

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
FINANCIAL SERVICES & MULTI-LINES ISSUES COMMITTEE
SAN DIEGO, CALIFORNIA
MARCH 11, 2023
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Financial Services & Multi-Lines Issues Committee met at The Westin San Diego Gaslamp Hotel on Saturday, March 11, 2023 at 1:30 p.m.

Representative Forrest Bennett of Oklahoma, Chair of the Committee, presided.

Other members of the Committee present were:

Sen. Mark Johnson (AR)	Sen. Bob Hackett (OH)
Rep. Rod Furniss (ID)	Rep. Jim Dunnigan (UT)
Rep. Matt Lehman (IN)	Del. Steve Westfall (WV)
Asm. Ken Blankenbush (NY)	

Other legislators present were:

Sen. Jesse Bjorkman (AK)	Rep. Julie Rogers (MI)
Sen. Justin Boyd (AR)	Sen. Nellie Pou (NJ)
Rep. Denise Ennett (AR)	Rep. Zach Stephenson (MN)
Rep. Deborah Ferguson, DDS (AR)	Sen. Paul Utke (MN)
Sen. Ricky Hill (AR)	Rep. Tim Barhorst (OH)
Rep. Reginald Murdock (AR)	Rep. Mark Tedford (OK)
Sen. Robert Mills (LA)	Rep. Kirk White (VT)
Del. Nic Kipke (MD)	
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 Rep. Jim Dunnigan (UT), the Committee voted without objection by way of a voice vote to waive the quorum requirement.

MINUTES

Upon a Motion made by Rep. Dunnigan and seconded by Rep. Matt Lehman (IN), NCOIL Immediate Past President, 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.

PRESENTATION ON INSURANCE ISSUES SURROUNDING NAME, IMAGE & LIKENESS (NIL) INDUSTRY

Pat Brown, Director of Risk Management and Insurance at Edmonds Duncan, thanked the Committee for the opportunity to speak and stated that I played football for the University of Kansas many years ago and became very passionate about the sport as I played and along the way I became very passionate about financial literacy for student athletes. And for those of you that have played sports in college you have a five year scholarship and in football if you go and you play you can actually stay in the summer and go to class and so forth. So I did that year after year and ended up graduating in four years. The reason I bring that up is not that it was the first time that happened but in order to be eligible to play my last year I had to take courses in order to play and I thought I would work on my MBA but it turns out the MBA was really kicking my butt when I was trying to take courses and play football. So I'm starting to get some stereotypical classes like basketweaving 101 and softball throwing and one class in particular I took was transition from college to the workplace which essentially exposed me to things like everything from stocks to bonds and I became very passionate at that point and really wanted to work with student athletes. So fast forward, year after year I would talk with the university and see if there was an opportunity for me to speak with the athletes about financial matters and each year they told me no don't worry about it and it wasn't until two years ago that Wayne Simien who was an All-American at Kansas reached out to me and said "hey would you like to come talk to the guys about financial empowerment and financial literacy?" So I was able to talk to the guys about financial empowerment. I say that because the whole point of them getting me in front of their players was because of NIL as it was coming down the line and so they were trying to get these guys exposed to these financial matters sooner rather than later.

And so I put this PowerPoint together to try to go through the history of NIL and then kind of where we are and what I think as far as insurance and how these kids are essentially a target moving forward. I want them to realize that I was in their seat at one point in time as well and that I know what it's like to try to manage school and sports at the same time. I mentioned my platform financial literacy for student athletes. Basically I've been doing this talk to former student athletes trying to get them to tell me basically some of the pitfalls and some successes that they've had while they play sports with the hopes that current student athletes will be able to learn from some the successes and failures. So what is NIL? This allows student athletes to now get compensated off their name, image, and likeness whereas before we weren't able to get compensated all. So if there was a camp or something back when I played and they all called it a Pat Brown Camp, I wouldn't be able to get compensated back when I played. So now these kids are able to get compensated which is a good thing depending on who you talk to. Before 2021 we weren't able to be compensated and you have examples like Reggie Bush who was forced to basically give back his Heisman trophy because his family was getting paid from the University boosters and actually had a house out here in San Diego. But Ed O'Bannon was the one that really kind of brought forth things back in 2015. The sports video games that you guys may be aware of, he saw the fact that we weren't able to get compensation, that student athletes weren't able to get compensated off the name, image and likeness and so he was kind of the one that really brought this forward and the case did settle. I still haven't received the check but the case has settled for about \$40 million.

