

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
FINANCIAL SERVICES & MULTI-LINES ISSUES COMMITTEE
2025 NCOIL SPRING MEETING – CHARLESTON, SOUTH CAROLINA
APRIL 27, 2025
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Financial Services & Multi-Lines Issues Committee met at The Francis Marion Hotel in Charleston, South Carolina on Sunday, April 27, 2025 at 9:00 a.m.

New York Assemblyman Jarett Gandolfo, Chair of the Committee, presided.

Other members of the Committee present were:

Rep. Mike Meredith (KY)	Asw. Pam Hunter (NY)
Rep. Edmond Jordan (LA)	Asm. David Weprin (NY)
Sen. Lana Theis (MI)	Rep. Brian Lampton (OH)
Sen. Jeff Howe (MN)	Rep. Ellyn Hefner (OK)
Sen. Paul Utke (MN)	Del. Walter Hall (WV)

Other legislators present were:

Sen. Steve McClure (IL)	Sen. Walter Michel (MS)
Rep. Peggy Mayfield (IN)	Sen. Bill Gannon (NH)
Rep. Mike Clines (KY)	Rep. Perry Warren (PA)
Del. Mike Rogers (MD)	Sen. Cale Case (WY)
Sen. Michael Webber (MI)	

Also in attendance were:

Will Melofchik, NCOIL CEO
Anne Kennedy, NCOIL General Counsel
Pat Gilbert, Director of Policy, Administration & Member Services, NCOIL Support Services, LLC

QUORUM

Upon a Motion made by Rep. Ellyn Hefner (OK) and seconded by Sen. Walter Michel (MS), the Committee voted without objection by way of a voice vote to waive the quorum requirement.

MINUTES

Upon a Motion made by Rep. Brian Lampton (OH) and seconded by Asw. Pam Hunter, NCOIL President, (NY), the Committee voted without objection by way of a voice vote to adopt the minutes of the Committee's November 23, 2024 meeting.

ALIGNING DATA SHARING WITH EXISTING PRIVACY LAWS

Ron Raether, Partner and Practice Group Leader of the Tech Privacy and Cyber Group at Troutman Pepper Lock, thanked the Committee for the opportunity to speak and stated that I've been honored to be able to practice in technology law for 30 years and in that 30 years, I have seen a lot of changes in technology. I think we all recall e-mails being new. I recall being in

front of judges and having partners that would have their e-mails printed out, and then they would dictate those responses. I think it's important for us to understand that as a context as we move into telematics for usage-based insurance and as we think about the new tools that are out there to benefit society, consumers, and the industry as a whole. I do want to take a moment and talk a little bit about myself. I live in California, and that will become relevant a little bit later, and I was born in California but I moved around and I was raised by a Wisconsin dairy farmer, and I went to high school in West Virginia. So, let's talk about telematics-based driving behavior data and how it's defined. And I think before we do that, one area that I've spent a lot of time practicing is the Fair Credit Reporting Act (FCRA). And I think it's important for us to think about that statute and that regime as we think about user-based driving behavior data and user-based insurance because the fundamentals of what is understood, what is studied, what is used is regulated by the FCRA. I had the pleasure of being able to work with Ron Plesser and Rick Fisher, two of the individuals that were instrumental in getting the FCRA passed in 1972. At its core, it is a privacy statute. It is providing consumers with the level of access, transparency, correction, rights that are fundamental to privacy. Telematics-based driving behavior data is just another aspect or component of that. For over two decades, user-based insurance has been in the market. What has changed is the technology. I think likewise what has changed is the need for better consumer education, improved perceptions, and changes in how we think and look at not just the insurance side of it, but the technology side of it as well. What is driving behavior data? It's basically defined as data that identifies behaviors such as speed, hard brake, hard acceleration, trip time, and the like. What I'll tell you is those are objective data criteria points. And I think I want to plant that as a seed as we move into some of the privacy issues. It's collected from a variety of different ways. I think historically it was plug-in devices, mobile apps, but now we have connected vehicles. The technology is changing. The technology is evolving. But the basic fundamentals remain the same. It may be obtained by insurers directly. We've all seen the commercials. I won't choose one insurance company over another. Original Equipment Manufacturers (OEMs) and third parties are now releasing mobile applications to help collect data for a variety of purposes. I do want to make sure that we take a step back from a variety of purposes because there are a lot of different ways in which data is being collected and used. I think for the purposes of our discussion and what's important here is the data that's used in the context of underwriting insurance, and that's really what our focus should be on.

The benefits are there. It's not new. I think we all see that consumers benefit from user-based insurance (UBI). What's interesting to me is because of the media attention, because of lawsuits and other inquiries into the technology itself, we've seen some recent legislation and that recent legislation has focused on two points that I want to spend just a little bit of time today with you. The first is permissible use. So, I've seen bills introduced, again I'm not going to pick on any particular state, but they prohibit the purchasing or obtaining of telematics data, period - it can't be collected or used at all, even for insurance purposes. There's a complete ban on the use of driving behavior data for insurance purposes, for underwriting. There's a ban on being able to use the information for adverse impact. So, it can only be used to improve your rates. It can't be used as a measure to determine sound pricing policies for insurance, and I'll get to that in a moment. So, permissible use is one element. The other is consumer consent. Some are requiring consent at the OEMs. Some are requiring consent by the insurers. I want to come back to that in a moment and explain why the FCRA, in order for it to work in its current form, in order for it to provide consumer benefits, consent becomes an important key. So, let's jump into is further regulation required, and let's focus on whether UBI, whether telematics-based driving behavior data should be considered at all, or should there be limits. I think the benefits of UBI and driving behavior data are well known. They promote and encourage safe driving habits. I don't know if anyone else recognized how people forgot how to drive after COVID, but I can tell you in California it's remarkable how people forgot how to drive. One of the things that I think is

key is this concept of cross-subsidizing. I don't think consumers actually realize that safe drivers are covering the risk of reckless drivers. Before UBI, we were depending on a lot of non-driving factors. They were being used to consider somebody's rates. I think a personalized, risk-based approach, where we're looking at how an automobile is actually driven, helps to eliminate that cross-subsidizing issue that I think most consumers aren't aware of, but if corrected, can help us address the increase in pricing and the reduction of availability. And I can tell you in California, we cannot consider driving behavior data because of a referendum. I can tell you that the price of insurance has gone up, the availability has gone down and it has nothing nothing to do with driving behavior data because it can't be used in California.

