

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
NCOIL – NAIC DIALOGUE COMMITTEE
SAN DIEGO, CALIFORNIA
MARCH 10, 2023
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) NCOIL – NAIC Dialogue Committee met at The Westin San Diego Gaslamp Hotel on Friday, March 10, 2023 at 1:30 p.m.

Representative Deborah Ferguson, DDS, of Arkansas, NCOIL President, Co-Chair of the Committee, presided.

Other members of the Committee present were:

Rep. Rod Furniss (ID)	Sen. Paul Utke (MN)
Sen. Travis Holdman (IN)	Asw. Pam Hunter (NY)
Rep. Matt Lehman (IN)	Sen. Bob Hackett (OH)
Rep. Brenda Carter (MI)	
Sen. Lana Theis (MI)	
Sen. Michael Webber (MI)	

Other legislators present were:

Sen. Jesse Bjorkman (AK)	Rep. Mike McFall (MI)
Sen. Justin Boyd (AR)	Rep. Helena Scott (MI)
Rep. Denise Ennett (AR)	Rep. Cameron Parker (MO)
Sen. Ricky Hill (AR)	Sen. Nellie Pou (NJ)
Rep. Reginald Murdock (AR)	Sen. Jeremy Cooney (NY)
Asm. Tim Grayson (CA)	Asm. Jarett Gandolfo (NY)
Sen. Win Stoller (IL)	Rep. Tim Barhorst (OH)
Sen. Robert Mills (LA)	Rep. Forrest Bennett (OK)
Rep. David LeBoeuf (MA)	Rep. Mark Tedford (OK)
Del. Nic Kipke (MD)	Rep. Ryan Mackenzie (PA)
Rep. Kristian Grant (MI)	Rep. Jim Dunnigan (UT)
Sen. Mark Huizenga (MI)	

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO
Will Melofchik, NCOIL General Counsel
Pat Gilbert, Manager, Administration & Member Services, NCOIL Support Services, LLC

QUORUM

Upon a Motion made by Sen. Bob Hackett (OH) and seconded by Sen. Paul Utke (MN), NCOIL Secretary, the Committee voted without objection by way of a voice vote to waive the quorum requirement.

MINUTES

Upon a Motion made by Rep. Matt Lehman (IN), NCOIL Immediate Past President, and seconded by Sen. Hackett the Committee voted without objection by way of a voice vote to adopt the minutes of the Committee's November 18, 2022 meeting in New Orleans, LA.

INTRODUCTORY REMARKS

Rep. Ferguson stated that before we get started I just want to note how great it is to again see such a large number of Commissioners attending our conference. We're now reaching the point where this type of large group of Commissioners in attendance is becoming the norm and I think that's great for each of our respective organizations. The high turnout of Commissioners recently is an observable manifestation of our improved relationship throughout the years. We may not always agree on every issue but we can disagree agreeably. Rep. Ferguson then asked all of the participating Commissioners to introduce themselves: Missouri Director and National Association of Insurance Commissioners (NAIC) President Chlora Lindley-Myers; Idaho Director and NAIC Immediate Past President Dean Cameron; Alaska Director Lori Wing-Heier; Arkansas Commissioner Alan McClain; Kansas Commissioner Vickie Schmidt; Louisiana Commissioner Jim Donelon; Montana Commissioner Troy Downing; Oklahoma Commissioner Glen Mulready; and Utah Commissioner Jon Pike

THE RETURN OF THE SYSTEMICALLY IMPORTANT FINANCIAL INSTITUTION (SIFI) DESIGNATION?

Rep. Ferguson stated that the first item we want to discuss is the return of the SIFI designation. As part of the overall effort to avoid a repeat of the 2008 financial crisis the Dodd-Frank Act created the Financial Stability Oversight Council (FSOC) and gave it the ability to designate certain financial institutions including insurers as systemically important. From the beginning serious concerns were raised surrounding the designation process as it relates to insurers since the designation subjected certain insurers to capital and regulatory requirements that were bank-centric and not rooted in an understanding of how the U.S. state-based system of insurance regulation functions pursuant to the McCarran Ferguson Act. Additionally the designation process was flawed because neither state insurance regulators or legislators had voting authority. After the financial crisis AIG, MetLife and Prudential were the designated insurance company entities but they have all since been de-designated. Recently there have been some FSOC meetings, some held behind closed doors, during which a topic of conversation was whether or not to bring back the designation. Does the NAIC know whether or not this revival will move forward and what is the NAIC's position?

