

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
PROPERTY & CASUALTY INSURANCE COMMITTEE
INTERIM COMMITTEE MEETING
FEBRUARY 19, 2021
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Property & Casualty Insurance Committee held an interim meeting via Zoom on Friday, February 19, 2021 at 12:00 P.M. (EST)

Representative Bart Rowland of Kentucky, Chair of the Committee, presided.

Other members of the Committee present were:

Rep. Matt Lehman (IN)	Asm. Ken Blankenbush (NY)
Rep. Joe Fischer (KY)	Asw. Pam Hunter (NY)
Rep. Derek Lewis (KY)	Sen. Bob Hackett (OH)
Rep. Chad McCoy (KY)	Rep. Tom Oliverson, M.D. (TX)
Rep. Brenda Carter (MI)	
Rep. Daire Rendon (MI)	

Other legislators present were:

Rep. Deborah Ferguson (AR)	Asm. Steve Hawley (NY)
Rep. Rachel Roberts (KY)	Asm. Jarett Gandolfo (NY)
Rep. Cherlynn Stevenson (KY)	Asm. Steve Stern (NY)
Rep. Edmond Jordan (LA)	Rep. Lois Schmitt (PA)
Rep. John Wiemann (MO)	
Sen. Jim Burgin (NC)	

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO
Will Melofchik, NCOIL General Counsel
Tess Badenhausen, Assistant Director of Administration, NCOIL Support Services, LLC

QUORUM

Upon a motion made by Asw. Pam Hunter (NY) and seconded by Sen. Bob Hackett (OH), the Committee waived the quorum requirement without objection by way of a voice vote.

CONTINUED DISCUSSION ON NCOIL CORONAVIRUS LIMITED IMMUNITY MODEL ACT, INCLUDING STATE ACTIONS RELATING TO CORONAVIRUS BUSINESS IMMUNITY STATUTES

Rep. Bart Rowland (KY), Chair of the Committee, thanked everyone for joining particularly since everyone is very busy continuing to deal with the pandemic and many are waist-deep in legislative sessions. Rep. Rowland stated that he is proud to sponsor this Model as it deals with such an important and timely issue. Every day it seems that another state has either passed legislation on this issue or is considering it since

Congress has been unable to reach any agreement. Rep. Rowland stated that the last time he checked the number was over 20 states that have either passed or introduced similar legislation.

Rep. Rowland stated that he and his colleagues are actively working on legislation in Kentucky that deals with this issue and they hope to send something to the Governor's desk soon. This Committee had a very good discussion on this issue at its last meeting in December where it heard from a panel of speakers with very different views on this issue. At the December meeting, the Committee discussed the first draft of the Model which was largely based on what Idaho had adopted this past Summer. However, everyone should have the latest version of the Model which was distributed last week. The latest version builds upon the first draft by adding some provisions from legislation that was introduced in Kentucky and in Representative Matt Lehman's, NCOIL President, home state of Indiana.

Specifically, a definition of the phrase "arising from COVID-19" was added along with more provisions to Section 3 relating to a reasonably prudent person standard, and a rebuttable presumption that safety measures adopted were reasonable if they conform to the Centers for Disease Control and Prevention (CDC) guidelines in existence at the time of the alleged exposure. On that last issue, Rep. Rowland stated that he knows that some states have included language that applies the presumption to more than one set of safety measures. Rep. Rowland stated that he thinks this is a good example of where an NCOIL Model provides the framework for an issue for states to further develop and that he likes the idea of the Model including the CDC guidelines for the presumption and then states can add to that if they wish.

Rep. Rowland stated that although those provisions were added, the intent of the Model has not changed at all – we're trying to protect businesses and individuals that operate using the proper standard of care from frivolous lawsuits during a time in which they are extremely vulnerable as a result of the pressures COVID-19 has put on them. Given the litigious society that we live in, handling lawsuits during this time can be an existential threat for businesses that are already on the brink of survival. Relatedly, insurance policies should not have to pay for something that ultimately could be impossible for a litigant to prove in certain instances.

Rep. Rowland stated that even with the continued rollout of vaccines and improved treatment methods, he thinks we all know that the country will unfortunately be living with this virus for quite some time. However, conscientious businesses still must be able to function in this era of our 'new normal' without the cloud of potential litigation hanging over their heads. That is not to say that there won't be instances where litigation is warranted – of course, if a business acts in a reckless or willful manner, liability can and should attach, but the businesses who want to re-open in a safe manner should be provided a certain level of immunity from COVID-related lawsuits.