July 1st was when the rules changed in 2021 and so moving forward student athletes are allowed to obviously get compensated. So who is eligible for NIL deals? Basically, anyone that plays college sports is now eligible, men and women and regardless of division 1, 2, or 3. Even high school athletes are now able to get compensated. Here are the ways of finding NIL deals. So anything from social media, to autographs, to advertisement campaigns, student athletes are able to start their own business whether that's t-shirts, whether it's seeing some guys in the state of Ohio have real estate companies. They're able to get compensated because of their name. And I mentioned there at the bottom about the quarterback Bryce Young is in the National

Football League (NFL) draft next month and he was getting deals for roughly \$1 million when he played and again that's off of Subway, Cash App and some other companies. I put one of your marketplaces, so again not knowing how much or how familiar you guys are but Opendorse and OpenSponsorship are our companies that are basically marketplaces where an athlete can go and put his or her name on and companies can actually contact this website and look for the athlete and they can agree on compensation and then moving forward whatever contract they may sign, they can get compensated that way. And then there's collectives which are basically a collection of fans and boosters who pool together money that it can pay athletes to play for a given school as long as they're not officially paying them to play for a given school. So let that kind of sink in. It's a group of boosters who basically pool money together. Now they can't entice an athlete to come to that particular University but when that athlete gets to said University who's to say that they can't say "hey if you advertise this cup well give you \$500,000." Now you can't pay a player to play, but you can pay a player to advertise.

So where there's money involved there's risk and there's an article that I did some time ago where I basically poked holes and discussed what I see kind of coming down the pipeline with regards to these student athletes and how they essentially are going to be treated kind of like celebrities. And a lot of celebrities from time to time may get sued for frivolous stuff regardless of if they did something or not and that's what I see with a lot of these student athletes. Because a lot of the information that's put out there on the internet it talks about the money that these student athletes potentially make. There are some making upwards to \$1 or \$2 million for an NIL deal and who's to say that there's someone that looks at them a certain way and tries to arrange some type of situation whereby they get hit by a car by and then sue them for something frivolous moving forward. So I just see a lot of casualties with NIL that I think are unfortunately coming down the road. These are some of the things with regards to insurance that student athletes looked at prior to NIL and I have on here total disability. This was something that it only affected a certain portion of student athletes and those were athletes that potentially were going to go in the draft either in the first round or top ten and typically a university can maybe pay the premium but if the kids have financial resources they'll be able to pay the premium. But this is essentially saying if you got hurt you cannot play the game that you're playing then this potential policy would pay out. So again this is before NIL really came into focus. Who can buy this type of policy? Typically people in the first round up to three years prior to their draft eligibility. But the devil is in the details with these types of policies. Another type which is actually an endorsement or a rider of a permanent disability policy is loss of value insurance. So essentially if the value of their draft went down a little bit if they got hurt during the season and instead of going first round they go second or third then this could potentially pay for the difference so they can still get some type of money if their value suffers. Then critical injury, essentially it's kind of like an Aflac policy. If they were to hurt themselves they would essentially pay a certain amount.

So, what do student athletes need to be concerned about after NIL? Some of the things I think that warrant attention relate to financial fraud. So the thing that I think about this is if you remember FTX, the cryptocurrency that went bankrupt. And guess who they're coming after for that? Shaq, Steph Curry, Tom Brady. These guys are all listed as far as the lawsuit was concerned. They were just a spokesperson and an influencer essentially but yet they still got roped into this as well. So I see something similar maybe not to that extreme but I can certainly see something like that with regards to student athletes. If you have student athletes who have a huge following whether it's social media or whatever platform that these kids are on and they're either saying you should buy a particular product and/or service and that service is faulty will these kids get roped into something like this later on? I have down here libel and slander against a person or brand. You know a lot of times these kids are young and they may have a tendency to kind of go off at their mouth if for whatever reason they don't like a particular person. If they're

an "influencer" can someone in fact come back at these kids and say hey I'm offended about what you said about me on your social media platform? So I see things kind of coming down the pipeline with regards to that.

There are also issues relating to Non-performance of a contract. These kids are signing contracts now so if they don't get representation by a qualified attorney they may sign a contract that they don't really read and so what happens when they don't do what they're required to do? Whether that's post something on a media site or post a number of things that you're supposed to do within a given time? What happens if that company or that organization comes back at them and says you didn't do what you're supposed to do so you owe us a certain amount of money. I have down here professional liability, that might be a stretch but all professions have some type of errors and omissions insurance. So again from a liability standpoint, if these athletes aren't doing what they're supposed to do with respect to whatever agreement that they get with a particular organization, that's a concern. Same thing with commercial general liability, I look at all these student athletes as very similar to social media influencers and I think that these policies or something like that should be something that these kids get or maybe at least exposed to when they get to school and they start doing these deals. And then again, I just have some examples of potential things such as a kid going to a meeting and knocking over something whether it's a computer or coffee on a computer, is that kid going to be able to pay for that? If he has an NIL deal that's paying X amount of dollars then he certainly could but if not then would a policy be a prudent thing for that particular student athlete?

