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Innovation, Cybersecurity, and Technology (H) Committee
Phoenix, Arizona
March 18, 2024

The Innovation, Cybersecurity, and Technology (H) Committee met in Phoenix, AZ, March 18, 2024. The following Committee members participated: Kathleen A. Birrane, Chair (MD); Chlora Lindley-Myers, Co-Vice Chair, and Cynthia Amann (MO); Kevin Gaffney, Co-Vice Chair (VT); Ricardo Lara (CA); Michael Conway (CO); Karima M. Woods (DC); Michael Yaworsky (FL); Gordon I. Ito and Lisa Zarko (HI); Dana Popish Severinghaus represented by Erica Weyhenmeyer (IL); Doug Ommen and Daniel Mathis (IA); Jon Godfread (ND); Judith L. French and Tom Botsko (OH); Michael Humphreys (PA); and Alexander S. Adams Vega (PR). Also participating were: Lori K. Wing-Heier (AK); Alan McClain (AR); Wanchin Chou (CT); Stephen C. Taylor (DE); Amy L. Beard and Victoria Hastings (IN); Tom Travis (LA); Phil Vigliaturo (MN); Eric Dunning (NE); Christian Citarella (NH); and Elizabeth Kelleher Dwyer (RI).

1. Adopted its 2023 Fall National Meeting Minutes

Director Lindley-Myers made a motion, seconded by Commissioner Gaffney, to adopt the Committee's Dec. 1, 2023, minutes (*see NAIC Proceedings – Fall 2023, Innovation, Cybersecurity, and Technology (H) Committee*). The motion passed unanimously.

2. Adopted its Task Force and Working Group Reports

A. Third-Party Data and Models (H) Task Force

Commissioner Conway reported that the Third-Party Data and Models (H) Task Force met March 16. During this meeting, it discussed the Florida Hurricane Commission's oversight process for reviewing hurricane models. The Task Force will continue to see what types of regulatory models exist that can potentially be used to build out a framework in the second year of the Task Force's operation.

B. Big Data and Artificial Intelligence (H) Working Group

Commissioner Gaffney reported that the Working Group met March 16. During this meeting, the Working Group discussed its work plan, which includes: 1) collaboration with the Center for Insurance Policy and Research (CIPR) and NAIC staff to continue existing artificial intelligence (AI)/machine learning (ML) survey work; and 2) the commencement of the health AI/ML survey. Additionally, the Working Group discussed project plans, including an update on the NAIC Bulletin adoption tracking process from Holly Weatherford (NAIC). The Working Group and NAIC staff intend to provide further updates on the NAIC website on the adopting states. The Working Group also heard a presentation from Dorothy Andrews (NAIC) on a survey of research activities that the American Academy of Actuaries (Academy) and the Society of Actuaries (SOA) conducted related to bias.

C. Cybersecurity (H) Working Group

Amann reported that the Working Group met March 17. During this meeting, the Working Group took the following actions: 1) adopted the Cybersecurity Event Response Plan (CERP); 2) heard a presentation from the Academy detailing its Cyber Risk Toolkit; and 3) heard a presentation from CyberAcuView, which was related to its data in the spaces of cybersecurity and cyber insurance. The Working Group also discussed its work plan for

2024. Three big topics anticipated are: 1) its work on data collection; 2) its discussion of cyber coverage and cybersecurity; and 3) its planned presentations for this year.

D. E-Commerce (H) Working Group

Director French reported that the Working Group exposed the E-Commerce Modernization Guide for a 30-day regulator-only comment period that ended Feb. 6. NAIC staff received comments and made the necessary changes to the guide. NAIC staff met with the Working Group leadership to review the edits to the guide and discuss the work plan for 2024. The Working Group met in regulator-to-regulator session March 5, pursuant to paragraph 6 (consultations with NAIC staff related to NAIC technical guidance) of the NAIC Policy Statement on Open Meetings, to discuss its work plan for the year. The Working Group exposed the guide for a 30-day public comment period that ended March 14. The Working Group plans to meet April 4 to consider adoption of the guide.

