

The Hon. Mick Campbell, Commissioner of the Missouri Division of Finance, thanked the Committee for the opportunity to speak and stated that first, just a little background on the Missouri Division of Finance. We're responsible for the oversight of 194 State Charter Banks with about $190 billion in assets as well as almost 2,500 non-depository licensees. EWA was first introduced last year during our 2023 session and was passed into law as part of a larger Omnibus Bill. And in Missouri we have a five month session each year from January to May. And for a new concept like this to be introduced and then passed in its first year is pretty rare. And admittedly we really didn't have as a regulator a ton of information about EWA at the start of that session last year and didn't have the benefit of several sessions to kind of get acclimated to this new concept. But certainly we had discussions both before and during session and then after passage with both association groups and individual companies as well as sponsors and that really helped us kind of gain a comfort level with this EWA space. It was enacted and went into effect August 28th of last year so we had a short period of time from passage in May to enactment but we did have a licensed application that went live to industry a couple weeks before August 28th and I think a lot of the questions we had from industry kind of going in to enactment and once it was enacted was were we going to do rule making or not. Would rule making delay implementation and hamper reliability to move forward with the enacted language? And we really felt like the language that was passed in Missouri which was an industry initiative was pretty straightforward and the way we like to do rule making is to kind of give a new concept like this a couple years to kind of season so we know better where clarity may need be needed by regulation.

But we did start accepting those applications as I said right before enactment date and within about the first two weeks or so we had 10 licenses and right now we have 29. I think about this time we anticipated maybe having 15 or 20 licenses. But this isn't some huge kind of crush of hundreds or thousands of applications. There's just not that many players in this space. There's really not any pain points that I could point to for Missouri.

And in our experience so far industry has communicated very well and their representation in Missouri we have a very good relationship with them and communicate with them and very transparent with them so I think that really helped the process both for industry and the legislature and for us as the regulator that was going to be taking this on. But I did want to maybe point out a few things for you all to kind of maybe be on your radar for peers of mine in your state, questions they may ask or things that may come up as part of the process as this model act starts to be introduced in more places. I think going back to what I mentioned earlier, just kind of lack of awareness and understanding. We didn't really know much about it but we have a pretty open mind here. Not all of my peers may be as open-minded about this new type of product or service that they don't know a ton about.

So I think education is very key. And I think the legislation and oversight is beneficial to both citizens and industry. So I think trying to tie that in could help make you successful. I know a lot of my peers will get hung up on whether these are loans or not and most will be adamant that they are. I'm really indifferent on the topic. Now that we've had a chance to kind of learn more about the industry I'm more inclined to believe that they really technically aren't loans especially for the employer direct product but that'll probably be a question and maybe a sticking point for a lot of state regulators. Also, assessment of fees and charges and whether those are limited or not especially for states that have usury rate caps for lending already. I've had a chance to go over the model act. I do think that a lot of the concerns I just mentioned have been addressed in the model act compared to maybe what was passed in our state back in 2023 which should make it more palatable to a wider range of state regulators in my opinion. As I mentioned we only have 30 licensees so far so budget and full time employee concerns or burden to me is very minimal and we've easily been able to include this in our regular capacity for non-depository oversight. We've had no complaints on EWA both before licensing was required and after licensing was required so we've not had to conduct any investigations or haven't got to the point of having to conduct regular exams either.

So, a couple of other technical situations that might come up is when is a license actually required? I think we would like to have some kind of de minimus situation and this would apply to the employer direct model where they have 1,000 employees in one state but they have two or three remote employees in a couple other states. If they're doing an employer directed product, does that EWA provider have to be licensed in those two states where they just have one employee? I think the way that the model act reads as well as what was enacted in Missouri the answer to that is yes but I think it would do both regulators and industry a lot of help if there was some, and I don't know what the number is five transactions, ten transactions a year, or clients, or 100. I don't know what the number should be. But maybe some type of de minimus situation would be very helpful. And then you may see some state regulators that want to push for bonding requirements in this space. To us we didn't feel like that is necessary or even down the road as EWA is much different than say money transmission licensing or mortgage licensing where surety bonds do play an important role kind of to the nature of those products and the monetary risk to citizens.

Asw. Hunter thanked Cmsr. Campbell for being here today. It's rare when we have these interim committee meetings that we get Commissioners from different states to join us so we really appreciate you being here today.

Ben Larocco with EarnIn thanked the Committee for the opportunity to speak and stated that we submitted some suggested red lines to the model that we believe make it a little bit more applicable across states and a little bit more applicable for our businesses to be able to continue to operate. So, I just want to say thanks for the process. We want to participate as it goes forward and I look forward to working with the legislators.

