

Draft: 8/3/20

Innovation and Technology (EX) Task Force  
Conference Call  
July 23, 2020

The Innovation and Technology (EX) Task Force met via conference call July 23, 2020. The following Working Group members participated: Jon Godfread, Chair, and Chris Aufenthie (ND); Elizabeth Kelleher Dwyer, Vice Chair (RI); Lori K. Wing-Heier represented by Chris Murray and Anna Latham (AK); Jim L. Ridling represented by Gina Hunt (AL); Alan McClain and Letty Hardee (AR); Elizabeth Perri (AS); Evan G. Daniels and Erin Klug (AZ); Ricardo Lara represented by Lucy Jabourian (CA); Michael Conway (CO); Andrew N. Mais (CT); David Altmaier (FL); Colin M. Hayashida (HI); Doug Ommen (IA); Dean L. Cameron (ID); Robert H. Muriel represented by Judy Mottar (IL); Stephen W. Robertson represented by Jerry Ehlers (IN); Vicki Schmidt represented by LeAnn Crow (KS); Sharon P. Clark (KY); James J. Donelon and Tom Travis (LA); Gary Anderson (MA); Kathleen A. Birrane (MD); Anita G. Fox represented by Chad Arnold (MI); Steve Kelly, Grace Arnold and Tammy Lohmann (MN); Chlora Lindley-Myers represented by Cynthia Amann (MO); Mike Causey represented by Tracy Biehn and Kathy Shortt (NC); Bruce R. Range (NE); Chris Nicolopoulos represented by Christie Rice (NH); Barbara D. Richardson (NV); Jillian Froment represented by Rich Campbell (OH); Andrew R. Stolfi (OR); Jessica K. Altman and Michael Humphreys (PA); Raymond G. Farmer (SC); Larry D. Deiter (SD); Hodgen Mainda represented by Rachel Jade-Rice (TN); Kent Sullivan represented by Doug Slape and Michael Nored (TX); Scott A. White represented by Trish Todd (VA); Michael S. Pieciak represented by Emily Brown (VT); Mike Kreidler represented by John Haworth and Michael Bryant (WA); Mark Afaible represented by Nathan Houdek (WI); and James A. Dodrill represented by Joylynn Fix (WV). Also participating: Joana Lucashuk (NY).

1. Discussed AI Principles as Adopted by the Artificial Intelligence (EX) Working Group

Commissioner Godfread said NAIC members made the decision to form the Artificial Intelligence (EX) Working Group during last year's Mid-Year meeting. He said members heard a presentation and spent time discussing artificial intelligence (AI), how it is being driven by the availability of vast amounts of data and ever expanding computing power, and how important it would be to expediently develop guidance in this area for the insurance industry. He said that was the genesis of the Artificial Intelligence (EX) Working Group last June 2019. He reviewed the charge to the Working Group established by the Innovation and Technology (EX) Task Force during its meeting at the NAIC 2019 Summer National Meeting in New York, NY. He said the Working Group has been able to stay on track, holding its first meeting on Sept. 5, 2019, hearing an overview on AI, and covering AI principles generally and the Organisation for Economic Co-operation and Development's (OECD's) AI principles, which have been adopted by 42 countries, including the U.S. He said he and Commissioner Afaible discussed how to approach developing principles for the insurance industry and using the OECD Principles as a basis for developing AI principles for the insurance industry with the Working Group members who agreed that it is an appropriate approach. He said an AI Principles (Principles) draft was first exposed for comment in January 2020 and the Working Group held calls on Feb. 4 and Feb. 19. Then, after a delay due to the COVID-19 pandemic, the Working Group got back to work holding calls on May 5 and June 3. Commissioner Godfread said the Working Group recently met on June 30 where the work was finalized, and the Principles were adopted and again exposed for comment. He said the Principles before the Task Force represent AI "FACTS" for the insurance industry, establishing expectations around its development and use of AI including sections titled, **F**air and **E**thical, **A**ccountable, **C**ompliant, **T**ransparent and **S**ecure/**S**afe/**R**obust. He said these are the key tenets of the Principles.