Dir. Lindley-Myers stated that at this point the NAIC does not know if that will move forward but we recognize as FSOC members our participation over the years through our representative who is currently Rhode Island Superintendent Beth Dwyer has enabled us to further cultivate relationships with our federal counterparts regarding the financial regulatory community and when we're looking at that and looking at the issues that are there the NAIC continues to believe that traditional insurance activities do not pose a systemic threat to the financial system. We consistently underscore the efficacy of state insurance regulation and its strong record of protecting generations of policyholders. Us and our individual states working with our legislative colleagues is paramount to making sure that we are holding prudential financial issues and regulations at the core of our individual state of regulation in hand. We don't need any assistance from the federal government. We continue to always work with our banking and financial counterparts. Going forward, it's important that you understand that the movement to go away from SIFI's as far as the designation, in December of 2022 the financial stability board or FSB announced the discontinuation of annual identification of globally systemic important

insurers or GSI's recognizing that the activities based in each individual state is at the approach of the International Association of Insurance Supervisors (IAIS) holistic framework committee and it provides more than an effective basis for addressing any systemic risk. We will continue to advocate in Congress for federal regulations to provide the state insurance regulatory representative with a vote on FSOC. Presently we don't have a vote. As I had mentioned earlier Supt. Dwyer is a non-voting member and as the primary regulators of the insurance sector we have the necessary expertise that is needed and we've informed FSOC of that and that we are monitoring their work and that we don't believe that this is something that should come back. But we will through the NAIC and our individual states continue to actively engage with FSOC on this issue as well as broader issues from a regulatory perspective and make sure that they understand that we have this matter well in hand.

Dir. Cameron stated that it's important to stress something that Dir. Lindley-Myers said - we are the state's seat on FSOC, the insurance commissioners, but we are a non-voting member. We've asked Congress multiple times to be a voting member and said that the states should have a voting seat on FSOC. We would certainly invite NCOIL to endorse that idea or support that idea because I think it benefits both you as legislators in your states as well as us in the regulatory community.

UPDATE ON ENHANCED CASH SURRENDER VALUE (ECSV) DEVELOPMENTS

Rep. Ferguson stated that the next issue is an update on ECSV developments. We've been discussing this issue for over a year now and it culminated with NCOIL adopting a resolution last summer identifying certain ECSV products as violating the Standard Nonforfeiture law. That resolution is on the website and it's also in your legislative binders on page 87 if you wanted to refer to that. Since that time the sponsor of that resolution, Sen. Travis Holman (IN), NCOIL Immediate Past President, introduced a bill in Indiana essentially codifying in statute what he was calling for in his resolution. That bill serves as the basis for the NCOIL Life Insurance is a Promise for Life Model Act (Model), also sponsored by Sen. Holman, which will be discussed later today during the Life Insurance and Financial Planning Committee. The Model can be viewed in your binder on page 138. We're aware that NAIC's A committee has been dealing with this issue and a survey has been sent to state insurance departments for reply with information on each respective department's interaction with certain ECSV products. Can you share with us the results of the survey? And what plans does the NAIC have going forward with this issue?

Cmsr. Mulready stated we took the NCOIL resolution and with my urging along with Ohio Insurance Director Judi French who's the Chair of the A committee, we put this survey out there. There are some basic questions such as have you had applications received in your office for that form? If so, who are the companies? If so, who were those offerings to? If so, how many offers were accepted or received there? We don't have that report completed yet. It's being put into a more user-friendly readable version as we speak but that was put out in October. We are in the midst of doing that. There's been some action taken. Part of the problem is that no state has specific action on that issue as it stands today. Illinois did come out with a bulletin basically stating that their position was it did not violate the smoothness factor for universal life. I took action in Oklahoma where we basically notified the industry we would not be approving any going forward and then asked those four companies who did have filings in our state to stand down and not make any additional offerings. They were very well received. I heard from a number of them and they totally understood and they are doing exactly that, standing down. I know Louisiana has some action taken and Indiana as well took some action. Those are the four individual states that I'm aware of. I will tell you in the big scope of all that and with the results of that survey, it's a really small issue. I think at most and from what I have seen we've received

survey responses from about 35 folks that have responded to that. There have been maybe 20 offerings accepted nationwide amongst all the states for those that have been offered. And there's been offerings of 600 from one company and maybe four or five accepted there. And as far as I know only in two states have offers been accepted at this point. In Illinois, the bulletin there basically just said that the smoothness factor did not impact flexible premium universal life. Part of the problem I think is that some of these standards that were put out with the NAIC and the actuarial task force, we're talking about 1980 and universal life was really just coming into play and so I'm not sure how much of that was contemplated. But I'll flip it over to Cmsr. Donelon to talk about what Louisiana has done.