E. Technology, Innovation, and InsurTech (H) Working Group

Director Dunning reported that the Working Group plans to meet in person at the next two national meetings. At the Summer National Meeting, it plans to have a speaker from a broad InsurTech-related focus. For the Fall National Meeting, the Working Group will also look at InsurTech-related issues, with a speaker tied largely to Denver, CO, where the meeting will be taking place.

F. Privacy Protections (H) Working Group

Commissioner Beard reported that the Working Group met March 8 in regulator-to-regulator, pursuant to paragraph 3 of the NAIC Policy Statement on Open Meetings as the regulatory discussion included feedback received from specific companies. During this meeting, the Working Group received a brief presentation from the NAIC on the history of the NAIC privacy models, a review of the Working Group's work over the past several years, and an update on the state privacy law landscape. With the transition of leadership, the Working Group has paused work for the moment on the *Insurance Consumer Privacy Protections Model Law* (#664), but the public continues to show strong interest in privacy-related discussions.

The Working Group will begin holding open meetings with subject matter experts (SMEs) in April to advance the discussion of the issues to be considered by the Working Group. The Working Group intends to schedule open meetings to allow for industry and consumer groups' input on Model #664. In addition, the NAIC Legal team will create an issue matrix, which aggregates the insights from the SMEs and allows for comparison between the last exposure draft, as well as comparisons against the *NAIC Insurance Information and Privacy Protection Model Act* (#670), the *Privacy of Consumer Financial and Health Information Regulation* (#672), and any other relevant drafts. The matrix will be used to understand the central issues and provisions in Model #664, and then the Working Group will continue to hold SME open meetings as necessary, as well as regulator-to-regulator sessions, to determine the best privacy regime and draft a model law that reflects that.

The Working Group intends to move forward with a focus on consensus building among members, industry, consumer groups, and fellow state insurance regulators, as well a focus on transparency.

G. Other Meetings

Commissioner Godfread reported that the Data Call Collaboration Forum is in process of building on its project in North Dakota on blockchain. He said it is also moving forward with a discussion at the NAIC level regarding how

state insurance regulators collect and analyze data, which will eventually include a discussion on data standardization.

Commissioner Ommen reported that the AI Systems Evaluation and Training Collaboration Forum met March 17 in regulator-to-regulator session and had a good discussion with members from several working groups and from the Market Regulation and Consumer Affairs (D) Committee. The work will advance the discussion on how AI systems are evaluated, with recommendations eventually coming back to the Committee to move forward on the topic.

Commissioner Birrane noted that the Committee met earlier this morning in regulator-to-regulator session, pursuant to paragraph 3 (specific companies, entities, or individuals) of the NAIC Policy Statement on Open Meetings, with the consumer representatives. The Committee has committed to having a regulator-to-regulator discussion with the consumer representatives in person at every national meeting going forward, and it will have virtual meetings in between to ensure it receives input throughout the process.

Commissioner Gaffney made a motion, seconded by Commissioner Lara, to adopt the reports of the Third-Party Data and Models (H) Task Force; Big Data and Artificial Intelligence (H) Working Group (Attachment One); the Cybersecurity (H) Working Group (Attachment Two); the E-Commerce (H) Working Group; the Technology, Innovation, and InsurTech (H) Working Group; the Privacy Protections (H) Working Group; and the Collaboration Forums. The motion passed unanimously.

3. Heard a Presentation from Uber on Working with AI and ML

Frank Chang (Uber and Casualty Actuarial Society—CAS) introduced telematics as an example of an advanced application of AI and ML. He explained how telematics, leveraging smartphone sensors, detects driving events such as measuring distance for usage-based insurance and identifying crashes. Through telematics, insurers can assess risk more accurately and incentivize safer driving behaviors among policyholders. He discussed the evolving landscape of advanced driver assistance systems (ADAS) and its implications for insurance modeling, such as the complexities of incorporating factors for lane change assist (LCA) and possible ensuing behavioral impacts of these features.

Chang raised possible concerns about overall data quality and modeling, and he emphasized the need for thorough validation to ensure the reliability of model outputs. He discussed the issue of fairness in insurance pricing, noting the potential biases that may be inherent in telematics data analysis. He also discussed the three approaches to achieving fairness in pricing—omission, equal rates, and equalized odds—and highlighted the considerations involved in each of these approaches.

