INNOVATION AND TECHNOLOGY (EX) TASK FORCE

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Innovation and Technology (EX) Task Force
Austin, Texas
December 9, 2019

The Innovation and Technology (EX) Task Force met in Austin, TX, Dec. 9, 2019. The following Task Force members participated: Jon Godfread, Chair, and Chris Aufenthie (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 (AR); Michael Conway represented by Peg Brown (CO); Andrew N. Mais (CT); Stephen C. Taylor (DC); Trinidad Navarro represented by Leslie Ledogar (DE); David Altmaier represented by Mike Yaworsky (FL); Colin M. Hayashida (HI); Doug Ommen and Travis Grassel (IA); Dean L. Cameron represented by Weston Trexler (ID); Robert H. Muriel represented by CJ Metcalf (IL); Vicki Schmidt represented by LeAnn Crow (KS); Nancy G. Atkins (KY); James J. Donelon represented by Rich Piazza and Warren Byrd (LA); Al Redmer Jr. and Robert Baron (MD); Gary Anderson represented by Rachel M. Davison (MA); Anita G. Fox represented by Chad Arnold (MI); Steve Kelley represented by Tammy Lohmann and Phil Vigliaturo (MN); Chlora Lindley-Myers represented by Angela Nelson and Cynthia Amann (MO); Mike Causey represented by Tracy Biehn and Kathy Shortt (NC); John Elias represented by Christian Citarella (NH); John G. Franchini and Anna Krylova (NM); Jillian Froment (OH); Glen Mulready (OK); Andrew Stolfi (OR); Jessica Altman and Michael Humphreys (PA); Elizabeth Kelleher Dwyer (RI); Raymond G. Farmer (SC); Larry Deiter (SD); Hodgen Mainda represented by Carter Lawrence (TN); Kent Sullivan represented by Michael Nored (TX); Scott A. White represented by Vicki Ayers and Eric Lowe (VA); Michael S. Pieciak represented by Kevin Gaffney (VT); Mike Kreidler represented by Molly Nollette and Lichiou Lee (WA); and Mark Afable represented by Nathan Houdek and Olivia Hwang (WI). Also participating was: Eric A. Cioppa (ME).

1. Adopted its Oct. 18 Minutes

The Task Force met Oct. 18 and took the following action: 1) adopted the Artificial Intelligence (EX) Working Group’s Sept. 5 minutes; 2) adopted its 2020 proposed charges; and 3) adopted a Request for NAIC Model Law Development to develop model law language for the Unfair Trade Practices Act (#880).

Mr. Taylor made a motion, seconded by Director Froment, to adopt the Task Force’s Oct. 18 minutes (Attachment Four). The motion passed unanimously.

2. Adopted the Reports of its Working Groups

a. Big Data (EX) Working Group

Commissioner Ommen said the Big Data (EX) Working Group met Dec. 7. He said after the Spring National Meeting and the referral to the Life Insurance and Annuities (A) Committee to study the use of external data and data analytics in accelerated life underwriting, the Big Data (EX) Working Group turned its attention to the use of data to fraud detection and claim settlements.

Commissioner Ommen said the Working Group received presentations from the Insurance Services Office (ISO) and the NICB (National Insurance Crime Bureau) to help inform the Working Group about current market practices in the property/casualty (P/C) industry. He said ISO provided an overview of three of its products the insurance industry uses for fraud detection and claim settlement: 1) ClaimSearch, which contains 1.4 billion records and is used by insurance companies to identify questionable relationships or networks within a claim record; 2) Verisk Weather, which provides historical weather data and loss exposure analysis for companies; and 3) ClaimXperience, a policyholder collaboration portal used for processing lower value property damage claims.

Commissioner Ommen said the NICB presentation primarily focused on the NICB’s Geospatial Intelligence Center (GIC), which provides aerial imagery of pre- and post-catastrophe conditions of property to assess potential fraud and speed up the claim settlement process.

Commissioner Ommen said the Working Group also received a brief update from the Casualty Actuarial and Statistical (C) Task Force regarding its white paper on best practices for the regulatory review of predictive analytics. He said the Task Force will soon issue its third draft of the white paper, but it may need further input from the Big Data (EX) Working Group on the issues of causality versus statistical correlation and the confidentiality of predictive models. He said the Working Group would...
like to delve deeper into the specific data elements used in fraud detection and claim settlement models beyond the traditional data collected during a claim investigation, and it will hold an interim conference call to explore these issues in more detail.

Commissioner Ommen made a motion, seconded by Commissioner Mais, to adopt the report of the Big Data (EX) Working Group (Attachment One). The motion passed unanimously.

b. Speed to Market (EX) Working Group

Superintendent Franchini said the Speed to Market (EX) Working Group met Dec. 3 and Sept. 12. During its Sept. 12 meeting, the Working Group discussed and reviewed System for Electronic Rate and Form Filing (SERFF) enhancements and prioritization of several focus areas. He said NAIC staff members discussed suggested areas of improvement and goals for submission validations, review tools, workload management, performance and reliability, the search function, document management, reporting and data export, streamlined correspondence, and user experience. He said input was sought from Working Group members, interested state insurance regulators and interested parties as to which areas of improvement would provide the most benefit. He said a survey was distributed to seek feedback from all states. During its Dec. 3 meeting, the Working Group took the following action: 1) adopted its Sept. 12 minutes; 2) heard an update on the SERFF capabilities survey; and 3) received a brief overview of the Request for Purchase (RFP) for a consultant to conduct a business and technical assessment of SERFF.

Superintendent Franchini said there was a great response to the SERFF survey sent in September, and all but 12 member jurisdictions provided feedback. He said some of the enhancement items reviewed are already being worked into the analysis and development process by NAIC staff, and others are going through the development pipeline. He said these matters will be reflected in an action plan for 2020 and beyond, so the SERFF application can provide more functionality for states and insurance companies moving forward.

Superintendent Franchini made a motion, seconded by Director Farmer, to adopt the report of the Speed to Market (EX) Working Group (Attachment Two). The motion passed unanimously.

c. Artificial Intelligence (EX) Working Group

Commissioner Godfread said the Artificial Intelligence (EX) Working Group met Dec. 7 and discussed comments related to using the Organisation for Economic Co-operation and Development (OECD) Artificial Intelligence (AI) Principles as a basis for developing AI principles for the insurance industry. He said it reviewed a draft principles document from the North Dakota Insurance Department as a “strawman” for moving forward to complete the deliverable and decided to expose the draft for a public comment period ending Jan. 17, 2020. He said the Working Group also agreed to meet at least once via conference call prior to the 2020 Spring National Meeting to discuss the comments and the draft.

Director Froment made a motion, seconded by Director Schraad, to adopt the report of the Artificial Intelligence (EX) Working Group (Attachment Three). The motion passed unanimously.

d. Innovation and Technology State Contacts

Denise Matthews (NAIC) said the Innovation and Technology State Contacts met Dec. 6. She said George Bradner (CT) chaired and reviewed the purpose of the meeting. She said the attendees discussed a proposed process to facilitate more frequent and regular webinars on various innovation and technology topics or presentations from innovators. She said the group agreed it would be appropriate and that it will proceed with that in 2020. Ms. Matthews said the group also discussed defining “regulatory sandbox” since that term gets used frequently. She said there was a desire to ensure that when that term is used, there is a common understanding of what is means. She said NAIC legal staff are also tracking sandbox and other types of state organized activity. She said Kentucky and Vermont are currently the only states to have implemented an insurance regulatory sandbox.

Ms. Matthews also said the group discussed innovation and technology education and information opportunities, including dates and locations taking place in 2020. She said updates on the Western Zone Silicon Valley Program, the InsureTech Connect event and the Insurtech on the Silicon Prairie event, all held in 2019, were provided by Ms. Nollette, Mr. Aufenthie and Matt Holman (NE), respectively. She said the group also received presentations on regulatory technology proof of concepts underway in a few states. She said the presentations focused on form filing review and analysis workflow tools that are using technology and some machine learning to make that process more efficient, including a discussion related to SERFF.
3. **Discussed Anti-Rebating Draft Bulletin and Model Law Amendments**

Commissioner Godfread said the Task Force voted to move forward with Request for NAIC Model Law Development to modify Model #880 during the Summer National Meeting. He said the Task Force reviewed and adopted it during its Oct. 18 meeting, and the Executive (EX) Committee has since adopted it. Therefore, he said the Task Force may proceed with work on model law language. Commissioner Godfread said prior to deciding to work on the model law, the Task Force discussed a North Dakota draft bulletin on the rebating topic, and the Task Force has received comments related to that language. He said it was considered something that could be done in the nearer term or possibly as an alternative to the model law approach. He said that while the Task Force members agreed to accept comments and continue to work on the language for a bulletin, Task Force members did not make a decision as to if it wanted to pursue this work as an exercise to fine tune a North Dakota bulletin that other states may choose to use as a template for their state, or if it wanted to actually pursue using this to create an NAIC work product. He asked if it was the will of the Task Force members to pursue an official NAIC anti-rebating bulletin, or to consider that work complete and move on with the work on the model language. Director Froment and Director Wing-Heier both said they thought it was time to move on to work on the model law language. Ms. Nollette said the work on the North Dakota bulletin was very valuable and will inform the model law work but agreed it was time to focus on the model law. Commissioner Godfread said there was clear direction to proceed and discontinue work on the bulletin. He said there would be one more small tweak to the North Dakota bulletin before it is finalized, but he hopes to get it in place early next year and would be happy to work with any state interested in the bulletin.

