

Draft Pending Adoption

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Innovation, Cybersecurity, and Technology (H) Committee
Tampa, Florida
December 13, 2022

The Innovation, Cybersecurity, and Technology (H) Committee met in Tampa, FL, Dec. 13, 2022. The following Committee members participated: Kathleen A. Birrane, Chair (MD); Evan G. Daniels, Co-Vice Chair (AZ); Dana Popish Severinghaus, Co-Vice Chair (IL); Karima M. Woods (DC); John F. King (GA); Amy L. Beard (IN); Chlora Lindley-Myers and Cynthia Amann (MO); Troy Downing (MT); Jon Godfread (ND); Adrienne A. Harris represented by Seema Shah (NY); Judith L. French and Carrie Haughawout (OH); Elizabeth Kelleher Dwyer (RI); Carter Lawrence (TN); Kevin Gaffney (VT); and Mike Kreidler (WA).

1. Adopted its Oct. 14 and Summer National Meeting Minutes

Commissioner Birrane said the Committee met Oct. 14 in a joint meeting with the NAIC/Consumer Liaison Committee. During this meeting, the Committee heard presentations on algorithmic bias and approaches insurance companies are or can implement to manage and mitigate the risk of unintended bias and illegal discrimination when developing and using artificial intelligence (AI)/machine learning (ML). Commissioner Birrane said the Committee also heard presentations on algorithmic bias and a holistic approach to confronting structural racism in insurance.

Commissioner Godfread made a motion, seconded by Commissioner Downing, to adopt the Committee's Oct. 14 minutes (Attachment One). The motion passed unanimously.

Commissioner Birrane said the Committee also met Aug. 10.

Director Daniels made a motion, seconded by Commissioner Lawrence, to adopt the Committee's Aug. 10 minutes (see *NAIC Proceedings – Summer 2022, Innovation, Cybersecurity, and Technology (H) Committee*). The motion passed unanimously.

2. Adopted the Reports of its Working Groups

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

Superintendent Dwyer said the Big Data and Artificial Intelligence (H) Working Group met Dec. 13 and exposed draft model and data regulatory questions related to the use of third parties for a 62-day public comment period ending Feb. 13 and issued a report on the AI/ML Private Passenger Auto (PPA) survey results.

B. Cybersecurity (H) Working Group

Amann said the Cybersecurity (H) Working Group continues to work on a baseline review of its survey results. She said they also: 1) heard an update on international work related to cyber; 2) adopted the "Summary of Cybersecurity Tools" memorandum; 3) received an update on the cybersecurity workstreams document; and 4) discussed cybersecurity with the Cybersecurity and Infrastructure Security Agency (CISA).

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C. E-Commerce (H) Working Group

Commissioner Downing said he has nothing additional to report regarding the activities of the E-Commerce (H) Working Group beyond what is in the summary.

D. Innovation in Technology and Regulation (H) Working Group

Director Daniels said he has nothing additional to report regarding the activities of the Innovation in Technology and Regulation (H) Working Group beyond what is in the summary.

E. Privacy Protections (H) Working Group

Amann said the Privacy Protections (H) Working Group will be exposing a new draft of the new *Insurance Consumer Privacy Protection Model Law* (#674) at the end of January, which will be followed by a 60-day comment period.

Director French made a motion, seconded by Director Daniels, to adopt the reports of the Big Data and Artificial Intelligence (H) Working Group (Attachment Two), the Cybersecurity (H) Working Group (Attachment Three), the E-Commerce (H) Working Group, the Innovation in Technology and Regulation (H) Working Group (Attachment Four), and the Privacy Protections (H) Working Group (Attachment Five). The motion passed unanimously.

3. Adopted its 2023 Proposed Charges

Commissioner Birrane reviewed the background and process regarding the development of the 2023 proposed charges for the Committee. She asked if there were any comments regarding the proposed charges.

Hearing none, Commissioner Downing made a motion, seconded by Director Popish Severinghaus, to adopt the Committee's 2023 proposed charges (Attachment Six). The motion passed unanimously.

4. Received a Status Report on Model Law Development Efforts

Director Popish Severinghaus provided a status report regarding the Committee's charge to track the implementation of and issues related to model laws pertaining to innovation, technology, data privacy, and cybersecurity. She said 21 states have adopted the *Insurance Data Security Model Law* (#668), and it is pending in two states. She said 10 states have adopted the *Unfair Trade Practices Act* (#880) revisions, and it is being considered in one state. She also said five states have insurance regulatory sandbox laws in place, and nine have indicated that they have an innovation regulatory initiative or regulatory flexibility allowing for innovation in insurance products and services.

