The Innovation and Technology (EX) Task Force met via conference call Oct. 18, 2019. The following Task Force members participated: Jon Godfread, Chair (ND); Keith Schraad, Vice Chair (AZ); Lori K. Wing-Heier (AK); Jim L. Ridling represented by Jerry Workman (AL); Allen W. Kerr represented by Letty Hardee and Mel Anderson (AR); Ricardo Lara represented by Lucy Jabourian (CA); Michael Conway represented by Peg Brown (CO); Andrew N. Mais and George Bradner (CT); Stephen C. Taylor (DC); Trinidad Navarro represented by Frank Pyle (DE); David Altmaier represented by Rebecca Smid (FL); Colin M. Hayashida represented by Kathleen Nakasone (HI); Doug Ommen represented by Travis Grassel (IA); Robert H. Muriel represented by Judy Mottar (IL); Vicki Schmidt represented by LeAnn Crow (KS); Nancy G. Atkins represented by Patrick O’Connor (KY); James J. Donelon represented by Rich Piazza and Tom Travis (LA); Al Redmer Jr. represented by Robert Baron (MD); Steve Kelley represented by Tammy Lohmann, Phil Vigiuturo and Grace Arnold (MN); Chiora Lindley-Myers represented by Angela Nelson and Cynthia Amann (MO); Bruce R. Ramge (NE); Marlene Caride represented by Carl Sornson (NJ); John G. Franchini (NM); Barbara D. Richardson (NV); Jillian Froment (OH); Glen Mulready represented by Cuc Nguyen (OK); Andrew Stolfi represented by Antonio Vargas (OR); Jessica Altman represented by Michael Humphreys (PA); Elizabeth Kelleher Dwyer (RI); Raymond G. Farmer represented by Daniel Morris (SC); Larry Deiter represented by Travis Jordan (SD); Hodgen Mainda represented by David Combs (TN); Kent Sullivan represented by Reagan Ellmar (TX); Todd E. Kiser represented by Tanji Northrup (UT); Scott A. White represented by Vicki Ayers (VA); Michael S. Piechiak represented by Emily Brown (VT); Mike Kreidler represented by Molly Nollette (WA); and Mark Afable represented by Nathan Houdek (WI). Also participating was: Chris Aufenthie (ND).

1. **Adopted its Summer National Meeting Minutes**

Mr. Bradner made a motion, seconded by Director Froment, to adopt the Task Force’s Aug. 5 minutes (see NAIC Proceedings – Summer 2019, Innovation and Technology (EX) Task Force). The motion passed unanimously.

2. **Adopted the Minutes of the Artificial Intelligence (EX) Working Group**

Commissioner Godfread said that following Mr. Kosnoff’s presentation, there was discussion, reflected in the minutes, and the decision was made to request comments regarding how the OECD principles might be “tweaked” or “tailored” for applicability to the insurance industry. He said those comments were due Oct. 11, and the next steps for the Working Group will be to review the comments and meet again to discuss whether the OECD principles can be effectively “tweaked” and “tailored” to fit the insurance industry or if taking another approach would be better.

Commissioner Godfread said the Working Group’s minutes were posted to its web page (Attachment A).

Ms. Ayers made a motion, seconded by Mr. Bradner, to adopt the Working Group’s Sept. 5 minutes. The motion passed unanimously.

3. **Adopted its 2020 Proposed Charges**

Commissioner Godfread introduced the Task Force’s 2020 proposed charges (Attachment B). He said the charges include a few relatively minor changes from its 2019 charges: 1) working to amend the Unfair Trade Practices Act (#880) to clarify the anti-rebating issue; 2) adding clarification related to autonomous vehicles to reflect continuing to monitor this area closely, but removing language related to developing a white paper or model legislation; 3) adding an item to reflect closely monitoring the Market Regulation and Consumer Affairs (D) Committee’s work on data privacy, a charge referred by the Task Force and; 4) including the new Artificial Intelligence (EX) Working Group charge to the overall charges for 2020.
Mr. Bradner made a motion, seconded by Ms. Northrup, to adopt the Task Force’s 2020 proposed charges. The motion passed unanimously.