Commissioner Godfread asked if anyone has any thoughts or suggestions regarding an approach to drafting the model law language discussed in the Request for NAIC Model Law Development. He said some draft language has been submitted by the American Property and Casualty Insurance Association (APCIA) during the Task Force meeting at the NAIC/NIPR Insurance Summit in June, and the Task Force has received a lot of thoughtful input via emails, comment letters and presentations. Director Ramge recommended the Task Force assign this to another group to work via conference call with subject matter experts (SMEs) and comments from interested parties, and Nebraska would volunteer to be on that group. Commissioner Richardson agreed with Director Ramge that a smaller group would be good to begin this work. Commissioner Ommen supported that as well to allow that drafting to take place but said there will obviously be a lot of opportunity for others to comment. Commissioner Godfread suggested this be a drafting group as opposed to an NAIC working group. Director Farmer agreed as did other members of the Task Force. Commissioner Godfread asked for volunteers to participate in the drafting group and to let NAIC staff know if interested. Hearing no other discussion, Commissioner Godfread said the drafting group will be formed and to move forward with the work on the model law.

4. **Received an Update on Cybersecurity Initiatives, Including the Implementation of Model #668, and Data Privacy from the Privacy Protections (D) Working Group**

Commissioner Godfread said the Cybersecurity (EX) Working Group was disbanded in March 2018, and the Task Force now has the responsibility to monitor developments in this area. He said data, innovation and cyber continue to be a key regulatory priority including not only the ongoing work to implement the model law, but also monitoring data privacy activity and applicability to the insurance space. He said efforts in this area need to be well coordinated, and updates will continue to be provided to committees with a vested interest. He said he encourages everyone to look at the different committees overseeing these workstreams and pay attention to that activity.

Director Farmer provided an update on the NAIC’s *Insurance Data Security Model Law* (#668) and its implementation. He said adoption of the model law remains a high priority for the NAIC. He said state insurance regulators are dedicated to developing the necessary tools to ensure consumers are protected from data breaches and that Model #668 is the best way states can lead in this effort. He said eight states have adopted laws based on the NAIC model to date, and more are anticipated to follow next year. He said the U.S. Department of the Treasury (Treasury Department) endorsed the model law and recommended its prompt and uniform adoption by the states to avoid congressional action setting forth uniform requirements for insurer data security.

Director Farmer said a joint Kansas and Missouri ransomware cyber tabletop exercise was held on Sept. 5 at the NAIC Central Office in Kansas City, MO. He said the event was well attended, with more than 40 participants comprised of staff from state insurance and information technology (IT) departments, 12 companies, financial examiners from several states, the Treasury Department and law enforcement. These events have prepared the NAIC with templatized cyber scenarios, an event planning timeline and direction on facilitation of these events. He said Illinois will host a cyber tabletop exercise in Chicago in 2020, and the NAIC is currently working with Wisconsin to determine if this could be a joint event similar to the Kansas/Missouri tabletop and if it can be scheduled sometime between May and October 2020. He said a cyber tabletop exercise will also be held in Ohio on May 19, 2020, for Ohio domestic insurers only, as well as support entities like the FBI and local law enforcement.
Ms. Amann said the work will be to decide how effective amendments to these models may be versus drafting something new. She said there is a chart on the NAIC webpage outlining state activity to date in this area. She said that NAIC legal staff are trying to keep it current, so contact NAIC staff if updates need to be made.

5. **Received an Update on Drafting a Document for Startups**

Commissioner Godfread said Birny Birnbaum (CEJ) submitted a request to the Task Force to draft a document targeted at educating startups regarding the difference between insurance products and other consumer products in the banking arena or otherwise. He said Mr. Birnbaum suggested that a document be developed for InsurTechs on why insurance is different from banking and other consumer products. Commissioner Godfread said most would likely agree Mr. Birnbaum’s points are well taken. Commissioner Godfread said during events and opportunities that state insurance regulators have participated in over the past several years, it appears there has been fairly strong interest and awareness on the part of accelerators and others in terms of offering counsel and mentorship to startups in the InsurTech space, in regard to better understanding the insurance industry, its products and services, as well as how it is regulated. He said he is not sure that undertaking a charge to draft an official NAIC white paper on this topic would make sense or should be a priority for the Task Force, but maybe something could be drafted, informally, to address this area. He also said the NAIC is working on opening up the Associate Professional in Insurance Regulation (APIR) designation program to tweak it for InsurTechs, and that could encapsulate a lot of the introduction to insurance regulation that InsurTechs may be missing. In addition, he said Shanique V. Hall (Center for Insurance Policy and Research—CIPR) is working on an InsurTech study and that she would be open to working with others to incorporate this work into the study as well.

Commissioner Godfread said he would like to discuss the 10 points raised in Mr. Birnbaum’s letter. He said they were included in materials sent to the Task Force prior to this meeting. He said Task Force members were asked to read them over and give some thought as to if they think: 1) the 10 points represent a complete list of items that should be included in a document of this type; 2) if there is something important missing or something included that they think is inappropriate 3) if it is appropriate, is the language effective. Commissioner Godfread said the Task Force could work on the key points and then either publish just as that, as key points, or hand them off to be incorporated into something else—possibly the designation program materials.

Commissioner Ommen said Iowa has information available to startups and the responsibility to communicate to those coming into the insurance business. He said the suggestions made by the CEJ indicate some common themes that are obviously very mindful of concerns that many of on the Task Force share, but he said risk discrimination is what we do in the business of insurance and is where companies compete to become faster and more efficient. He said this document might create an overemphasis on one particular aspect of the Task Force’s concerns, and it is difficult to boil all of this down to a short list. He said the Task Force should work on all of the issues contained in the list in Mr. Birnbaum’s letter, but it may be too heavily focused on one theme.

Commissioner Godfread said he likes the idea of working with CIPR and the designation program, along with the consumer groups. Director Froment agreed as well and said Ohio has a designated person who meets with the startups. She said they come in with different levels of knowledge, and it takes a person to navigate where they are and then work with them. Mr. Slape said there is a list of state innovation and technology contacts on the NAIC website. He said it would be good to get that message out through social media and other methods, reminding startups of that list so they can contact the right person and get direct feedback.
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Mr. Birnbaum said he would defer to the Task Force members’ best judgment on how to get this message out to InsurTechs. He said he wanted to clarify that the intent of his letter was not to provide a list of things that they need to do to comply with insurance regulation or a guide to becoming a producer or licensed company, but rather to explain the significant differences between insurance products and other consumer products. He said many InsurTechs come from other markets where there is no rate regulation or licensing and capital requirements. He said the goal was to help them navigate the regulatory system and to help them understand the key concepts and differences from other consumer product markets, using the unfair discrimination issue as an example.

Peter Kochenburger (University of Connecticut School of Law) said even skilled and knowledgeable individuals in other areas often do not know that these regulatory processes exist and that they should talk to a state insurance regulator. Commissioner Godfrey said he has seen a shift over the past few years and progress has been made, but that does not mean everybody is there yet.

Commissioner Godfrey said the letter includes a good list and points out those differences. He said state insurance regulators are committed to working with consumer groups to ensure this gets addressed. He said working through CIPR and the NAIC designation program, in his opinion, is the best approach.

6. Heard an Update on the NCOIL Insurance Modernization Activity

State Rep. Matt Lehman (R-IN) and the National Conference of Insurance Legislators (NCOIL) vice president provided an update on NCOIL’s insurance modernization activity. Rep. Lehman said about a year ago, NCOIL began to receive comments about the market being ripe for clean-up legislation around technology and doing business the old way. He said a prime example is that some states do not have legislation to allow consumers to opt into electronic delivery of documents but mandate a requirement to do so via the U.S. mail, which is antiquated and needs to be updated. He said NCOIL made it a 2019 priority to develop insurance modernization legislation and at first was not sure if it would be some type of omnibus modernization deliverable or if it would get into more detailed issues. He said NCOIL looked at: 1) allowing consumers to opt into electronic delivery and posting of insurance notices; 2) modernizing the current paper process used to transfer ownership of a total loss vehicle; and 3) modernizing the anti-rebating laws. He said he heard the discussion on the anti-rebating topic earlier in the meeting and would be happy to work as partners with the NAIC on that effort and any topics the Task Force may wish to include. He expanded on the first topic, saying the industry took the federal e-signature law and customized it for the insurance industry. He said it requires an opt-in, so the consumer must consent, and it excludes cancellation and renewal notices. He said this type of insurance delivery method has been adopted in approximately 38 states, and approximately 25 states have enacted insurance posting legislation that is opt-out. This means that it only applies to the policy document itself and does not include any personally identifiable information (PII), and the consumer can request a paper copy, which most still do.

Rep. Lehman said in the case of an accident that results in a total loss where the insurance company takes ownership of the vehicle, the process is completely paper-based and requires paperwork that the consumer often does not have or cannot find. As a result, the consumer has to file for a duplicate from the Department of Motor Vehicles (DMV), which takes time. He suggested if the process were digitized, the process could be sped up, money would be saved, and the consumer would get his or her money faster. He said the proposed NCOIL model would require the DMVs to develop and use electronic systems to process those transactions. He said Florida passed a law and that he hopes the NCOIL model can gain traction across the country.