Cmsr. Donelon stated that as noted by Cmsr. Mulready, we have taken action on this by rescinding company form approvals for that activity, three of which voluntarily said they would discontinue marketing those products and using those policy forms that had been approved back in 2019. A fourth, Lincoln National, has filed an appeal to our Division of Administrative Law and that is ongoing in appeal as we speak. I spoke to my Deputy Commissioner this morning about the recently raised issue of retroactivity which frankly we had not considered. We rescind policy forms not all the time but it's not unusual to find that one of our policy form people made a mistake and approved the policy form ten years ago or five years ago that's out there and being utilized. I don't think this was a mistake as such but it certainly was or is a difference of opinion by me as a regulator versus whoever the commissioner was back when those forms were approved. I very much agree that this is a prohibited discriminatory practice and based on that as well as some activity at the NAIC level looking into the issues surrounding this I withdrew my approval. And as I said the three companies that agreed have stood down in that activity but it's not in my judgment an issue of looking back. We did tell the companies we have no intention of taking action to penalize them for having done this in the past and certainly the consumers who accessed it are happy they have their check and are at home. So with that said from my perspective it's a go forward issue only.

Cmsr. Mulready stated that for those new to the issue, basically this is about life insurance companies making offers for a substantially increased cash surrender value that could be 400% of what the actual cash surrender value is at that time. And the folks that have really pushed back against it is the life settlement folks because basically what they're stating is they're doing life settlements and just calling it something different. And in the life settlement world there are consumer protections in place. You've got to have a physician involved, you've got rescission rights, that sort of thing, and that isn't happening in this place so those consumer protections are missing which is what we in the regular world are most concerned about. And I might add through that survey and nationally we have received no complaints about any of these that have been accepted or offered.

Sen. Hackett stated that I totally agree with what you're doing but one thing to remember and I'm surprised you're not dealing with relates to universal life and the product is only universal life. When I owned a company I had all these policies that were going to blow up 10 to 15 years and because of Tax Equity and Fiscal Responsibility Act (TEFRA) guidelines and the IRS guidelines they can't just drop the policy in half and double the premium. I can show you case after case where all they can do maybe is drop it 10-15% and that's not going to really change that much. And some of these people even if they wanted to pay more they've gone over the guidelines of what they could pay in the policy so could they literally say "hey it's probably better for the consumer to cash the policy in now if we incentivize them to do it then to wait when the policy blows up?" I didn't realize it's only on universal life. We have major problems based on that law. We used to sell universal life and I had a case where they put \$100,000 in it and the death benefit was only \$150,000. We gave the individual his money back in two years and there was

enough cash in the policy he ended paying a little more later to run the policy without paying anything. And the IRS said that's not a life insurance product, it's a tax deferred product. I agree. They changed the law and I agreed with that but now we've got a lot of middle class people that want to have one policy in place there between 75 and 85 years old and their universal life is blowing up and I agree you should reduce it below the minimum issue of the policy but they can't reduce it to say 50% or 60% of the value because it's TEFRA or IRS guidelines of what they're allowed to put in that policy. So I don't disagree with what you're doing, but maybe they're trying to protect the consumer to cash that policy in before it blows up in 10 years. It isn't two or three, I've probably got 50 policies of a group that I took over and they were replacement artists I agree there. They replaced all this whole life on the concept we can double your insurance, same out of pocket. That's all they did. And of course it was based on 9% and 10% interest rates. I was in the business at that time and I made the client sign a form that if it averaged under 6% it would blow up, it wouldn't make it, even though we were paying 10% and 11%. So I just want to see the reaction from you all on what about all these policies that are blowing up and the people aren't real happy to lose their life insurance.

Cmsr. Mulready thanked Sen. Hackett and stated that is really good feedback and something else for us to consider. It's similarly related to this. And I don't have a great response for you except thank you for bringing that to the forefront. I was with John Hancock at that same time, licensed in 1983, so we're both showing our age, but thank you that feedback. Cmsr. Donelon stated that my only comment would be that I've been dealing with that issue for 15 years and some more aggressive investors as you describe felt the pain in the impossible situation they found themselves in a decade ago. Has anyone done anything that's been effective to address or to solve the problem? I don't think regulation can fix it, I really don't. Sen. Hackett stated that we need the fed's to fix it - we can't fix it. All they have to do is say you can drop the policy in the situations I described and they have to change those guidelines based on the people's age and the shape of the policy but they want one set of rules for everybody. And I understand why they did what they did. They were not life insurance policies. But if you've been in the business, you know how many of those we have on the books and they're going to keep blowing up over the next 15 years. Cmsr. Donelon stated that I was not in the business but you're right and I've seen it happening already but it is only going to get worse. Perhaps our organizations should work together to advocate for a resolution to Congress asking them to fix the problem.