4. **Heard a Consumer Representative Request for an InsurTech Bulletin**

Commissioner Godfread asked Mr. Aufenthie to present Birny Birnbaum’s (Center for Economic Justice—CEJ) request (Attachment C) for the development of a bulletin directed to InsurTechs, titled “Why Insurance is Different from Other Consumer Products,” in Mr. Birnbaum’s absence. Mr. Aufenthie said Mr. Birnbaum, after hearing a presentation from Plug and Play at the Task Force’s meeting during the Spring National Meeting, thought their survey was too generic to provide actionable insights and did not provide any way forward. He said Mr. Birnbaum’s letter indicated it would be more useful to spend resources educating startups on the business of insurance and suggested that the Task Force develop this bulletin. Mr. Aufenthie said Mr. Birnbaum’s letter suggested the bulletin include certain points such as: 1) insurance is regulated on a state-by-state basis; 2) insurance has a limited suggestion anti-trust exemption; and 3) there is a requirement for cost-based pricing to protect insurer financial condition and prevent intentional or unintentional unfair discrimination. He said the full list of items are in the request, which is posted on the NAIC’s website.

Commissioner Godfread said agrees that Mr. Birnbaum’s points are well taken. He said many have been discussed at length and presented during the many events and opportunities state insurance regulators have had over the past several years, and there is evidence that work has created fairly strong interest and awareness on the part of accelerators and others offering counsel and mentorship to startups in the InsurTech space. He said this has resulted in an understanding of the insurance industry, its products and services, and how it is regulated.

Commissioner Godfread said there are several documents geared toward this topic available on the internet, intended to better educate startups coming into insurance. He said his staff in North Dakota undertook a project to draft something along these lines and would be happy to share that with the consumer representative group for comment. He said his staff discovered during the development of the paper that there are clearly different opinions on how best to do this. He said it could probably be debated and wordsmithed for a long period of time, but the 10 basic items mentioned in Mr. Birnbaum’s letter represent an excellent start.

Commissioner Godfread said he is not sure undertaking a charge to draft an official NAIC bulletin is the best approach and opened it up for discussion. He suggested state insurance regulators could still work with consumer representatives to develop a paper on this topic, but he said he is reluctant to add it as a charge to the Task Force at this time.

Commissioner Godfread said he wants to make everyone aware of another undertaking related to development of an NAIC designation that will be discussed more during the Fall National Meeting. He said it involves working to find a way to open up the Associate Professional in Insurance Regulation (APIR) to tweak that for the InsurTech, basically opening up the designation that would encapsulate a lot of the introduction to insurance regulation that the InsurTech may be missing. He said this work is in progress and could be a good option as well for new entrants to this space, noting it could be a good introduction to what insurance regulation looks like. He then opened it up for discussion.

Mr. Grassel said the Global Insurance Accelerator (GIA) held its InsurTech event Oct. 14–18, and this topic was covered. Commissioner Godfread said those types of events are generally where this kind of education takes place. Mr. Bradner asked if Iowa could share that presentation with this group. Mr. Grassel said he would do that.

Peter Kochenburger (University of Connecticut School of Law) said this is a good idea and should not be a heavy lift, as there is already a lot of information on this topic available in the academic community. He said that it is written so it does not become dated and that he would be happy to provide some examples for the Task Force to review. He said having a consistent document would have a lot of value, and it could be shared online and elsewhere. He also said that if it is a charge, it is more likely to get done.

Commissioner Godfread said North Dakota is willing to offer what it has done so far. He said if the consumer representatives would be willing to offer up some of the work from the academic community, it may not take long to get something ready to share with the Task Force members.