5. Discussed Other Committee-Level Projects

Commissioner Birrane described several committee-level projects currently underway, including a portal, or entry point for understanding what is happening throughout the NAIC on issues related to innovation, cybersecurity, and technology. She asked Scott Morris (NAIC) to provide the status of those projects. Morris said the project that has been referred to as the ICT-Hub is intended to assist in coordinating the work of all NAIC committees on issues

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related to innovation, cybersecurity, and data privacy. He said during the July Collaboration Forum on Algorithmic Bias, NAIC staff presented a concept to be built on the current website to identify “related groups” and link to their work pages and a summary of the relevant work, as well as a library of resources. He said the team has developed a mockup of the hub focusing on topics covered by the Committee, and it would welcome feedback on those. He said while this larger project is being worked on and delivered in late spring or early summer 2023, the team is looking to deliver some content earlier.

Morris said NAIC staff are also creating a Committee web page that summarizes the work of “related groups,” especially in relation to the Collaboration Forum. He said it would be available after the first of the year or at the very latest, by the 2023 Spring National Meeting. He said another project is the vocabulary project defining foundational terms. He said a draft of that work product would be ready for review by a regulatory drafting group soon. Lastly, he said the NAIC team is working on a resource guide that will aggregate presentations, materials, and key resources related to the topic. He said this educational process is ongoing, and he reviewed all of the related sessions and events held during 2022. He said the plan is to continue these at the direction of the “related groups.”

6. Heard an Update on the Collaboration Forum Plans and Deliverables

Commissioner Birrane said the goal of the Collaboration Forum is to ensure, to the extent possible and appropriate, that the work on this important topic is transparent, efficient, collaborative, and consistent in addition to developing a common vocabulary for state insurance regulators. She said state insurance regulators considered whether the NAIC should move forward with guidance or directives now and what form that would take in terms of a principled or prescriptive approach among other topics. She said there is a clear consensus that: 1) the NAIC should develop and adopt a regulatory framework for the use of AI by the insurance industry; 2) it should take the form of a model bulletin; 3) the framework should be principles-based and not prescriptive; and 4) members prefer a focus on governance requirements and the establishment of AI use protocols that rely on external and objective standards, such as the National Institute of Standards and Technology (NIST). She said members agree that efforts to validate the process should be part of the requirements, but with recognition of the practical difficulties and limitations associated with testing at this time. She said with respect to third parties, there is a strong preference among members to place responsibility on licensees to conduct appropriate diligence with respect to third-party data and model vendors as opposed to attempting to directly regulate unlicensed third-party vendors.

Commissioner Birrane said it is with those concepts in mind that the Committee, through the Collaboration Forum and the many working groups that make up the Collaboration Forum, will draft a model interpretative bulletin. She said the development of the current table of contents for the bulletin, at a very high level, is just now getting underway. She said it would include: 1) an introduction background and anchoring legislative authority for the bulletin; 2) a definitional section incorporating the vocabulary project already underway; 3) regulatory expectations for the use of AI by the insurance industry, which will include corporate governance and enterprise risk management (ERM) expectations; and 4) a section on regulatory oversight and examination standards, which will address market conduct, financial examination, and rate filing reviews.

Commissioner Birrane said the drafting of these four sections will be divided among the working groups that currently make up the Collaboration Forum, but all members are welcome to participate. She said a timeline will be developed, and sufficient work will be completed to enable a robust conversation about it in advance of the 2023 Spring National Meeting in Louisville, KY, affording plenty of time to discuss the details.

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7. Heard Presentations on the Feasibility of Transparency and Explainability to Consumers Regarding Adverse Decisions from the Use of Big Data and AI

Commissioner Birrane introduced the panel presenting on the topic of the feasibility and transparency regarding adverse decisions that are derived from the use of AI/ML driven automated decisions: the moderator, Dorothy L. Andrews (NAIC); and the panelists, Brenda J. Cude (University of Georgia), Anthony Habayeb (Monitaur), Frank O'Brien (American Property Casualty Insurance Association—APCIA), and Rachel Jade-Rice (Next Insurance). Andrews began the discussion asking panelists about what transparency and explainability means for consumers. Jade-Rice said for Next Insurance, explainability is a key part of transparency. Habayeb said it is important to remove the complexity around transparency and think of it as who did what and why. He said consistently using the words "decision" and "understanding" is very important. O'Brien said transparency is easy and supported by everyone. He said doing transparency is the hard part, and the key things to consider are whether it is doable, desirable, understandable, and scalable. He said operationalizing that within programs that provide a meaningful level of transparency is what we should be pursuing, and it is the hard part. Dr. Cude said the important thing is conveying what consumers want to know, which includes why the decision was made and less about how the information is used. She said consumers need to know that so they can better understand what they can change to get a better result. She said this is not new, as consumers make adverse decisions all the time, so consideration should be given to how the introduction of big data and AI into the equation changes things.