Rep. Ferguson asked Sen. Holman if he would like to comment on his Model on this issue. Sen. Holdman thanked Rep. Ferguson for raising the issue which is a good one and one that I plan on addressing during the Life Insurance Committee's meeting later today. I think there's a misunderstanding by some who view the Model as asking for the Commissioners to rescind existing agreements that have been entered into between the consumer and the insurer. That's not the case and frankly couldn't be the case as we couldn't be pushing ourselves in between the insurance company and the client for fear of a contractual interference. The Model is only asking for the commissioner to rescind the regulatory approval of the form on a go forward basis so that doesn't impact any existing contracts. If the language needs to be tweaked in the Model to make that more clear I'm happy to work on that. When I filed the legislation in Indiana, I quickly got a response from one of the companies that was in the practice of doing the enhanced surrender value offer and we came to an agreement that I would not advance the bill there as long as we continue our discussion and so hopefully the NAIC and we as an organization ourselves can come forward with recommendations and some resolution to the problem.

DISCUSSION ON ISSUES RELATING TO TRIBAL INSURERS

Rep. Ferguson stated that we'll move on to the next topic which is issues relating to tribal insurers. The NAIC American Indian and Alaska Native Liaison Committee has been doing a lot of interesting work regarding insurance issues specific to tribal nations. We're also aware of a survey that was conducted by that committee relating to the growing insurance markets and business models of certain tribal insurers. Can you share with us the results of the survey and what plans if any the NAIC has going forward with regard to these issues?

Cmsr. Downing stated that first a little bit of background about the Committee you mentioned. Fundamentally that's there for consumer protection and access to markets and that's why that committee exists and I think we did a lot of good work on that last year. I'm personally very proud of the work that committee achieved in creating documents on cultural awareness and on communicating between non-tribal and tribal members. We did a document on access to Affordable Care Act (ACA) plans. We did another one on lessons learned during the pandemic. So we produced some interesting information back then and one of the things that came up while I was chairing that committee is we received a complaint actually that was in Maine about Sovereign Nations Insurance and when we first heard about that I'd reached out to Sovereign Nations to see if they were willing to present to the committee, which they did and we were happy to see that happen. And so just a little bit of background for people to understand what Sovereign Nations Insurance is. It's a consortium of three tribes in Utah and they've created an insurance company that right now is doing health insurance but they've made it clear that they plan on looking at other lines as well and so they've also created a regulatory body that's the Sovereign Nations Health Consortium (SNHC). And then finally they have a non-profit association called the Native American Restoration Association and the premise of what they're doing is they made it very clear that they plan on selling policies on reservation and off reservation to enrolled members of tribes and non-enrolled members. Their general counsel came in and presented to us and he made very clear that they consider non-tribal members as part of their community and intended to sell them policies as well. And one of the interesting things about the way they're doing this is they have this I mentioned Native American Restoration Association which is a non-profit that they say does a lot of work in supporting Native American and Indigenous population issues.

But you need to join that association and thereby agree to be bound by the tribal law rather than the state law and on its surface this seems to fly in the face of McCarran-Ferguson and so we've got a lot of issues on how to deal with that and I think that's going to be something bigger than the individual states. So we did do a survey on getting responses from states and we're still getting information about that and trying to put that together. Some of the interesting cases is the State of Washington has put a cease and desist in place to stop them from selling these products in Washington. I know there's some other states that are looking closely at that to try to figure out what it is but I'm going to go back to my main theme that I started with which is there's a consumer protection issue. These plans are being marketed as ACA plans and they're not. They don't have the same protections, they don't have the same coverages and we're particularly concerned about the consumer protection issue there. And I'm going to hand this off to Cmsr. Mulready because I understand he just had a recent meeting related to this.

Cmsr. Mulready stated that I dug into this issue as well when that came about in Oklahoma as our state has a lot of Tribal Nations within our borders – 39 federally recognized tribes. And I met Wednesday of this week with their executive team. They flew out to Oklahoma and we sat down and Cmsr. Downing has covered most of it. The thing that I think wasn't stated that needs to be clearly stated is they believe they operate fully outside of the state regulatory environment—that as a Sovereign Nation they do not have to abide by state law or our state insurance departments and so that's concerning. They did mention to me specifically that when I asked

about other insurance coverage that they were very much moving next into burial insurance and small life insurance policies to cover burial items. As they described how they were structured, which I already knew because I was in that meeting in Portland and I knew how they had this SNHC which is their regulator and then they had a wholly owned subsidiary that was an insurance company. And I asked them if they thought that was odd that the regulator would own an insurance company and that didn't strike them as odd as it did me. But at any rate, we did ask them about that and they are moving forward. They were very, very pleasant and we're trying to figure out a way that they could work with us. We didn't really have a lot of common ground to offer them. We said "if you want to do business in Oklahoma this is the path" and I think they were being educated a bit on the path working within the NAIC. But we did finally talk about McCarran-Ferguson which is pretty direct that it's left to the states when it comes to insurance. It was interesting their response, it was that since McCarran-Ferguson was silent on tribes they felt like Federal Native American law overruled that or superseded that on that point so it was an interesting take on that.