Chang transitioned to discussing the use of large language models (LLMs) in insurance and offered insights into their respective strengths and weaknesses. He discussed major security vulnerabilities of LLMs by providing examples of prompt injection attacks that can cause the systems to bypass their intended constraints, specific exploits such as the “dead grandmother” trick, and real-world incidents where chatbots misrepresented companies’ product pricing policies. To mitigate such risks, he recommended governance protocols such as human monitoring of chatbot conversations, data sanitation to block malicious prompts, circuit breakers to disable compromised bots, and understanding an AI system’s limitations upfront.

Commissioner Birrane asked Chang about his thoughts on proper governance oversight of LLMs used in insurance. Chang replied that if LLMs offer help or support with no financial consequences, then testing can be performed a

little more lightly. However, if LLMs are used for binding a policy or filing a claim, then stronger monitoring for exploits would be required.

Miguel Romero (NAIC) asked whether there are any more specific guidelines or metrics to judge the amount of data needed for the complexity of a model. Chang responded that actuaries have credibility standards for loss data. He also said there are statistical tests such as Akaike information criterion (AIC) and Bayesian information criterion (BIC) that can be performed to estimate whether an extra variable included in a model provides significant predictive value. In the validation of a model, use a hold-out sample or k-fold cross-validation sampling to test performance.

Citarella asked whether data scientists consider telematics data collected in the context where the human is assisted with an ADAS device, such that the driver is not always taking the preventive action. Chang responded that it is important to recognize whether rating factors indicated from telematics data and rating factors indicated from vehicle characteristics are not double-counted.

Chou remarked that state insurance regulators want to encourage accuracy, but they are also concerned about consumer protection. He asked how regulators can be sure a model used by an insurer is accurate. Chang responded that regulators should start by asking the easy, more obvious questions to perform first-level human validation and then dig deeper by performing a review of the model predictions for a sample of policies.

Vigliaturo asked whether the severity of losses is also considered along with the frequency of claims, and he remarked that having an ADAS device might make a driver less vigilant. Chang responded that severity is also taken into account in insurance modeling of telematics data and that there is quite a bit of literature that talks about human brains "shrinking" from the use of GPS maps as compared to reading a physical printed map. However, he said he is not aware of this phenomenon in response to the usage of ADAS in vehicles.

4. Heard an Update on Federal Activities Related to AI

Shana Oppenheim (NAIC) noted that proposed bills by Congress aim to address various aspects of AI, from financial risk to transparency, governance, and environmental impacts. Oppenheim said that Sen. Mark Warner (D-VA) and Sen. John Kennedy (R-LA) have introduced legislation that would require the Financial Stability Oversight Council (FSOC) to coordinate a response to market stability threats posed by AI, such as the use of deepfakes, and recommend ways to close regulatory gaps. The bill would also allow the U.S. Securities and Exchange Commission (SEC) to pursue penalties for market manipulation and fraud involving AI, and it would give credit unions and housing regulators authority to oversee AI service providers.

The federal AI Foundation Model Transparency Act directs the Federal Trade Commission (FTC), along with the National Institute of Standards and Technology (NIST) and the White House Office of Science and Technology Policy (OSTP), to create standards for transparency in training data and algorithms used in AI tools. Companies creating AI tools would be required to share with consumers and regulators data on how models are trained, mechanisms used for training, and possible collection of data. The AI Governance and Transparency Act encourages the responsible use of AI in agencies and offers guidance on implementation.

Lastly, the Artificial Intelligence Environmental Impacts Act of 2024, introduced by Sen. Edward J. Markey (D-MA), Sen. Martin Heinrich (D-NM), Rep. Anna Eshoo (D-CA), and Rep. Don Beyer (D-VA) Beyer, aims to measure and report the full range of environmental AI impacts through inter-agency study, as well as create a voluntary framework for developers to report environmental impacts.