And I'll get to in a moment where when it is used and considered. It rewards safe drivers. So, there are premium benefits, good drivers are rewarded, and it reduces the severity and frequency of accidents. When people know that their driving behavior is being considered for insurance purposes, people begin to change their behavior. They start driving in a manner that improves road safety, improves, I think, the culture and the environment for the vast majority of your constituents. And more importantly, I think it provides new and inventive ways of being able to capture and address these issues that are emerging that are actually increasing our prices and reducing availability of insurance. So, quickly, I want to talk about the consumer consent aspect of this and a little bit more about the FCRA and whether further regulation is required. So, I've done a lot of work in the FCRA over the past 30 years and what I can tell you is, while not a perfect statute, it is working and I think it works very effectively and it does provide the framework that's needed to be able to manage this new tool, this new data, whether it comes from an OEM, whether it comes from a toggle, whether it comes from a mobile app, the rights are already embedded in the FCRA that are necessary - rights that provide consumer access, transparency, the right to correct, safety and control.

The FCRA regulates any information that goes into a consumer report. It doesn't matter what that source is. So if I use driving behavior data in a consumer report, that consumer then has the right to say to the consumer reporting agency, let me see that. So if I am a consumer reporting agency, if I get data from an OEM, one concern might be, well, how do I know what information is actually out there about me? What information is being used? Do I know if I hard braked or not? Do I know if I went over 80 miles an hour? Under the FCRA, a regime that already applies to this data, if any data is used for underwriting purposes, the consumer gets access to that information and they get to know who the source is and they get to know who ordered or used that information for underwriting purposes. So there's no reason to change our privacy regime that applies to these data points. In fact, doing anything else would undermine the integrity of underwriting. So, let me just give you one quick example in the credit context. So let's say I don't want somebody to know that I didn't pay my mortgage. What is the consequence of me being able to say, you know what, I opt out of having my mortgage payments reported under the FCRA? We all know the answer to that. People that are writing loans and credit cards, that's a useful piece of information that will no longer be available to them. Don't do the same thing with respect to driving behavior data. There needs to be a free market with respect to that in order for UBI to actually realize and see the benefits that will happen for consumers that drive safely.

Lastly, there are FCRA preemption issues and challenges. We're seeing that already in other arenas, so there needs to be care taken. So, what do we do? How do we help consumers? How do we help your constituents? And I think the bottom line is more consumer awareness and more education is needed. You already have your Departments of Insurance, the institutions to be able to determine when it should be applied and how should it be applied are within your governance structures. But here's where I think it becomes important in terms of education

because when you actually look at consumer perceptions, when they're educated, when they get an opportunity to hear about the benefits of it, people begin to opt in. People begin to realize that as a safe driver, it's to my benefit. And at the end, what we're seeing in our studies is on average a discount of 12%. So, in a world where we're seeing increasing rates, lack of availability, we know that driving behavior data, when used responsibly, when used in compliance with the FCRA, will benefit consumers. And in fact one issue that I come across all the time in my years of involvement with these issues is disparate impact and what I would say is driving behavior data actually benefits protected groups of individuals. And so here on this last slide what we're seeing is annual savings in categories that you would be surprised to see because normally we see that 18 to 25 range having higher rates but they're actually benefiting and we're also seeing that in terms of data by race.

Asm. Gandolfo asked when we're talking about the users driving data, how detailed does that get? I know the slides mentioned the time of day that you might drive. Does it go as far as the route that you usually take and certain roads are maybe more accident prone? I know down in my district we have a section of a highway that's called Blood Alley just because of how frequent accidents happen on it. It's a very windy highway. So just to clarify, what sets of data would you draw from each driver?

Mr. Raether stated let me answer that question in two parts and let me answer the second part first, which is what data is considered and how is it considered, and that process actually goes through each state's Department of Insurance. So, being able to determine the algorithm or the logic or the impact on underwriting, there is a process already in place within your states to be able to analyze and vet that information or that question. What I'll tell you is in terms of the first part of your question, which is what is collected, and the technology is still ever evolving and changing, the biggest impediment prior was the amount of memory. Now my phone is better than my computer that I had when I was a kid. The data elements are set by each OEM. They're set by the app. So there is no uniformity right now in terms of what data is collected. It won't track, for example, necessarily what road you're at. It might track what latitude and longitude you're at. It's more centered on things like velocity, how fast you're driving. Latitude and longitude is used in an algorithmic way to determine how quickly you stop. But the criteria that's being used currently is not so specific to say you're driving on a specific road or it's not even measured enough to be able to say you're driving 30 in a 25. It's more set on are you driving faster than 80 miles an hour.

Rep. Brian Lampton (OH) stated that I tend to accelerate and brake quickly but I also consider myself a driver that pays attention. Is there any way that that data can look at how I haven't had an accident in many years compared to the driver that may drive slower and brake easier and whatnot but has more accidents because they're not paying attention and they're looking at their phone? Is there any way to kind of combine those two things together or are they doing it now? Mr. Raether stated that's a great question and the answer is yes they're doing it now. We're not talking about the elimination of traditional data that's being considered for underwriting purposes. So, to the extent that I'm getting moving violations and I'm involved in accidents and I have claims and lapses in my policy, those factors are still included in the underwriting process. What we're really discussing here is an opportunity to be able to refine and to get a little bit more detail to be able to provide I think benefits to the majority of individuals out there. Again, I don't think it's a simplistic issue of just looking at one factor and weighing that factor. My daughter is in Montana and Montana has lots of stretches of long highways and there are places in Montana where you can drive more than 80 miles an hour and it's not a violation of the law and I do think that as the technology evolves and improves, we can begin to center in on

those issues. But my daughter will not be penalized. Her rates will not necessarily go up. They may not go down simply because she drives more than 80 miles an hour in Montana.