Commissioner Godfread highlighted a couple of key points related to the Principles. First, he said the industry has been adamant about being clear that these Principles represent "guideposts" and do not carry the weight of law; to that end, specific introductory language was added. He said there have also been sensitivities related to anything that might create new burdens related to adverse consumer impact, given that AI and everything associated with it in terms of big data and algorithms is fairly nascent, and there may be inadvertent or unintentional missteps as we all explore the vast potential of AI and benefits it can bring consumers and the industry, even as we consider and work to mitigate potential risk of harm. He said the Working Group's proposed Principles have "threaded that needle" in a way that can work for everyone.

Secondly, Commissioner Godfread said most have heard a lot about "proxy discrimination" lately, and the potential AI has to use proxies to perpetuate unfair discrimination or fail to identify and eradicate embedded bias against protected classes. The Working Group was sensitive to that issue, and there has been a lot of discussion around this, not only at the Working Group level but with the full membership on more than one occasion.

a. Discussed Comments Related to the AI Principles as Adopted by the Artificial Intelligence (EX) Working Group

Commissioner Godfread opened it up to discussion by the Task Force members. Commissioner Mais presented points from his comment letter. He said the comments were straight forward, and he reviewed them, including the inclusion of data providers in the first paragraph. He said he would also suggest adding the word “fair” in the introductory paragraph beginning with “This Document,” prior to “safe, secure and robust outputs.” He said he also suggests deleting the word “or” between the words “harmful” and “unintended” in the Fair and Ethical section and adding “and corrects and compensates for such consequences when they occur.” He said there will be failures, and this spells out the consequences which is to “correct and compensate.” He said in the next two sections, he will discuss the last sentences as one. He said he has a concern regarding the last sentences in the Accountable and Compliant sections. He said this should be a guiding document, not a regulatory guidance document, and those two sentences represent regulatory guidance. Therefore, he said this is not the place for that, and it could be interpreted as tying the hands of state insurance regulators. He said there needs to be fairness, openness and trust, and he does not think this document should be telling state insurance regulators what they should and should not be doing. Lastly, he said specifically mentioning “consumers” in the Transparent section is concerning because by only mentioning consumers, it might make others think they were not meant to be included, and it would leave out relevant stakeholders.

Commissioner Godfread said he has no concerns with the preamble changes and adding the word “fair” as suggested. He said in regard to the language in the Fair and Ethical section stating, “and corrects and compensates for such consequences when they occur,” that is covered in Part A of the Accountable section, and that shows some balance in terms of what we are trying to do. He said there may be a difference of opinion in terms of how this gets accomplished. He said he does not believe the language ties the hands of state insurance regulators because this is a guiding document. He said the last sentence in both the Accountable and Compliant sections give a nod to the creation of or discussion around a safe harbor and the good actors in this space saying that if you do everything right and follow proper procedures, there will be some regulatory flexibility within the regulatory community. He said it the language recognizes that mistakes are going to happen with new technology, especially of this caliber, and there will be unexpected outcomes even with the best intentions. He said the last sentence in the Accountable section covers that, and it allows for a remedy that makes the consumer whole again.

Ms. Jabourian said California agrees with Commissioner Godfread’s comments, but it does have concerns with the proposed language under Subsection b of the Fair and Ethical section. She said there is no need to add that because it is covered under the Accountable section.