Oppenheim reported that the bipartisan AI Committee Working Group announced by Rep. Maxine Waters (D-CA) is led by the Digital Assets, Financial Technology, and Inclusion Subcommittee, and Chair French Hill (R-AR) also plans to explore the impact on financial services and housing industries, including fraud, prevention, and compliance efficiency. Oppenheim also noted there is a bipartisan Task Force on Artificial Intelligence that was announced by U.S. House of Representatives Speaker Mike Johnson and Rep. Hakeem Jeffries (D-NY), which is aimed at ensuring the U.S. continues to lead in AI innovation while considering guardrails that may be appropriate to safeguard the nation. The U.S. Government Accountability Office (GAO) has identified several areas of AI concern, including natural hazard modeling using AI, and it has issued a report outlining 35 recommendations to address the issue that there is no government-wide guidance for agencies implementing AI themselves. The FTC and the Commodities Futures Trading Commission (CFTC), as well as the National Telecommunications and Information Administration (NTIA), are also looking into the use of AI in their regulated entities and in their own usage.

Finally, Oppenheim reported that the White House has an AI council that is working to develop safe, secure AI model standards. The AI council is convened by the deputy chief of staff, as well as several leading Artificial Intelligence Safety Institute Consortium (AISIC) members, including Microsoft, Meta, and Google, which are among 200 members of this newly established AI Safety Institute Consortium under the Department of Commerce, as well as the National Institute of Standards and Technology.

5. Heard a Presentation from DLA Piper on International Activities Related to AI

Danny Tobey (DLA Piper) covered various aspects of AI regulation and governance. He outlined the broad scope of the discussion, touching upon how state insurance regulators are examining the regulation of AI not only within the insurance sector, but also across other industries. He highlighted the European Union's (EU's) recent legislative developments and reflected on recent developments in AI governance. He also highlighted 2023 and 2024 as significant watershed years, noting the insurance sector's proactive stance on addressing AI-related issues and how other industries like employment, health care, and finance are ramping up enforcement efforts as well.

Tobey noted AI-specific regulatory actions taken by the Federal Trade Commission (FTC) focused on the value chain of development, or the AI stack, from the foundation model developers to the customizers/fine-tuners, adopters, and through the consumers who use the models. The FTC uses an accountability matrix because the skill sets are spread across layers of development in an organization, and it has imposed penalties for algorithmic manipulation and actions against misleading AI disclosures in corporate settings. This can include algorithmic disgorgement. The U.S. Department of Justice (DOJ) has brought criminal actions against those who overpromised their AI capabilities. The SEC has also been active in regulating AI. Tobey noted currently proposed state legislation in Kentucky, Louisiana, New Jersey, and Washington that provides for consumer disclosures and control over their personal/biometrics data and how it is used.

Tobey discussed various legal aspects of potential harms from wide horizontal risks, including the implications of AI for product liability and tort claims. He mentioned specific cases such as copyright disputes and employment discrimination claims, along with the evolving legal considerations for AI inventions and patents. He then provided more information on the EU's Artificial Intelligence Act (AI Act), emphasizing its risk-based approach and extraterritorial applicability. Additionally, he discussed the AI Act's categories of risk and potential impacts on companies operating within and outside the EU. He also highlighted proposed acts, bills, and regulatory legislation introduced in other countries, largely guided by what the EU has done. He noted that the common denominator

is pre- and post-implementation testing, especially in high-risk sectors, and he acknowledged the ongoing academic and industry collaboration in shaping regulatory methodologies.