Sen. Hackett stated that in Ohio and we're in charge of the workers comp budget and it's going to be coming over from the House in the next two to three weeks and one of the things we see is there's an amendment in there that in pro-sports people qualify for permanent partial disability and they get paid for the contract. And I don't know if any of the other people here deal with it in other states but there's a law firm in Cleveland that will jump in and it has a national reputation and the Browns and the Bengals and now the Blue Jackets are they're facing this thing and they would like us to do legislation that outlaws it. But the person does qualify for both under that scenario but I understand they signed a contract. Do you know anything about that? Have you ever run across that where they do permanent partial and then they get paid and they even go back and play and they still get permanent partial from workers comp. Mr. Brown stated that I'm not really familiar with work comp but there is the temporary policy that is floating around out there for a disability and I know the devil is in the details with those policies as far as who can actually benefit from those and file a claim.

Sen. Hackett stated that well I think with permanent partial, they can play with it but it's still a bit with disability. Mr. Brown stated that so they're able to file for both sides of that is what you're saying? Sen. Hackett stated, yes it sounds like it and sounds like double dipping. Mr. Brown replied, yes it does. Sen. Hackett stated I've been in the business for a long time and you can't really double dip. Mr. Brown stated that that you can't double dip. There's actually a kid from Kansas State who was playing basketball at the University of Miami and some of you guys may know the story but he passed out on the court and he actually had a total disability policy and so he either could file that claim or if he fought back and continued to play, which he did and he transferred to Kansas State, he was basically able to continue playing and not file the claim. The policy was for about \$5 million so he basically turned down that money to go play for Kansas State. Sen. Hackett stated in this case it's a professional. JP Wieske, VP of State Affairs at Horizon Gov't Affairs, stated that we dealt with a little bit of that in a couple of cases. If you look inside the contracts of some of the major sports figures actually most of their salary is not actually attributable to their athletic performance. They have a separate executive sort of piece which would be outside that but obviously the total disability and personal disability rules are sort

of separate and I think you would have to figure that out because those same rules apply I think to people in general who have partial disabilities that may be able to continue work but just not working in exactly the same way or in the same field necessarily but maybe similar. They may have similar income. But I think that you'd need to be careful to sort of take a look as to whether or not it applies to other people as well outside the athletes since it's major dollars. Sen. Hackett stated that workers' comp says we have so little we don't even want to mess with it. The Bengals have showed me just this week, it's over 30 people in one year under that scenario and then you add on the Browns and others and it's interesting and I'm curious if anyone else has dealt with it.

DISCUSSION ON POTENTIAL NCOIL CONSUMER DATA PROTECTION MODEL ACT

Rep. Bennett stated that next on our agenda is a discussion on the potential development of an NCOIL consumer data protection model act. We had an interesting general session on different types of data privacy laws at our last conference in New Orleans and now we're going to start discussion surrounding whether or not NCOIL should develop its own consumer data protection model act. We discussed this a little bit yesterday in our NCOIL-National Association of Insurance Commissioners (NAIC) Dialogue. Guiding this discussion today will be the Virginia consumer data protection act which is on the website and the app and in your binders on page 249. The NAIC's development of their consumer protection privacy model act will also be referenced. The cover page to that model appears in your binders on page 90 and you can view the model on the website and the app. Today we'll hear from our list of speakers and then determine how best to proceed in terms of developing an NCOIL model act.

Andrew Barnhill, Head of Public Policy at IQVIA, stated that I appreciate the invitation to kickstart the discussion about data privacy as we start to think about potential models for the future. To really start this off the perspective that I'm going to bring is one that helps us to balance the importance of consumer protections along with a framework that works particularly for healthcare companies and health insurers and that's the direction that I'm going to take my comments today. So a little bit of background for those who might not have been in New Orleans when I gave a little bit of an intro into this, I lead public policy for IQVIA which is the world's largest clinical research and health technology company. We conduct clinical trials in all 50 states and all around the world and we have had a close eye on data privacy particularly in regard to healthcare data for as long we've been in existence as an organization. And one of the things that we have found is that this discussion, this topic area is coming to even greater focus at the states right now. Just a little bit more background on our company on the screen I won't go through all of that but it gives you a sense of what we work with which is a variety of types of healthcare data, both data that may be protected by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and other forms of clinical data that helps us in the delivery of care for patients all around the world. You might know us from some of our work during the pandemic. We conducted the clinical trials on two of the four approved vaccines. We also did a variety of surveillance work both here in the U.S. and in other countries to make sense of what was happening on the ground particularly in partnership with state public health departments including some of your states are here represented today.