Rep. Lehman said anti-rebating issues have been brought up a lot and are finally getting attention. He said the law covering this issue was drafted a long time ago when life insurance agents were paying rebates to clients to increase sales and then were demanding higher commissions, which led to solvency issues. He said he recognized the state insurance regulator’s charge is to not only protect consumers but also the solvency of companies, making this a big issue that also potentially has unfair discriminatory practice implications. He said he considers rebating to be an issue between brokers and carriers and not as much to the consumer as a loser. He said unfair trade practice issues are driven by the consumer. Therefore, rebating is tied more to the issue of an anti-trade violation as opposed to unfair trade practices, so they should be viewed as separate items. He said earlier conversations among the Task Force members regarding the desire to work on a model to avoid multiple bulletins and inconsistencies makes sense and that as a broker, he is aware of the challenges posed by state differences. Therefore, he said NCOIL is looking for a standard or benchmark for this area. He said the NCOIL model addresses those things and moves toward that direction. He said NCOIL is here to work with state insurance commissioners and to get those laws passed. He said he would be happy to work with the Task Force’s drafting group as a resource. Commissioner Godfrey said the Task Force would definitely keep NCOIL apprised on its work as the two groups share a common goal to simplify this and make things easier and more understandable.
Rep. Lehman said he liked the three bullet points in the North Dakota draft bulletin on anti-rebating and, as the author of the NCOIL model, would be considering those as a filter to put the model through.

7. Discussed Other Matters

Commissioner Godfread said CIPR has posted a great summary of the “Time to Dust the Anti-Rebating Laws” Journal of Insurance Regulators (JIR) paper and encouraged those working on the anti-rebating model law language to read it. He also said the Task Force has a charge to: “Monitor and discuss regulatory issues that arise with the development of autonomous vehicles. Study and, if necessary, develop recommendations for changes needed to the state-based insurance regulatory framework.” He said in keeping with that, he wanted to let the Task Force members know about an upcoming webinar on the subject. Ms. Hall provided a quick update on the webinar, noting it would build on the CIPR Autonomous Vehicle Symposium held in 2018 in Silicon Valley regarding this emerging technology.

Having no further business, the Innovation and Technology (EX) Task Force adjourned.
The Big Data (EX) Working Group of the Innovation and Technology (EX) Task Force met in Austin, TX, Dec. 7, 2019. The following Working Group members participated: Doug Ommen, Chair (IA); Elizabeth Kelleher Dwyer, Vice Chair, represented by Matt Gendron (RI); George Bradner and Wanchin Chou (CT); Stephen C. Taylor and Sharon Shipp (DC); Frank Pyle (DE); Sandra Starnes (FL); Robert Muriel and Judy Mottar (IL); Rich Piazza (LA); Robert Baron (MD); Timothy Schott (ME); Karen Dennis (MI); Phil Vigliaturo (MN); Angela Nelson (MO); Christian Citarella (NH); Seong-min Eom (NJ); Jillian Froment (OH); Andrew Stolfi and TK Keen (OR); Michael McKenney and Shannen Logue (PA); Kendall Buchanan (SC); Rachel Cloyd and J’ne Byckovski (TX); Tomasz Serbinowski (UT); and Christina Rouleau (VT).

1. Adopted its Oct. 7 Minutes

The Working Group met Oct. 7 and took the following action: 1) adopted its Summer National Meeting minutes; and 2) discussed the use of big data in fraud detection and claim settlement. Mr. Bradner made a motion, seconded by Ms. Nelson, to adopt the Working Group’s Oct. 7 minutes (Attachment One-A). The motion passed unanimously.

2. Discussed the Use of Big Data in Fraud Detection and Claim Settlement

Commissioner Ommen said the Working Group heard a presentation at the Summer National Meeting from Kevin Rawlins (Insurance Services Office—ISO) about ISO’s ClaimSearch and a presentation from Alan Haskins (National Insurance Crime Bureau—NICB) about NICB’s fraud detection services. Commissioner Ommen said the Working Group also heard a presentation from Carlos Martins about ISO’s claims solutions during its Oct. 7 conference call. Commissioner Ommen reviewed the three charges of the Working Group. He said the fraud detection and claims settlement practices discussed by the Working Group are subject to his regulatory jurisdiction under both Iowa’s unfair trade law and Iowa’s unfair claim settlement practices provisions, which are based upon the NAIC Unfair Claims Settlement Practices Act (#900). Commissioner Ommen asked if the Working Group members have any observations about the adequacy of the current state insurance regulatory framework used to oversee the use of big data in fraud detection and claim settlement.

Ms. Nelson said she has concerns about the use of non-insurance data in fraud detection models because consumers may not know about them is being used and how to correct inaccurate data. Ms. Nelson said this concern is heightened with the use of third-party vendors because state insurance regulators may have challenges with access to information of third-party vendors. Mr. McKenney said the presentations from ISO suggested there is not a lot of oversight by insurers. Mr. Baron said the Maryland Insurance Department would hold the licensee accountable, similar to how insurers are held accountable for the action of independent adjusters who have been hired.

Birny Birnbaum (Center for Economic Justice—CEJ) said there is a need for additional oversight of third-party vendors, which he believes are operating as advisory organizations. Mr. Birnbaum said state insurance regulators should review whether an insurer’s practices result in disparate impact and should require insurers to disclose to consumers what third-party data and algorithms are being used. Peter Kochenburger (University of Connecticut School of Law) said even if states have regulatory authority under unfair trade laws, consumers need to know what data is being used because the accuracy of data can only be determined by the consumer. Mr. Kochenburger said similar protections found in the federal Fair Credit Reporting Act should be applied to the use of data for fraud detection and claim settlement. Commissioner Ommen said he would hold the insurer responsible for validating the accuracy of the data and model outputs. Mr. Gendron said state insurance regulators need more detail on how insurers ensure the accuracy of data being used. Mr. Bradner agreed and said insurers’ use of data from third-party vendors and how insurers validate the accuracy of this data warrants additional discussion.

3. Received a Report from the Casualty Actuarial and Statistical (C) Task Force

Mr. Piazza said the Casualty Actuarial and Statistical (C) Task Force has the following three charges to coordinate with the Big Data (EX) Working Group: 1) facilitate training and sharing of expertise on predictive analytics; 2) draft guidance for the
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review of state rate filings based on complex predictive models; and 3) draft changes to the Product Filing Review Handbook to include best practices for review of predictive models and analytics filed by insurers to justify rates. Regarding the first charge, Mr. Piazza said the Task Force conducts monthly public education webinars on rate filings and regulator-to-regulator conference calls on specific rate filings of concern. Mr. Piazza said the Task Force’s public calls since the Summer National Meeting addressed neural network, natural language processing, analytics and actual data mining, and the open source model “R” and predictive analytics. Regarding the two other charges, Mr. Piazza said the Task Force exposed the most recent draft of the regulatory review of predictive modeling white paper on Oct. 15 for a public comment period ending Nov. 22. The Task Force received comments from 11 interested parties and is beginning its review of the comments.

4. Received a Report from the Accelerated Underwriting (A) Working Group

Director Muriel said the Accelerated Underwriting (A) Working Group met Oct. 2 to review a work plan for accomplishing its charge, which is to “consider the use of external data and data analytics in accelerated life underwriting, including consideration of the ongoing work of the Life Actuarial (A) Task Force on the issue and, if appropriate, drafting guidance for the states.” Director Muriel said the work plan contemplates three general phases. The first phase is information gathering. The second phase is to identify issues and the best ways to address them (white paper, model bulletin, model law or something else). The third phase is to develop a work product by the 2020 Fall National Meeting.

5. Received an Update on NAIC Technical and Non-Technical Rate Review Trainings

Kris DeFrain (NAIC) said the NAIC has been sponsoring predictive analytics training since 2017 through what is called the “Book Club” of the Casualty Actuarial and Statistical (C) Task Force. Ms. DeFrain said the topics presented at the “Book Club” are mostly focused on the review of predictive analytics in property/casualty (P/C) rate filings. She said the NAIC is developing non-technical and technical training. The non-technical training will be provided to rate filing reviewers and market conduct examiners and focus on how to ensure vital information is contained in a rate filing, how to evaluate rate classes for unfair discrimination and understanding when additional actuarial assistance may be needed. Ms. DeFrain said this training will be conducted after the Task Force completes its white paper toward the end of this year or early in 2020. She said the technical training will be conducted by the NAIC’s consultant, Dorothy Andrews (Actuarial & Analytics Consortium LLC) and will focus on training actuaries and statisticians. Ms. DeFrain said the technical training will be presented through on-demand modules and will focus on data inputs, mathematical distributions and statistical techniques.

In response to Commissioner Ommen’s question about training addressing the use of models in fraud detection, Ms. DeFrain said the training will focus on rate models but could be expanded in the future to include the assessment of models used for fraud detection and claim settlement. Mr. Vigliaturo said the technical training is very good, and each session takes approximately 12 hours to complete. Mr. Vigliaturo said he thinks the courses will increase the knowledge of participants but will not necessarily lead to a quicker review of rate filings. Mr. Vigliaturo suggested the training be added to the list of courses for the NAIC’s Insurance Regulator Professional Designation Program.

