

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
FINANCIAL SERVICES & MULTI-LINES ISSUES COMMITTEE
2024 NCOIL ANNUAL MEETING – SAN ANTONIO, TEXAS
NOVEMBER 23, 2024
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Financial Services & Multi-Lines Issues Committee met at The Westin Riverwalk Hotel in San Antonio, Texas on Saturday, November 23, 2024 at 3:30 p.m.

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

Other members of the Committee present were:

Sen. Justin Boyd (AR)	Sen. Pamela Helming (NY)
Rep. Rod Furniss (ID)	Asw. Pam Hunter (NY)
Rep. Matt Lehman (IN)	Rep. Brian Lampton (OH)
Rep. Michael Meredith (KY)	Sen. George Lang (OH)
Rep. Brenda Carter (MI)	Rep. Forrest Bennett (OK)
Sen. Jeff Howe (MN)	Rep. Ellyn Hefner (OK)
Sen. Paul Utke (MN)	Rep. Tom Oliverson, M.D. (TX)
Rep. Bob Titus (MO)	Rep. Jim Dunnigan (UT)
Rep. Nelly Nicol (MT)	Del. David Green (WV)
Sen. Jerry Klein (ND)	Del. Walter Hall (WV)
Asm. Jarett Gandolfo (NY)	Sen. Eric Nelson (WV)
	Del. Steve Westfall (WV)

Other legislators present were:

Rep. Deborah Ferguson, DDS (AR)	Rep. Bill Sutton (KS)
Sen. Clint Penzo (AR)	Sen. Roger Hauck (MI)
Rep. Stephen Meskers (CT)	Sen. Lana Theis (MI)
Rep. Toby Overdorf (FL)	Sen. Michael Webber (MI)
Sen. Larry Walker (GA)	Asw. Catalina Cruz (NY)
Rep. Mark Hashem (HI)	Sen. Patty Kuderer (WA)
Rep. Brian Lohse (IA)	
Rep. Peggy Mayfield (IN)	

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. Forrest Bennett (OK) 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 Rep. Mike Meredith (KY) 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 18, 2024 and September 20, 2024 meetings.

CONSIDERATION OF RE-ADOPTION OF NCOIL INSURANCE FRAUD MODEL ACT

Sen. Felzkowski stated that we will start with consideration of re-adoption of the NCOIL Insurance Fraud Model Act (Model). Per NCOIL bylaws, all NCOIL model laws are scheduled to be considered for re-adoption every five years and if it's not re-adopted, it sunsets. You can view the Model in your binder starting on page 283 and on the app and website. I note that more than half the states have adopted the Model either in whole or in part.

Hearing no questions or comments, upon a Motion made by Asw. Pam Hunter (NY), NCOIL Vice President, and seconded by Rep. Matt Lehman (IN), the Committee voted without objection by way of a voice vote to re-adopt the Model. Sen. Felzkowski thanked everyone and stated that the Model will now be placed on tomorrow's Executive Committee agenda for final ratification.

PRESENTATION ON INFLATION'S IMPACT ON THE INSURANCE MARKET – WHERE ARE WE NOW AND WHERE ARE WE HEADED?

Sen. Felzkowski stated that next is a presentation on inflation's impact on the insurance market. Some of you may recall that we had a presentation on this at our meeting last November, so it will be interesting to see what's changed since then and what the road ahead looks like.

Ed Lukco, Instructor of Insurance and Risk Management at Ohio Dominican University thanked the Committee for the opportunity to speak and stated that we'll talk about these four things that that were talked about last year - the general level of inflation has come down pretty significantly and we'll have a slide or two as we go on that illustrates that. But the general level of inflation is still going to have an impact on insurers as they go through the process of not only operating, but from a claim standpoint, the components that go into that are going to be affected by general inflation and along with that is this idea of social inflation. What we're talking about there is how the legal side of claims has changed pretty dramatically and we'll get into that as we go along and it's having a pretty negative impact on claims and how they're handled. Wage inflation is another area. What we're seeing is that wages have been keeping up with inflation over the last 15 years. And then finally, interest rates. And this has an impact on insurers from several different areas and we'll get into those as well. So, those are the four general topics. And Peter Drucker once said that "the only thing we know about the future is that it will be different" and he compared predicting the future to driving a car down a dark country road with no lights while looking at the rear window. And the point is that I'll give you information but I cannot predict the future.