Nikki Hall (Center for Insurance Policy and Research—CIPR) said she is working on an InsurTech study and would be open to working with others to incorporate this work into the study. She said she hopes to have a draft of the study ready to deliver.
to the Innovation and Technology State Contacts Roundtable at the Fall National Meeting. Commissioner Godfread asked if what has been done to date could be shared with Ms. Hall, along with the presentation from the GIA, to get a full picture and then the study can be shared at the Roundtable. He said that a consistent document would be easier for those who work with InsurTechs and that coupled with the work on the designation side, it would be valuable. Mr. Bradner suggested it be put together as a video as opposed to a written document and could be made available online. Superintendent Dwyer said the NAIC Communications Division staff have information on how to present materials for effectiveness and that might be good to consider. Ms. Jabourian said she would like to see this material including information on the state insurance regulator’s obligation to enforce the law and that it is a legislative process to change those laws. Angela Gleason (American Property Casualty Insurance Association—APCIA) said the APCIA would like to be involved in developing this guidance. She said it should be neutral and accurate in terms of what the state laws are and should not put forth any specific agenda.

Commissioner Godfread said that the Iowa presentation will be distributed and that Mr. Aufenthie will work with Mr. Kochenburger and Ms. Hall on the study, which will be revisited at the Task Force meeting during the Fall National Meeting. He asked if there was agreement with that approach. Hearing no disagreement or objection, he said that will be the approach.

5. **Adopted a Request for NAIC Model Law Development to Revise Model #880**

Commissioner Godfread said during the Summer National Meeting, the Task Force voted to move forward with work on an anti-rebating bulletin, as well as pursue development of language to revise Model #880 to further clarify what constitutes regulatory compliance in this area of anti-rebating. He said the first step to is to submit a Request for NAIC Model Law Development to the Executive (EX) Committee and the full membership asking for approval to work on Model #880. He said the Request for NAIC Model Law Development was posted on the Task Force’s web page (Attachment D). He asked if there were any questions or discussion regarding it. David Kodama (APCIA) asked if the work would be limited to the section of Model #880 in the Request for NAIC Model Law Development, Section 4(H)(1). Commissioner Godfread said he thought the intention was to limit it to that. Mr. Kodama said the APCIA prefers it to be limited to that section.

John Fielding (The Council of Insurance Agenda and Brokers—CIAB) asked about item 4A in the Request for NAIC Model Law Development. He asked if the intent is to limit this to development of language specific to new technologies or if it is going to be generally applicable. He said the CIAB would urge that it not be limited just to technologies, but also other things that may not be specifically related to technology. Commissioner Godfread said he does not read it that way. He said he reads it to say that is how this all came about; in other words, in light of new technologies, this needs to be addressed but does not restrict amendments to Model #880 to only be related to technology.

Mr. Baron made a motion, seconded by Ms. Brown, to adopt the Request for NAIC Model Law Development. The motion passed unanimously.

6. **Discussed Comments Related to the North Dakota Anti-Rebating Bulletin**

Commissioner Godfread said the next agenda item is related to requested comments regarding the draft North Dakota anti-rebating bulletin. He said after discussions with NAIC Legal staff, the draft is more in line with a “bulletin” than a “guideline,” so it will be referred to as a “bulletin” going forward. He also said the Task Force members agreed to accept comments and continue to work on the language for a bulletin while it continues to pursue model law language development. He said the Task Force membership did not make a decision as to whether it would continue to work on “fine tuning” a North Dakota bulletin that other states may choose to use as a template for their state, or if the intent is to pursue developing an NAIC bulletin, meaning it would be developed and voted on, as a Task Force, and moved up through the NAIC committee process for a full vote of the membership.

Commissioner Godfread told the Task Force members that the comment letters have been posted to its web page (Attachment E). He said 13 letters/emails have been received, six from insurance departments and the remainder from interested parties.

Commissioner Godfread asked the Task Force members if they want to pursue an official NAIC anti-rebating bulletin, to be voted on and sent up through the NAIC process as an NAIC work product, or if they want to discuss and consider the comment letters received and continue to work with the North Dakota draft bulletin to better understand the issues as it works toward the model language. He said based on the answer to that question, the Task Force will proceed with work to finish the discussion about the bulletin. He said once approval is received from the membership regarding the Request for NAIC Model Law Development, the Task Force will proceed with the work on the model law language. He said North Dakota is going to work
on this bulletin anyway, so the thinking is to share that work with the Task Force to enable other states that want to move ahead with something in the short term.