One of the other recent examples of how healthcare data can really make a difference is an example that goes back to 2017 during Hurricane Maria that was hitting Puerto Rico as a really strong category four hurricane. Some of you might remember we were contacted by the U.S. Department of Health and Human Services (HHS) and the Centers for Disease Control and Prevention (CDC) to help try to come up with a list of the prescription medication usage by residents of Puerto Rico and assisting with some of the relief efforts. In using our data

capabilities and extracts that we have we were able to provide the list of all the top 200 prescription drugs in Puerto Rico and their utilization rates within 45 minutes of the request from the federal government. So that's just one example from one company but I use that as we start thinking about the importance of healthcare data surrounding this conversation of data privacy and how it can be of service to the companies, to patients, but also to our governments at the federal and state level as well. So how did we get here to discussing data privacy so much. You're seeing in the news a lot now that you might not have seen even just a couple of years ago. We have seen a failure to act by Congress as technology grows and advances and as consumers become even more interested in who is sharing their data, who is selling their data, and what sort of rights that they have to protect that data both in the healthcare space and in the consumer space as well. As a result, we've seen a number of states begin to act. Actually California was among the earliest actors in privacy legislation and was first to hit the mark on it and also inspired a number of states in the future. At present we have five states that are pursuing comprehensive data bills this session but there are others that are at various phases of process. We saw some that were introduced last year that didn't pass and you've seen other states that are beginning to consider legislation to date.

There are also a number of bills out there that address particular types of data privacy. So you have some states that are interested in regulating data brokers for instance and have data broker registrations in places such as what you find in California and Vermont and now a proposal in Massachusetts. You have others that are focused on specific types of data itself such as biometric data and healthcare data more broadly. And then you have the select group which I've identified some on the map here that want to pursue a comprehensive data privacy standard for their states. Now what we're beginning of course to see is that this creates a patchwork of policies out there and other states have an incentive to act with the absence of federal legislation. Today the model that I think is helpful for us to use as a launching point for discussion is Virginia's. Virginia passed the consumer data protection act in 2021 and this particular data privacy bill actually just went into effect January 1 of this year. This model is actually one that's being used by a number of states as they begin to draft their own bills. Florida for instance has borrowed a lot from Virginia. Colorado shared ideas with Virginia in their early stages and there are several others who are recognizing the Virginia model as one that is workable for other states. This bill clearly defines who's personal data is covered. It clearly defines consumers as residents of the state who are acting in individual or household contexts. It also imposes no significant record-keeping requirements on insurers, healthcare entities and other companies aside from documenting data protection assessment. So one of the things that we found with some of the proposals that have been bubbling up is the compliance and record-keeping requirements are difficult particularly for smaller businesses. Well Virginia makes sure that is not particularly a challenge. It also clarifies that consumers are not those acting in commercial or employment context and it separates the language between those two. There's some states that sort of merge the boundaries between when consumers are acting in their individual capacity or in a commercial or employment context.

So what specifically does this bill protect? I've identified some of the key areas of protection here. One is the right to know, access and confirm your personal data. Another is to correct inaccuracies in personal data. That was something that many consumers identified as something that they would like to see in their state privacy legislation. Another important provision is the right to opt out of the sale of personal data which has certainly driven a lot of discussions in states and at the federal level on data privacy legislation. And then in addition to that there are a number of other provisions that we see Virginia does really well. So why is this particular model good in the healthcare space and why might it matter to health insurers? It has a clear carve out for protected health information under HIPAA. But in addition to that it also

identifies private information that occurs in the scope of clinical research or other forms of academic research as carved out of this particular bill. And so information that may have been de-identified in accordance with HIPAA or in accordance with requirements of clinical trials is given an exception for the purposes of this law itself. In addition to that it's worth noting that it's helpful for some of the smaller healthcare businesses that we mentioned earlier by including what's considered a 30 day cure period which allows companies to address some non-compliance so if there is an identified issue with how their company is operating in the state relative to data privacy, they have the opportunity to correct it within a fixed window of time. So our argument is that we recognize the growth of interest surrounding data privacy legislation at the state level particularly with the absence of a federal standard and if we are going to pursue a model across a variety of states, the Virginia model that just passed a couple years ago and went into effect two months ago is one that really carefully balances the interests of the consumers and the interests of companies including healthcare insurers.

Mr. Wieske thanked the Committee for the opportunity to speak and stated that I think when you look at this issue from our standpoint I think you are seeing a number of things come together from a data standpoint. Yesterday Oklahoma Insurance Commissioner Glen Mulready talked about the NAIC and the fact that if the NAIC doesn't take action then in the absence of that you're going to see some significant issues that sort of attach in the states and we've already started to see some crazy stuff in a number of states. Not to pick on Oregon but Oregon I believe had a bill that would have required collection of dollars for anonymized data and to try to figure out how you would get money back to the consumer for anonymized services that were commercial in nature is obviously problematic. I don't even know how you do that. I would also note that Congress is unlikely as we talked about to take action given the split and given the issues there and it's unlikely that there's going to be a consensus on movement and how you look at this. And I would also note that NCOIL uniquely positioned with this issue. As we heard earlier today and in discussion of Rep. Lehman's underwriting transparency model act, this is an organization where we can come to consensus and have a discussion and we can push both sides of this discussion to come up with a middle ground that makes sense both for consumers as well as the industry. And to circle back to former California Assemblyman and NCOIL President Ken Cooley he always said in his time as president of NCOIL that this is the place where you have the discussion and you go back to your states and you're the giants in your state in your caucus about discussing these issues. And I think that's an important aspect of this as well. While we're wedded to a lot of the language in the Virginia model we understand that there are pieces here that may have to be adjusted. There may be expansions that may have to happen in some protections and coverage of other areas. But I think this is going to be an important conversation for NCOIL going forward.