Starting with general inflation, here we have four categories where inflation applies and what it means is that the buying power of your money is dropping. You can't buy as much with the same amount of money because prices are going up. Now when we talk about inflation, not all prices are going up. The general level of prices is going up. Now, you can see on the left-hand side where it says all products. That is a year ago when my colleague was here and that is up at approaching 4%. And then we have food. We have energy. And then we have everything but food and energy. So, we see that those costs were going up pretty significantly. Well, here we are today. This is one year later. These are both as of September in 2023 and 2024. And you can see again all items were down – it was 2.4% in September. Food was a little bit less

than that, I think it was 2.2% or 3%. Energy was down a negative 6.8%. So, the cost of energy was dropping. And then on the end we have all items except food and energy. And that's still right around 3%. So, that's a significant change from these same categories a year ago. We're still experiencing inflation, but it's described as disinflation which means continuing inflation but at a lower level. And then we have deflation as regards energy. So, it's still having an impact and it's still something that insurers and the industry is going to be concerned with. This is one of my colleague's slides from a year ago and you can see here we're looking at the inflation rate. This is all items here. And that takes us up to September of 2023. And here it carries on. So, we can see the impact of inflation dropping over this period of time to bring us to September of 2024.

So, why did your insurance rate go up this year if this inflation is slowed down? You would think that maybe your insurance wouldn't go up. But we have these issues. There's an increasing number of natural catastrophic events. Here in Texas, you had some and then there was another one that went up to Louisiana this year. This hurricane season there were three that hit Florida, which is a higher number than normal. So there are five catastrophic hurricanes that hit this area this year. And of course, that has a huge impact on the results of the insurers. And then they are in the market trying to buy the things they need to fix the things that were damaged and that's driving prices up as well. We have wildfires not only in California and the West Coast but this year we had wildfires in New York and New Jersey, which is pretty unusual. But that's due to the drought that hit my part of the United States, Ohio and eastward. The cost of component parts for auto repairs is continuing to go up. Many of these things are being brought in from outside the country but they're still increasing in cost and those go into the calculation and promulgation of rates by insurers. And the cost of building materials, again where these catastrophic hurricanes are hitting, those amounts are in the billions. Whether we're talking about insured loss or all loss, we're still talking about billions of dollars that they're going to have to be paid for somehow. And then finally, we have increasing wages. So, all of these combine to increase the operating costs for insurers and in order for them to be able to continue to operate, they're going to have to increase their rates to cover those costs.

Now here's the social inflation that we were talking about. And this is changing jury attitudes with larger sums that are awarded when the cases end up in court. And a part of that is this idea of third-party litigation funding. And this is quite simply someone being willing to pay the legal cost for an action that is being brought with the idea that they're going to share in whatever the award that is issued by the court. And there's more of that going on. And then we have additional capital that's coming into the plaintiff side. I don't know if any of you are in Florida or have been in Florida and if you travel around there and you see the billboards, what do they say – “Attorney Bill got me \$700,000 and changed my life.” So that's just telling people, “call Attorney Bill and he's going to get you a lot of money.” And then we go to that third-party funding and we end up with these kinds of awards which have an impact on the rates that insurers are going to charge. The trust in institutions is also declining and I think it's continuing to decline and this will have an impact as well in terms of how people respond when they have a claim. And then there are expanding legal concepts where more and more things are being brought and argued in court and being adjudicated on behalf of the plaintiff. Here's a statistic that I found with regards to this idea of social inflation – it's been around since 2015 and Swiss Re, one of the larger reinsurers in the world said that claims costs are up by 16% over the last five years and by 57% over the last decade. Claims costs drive up insurance rates and when we see these kinds of increases, you know that insurance rates are going to be going up in an attempt to mitigate the impact.