6. Heard a Presentation on the Role of Advisory Organizations from the CEJ

Mr. Birnbaum provided a presentation on the history of advisory organizations, current regulatory requirements for advisory organizations and third-party vendors that he believes are operating as unlicensed advisory organizations. He said the federal McCarran-Ferguson Act provides insurers with a limited exemption from federal antitrust laws to the extent that insurance is regulated by the states. Without this exemption from antitrust laws, Mr. Birnbaum said insurers would not be able to use advisory organizations to collect and compile historical information for ratemaking purposes. Mr. Birnbaum said states have oversight of these activities through the licensing of advisory organizations. In the late 1980s, Mr. Birnbaum said a number of state attorneys general brought legal action against ISO, alleging its involvement in anticompetitive activities. Mr. Birnbaum said ISO settled this litigation by changing its corporate structure and going to lost costs in states for lines of insurance where it had not already done so. By the early 1990s, Mr. Birnbaum said more states had enacted legislation to require organizations to file prospective loss costs instead of fully developed rates. Mr. Birnbaum said rating organizations became more widely referred to as advisory organizations, with state insurance regulators having oversight of data collected and algorithms used for loss costs. Mr. Birnbaum said states conduct advisory organization examinations to determine that an advisory organization is performing its permitted regulated functions in a manner consistent with state rating laws and in a manner that results in accurate and compliant products or services for its subscribing companies.
Mr. Birnbaum said new third-party vendors engaged in collecting decision marking are not licensed as advisory organizations. Mr. Birnbaum said the following activities raise antitrust concerns that require state supervision of organizations exempt from federal antitrust laws: 1) collecting data from insurers; 2) adding additional data to insurer data; and 3) analyzing the data to producer pricing recommendations in the form of prospective loss costs or risk classification. Mr. Birnbaum questioned what the functional difference is between ISO, which is licensed as an advisory organization and produces personal auto risk classification relativities and third-party vendors, such as TransUnion, which provide credit scores, criminal history scores or vehicle scores. Mr. Birnbaum said there is a need to create the accountability and regulatory oversight of vendors of big data algorithms as envisioned in antitrust laws and advisory organization statutes. Mr. Birnbaum said this may mean not only bringing regulatory oversight to third-party algorithm vendors, but also updating advisory organization requirements and procedures for the era of big data. Commissioner Ommen said this is an important issue to which the Working Group should give further consideration.

Having no further business, the Big Data (EX) Working Group adjourned.
The Big Data (EX) Working Group of the Innovation and Technology (EX) Task Force met via conference call Oct. 7, 2019. The following Working Group members participated: Doug Ommen, Chair (IA); Elizabeth Kelleher Dwyer, Vice Chair (RI); Lori K. Wing-Heier, Shauna Nickel and Alex Romero (AK); Jerry Workman (AL); George Bradner and Wanchin Chou (CT); Stephen C. Taylor (DC); Frank Pyle (DE); Carly Jamarowicz, Rebecca Smid and Mike Yaworsky (FL); Susan Lamb (IL); Rich Piazza, Nathan Strebeck and Jeff Zewe (LA); Robert Baron (MD); Karen Dennis (MI); Phil Vigliaturo (MN); Carrie Couch, Angela Nelson, Julie Lederer and Cynthia Amann (MO); Christian Citarella (NH); Mark McGill (NJ); Mitchell Moore (NV); Jennifer Demory, Jillian Froment, Angela Dingus and Rodney Beech (OH); David Dahl, TK Keen, Ying Liu and Andrew Stolfi (OR); Michael McKenny (PA); Kendall Buchanan (SC); J’ne Byckovski and Rachel Cloyd (TX); Armand Glick, Reed Stringham and Tracy Klausmeier (UT). Also participating were: Lindsay Bates and Travis Grassel (IA).

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

Mr. Piazza made a motion, seconded by Ms. Nelson, to adopt the Working Group’s Aug. 3 minutes (see NAIC Proceedings – Summer 2019, Innovation and Technology (EX) Task Force, Attachment One ). The motion passed unanimously.

2. **Discussed the Use of Big Data in Fraud Detection and Claim Settlement**

Commissioner Ommen said Carlos Martins (ISO Claims Solutions) will provide an update to the Working Group’s discussion with ISO at the Summer National Meeting. Commissioner Ommen asked for more detail on how ISO uses data in the ClaimSearch database. Mr. Martins said the ISO ClaimSearch database has been in existence since 1971. It is a contributory claims database, and subscribers must use all reasonable measures to ensure the quality of data being submitted. Mr. Martins said ISO also has data quality checks to verify data is what they would expect. For example, a company could not submit a date of birth as all nines or zeros. Mr. Martin said ISO uses commercially available address scrubbing solutions to ensure addresses are correct and adhere to U.S. postal code standards. Mr. Martins said ISO sends Social Security numbers (SSNs) to the federal Death Master File (DMF) to ensure the SSN is not associated with a deceased individual. If an SSN is associated with a deceased individual, ISO provides an alert to the subscriber. Mr. Martin said ISO will alert a subscriber if an address is associated with a prison or mail drop location.

Mr. Martins said ISO has had a voluntary program in existence for 15 years through which a person can contest information in the ClaimSearch database. If a citizen contests information, ISO communicates with the insurer that submitted the information and works with the insurer to address any inaccuracy. ISO also adds a notation in the database that the consumer has contested data submitted. Mr. Martins said ISO does not charge a fee for this service and had had only three inquiries in the last year. Mr. Martins said only the insurer that submitted the data can correct their information. Commissioner Ommen asked if all aspects of a claim are submitted at the consent of the consumer. Mr. Martins said consumer consent is not needed since the database operates under a fraud exemption of the federal Gramm-Leach-Bliley Act (GLBA).

Ms. Nelson said ISO’s website references a product called ClaimDirector, which advertises that subscribers are given access to financial, civil and criminal records. Ms. Nelson asked if insurers accessing and using this information is disclosed to consumers. Mr. Martins said ClaimDirector is a database created in 1971 and is used to deter and identify fraud and a consumer’s claim history. Mr. Martins said the database allows insurers to identify potentially duplicative claims being made with multiple insurers. Mr. Martin said the database helps process meritorious claims as quickly as possible. Mr. Martins said the database helps industry understand claims with suspicious indicators, but ISO does not make a judgment on whether a claim is fraudulent. Mr. Martins said ClaimDirector applies a set of business rules created by seasoned insurance claims professionals and presents back a score and report on rules that fail. Mr. Martin said suspicious indicators would include an individual submitting similar claims with multiple insurers or an individual filing a claim after two weeks of purchasing insurance without any evidence of prior insurance. Mr. Martin said ClaimDirector also pulls in data from third-party sources, which might include information on whether a person filing a claim has been convicted on an insurance related crime. Mr. Martins said ISO provides tips and leads to insurers for an insurer to investigate. Mr. Martins said ClaimSearch DNA is provided to all ClaimSearch subscribers. Mr. Martins said ClaimSearch DNA identifies relationships between claims and insurers across the industry. For
example, Mr. Martins said the database will identify cell phone numbers and addresses associated with insurance claims being processed by multiple insurers.

Mr. Chou asked how these databases are different from the Comprehensive Loss Underwriting Exchange (CLUE) database. Mr. Martins said CLUE is an underwriting database, and ClaimSearch data cannot be commingled with an underwriting database, which is subject to the federal Fair Credit Reporting Act (FCRA).

Ms. Nelson asked what disclosures are made to consumers and how a consumer would know an ISO database has been used in the claims process and how to contest data in a database. Mr. Martins said ISO contracts require confidentiality and privacy of information contributed to database and, by contract, subscribers are not allowed to share database reports with consumers or other third parties without ISO’s consent. Commissioner Ommen said it appears ISO uses business rules to identify potential fraud and provides an insurance fraud score that could potentially place a claim in a holding pattern for settlement. Commissioner Ommen asked how a consumer would evaluate data that might be delaying a claim settlement. Mr. Martin said a company claims adjuster should let the claimant know the claim investigation has identified information that might delay the claim settlement. At this point, the claims adjuster and claimant would discuss this information, and the claims adjuster would know if the claimant questions the accuracy of the information. At the same time, Mr. Martins said the claims adjuster would not be trained to tell a consumer about the existence of an ISO report because of the confidentiality of the report. If the claimant questions the accuracy of the data, the claims adjuster would then work with ISO to obtain more information on which insurer submitted the prior claims data. Ms. Nelson said she is most concerned with ISO accessing and using financial, civil and criminal records and a consumer not knowing this information is being used or having any recourse if there is an error in this information.

Mr. Martins said if ISO uses third-party, publicly available data, ISO would notify a subscriber of where information was obtained if the consumer contested this information. Mr. Martins said ISO would work with the third-party vendor to address data errors and said he believes vendors would have a process to correct data. Ms. Nelson said she is concerned with a claims adjuster being provided a high-level score but not the detail of how the score was calculated. Ms. Nelson said this requires the claim adjuster to ask about the detail of how a score was calculated and then to share this information with a claimant. Mr. Martins said ISO provides reasons for a score, and a claim adjuster would need to determine relevance to the claim. Mr. Martins said insurers have different thresholds on reasons they would identify a claim to be potentially fraudulent. Mr. Martins said this process is used to process claims quickly, and only a small percentage have claims that have a fraud score that prompts further investigation.