Commissioner Godfread asked if any member of the Task Force wished to offer the Connecticut proposed language as an amendment to the Principles. Commissioner Anderson asked if it would be appropriate to take this and comments just recently received under consideration and discuss them during the next meeting of the Task Force. Commissioner Godfread said another exposure draft could be put together and discussed during the next meeting. He asked the Task Force members what might be included in that next draft. Commissioner Anderson said it would be easier to gather the feedback and determine how they might be woven into the document. He said it is difficult to determine the impact of these comments, having not had time to give them more thought. Commissioner Birrane agreed, and she said it would be good to hear the reasoning, but she is not ready to vote on a motion at this point. Mr. Nored agreed that it would be helpful to see another exposure draft on this. Commissioner Godfread said that could be done. Commissioner Conway suggested that the Task Force push hard to vote during the next meeting; endless amounts of time could be spent tweaking and reworking the language and it would still not be perfect, so it is important to recognize the work already done, and it is time to take that next step. Commissioner Godfread said that is the goal, as it does not appear the members are ready to vote on it today. Commissioner Anderson said the delay is not to take away from the good work already done, but just to try to take into consideration the comment letters before taking a vote. Commissioner Ommen said he agrees with thinking this through, and he supports some of Commissioner Mais’ suggestions. He said he wants to propose that the Task Force consider the North Dakota language raised at the Working Group level having to do with proxy discrimination that recognizes avoiding proxy discrimination does not preclude the use of proxy variables for legitimate and acceptable business purposes. Commissioner Ommen provided the example of the correlation between hypertension and race, and he attributes it to various correlations between diet, nutrition and smoking, and to some extent geography and other factors. He said the relationship between hypertension and mortality is based on science, and he expects that there is also a correlation between race and premium as a result of this, but the premium is not the causation of the disparity. He said he thinks the North Dakota language recognizes that there are inequities that need to be carefully looked at and examined, but at the same time the science and the cause need to be addressed without turning the premium rate into a causation. He said he would support the North Dakota language because it ably explains this and captures one of the challenges state insurance regulators will face when dealing with these disparities in society.

Commissioner Godfread said this will be offered as possible language in the next draft of the Principles. He said he would open the discussion to interested parties. Paul S. Graham (American Council of Life Insurers—ACLI) said the ACLI supports the Principles as adopted by the Artificial Intelligence (EX) Working Group. He talked about how life insurers use AI and how important it is today in the marketplace. He said the ACLI supports the wording at the end of the Accountable section, as having a safe harbor is important for new and innovative ideas to come into play. He said the ACLI supports including a reference to proxy discrimination, and it looks forward to working with stakeholders regarding the concept of proxy discrimination in the insurance context, what it means exactly, and how processes and oversight can be put into place to prevent AI from doing what would otherwise not be allowed by regulation or law. He said the ACLI supports the adoption of the Principles as written, and it supports the amendment offered by the North Dakota Department of Insurance (DOI) as being very helpful in framing the concept of proxy discrimination in the insurance context.

Bob Ridgeway (America’s Health Insurance Plans—AHIP) said AHIP believes it would be better and easier to define if the focus on proxy discrimination was narrowed by changing the word “unfair” to “unlawful.” He also said AHIP suggests that in some cases, AI might result in unintentional proxy discrimination, and it would be helpful to include the word “unlawful” again before the words “proxy discrimination” making it easier to regulate.

Angela Gleason (American Property Casualty Insurance Association—APCIA) offered a few additional considerations, saying the APCIA is fully committed to the strict enforcement of discrimination laws and practices, and it understands that the goal is to stress the importance of processes and procedures being in place to proactively engage in responsible stewardship of AI. She said as you look at proxy discrimination, it is important to balance that with ensuring that regulatory objectives, such as consumer protections, are adhered to as well as sound insurance principles grounded in financial solvency. She said the APCIA suggests that terms such as “beneficial outcomes” and “harmful” are subjective and can be removed without changing the intent. She said the APCIA suggests some additional introductory language to provide more clarity, stating that the Principles are not intended to expand current law or create additional laws and last. She said the APCIA suggests the addition of the words “willful and wonton” in front of “negligence,” protecting employees working on these issues.