So, related to these claims costs is the fact that we're dealing in a service. There's no tangible product. You get a piece of paper that gives you the legalese but you're buying a service. When you have a claim, you expect that service to come into play. You expect the company to take care of you and make you whole. So, with those wages going up overall in the service economy, the insurance industry is affected by that as well because it is a service, it's not a tangible product. So, here's the graph that I was mentioning earlier. This is the wage inflation and you can see the yellowish line is the nominal increase and the blue jagged line is the wage cost and then the red one is nominal as well and is the real cost. Now the difference between nominal and real is inflation. So, the nominal cost is then reduced by the amount of inflation. Now, this goes back to 2005. That's a new base year for this calculation. So in 2005 they were all equal and we can see what's happened how over the course of the last 20 years we can see that there's been a fairly significant increase in wages. And this is in the service industry but even with those increases on a real basis, there isn't much change. So, people are getting wage increases, but because of inflation, their ability to buy the same things hasn't changed at all. So, they may be getting more money, but they don't feel richer. And this is another graph that gives us the same thing. This is service industry wage changes. This just gives it to us as it happened on an annual basis. And you can see again that it's trending upward apart from the last year or so up there.

Interest rates are the last topic. The Federal Reserve has started decreasing interest rates and the impact it has is that it makes it easier for companies to raise capital because their borrowing costs of the bond market certainly is going to be lowered. And this gives them the ability to raise more capital. And as long as that continues, we'll see that as a benefit in terms of companies and how they're going to respond. As I said, the Federal Reserve seems to think they have control of it so we'll see how it is going forward. I think that the likelihood is that in December there will be another decrease in the rates but I think after that it's going to be a wait and see attitude to see where they're going to go and what they're going to do going forward. So, what can insurance companies do about it? Well, the first issue is recognizing that there is a problem. And there is a problem that inflation is causing for insurers as it relates to rates. So, business planning and strategy is a great way for companies to address this issue. And you can see the steps that companies are going through looking at reserving and financing and how they're going to make sure they have the appropriate amount of capital. Pricing obviously is a major issue for them. And capital insolvency are clearly issues they're going to be concerned with. The outwards purchasing and adequacy we're talking about reinsurance protections that they're going to be buying as a means of smoothing out some of the large losses that they will have experienced and making sure that they're able to continue to write the amount of business they want to at rates that are appropriate. And then exposure management again, we're talking about this increase in catastrophic events and this is across the country. It's not just in Florida or just in Texas and Louisiana, or just in California. We're seeing more and more of these larger events occurring and companies have to manage their exposures. How much business are they writing? They have to aggregate that, take a look at it, then go back and look at their outwards reinsurance purchases to make sure that they have enough protection for the amount of business that they're writing in the event of one of those terrible events. And then they're going to be looking at expenses, not only wages, but all of their other expenses as a means of trying to control what's going on.

This reserving, investment pricing, and portfolio management are all a part of the strategic planning and business planning that insurers have to do. Reserving is clearly one of the major things that they are involved in from the standpoint of their financial integrity. Their investment portfolio is something that they need because we all know the people who make claims to insurers figure that they can fudge a little bit on how much it was because insurance companies

have so much money. Everybody thinks that. From a pricing standpoint, they want to be fair and reasonable, but they also want to stay in business so they have those two things that they're trying to balance and then their portfolio management on the investment side is going to be important as well because they need to be able to match the maturity of their investments with the times when they're going to need those funds to pay the claims that come along. This is the second to last slide - this is how the investment categories correlate to the consumer price index (CPI) and you can see that we run the gamut. There's some that didn't do very well and some that did very well. From an insurer standpoint, there are a lot of things that they're unable to invest in in order to be in compliance. And this slide there are some things that you can't see very well but the reason that I have that up there is that you can see the swings in these various categories of investment and that they all go below the line at some point. So, this is an issue that insurers are going to have to deal with because they're investing funds constantly.

CONSIDERATION OF NCOIL EARNED WAGE ACCESS MODEL ACT

Sen. Felzkowski stated that up next we have consideration of the NCOIL Earned Wage Access (EWA) Model Act (Model). You can view the model in your binders on page 271 and on the website and app as well. We will be voting on this model today. Before we go any further I'll recognize Asw. Pam Hunter, NCOIL Vice President and sponsor of the Model.