Commissioner Ommen asked if data may identify a consumer’s propensity for litigation and whether state insurance regulators have reviewed the business rules being used. Mr. Martins said he is not aware of any data or product used to predict a consumer’s propensity for litigation. Mr. Martins said ISO works with subscribers on market conduct exams and that the rules used to identify a claim as potentially fraudulent come from the National Insurance Crime Bureau (NICB) and seasoned claims professionals. Mr. Martins said ISO has tried to automate these rules for more efficient claims processing.

Mr. Martins said data is not used for rating and underwriting, and this is a contractual requirement for companies submitting data. Mr. Martins said ISO does not have any systems or scores that identify gender, ethnicity or other prohibited factors. Mr. Martins said ISO also does not use this information in their databases. Mr. Martins said ISO is committed to safeguarding industry data. ISO applies the latest encryption techniques and is audited to Service Organization Control (SOC) 2 and SOC 3 level to make sure sensitive information is not misused. Mr. Martins said ISO audits data use by subscribers to make sure subscribers use data in accordance with contractual obligations.

Birny Birnbaum (Center for Economic Justice—CEJ) asked if ClaimSearch is FCRA-complaint. Mr. Martin said FCRA standards do not apply to ClaimSearch. Mr. Birnbaum asked if ISO has assessed rules to determine if they result in a disparate impact to low-income and minority consumers. Mr. Birnbaum asked if ISO has assessed algorithms to identify how many false positives occur when identifying a claim as potentially fraudulent. Mr. Martin said ISO has not conducted these types of assessments. Mr. Martins said ISO provides tips and leads to insurers and does not make a final judgement on claims. Mr. Martins said ISO works with subscribers on data quality to ensure that tips and leads are appropriate. In response to Mr. Birnbaum’s question about disparate impact, Mr. Martins said ISO does not know impact because ISO does not conduct this type of analysis.
Peter Kochenburger (University of Connecticut School of Law) said there appears to be no communication between ISO and the consumer to confirm accuracy of information in database. Mr. Kochenburger asked if ISO provides any guidelines to insurers on how to address data quality with consumers. Mr. Martins said ISO requires subscribers to use reasonable efforts to ensure data quality, and any data quality issues are brought to the attention of subscribers. Mr. Martins said data quality issues are rare because ISO receives data directly from subscribers’ claims systems. Mr. Martins confirmed there is no contact between ISO and the consumer.

Having no further business, the Big Data (EX) Working Group adjourned.
The Speed to Market (EX) Working Group of the Innovation and Technology (EX) Task Force met via conference call Dec. 3, 2019. The following Working Group members participated: Maureen Motter, Vice Chair and Christine Wright (OH); Joanne Bennett (AK); Gina Hunt and Jerry Workman (AL); William Lacy (AR); Shirley Taylor (CO); Janet Brunory and Jocelyn Villanueva (DE); Tammy Lohmann (MN); Angela Nelson (MO); Tim Johnson (NC); Chrystal Bartuska (ND); Cuc Nguyen (OK); Tammy Vance (OR); Sharalyn Taylor and Mark Worman (TX); Bob Grissom (VA); Lichiou Lee (WA); and Lisa Brandt, Diane Dambach, Sue Ezalarab, Barry Haney and MaryKay Rodriguez (WI).

1. Adopted its Sept. 12 minutes

The Working Group met Sept. 12 and discussed and reviewed a presentation made by NAIC staff members Joy Morrison, Bridget Kieras and Brandy Woltkamp on enhancements and prioritization of capabilities in the System for Electronic Rate and Form Filing (SERFF). The following themes were discussed: Submission Validations, Review Tools, Workload Management, Performance and Reliability, Search, Document Management, Reporting and Data Export, Streamlined Correspondence and User Experience.

Ms. Nelson made a motion, seconded by Ms. Lee, to adopt the Working Group’s Sept. 12 minutes (Attachment Two-A). The motion passed unanimously.

2. Received an Update on the RFP Related to SERFF

Ms. Kieras advised that in mid-October, the NAIC issued a request for proposal (RFP) to engage a firm for assistance in conducting a business and technical assessment of SERFF to assess current regulatory needs and future areas of focus. The proposals, which were due in early November, are being reviewed by three state insurance commissioners and several senior NAIC staff members.

Once a firm is selected and begins its work, it will perform a number of functions, including stakeholder interviews. The interviews will include users of SERFF from various insurance companies, representing all lines of business. There will also be interviews of six to 12 insurance commissioners, representatives from State Based Exchanges, NAIC Consumer Representatives, some industry partners, Interstate Insurance Product Regulation Commission and SERFF staff members. The purpose of these interviews is to obtain an overview of the services and features of SERFF, the technology that SERFF is built upon, and the governance model under which SERFF operates, to determine if SERFF is meeting current regulatory needs and to assess how the SERFF application may need to be enhanced in the future.

Engagement with the firm ultimately selected is expected to start by the end of 2019 and is scheduled to conclude by May 31, 2020. Participants will be selected for the stakeholder interviews; some of these will occur at the 2020 Spring National Meeting, particularly at the commissioner level. The final deliverable for the request for proposal will include a written report and presentation to be made to the Executive (EX) Committee or other designated group.

The NAIC SERFF assessment RFP press release is posted to the NAIC website, and as there were no comments or questions from the Working Group, Ms. Kieras advised there is an email address in the RFP should anyone wish to submit questions at a later time.

3. Received an Update on the SERFF Capabilities Survey

On the Sept. 12 call, a list of capabilities relevant to the future of SERFF were presented to this Working Group for discussion. After the call, a survey was sent to all states and a presentation was also made at the Association of Insurance Compliance Professionals (AICP) Annual Educational Conference on this subject matter.
The survey questions asked respondents if they would use each of the capabilities and the answer choices provided were “yes,” “no,” and “not sure.” The survey also asked respondents to rank the capabilities in order of importance and for each area there was also a free form text field where additional ideas and/or comments could be provided. All but 12 jurisdictions responded to the survey and there was a good mix in the responses across various lines of business, as well as types of staff who responded to the survey.

Results of the ranking demonstrated that the categories “review tools” and “performance and reliability” scored the highest among the available capabilities, indicating that these two capabilities were the most important to survey respondents. The capabilities “user experience” and “streamlined correspondence” scored the lowest among the capabilities ranked.

The top features that survey respondents were interested in centered around the issue of attachments, to include the capabilities of “document comparison,” “improved versioning,” and “document search.” Survey comments and results continue to be reviewed by NAIC staff for other subject matter and issues. The capabilities survey will be assessed alongside the survey that was performed in 2018 to look at how things will work moving forward.

Some items from the capabilities survey are already being worked into the SERFF analysis and development process, such as search improvements, improvements to the quick text feature, and some preliminary proof of concept work for document comparison and document search. Some of these capabilities are already being moved through the development pipeline. Significant enhancements will follow a review process that may this Working Group, the Product Steering Committee or SERFF Advisory Board, while others are more straightforward and NAIC staff is working to implement them.

Final survey results will be reflected in an action plan for 2020 and beyond so the SERFF application can provide more functionality for states and insurance companies moving forward. The Working Group had no questions or concerns about the capabilities survey.

Having no further business, the Speed to Market (EX) Working Group adjourned.
The Speed to Market (EX) Working Group of the Innovation and Technology (EX) Task Force met via conference call Sept. 12, 2019. The following Working Group members participated: John G. Franchini, represented by Bryan Brock, Chair (NM); Maureen Motter, Vice Chair (OH); Austin Childs (AK); William Lacy (AR); Shirley Taylor (CO); Ann Lyon and Jennifer Stinson (DE); Heather Droge (KS); Tammy Lohmann (MN); LeAnn Cox (MO); Timothy Johnson (NC); Mike Andring and Chris Aufenthie (ND); Chris Wright (OH); Nancy Clark, J’ne Byckovski, Marianne Baker, Rachel Bowden and David Muckerheide (TX); Bob Grissom and Trish Todd (VA); Lichiou Lee (WA); and Barry Haney (WI).

1. Discussed and Reviewed a Presentation on SERFF Enhancements and Prioritization of Focus Areas

The following themes were discussed and reviewed with the Working Group by NAIC staff members Joy E. Morrison, Bridget Kieras and Brandy Woltkamp:

a) Submission Validations: The goal of this theme is to increase up-front checks to improve compliance of filings at submission, reduce filing objections and rejections, and reduce manual verifications. The enhancements discussed include the creation of validation rules for state-specific fields, validations for correct state fees, field validations based on state business rules, and validation of prescribed language.

b) Review Tools: The goal is to provide tools that will provide a more comprehensive and consistent filing review and reduce time from filing to approval. Potential enhancements include automatically assigning filings in order to get to state filing reviewers faster; creating built in checklists; building out public access and System for Electronic Rate and Form Filing (SERFF) Filing Access (SFA) capabilities to help the states meet their requirements to consumers; and creating a holistic product review, which is the ability for state insurance regulators to review changes made to a product over a period of several years.

c) Workload Management: The goal is to provide analysts and filers tools to identify and organize workflows in a manner that maximizes time spent on the most critical filing process tasks. Enhancement suggestions include workload dashboards, email notifications that occur when a user is not logged into SERFF, and customized views.

d) Performance and Reliability: The goal is for the SERFF system to behave in a consistent and expected manner with little to no unplanned downtime. The enhancements suggested under this theme are cloud migration, the implementation of new technologies, and advanced monitoring.

e) Search: The goal is to allow users to perform quick and efficient searches to locate single filings or sets filings with similar characteristics. The enhancements suggested under this theme are a key word search, a document search, and a redesigned search screen.

f) Document Management: The goal is to implement a document management system to expedite filing reviews with improved document comparison, collaboration and tracking capabilities.

g) Reporting and Data Export: The goal is to provide analytical capabilities to help state insurance regulators with decision making and market oversight. Considerations for this area include Tableau implementation for graphical reporting, improving data export capabilities, and expanding and enhancing canned reports.

h) Streamlined Correspondence: The goal is to reduce complexity and improve communication and response time in resolving compliance issues. Considerations discussed include moving schedule item data updates to Post Submission Updates, simplifying the response and objection process, and expanding the use of Quick Text.

i) User Experience: The goal is to improve the look and feel of SERFF by introducing standard user patterns and easier to navigate workflows. Considerations discussed for this theme are a simpler and more intuitive interface, and an improved workflow.