PRESENTATION ON THE NATIONAL INSURANCE PRODUCER REGISTRY (NIPR)

Karen Hornig, CEO of NIPR, thanked the Committee for the opportunity to speak and stated that for those of you who have been around for a long time, you know that NIPR was created as an affiliate organization of the National Association of Insurance Commissioners (NAIC) to solve a very distinct business problem around our state-based system of insurance regulation, and that is complexity around producer licensing. And I know that there are members of this committee who are producers and who experience this at least every two years. Because this is early on a Sunday morning, I'm going to serve as an evangelist for the importance of a continuing commitment to uniformity and reciprocity in producer licensing because ultimately it strengthens the state-based system. NIPR has had the same mission since 1996 when it was founded - it fundamentally was created to provide a cost-effective, streamlined, and uniform system of producer licensing for the benefit of state regulators and for the benefit of industry, ultimately to protect consumers. And NCOIL has been a consistent supporter of uniformity and reciprocity in this space, because it is a multi-state system that we have tried to create to lower the cost of compliance which ultimately will lower the cost for premiums. And NCOIL has always supported the work of NIPR. We were created in the 1990s because there was a growing call for federalizing producer licensing. The industry was pointing to producer licensing as an example of inefficiency and unnecessary cost in the state-based system and the federal government went to the extent of including producer licensing in the Gramm-Leach-Bliley Act in 1990 and in that act, Congress said, "states, if you can't get it together and increase uniformity and reciprocity in producer licensing, then we're going to preempt. We are going to step in and take over producer licensing regulation." And so the states did do that and took a number of steps and the reason that industry was objecting to the state-based system was because it created so many problems within the licensing environment with different licensure requirements depending on the jurisdiction.

So, we have 56 NAIC members, the states, the District of Columbia, and the five territories. So, there's 56 different ways of doing it. And some producers had to get their license by license type or lines of authority. There were different laws and regulations in every state and obviously it was a labor and paper intensive process. When I'm doing new hire orientation, I describe paper applications with checks clipped to them and often our younger staff members don't know what I'm talking about with that. So, it was a very manual process and from a regulatory perspective, it made compliance more difficult because there was no national place to go and get compliance information about those people who sell, solicit, or negotiate insurance. So, NIPR was created to help solve that and we are a technology company and we do two primary things. We warehouse data that the insurance industry can pull. If I'm the director of compliance for a large insurance carrier, I can go to one source instead of 56 to make sure that all my folks are in compliance with state law. And we have integrated with the back-end system of 54 states and territories. The American Samoa and the Northern Mariana Islands, we still have to work with them on trying to get them on but New York and the state of Washington were our last two big states to come on, and that was just in 2024.

When I'm at a cocktail party and somebody asks me what I do or what NIPR does, I always say, NIPR is to getting a license to sell insurance what H&R Block is to filing your taxes. You can come to one place and you can file your taxes no matter where you have to do it. And so, because it's become so popular and such a multi-state industry, we're a one-stop shop for that, and insurance companies then can manage their data all in one place. So, I want to sort of tell

you where we are in terms of the producer licensing market. So, we had 138 million transactions last year, and the industry pulled almost 9 million reports. This next statistic is an important one. We transmitted \$1.37 billion in fees to state departments of insurance. So, producer licensing generates a high level of revenue for state treasuries and NIPR provides a customer call center that is trained in multi-state licensing issues and we helped over 300,000 producers last year. I want to talk a little bit about the fact that the sales force in the insurance industry is primarily multi-state now. The days when you held a license in one state are primarily behind us - some people still do but of the 2.8 million licenses for producers, 1.2 million of those folks hold an average of ten licenses. So, they're managing licensure in an average of 10 different states and that has to be renewed every year. And this stylized map will show your state and the percentage of your revenue for producer licensing fees that comes from non-resident licensees. And for most states it's over 75%. Now there are a few notable exceptions in light blue and they're not going to surprise you - California, Texas, Florida and New York. Those states tend to have producer licensing laws and regulations that are less uniform and not reciprocal. So it is more difficult to get and maintain licenses in those states. But you will see that for some states even the percentage is up in the 90s and that helps broaden the market for those states. If you are Montana, if you are Alaska, if you are Wyoming, you need non-resident producers in order to have a vibrant insurance market for consumers.

So, what are we continuing to see? We've been at this now since 1996, and we still don't have full uniformity and reciprocity. Only 65% of states use the same names for producer licensing. No consumer cares what the laws call agents and brokers, they just don't. And it creates complexity without delivering any result for consumers. Same kind of thing for how fees are calculated. And what we're seeing, and one of the reasons I'm here, is what we are calling regulatory backsliding. We are seeing a movement away from uniformity and reciprocity and more of a, "I don't care what you do in other states, this is what we're going to do in our state." And it isn't just in insurance, there are other areas of legislation that impact the producer licensing system that we've created over the last 30 years and that's that growing number of state-specific questions. We have a uniform application, just like higher education has a uniform application, but we have this growing number "but in our state, you fill out the uniform app and then you have to answer all these other questions." So the sort of call to action here is to continue to help us protect this system that has been created because it helps to protect the state-based regulatory system. And keep a look out for bills that impact how fees are collected. That's one that we're seeing because we already have a system in place for that and there are some other kinds of things coming out of committees other than insurance that can really negatively impact that.

Asm. Gandolfo thanked Ms. Hornig for being here and stated that it's great that NIPR is getting more involved with NCOIL and I'm glad you had the opportunity to share what it is you all do and showcase the impact it has on the industry as a whole.