Asw. Hunter thanked everyone who has participated in our discussions on this since we started last November. For all who've been involved, it's been a long year. I think we've made great progress on this Model throughout the past year and have incorporated requested changes from both industry representatives and consumer advocates. I think that we're ready for a vote today and the timing is good because it's an issue where not only states have taken different approaches, but as mentioned during our interim meeting in September, federal agencies have also stepped in here with rules that will be litigated. So, it's up to states to take action here and NCOIL can be a big part of this. I do want to point out that one issue that was brought up during the interim meeting in September was a proposal about setting up some type of database that would be able to track these types of earned wage access transactions. I don't support that type of proposal at this time. I think it's something worth discussing in your states but it's something that hasn't been included in any of these types of laws yet and we've been discussing this for over a year. So, to delay action on this Model further for something that isn't proven yet I think would be wrong since as I said, now is the time for us to provide states with guidance. I think this Model is in a good place and I think that we have incorporated as many collaborations and conversations throughout this year from everyone and I encourage the committee to support the Model.

Derek Hein of Catalyst, a multi-state government affairs firm representing EarnIn today, thanked the Committee for the opportunity to speak and stated that I think Asw. Hunter did a terrific job of expressing some of the same thoughts that I have today. This is not a perfect Model and I think there are a lot of things we would like see different about it. However, we are extremely appreciative and really have a lot of respect for the process that NCOIL has and the attention NCOIL has given to this over the last year. And I think in the interest of not letting the perfect be the enemy of the good, I believe we should probably move forward with this and truly the concept behind a model bill is to be a conversation starter in each and every state and those states can elect to move forward however they wish and we will be part of that process when it reaches states.

Sarah Mamula, Head of Government Affairs at the Financial Technology Association (FTA), thanked the Committee for the opportunity to speak and stated that FTA is an organization that

represents approximately 30 digitally native financial services companies including several leading providers of earned wage access. First and foremost, we want to commend and thank NCOIL for its thorough process over the past year leading to the draft model EWA bill and for actively engaging with stakeholders in its development. There are many items in the draft Model that we believe will be beneficial to consumers and providers including: the creation of a state licensing mechanism for EWA providers; codification of EWA's consumer protective elements, including at least one no cost option, no credit checks or credit reporting and the inability to take legal action to collect payments except when fraud has occurred; and inclusion of robust and appropriate disclosures. However, there are a few provisions in the draft we would oppose if introduced in states. The first is the requirement to disclose the full cost of the transaction as an annual percentage rate (APR). Given that EWA products are short term and do not involve interest charges, this would confuse consumers. We recommend providing the total cost in dollar terms instead as this aligns with practices for noncredit products such as ATM fees. Finally, we emphasize the importance of allowing EWA providers to access lawful remedies against fraud or malfeasance which the draft Model could further emphasize. It is crucial that fraudsters cannot exploit this non-recourse product at the expense of legitimate providers or consumers. Again, we appreciate NCOIL's thoughtful and deliberative process in drafting this model EWA legislation. We welcome the opportunity to partner with you and your states if you consider EWA legislation and we can develop a path forward that is both product enabling and consumer protective.

Hayden Cole, Director of Federal Government Affairs for the American Fintech Council (AFC), thanked the Committee for the opportunity to speak and stated that AFC's mission is to promote an innovative, transparent, inclusive and customer centric financial system by supporting responsible innovation in fintech and encourage sound public policy. AFC's members are at the forefront of fostering competition and consumer finance and pioneering ways to better understand consumer segments and geographies. We probably represent the largest number of EWA providers who combined are serving millions of employees across the United States. AFC commends NCOIL for its thoughtful approach in drafting this model EWA bill. AFC strongly supports it and respects the tireless efforts that have gone into creating the Model and we appreciate NCOIL's leadership. We look forward to collaborating to refine this legislation within states across the country.