Cmsr. Downing stated that one of the things that they've been doing is reaching out to certain states trying to work on memorandums of understanding to operate in those states and I think Utah was one of those states. Cmsr. Pike stated that's what they've been touting. They're basically saying that they would consider doing an agreement or a compact with any state that would like to do that. On the other hand it doesn't mean that they would be subject to state law is what they're saying. And in the absence of that kind of agreement, they're basically saying we're prepared to go it alone. And they acknowledge, and my colleagues all remember them saying this, that this may well end up at the U.S. Supreme Court or in Congress because of as Cmsr. Mulready said, the absence maybe of specifics in McCarran-Ferguson or other federal law. So it's going to be interesting. I don't know how many of you have watched the Netflix series Stranger Things but it's kind of a parallel universe of insurance that's started, albeit small, about 9,000 members. And because these folks are literally my neighbors, quite literally as their counsel lives about ten miles from my house. I think good intentions are there but it's unique.

Cmsr. Mulready stated that we've focused on this one group but I think this issue as a whole is a big issue for us. I just became aware this week that there was an op-ed in our Oklahoma City newspaper by someone who is the head of a tribe in Oklahoma who has been licensing captives and he wrote an op-ed about it so that's how we became aware of it so we will be investigating that but I just think this is a growing issue across the board. Cmsr. Downing stated that to put a bow on that, obviously we have a number of concerns but the first one is just the consumer protection issue as we have folks selling unlicensed products in our states with what we've seen as somewhat misleading and we just want to make sure that we deal with that appropriately because consumer protection is obviously very high on our list of concerns.

Rep. Ferguson asked if there are any examples of maybe where it was inappropriate insurance like lifetime limits or monthly limits where people thought they had coverage and they didn't? And my second question, is are they in any way tied into the Indian Health Service (IHS)? Cmsr. Downing stated that they're not tied into HIS and we actually had a Commissioners meeting not too long ago where we just looked at some of their marketing videos and the one that stood out to me was they had a program for mental health where you went onto a waiting list until you got a meeting with a chatbot so that's some of the stuff that's in there. There was also and I don't remember the exact details but there was some mentioning of pre-existing conditions being covered a certain percentage of the first year and a higher percentage of the third year and a higher percentage of the fourth year so it was like phasing in coverage of pre-existing conditions. There were a lot of deficits like that. Rep. Ferguson stated that I think I heard you say they are

not just covering Native Americans but other individuals as well with sort of unregulated insurance. Cmsr. Downing replied that's correct.

Dir. Wing-Heier stated that when we were at the same meeting our counterpart in Colorado has a claim that he's working on with regards to a consumer complaint and an individual with one of these plans went into the emergency room and was told this was an ACA compliant plan only to be not admitted when he went to the emergency room. And because this person was not admitted they denied the whole claim and he now has a bill for several thousand dollars. It's that type of thing that we're trying to protect consumers from. It's a fine line of what we're trying to do in working with consumers in our states on these plans that we don't have authority over. Cmsr. Mulready stated that I do know too that in Massachusetts, my old home state, they've had a number of complaints on this group and there's one in particular there's an article in the Boston Globe about a similar incident that you just heard about here. A woman presented it to the emergency room I want to say a \$20,000 claim and had no coverage for that too.

DISCUSSION ON DEVELOPMENT OF NAIC'S NEW CONSUMER PRIVACY PROTECTION MODEL LAW

Rep. Ferguson stated that next we're going to discuss the development of the NAIC data privacy model law. The NAIC is working to amend its Insurance Information and Privacy Protection Model Act and its Privacy of Consumer Financial and Health Information Regulation with the end result being a new NAIC Consumer Privacy Protection Model Law. The proposed amendments you can find on page 90 of your binders. We understand that the NAIC Privacy Protection Working Group recently exposed for comment the first draft of the model law. Can you provide us with an update as to what led to the NAIC opening up these models as well as a summary of the proposed amendments and what the timeline is for possible adoption by NAIC?