Rep. Lampton stated that recently in our local news we had an insurance agent commit fraud and subsequently prosecuted for it. I'm sure they have or will be losing their license. How does that translate if let's say she has four other non-resident licenses? Is NIPR involved? How does that help her lose her licenses in all of the jurisdictions that she may currently be licensed in and prevent her from moving to another state and setting up shop somewhere else? Ms. Hornig stated that was one of the main reasons that NIPR was created because that's exactly what was happening before. A bad actor just could hop from state to state. So, as soon as that resident state takes down that license, it will go off in all non-resident states. So, it would flow through the system. Also, let's say her license wasn't revoked, but she was suspended for six months. That will show up in NIPR's system data, because our data is fed from state

departments to the NAIC, which creates a regulatory database and then NIPR gets a version every night of the producer database, and it has to comply with the FCRA. So, there are sort of two ways. It's the license would come down, because no resident license, and then you can't have a non-resident license.

PRESENTATION ON DEVELOPMENTS IN THE CANNABIS AND INSURANCE MARKETS

Kevin McKechnie, Executive Director of the Health Savings Account Council at the American Bankers Association (ABA), thanked the Committee for the opportunity to speak and stated that if I could ask the indulgence of the Chair for one minute, I'd like to applaud the work of my Ms. Hornig, and here's why. Part of the mood to establish an optional federal charter arises from the fact that licensing was in such disarray and so every bit of effort you put into this keeps the federal government from exercising the law that is already passed, the National Association of Registered Agents and Brokers (NARAB). It's just waiting there. It simply hasn't been done yet, but it's not waiting to be passed. It has been enacted. And so were the licensing regime to fall off, this is coming. Were it to succeed, this is not coming. And as they say, in Hollywood, it's not about the money. It's really about the money. And that is exactly the overhead question that bank-owned insurance agents and brokers ask themselves all the time when they're dealing with this system. So, I encourage all of you to pay a lot of attention to it and if you have any questions about it, I'm obviously here. Your experts are here. But don't take your foot off the gas. It matters.

It's unusual for the ABA to be considered experts in this question around marijuana, and we're not. And so, let's draw a distinction between the legalization debate and why you asked me to come. I don't participate in the legalization debate. I am the insurance expert at the ABA, and so bankers who are operating their financial institution and the 26 interlocking liability policies that they must have in order to do so, generally call and ask for a gap analysis and they ask for the one thing that is increasingly a sticking point, and I'll tell you what it is. Were NCOIL to find an employee engaging in criminal behavior, there's insurance for that, and that's traditionally what insurance is for, third-party liability insurance for bad actors, which is to say if you receive a demand letter from someone claiming harm, your insurance policy tends to respond. But were it the case that NCOIL resolved an executive committee to engage in that criminal behavior, well, then that would be a first-party claim, and insurance generally doesn't cover those with limited exceptions in the cyber area. And it works like that in banking, meaning if there's an employee of a financial institution, we call it crime bond, something you may hear more about, but if an employee is caught doing something illegal, there's harm to a consumer or harm to the bank itself, a claim can be generated because certainly the bank was doing everything it could to avoid criminal behavior, and that's why they have this coverage. But if it's the policy of the bank to engage in this behavior, there are risks that are much larger than most people know, and that is the invalidation of your directors' and officers' coverage, the invalidation of your errors and omissions in insurance, possibly the invalidation of other liability coverage, and certainly your general liability coverage.

And so, these are the things that I discuss, and this is my interest in the subject, which is to what extent is this anomaly or this dissonance between federal statute and state statute affecting the operations of the banks, and the answer is the risks are extraordinary. How extraordinary? Well, meet me on the other side of Transportation Security Administration (TSA) security with your bag of cannabis, and we'll have that discussion. The federal government is crystal clear on this point. It even has a separate sentencing schedule. That's how much of a felony it is. And, of course, you're sitting in a state that is charming for its historical nature and charming because it chooses to follow federal law, which is not a choice in

itself. If you're a rule follower, that is the law of the land. However, the states have democratized, thought other ways about it. Let's start at politics. The Banking Committee in the United States Senate is chaired by whom, Senator Tim Scott from this state. Is cannabis legal in this state? No. And so will the Senator be getting over his own legislature? I don't know the answer, but I suspect, and all of you do too, that probably the answer is no. The House Financial Services Committee is chaired by Representative French Hill of Arkansas. They have legalized medical marijuana. You have to get a license to engage in that. We don't see this problem being solved soon, but it's not to say the problem hasn't been addressed. Here's how in the last Congress it was addressed. The Secure and Fair Enforcement Regulation Banking (SAFER) Act is something ABA would like to see. Get all of that money and cash off the streets, make the place safer. It's bipartisan. About 130 Members of Congress supported that bill and were co-sponsors. More than 30 Senators signed on to it.

Keep this before your minds, though. So many states have legalized in one shape, form, or another cannabis that there's about a, by my math, 92-seat majority in the Senate based on the number of states who have actually done something about this and an even larger bulletproof majority in the House. So, we're at the case that states said to their Senators, please vote the way our laws look. You would win, and it wouldn't even be hard. It would be something that would be veto-proof. We haven't seen that bill reintroduced to this Congress. One of its great champions, Earl Blumenauer of Oregon, has retired. I don't think that will dampen the zeal of the 129 other co-sponsors, but one never knows. And, of course, Congress is in different hands this time. And so, the study question, to which all of us should engage, is will Republican majorities engage or will they introduce this bill and entertain some of the social questions that in my view, held this up last time. Where we started was the legalization debate and the SAFER Act. These are different questions.

One is about what should we do as a society in these substances and who should be able to use them and under what circumstances? The other is can the financial services industry reduce the risks of crime and attendant other illegalities by allowing these businesses to be banked so that we know who they are, so that the money is off the street, so that it goes into the system, and so that it's traceable and auditable? Those are different goals. And so, on this side, we think it's going to be reintroduced and we hope that it does. For the social questions to come up again, I think that would be an impediment to passage. But the challenge is that the President, through Truth Social, seems to be a legalization, perhaps not an enthusiast, but he's okay with it. Such narrow margins in the House suggest that might be determinative. That might be something that could actually work out. Yesterday, if you were in one of the other meetings, you heard a lot about the reconciliation process, meaning there's no space for anybody anywhere in Congress right now except for that bill. And so we'll have to wait, in my view, for this process to terminate before we see people start entertaining the committee system and looking at bills and bringing them to the floor. And that's where I think it lies. One other thing, just to note, I don't think people really know what these things cost. Do you know there's a spot price for cannabis every Friday? And one of the other things that's in the way of this is from the last year of the Obama Administration to right now, a pound of cannabis is less than half the price it used to be, meaning, this is like every other industry, it's consolidating. People that are in charge of it are getting bigger, not smaller, they're squeezing out all of the smaller players that states relied upon to legalize in the first place, and I don't know if that is taking the wind out of the sails of all of these things that we're trying to accomplish or not, but I know there's nobody pounding the desk in either body asking for this.