John Barnes, Vice President of Government Relations at Catalis, thanked the Committee for the opportunity to speak. Thank you also Asw. Hunter for all the conversations. We greatly appreciate it. We know how hard you and this Committee are working to develop a Model that regulates emerging industries and to ensure that important safeguards for both consumers and providers are included. First, we know that this has been an over 15 month discussion and we are late and we understand that, but we will be back as we appreciate the value that NCOIL brings by getting to see so many legislators and states that we operate in already. It's a great value for the industry to be involved with and to have those conversations. The reason we support the database amendment is that in the 14 states we operate, it helps regulate small dollar lending in the unbanked market space and the EWA model as currently written without a database amendment would cause a gap in consumer protections and a loophole that would allow bad actors in the space to manipulate those laws. Specifically, there are no limits on the number of EWA loans a person can take out nor are there necessary enforcement tools for regulators. The reason the database is so important is that EWA loans aren't underwritten and there's no credit check involved so there's simply no way of knowing in real time as we've seen in California how many individuals are taking out these loan products and how many different providers they're getting them from. That said, we've spoken with several members of this Committee and we really appreciate the time and energy that you gave to this issue. We

understand that the database is not going to be included today, but we will make sure that it is included in the conversations as states continue to move forward with EWA bills being introduced. We appreciate the time today and we welcome the opportunity to speak with any legislators and any members of this committee as you plan for legislation to come to your state.

Rep. Deborah Ferguson, DDS (AR), NCOIL Immediate Past President, stated that I'm curious about the Consumer Financial Protection Bureau's (CFPB) interpretive rule and where you see that going in terms of saying it has to be a consumer loan. How is that changing the industry for your particular group? Do you see that standing long term and are you moving toward complying with the rule? Mr. Hein stated that I don't know that I have an appropriate response and candidly I have not had an opportunity to consult with EarnIn on their position. I don't know if either of the associations want to comment, but I'd love to have a follow up conversation with you at the appropriate time. Ms. Mamula stated that the only thing that I would add is it is a proposed rule so it's unclear at this time if it's going to be finalized before the end of this Administration into the next. It's something our association is tracking and we're happy to continue that conversation with you.

Rep. Ferguson stated that I thought that a lot of the groups were scrambling to sort of meet those needs to try to incorporate it where they could make a consumer loan into their products. Are you seeing that happening in the industry where people are trying to come up to those standards in just in case? Ms. Mamula stated that the only thing I can say at this time is that there are concerns with the proposed rule. I would have to check with our membership as a whole to get that further detail for you.

Hearing no further questions or comments, upon a motion made by Asm. Jarett Gandolfo (NY) and seconded by Del. Steve Westfall (WV), the Model passed via a voice vote with Sen. Felzkowski determining that the yes votes clearly outnumbered the no votes. Sen. Felzkowski thanked everyone and stated that the Model will now be placed on tomorrow's Executive Committee agenda for final ratification.

CONSIDERATION OF NCOIL TRANSPARENCY IN THIRD PARTY LITIGATION FINANCING MODEL ACT

Sen. Felzkowski stated that last on our agenda is consideration of the NCOIL Transparency in Third Party Litigation Financing Model Act (Model). You can view the Model in your binders on page 257 and on the website and app. We will be voting on this Model today. Before we go any further, I'll turn things over to the sponsor of the Model and past NCOIL President, Rep. Matt Lehman (IN).

Rep. Lehman thanked everyone for their work on this and stated that a lot of work has gone into developing the Model. I was reminded earlier of when this issue first came up at NCOIL which was over 10 years ago. I think you heard from the earlier presenter on the issue of inflation and the impact this litigation financing is having on rates. This Model in front of you has been around for the past year. I think we made good progress. I want to thank Del. Steve Westfall (WV), co-sponsor of the Model, for his input and also others who we've had a vigorous debate with on this. And I think we're ready to move forward. I just want to talk briefly about where we have finally landed. Our goal from the start was that we wanted this to be transparent and have guardrails. I think we've begun to see that we don't want there to be bad players in this space. And the second thing is we don't want our judicial branch to become Wall Street. And when you look at the two paths we're on in this Model, there's a consumer path and we've heard from the consumer lenders that their lending is about survival and giving money to those who need to get