Dir. Lindley-Myers stated that what led to it is the fact that the models hadn't been updated since the late 1980s/early 1990s and everything has changed since then so that's why we were trying to sort of tidy up both models you mentioned and perhaps combine the two because there were things that were in the model that were basically outdated that you'd have to put things in newspapers or things like that and it didn't take into account that you can send it electronically and how you can do that sort of thing. So the intent of the draft model is to promote uniformity amongst all the states to get the state consumer data protection laws sort of united so that on a state by state basis it makes it easier for the insurers and the industry to operate across state lines if our legislators would put that into action. With our draft we've attempted to modernize and streamline consumer data privacy notifications and disclosures. With respect to the third party service providers, that was not a big deal back necessarily back when the models were developed so we're trying to make sure that is out there. It also includes providing consumers with clear information about their rights regarding consent to use their data and the sale of their personal information and transparency and the details of adverse underwriting decisions. We wanted to make sure that most of the language in this new model was drawn from the NAIC's existing privacy models through new concepts which were incorporated in legislation that have been passed recently in all of the various states. The deadline for this exposed draft model is coming up for April 3rd. We're hoping to have all of that information into us by that timeline. The working group is working diligently and looking forward to hearing from stakeholders and others who are engaged in further discussions on how we can develop it to something that could be utilized not only by regulators but also by the industry and consumers. So we want to make sure that everyone's voice is heard and that people understand what's going on especially in light of the fact that there have been data breaches and people's information has been exposed.

Rep. Ferguson asked if Sen. Paul Utke (MN), NCOIL Secretary, had any comments on this issue. Sen. Utke stated that tomorrow during the Financial Services and Multi-Lines Issues Committee, there will be a discussion on the Virginia privacy law in contemplation of using that as a starting point for the development of an NCOIL data privacy model act. We're still in the early stages of that process as a decision hasn't been made yet as to whether to proceed or not but either way the overall topic of data privacy and in the insurance context what insurers can and cannot do with consumers data is so important that we at NCOIL feel we need to be discussing it in some manner. After the discussion tomorrow we will evaluate whether to move forward or not with a model act on that issue. I do have a question for the Commissioners - since we'll be discussing Virginia's law tomorrow, do the NAIC's proposed amendments to its models have any similarity with Virginia's law or do they conflict in any way with Virginia's law? Dir. Lindley-Myers stated that since the chair of the working group is from Virginia it's in line with the Virginia law but there may be some conflicts with other state laws and that's why we want to flesh this out and make sure that everybody has a stake in it and note that maybe we need to soften this or build this up. So that's the purpose of having this ongoing conversation.

Rep. Lehman stated that in Indiana we just passed the Virginia model out of the Senate and I am the House sponsor of that bill, SB 5. So in going through that, what was interesting to me is seeing the pieces of that puzzle that allow someone to ask if they are using my data and that allow them to be able to correct adverse data. But one thing it allows for is I can ask to be exempt. So are we on some form of a collision course here? If I want my data to not to be used by an insurance carrier how does that play now into their models of underwriting using much more artificial intelligence? That's the thing is I see in that Virginia model is there's a lot of protections for the consumer which I fully support but I think it might run counter to what the industry is doing as a whole and we'll ask the industry this question tomorrow. Do you as the regulators see pieces within that Virginia model that would actually be in conflict now with what some carriers are doing? Dir. Lindley-Myers stated that I would have to answer yes that I see that it would be in conflict but the hope is that we could try to smooth it out and I'm not sure how we can do that such that it would allow people because it's your personal information, if you choose to exclude it then I don't know how the companies can utilize it especially if it's a whole bunch of us that's one side of the other, I don't know how they could actually utilize that data in order to create rates using artificial intelligence. And so that is a bone of contention that we'd have to look at and try to exercise in or out how we were going to do that and how we're going to display that. So I do think that there are issues that are going to collide and I think our jobs as regulators is try to figure out how to minimize that or eradicate it if we can.

Rep. Forrest Bennett (OK) stated that I'm excited about this conversation that we're going to have tomorrow on this issue and in Oklahoma where I am from we've had conversations the last couple of years over data privacy and sort of the overarching concern of the opponents of it at the state level is we understand that there is an issue ultimately of a patchwork of laws across the country is not the solution and you all have spoken to that already. The other alternative to adopting a model law across the country is a federal solution and I know none of us are holding our breath for that but I wonder if any of you have had conversations with anyone at the federal level about whether there is any inkling of an idea of doing that at the federal level? Dir. Lindley-Myers stated that I would say the answer to that is yes so that's why it's important for us to get together legislators as well as the regulators to come up with something that works because we know our states the best. So we've got to come in and get to a point where we can all get together on that to say "hey we know what's going and you're sitting in D.C. and you don't know what's happening in our individual states so let us come together and try to come up with something that will be amenable to all of our constituents and all of our states so that you don't

need to get involved.” Cmsr. Mulready stated to Rep. Bennett that I think the answer is if we don't, they will.

Rep. Lehman stated that my last comment on this is on this side of the table we hear a lot about the things you're working on - are these models available for us to look at as well? Dir. Lindley-Myers stated that yes, the proposed amendments have been exposed and they are on our website.