After going over each of the areas of suggested improvement, input was sought from the conference call participants. Several states provided feedback but there was not a lot of discussion from working group members regarding which of these areas would provide the most benefit to them. The PowerPoint presentation used for this call will be provided to the Working Group to seek feedback and prioritization for the items discussed; that feedback may then be used to provide information and seek further feedback from the states that are not on the Working Group. No timeline for completion of the suggested enhancements has been confirmed, as this project is currently in the development phase.
Having no further business, the Speed to Market (EX) Working Group adjourned.
The Artificial Intelligence (EX) Working Group of the Innovation and Technology (EX) Task Force met in Austin, TX, Dec. 7, 2019. The following Working Group members participated: Jon Godfread, Chair (ND); Mark Afable, Vice Chair (WI); Anna Latham (AK); Keith Schraad (AZ); George Bradner and Josh Hershman (CT); Peg Brown (CO); Erin VanSickle (FL); Travis Grassel (IA); Robert H. Muriel and Judy Mottar (IL); Jerry Ehlers (IN); Rich Piazza (LA); Robert Baron (MD); Cynthia Amann (MO); Christian Citarella and Christie Rice (NH); Anna Krylova (NM); Jillian Froment (OH); Michael Humphreys and Michael McKenney (PA); Hodgen Mainda (TN); Eric Lowe (VA); and Christina Rouleau (VT). Also participating were: Phil Vigliaturo (MN); Brian Fordham (OR); Travis Jordan (SD); and James A. Dodrill (WV).

1. **Heard Introductory Remarks**

Commissioner Godfread provided a quick recap regarding the appointment of the Working Group and provided an overview of the its Sept. 5 conference call. He said this Working Group was appointed to: 1) study the development of artificial intelligence (AI), its use in the insurance sector, and its impact on consumer protection and privacy, marketplace dynamics and the state-based insurance regulatory framework; 2) develop regulatory guidance, beginning with guiding principles; and 3) make other recommendations to the Innovation and Technology (EX) Task Force, as appropriate, by the 2020 Summer National Meeting. He said the decision was made to focus first on the latter part of the charge, specifically to work on guiding principles.

Commissioner Afable said the goal is to get this work done by the 2020 Summer National Meeting, noting that it is important to hear from Working Group members and other stakeholders regarding the North Dakota draft of “NAIC Principles on Artificial Intelligence (AI)” (Attachment X). He said he and Commissioner Godfread initially want to hear if there are concerns about using it as a working draft.

Commissioner Godfread said he and Commissioner Afable decided a good approach would be to consider work already done in this area as a basis for this work. He said, on its Sept. 5 conference call, the Working Group heard an overview on AI from Scott Kosnoff (Faegre Baker Daniels LLP), who talked about: 1) AI principles generally; and 2) the Organisation for Economic Co-operation and Development’s (OECD) AI principles, which have been adopted by 42 countries, including the U.S. Commissioner Godfread said, ultimately, the decision was made to request comments regarding how the OECD principles might be “tweaked” or “tailored” for applicability to the insurance industry, with a comment deadline of Oct. 11.

Commissioner Afable said the North Dakota draft is intended to be higher level, overarching principles, not a model law or model regulation. He said it is intended to be a guiding document, to be used by other NAIC committees, task forces and/or working groups as they look at issues related to AI in their respective areas.

2. **Discussed OECD Comment Letters and Development of AI Principles for Insurance**

Commissioner Godfread said he thought it would be helpful to have a “straw man” document to expedite progress, so he asked his staff to consider the submitted comments. He said this draft represents that work. He said the draft was then sent to the Working Group members for comment, noting they should feel free to offer alternative approaches to completing the deliverable. He asked the Working Group members for discussion regarding using the draft as a starting point and, if the answer is “yes,” then he would accept comments on the draft.

Mr. McKenney said he submitted substantial comments regarding the OECD AI principles, and this draft is entirely consistent with those comments. He said he would agree with moving forward with the North Dakota draft as the basis for completing the deliverable.

Mr. Grassel said his understanding is that the goal is to bring insurance-specific language and issues into the framework, and he believes the draft does a good job of that.

Mr. Citarella said the “Fair and Ethical” section of the draft in item (b) states that “AI systems must not be designed to harm or deceive people.” He said, ideally, AI systems would not harm people, but it would be difficult to regulate intentionality so that may need to be modified. He also said in the “Compliant” section, where it states that “data used by AI systems must be...
retained and be able to be produced in accordance with each jurisdiction’s requirements,” is an excellent concept, but he is not sure how it would work in practice. He said it would likely generate quite a bit of pushback. He also said that because AI is an iterative process with data continuously being fed into the system, adjusting the results to be compliant with 50+ jurisdictions’ requirements could be difficult.

Commissioner Godfread said Mr. Citarella’s comments go a step or two beyond what the principles are designed to cover. He said there will be a whole host of things that will need to be figured out in terms of implementation. He said this is a new and evolving area and key principles requires consistent monitoring, and while he does not disagree with the point made, he said it is pretty detailed for this initial discussion.

Mr. Citarella also said transparency may mitigate the problems that arise from the amount of data involved in AI, but each actor will have a narrative about how they go about what they do and how they will address concerns and issues that develop. He said he does not have a recommendation on how the language might be revised to address that, but it should be given some thought.

Commissioner Godfread said the goal is not to explain the black box but be able to explain the purpose and—if the AI actor cannot articulate that—it might indicate transparency issues.

Mr. Fordham said compliance with state and federal laws is always required, so he questioned if the reference to it being required “whether intentional or unintentional” is necessary.

Birny Birnbaum (Center for Economic Justice—CEJ) thanked the Working Group for the draft and said it was well done and a good basis to start further work. He referenced the words under the “Fair and Equitable” section in item (b) regarding “beneficial outcomes,” stating there will be winners and losers in that and, while a majority may benefit, the cost to the minority may be unreasonable or unacceptable. He said he is not sure how to address that, but it is difficult to think about beneficial outcomes when most insurance involves segmenting the population one way or another. He said the “Accountable” section states that “AI actors should be accountable for the proper functioning of AI systems and compliance with all stated principles,” but he asked to whom the AI actors would be accountable. He said he has a similar question regarding transparency, noting that many might assume AI actors should be accountable and transparent to regulators, but he said they need to be accountable and transparent to the people impacted by the system.

Commissioner Godfread said he understood that point from the perspective of transparency, but the AI actors would be responsible to the regulators. He said the draft principles also refer to “relevant stakeholders” so that would, in his opinion, include consumers and discussion with consumers—including what the data is being used for—but said he is open to other clarifying language, as well.

Commissioner Afable agreed and said the explanatory piece would be there, as well.

3. Discussed Next Steps

Commissioner Godfread said it appears the Working Group members are in favor of using the North Dakota draft as the basis for its work and, hearing no objection, said it will be posted for another exposure period. He encouraged everyone to contribute comments. He said, as a recap, the Working Group will:

1) Work off this draft.
4) Revise the draft and expose it again prior to the Spring National Meeting, March 21–24, 2020.

Ms. Amman said there are definitions and a glossary developed by the IT Examination (E) Working Group for the Financial Condition Examiners Handbook that may be helpful to this Working Group.

Having no further business, the Artificial Intelligence (EX) Working Group adjourned.
Innovation and Technology (EX) Task Force
Conference Call
October 18, 2019

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 Vigliaturo and Grace Arnold (MN); Chlora 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 the Working Group met Sept. 5 to hear an overview on artificial intelligence (AI) from Scott Kosnoff (Faegre Baker Daniels LLP). Mr. Kosnoff talked about: 1) AI principles generally; and 2) the Organisation for Economic Co-operation and Development’s (OECD) AI principles, which have been adopted by 42 countries, including the U.S.

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 (Attachment Four-A) were posted to its web page.

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 Four-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 Four-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 Four-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. 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 exists 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 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.

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.

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The Artificial Intelligence (EX) Working Group of the Innovation and Technology (EX) Task Force met via conference call Sept. 5, 2019. The following Working Group members participated: Jon Godfread, Chair (ND); Mark Afable, Vice Chair (WI); Lucy Jabourian (CA); Andrew N. Mais (CT); Peg Brown (CO); David Altmairer (FL); Travis Grassel and Andria Seip (IA); Robert H. Muriel (IL); Amy Beard (IN); Tom Travis and Rich Piazza (LA); Ron Coleman (MD); Cynthia Amann, Angela Nelson and Teresa Kroll (MO); Keith Briggs (NC); Christian Citarella (NH); John G. Franchini (NM); Barbara D. Richardson (NV); Mark Hamlin (OH); Shannen Logue and Michael KeKenney (PA); Rachel Jade-Rice (TN); Eric Lowe (VA); and Christina Rouleau (VT). Also participating were: Timothy Schott (ME); Karen Dennis (MI); and Grace Arnold and Phil Vigniaturo (MN).

