

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
FINANCIAL SERVICES & INVESTMENT PRODUCTS COMMITTEE
AND CYBERSECURITY TASK FORCE
LAS VEGAS, NEVADA
NOVEMBER 17, 2016
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) Financial Services & Investment Products Committee and Cybersecurity Task Force met at the Paris Hotel on Thursday, November 17, 2016, at 1:00 p.m.

Senator Bob Hackett of Ohio, Chair of the Committee, presided.

Other members of the Committee present were:

Sen. Jason Rapert, AR	Sen. Jerry Klein, ND
Rep. Joseph Fischer, KY	Sen. David O'Connell, ND
Rep. Bart Rowland, KY	Rep. Bill Botzow, VT
Rep. Tommy Thompson, KY	Sen. Mike Hall, WV
Rep. George Keiser, ND	

Members of the Cybersecurity Task Force present were:

Sen. Jason Rapert, AR	Sen. Bob Hackett, VT
Rep. Joseph Fischer, KY	Rep. Marguerite Quinn, PA
Rep. Steve Riggs, KY (Chair)	Rep. Bill Botzow, VT
Rep. George Keiser, ND	

Other legislators present were:

Asm. Ken Cooley, CA

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO
Paul Penna, Executive Director, NCOIL Support Services, LLC
Will Melofchik, Legislative Director, NCOIL Support Services, LLC

MINUTES

Upon a motion made and seconded, the Committee unanimously approved the minutes of its July 15, 2016, meeting in Portland, Oregon.

RETIREMENT SECURITY – WORK AND SAVE

Sarah Gill, Senior Legislative Representative from AARP spoke first. Ms. Gill stated that 50% of all households are currently at risk of having a financially insecure retirement. That number has steadily risen – in 1983, 1 in 3 households were at risk. Ms. Gill stated that it is important to note that financial insecurity is not the inability to visit grandchildren but rather the inability to pay things such as an electric bill and rent. Ms. Gill noted that 33% of all households do not have access to an IRA or other type of retirement product. Having access to such a product through an employer is important because of

behavioral economics – people are 15 times more likely to save just by having access to payroll deduction plans at work. That number jumps to 18 times more likely when an employer uses automatic enrollment.

Ms. Gill stated that if you make more than \$80,000 per year, you have a 3 out of 4 chance of having access to a retirement plan at work. If you have make less than \$20,000 per year, you don't have a good chance of having the same access. However, your social security replacement ratio will be much higher. Therefore, it's the folks in the middle that are "squeezed" because their social security replacement rate is not high and they are less likely to have access to a retirement plan at work. A social security replacement ratio is a person's social security income after retirement, divided by his or her gross income before retirement. Ms. Gill further stated that while those 25 years and younger are less likely to have access to a retirement plan at work, the scary part is that those that are 40-64 years old struggle to have access as well.

Ms. Gill then offered some solution to these problems: availability, automatic enrollment, ease of investment, automatic escalation and lifetime income streams. Ms. Gill stated that she often gets asked if lower income individuals will actually use retirement products if offered and based on polling data, it is extremely important to them, even more so than higher income individuals. AARP's main solution to these problems is its Work 'n Save Program, the main concept being a public-private partnership that provides easy to use plug and play options that are cost effective and help make small businesses more competitive by making it easier for them to offer retirement plans. The program is paid for through participation fees. There is a huge precedent in States taking active roles in these types of arenas. Looking to 529 college saving plans, in 1998 the cumulative savings by American families for college in said plans at that point in time was only \$2 billion but in 2015 the cumulative total saved reached more than \$250 billion. That is the model to which AARP is looking when developing its Work 'N Save Program. Many States are working on these types of programs and it is important that States modify the program to meet their specific needs. Ms. Gill noted that polling data indicates that 80% of people, across party lines, think that small businesses should offer retirement savings plans.

John M. Huff, NAIC President and Director of the Missouri Department of Insurance stated that too many people are not planning for their retirement. Earlier this year, NAIC launched a retirement security initiative that is broken down into 3 components: consumer protection, education, and innovation. With consumer protection, NAIC staff is working with industries and State legislators to encourage State adoption of Model #275, Suitability and Annuity Transactions Model Regulation; updating Model #245, Annuity Disclosure Model Regulation and the Senior Certification Model Regulation, #278; and the Life Insurance Buyers Guide. Additionally, on November 21, 2016, NAIC is launching its life insurance policy locator – individuals can go to the NAIC website and see if there is an outstanding life insurance policy after a loved one passes away. With education, NAIC staff has launched a retirement security micro-site that has been very successful. And with innovation, particularly with long term care, NAIC has established the long term care innovation subgroup to help solve some of the problems facing that industry.

John Mangan, Regional Vice President of ACLI stated that ACLI has offered itself as a resource to all States that are looking to improve their retirement security systems. Mr. Mangan also noted that the interstate compact has helped innovate by offering more

types of annuities and products to the marketplace – that type of innovation will help advance retirement security. Mr. Mangan noted that this is a huge issue and it involves everyone at every age, which means everyone needs to be at the table to help solve it.