Chuck DeWeese, Traffic Safety Consultant at Responsibility.org, thanked the Committee for the opportunity to speak and stated that maybe this is a little different for this organization but I want

to talk about the lives lost - 500,000 lives were lost in World War I and World War II but just since the year 2000 over a million people have been killed on our roadways because of car crashes. And that number may seem staggering but think about a 747 that were to crash and kill every member on board once a week in our country and the uproar that we would have. But we don't have that because car crashes occur frequently. But those numbers should be staggering to you. What I want to talk a little bit more about is drug driving because, as long as drugs have been around and cars have been around, we've had the issue of drug driving. So, the National Highway Traffic Safety Administration (NHTSA) does these surveys once in a while. The last one was done in 2014. And they basically ask people to voluntarily pull in and have an oral swab taken and a blood test. And these are the results, the amount of people who are testing positive on our roadways during the week and weekends. Again, where I come from, Responsibility.org, and I'll talk a little bit about that, we don't take a position on legalization. People have been driving high on different substances for years. Whether it's legalized or not in the state doesn't really matter to traffic safety experts. It's always been illegal to drive under the influence. NHTSA estimates that over 56% of injured or killed roadway users tested positive for one or more drugs, including alcohol. The use of drugs in driving is staggering in our country. So, Responsibility.org, the organization I work for, it's funded by the distillers, the folks who make distilled spirits. We have three main missions: lead efforts to eliminate drunk and impaired driving; lead efforts to eliminate underage drinking; and if you decide that you do want to drink, to make responsible decisions. Responsibility.org, a couple years ago, created the National Alliance to Stop Impaired Driving because we're not making a dent. We lose over 40,000 people a year, 13,000 by alcohol and drugs on our roadways.

So, what I'm here to talk about today is a tool. You probably are all familiar with roadside law enforcement officers who have this thing called a PBT or a portable breath test. They run through their standardized field sobriety testing. They determine that the operator is impaired. Now it's time to determine what's causing that impairment. Is it a medical impairment that I need to get an ambulance to the scene? Or is the impairment caused by alcohol? Or is it caused by drugs? They have a PBT that they can give to the motorist to determine if the impairment is caused by alcohol. But what's new is a technology and thank goodness for COVID because you'll be able to understand this a little better. We use lateral flow immunoassay technology to detect drug impaired drug usage at roadside. So, think of your pregnancy test, your COVID test, or your urine drug testing. It's a very simple technology. You're basically mixing a solution which is either your nasal fluid for your COVID test, or urine for a pregnancy test. And you take that swab, you're very familiar putting that swab up your nose, you mix it with a buffer. The buffer takes the drug off of the swab. It mixes it together and it basically moves over lateral flow strips. I'm not a scientist, but it just moves over these strips, there's dried reagents on those strips and if it reacts, you'll get a positive result. So, you're all familiar with that technology. So, what I have here and what's on the screen is a technology that's similar to your COVID test, but it's going to test for drugs. The devices on the left are called analyzers because they have cameras inside, there are heaters inside. All the technology is contained inside of an analyzer. You compare that to a visually red product, that's more like your at home COVID test. The problem I have with the visually red products, for a number of reasons, is you're asking the law enforcement officer to subjectively look at a strip out in the middle of the nighttime in the dark with it snowing and looking at different colors to see is it there? How many of you have taken a COVID test? And you're like, is that line there? Is it not there? Is it positive? And I have to ask my wife to come over. Do you think this is positive? The analyzers do that for you.

So, I brought this SoToxa mobile drug test analyzer here because I want show you how it works. So, the officer pulls somebody over for a driving violation, they interview the driver, they sense that there possibly could be some impairment maybe they see a vape pipe in the car and they

take the person out of the car and they still have to do their normal standardized field sobriety testing, nothing changes. They at that point detect that the person is impaired and now we're going to determine whether it's a medical impairment, an alcohol impairment, or a drug impairment. So, they do the alcohol test and it's a .02 or .01 or maybe even zeros and what they do now is they can get give motorist this swab. It's like a Q-Tip. You ask the motorist to run it in their mouth for about 30 seconds. I've already done it to save time here. You do it for 30 seconds you know you have enough oral fluid when it turns blue there's an indicator on there. The officer starts the analyzer, there is a positive and negative quality control cartridge that takes five seconds to run to make sure it's calibrated for every test. Or you can do it once a day or once a week. Stick the cartridge into the device. It'll give you a checkmark to tell you that it's ready in about five seconds. Once you get that, you stick this in here, and it starts working. You can set it down on your car. Officer safety is very important, so it's very small. It can keep it on the roof of their car. So, the test is now running. It's mixing that oral fluid with the buffer solution, and it's working over lateral flow strips. If you were to hold it up, you'll get an error message because, again, it's lateral flow. It needs to work on a horizontal plane. So, that's running through the test. It takes five minutes to give a result, and by the time I'm done talking, we'll have a result that's hopefully negative. I tested my son on Easter because he takes Adderall, and he was curious to see if he would test positive, and he didn't. And I wasn't surprised because he takes a therapeutic dose of it so he was not testing positive even after two hours after taking his medication. So, you collect the sample, you stick the cartridge in, and then you get your result of either a positive or negative. And we test for up to six drug classes, cocaine, opioids, methamphetamine, THC, benzodiazepines, and amphetamines.