The panel discussed what might affect consumer's understanding. Dr. Cude said instead of asking what consumers can understand, it should be about what insurance companies can explain. She said there are consumers that will not pay attention to any of this and people who are expert consumers who already know a lot about this. She said those two groups are not the concern. She said everyone else and the intermediaries that are helping those people are the ones to be concerned about, as well as whether insurers can get that information to those people when they need it. She said there will also be educational and generational issues. Jade-Rice said it is not a question of whether insurers can do this because they can, but the question is whether it is going to be understandable and actionable for the consumer. She said Next Insurance does a lot of market research to try to figure this out. Habayeb said there is a very positive approach to this, and insurance products can be improved using AI. He said they already have transparency standards in Europe, so there is some global precedence already set. Jade-Rice agreed and said this can create more transparency. O'Brien said the term adverse needs to be defined within this context, and it is important to present information that assures the consumer they are being treated fairly. He said it is about trust.

Habayeb said the conversation around governance and what questions state insurance regulators will be asking needs to take place. He said in defining what needs to be communicated to consumers, depending on where that discussion lands, there will need to be some operational system that can deliver that, and companies will need some time to build it. Andrews added that diversity in thought is important in making good decisions. Dr. Cude said that as an educator, researcher, and advocate, she wants to know about the audience and ask what they need to know. She said a best practice is to learn more about consumers and what they know about big data, algorithms, and AI, as well as do consumer testing. Jade-Rice said the federal Fair Credit Reporting Act (FCRA) provides a good lens into how to translate complex processes into something a consumer will understand, and that path should be followed. O'Brien said the NAIC has sought to provide some level of flexibility and scalability in terms of requirements and processes expected of insurers, such as with the cyber model. He said one size will not fit all. Jade-Rice said the insurer can provide a lot of detail behind how the decision was made, but the question is what is useful to the consumer and actionable. She said consumers want to know the variables upfront

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and then the outcomes on the backend. Habayeb said insurance has this foundation of actuarial practices in insurance that can influence this area. He said state insurance regulators want to know the inner workings, but consumers do not as they are trusting the state insurance regulator to be on top of that. He said some information provided to the state insurance regulator should not have to be a public asset or record. Dr. Cude said it might be important to ask what consumers have a right to know that does not necessarily have to be automatically provided.

Andrews asked the panel what they believe is practical to be disclosed to consumers. Jade-Rice said it is about whether it is understandable and actionable to the consumer. She said how much the consumer wants to know and the purpose of the disclosure should be considered. She said certain variables represent a hard decline, and those factors should be disclosed as such, especially when they are actionable and can be used to mitigate risk. Habayeb said being able to say what factors are involved should be table stakes. He said there are also factors that have been approved to be used, and the consumer should know what factors were involved. He said setting a number on how many factors need to be disclosed may not make sense, but which ones are the most important should definitely be disclosed. O'Brien said the number of factors that should be disclosed is being discussed at the National Conference of Insurance Legislators (NCOIL), and the APCA has some significant concerns with that and how it would practically work.

Commissioner Birrane said as a consumer, she would want to know what was driving her score or her denial because that represents consumer shopping power. Amann said governance and a framework for it is already covered by the NIST, and much of the disclosure issue is included in the privacy model that will be exposed at the end of January 2023. She encouraged those in attendance to provide comments during that exposure period. Commissioner Birrane said she hears different things regarding what is doable, and knowing what factors were involved that carried the most weight would be of value to her as a consumer. She asked the panel what is actually doable. O'Brien said his members vary in terms of their position on that question. He said it depends on who you talk to. He said more is doable now than was years ago, but he asked what the expectations are, stating that just because it is doable does not make it desirable or scalable. Dr. Cude said from the public policy perspective, we need to be sure this is not just another way of gathering more information about consumers and making rating factors based on correlation and not causation. She said we should be looking at what is good for the consumers as a whole and the industry as well. Jade-Rice says it is doable, but the question is how much it will cost to do; since that cost is passed on to consumers, there should be a sensitivity to that. She said if we are going to take it on, we should be sure it is useful to the consumer, so it is about finding the right balance. Habayeb said the question is scalability and being reasonable on expectations regarding the time to implement, as different companies will have different capabilities to do this.

Director Popish Severinghaus said if insurance companies can get there on their own, and there is a way for them to do that, they can help to drive where this goes. She said it is the state insurance regulators' job to facilitate that and help consumers to better understand what they need to know. She said facilitating that will help consumers be a part of driving that forward as well.

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