PREVIEW OF ENVIRONMENTAL, SOCIAL, AND GOVERNANCE (ESG) GENERAL SESSION

Rep. Ferguson stated that as you likely know NCOIL announced last month the special series of general sessions to be held throughout NCOIL's 2023 National meetings focusing on ESG policy. The series will be co-facilitated by Asw. Pam Hunter (NY), NCOIL Treasurer, and Rep. Tom Oliverson, M.D. (TX), NCOIL Vice President. The goal of the series is strictly educational and will bring together a wide range of experts to address the challenges and opportunities presented by all different types of ESG public policy. The first session of the series will be held immediately following this Dialogue and will serve as an introduction to ESG with a substantive focus on environmental policy. We plan to address environment, then social, then governance at three different sessions. We know the NAIC doesn't have a formal ESG position and neither does NCOIL but we are interested in hearing about the work of your Climate and Resiliency Task Force and the opt-in insurer climate risk disclosure reporting requirement. That survey can be found on page 93 in your binders. Can you share with us the plans for the task force for this year and beyond?

Dir. Cameron stated that if I might first just take a matter of personal privilege. First of all, thank you this morning for the recognition. I've enjoyed being with this group of Commissioners who have seen how important it is to work with NCOIL and I have been at a lot of meetings. I want to thank you for the relationship and give a special thanks to Cmsr. Tom Considine, NCOIL CEO, and to Rep. Ferguson and to Rep. Lehman who have worked really well with the NAIC over the last year. And I can remember the first NCOIL meeting I attended as a state senator was in Boston and the insurance commissioner sat at that table by herself and it was not a nice meeting as this one is and so we've come a long way and we recognize that we want to work with you. We need to work together. And as you said at the beginning, there are going to be times where from a legislative perspective something that we're doing doesn't make sense and there are going to be times where it's the other way but the more we can communicate and talk about those issues and work through them at least you know where we're coming from and you can then make those decisions.

And we have to handle difficult decisions such as the one that I'm going to talk about now. So let me just say that climate natural disasters, access to coverage, and resiliency have been NAIC priorities and remains such under Dir. Lindley-Myer's leadership. We are working very diligently to work to close gaps in coverage. It is interesting to me as we work in the international market where we're seeing lots of gaps of coverage and yet some of the regulatory decisions help create those gaps. We continue to advocate for a long-term National Flood Insurance Program (NFIP) and allowing us to have a more robust private flood insurance program. We stood up this last year the Catastrophe Modeling Center of Excellence which allows the NAIC and our commissioners to gather a lot of data and information that will help us make appropriate decisions. We are doing much work through the task force that you asked about and one of our leaders in that task force is Dir. Wing-Heier so I'm going to turn it over to her to address that and after she's through we'll ask Cmsr. McClain to talk about solvency work stream.

Dir. Wing-Heier stated that as Dir. Cameron noted, I am co-chairing the task force this year along with California Insurance Commissioner Ricardo Lara. I'm also the NAIC representative to the Sustainable Insurance Form (SIF) at the United Nations (UN). There's many things we are working on and we're finding more and more that we're walking a fine line in dealing with some of these topics. Certainly as you can see on our website that is now live with a page dedicated to resources, we're looking at building codes and land use and we're working with consumers on mitigation efforts. We're also dealing with local state and federal regulators and legislators on consumer incentives and resiliency funding and we continue to work with almost anybody that'll talk to us on looking at other solutions to deal with the catastrophic losses that have been felt if it's wildfires, if it's the storms, if it's the droughts. Even my own state had a typhoon north of the Arctic Circle last year so we all recognize the change to the climate and our need to help the insurers stay solvent to help reduce these losses. It's the thing to do. But we also recognize when we talk about gaps in insurance not only is it hard to find property coverage in many states right now we are also finding it very hard for some of our contractors to find insurance. And why is this important? Well it's important because the heat that comes to your home be it gas or home heating fuel, the same companies that are also looking at risks and their own ESG programs are stepping away from insuring those entities and it is creating a hardship for many contractors. Our thoughts and our goals are to work on a transition that insurance will still be available so that we have fuel in our cars and that we have home heating fuel so when you turn on the on button on your oven if you have natural gas there will be something at the other end. As we go forward we have found that we cannot shut it off all at once. So we're working very hard to work with reinsurers and insurers to admit that we have to have a transition off of carbon base. We don't want to leave the planet worse than we found it. So our emphasis is in recognizing these storms that have happened and the wildfires and the devastation that they have caused, but also saying that we have to have a plan to walk away. And we're not there yet. And the gap is not just the property market which several of my colleagues here can tell you what has happened in their home states and many of you know, but it's also the products that we get from oil, gas, coal and other natural resources that we still need until we have an alternative source.