Jon Schnautz, Ass't VP of State Affairs at the National Association of Mutual Insurance Companies (NAMIC), thanked the Committee for the opportunity to speak and stated that I'm not a data privacy expert by any stretch of the imagination but the main reason I'm participating in this panel is to kind of lend some level setting and perspective from the property & casualty (p&c) side of things as NAMIC is a p&c trade association. So as to the Virginia law, it is a data privacy statute of general applicability that I think it's important to note includes a lot of exceptions. One of those exceptions that's most significant for our purposes is the Gramm- Leach-Bliley act exception which for p&c insurers at least mostly takes them out of the act recognizing that they have a parallel set of federal data privacy requirements that they comply with. So that's kind of just some initial level setting about what Virginia does and doesn't do in its act. I will say there are some aspects of the Virginia act that we think are good in terms of data privacy laws. We tend to try to stay engaged on those anyway even if they don't apply to the industry because an exemption can always be lifted and you don't want to hang everything on just that. I can talk

about some of those particular things in a little more detail if the committee would like to ask. The other thing that I want to make clear just to connect this and I think everyone remembers from the discussion yesterday if you were present in the NCOIL-NAIC dialogue, there is currently proposed a very hot issue at the NAIC around revising its model law on data privacy. There's a draft exposed on that right now and the comment deadline is April 3rd. If it were April 4th I could tell you exactly what our comments were going to be. Spoiler alert they're going to be a lot of them. We have a lot of concerns with the NAIC model. So the idea that there might be something for NCOIL to do here is not one that we are not open to but I guess to be clear we do have a parallel proposal there that very much does apply to the industry because that's what NAIC does. To that point I would say that one of our sort of bedrock principles on any regulation here would be things that could be reflective of what the NAIC is doing and what I mean by that is having one single set of standards. To go back to a point I made earlier today, not having duplicative requirements do the same thing is important. We want to avoid the questions of which do you follow and how do you follow both and that sort of thing. And also having the enforcement of whatever is passed be in the hands of the state insurance regulator is important. We may or may not like parts of the NAIC's proposal but we do agree that however it's going to be enforced they are the proper party to be enforcing it and we think that's the right mechanism.

And then finally, one of the other speakers alluded to the federal activity on this. There is some serious activity going on compared to what there's been a lot of previous years. Will that actually get anywhere in terms of amending Gramm-Leach-Bliley or something like that is probably a slim hope given the state of federal affairs right now. But it's at least a possibility and so we try to keep our eye on that as well because again we're trying to have one clear set of guidelines to comply with. I guess the final point I would make and I think I can only speak to p&c but I think this applies to a lot of insurers. As I said the Virginia law is general applicability. People who are just in the business of selling data that's literally all they do, department stores and all kinds of entities across the spectrum commercially. I know this is not a new concept but information is critical to what insurers do. I mean at some level the purpose of insurance is to help people understand risk and then help them protect against it and we need good and in some cases private information from people to do that. That's part of providing the service and whatever model might come out we think that would be important to preserve. The final point I guess I would make just to loop back given what the Virginia law is and isn't, if NCOIL is determined to do something here maybe it's not a model act. Maybe it is some sort of a resolution that would support a certain set of exceptions to a law of general applicability. I don't know but I think we could very easily get comfortable with something like that because we have in other states.

Robert Herrell, Executive Director of the Consumer Federation of California (CFC), thanked the Committee for the opportunity to speak and stated that I had worked for about half a dozen years for the California Department of Insurance as a deputy insurance commissioner and prior to that as a staffer in the California legislature. So I think my role here in part is two-fold. One is to try to give you a little bit of the local or regional flavor of California, one of the states that in Mr. Barnhill's presentation was one of the first out of the box if you will. I can go over that very briefly. I'm going to focus more on non-health partly because I have less expertise in the health area but I will touch on that. And then just kind of pivoting over to pick up on what Mr. Schnautz was saying about big picture considerations as you decide to go down this road or not go down this road. I would also note I'm on the Board of the Consumer Federation of America (CFA) and obviously they have a significant interest in data privacy. At the federal level the one thing I would just note for all of you is to be aware of is for a state like California or Virginia or some other states that in certain areas have taken important steps forward, the big concern that we always tend to have is if the feds act is it going to override? Is it going to be a floor or a ceiling? We prefer the floor so that states can go beyond that if they want to. I know that there is a lot of

pushback historically from industry and they want a uniform standard. You hear it all the time especially in the insurance area, the crazy patchwork quilt argument I call it. I'm not unsympathetic to it but I do think that as state legislators you want to think about potentially in some areas going beyond and that would depend on local issues.