Andy Morrison of the New Economy Project thanked the Committee for the opportunity to speak and stated that I just wanted to weigh in about our position on earned wage access. We represent groups across the state. We've been doing fair lending work in New York for many years and just want to point out that from our perspective EWA, particularly with the direct business to consumer model that's exemplified by companies like EarnIn and others, is not a new concept. It's a very old concept known as usurious lending. And we think that most problematically with any model legislation and bills that have been advanced in New York are provisions that exempt these products from our usury law. In New York we're one of I think 17 states that have really strong usury laws that have effectively barred payday lending which extracts massive wealth from black and brown neighborhoods in particular. And we don't want to see EWA products circumvent that really strong protection so that they can charge usurious rates that extract money from those communities. So, just wanted to share that that's most fundamentally our issue that these products, if they want to operate, they must do it under the usury law.

Penny Lee, President and CEO of the Financial Technology Association (FTA), a Fintech Trade Association representing the Fintech Industry which includes the earned wage access products and companies, thanked the Committee for the opportunity to speak and thanked Asw. Hunter for all your effort and your leadership and your work on this bill. And what we've seen is that for the American worker, the two week or one month pay cycle no longer applies oftentimes to their own economic needs and their own liquidity needs. And so these type of products are really helpful to those to try to meet those short-term gaps and those short-term needs because the two-week pay period oftentimes doesn't fit their own needs. So, we appreciate the work of this Committee and of Asw. Hunter and others in a very collaborative and very deliberative process to be able to come to this model law that we have to give clarity to other regulators in other states. As you've seen, there has been a lot of questions with this new product in the marketplace. Different states have reacted in different ways with five having laws passed. Others are reacting as well. So, I think it's incredibly helpful to have an organization such as NCOIL take the lead on this model law to be able to provide that clarity. So, we appreciate everyone's leadership on this.

Lauren Saunders, Associate Director of the National Consumer Law Center (NCLC), thanked the Committee for the opportunity to speak and stated that we’ve done a lot of work on earned wage access. We work for economic justice for low income and vulnerable clients. We have concerns about some aspects of the draft model law and also see some positive aspects of it. I support the fact that you are taking a different approach from Missouri, South Carolina and the other states that have adopted laws so far. Those states all allow payday loans. They do not have rate caps. And the approach of exempting the advances from lending laws and having no cost limit whatsoever is not appropriate in states that protect people against predatory payday loans. I do strongly object to the provision in the draft that exempts these advances from usury caps and also don't think it's appropriate to give unfettered discretion to a regulator to decide what fees should be allowed above the usury cap. I strongly believe that these

are a new kind of fintech payday loan. The data is clear that these loans are trapping people in a cycle of debt – 36 to 100 loans a year, 300% annual percentage rate (APR) loans. And as others will discuss, some of the models are triggering overdraft fees. The broad definition of earned wage access in this draft and in others is broad enough to potentially encompass traditional payday lenders. So, we have to be very careful that we're not just allowing another kind of high-cost loan. It is appropriate obviously to cap the costs and cap fees. Any cost cap should also be per month and not just per transaction in order to prevent snowballing costs and manipulations to push people to take out several advances when they really just want one loan.

There are aspects of the proposal that I support. I support requiring the disclosure of an APR that includes all fees, all costs including tips before each transaction. And I support the quarterly disclosure of all costs. The data shows that the rates on these loans are very high and with people taking out dozens a year, several a month, small costs add up. And it's important to disclose that rate so people can compare. Also I strongly support including any tips and other so-called voluntary charges when measuring costs, and prohibiting any default or suggested tip or anything that requires the consumer to take affirmative action to opt out of those costs. We have seen many manipulations that these lenders have used to push people into paying tips. I've seen a video of one user using an app and had to take five different steps in order to undo tips and other costs that the app kept putting in and had to sort of power through eight different messages about why they really should tip and why they should feel guilty about tipping. Some reviews talk about they try to trick you into giving them more money. The first screen is a tip screen. You say zero and next loads the advanced screen which automatically puts in another $10 tip. I won't read the whole review but there's a lot of manipulations there. So, again I strongly oppose exemption from usury caps but support addressing all these manipulations. Make sure you include expedited fees too and focus on all costs that are received by the lender whether or not they are so-called charged to avoid manipulations there.

