

Draft Pending Adoption

Draft: 4/6/23

Innovation, Cybersecurity, and Technology (H) Committee
Louisville, KY
March 22, 2023

The Innovation, Cybersecurity, and Technology (H) Committee met in Louisville, KY, March 22, 2023. The following Committee members participated: Kathleen A. Birrane, Chair (MD); Michael Conway, Co-Vice Chair, and Jason Lapham (CO); Doug Ommen, Co-Vice Chair (IA); John F. King (GA); Gordon I. Ito and Lance Hirano (HI); Dana Popish Severinghaus (IL); Chlora Lindley-Myers represented by Cynthia Amann (MO); Troy Downing (MT); Jon Godfread and Chris Aufenthie (ND); Adrienne A. Harris represented by John Finston (NY); Judith L. French (OH); Carter Lawrence (TN); Kevin Gaffney (VT); and Mike Kreidler and Molly Nollette (WA). Also participating were: Lori K. Wing-Heier (AK); George Bradner (CT); Weston Trexler (ID); Amy L. Beard (IN); Sandra Darby (ME); Grace Arnold (MN); Angela Hatchell (NC); Jennifer A. Catechis (NM); Elizabeth Kelleher Dwyer (RI); and Katie Johnson (VA).

1. Adopted its 2022 Fall National Meeting Minutes

Director French made a motion, seconded by Commissioner Godfread, to adopt the Committee's Dec. 13, 2022, minutes (*see NAIC Proceedings – Fall 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 March 22 at the Spring National Meeting.

Related to the Working Group's survey efforts, Superintendent Dwyer reported that the home insurance survey is complete, with the Working Group now shifting to the analysis phase of the project. A public report is to be provided to the public at the Summer National Meeting.

Superintendent Dwyer reminded attendees that the private passenger auto (PPA) insurance survey report is already available on the Working Group's website.

Lastly, related to the survey work, the artificial intelligence (AI)/machine learning (ML) life insurance survey is scheduled to be distributed by the end of March. The requesting states intend to issue a public report by the Fall National Meeting.

The Working Group's third-party vendor workstream has three deliverables this year.

First, using the results of the survey work, the workstream will develop a library of third-party vendors operating in the PPA market, home market, and life market. The library will be completed for both the PPA and home markets by the Summer National Meeting. The library for the life market will be delivered by the Fall National Meeting. The second deliverable of this workstream is to develop a regulator-only tool for states to share information about third-party vendors' activities, similar to what the NAIC has developed for states to share

Draft Pending Adoption

information about the review of property/casualty (P/C) rating models. This tool will be available by the end of April. The final deliverable is a set of model and data regulatory questions, which state insurance regulators may use to ask about models and data used by insurance companies. A revised draft of the questions should be circulated by the end of April. Those in the industry have submitted comments raising the following issues: 1) the document should be principle-based; 2) the document should be more limited in scope to encourage state insurance regulators to focus on higher-risk AI models; 3) questions should be prioritized to recognize the importance of model governance; 4) there are questions about assumptions of law that are not based in law; 5) there are concerns about redundancy with financial examinations and the potential burdens on smaller companies and smaller AI providers; and 6) the document needs to clarify the intended use of the questions.

The third workstream under the Working Group will evaluate tools and resources for monitoring the industry's use of data and AI/ML. This workstream will create a library of tools, metrics, and resources available to the insurance industry for managing AI/ML activity by the Summer National Meeting. The workstream may then pursue a more formal assessment of the strengths and weaknesses of these tools.

The final Working Group workstream, which is addressing the development of a regulatory framework for AI/ML, has not been active due to work on the AI Interpretive Bulletin, which will address regulatory expectations for the use of AI by insurers, as well as regulatory oversight and examination considerations. Related to the final workstream, Commissioner Beard said that the state insurance regulators have started leaning toward the idea of an independent data set, which could help in testing for bias. The work would progress with the assistance of Dorothy L. Andrews (Center for Insurance Policy and Research—CIPR) and the CIPR. Birny Birnbaum (Center for Economic Justice—CEJ) asked who would be responsible for the development of an independent data set and how the project came about. Commissioner Birrane said that the project cannot be elaborated on because, at this point, state insurance regulators have just started to brainstorm the possibilities of the project.