With regard to the format of today's meeting, the Committee will first hear any comments and questions from legislators. Once all legislators are finished speaking, the Committee will then hear any comments and questions from interested persons. Once all comments and questions are heard, Rep. Rowland stated that he would entertain a Motion to vote on the Model as it is important for NCOIL to adopt the Model today as a form of guidance since more and more states are seeking to enact legislation on this issue.

Rep. Lehman thanked Rep. Rowland and everyone else for joining today. Rep. Lehman stated that he is proud to sponsor the Model alongside Rep. Rowland and he agrees with his remarks that it's important for the Committee to adopt the Model today as more and more states are considering this issue. Rep. Lehman stated that in his home state of Indiana, a bill was sent to the Governor's desk earlier this week and he did indeed sign it. In Indiana, it was ultimately agreed upon that the economy simply cannot function if businesses can't get back to the everyday service of providing a product or service to consumers with a fear of being sued hanging over their heads. Even if there has not been a lot of litigation yet, we have to ask ourselves as legislators – what about tomorrow and next week and next month when America further continues its reopening process and begins to get to a place where we are getting back to normal regular order.

Having a law in place that would provide a certain level of immunity to responsible businesses will encourage them to re-open, and protect them and their insurers from any unnecessary litigation. Our business community can't function if they are looking over their shoulder worrying about who is on their doorstep looking to put them out of business with a lawsuit. Rep. Lehman stated that he is pleased that language was added to the Model to build upon the prior version. States have been and are going to deal with this issue in different ways, but, as he often says, NCOIL has always been an organization that says we build the foundation and you put up the curtains. This Model represents a very solid foundation for states to consider and they can work with it as they wish.

Rep. Chad McCoy (KY) stated that for those who were at the Committee's last meeting in December, they would recall that, as a practicing trial lawyer, he was against the Model. However, Rep. McCoy thanked everyone that has worked on the Model since that time to make changes that have alleviated his concerns. Rep. McCoy stated that he believes this Model is great and strikes a really good compromise as it gives businesses the immunity they need and from a legal standpoint it gives an affirmative defense and presumption. Rep. McCoy stated that he supports the Model and hopes the Committee adopts it today.

Rep. Daire Rendon (MI) stated that she has a unique perspective on this issue because besides being a legislator she has been a business owner for 35 years. Rep. Rendon stated that her business was able to work through the pandemic by implementing safety procedures but even with that there will be things that will pop up going forward that will need to be dealt with so she appreciates the comments from the previous speakers. Rep. Rendon asked if the comments submitted by National Association of Professional Insurance Agents (PIA) were taken into account when drafting the Model. The comments addressed a definition for "testing" for COVID-19 and the emergency which they thought should be specifically named. Rep. Rowland stated that he doesn't see anything wrong with PIA's comments but believes that the Model is solid as-is and can be altered by states if they would like to do so with comments such as those submitted by PIA. Rep. Rendon agreed.

Rep. Derek Lewis (KY) applauded the work done on the Model thus far and stated that it represents a proactive approach. Too often, legislatures are reactive instead of being proactive and Rep. Lewis stated that he supports adoption of the Model.

Rep. John Wiemann (MO) stated that his comments do not represent dissatisfaction with the Model as he believes it is a good piece of Model legislation. Rather, he just wanted to comment on his involvement with this issue in Missouri as they have been actively working on it. The bill there has almost passed out of the Senate and then he will take over on the House side. One of the areas that they had a lot of problems with dealt with the applicable standards. The Model uses the CDC guidelines but the Missouri local health departments had a lot of issues with that.

Rep. Rowland stated that he and his colleagues have had similar conversations in Kentucky regarding the applicable standards. Ultimately, the Model cites the CDC guidelines but states can of course cite different guidelines if they wish. Rep. Lehman stated that one of the concerns he and his colleagues had in Indiana with this issue was that what if local standard go well below the CDC standard. So, for example an area might say we're going to be more lenient but it goes well beyond that would that immunity apply if they want to do things so far below CDC. Indiana had similar discussions and ended up looking at it as the CDC is the footprint and then you can go one way or another. Rep. Lehman stated that he is glad this issue was brought up because it led to robust discussions about what happens when places are more or less lenient.

Rep. Rowland stated that another important point to make is that this is a national Model and the CDC is a national entity. Of course, a state law may want to adopt state health guidelines in their law and they certainly are able to do that.