Cmsr. McClain stated that I'll move to giving a brief report on the solvency work stream and a point of personal privilege, it's a great honor to have Rep. Ferguson from Arkansas as President NCOIL. I also chair the Property and Casualty (C) Committee at NAIC where some of the issues regarding access to different lines of insurance come up and some of these matters will often be a topic at the C committee. But with regard to the solvency work stream I want to give a quick report. Our solvency work stream has been exploring and receiving stakeholder input on potential enhancements to the existing regulatory solvency tools that we all use in our departments and to the tools that address climate risk in particular. So last year the workstream recommended that modifications to the NAIC's Financial Analysis handbook, the Financial Condition Examiner's handbook and Own Risk and Solvency Assessment (ORSA) Guidance Manual be considered by the appropriate NAIC groups. So specific to wildfires, the work stream recommended that a wildfire peril be added to the risk-based capital framework for catastrophe risk exposures. That recommendation was adopted and beginning this year the property casualty risk-based capital E working group will require companies for informational purposes only to annually report their modeled wildfire risk. So that'll be good data to collect. This will help to ensure that companies are adequately reserving the capital necessary to maintain their financial condition when wildfires do occur. After collecting the data for a couple years and measuring against benchmarks then the NAIC will consider an appropriate capital charge to be applied. Based on recommendation from the solvency work stream the risk-based capital E working group is now looking into collecting modeled losses on severe convective storms for informational purposes only. So since the summer national meeting the solvency work stream

has hosted several panel discussions to understand the various approaches to the scenario analysis including panelists from several financial organizations as we look at different models.

Dir. Lindley-Myers stated that I do want to make sure that you understand that the NAIC's EX Committee on Race and Insurance is still working. The special committee and its work streams are focused on closing the protection gaps for underrepresented and minority communities by addressing any barriers to access and expanding any opportunities in the insurance sector. At the NAIC's fall meeting in Tampa in December, the special committee unanimously adopted the recommendations that regulators and industry representatives can follow to improve upon their diversity and inclusion efforts. One of the issues is it's not a number counting, it's not I had three yesterday and tomorrow I have four. It is more what are they doing on a systemic level of trying to increase diversity in their ranks which is women, people of color, people with disabilities and the like. In the committee we're looking at all underrepresented areas. We've adopted various recommendations which you can find on the special committee website. This some of the committee's work streams will renew their focus on looking at each individual area and what can be done to enhance the process of trying to get more people into the insurance industry as well as what barriers might exist that we might be able to look at and overcome.

Dir. Cameron stated that first I want to recognize Dir. Lindley-Myers who was just recognized and awarded for her efforts on race and insurance. She's been a dynamic leader there for years and was just recognized. One of the things that the NAIC did at the start of last year is we started to stand up the NAIC foundation which stands for New Avenues in Insurance Careers and it's desire is to help people get into the insurance career model. Not into the agent model which I love but it's into being actuaries and examiners and all of those highly technical areas. We have a shortage in the regulatory regime of those people of those talents and we know the industry has a shortage. We also know that there are lots of folks of different races, different ethnicities, and different genders who have not been able to access that pathway and our goal is to do that. We have a board that has been set up and is established and has completed the bylaws. We've filed to the IRS for approval. We will be putting forth our communications and we'll certainly keep you informed on that and we are also in the process of a survey in the states to see how many would accept different internships because it's not only scholarships but internships and apprenticeships that we will push forward to get people into that pathway.

Lastly, I just want to thank NCOIL and your efforts in engaging in a thoughtful process. You always as an organization put forth the thoughtful process whether we're talking about private equity or in this case at this meeting ESG. We recognize and I know that you recognize we're in a hardening market. In the last two years our market has become more and more difficult and it's becoming more difficult particularly in some rural states but really everywhere. It's also becoming difficult because of the items Dir. Wing-Heier talked about but also because of the reinsurance industry and some of the pressures that's on the reinsurance industry with regard to ESG. So the only thing that I would respectfully ask is that because we know almost every state is dealing with some ESG legislation, we'd love to know about it and would ask you to work with the insurance commissioners because the last thing we want to do although you will set the public policy, is get down the stream and have less carriers offering coverages to our businesses and our families because of some policy that was passed. So we stand ready to work with you and to make sure that doesn't that doesn't occur.

Rep. Ferguson stated that right after this Dialogue Asw. Hunter is going to facilitate a whole session on ESG so I don't want to steal her thunder but this is obviously a very contentious topic and it's very difficult among states to reach a consensus on this issue. We're not going to have model legislation at NCOIL on ESG, we just want to present an open discussion of ideas and

make people aware of both sides of the issue. And there is already ESG legislation going on in most states. I know Arkansas already passed some form of ESG legislation around investment banking and here we want to have a polite discussion around it. The next topic we were supposed to discuss is the NAIC's model bulletin on issues relating to artificial intelligence but we've run out of time so we'll hold that over until the summer meeting.

ADJOURNMENT

Hearing no further business, upon a motion made by Sen. Hackett and seconded by Sen. Holdman, the Committee adjourned at 2:45 p.m.