Commissioner Godfread asked if anyone from the Consumer Data Industry Association (CDIA) wished to present their comments. Hearing none, Andrew R. Pauley (National Association of Mutual Insurance Companies—NAMIC) said NAMIC provided written comments. He said NAMIC respects the NAIC’s response to race discrimination in insurance, and it adamantly opposes discrimination in general, but it is strongly supportive of risk-based pricing in insurance. He asked that if the term proxy discrimination remains in the Principles that it be paired with some statement supporting risk-based pricing as a general concept. He said NAMIC believes that the North Dakota language is very important in terms of approaching an understanding of the concerns listed, and it concurs with the comments made by Commissioner Ommen. He said not much time has been spent discussing the positive aspects of AI in terms of transforming the consumer experience in many positive ways, and he hopes there are not any unintended consequences from the Principles that would have a negative impact on that.

Birny Birnbaum (Center for Economic Justice—CEJ) said the CEJ supports the Connecticut proposals. He said proxy discrimination is clear and appropriate for these principles, and the CEJ opposes the proposed North Dakota language, as it introduces an unrelated concept—proxy variables—that confuses the basic principle. He said he also takes issue with Commissioner Ommen’s suggestion that it is at odds with cost-based pricing, saying that it improves cost-based pricing, and the CEJ provided an example of that in its comments. He said minimizing proxy discrimination does not mean you cannot use a particular variable as you can to the extent that variable is or those variables are, predictive of the outcome but not to the extent they are correlated with a particular class. He said the role of proxy discrimination versus cost-based pricing is also not addressed by the North Dakota language. He said the CEJ opposes using the word “unlawful” versus “unfair” because current law does not envision any action or prohibition against proxy discrimination, and that is what the CEJ wants to see enshrined in these principles. He said the CEJ supports the Connecticut proposals, particularly regarding supposed “safe harbors” in the Accountable and Transparent sections.

b. Discussed Next Steps for the Adoption of the AI Principles

Commissioner Godfread said the next steps are to provide a summary document to the Task Force members with options that may lead to some amendments to the Principles to be discussed during the next Task Force meeting.

## 2. Discussed Anti-Rebating Draft Model Law Amendments

### a. Discussed Comments Related to the Anti-Rebating Draft Model Law Amendments

Superintendent Dwyer provided background on the rebating issue. She said most states have language consistent with the *Unfair Trade Practices Act* (#880), but there is inconsistent application. To clarify that, many bulletins have been issued to explain the intent, creating angst as to what can and cannot be done. Superintendent Dwyer said this has gone on for a long time, so there was a desire to get to some language that allows the consumer benefits to be offered. She said a drafting group was formed to get pen to paper, including eight state insurance regulators, five trade associations, one insurtech startup, one industry representative, a consumer representative, and representation by the National Council of Insurance Legislators (NCOIL). She said the work began on Jan. 27 working with a chair's draft, followed by several conference calls to discuss and revise the draft. She said the drafting group disbanded after its June 3 meeting after creating five drafts and putting the last one out for comment. She said 23 comment letters were received; all were and will continue to be considered, and she reviewed some common themes including:

- H. 2. (e)(1): Some commenters wanted expanded and some wanted more restrictive language, as well as comments requesting additional language to avoid unfair discrimination.
- H. 2. (e)(2): There were comments indicating confusion as to what the language meant and requests to change it to allow the commissioner to create regulations.
- H. 2. (e)(3): Comments requesting more clarity and specificity as to what a pilot and test program would be and limiting the duration to one year.
- H. 2. (e)(4): Comments saying the language is a bit vague and requests to change to be more specific.
- H. 2. (e)(5): There were a number of comments saying that (e)(5) and (f)(1) are talking about the same thing and yet are in two different sections; therefore, recommendations to move it to (f)(1). Comments about what the amount should be or be set by the commissioner, and yet, in another part it stipulates it as [two hundred and fifty dollars], and some suggested that it should be \$500. Again, some comments suggested that the language should be expanded to allow more and others saying it should be more restrictive.
- H. 2. (f)(2): There was a suggestion to add the word "group" in addition to what is there. Superintendent Dwyer noted that the use of that term might bring up issues regarding rebating issues related to commercial insureds in the lender-placed area, and that may be of concern. She said the commenters suggesting that might want to look at that again to see how it could be considered while not creating a situation in which commercial is preferred and people paying the premium are adversely affected.
- H. 2. (f)(3): There were comments that the "five hundred dollars" should be bracketed, and some mention that language in the section is vague.