Ms. Brown said Colorado appreciates having the North Dakota bulletin to identify some of the issues that Colorado would like to see addressed. She said all states have some rebating language, but the interpretation varies dramatically. She said that she is hoping this effort will lead to more uniformity in how states are looking at rebating and that this would apply to technology across the board.

Commissioner Godfread said the goal is to instill uniformity and reset some of the interpretation that exits across the country. He said the North Dakota bulletin is intended to address some of the issues identified and share that with other states, but the Task Force also voted to amend the Model #880, which is a good step, but both outcomes should help to make the states more consistent across the country. He said the bulletin is an option for a state to make that move sooner rather than later, and the model law process will hopefully also coincide somewhat with the bulletin language even though that is a different process.

Ms. Brown asked if the intention is to use the North Dakota bulletin as something of a launching pad for moving the model law discussion forward. Commissioner Godfread said that would be a fair assessment. Mr. Bradner said all states have the ability to be more consistent and deviate where they think they need to, but he said he would support continuing to work on the bulletin.

Superintendent Franchini agreed and said that in New Mexico, some companies that are using technology and AI to give credits or discounts want to include things to make the policyholder safer. He said he agrees with that premise, but he said state insurance regulators need to find a way to make sure technology does not get thrown in as a rebate. He said state insurance regulators need to find a way to separate the technology that mitigates risk from what used to be considered a rebate.

Commissioner Godfread agreed that the point is to look at technology that is being used for risk mitigation as something OK and by being able to be more efficient, the companies are able to save money and can pass that along to the consumer. He said he cannot see how that would be considered a rebate. He said if the focus is to offer something tied to risk mitigation, it is not a rebate. Superintendent Franchini said he agrees.

Commissioner Godfread said North Dakota has gone back and forth on whether it must be included in the policy. He said North Dakota has decided it does not necessarily need to be included, but he wants the ability to understand what is being offered in the marketplace so they can answer calls from consumers. He said he considers that to be informational sharing between the companies and the regulators.

Superintendent Franchini said not having it in the policy could lead to bad market behavior. He said if it is in the policy, it is harder to discriminate. Commissioner Godfread said that is why North Dakota initially wanted it specified in the policy. However, he said North Dakota also understands the counter argument to that, particularly in terms of having to revise the policy every time the value-added product may be upgraded. He said the level of specificity required is an issue if it is in the policy, and he and his staff have gotten more comfortable with information sharing as opposed to requiring it be in the policy. He said this will likely be debated as the Task Force works on the model law language.

Jeffrey Klein (McIntyre & Lemon PLLC), representing the Risk Insurance Management Society (RIMS), said he is pleased the Task Force is looking into this issue. He said from a procedural standpoint, the bulletin route may be important given the amount of time it might take to draft the model law language, but ultimately that will be necessary to ensure consistency and uniformity across the states. He said the challenge will be to ensure the model law language is either consistent with or overrides the bulletin.

Commissioner Godfread said the bulletin was just the first crack at this and that the model law would trump the bulletin. He said if that happened, states could rescind the bulletin or pursue another option, as there is a host of ways to handle that.

Mr. Kodama said he suggests there be more discussion as to why these products and services can or should be specified in the policy. He said the APCIA is taking the position that this discussion is being taken up because the device is being offered outside of the policy. He said if it is something offered that is specified in the policy, it would be filed and approved, and those are already in the marketplace today. He said the monetary value is included in the insurance product and that what is being discussed is more along the lines of something separate that the insurance company or producer wants to offer to the consumer,
like a supplement to the policy and provide information and risk awareness and mitigation. He said he wants to make sure that is clearly defined as this work moves forward.

Commissioner Godfread agreed and said there will be more discussion on this topic during the Task Force meeting at the Fall National Meeting. He asked Mr. Kodama to offer those comments there.

7. Discussed Other Matters

Commissioner Godfread said the annual report based on the Cybersecurity and Identity Theft Insurance Coverage Supplement filed by insurers with their annual statement was distributed to the Task Force members with the notice for this conference call. He said it has now been published on the Task Force’s web page and hearing no objections to that, it is now available to the public. He said that it is the same format, basically presents the same data as the previous reports and is based on the 2018 data year.

Having no further business, the Innovation and Technology (EX) Task Force adjourned.