B. Cybersecurity (H) Working Group

Amann said the Cybersecurity (H) Working Group's most significant project is the planned cybersecurity response plan. The Working Group has volunteers and has drafted an outline document that the volunteers will now meet to expand on. The response plan will serve as an aid to states responding to cybersecurity events occurring at regulated entities. Additionally, the Working Group, as part of its efforts to monitor federal cybersecurity developments, will be having discussions about cloud service providers that insurers are using, whether state insurance regulators should have that data, and how they would go about getting that data. Third, the Working Group will send a referral to the Information Technology (IT) Examination (E) Working Group, asking it to consider updating its guidance based on recent releases by the Cybersecurity and Infrastructure Security Agency (CISA). The Cybersecurity (H) Working Group will also continue to support NAIC training initiatives. Lastly, the Working Group will also be working with NAIC staff to receive presentations from cyber risk analytic vendors so that state insurance regulators can consider if the tools would be useful to them as regulatory tools.

C. E-Commerce (H) Working Group

Director French said that the E-Commerce (H) Working Group has now exposed its state laws surveys/framework with comments due by March 23. The framework was developed based on survey work completed in 2022, which included questions on state laws, questions on actions taken in the wake of the COVID-19 pandemic, and a business impact survey.

Draft Pending Adoption

Following the receipt of the comments, the Working Group plans to meet to further discuss the framework comments received and to consider the next steps required to meet the demands of the Working Group's 2023 charges.

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

Commissioner Conway said the Innovation in Technology and Regulation (H) Working Group plans to meet in April to develop a supotech regulator forum that would allow state insurance regulators to share insights on current innovations and technologies being explored among the regulatory community. The regulators will also look at developing an insurtech forum that would allow regulators to have confidential one-on-one discussions with insurers and third parties about innovation and technologies that insurers and third parties are using, as well as the regulations and barriers that may exist. The Working Group will also continue to monitor the developments of the Innovation, Cybersecurity, and Technology (ICT) Hub to ensure insights shared among the state insurance regulator community can be widely and easily distributed. The Working Group will continue to monitor industry trends, including consideration of training for regulators, which may lead to referrals to other working groups or committees.

E. Privacy Protections (H) Working Group

Johnson said that on Feb. 1, the Privacy Protections (H) Working Group exposed a draft of the new *Insurance Consumer Privacy Protection Model Law* (#674) for a 60-day public comment period ending April 3. In the interim, the Working Group has met in regulator-to-regulator sessions on March 15 and Jan. 23. The Working Group met directly with companies on Feb. 16, March 1, 2, March 9, March 14, and March 19, with additional meetings scheduled for April 5, April 6, April 11, April 12, and April 13. The Working Group is also planning open meetings following the comment period beginning April 18 and an interim in-person meeting in Kansas City, MO, in June. The Working Group also met March 21 during the Spring National Meeting, during which it adopted its 2022 Fall National Meeting minutes, heard updates from Jennifer Neuerburg (NAIC) on state privacy legislation, heard updates from Shana Oppenheim (NAIC) on federal privacy legislation, and adopted its 2023 work plan. Commissioner Birrane commended the Working Group for its process thus far, noting that it has been rigorous and transparent.

Commissioner Godfread made a motion, seconded by Deputy Superintendent Finston, to adopt the reports of the Big Data and Artificial Intelligence (H) Working Group (Attachment One), the Cybersecurity (H) Working Group (Attachment Two), the E-Commerce (H) Working Group, the Innovation in Technology and Regulation (H) Working Group, and the Privacy Protections (H) Working Group (Attachment Three). The motion passed unanimously.