So, what are the benefits of oral fluid screening technology? I always like to say I'm from the Northeast and we get a lot of snow. It's a tool to do your job better. You can either get a foot of snow and shovel it and take four hours. You can use a snowblower and take an hour and a half. Or you can use a plow and take five minutes to do your driveway. Technology is intended to make our roads safer, to give the officers what they need to do their job. So, it analyzes using lateral flow. It's a simple, quick collection process. It's not invasive. You're not sticking a needle into somebody. You can see the drugs that are tested for. There's pre-set cutoff levels for each drug so you will not pick up therapeutic doses of medications. It's rapid. It gives you a result in five minutes. You can print out the result and the technology does have built-in quality control checks. This is kind of an important slide for those who aren't familiar with roadside screening. There's a difference between investigative confirmation testing that is done in a laboratory with blood or urine or oral fluid and the stuff that's done at roadside. On the right side, think of your toxicology lab. It's an evidential test. The test is done in the lab. It's tests for about 100 to 150 different substances and it's going to give you a quantitative result of a number of nanograms and it's used as evidence in court. So, think of your blood, urine, oral fluid that's tested at a lab. The screening technology like this SoToxa here is intended to be like a PBT. It's done at roadside. The analysis is conducted roadside. It's a limited test panel of only six drug classes.

However, we do pick up about 90% of the drugs that we see on the roadside and it's only going to give you a qualitative result of a positive or a negative. It's giving that officer another tool to give him or her probable cause to make the arrest. The advantages, it's a reflection of the drug that's circulating in the blood. It's taken proximate to a traffic stop. Let's think about THC. If you don't know, when you administer or take THC, it goes out of your body extremely fast. So, if there's a fatal crash and it takes three hours to get a blood sample, the roadside oral fluid test will show positive. But by the time the blood is drawn two to three hours, it may show negative. So, the benefit of doing oral fluid at roadside is it's proximate to the stop of the crash. It enhances public safety. And my favorite part is most motorists out there don't think there is any technology that law enforcement has to detect the recent use of drugs, but we do have it and it

works as a general deterrent. It does not detect whether you're impaired. Impairment can only be detected through the evaluation by a drug recognition expert. There is no blood alcohol like test for THC and there never will be. We will never have a number for cocaine, a number for methamphetamine, it's just not going to happen. A toxicologist once told me unless you can suck brain tissue out of somebody's brain and put it on a slide, you'll never be able to determine a number, a per se level. We don't have that technology. Hopefully someday we do.

This is an important slide that we use with legislators because a lot of times a legislator may think that when you pull somebody over you're just going to have them roll down the window and stick this swab in their mouth. That is not the case. You still have to have your vehicle in motion. You still need to see the traffic violation and pull somebody over and have your personal contact and interview the driver and do pre-arrest screening, which are those standardized field sobriety tests. Now you determine that the person is showing signs of impairment. Now you're determining whether that impairment is medical, alcohol-related, or drug-related. And that's where the field screening comes in. Now you develop your probable cause to make the arrest. You can seek a blood warrant for evidential testing or call a drug recognition expert to the scene. How are we doing in states – 23 states authorized some type of oral fluid collection. Those numbers are growing. And I want to quickly just talk in my last five or so minutes here about some of the results. It's being used widely across the country and across the globe. Michigan was one of the first states and it ran a wonderful pilot in 2018 and 2019. And this week legislation was introduced there to make oral fluid permanent as the pilot expired. So, hopefully this session, that'll happen.

Indiana said, we don't need to do a pilot. Michigan, our partner state, just did a pilot and determined that oral fluid is a perfect matrix for determining recent use of drugs. So, in Indiana, in 2020, right after COVID, they bought 80 of these analyzers and they had 110 uses. In 2021, 200 analyzers were purchased by the Highway Safety Office and handed out to law enforcement and they did almost 900 tests. And you can see how the tests have grown over the years. As of today, there's been over 6,000 tests that have been done and you can see the number of people testing positive multiple drugs in their system is almost 50%. And THC positive is 67%. But what's more remarkable is the results of what has come from that. For those who don't know, a drug recognition expert is your green beret of law enforcement. They take a special three-week class to become a drug recognition expert (DRE). Less than 2% of police officers in this country are DREs and you can see on the left that the number of DREs in the state of Indiana decreased significantly. That's happening in every single state. As you train a class of 40, you lose a class of 40 because they get promoted. So, the number of DREs are going down. But what happened in Indiana, if you look at the right, the number of drug recognition evaluations went from 425 to 662 with fewer DREs. Why? Because your road patrol officers, your trained officers were now pulling more people over and using their oral fluid devices and detecting levels of drug impairment and then calling for a DRE to do the evaluation. So, Indiana has had great results. Their traffic fatalities have declined. So, I'll conclude by saying if you're interested in it, I'll be here. My flight's not until later. I can show you how the technology works or answer any questions. But we are at responsibility.org going around the country trying to talk about the virtues of oral fluid testing and to make things easy the nascent oral fluid working group has put together a whole host of resources so that if your state is interested you don't have to start from square one. We have an implementation guide that walks the state through how to do it. We have documents that say here's the data you should collect so that a year after you implement you can show your legislature the benefits of the program. We have a ton of resources on our website. But this technology is here, it's been proven effective and if we are ever going to make our roads safer and start saving more lives I think this technology is critical important. Lastly, I'll just say that we're working on a project now to collect information on every state's oral fluid statutes. We're asking the traffic safety resource

prosecutors in every state to let us know if you have a roadside statute for oral fluid or an evidential statute and what your implementation status is in your state. Indiana has a statewide program. New York, California other state law enforcement is just buying these and it's kind of spotty or jurisdictional. So if you are a state that's interested in this there'll be a website you can go to and look at sample legislation.

Sen. Paul Utke (MN), NCOIL Vice President, stated that I was wondering what was being highlighted in one of your slides when Minnesota graphics were up there. Mr. DeWeese stated that Minnesota just concluded an oral fluid pilot program. The report was issued and delivered to the legislature in March of 2025 and as it stands right now, the hope is that a bill will be written. I know you only have a month left in your session but hopefully a bill will be written to make that pilot permanent in Minnesota.