to the end of the process. And so with their sections of this Model, there's a lot of nuances but basically the big changes have been the rate cap that's been put in and the disclosure of the existence of an agreement. In the commercial space it's a little bit different. That has become a return on investment. That is where I want to get my money out. And here are some things we've done there. One is we have said we want no "foreign entities of concern" or "foreign countries of concern" to be a part of this. We want you to have no access to the data. You don't get to be at the table when things are disclosed that are proprietary. Another thing is that we've said you have no say in the path of the suit. You can't say "I don't want you to settle because it's not enough of my return back." And last is this disclosure of the content of the agreement – not just the existence but the contents in that commercial space. There's been some other changes in the disclosure section as well in terms of some of the nuances to correct some conflicts.

I've been around here at NCOIL for 14 years and I've heard some things in the process of this Model particularly that I have not really heard before and that is "if NCOIL doesn't do X, if NCOIL is silent on X, then it sends a message to states" but this whole process is about constructing a foundation of strong walls and a strong roof and sending this to the states and letting the states tweak it how they want. So, we do have blanks. We do have spaces. We do have things that we are silent on. That doesn't mean we condone those things. It doesn't mean we condemn those things. It means this is a Model that is a strong foundation. Go back to your states and figure out what fits in your state. I think this Model is in a good place. Does it have everything I want? No. Does it have everything others want? No. And that's probably where I think we've ended up in a good place with this Model. And I think we need to stay focused on the fact that this is a Model and let's not let perfection be the enemy of good. And I think it's going to come down to what you do in your state because you have every right to change whatever you want within this Model.

Sen. Felzkowski thanked Rep. Lehman and stated that I am going to be introducing an amendment to the Model. I previously reached out to Rep. Lehman on this and I want to thank him for speaking with me. The proposed amendment broadens the definition of "commercial litigation financing agreement." I think it's very important that we do that. In front of you is a copy of that amendment and I know staff distributed it earlier as well. The proposed amendment is based on my conversations throughout this process and I think that the prior definition was too narrow and this revised definition better tracks with what other states have done and captures more of these types of agreements. I think if we're developing model policy, it's better to send the signal to states and be expansive with definitions and then if the states want, they can always take a more narrow definition and approach, tracking with what Rep. Lehman said.

Del. Westfall thanked Rep. Lehman for sponsoring the Model and thanked everyone for their work on the Model. As a lot of you know, we passed this Model plus a little bit extra in West Virginia this year. As Rep. Lehman, I think it's important that you take the Model back to your states and I may like what we did in West Virginia better but this is a Model. I've taken a lot of Models from NCOIL and passed them in West Virginia but I've never passed them verbatim. We usually change them to how we need to do in West Virginia. And I really appreciate everybody looking at this Model and I think the proposed amendment helps the Model a lot and I support the proposed amendment.

Hilary Segura, VP & Counsel of State Gov't Relations at the American Property Casualty Insurance Association (APCIA), thanked the Committee for the opportunity to speak and stated that APCIA is very appreciative of the hard work and many hours that Rep. Lehman and Del.

Westfall have put into this. I know it has been a tiring and sometimes tedious process. The most recent draft of the Model that was released on November 12th has moved the ball forward considerably and we are very pleased with that. Sen. Felzkowski's proposed amendment to the definition of "commercial litigation financing agreement" and removing the reference to non-recourse loans is an incredibly important addition given the evolution of the commercial litigation funding industry. We strongly support that language. In the consumer disclosure section, section 7, ideally we would have preferred to have mandatory disclosure of contents and in the spirit of compromise over the course of this process APCIA, the National Association of Mutual Insurance Companies (NAMIC), The U.S. Chamber of Commerce, and the Alliance for Responsible Consumer Legal Funding (ARC) have worked together to try to find a solution and a compromise on some language. So, if this Model comes to your state and you're introducing it, we will be reaching out to you to seek some changes in the consumer disclosure section based upon the agreement that we've come up with on language that we think will benefit everyone. And then my final comment is on the definition of "charges." We are agnostic on that and I know there's been a lot of debate on the rate caps. We're agnostic on that definition and leaving it up to each state to decide, we're okay with that as well. I appreciate your time and all of the hard work that you have put into this model.