Erin Collins, VP of State Affairs at the National Association of Mutual Insurance Companies (NAMIC) stated that NAMIC supports the Model and knows that the intent and practical measure of these laws is to protect small businesses as we emerge from the pandemic and shield against frivolous lawsuits. It's important to note that NAMIC concurs with Rep. Lehman that these are sensible and balanced provisions that help us emerge from the pandemic – they don't as some opponents argue invite bad actors that put the public at risk – that's false. NAMIC supports the Model and urges adoption. NAMIC does have a few suggestions that were forwarded to NCOIL staff that Committee members may want to consider when drafting legislation on this issue in their state. First, NAMIC wants to ensure that the applicability covers businesses that are acting in a volunteer capacity.

Second, NAMIC also contemplated similar concerns as have already been mentioned about CDC guidelines and perhaps conflicting with state or local protocols. NAMIC understands Rep. Rowland's and Rep. Lehman's comments about considering this issue at the state level. Finally, the rebuttable presumption of immunity in the Model should be tied to a person's good faith attempts to comply with the CDC or other guidance. The Model does provide that but then inserts an ordinary and reasonable and prudent standard which might muddy the waters and create confusion so we urge states to look at that and stick with just the good faith standard. NAMIC support the model and agrees that timeliness is important and urges the Committee to adopt it.

Wes Bissett, Senior Counsel of Gov't Affairs at the Independent Insurance Agents & Brokers of America (IIABA) thanked Rep. Rowland and Rep. Lehman for sponsoring the Model and for their work to improve the Model. IIABA supports the Model and urges action today. Mr. Bissett stated that he wont repeat his December comments but believes strongly that providing limited immunity for a small window of time is not only

appropriate but would help to eliminate a lot of the concern that small businesses are facing right now. Along the lines of Ms. Collins' comments, IIABA does not want to make perfect the enemy of the good but one suggestion is to eliminate the references to the good faith standard in Section 3(A) and incorporate that into Section 3(B) but that's not something that should impede the Committee's work today. IIABA urges adoption of the Model.

Lauren Pachman, Counsel and Director of Regulatory Affairs at PIA stated that PIA members are often small business owners so this is an important issue. PIA thanks the sponsors and the Committee for their work. As indicated in PIA's comment letter, PIA supports the Model as it affords small businesses the assurances that they need to reopen confidently and without fear of frivolous litigation. As we all know that kind of threat can derail businesses even in the best of economic times and now it poses a greater threat as business are already on the precipice of closing. PIA does have two small recommendations and Ms. Pachman thanked Rep. Rendon for mentioning them. The comments just add detail around testing in Section 2 and add a bit of detail around the state of emergency just to provide states with a template for filling in the actual state of emergency that's in effect. PIA supports the Model and urge states to adopt it.

Hearing no other comments or questions, upon a Motion made by Rep. Joe Fischer (KY), NCOIL Secretary and seconded by Rep. Lehman the Committee voted without opposition to adopt the Model by way of a voice vote. NCOIL General Counsel, Will Melofchik, stated that the Model will now be placed on the Executive Committee agenda for final adoption in April. NCOIL CEO, Commissioner Tom Considine, stated that for anyone unfamiliar with the model law adoption process at NCOIL, it would be highly unusual for changes to be made to the Model before then so if any legislators are interested in introducing the Model, the version adopted today would be the form they can be comfortable with.

Asm. Ken Blankenbush (NY) asked whether he had to abstain from voting since he is an insurance agent and owns an agency and is a member of IIABA. Rep. Rowland and Rep. Lehman replied no as they are in the same position as Asm. Blankenbush.

Rep. Rowland stated that he has a couple of more pieces of business before the Committee adjourns. First, registration for the NCOIL Spring Meeting in Charleston, South Carolina is now open. The meeting will again be a hybrid format allowing for both in-person and virtual attendance via Zoom. All registration information can be found on the NCOIL website or by reaching out to NCOIL staff.

Second, in December of 2019, NCOIL adopted the Peer-to-Peer Car Sharing Program Model Act which he was proud to sponsor. The Model has been very successful and has been introduced and adopted in several states across the country. Recently, some amendments to the Model have been agreed upon by both the insurers and peer-to-peer car sharing companies which Rep. Rowland would like to sponsor and include on the Committee's agenda for adoption at the Spring Meeting.

Overall, the amendments aim to provide clarity and standardization of insurance coverage during the peer-to-peer car sharing transaction and deal with amending certain definitions in the Model; clarifying state insurance limit, primary liability, and underwriting issues; and providing additional recordkeeping requirements on the car sharing program.

The specific language of the amendments will be included in the 30 day materials next month. Any questions on this can be directed to Rep. Rowland or NCOIL staff.

ADJOURNMENT

Upon a Motion made by Rep. Lehman and seconded by Rep. Fischer, the Committee adjourned at 12:30 p.m.