Also, it was mentioned what's brewing at the NAIC. I think it was called hotly contested. I think that's perhaps an understatement. While I'm not in the middle of the day on that I do think that's very important to the extent that NCOIL has significantly strengthened your relationship with NAIC. I saw evidence of that yesterday. I think this is an area where it's very important that you continue to coordinate and collaborate with them on that. I say this candidly as someone who has been historically a bit critical of the NAIC because in California we would look at NAIC models in various areas and just feel like they were too weak in terms of consumer protection. And usually the argument in California has been how far above the NAIC model to go but that's again part of what you deal with in your respective state legislatures. Some brief history, 20 years ago I was fortunate enough to be the lead staffer on a bill that got signed by then Governor Gray Davis in California in 2003 on consumer financial privacy. I can tell you that was a multi-year battle. There was an initiative threat that forced folks to the table to negotiate in I wouldn't say good faith but in better faith. That resulted in that compromise legislation that was California SP1 of 2003 sponsored by then state senator Jackie Speier who then went out to Congress and just retired from Congress after a number of years. California was the first state to do something on data breach notification and the like. The history in California has been that it's been initiative threats that have tended to force more meaningful conversations. That happened again in 2018 with an initiative threat by a gentleman named Alastair Mactaggart for stronger privacy laws and in California there's a kind of a version of an indirect initiative where it didn't used to be the case but now if something's about to qualify for the ballot there's a sort of deadline given and either the legislature will come up with an agreement such that the sponsors of the initiative agree to withdraw it or not or you go forward and kind of fight the fight on the ballot. That was reached at the last minute in 2018. It led to AB375 of that year. Then, as stated, there was what I call the rush to get whole industries carved out of that law and insurance was in fairness part of that for the reasons that have been stated such as Gramm-Leach-Bliley and other considerations.

I will touch briefly on health - you may or may not remember when Governor Schwarzenegger was Governor of California there was a massive scandal and it dealt with the UCLA Medical Center and essentially long story short what was happening was high profile, particularly celebrity patients, personal private information was being leaked. We now know hindsight being 20/20 that some of that was happening by staff at the UCLA Medical Center who were interacting with so-called pay to play outlets like TMZ and others to get paid to leak information about a story. That spurred, I think, Governor Schwarzenegger to take action and then there's been additional moves in health privacy beyond that at the state level that I won't go into the detail of for lack of time. So most recently in 2020 California supported an initiative Prop24 by about 56%, the California privacy rights act. That is just now being implemented in California as sort of privacy agency if you will with a minimum funding threshold was created. They've just been promulgating some rules and they should become final within the next month or two. So there's been a lot of action in California. I would urge you whatever you do in this area take a good look at the panoply of things that we've done in California. It is a state that has taken privacy rights very seriously and has been I think moving the ball forward. All information is important and I say this to someone who's focus is less on health than on other areas but I think one could make the argument that health information is almost first among equals. It is so personal, it is so private, it is so important. And we live in a world where portability of that information is actually important at some level for the future effectiveness of our healthcare system. That is no easy balancing act but it is an important one as you consider it.

Broadly, a couple of thoughts on this if you go down this road, the CFC and many of our other consumer organizations generally believe that whenever possible, allow for opt in. Making the individual consumer have that power to decide is preferred to opt out. What we know historically about opt-out regimes is at one level you create an incentive with an opt-out regime to make a decision complex and you essentially create an option where the more legalistic and confusing an opt out decision is for the consumer, the less likely they are to exercise that. So do as much opt-in as you can or if you can't do opt-in do a clear, easy to effectuate opt out. Again our bias is opt in but we literally had readability experts take a look at some of these opt out notices and they literally told us you had to be basically at a doctorate or PhD level to sufficiently understand the language and those opt out notices. That does not serve consumers at all. You want to have something that's readable, understandable and actionable. I'm mirroring my own comments from this morning. That is the goal and it really cuts across a number of lines. I'm not going to go into too much detail about the Virginia model. I do think there are some very beneficial provisions in it. I think you always want to be very careful about exemptions that's almost always where the fight and the debate is whenever you want to go down the road to privacy at the state level so keep them as narrow as possible. There is always going to be that push-pull where various industries will come in and they will tell you an amazingly unique story that causes them to need a carve out. Resist that temptation as much as is humanly possible.