Paul Martin, VP of State Affairs at NAMIC thanked the Committee for the opportunity to speak and stated that Rep. Lehman has worked tirelessly on this for a number of years and as we've had conversations with many of you the last couple of days, we simply refer to it as TPLF, and that's accurate. But I was noticing this afternoon as I was looking over my notes, we sometimes omit the first word of the Model and that is "transparency" when we only say TPLF. And so we think this Model with the amendment that Sen. Felzkowski has presented is a very good start. This is something that we can take back to the states. We'll probably want to push for some tweaks here and there on the consumer side but this has been a long time coming and it's our hope that by making this more transparent, we can truly understand the impact and see where there are problems and where there are not problems. That is the good thing about transparency. We appreciate the hard work of everyone who's worked on this.

Jack Kelly, Managing Director of the American Legal Finance Association (ALFA), thanked the Committee for the opportunity to speak and stated that ALFA is the consumer litigation funder's oldest association in the country, made up of the leading members of this marketplace. We have since our foundation worked very strongly for transparency in this marketplace. We believe that consumers need protection from bad apples. Twelve years ago, Rep. Lehman and myself and others in this room started working on a Model dealing with litigation financing. That day, after two and a half years of debate, a vote was held on a Model in San Francisco, California. And the vote was tied. The model tied because everybody said, "Oh, I want this, I want that. I want the perfect." But what happened when we sought the perfect was we lost the good. Consumers weren't protected for all that time. Some states adopted laws but consumers didn't have the basic protections. I'm on the consumer side. I'm not on the commercial market side. We provide small amounts of money to people to pay their rent. This Model achieves that balance finally. Is it perfect? No. I've been in this business for a long time and my father would tell me a good piece of legislation is when somebody looks at you on both sides and says I'm not happy. And that's where you are today. We'll take this Model back. Some states will amend it in different ways and do different things. But for the first time we'll have a foundation to protect people from bad apples and to give them transparency in their contracts and to stop bad behavior and make prohibited practices for people who do bad things like give kickbacks and pay off people and steer these cases. And that's what we care about. So, with that, I'd like to thank Rep. Lehman for his hard work on this as well as Del. Westfall. Today we need to get this

done and what needs to be changed in the states, we'll do that individually as each state decides how they want to treat this product.

Eric Schuller, President of ARC, thanked the Committee for the opportunity to speak and thanked Rep. Lehman and others for working on this. Just like Mr. Kelly said, ARC supports proper regulation of the industry. Again, just a couple of parts of the Model that we do have some concerns with, one is the definition of "charges." The reference to the Military Lending Act was removed and a rate was inserted, but the way the language is currently drafted, it does reference "usury" and our concern is that some states may take that as this product being a loan whereas several courts recently have ruled that this product is not a loan. So, that's why we would wish that be left up to the individual states. And as Ms. Segura said on the section on consumer disclosures, the fact that it is an automatic disclosure and the contract itself could still be admissible, we think that would harm the consumer in the end. But again, we'd like to work with you all when this comes into your states to make sure we have a good piece of legislation that everybody can live with.