3. Received an Update from the Collaboration Forum on Algorithmic Bias on the Development of a Model Bulletin Providing Regulatory Guidance Respecting the Use of Big Data/AI-Driven Decisional Systems by Insurers

Commissioner Birrane started the discussion by revisiting past discussions on the bulletin at the 2022 Fall National Meeting. Commissioner Birrane stated that bulletin work is a member-driven activity with a consensus that the framework developed should be principles-based and not prescriptive. The membership also has a consensus that the framework should focus on governance requirements and the establishment of protocols that rely on external and objective standards. The membership has also agreed that validations should be a part of the requirements but with recognition of the practical difficulties and limitations associated with testing. With respect to third

Draft Pending Adoption

parties, the preference among the membership was that responsibility be placed on licensees to conduct appropriate diligence with respect to third-party data and model vendors and to hold licensees responsible as opposed to attempting to directly regulate unlicensed third parties at this time.

Since the 2022 Fall National Meeting, state insurance regulators have started drafting the four sections of the bulletin among drafting groups. There is an introductory section with the leaders of that group: Director Popish Severinghaus, Commissioner Andrew R. Stolfi (OR), and Commissioner Nathan Houdek (WI). There is also a definitional section, of which the leaders are Commissioner Conway and Commissioner Gaffney. There is a section focused on regulatory expectations, which is the largest section of the bulletin. This section's leaders are Commissioner Beard, Commissioner Birrane, Superintendent Dwyer, and Deputy Superintendent Finston. The final section of the bulletin is focused on regulatory oversight and examination based on the articulated standards. The leaders of that section are Commissioner Arnold, Commissioner Trinidad Navarro (DE), Commissioner Ommen, Commissioner Jon Pike (UT), and Director Wing-Heier.

Commissioner Birrane said she hopes to have a public exposure draft by the Summer National Meeting.

4. Heard a Report on the Colorado Proposed Algorithm and Predictive Model Governance Regulation

Commissioner Conway introduced Lapham, who provided an update on the Colorado proposed regulation. Lapham stated that the regulation under consideration is based on Senate Bill (S.B.) 21-169, which is designed to protect Colorado insurance consumers from insurance practices that result in unfair discrimination due to the use of predictive model AI tools. It applies broadly to insurers that use external consumer data and information sources (ECDIS), as well as the algorithms and predictive models that use ECDIS. The law requires that the Colorado Division of Insurance engages in stakeholder outreach for each type of insurance, with the Division initiating this process in February 2022. The Division has initially focused on life insurance underwriting and has held six stakeholder meetings thus far. Additionally, the Division completed a survey of 10 life insurers. In the process of stakeholder outreach, the Division has discovered that there is a wide range of insurer preparedness related to governance and risk management around AI tools. The Division bifurcated its approach to addressing the required risk management framework and testing components contemplated by S.B. 21-169 through two regulations.

The draft risk management framework regulation has three sections. The sections address governance framework expectations, documentation requirements, and a reporting requirement. The Division is in the process of digesting and synthesizing comments received and will adjust the regulations as appropriate with the intention of exposing a revised draft for additional comment. Commissioner Conway added that there has been an inaccurate view that once the Division notices the regulation, the discussion or opportunity for input is over. Commissioner Conway said this is not true. The Division continues to look forward to input regarding S.B. 21-169.

Birnbaum asked how many insurers will be submitting the annual reporting on their use of ECDIS, to which Lapham responded he does not have an answer apart from saying that as many carriers as are subject to the regulation. Commissioner Conway noted that the Division has not done a comprehensive survey of the companies to which the regulation will apply, so the Division is currently unable to provide an estimate apart from anticipating there will be a robust number of companies submitting the required information. Birnbaum followed up by saying that the reason for his inquiry is that, on the resources, the Division will need to review the insurance company reporting in a timely manner. Commissioner Conway said that is an issue that industry members have raised as well, and it will be one the Division is going to be cognizant of, as there is no point in requiring the testing or getting the required report if the Division cannot use it in a meaningful way.