I'll touch on two more things. One is about definitions, they're very important obviously. With "sale", 20 years ago when I was working on this issue as a staffer, sale literally meant sale. The industry has changed and evolved some would argue devolved into you don't have the kind of direct sale that you may be used to two decades ago. It's all about kind of leasing, sharing that information. You can go online right now and essentially buy access to very specific populations of people, de-identified that would trouble you and amaze you. That is a thing. So be very careful on your definitions about "sale." Make sure you capture broadly all the ways in which value is exchanged not just traditional sale, or renting, or leasing. Finally, a quick note on enforcement. The point was made about insurance commissioners enforcing this. I want to make a broader point that goes beyond just the insurance area. Whenever you have enforcement our view is you want whoever the regulator is to have enforcement capability. You should have your attorney general have enforcement capability. You should have depending on what you call it your county district attorneys have enforcement capability. In some states you have large cities where city attorneys have a big enough shop where they might be able to enforce. And finally there is in some situations a role for a private right of action. Now you can put a box around that and you can limit the amount that could be collected or damages or things like that. But I think it's important to have as broad an array of enforcement possibilities as possible. I say that not because I want the privacy cops chasing after everything but I do think that it makes sure that industries are as attentive as they need to be to following these reasonable rules and giving consumers as much control as is humanly possible over their information and what's done with it.

Rep. Bennett stated that I am curious as a person who grew up sort of giving my data to the internet at an early age, I've looked around the world and seen what data privacy laws exist elsewhere and in Europe it's pretty clear cut - the consumer owns their data. And this conversation's been very complex but they seem to have figured it out and I wonder what is the difference between Europe and the U.S. on this issue? Are they doing it wrong? Do you see an avenue for us to do that? Do you even want that? Mr. Herrell stated that I'll give you a real short answer and then I'll expand just a tiny bit on it. In two words the difference is political will. Now there's a more nuanced version of that answer which deals with historically, and those of you who've been in the insurance space have seen this, and I don't want to paint with too broad a brush but I want to make the point that Europe and a lot of areas have tended to come out with

fantastic rules in various industries and sectors. Then where things have gotten really challenging is in the enforcement of those rules. Again I don't want to be painting with too broad a brush. That's my sense of the challenge here. So I think that it remains to be seen. I agree with you Rep. Bennett that they have laid down a very clear marker. Your information is yours. And I think that's the bias walking in that we ought to have to protect consumers. Then it gets trickier when you're dealing with enforcement and you're also dealing with the European Union (EU) which is over 20 nations. That can get a little funky too. So there are various multinational groups within Europe that are meant to handle some of this but the marker is clear and the more that you can get that sort of clear statement of purpose, I think generally speaking the easier it is to then flush that out.

Rep. Bennett stated that in Oklahoma we've had this conversation. Just roughly off the top of my head I can think of several more technology companies that are based in California than there are in the state of Oklahoma and the thought is that a place like California where these places are domiciled can more aggressively control or set standards. So I guess my question is, is a state by state solution the best from that standpoint because different states have different levels of authority over these companies? Mr. Herrell stated that it's a fair question and I'm more than a little sympathetic to the challenges that are entailed when you're dealing with different levels of standards in different states. I really am. It's one of the reasons why Europe has kind of gone down this road. Now granted those aren't states, those are countries that through the EU and the different mechanisms have done that. Let me use an anecdote to kind of make that point. When we were in very intensive negotiations nearly 20 years ago about the Consumer Financial Privacy Data Law, we were well aware that it was a California conversation that was very quickly going to turn into a de facto national standard conversation literally right after the bill got signed by the Governor. I think within a week or two then State Senator Speier and I traveled to Washington DC and met with just now retired U.S. Senator Richard Shelby and others who had been part of that broader privacy coalition because we knew that the opponents of the bill in California immediately raced to DC to try to take the legs out from under it. So, in a perfect world you have a national solution. But the concern that I have is historically that national solution has been too weak on consumer protection so therefore that's why we go into the national solution is preferred but having it be a minimum level of standard that states can go beyond if they wish. That's not perfect by any means but I think it's the way that we try to protect consumers to the maximum extent possible.

Mr. Wieske stated that I agree in general you want a nationalized standard. Having said that insurance is state regulated and it's subject to specific state regulation and your ability to sort of enforce it. I think you can take a look at the cyber security issue that the NAIC worked on and the fact that they want to have control differently than the national standard. Also note that if you're looking at Europe you're looking at a whole different world for negotiation standpoint. I happen to have a boss who was the chief negotiator as the President of the NAIC in dealing with a lot of these issues and trying to figure out how to actually have American companies operate in Europe and have European countries operate in the U.S. and I'm not so sure that environment and the way they look at it is right and I appreciate the idea and the consumer protection that's attaching to it but I'm not so sure that works in a place like the U.S. in the same way. And I'm not so sure people would be happy with the lack of access to certain types of products and the ability to sort of move data through in the same way that it works now. That would be a concern. Mr. Schnautz stated that I think what this conversation has revealed at least in part is that this is a complicated issue both in terms of who ought to be doing it and what ought to be done and I guess I would say the question probably ought to be how does NCOIL fit into that? I would at least encourage maybe waiting another month or so as you're going to know sort of what comes out of the NAIC. We can give you some more concrete feedback on that and then again if the

idea is to do a model based on Virginia's law, it would be odd to have an NCOIL model that generally doesn't apply to insurance. So I think the concept of what the best way to approach this regarding whether it's a resolution or an actual model, focusing in on what sliver of that belongs here might be the easiest path forward. Mr. Wieske stated that I would just agree and add on that, to use Plato's analogy it's the shadow and the cave wall that you're looking at here as you're moving forward and we need to get closer to that ideal. We may not get there but I think even having the conversation here given that the NAIC is having it and given that it's happening in state legislatures is going to be hugely important on a go forward basis.