Ryan Naples of DailyPay thanked the Committee for the opportunity to speak and stated that DailyPay is a business to business EWA company. So we sign contracts with businesses and then we take four to six weeks to integrate with their payroll and their time and attendance systems and then everyone who works for these companies are able to download our app. We get about 36% of people downloading the app. There's about 50% of people just watching to see how much they make because we pull data four times a day. So, people are able to see how much they make throughout the day and throughout the payroll period. The people that do transfer the wages they've already earned, I do want to be clear that these are not usurious rates. These are either zero dollars if you can wait until the next day or it's $3. I do want to also object and we have also objected to the California data that was released publicly and gets mentioned a lot about this 300%-plus APR rate. There are 20 business to business companies like mine. There are far fewer direct to consumer companies and California used three companies that asked for tips. There's only two companies now left in the industry that do ask for tips and they only used two companies that don't as opposed to the 20. So the data was extremely skewed which is how they got this 300%. Because they were not comparing the correct number of companies when they were making this calculation. I do also want to say the data and the research shows the opposite of what was just mentioned by the previous panels about how this does help people. And the Financial Health Network which has done panel discussions and surveys with people who they did not find from any company, hey just got them from anyone who actually used it. They all

showed positive results. Because you can't think about this in a vacuum. The people that use us are using us because otherwise they're going to pay bills late. And so I think the model bill is a good thing because it actually sets up criteria for disclosures around tips. Right now there are none.

So it actually has strong, helpful disclosures. There's also an important strong mechanism to control the cost because there are no loans in the country where they're either free or $3. There are no loans in the country where you cannot pay it back and there are no negative consequences. Keeping that as the standard for the industry going forward is also really important we think. So, that's why I think it's a good idea for this model bill to be considered and we appreciate it. And I do also want to mention in South Carolina every single Democrat voted for this bill in both houses. I think there were two people who voted against the bill in the Senate who were Republican. And these are laws and regulations that get codified into law after a great deal of discussion and education. No one is rushing to codify industry best practices. We want to make sure everyone understands what this is and why it exists and why it helps people. So, we're not trying to rush and we appreciate the conversation.

Andrew Kushner at the Center for Responsible Lending (CRL) thanked the Committee for the opportunity to speak and stated that CRL is a nonprofit, nonpartisan advocacy and research organization that works predominantly on predatory lending issues. I second everything that Ms. Saunders said but I'm also going to add just a little bit on an issue specifically about direct to consumer EWA products and debiting of users bank accounts. So, if you look at Section 8(b)(4) of the model law, it gives to the state regulator the authority to promulgate rules around the debiting of users bank accounts. I'm going to address that. So, just to give a little bit of context. I believe my colleague Monica Burks talked about this in depth at the NCOIL meeting in Nashville but we recently at CRL did a study based on actual transaction data that we received through another nonprofit that looked at overdraft incidents by EWA users. And it actually found that with direct to consumer EWA users on average, user incidents of overdraft increased 56% once they started using the product. So that's part of the context here. Our position is that it doesn't make sense for any law to exclude these products from state usury caps but it especially doesn't make sense as applied to direct to consumer products. I put in the chat the study that I referenced. But if the committee is going to go down that road then we would say it absolutely makes sense to have in the law specific restrictions around the debiting of user bank accounts. And that the companies be allowed to attempt to collect a single time. If it’s unsuccessful in collecting they're not able to re-present that transaction. That makes sense to protect users from overdraft fees that can flow from using these advanced products and it also is perfectly consistent with industry's narrative that they're not offering loans, that there's not an obligation to repay these products. If they're not loans, if there's not an obligation to repay them, if they've tried one time to get payment from a user's bank account and that's not successful that should be the end of it.

Molly Jones, Head of Public Policy at Payactiv thanked the Committee for the opportunity to speak and stated that I know this is a new topic for a lot of people and it's really nuanced as I'm sure you're hearing today. We are an employer integrated provider. So, we have a contractual relationship with the employer. We integrate directly into the time and attendance payroll system and we make an accessible balance based on those verified earned wages. So, again it's using earned wages that someone has earned and it's not a lending product. I find this can be a very philosophical issue for

people. Some people think that the bi-weekly pay cycle is this sort of sacred forced savings device for consumers and that anything you access before payday must then be a loan. That's not the modern world that we're living in with the technology that we have today and it's certainly not the reality for workers living paycheck to paycheck when you don't need a force savings device every two weeks. You need to access money that you have earned. You want to pick up a shift at work and be paid immediately afterwards so you can pay a bill. Things like that. And this is a really highly valued service for employees. The fees are only voluntary. And such an APR calculation is not appropriate. There's a handful of very serious issues with the data that has been cited. I'm happy to talk offline further with anyone interested in digging into that. I'll spare the rest of you because it is pretty wonky. And there's been some statements made that are simply not accurate with how the EWA industry operates and I think it's certainly fair for all of us to have appropriate scrutiny of this sector and to wonder how to regulate it and I think let's take those concerns and put them into the regulation. I heard some things that were cited and those are actually consumer protections that are added into this bill. So, let's think about the consumer protections here and I think it's a very high standard model that you're considering.