Draft Pending Adoption

5. Heard a Presentation on the Use of Block Chain Methodology for Data Calls

Commissioner Godfread led a presentation on a North Dakota project to use blockchain technology for data calls. The reason for the data call initiative is to address several issues with data. The data available is often delayed, but the legislature meets on a biannual basis, with the data provided often being out of date. However, the North Dakota Insurance Department wants all policy decisions to be data-driven, noting that bad data can lead to bad public policy. Additionally, the data often available is usually higher in level than is needed to address the questions posed. The data-gathering process is often delayed as the Department tries to refine the questions being asked, which can lead to legislation not advancing or legislation advancing without the data needed. Data calls are often for a single point in time and are not easy to repeat. Lastly, Commissioner Godfread noted that the data does not provide meaningful value to companies.

To address this problem, the Department undertook a pilot with one goal of the data call being to help answer the question regarding uninsured motorists, which is a frequent issue in every session of the legislature. The second goal was to test the data-gathering process/technology. Some industry estimates suggest the figure is as high as 20%, while others say it is as high as 7%, and the data available right now is likely 24 months old.

The Department gathered data by asking the North Dakota Department of Transportation (DOT) to provide the registers of vehicles in the state and relied on the 10 personal auto insurance companies with the most business in the state to provide data on the vehicles they insure in North Dakota.

Commissioner Godfread then described the mechanics of the technology, which, at a high level, can be explained as a highly secure, highly complex spreadsheet of information. The Department posted its list of vehicles registered in North Dakota. Carriers input their insured vehicle identification numbers (VINs) into a node created for each individual company. Information was then compared. No information ever left the nodes and thus stayed in the custody, control, and care of each company the entire time. This is different from a traditional data call, in which the data would have been copied and given to a third party or regulator, which raises a security issue consideration.

The Department ran into resistance, which required an extensive explanation of the technology and safeguards in place. However, once data was received, the Department found that among the 10 participating carriers, 46% of vehicles registered in North Dakota can be as insured in the top 10 auto carriers. The figure appears low, but Commissioner Godfread reminded the Committee that the data call only included 10 carriers and only focused on personal auto and that some companies provided information on recreational and farm auto VINs. Other vehicle types (e.g., motorcycles, classics, and recreational vehicles [RVs]) may also not be accounted for.

What the Department also found was that this data call was easy to repeat, with the first call going out on Feb. 10 and a repeat data call going out on March 10. The data call also allowed the Department to provide information back to carriers—for instance, that 21% of the VINs insured were not registered in the state. A final data call is expected on April 10. This data process could also be repeated to ask for more granular data as long as a data standard is set up, which sounds simple but has proved to be difficult. Still, because of the speed of the process and the information the process yielded, Commissioner Godfread considered the project a success.

Draft Pending Adoption

Deputy Superintendent Finston asked if the Department ever took possession of the data. Aufenthie responded that the Department only received aggregated results based on the question posed. Godfread restated that the intent of the project was to prove that functionality was viable. Aufenthie noted that the American Association of Insurance Services (AAIS) created nodes for each individual company, and each company uploaded information into its node, but the nodes remained in their possession.

Commissioner Gaffney noted that this effort is very timely, as states are in legislative session, so this technology may be beneficial from an efficiency and data security standard. Commissioner Gaffney asked what expertise would be needed to complete the project or if the expertise was provided by the vendor. Commissioner Godfread remarked that the resources/costs were not substantial but that the key hurdle was generating willingness to embark on the project as it required many discussions with stakeholders, especially if departments of insurance (DOIs) continue with parallel data tracking mechanisms while the blockchain technology continues to be validated for data call usage. Commissioner Godfread noted that smaller companies did find the project beneficial in that they were able to access meaningful data that was gathered as part of the project. Commissioner Godfread further noted that while there may be a cost associated with the technology, it is negligible compared to the cost associated with the current data-gathering processes.

