

March 18, 2020

Commissioner Jon Godfread, Chair
NAIC Artificial Intelligence (EX) Working Group
c/o Denise Matthews – dmatthews@naic.org
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

Re: NAMIC comments on the draft NAIC Principles on Artificial Intelligence

Dear Commissioner Godfread, Vice Chair, Working Group Members, and Other Interested Regulators,

Please find included herein the following additional comments of the National Association of Mutual Insurance Companies (hereinafter “NAMIC”)¹ on behalf of its member companies regarding the working group draft edits of the exposure of the OECD Artificial Intelligence Principles. NAMIC wishes to thank the working group for the ability to provide comments on the AI Principles and their relation to the insurance industry.

NAMIC believes that as a result of the previous comments and working group sessions, the document has improved from its origin. However, we continue to request the working group explore an overall mission and objectives that are clearly stated and principles that flow from such direction. NAMIC wishes to continue to reiterate that there are concerns with the overall broadness of the document. We clearly understand the need to move forward with overarching principles, but it will be from these principles that future work will flow. NAMIC would respectfully submit that further edits be considered.

More specifically, NAMIC would suggest the following:

- Under the RECOMMENDS section, there should be absolute clarity that this section extends to entities regulated by insurance laws. Otherwise, is there an intention to extend the reach of insurance regulation? NAMIC would propose that the section clarify that “all persons or entities **regulated and** facilitating the business of insurance that play...” If the intention is to the contrary, it should be clearly stated.

¹ NAMIC membership includes more than 1,400 member companies. The association supports regional and local mutual insurance companies on main streets across America and many of the country’s largest national insurers. NAMIC member companies write \$268 billion in annual premiums. Our members account for 59 percent of homeowners, 46 percent of automobile, and 29 percent of the business insurance markets. Through our advocacy programs we promote public policy solutions that benefit NAMIC member companies and the policyholders they serve and foster greater understanding and recognition of the unique alignment of interests between management and policyholders of mutual companies.



- Under the CALLS ON section, the wording still is vague and not clear especially what duties “promote” and “consider” create. We suggest it read “...AI actors to take notice and monitor the development of the following principles...”
- Under Fair and Ethical , section b., the wording still is problematic concerning minimizing negative outcomes for consumers. While we understand the laudable thoughts, this is a vague enunciation that can lead to misguided thought that any negative outcome for a consumer has the right to redress as mentioned further in this document. We believe misconstruing duties and obligations that require insurers in many instances to take legally protected activity which may be considered an adverse/negative outcome for a consumer, though legal and possibly required by law, should not create false impressions or encourage frivolous conduct. We would suggest that you either remove the clause “...and should be implemented in a manner that minimizes negative outcomes for consumers.” or insert in its place “...deceive people and be contrary to law.”
- Under Accountable, section a., sentence starting with “Data supporting the final outcome of an AI application...” This section should clarify if this involves non-regulated entities or only regulated entities.
- Under Accountable, section a., sentence starting with “AI actors should be responsible...–even if impacts are unintended.” This sentence should be removed as it is not the current state of the law for all situations. If the statement is not removed, it should clearly state “according to law.” or it would be a misstatement.
- Under Accountable, section a., sentence starting with “Consistent with current requirements,...” ends with “...should have a way to inquire about, review, or seek recourse for AI-driven insurance decisions.” We believe the end section is unnecessary and may create legal duties which may or may not be warranted given particular circumstances. Constitutional principles and state laws will provide appropriate relief for consumers where they believe they have been harmed as well as regulatory duties and authority. However, this document appears to be advocating for rights that may be contrary to state public policy. We would suggest removing “or seek recourse” or at least adding “...according to state laws or other relevant legal authorities.”
- Under Transparent, section a., sentence beginning with “Responsible disclosures include...” which requires disclosures to “all stakeholders.” This section is extremely broad and appears to create duties that might be *de minimus* or that do not necessarily need dissemination. We suggest adding a materiality element such as revising the term “responsible disclosures” to “responsible material disclosures” as used in the entire paragraph. Further, relevant was used to qualify stakeholders in the middle of the paragraph, but the term all stakeholders is used at the end of the paragraph. We suggest adding “relevant” back to that term to read at the end “all relevant stakeholders.”

NAMIC wants to thank the Chair and the work of the group for the ability to respond to its process. We look forward to providing future input, where necessary, in regard to this endeavor and thank you for consideration of our comments.



Sincerely,

Andrew Pauley, CPCU
Government Affairs Counsel
National Association of Mutual Insurance Companies (NAMIC)