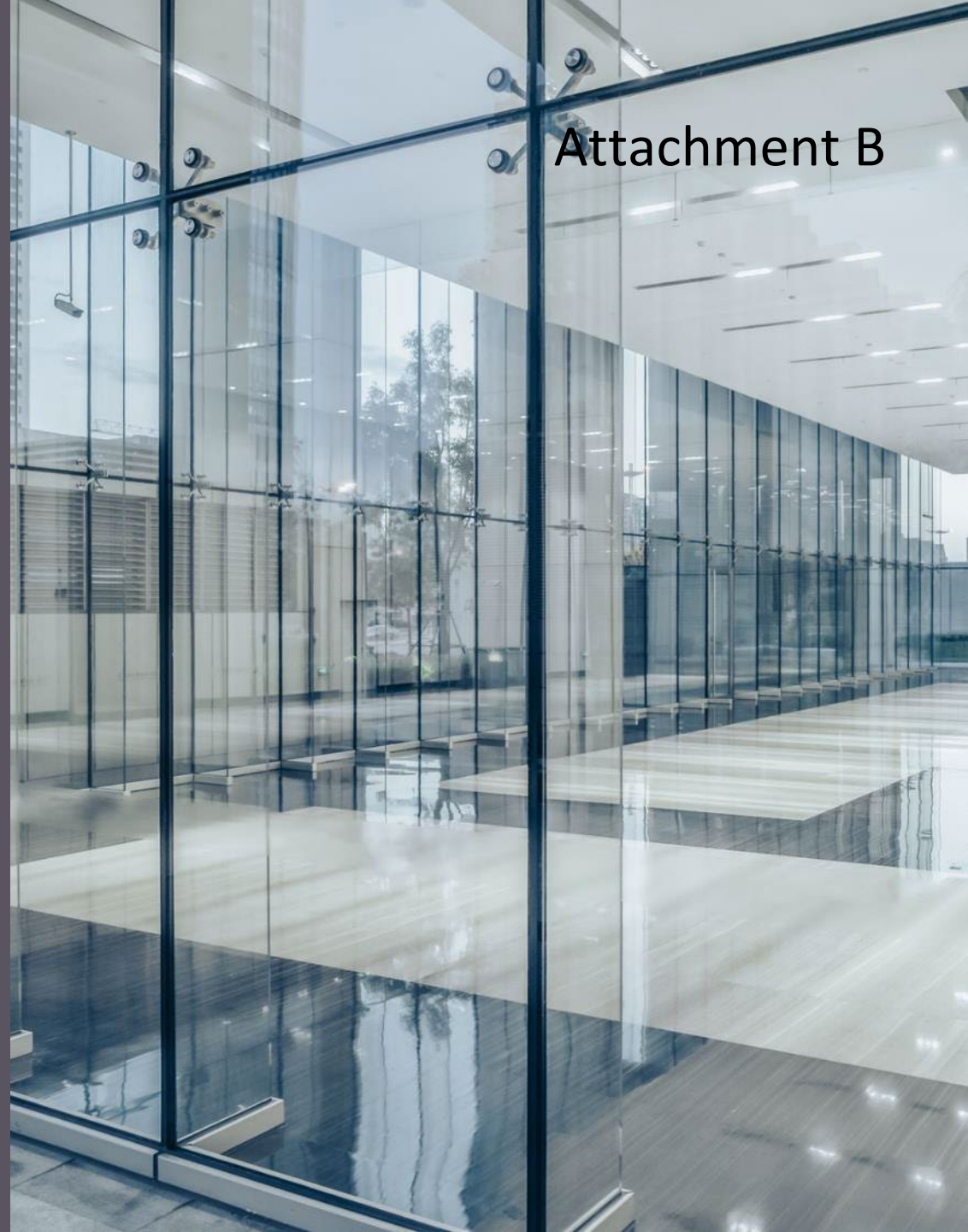
Having no further business, the Innovation, Cybersecurity, and Technology (H) Committee adjourned.

SharePoint/NAIC Support Staff Hub/Member Meetings/H Cmte/2024_Spring/H-Minutes/H-Cmte-Minutes031824.docx

Attachment B

H COMMITTEE UPDATE

June 28, 2024



Objectives

This brief presentation should provide attendees information on the latest developments under the H Committee where consumer representatives may wish to engage.

Projects – Summary

H Committee

- AI Systems Evaluations & Training Collaboration Forum
  - Charges in development with anticipation of evaluations work proceeding under a working group
  - Will broadly look at how regulators update market conduct processes for AI Systems

Projects – Summary

Third-Party Data and Models (H) Task Force (New in 2024)

- Propose Regulatory Framework for oversight of third-party data and predictive models (AI related discussion)
- Will meet on July 10th

Big Data and Artificial Intelligence (H) Working Group

- Health Survey in development
- AI Training
- Monitor & support Bulletin adoption
- Will consider next steps post Bulletin adoption

QUESTIONS?