Will Weisman, on behalf of the International Legal Finance Association (ILFA), thanked the Committee for the opportunity to speak and stated that ILFA is the nonprofit trade association which promotes high standards in the commercial legal finance sector. While there's many areas of consensus with what's in the Model, regrettably, ILFA cannot support the Model in its present iteration and that's primarily because of Section 16, which requires the automatic unfettered disclosure of the funding agreement. I think everyone needs to be clear-eyed about what that actually means in practical terms. That will cause extreme prejudice to the plaintiff because a commercial funding agreement contains the plaintiff's litigation budget. So, you are telling the defense counsel here's precisely how much money this plaintiff has to litigate a case. You will also be telling defense counsel when you disclose that agreement at each phase of the litigation here's how much money the plaintiff and the plaintiff's counsel will make if we resolve the case at this stage. That is highly prejudicial and does irreparable harm to plaintiffs. No one in this room would ever suggest that defendants or defense counsel should turn over their litigation budget. I worked at an insurance company for many years. You would never as an insurer say I will turn over my reserve information to the plaintiffs. You'd be laughed out of the room if you said that because it would be so harmful and prejudicial and it's also irrelevant. And yet, that's what the Model does. So, for that reason, we're unable to support it. I also want to correct one misconception which I heard repeated several times here today which is that commercial litigation funders are contributing to social inflation and to escalating insurance costs. That is not true, and it's not true for a simple reason. Commercial litigation funders do not fund suits which are paid by insurance companies. There is not insurance for a breach of contract case. There is not insurance for patent infringement. There is not insurance for antitrust cases. We fund business to business disputes where the ultimate payer is the defendant. There is not an insurance product or an insurance company behind that. So, I want to correct that misconception. So, while we very much appreciate the opportunity to be part of this process and I think there's a number of areas where there's room for real consensus, including with respect to disclosing the case is funded and putting procedures in place to ensure that funders are not exercising control, you will find broad consensus in my corner of the world for those pieces of the Model. But disclosing the funding agreement itself causes extreme prejudice. It's putting a thumb on the scale in favor of defense counsel, and for that reason, we're unable to support it. With that said, I very much appreciate the opportunity to share these views and I've appreciated the collaborative process throughout.

Rep. Forrest Bennett (OK) thanked all of the speakers and stated that I appreciate the work that's been done on this. I recognize it's been about a long process and it seems like we'll be

voting today. I've mentioned this before to Rep. Lehman and at previous meetings. I have some troubles that sort of echo what ILFA said where the disclosures to me sort of tip the scales in favor of one side over the other. And I don't love that. But I also recognize that we do need some type of framework. So I appreciate that everyone's come to the table and has been willing to negotiate and I would encourage legislators who are taking this back to their states to look at that section and determine what's best for you and your state. You may not hear me vote in favor of this but I also won't fight it.

Rep. Toby Overdorf (FL) stated that I felt like I was having flashbacks to when I was presenting a similar bill in Florida with the panel here talking about disclosure. And it was interesting. Florida discussed similar legislation and we had a big disclosure discussion back and forth that was the largest area of discussion and debate. That being said, I certainly don't want the perfect to be the enemy of the good and I think this is a very good piece of legislation that we have in front of us. I will say that one area that I think that members should be aware of is the foreign disclosure portion. And specifically, when you look at Section 3.9.(e) and looking at the individual that owns or has a controlling interest, I think that we need to look at a percentage of ownership. And the reason I say that is in Florida we passed a law regarding ownership of land associated with a foreign entity and that ownership then was looked at as there was no percentage associated with it. So, you might have an investment fund that has a foreign national that's part of that investment fund and they may have .0001% of ownership of a parcel. Yet that funding could not be utilized because there is a foreign ownership associated with that investment fund. Alternatively, that investment fund could have disclosed all of its members and all the association with it. So, I just think that's an area to be aware of as you go forward in your specific states as to what percentage is associated with ownership. And again the disclosure portion of it is really what killed it in Florida this past time around. I look forward to presenting it again this year and finding a way to work this forward because I think there's a lot of good material within this overall Model and I look forward to talking about it next year, after we hopefully pass it in Florida.

Hearing no further questions or comments, upon a Motion made by Del. Westfall and seconded by Rep. Matt Lehman, the Committee voted without objection by way of a voice vote to adopt the amendment proposed by Sen. Felzkowski. Then, upon a Motion made by Del. Westfall and seconded by Rep. Jim Dunnigan (UT), the Committee voted without objection by way of a voice vote to adopt the Model, as amended. Sen. Felzkowski thanked everyone and stated that the Model will now be placed on tomorrow's Executive Committee agenda for final ratification¹.

ADJOURNMENT

Hearing no further business, upon a motion made by Rep. Carter and seconded by Rep. Lehman, the Committee adjourned at 5:00 p.m.

¹ Mike Lane, Associate General Counsel at State Farm Insurance Company, submitted a witness slip in support of the Model with the amendment from Sen. Felzkowski.