

Draft: 9/26/2023

E-Commerce (H) Working Group
Virtual Meeting
September 7, 2023

The E-Commerce (H) Working Group of the Innovation, Cybersecurity, and Technology (H) Committee met Sept. 7, 2023. The following Working Group members participated: Judith L. French, Co-Chair (OH); Troy Downing, Co-Chair (MT); Michael Humphreys, Vice Chair (PA); Jully Pae (CA); Dana Sheppard (DC); Johanna Nagel (IA); Craig VanAalst (KS); Jo LeDuc (MO); Martin Swanson (NE); Colton Schulz (ND); Matt Gendron (RI); Amy Ondell (SD); and Charles Malone (WA).

1. Discussed the Updated Framework

Director French briefly went over what the Working Group has accomplished thus far. She explained that in 2021, the Working Group issued a survey asking what laws were implemented during the COVID-19 pandemic that allowed electronic commerce, transactions, and communication to take place when in-person methods were not possible. She stated that the Working Group also sent a survey to insurers and stakeholders asking them to identify technologies or any other forms of electronic commerce that may have impeded their ability to conduct business electronically. Director French explained that an initial document was created, called a framework, and exposed for a public comment period that ended March 23. She stated that Working Group leadership worked with NAIC staff to create the current draft framework that was included in the materials for this meeting. She stated that the document is a summary of the input the Working Group received and does not take a position on whether a state should amend its regulatory requirements, as that will remain a decision for each state to make. Instead, Director French stated that this framework will be a resource for states to consider when reviewing their rules or regulations. She explained that the Working Group's intent is to adopt the framework by the end of the year and that the Working will expose the updated framework for further comment.

Commissioner Downing agreed that the framework is nonprescriptive in nature and that it lays out what issues there might be regarding electronic commerce. He also agreed that the exposure of the document is a good next step.

Sarah Wood (Insured Retirement Institute—IRI) stated that she appreciated the work on the updated framework and that it is helpful. She asked if a work plan was being developed to produce guidance or a bulletin after the framework is adopted. Director French stated that right now, there is no plan for further guidance once the framework has been adopted, but she did state that she did not want to completely foreclose that possibility. Director French further stated that the thought of the Working Group is that the framework is to serve as guidance to the states. Commissioner Downing agreed with Director French's statements regarding the Working Group's plan to solely produce the framework at this time. Director French told Wood that if she sees the need for something additional later on, she should express that need to the Working Group.

Wood stated that members of the IRI would like to see something more explicit about what is acceptable when it comes to modernization but that she would be happy to provide more details on that. Director French said that Wood's perspective was helpful and that she is looking forward to receiving comments on the draft framework from the IRI. Miguel Romero (NAIC) stated that he could see a possibility that the framework could be adopted this year and then have possible updates next year or the year after, especially after industry and the public get a chance to understand what this publication is.

Birny Birnbaum (Center for Economic Justice—CEJ) stated that the document is more of a brainstorming document than a framework. Birnbaum believes that this is a good start, but the document needs to be winnowed down to the things that state insurance regulators think are relevant. He also stated that the document needs to provide guidance for state insurance regulators to address those issues. Birnbaum stated that there are items in the framework that do not need to remain on the list. He stated that the use of artificial intelligence (AI) does not need to be on the list because it is being addressed elsewhere in the NAIC. Birnbaum also suggested that the items that are useful to state insurance regulators should be prioritized and expanded upon in this framework.

Schulz responded to Birnbaum’s point about prioritization, stating that there is prioritization built and considered in the framework. Birnbaum responded by stating that it is not clear to him that the current framework represents a prioritization as he reads through the document; rather, it seems to list a set of issues. Birnbaum further stated that if the intent is to prioritize certain items, it would be good to state explicitly that those are “priority items” and the other ones are not. Schulz stated that the items in the framework are numbered, and that provides proper prioritization guidance. Birnbaum stated that he reads the document as a list of items and not necessarily a hierarchy of items. Director French stated that the Working Group will consider that in determining what the final document will look like. Romero stated that the benefit of the comment period could allow the Working Group to consider what is in and out of scope for the framework and what the document needs in order to be a useful resource for state insurance regulators.

Director French thanked everyone for their input. Commissioner Downing stated that he appreciates the input received during the meeting, and he looks forward to completing the framework.

Having no further business, the E-Commerce (H) Working Group adjourned.

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