1. Heard Introductory Remarks

Commissioner Godfread said that at the Spring National Meeting, the Innovation and Technology (EX) Task Force adopted a motion to establish this Working Group to study the development of artificial intelligence (AI), its use in the insurance sector, and its impact on consumer protection and privacy, marketplace dynamics, and the state-based insurance regulatory framework. He said the charge also stated that the Working Group will develop regulatory guidance, beginning with guiding principles, and make other recommendations to the Innovation and Technology (EX) Task Force as appropriate by the 2020 Summer National Meeting.

Commissioner Godfread said the plan is to focus on that latter part of the charge, specifically to work on guiding principles. He said that other groups outside of the NAIC are working on principles for AI, and some have even adopted them, such as the Organisation for Economic Cooperation and Development’s (OECD) principles, as well as those being considered by the Australian government’s Department of Industry, Innovation and Science. He said these principles were sent out as materials for this call.

Commissioner Godfread said he and Commissioner Afable discussed how to approach developing these principles for the insurance industry. He said they think it is important to discuss and establish the scope of the Working Group’s work and to keep it at a high level in order to get these principles drafted. He said both he and Commissioner Afable realize it is going to be hard to keep from getting into details in terms of definitions and exactly what is meant by some regarding these terms. However, he said they would like the Working Group to stay out of the weeds and get some high, overarching principles drafted that can be used across the NAIC workstreams. He said the timeline is tight and somewhat aggressive, so he would ask the Working Group members, other state insurance regulators and interested parties to keep the timeline in mind as they prioritize this work. Commissioner Afable reiterated the importance of staying focused on high-level guiding principles and that other committees and Task Forces will determine where the specific issues are best developed once the principles have been drafted. He said he and Commissioner Godfread realize there is work going on in the space without guiding principles in place, making it important to get this work done quickly.

Commissioner Godfread said there are other organizations putting out principles and that it is important for the NAIC to get out some insurance guideposts as well with principles that are tailored to the insurance industry.

2. Heard a Presentation on AI from Faegre Baker Daniels LLP

Scott Kosnoff (Faegre Baker Daniels LLP) provided an AI overview. He began with offering common definitions for AI and its genesis. He said its growth can be attributed to the explosive amounts of data now available for use and the availability of storage that allows this data to be stored and made available, widely, as well as the amazing strengthening of processing power. He talked about the difference between “general” AI, which can think like a human in all respects, and “narrow” AI, which is focused on very specific tasks. He said while “general” AI is still a long way off, “narrow” AI is here and alive and well. Mr. Kosnoff reviewed why AI is so important and some important applications for AI, including medical research, hiring decisions, lending, insurance and more. He said insurers are interested in AI to improve marketing and customer engagement, underwriting, rating, claims decisions and fraud detection, and he talked about what is in it for consumers. Mr. Kosnoff also reviewed the concerns related to AI. He said the most frequently cited concern deals with fairness, bias/discrimination and the lack of transparency/explainability. He said these are not unique to the insurance industry related to AI but are concerns that
are agnostic to the use of AI. He also reviewed other AI challenges, including incomplete, inaccurate and outdated data, as well as having embedded bias in the data. He said there are also algorithm challenges, including unreliable accuracy and algorithms that are too complex or rely on unlawful factors such as race, gender or religion. He said this can have a widespread impact with AI. Mr. Kosnoff provided some examples where these issues became a problem. Mr. Kosnoff said there is strong consensus regarding AI’s ability to offer extraordinary benefits but that reasonable and measured guardrails are needed. He said there is an important role for state insurance regulators and that it is important to get engaged as the federal government already is, as well as international standard-setters such as the OECD and the International Association of Insurance Supervisors (IAIS). He said the principles should not be overly restrictive or prescriptive, but there should be a balance between the need for consumer protections and the desire to encourage innovation.

Commissioner Godfread reiterated that while data issues and algorithmic challenges exist, it is not the charge of this Working Group to solve those issues or develop details of what that means as that will likely be the purview of another group. However, he said setting up the guardrails needs to be done and that time is of the essence. He said with the availability of 5G networks, data issues will only continue to grow and will create more privacy issues. However, he said the details will be handled elsewhere and that this Working Group will address areas of focus for the broader industry.

Ms. Jabourian said there need to be guidelines that emphasize the importance of transparency and explainability of the algorithms versus being told it is the AI and that it cannot necessarily be explained. She said as state insurance regulators, we need to be able to understand how the AI came to its conclusions. Commissioner Godfread agreed. He said the principles need to lay out what is required, but not necessarily provide all the details of how that will be done just now.

3. Discussed the Adopted OECD AI Principles and Australia’s Ethics Framework Discussion Paper

Mr. Kosnoff provided an overview of the OECD principles. He said several workstreams to develop AI principles are in progress or have been completed, most limited to a specific country. He said the OECD AI principles, however, are the first and only set of inter-government policy guidelines adopted by multiple countries. He said 42 countries, including the U.S., have adopted the OECD AI principles. He said they are for general application and are not targeted at the insurance sector. Mr. Kosnoff pointed out portions of the principles that might have application for the insurance industry, including:

1. Inclusive growth, sustainable development and well-being
   - Advancing inclusion of underrepresented populations.
   - Reducing economic, social, gender and other inequalities.

2. Human-centered values and fairness
   - Respect of the rule of law, human rights and democratic values throughout the AI system lifecycle.
   - Privacy and data protection.
   - Non-discrimination and equality.
   - Fairness.
   - Mechanisms and safeguards, such as human determination.

3. Transparency and explainability
   - Provide meaningful information to stakeholders so that they know when they are interacting with AI.
   - Stakeholders affected by an AI system should be able to understand the outcome.
   - Stakeholders adversely affected by an AI system should be provided information so that they can challenge the outcome and the logic that served as the basis for the decision.

4. Robustness, security and safety
   - Should be robust, secure and safe throughout their entire lifecycle.
   - Should ensure traceability to enable analysis of outcomes.
   - Systematic risk management approach to each phase of the AI system lifecycle on a continuous basis.

5. Accountability
   - All organizations that deploy or operate an AI system should be accountable for the proper functioning of the system and for the respect of the above principles.

Mr. Kosnoff said the OECD principles appear to be a good place to start for the Working Group. He said the Australian draft principles are also very interesting and may be more reader-friendly than the OECD principles, but they are just a proposal out for comment and have not been adopted anywhere.
4. **Discussed the Process for Development of AI Principles for Insurance and Next Steps**

Commissioner Godfread asked the Working Group members how they would like to move forward in drafting AI principles for the insurance industry. He asked if the Working Group would like to use the OECD principles or some other entity’s principles as a starting point and accept comments on how to tailor it to the individual insurance industry as a whole. Commissioner Richardson said it would be good to start with something already based in reality. Commissioner Mais agreed and said there is no reason to reinvent the wheel. He said the OECD principles provide a good basis for creating a set of principles uniquely tailored to the insurance industry. Commissioner Afable said NAIC staff had been asked to look at other standards out there and that research came back to the ones being discussed. He asked Mr. Kosnoff if he sees any significant difference between the OECD AI principles and the Australian draft. Mr. Kosnoff said he does not think there is any meaningful difference and if an exhaustive study of all workstreams were done, it would likely reveal far more commonality among the different versions than differences. He said there may be differences in emphasis and the way they are expressed but still more commonality than differences. Mr. Logue said there should be a constant reminder to creators of AI systems that unfair trade practice laws must always be kept in mind.

Commissioner Godfread asked if interested parties had any comments. Hearing none, he said there is a clear direction to work with the OECD AI principles as a starting point. He said NAIC staff will publish a pared down version of the OECD AI principles and expose them for a public comment period.

Having no further business, the Artificial Intelligence (EX) Working Group adjourned.
2020 PROPOSED CHARGES

INNOVATION AND TECHNOLOGY (EX) TASK FORCE

The mission of the Innovation and Technology (EX) Task Force is to provide a forum for regulator education and discussion of innovation and technology in the insurance sector, to monitor technology developments that affect the state insurance regulatory framework, and to develop regulatory guidance, as appropriate.

Ongoing Support of NAIC Programs, Products or Services

1. The **Innovation and Technology (EX) Task Force** will:
   A. Provide forums, resources and materials for the discussion of innovation and technology developments in the insurance sector, including the collection and use of data by insurers and state insurance regulators—as well as new products, services and distribution platforms—in order to educate state insurance regulators on how these developments affect consumer protection, privacy, insurer and producer oversight, marketplace dynamics and the state-based insurance regulatory framework.
   B. Develop regulatory guidance, model laws or model law revisions, and white papers or make other recommendations to the Executive (EX) Committee, as appropriate.
   C. Monitor and discuss regulatory issues that arise with the development of autonomous vehicles. Study and, if necessary, develop recommendations for changes needed to the state-based insurance regulatory framework.
   D. Discuss emerging issues related to companies or licensees leveraging new technologies to develop products for on-demand insurance purposes—in addition to potential implications on the state-based insurance regulatory structure—including, but not limited to, reviewing new products and technologies affecting the insurance space and the associated regulatory implications.
   E. Monitor developments in the area of cybersecurity, including the implementation of the *Insurance Data Security Model Law* (#668) and representing the NAIC and communicating with other entities/groups, including sharing information as may be appropriate.
   F. Coordinate with other NAIC committees and task forces, as appropriate, on technology, innovation, cybersecurity issues and data privacy.