Chuck Bell, Financial Policy Advocate at Consumer Reports, thanked the Committee for the opportunity to speak and stated that we are highly concerned that unless the fees are very low or minimal for the use of earned wage advanced products that consumers will bear a high net cost at the end of the day. There is research that shows many consumers in every state are living paycheck to paycheck, roughly 30% on average if you look at certain data. And people are full in their budget with expenses that they cannot afford to pay. So, if we're saying that it's okay to shift $200 or $300 of the cost of being paid through earned wage advance to consumers, where is the room in that budget going to come from? And the California data that we have does take account of the fact that these are very short term loans and when you include the fees in that they do have very high equivalent APR rates for many of the products. We're a little more comfortable with the employer integrated model where there's actually access to the wage data but I want to also point out we're letting employers off the hook. There's nothing stopping employers from giving people early pay at no cost to them and that would be a better model than shifted legalizing fintech to payday loans and making it sort of a wild west environment. We're concerned in New York that if you start allowing exceptions to the banking laws other companies are going to come in and lobby for the same holiday from regulation.

And historically it's been very difficult to keep out the high cost usurious payday lenders. So, we do think if there is a model law then it should keep the fees low and the caps should be low and tightly enforced but we don't think it should be solely up to the regulator. We'd like to know where we're going before these products are legalized and what the costs are actually going to be at the end of the day to consumers. There should be stated in the form an APR equivalent so the consumer can compare that to the other credit options that they may have. Or they may also get a quarterly statement with the net costs so they know how much they're paying throughout the year for this product and whether there's an alternative way to get that service for less money. The problem of loan stacking for the business to consumer loans is also a highly significant problem. The study by CRL has found out that 25% of consumers use more than one of these services and that multiplies the risks of becoming insolvent, of getting into a debt trap and of incurring overdraft fees. So, we are concerned about that feature of the

model law and we hope that those features could be addressed in further conversations with the advocates and people who are concerned about financial health and stability.

Asw. Hunter stated that it's great to hear from both sides on this but I do feel like there needs to be clarity and if we could maybe find a way to get some of this clarified either in advance of the next meeting or part of the discussion at the next meeting relative to concisely what providers are actually making folks pay. Because we hear it's equivalent to Venmo or PayPal and you're not paying anything and some people are only paying $3 if they want it early compared to the other conversation relative to all of these fees and mission creep into payday lending. And so I think that there needs to be significant clarity between "I work for this, I'm getting my pay early" vs. usury rates, high fees, and what exactly are all of these other products that potentially we're talking about so that we can be very clear. We don't have to have a lengthy conversation about that but I think based on the chat's going on there definitely needs to be significant clarity as to the products and fees and where all of this 300% APR is coming from.

Sen. Paul Utke (MN), NCOIL Treasurer, stated that as we go forward I'd like to discuss the fees because when I heard the fees were voluntary it was something that caught my ear. And going forward that is something that we need to address is we know that those that are advancing the money need to get paid and so it's figuring out, it's uncovering, it's clarity, it's transparency. And hopefully in the months ahead if this is something that gets entertained and that transparency is brought forward, we'll talk more about it as it goes on.

Sen. Lana Theis (MI) stated that as someone who has had to make use of these things back in a prior life, you need to be careful about how much you're protecting somebody from their ability to actually have these products. If you make the products impossible to provide then they're not going to have access to them. And so it's great that you've protected them but then they really do have the overdraft fees. They really can't purchase their groceries that they need to purchase for their kids. People get themselves in a bind and they're a risky person to lend to. They may not have the credit cards because they have bad credit. They may not have access to bank accounts because they might not be banked at all. These are things they're going to be able to need. And I appreciate that you want to protect them and financial literacy is absolutely essential in this space, full transparency is essential in the space. But I don't suggest legislating from these products being available to people who need them.

Asw. Hunter stated that I think I said this when we had our annual meeting last year when we first introduced this that these products wouldn't be available if people didn't need them. Whether it's wage gap, low wages, high inflation, many different factors are creating a scenario where people are enticed to need these products. And yes financial education is definitely important. And as the saying goes, it's hard to make $1 out of $.15, it makes perfect sense. So, I'm just looking forward to any additional recommendations. I am collaborative, and want to know how we can make this a strong model and then you take it back to your state and make it work for what works for you. New York is a financial capital around the globe and we want to make sure that we have super strong consumer protections but it doesn't escape me that we're having this conversation because people are desperately in need and these products are out there. And we don't want bad actors. We don't want people to prey on people who are obviously poor and need these kind of services. We just want to make sure that they're protected so I definitely look forward to any additional amendments that you have,

please send them NCOIL's way and we'll walk through them. And I look forward to getting a little more clarity at our meeting in July.

Sen. Felzkowski thanked Asw. Hunter and everyone for their comments today. Please be sure to reach out to Asw. Hunter, myself or NCOIL staff with any questions or comments on this model or the previous model that we talked about today.

ADJOURNMENT

Hearing no further business, upon a Motion made by Rep. Lehman and seconded by Del. Westfall, the Committee adjourned at 1:30 p.m.