Superintendent Dwyer then opened it up for comment from the Task Force members. Mr. Murray said Alaska just wants to show support for the draft. Commissioner Mais said Connecticut provided a technical edit. Regarding the specified amounts being set in regulation, he said in some states it is a difficult and time consuming process to change, and it does not offer the flexibility needed, so the suggestion is to add "or otherwise reasonably determined by the commissioner." Superintendent Dwyer asked if putting those amounts in brackets would help. Commissioner Mais said he would prefer to not be locked into a number because it can stay locked in for many years and get woefully out of date. He said he preferred something to the effect of "reasonably determined by the commissioner."

Ms. Lucashuk said she had no additional comments to offer beyond what was provided in writing. Mr. Humphreys said he did not have much to add to Pennsylvania's comment letter either, but he said the specificity was appreciated and he would suggest deleting some of it and providing more of a general approach to rebates not tied to the risk and not having a predetermined amount dictated to the states, allowing them to determine what may be appropriate in their markets. He said it is important to note that in COVID-19 filings they received, carriers were making the COVID-19 benefits contingent on continued purchase or renewals, so it is important to clarify that.

Mr. Bryant said Washington made 13 comments in its letter that covered three areas that are: 1) providing a more direct link with the type of value added benefit of the underlying coverages; 2) suggesting changing terms like "mental state" and "good faith belief" to a more empirical standard; and 3) committing to giving the commissioner regulatory authority over consumer protection issues that arise from this.

Director Ramage said he supports the model, as it strikes a good balance, and he suggested that the drafting note include brief but appropriate comments to remind that there are provisions within the Real Estate Settlement Procedures Act (RESPA) and the Federal Crop Insurance Corporation (FCIC) that might affect the ability to provide rebates. Superintendent Dwyer asked Director Ramage if he could provide language to address that issue, and he said yes.

Ms. Lohmann said the only thing Minnesota would comment on not already mentioned is the concern regarding third parties, regarding whether anyone has any liability or obligation there since they are not licensed and therefore the commissioner would not be giving approval for these services, and most carriers say they have no liability for them. She said there may need to be something addressing that issue in the model. Superintendent Dwyer asked if Minnesota could provide language to that effect, and Ms. Lohmann said yes.

Mr. Ridgeway said the summary of issues provided earlier in the meeting did not mention some of AHIP's comments. Superintendent Dwyer clarified that it was just a general summary, but all letters and comments will be considered.

b. Discussed Next Steps for Completing the Development of Amended Model Law Language

Superintendent Dwyer said the intention is to go through the comment letters carefully and come up with summaries and possibly another draft for discussion during the Task Force meeting on Aug. 7.

3. Discussed its Timeline and Next Steps

Commissioner Godfread said the plan is to create summaries for the comments and continue the discussion during the Task Force meeting on Aug. 7.

Ms. Jabourian said she would like to go on record as stating that California does not agree with changing the word "unfair" to "unlawful" in the Principles.

Commissioner Anderson asked for clarification regarding the timeline for completing the Principles. Commissioner Godfread said they were to be created by the Summer National Meeting. He said significant discussion has taken place both at the Working Group level and on member calls. He said he thinks it is very close, it just needs the final touches and then it will be ready to move forward. He said there has been a lot of discussion in an open and transparent setting; they are guiding level principles for the NAIC, and they will become more defined as related work transpires in other workstreams. He said the Principles do not represent a model law or regulation, but they serve as guideposts that will be considered in terms of guiding that discussion.

