

# Insurance Institute of Kentucky

## 2020 Session Agenda Items

1. Towing Abuses – NCOIL Model Act
2. ALI Restatement of the Law
3. Actual Cash Value – Depreciation of Labor
4. Ban Hand-held Cell Phone Usage

### Towing – NCOIL Model Act

#### **Background**

There are sufficient problems with towing and storage practices in KY to merit the passage of the [NCOIL Model Towing Act](#). Among those abuses are:

- Rates that vary if insurance is involved
- Lack of rate transparency
- Restrictions on insurer access to vehicles
- High gate fees
- High storage fees due to law enforcement holds, restricted access to the vehicle, and difficulty in contacting the storage facility.

#### **Key provisions of the NCOIL Model Act**

- Requires towers to take photographs, video, or other visual documentation to evidence the vehicle damages prior to the vehicle being removed from the tow truck;
- Requires that a rate sheet must be provided to the owner if present at the scene of a disabled vehicle as well as posted at the towing company's business. Any charges in excess of the rate sheet will be deemed unreasonable and excessive (not including private contract tows);
- Any invoices must be provided within 24 hours of request from an insurance company;
- Upon payment of all costs incurred against a motor vehicle that is towed and stored, the vehicle must be released to a representative of the responsible insurance company; and
- All calls made to a towing service or storage yard must be returned within 24 hours.

#### **Current Status**

Some aspects of the NCOIL Model Act are currently in KY statutes. A bill is currently being drafted to incorporate the rest of the NCOIL Model Act.

# **ALI Restatement of the Law**

## **Background**

In May, 2018 the American Law Institute (ALI) voted to approve its much-anticipated Restatement of the Law of Liability Insurance that had been the source of a great deal of controversy. The Restatement is widely viewed in the insurance industry as deviating from settled insurance law in a majority of jurisdictions.

A number of states have already taken action addressing the ALI Restatement, and a number of others are considering action. NCOI passed a [model law](#) on this issue in July, 2019 which was sponsored by Rep. Joe Fischer.

## **Current Status**

Rep. Fischer is likely to file the NCOIL Model Act as a bill in the 2020 legislative session, and IIK supports that legislation.

# **Actual Cash Value – Depreciation of Labor**

## **Background**

The State Farm vs. Hicks case in Federal court held that depreciation of labor is not appropriate in calculating actual cash value (ACV). The DOI regulation 806 KAR 12:095 was held to be ambiguous regarding depreciation of labor and the court therefore construed it in favor of the policyholder.

## **Current Status**

DOI is currently watching a federal court case out of OH before they take any action. This issue could be addressed statutorily by allowing insurers to use the depreciation of labor to determine actual cash value (ACV) if it is stated in the policy.

# **Ban Hand-Held Cell Phone Usage**

## **Background**

IIK Members have long supported highway safety measures, but we have not made any of those bills IIK agenda items. Due to the growing problem of distracted driving and its impact on claims, a consensus among members has emerged that IIK should take a more active role in the legislation.

## **Prospects for 2020**

[BR 166](#) and [BR 212](#) each would prohibit the use of hand-held cell phones and other devices. They have been pre-filed for the 2020 session by Rep. James Tipton and Rep. Regina Huff, respectively. IIK supports the passage of one of these or a similar bill.