Sen. Hackett stated that in Ohio some stated that the public sector shouldn't be involved in getting the private sector to develop these retirement systems. Mr. Mangan stated that ACLI believes offering more choice to consumers is the best route to take. Ms. Gill stated that the concerns in Ohio have been voiced in other States and that is why it is important to have the public and private sectors work together on these issues. Mr. Mangan stated that some things that State legislators can do to help solve these issues, perhaps using NCOIL as a vehicle to do so, is to discuss with Congress possible efforts to try and raise contribution limits, create a simplified 401k, and have multiple employer plans.

CONSIDERATION OF MODEL LAW CONCERNING IDENTITY THEFT AND MINORS

Rep. Riggs stated that this Model is necessary for situations where an adult of any age wants to apply for a credit card or other type of credit and finds out that his or her identity has been stolen as a youth, which has ruined their credit. Typically, parents have not been able to exercise a credit/security freeze for their children because they usually don't have credit in the first place and because of the way certain State laws are written. But now, several states have passed laws giving parents the right to request credit/security freeze protections for minors. In effect, parents can ask to have a credit record created, and then have it frozen. Accordingly, this Model, which is similar to the laws that States have adopted on this issue, allows credit reporting agencies to place a security freeze on a minor's credit report. Approximately 20 States have adopted legislation similar to this Model. Sen. Hackett noted that Ohio is currently working to introduce legislation on this issue.

Wes Bissett of the Independent Brokers and Agents of America, stated that IIABA believes that being able to place a security freeze on a credit report should be free. While the fees seem low, studies have shown that they can operate as a barrier to some. Additionally, most States allow fee exemptions for those that are victims of identity theft. Mr. Bissett recommended that Rep. Riggs' Model should be expanded to include all individuals, not just minors. Rep. Riggs stated that he believes the issue of charging fees should be left up to the individual States and the Model should not be amended to state that. Rep. Riggs also noted that the Model contains the identity theft provision that Mr. Bissett noted. Sen. Rapert expressed his support for the Model and seconded Rep. Riggs' motion to adopt the Model. Rep. Riggs then stated he is open to waiving the fee requirement. Rep. Keiser stated that he supports the Model as written. The committee then unanimously adopted the Model.

DISCUSSION OF REVISED DRAFT OF NAIC INSURANCE DATA SECURITY MODEL ACT

Director Huff stated that the NAIC Model essentially handles 3 areas: the front-end data security, the ongoing risk controls, and the back-end mitigation, investigation and notification requirements in the event of a breach. The Model is undergoing a 3rd round of revisions and NAIC is hopeful that the new draft will be issued soon so that the Model can be considered by the end of the year. However, while hoping to move quickly, the

number one priority is to make sure all the language in the Model is appropriate. NAIC is willing to hold another conference call with NCOIL members to review the next draft.

Kate Kiernan of ACLI stated that ACLI is working closely with NAIC on the Model and that the current framework of having 47 different cyber-breach requirements has been difficult for those involved. ACLI is concerned about the cyber threats facing consumer and company data but is encouraged by the work NAIC has done thus far. Ms. Kiernan also stated that it is extremely cumbersome and dangerous for insurers to be subject to different cybersecurity standards. Additionally, ACLI would like to see the NAIC get this Model right for the insurance industry and then possibly get other industries on board.

Frank O'Brien of PCI stated that there are fewer things more important to the insurance industry than the safekeeping of consumers' data. If consumers don't think their information is being handled properly, insurers won't get the information they need. However, it is a delicate balance of meeting the legitimate expectations of consumers and the ability of companies to use the information appropriately. PCI has been working closely with NAIC on its Model but unfortunately the current draft of the Model has significant problems and PCI is unable to support it. PCI is looking forward to working with NAIC on the next draft.

Sen. Hackett questioned whether the insurance industry needs to be singled out in this area and also noted that some are worried about compliance costs. Director Huff stated that there needs to be a level of proportionality with regards to compliance costs. As to the insurance industry, Director Huff stated that the issue of singling out the insurance industry is an important one, but ultimately the industry is unique enough to have its own cyber requirements. Rep. Keiser complemented the NAIC's efforts on the Model but echoed Sen. Hackett's concerns about singling out the insurance industry. Rep. Keiser also stated that he is concerned with the model stating that it contains the "exclusive standards" for insurance industry. Rep. Keiser also stated he has other concerns with the Model such as defining vague terms like "reasonably foreseeable internal and external threats." Wes Bissett stated that IIABA is very concerned with the NAIC Model. Some examples include the obligation to investigate and to deliver breach notices at the company level is not imposed on the independent agent – IIABA believes each individual and entity subject to the Model should have their own independent obligations and if a breach occurs they can follow those obligations. Mr. O'Brien stated that the Model is designed to give the regulator some leeway because the cyber threats are constantly evolving. This is a classic public policy issue – there are equities that need to be balanced. Rep. Fischer stated that if the intent of the Model is to achieve uniformity with regard to cybersecurity and the insurance industry, section 2 of the Model does not further that goal – that section should simply state that the Model cannot be superseded.

RE-ADOPTION OF IDENTITY THEFT PROTECTION MODEL ACT

Upon a motion made and seconded the committee unanimously agreed to re-adopt the Identity Theft Protection Model Act.

ADJOURNMENT

There being no further business, the Committee adjourned at 2:30 p.m.