2. The **Big Data (EX) Working Group** will:
   A. Review current regulatory frameworks used to oversee insurers’ use of consumer and non-insurance data. If appropriate, recommend modifications to model laws and/or regulations regarding marketing, rating, underwriting and claims, regulation of data vendors and brokers, regulatory reporting requirements, and consumer disclosure requirements.
   B. Propose a mechanism to provide resources and allow the states to share resources to facilitate their ability to conduct technical analysis of, and data collection related to, the review of complex models used by insurers for underwriting, rating and claims. Such a mechanism shall respect and in no way limit the states’ regulatory authority.
   C. Assess data needs and required tools for state insurance regulators to appropriately monitor the marketplace and evaluate underwriting, rating, claims and marketing practices. This assessment shall include gaining a better understanding of currently available data and tools, as well as recommendations for additional data and tools, as appropriate. Based on this assessment, propose a means to collect, house and analyze needed data.
3. The **Speed to Market (EX) Working Group** will:
   A. Consider proposed System for Electronic Rate and Form Filing (SERFF) features or functionality presented to the Working Group by the SERFF Advisory Board, likely originating from the SERFF Product Steering Committee. Upon approval and acquisition of any needed funding, direct the SERFF Advisory Board to implement the project. Receive periodic reports from the SERFF Advisory Board, as needed.
   B. Discuss and oversee the implementation and ongoing maintenance/enhancement of speed to market operational efficiencies related to product filing needs, efficiencies and effective consumer protection. This includes the following activities:
      1. Provide a forum to gather information from the states and the industry regarding tools, policies and resolutions to assist with common filing issues. Provide oversight in evaluating product filing efficiency issues for state insurance regulators and the industry, particularly with regard to uniformity. In 2020, evaluate the state survey results compiled in 2019 regarding the usefulness of existing tools and potential new tools and propose a plan to make improvements.
      2. Use SERFF data to develop, refine, implement, collect and distribute common filing metrics that provide a tool to measure the success of the speed to market modernization efforts as measured by nationwide and individual state speed to market compliance, with an emphasis on monitoring state regulatory and insurer responsibilities for speed to market for insurance products.
      3. Facilitate proposed changes to the product coding matrices (PCMs) and the uniform transmittal document (UTD) on an annual basis, including the review, approval and notification of changes. Monitor, assist with and report on state implementation of any PCM changes.
      4. Facilitate the review and revision of the *Product Filing Review Handbook*, which contains an overview of all of the operational efficiency tools and describes best practices for industry filers and state reviewers with regard to the rate and form filing and review process. In 2020, develop and implement a communication plan to inform states about the *Product Filing Review Handbook*.
   C. Provide direction to NAIC staff regarding SERFF functionality, implementation, development and enhancements. Direct NAIC staff to provide individual state speed to market reports to each commissioner at each national meeting. Receive periodic reports from NAIC staff, as needed.
   D. Conduct the following activities as desired by the Interstate Insurance Product Regulation Commission:
      1. Provide support to the Compact as the speed to market vehicle for asset-based insurance products, encouraging the states’ participation in, and the industry’s usage of the Compact.
      2. Receive periodic reports from the Compact, as needed.

4. The **Artificial Intelligence (EX) Working Group** will:
   A. Study the development of artificial intelligence (AI), its use in the insurance sector, and its impact on consumer protection and privacy, marketplace dynamics, and the state-based insurance regulatory framework. The Working Group will develop regulatory guidance, beginning with guiding principles, and make other recommendations to the Innovation and Technology (EX) Task Force as appropriate by the 2020 Summer National Meeting.

NAIC Support Staff: Scott Morris/Denise Matthews

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Comments of the Center for Economic Justice

To the NAIC Innovation and Technology Task Force

Suggested Bulletin Directed at Insurtechs:
Why Insurance is Different from Other Consumer Products

April 19, 2019

During the Innovation and Technology Task Force’s meeting earlier this year, we listened with interest to the presentation by Plug and Play and to the questions and discussion that followed the presentation. We felt that the survey results presented by Plug and Play were too generic to provide actionable insights. Rather, information on what type of regulation presented what type of barrier would have been far more useful.

Some of the perceived barriers may be a result of Insurtech’s thinking that insurance is like any other consumer product, in spite of the fact that regulation of insurance is predicated on the fact that insurance is not like other consumer products. To educate Insurtechs to basic issues of insurance regulation, we suggest the ITTF develop a bulletin for Insurtechs entitled “Why insurance is different from other consumer products – a primer for Insurtechs.” Such bulletin might include discussion of the following topics to provide a context for Insurtechs to understand the purposes of insurance regulation and to help guide their efforts in support of the goals of insurance regulation. In no particular order:

1. Insurance is generally regulated on a state-by-state basis

2. Insurance has a limited exemption from federal anti-trust laws. Activities that might otherwise violate anti-trust laws are permissible if regulated by the state.

3. The nature of insurance products have resulted in particular statutory requirements and regulatory practices

4. Cost-based pricing is required by actuarial standards of practice and financial solvency. The requirement for cost-based pricing is to protect insurer financial condition and prevent intentional or unintentional unfair discrimination
5. States generally prohibit discrimination on the basis of specific consumer characteristics – such as race, religion or national origin – as well as require discrimination on the basis of other consumer characteristics be justified by differences in expected losses or expenses. Pricing practices – such as dynamic pricing or price optimization – are not permitted in personal lines insurance.

6. Some insurance is required either by law or by lenders requiring protection of home or vehicle collateralizing the loan.

7. An insurance contract is a promise for future benefits if an undesirable event occurs. If the product “fails” – the consumer learns the insurance policy won’t cover the loss – she is stuck and can’t purchase another policy that would protect her against a known loss.

8. Consumers have little or no information about the insurers’ performance.

9. There is profound public interest in broad coverage – failure or inability of consumers and businesses to access insurance has implications not just for individual families and businesses, but for taxpayers, communities and the nation.

10. State insurance regulators have resources to assist you to understand, navigate and develop products in compliance with the consumer protection goals of the state-based insurance regulatory system.

We suggest that the proposed bulletin would provide a useful introduction to insurance regulation and provide a roadmap for innovation.
REQUEST FOR NAIC MODEL LAW DEVELOPMENT

This form is intended to gather information to support the development of a new model law or amendment to an existing model law. Prior to development of a new or amended model law, approval of the respective Parent Committee and the NAIC’s Executive Committee is required. The NAIC’s Executive Committee will consider whether the request fits the criteria for model law development. Please complete all questions and provide as much detail as necessary to help in this determination.

Please check whether this is:  □ New Model Law  or  X Amendment to Existing Model

1. Name of group to be responsible for drafting the model:
   Innovation and Technology (EX) Task Force

2. NAIC staff support contact information:
   Denise Matthews
dmatthews@naic.org
   816-783-8007

3. Please provide a brief description of the proposed new model or the amendment(s) to the existing model. If you are proposing a new model, please also provide a proposed title. If an existing model law, please provide the title, attach a current version to this form and reference the section(s) proposed to be amended.

   NAIC Unfair Trade Practices Act (Model #880)
   Section 4(H)(1)

   The Innovation and Technology (EX) Task Force will draft amendments to the NAIC Unfair Trade Practices Act (Model #880), focusing on Section 4H, to clarify what is considered a “rebate” or “inducement”.

4. Does the model law meet the Model Law Criteria?  X Yes  or  □ No  (Check one)
   (If answering no to any of these questions, please reevaluate charge and proceed accordingly to address issues).
   a. Does the subject of the model law necessitate a national standard and require uniformity amongst all states?  X Yes  or  □ No  (Check one)
      If yes, please explain why: Inconsistency in the interpretation of the Model language necessitates revisions to clarify the intent and ensure necessary consumer protections remain in place in light of technologies being deployed to add value to existing insurance products and services.
   b. Does Committee believe NAIC members should devote significant regulator and Association resources to educate, communicate and support this model law?  X Yes  or  □ No  (Check one)
5. What is the likelihood that your Committee will be able to draft and adopt the model law within one year from the date of Executive Committee approval?

X 1          2          3          4          5         (Check one)

High Likelihood          Low Likelihood

Explanation, if necessary: A significant amount of time and discussion has already been devoted to this topic including presentations from all stakeholders and discussion around draft guideline language. That should help in accelerating the development process related to this model language.

6. What is the likelihood that a minimum two-thirds majority of NAIC members would ultimately vote to adopt the proposed model law?

□ 1          X 2          3          4          5         (Check one)

High Likelihood          Low Likelihood

Explanation, if necessary:

7. What is the likelihood that state legislatures will adopt the model law in a uniform manner within three years of adoption by the NAIC?

□ 1          X 2          3          4          5         (Check one)

High Likelihood          Low Likelihood

Explanation, if necessary:

8. Is this model law referenced in the NAIC Accreditation Standards? If so, does the standard require the model law to be adopted in a substantially similar manner?

No

9. Is this model law in response to or impacted by federal laws or regulations? If yes, please explain.

No.