Mr. DeWeese stated that there is a feature that some people worry about, that the result will taint the subjectivity of the DRE that comes to the scene. So, because they're going to do their full evaluation, there is a mode you can set to here that just shows that every test was done, and there was a positive for one of the categories, but it doesn't tell you which one. So, that feature is also available.

Asm. Gandolfo stated that in states that haven't really gone this route yet, whether by county jurisdiction or statewide, what seems to be the hesitancy to start using these oral roadside fluid tests? Mr. DeWeese stated that I think a lot of it is there's a lack of education or understanding on how it works. People, especially in my state of New York, think that it gives law enforcement another tool to pull people over randomly, and it has nothing to do with that. That's one piece of it. The second piece is a lot of times people think that it's an evidential tool and that it hasn't been tested in court. It's not intended to be an evidential tool, it is only for roadside uses. So, those are a couple of the reasons why it hasn't picked up steam in some states but we're in over 35 states now.

Sen. Jeff Howe (MN) asked how many different makers of those types of devices are out there? Mr. DeWeese stated that so if you remember I talked about the visually red products and then the analyzers. There are maybe 20 or so different companies that do those visually red products. Some are good, some are bad. I know one company, there's a solution on there that helps a person produce saliva and it's made with animal byproducts. So, I have a concern with that and I think you should as well. So, you have to be very careful with some of those visually red products. As far as the analyzers go, the companies that I'm most familiar with are Abbott, SoToxa, and Draeger. Those are the companies that have been doing analyzers and drug testing technology for years but I think there's a company called Randox as well.

DISCUSSION ON STATE INITIATIVES REGULATING THE BAIL BOND INDUSTRY

Asm. Gandolfo stated that before we bring our last agenda topic, I'll make a couple of comments first. I know you might be seeing bail bonds on the agenda and wondering how it fits in with insurance, but in many states, bail actually is an insurance product and is regulated under that state's Department of Insurance. Second, NCOIL has made extensive efforts to have representation here today by advocates on the other side of the issue but unfortunately, they declined to participate.

Rep. Peggy Mayfield (IN) stated that I was the author of the Indiana law regulating charitable bail. I know that throughout the country it has been regulated. I know New York had it for over a decade, and we actually used their statute as the basis of our model. And I approached this, or

you could approach this in a couple different ways. You could go after the criminal aspect, and you run into a lot of roadblocks there because you have constitutionality issues and so forth. I chose to go down the regulatory path of bail in Indiana is an insurance product, and therefore it would be easier to go down the path of regulating who is able to sell an insurance product with licensure. And I ran into less roadblocks than going down the criminal path. The reason I asked about NCOIL considering this as a model act is because, one, we did pass it. Two, it was challenged in court and it withstood challenge. So, I thought I would offer this model legislation to other states that might want to go down this path. It really became an issue even prior to COVID, but especially during many of the protests during that era of organizations coming in, doing charitable bail, and putting kinks into the criminal justice system in those states.

Jeff Clayton, Executive Director of the American Bail Coalition (ABC), thanked the Committee for the opportunity to speak and stated that the ABC is a trade association of insurance corporations that underwrite criminal bail bonds throughout the nation in the 46 states where we're able to do that, and I think even some territories. I've been at this now for ten years and spend most of the time talking about criminal law. As Rep. Mayfield said, in the setting of bail, the in-cash bail debate is primarily what we work on, but we also, as Rep. Mayfield said, are regulated by state departments of insurance. Charitable bail funds, what are they, when, where, and why? They are a pool of money used to post criminal bail bonds, of course, the biggest one being the Bail Project, but you can also Google the National Bail Fund Network. There was a massive infusion of cash into these funds in the summer of 2020, and some called them Vice President Kamala Harris's bail funds. As I told reporters, she has nothing to do with these bail funds and never was involved in the bail funds, never donated to the bail funds. She put one post on Twitter to bail out peaceful protests and here we are. So, I think take her out of the debate and look at this through a different lens. I think bail funds are different than bail bondsmen because they post actual hard cash, whereas we post a written financial guarantee that's underwritten by insurance corporations, at least the bail bondsmen do. Something that the current Administration has not figured out - federal immigration bonds, we rely on the states to regulate bail bondsmen who post federal bonds, which includes federal immigration bonds. And so, the Administration hasn't quite figured that one out. We're not here to remind them of that. The definition of insurance as to whether it covers bail has been left to the states under the Comprehensive Crime Control Act. There is federal legislation pending that would define bail as insurance and then thus force all state departments of insurance to regulate bail. That would be a major shift, and that legislation made it out of the House. I have not heard yet whether it's going to proceed beyond that point. What is the charitable purpose of these funds? It's sort of mixed. I would start with the good one. They help people who are otherwise bailable that should get out that don't have sureties - a good purpose. But the main purpose that's been articulated is a First Amendment purpose, which is to destroy the bail system, to end monetary bail, and to basically end bail. And I would posit that maybe as a different purpose than we're used to under charities, particularly having this dual purpose.

They operate generally in all 50 states. Some of them are small. They operate in a single court, single jurisdiction. Some of them operate statewide. Some of them are national. How much assets are we talking about statewide? We don't know. We have an article from the New York Times suggesting probably in the \$200 to \$300 million range nationally. We don't know. The Bail Project has financial reports on their website, and you can see what their take is and how much bail they're posting. The charitable purpose of these funds has expanded in light of the fundraising from not just posting bonds, but also for lobbying to eliminate bail. And so, they've morphed into also lobbying arms for criminal justice reform and have registered to lobby in multiple states, Minnesota and Colorado coming to mind at this time. Regulation of bail bonds. How does it work - typically state insurance departments and judges. All persons are bailable

by sufficient sureties means judicial regulation on a case-by-case basis. What does that mean? Well, if you stole the money to post-pay, that's bail source. That would be something that a judge can scrutinize internal to a criminal case. So, that's one way bail is regulated. Is the surety sufficient? And then most states license bail bondsmen via state departments of insurance, many of whom are required and complain about the fact that they have to get a property & casualty license. And surety regulators are regulated by state DOIs. You have property bondsmen in the southern states primarily that are self-underwritten. In other words, some are lightly licensed and underwrite themselves.