Darby, Statistical Data (C) Working Group chair, noted that the Working Group had been looking at blockchain technology/OpenIDL technology for a similar project and asked if there was a cost figure per company or if figures were able to compare costs between smaller and larger companies. Aufenthie noted that there was zero cost to the companies participating in the process. However, he said that he was unsure about cost to the vendor and expects the cost would go down as an increasing number of companies participate in the process. Darby also asked about the security of the data in the node. Aufenthie noted that the program was permission-based, which helped avoid security issues. The companies were able to see and understand the information that would be shared, which required some upfront discussion about the technology, but the fact that the information stays with the company the entire time means it is more secure than the current process. Under the current process for data calls, data is transmitted to a third party, which is less secure. Additionally, DOIs are able to limit access to the data to only the data fields that are truly needed for the information-gathering exercise.

Bradner noted that in their own experience with OpenIDL, the initial setup can be time-consuming, but it can be easily repeated once set up. Bradner hopes that state insurance regulators can continue to build data-gathering capabilities leveraging OpenIDL technology.

Hirano asked how, if the Department did not ever have the data locally, it was able to determine that farm and recreational vehicles were included in the data set. Commissioner Godfread noted that as companies were uploading information, they informed the Department about what was being uploaded. Therefore, this determination did not come out through the blockchain analysis phase of the project but instead was identified in the early discussions before data was uploaded.

Commissioner Birrane asked how long the project took to get started. Aufenthie stated that the project started in June 2022 with the hopes of getting done by the end of the year, but the project took a long time to get started, specifically with getting companies comfortable with the technology. The Department started the discussions with a day-long summit to talk about the technology and intent of the project, which was beneficial, but the companies still raised many questions as the project moved along.

Draft Pending Adoption

Commissioner Birrane asked what the North Dakota Insurance Department sees as the challenge going forward. Commissioner Godfread said that a data standard is the largest obstacle. Working with VINs was manageable, but as the complexity of the data call increases, so will the complexity of the data standards. Therefore, asking for very specific information may prove to be difficult.

Birnbaum thanked North Dakota for its willingness to engage in the data call pilot project. Birnbaum asked about resource requirements for the DOIs to continue with the data calls. Aufenthie said the resource requirements are minimal because most of the work of the project comes in the setup. Asking for a data refresh, as anticipated in April, will take one minute to complete. Aufenthie noted that this project resulted in no additional staffing needs and no cost to the state. Birnbaum then asked how difficult it would be to expand the data call project to include zip codes and then produce the same uninsured data by zip code. Aufenthie said it would not be difficult to expand the data call as such but would require upfront work with the vendor to ensure the coding is updated. Aufenthie noted, however, that adding ZIP codes could introduce privacy issues that would need to be considered.

Tony Cotto (National Association of Mutual Insurance Companies—NAMIC), thanked North Dakota for the process undertaken, including involving the trades, as it helped build comfort with the project. Cotto also noted that while answering the uninsured motorist problem was not the true intent of the data call, it is still an important issue for states to consider. Cotto noted that the Insurance Industry Committee on Motor Vehicle Administration (IICMVA) is also looking at blockchain technology, specifically regarding motor vehicle authentication.

Robin Wescott (AAIS) thanked Aufenthie for his work on the project and noted that cost is difficult to determine, even for the current data-gathering process, but noted that the blockchain project might yield efficiencies. Wescott also noted that the technology this was built upon is the hyper ledger fabric through the Linux Foundation, which is an open software solution. Wescott encouraged the industry to look at open-source solutions, not just proprietary ones. This technology could affect the statistical reporting process, perhaps even removing the need for statistical agents. Wescott said the AAIS supports this because its goal is to make data easier to access.

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

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