Commissioner Altman said she supports the timeline and pushing forward. She said much conversation has already taken place and could continue, but in recognition of all the work and discussion that has already taken place, it is important to move this forward. She said she fully supports doing everything possible to get this wrapped up at the Summer National Meeting.

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

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## Draft Pending Adoption

Draft: 3/17/20

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 Afile 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 Working Group turned its attention to the use of data for fraud detection and claim settlements.

Commissioner Ommen said the Working Group received presentations from the Insurance Services Office (ISO) and the National Insurance Crime Bureau (NICB) to help inform the Working Group about current market practices in the property/casualty (P/C) industry.

Commissioner Ommen said the 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.

## **Draft Pending Adoption**

Commissioner Ommen said the Working Group also received a brief update from the Casualty Actuarial and Statistical (C) Task Force regarding its white paper, *Regulatory Review of Predictive Models*. 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.

Commissioner Ommen 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 proposal (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 the 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.

Commissioner Godfread said the Working Group also 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 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.

## Draft Pending Adoption

Ms. Matthews 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. She said the group also discussed defining “regulatory sandbox” because 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 it means. She said NAIC Legal Division 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 said the group also 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.

Ms. Matthews 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 adopted a motion 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 the request 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.

Commissioner Godfread asked if it is 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 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 Ramage 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 Ramage that a smaller group would be good to begin this work.

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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, he 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

##### a. Update on Cybersecurity Initiatives

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 *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 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 templated cyber scenarios, an event planning timeline and direction on facilitation of these events.

Director Farmer 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. He said the NAIC is also talking with Connecticut about conducting a tabletop in October 2020. He said it will likely be a single-state event and would be the third cyber tabletop exercise in 2020, exceeding the NAIC's original goal of two events for 2020.

##### b. Update from Privacy Protections (D) Working Group

Ms. Amann provided an update on the work of the Privacy Protections (D) Working Group. She said it held its kick-off meeting Dec. 8. She said the Working Group was appointed Oct. 1, and it is in the process of finalizing its membership and distribution lists for interested state insurance regulators and parties.

Ms. Amann said the Working Group will work closely with the other working groups in this arena, including the Artificial Intelligence (EX) Working Group, the Accelerated Underwriting (A) Working Group and others, as each has its unique set of issues that will require coordination.

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Ms. Amann said during the Dec. 8 meeting, the Working Group took the following action: 1) discussed its proposed workplan to meet monthly via conference call; 2) heard a presentation by Jennifer McAdam (NAIC) on the *NAIC Insurance Information and Privacy Protection Model Act* (#670), the *Privacy of Consumer Financial and Health Information Regulation* (#672), the General Data Protection Regulation (GDPR), the California Consumer Privacy Act (CCPA) and state data privacy legislation; 2) heard an update from Kendall Cotton (MT) on current legislative activities in Montana; and 3) discussed comments received from the Center for Economic Justice (CEJ), the National Association of Mutual Insurance Companies (NAMIC) and the APCA.

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 web page outlining state activity to date in this area. She said NAIC Legal Division 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.

Commissioner Godfread 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 (NAIC) 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. He 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 mindful of concerns that many 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 the NAIC's Center for Insurance Policy and Research (CIPR) and the NAIC Insurance Regulator Professional Designation Program, along with the consumer groups.

Director Froment agreed 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.

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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.

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 would like to clarify that the intent of his letter was not to provide a list of things 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 Godfread 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. He said the CEJ 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

Indiana State Rep. Matt Lehman (R-Berne), who is also vice president of the National Conference of Insurance Legislators (NCOIL), provided an update on NCOIL's insurance modernization activity.

Mr. 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.

Mr. Lehman 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.

Mr. 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 state's 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.

Mr. 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

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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.

Mr. Lehman 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 Godfreed 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.

Mr. 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 Godfreed said CIPR has posted a great summary of the *Journal of Insurance Regulators* (JIR) article titled, "Time to Dust the Anti-Rebating Laws," and he encouraged those working on the anti-rebating model law language to read it.

Commissioner Godfreed 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.

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