Bail funds, they send in a third-party poster so that's just a person who typically will pose as a friend and not disclose on court documents that this is corporate funds. So, we don't say it's from the bail fund. It's me posting somebody else's bond, and that's how it goes on as a court record and that technically is false swearing on a court document. Why not use a bail bondsman? Why don't these funds use a bail bondsman? As one famous activist said, a national bail fund sponsored by bail bondsman would be like a free sample of heroin from a drug dealer. And of course, my reaction to that and what something my board didn't particularly like was I said we're not against charitable bail, we just want a piece of the action. But anyway, that's beside the point. They're choosing not to use a bail bondsman to mitigate risk and that's an important distinction here. They could use a bail bondsman and if their client fled, they can have them re-arrested. They choose not to do that. So, that's a choice that they're making. Texas, you're special because you regulate bail differently. You regulate it locally, but you actually regulate it as an insurance product sort of locally. So, in Texas, none of this would work, but that's alright. They can figure it out themselves down there. States have begun to regulate charitable bail, we've seen a lot of bills that I didn't put up in here. So, a lot of them coming from Wisconsin holding charitable bail funds liable for the acts of the people they bail out and stuff like that, I'm not going to get into that. The oldest, most comprehensive law is the New York Charitable Bail Act of 2012, which requires licensure only, and allows for posting in misdemeanor bonds only. Bonds must be less than \$2,000, and all persons who post are also licensed and must report. And the people that post have to get a bail license, so the actual individual that walks into the courthouse has to be licensed like a bail agent.

The Indiana Charitable Bail Act is similar, as Rep. Mayfield said. You cannot post bail in crimes of violence or in felony cases where the person has a prior crime of violence conviction. The charitable bail fund has to become licensed. There's a prohibition of public funds, and I just got a call from a judge in Cuyahoga County, Ohio, who said, "why are we using public funds to bail people out after we arrest them?" Well, that's another pivot point, should we be using taxpayer dollars to post people's bails? As Rep. Mayfield said, the Bail Project sued the Insurance Commissioner under a First Amendment theory, and I would say lost badly in the U.S. Court of Appeals for the Seventh Circuit, although in discussing the issue with Attorney General Todd Rokita, I did point out that if they don't have to be regulated under a First Amendment theory, then we probably shouldn't have to be regulated under a First Amendment theory. But obviously, they lost badly, and they said that posting bail is protected First Amendment speech. And the Court of Appeals said no, and they said, "You're making a financial guarantee from crowdsourced funds versus somebody's actual money". Economic incentives are different, thus there's an important public purpose for the legislature to look at this and we find that the legislature acted appropriately under this case. In Texas, you had data reporting legislation, I wouldn't really call it much of a regulation, but it would be in the nature of some sort of sunshine and transparency. In other words, who do these funds bail out? Do they show up in court? Do they commit a new crime? That sort of thing, I think, would be a good step to say, what are these funds actually doing? But I would consider that to be mostly sort of a toothless regulation.

In Georgia, we have a case pending where we'll find out what the, what I would say the limit of legislation power is in this area. To simply ban it, in essence. You can post no more than three charitable bails per year, then you're banned, and you can no longer post charitable bails. This case is pending before the U.S. Court of Appeals for the Eleventh Circuit. But that leads to the question of, can you just simply ban charitable bail and not allow it altogether? And you have to keep in mind, there's a fundamental right to bail, and there's a fundamental right to association and right to surety. So, we run into fundamental rights when we start talking about this regulation. Is the bail industry pushing regulation? Is the ABC pushing regulation? I would say no. And what I tell our board is don't turn the sideshow into the circus. Obviously, these regulatory issues hit the for-profit and the non-for-profit industry equally in certain respects, and so we have to pay attention. But whether legislators and folks think it's important enough to regulate or not is a question we really leave to them. I don't spend time or resources trying to make the argument that it should be regulated. But to give you an example of one, and I had to hire a lawyer in order to put this slide up to chase all this down and prove all this, but the Colorado Freedom Fund in my home state where I'm a lawyer sort of proves why there's a problem with this and why people need to pay attention to it. The Colorado Freedom Fund is not registered as a charity in Colorado. It's not registered as a business entity. It has never issued an annual report. It's never disclosed the salaries of its employees, one of whom is a former state legislator and was a state legislator at the time. It is registered as a lobbying entity, but the fiscal sponsor is not registered as a lobbying entity, entity or charity, never issued an annual report, and nobody is properly registered to solicit donations for the public in Colorado. And the charitable purpose has changed from the original purpose of posting bonds to now being a criminal justice reform outfit. So, one might argue multiple complaints could solve this, but one might argue maybe some regulation might be in order. I'll leave that question ultimately to you.

So, final statement - to regulate or not to regulate, I think that is the question for you. I think there's one compelling argument that says absent regulation are charitable bail funds insufficient charities as a matter of law? And some courts have said yes. Some courts have just said we're not going to take your bonds on a one-off basis, local courts. So, if you care about charitable bail and you want charitable bail in your state and you think it has a legitimate purpose, it's probably important to regulate it, to give it the standing of legitimacy to survive the legal challenges that it may find along the way. Obviously, as Rep. Mayfield points out, statutory controls exist that don't require legislation in the criminal context. You could limit which cases, who can post, you could prohibit taxpayer dollars, number of bonds posted, size of bonds, type of case class. All that sort of thing would be options short of regulation. The best model is probably Indiana. I think they took components of New York but kind of made it a little bit lighter. I think for a charitable organization that's serious about complying, the commissioners made it extremely easy, and if they're on the up and up and they want to do charitable bail right in Indiana, it's right there for them. In our opinion, if they're using corporate funds that's crowdsourced, there should be some regulation and I think maybe that's harder enforcement of the charitable bail laws or other sources of regulation, but we think probably in light of the hundreds of millions of dollars that are out there, that there's probably a need for oversight.

ADJOURNMENT

Hearing no further business, upon a motion made by Rep. Lampton and seconded by Sen. Utke, the Committee adjourned at 10:45 a.m.