Rep. Bennett thanked everyone for their comments stated that I suspect we'll continue discussing this topic in some fashion so if you have questions or feedback please let me or NCOIL staff know.

DISCUSSION ON E-DELIVERY OF INSURANCE DOCUMENTS AND POTENTIAL AMENDMENTS TO NCOIL INSURANCE E-COMMERCE MODEL ACT

Rep. Bennett stated that next on our agenda is the discussion on the electronic delivery of insurance documents and potential amendments to the NCOIL Insurance E-commerce model act and on page 265 there are some examples of state laws dealing with this issue along with the NCOIL model I just mentioned. For this topic we're going to hear from our speakers today and then determine whether or not to make any amendments to the model either at our summer or fall meeting.

Mollie Zito, Associate General Counsel at UnitedHealthcare thanked the committee for the opportunity to speak and stated that as part of UnitedHealthcare's sustainability strategy we are working to reduce paper usage not only in UnitedHealthcare but also in the healthcare system as a whole. And so what we would be interested in doing is working with members of NCOIL as well as stakeholders on an amendment to the NCOIL insurance e-commerce model act that would allow employers who have fully insured health plans to attest that their employees are wired, which means that they have access to smartphones or computers and internet, and that if they're part of the health benefit plan that they would receive their health benefit plan documents electronically. They would have the option of opting out and getting their documents through paper. And I want to emphasize that this would be an optional thing for employers. We wouldn't mandate it. I also want to emphasize that this is in the group market. So just a little bit about the e-delivery landscape right now. We have state and federal laws that have been in place for a long time, much before employees had access to smartphones and computers and laptops that they carried with them and a lot of times these laws hamper that. And the Employee Retirement Income Security Act of 1974 (ERISA) in 2002 actually did a safe harbor for plan sponsors or employers that allowed them to say that their employees were wired at work which means that they had access to their health benefit plans electronically and if they were wired at work then the employer could send their documents electronically. This is different as fully insured plans are regulated at the state level. And we don't have that same opportunity on the state level and so that's why we're looking for this amendment to give those employers the same option to say, "okay my employees are wired at work and I can give them their health plan documents electronically."

So there's many benefits to e-delivery, this slide outline several of them. There's ease of administration for employers. I'm sure it's the same for a lot of you where I know my employer tells me if I want to see my paycheck I need to go look on the internet. If I want my tax documents I need to go look at the internet. If I want my W-2 I go to the internet. And so there's a lot of administrative ease for the employer if we do allow them to send the health benefit plan

documents electronically. But there's also the consumer experience. And I really wanted to focus there for a minute because we're seeing that if you have access to your health benefit plans ready on your phone or your computer, you have the option to "control F" - what are my benefits for colonoscopy? What are my benefits per person for prescription drugs? And this improves health literacy and engagement in personal health and we think that's going to lead to better health outcomes. Last October, Morning Consult did a poll regarding this very issue asking employees would you care if your employer sent you your health plan documents electronically? There's several statements on this slide but the last one is the most important that 94% of the respondents said that a proposal to allow your employer to send you health plan documents electronically that they would approve of that. In addition to the benefits that employers and employees see we also have environmental benefits of e-delivery. And then lastly, this is I think the most important slide as this law has started to be implemented in a few states around the U.S. As was mentioned to this Committee last year, it was implemented in Texas. It's also implemented in Georgia and Iowa. The law is sitting on the Governor's desk in Mississippi and it's passed the Tennessee Senate and we expect it to be introduced in several other states as well this session. UnitedHealthcare hasn't put forth any model language for the committee today but NCOIL staff did include in your binders the Georgia law that was enacted and we have drafted some legislative language along those lines and we have sent it around to several health insurers and other associations that work with NCOIL. It is our hope today that we can work with you and stakeholders on this between this meeting and the summer meeting in Minneapolis to come to some consensus on some legislative language that we could put forth as an amendment to the NCOIL's Insurance e-commerce model.

Jeff Album, VP of Public and Gov't Affairs at Delta Dental of California, thanked the Committee for the opportunity to speak and stated that Delta California actually is the Delta Dental plan of record in 15 states with about half of all Americans who have dental insurance are in one of our plans across the country. I'm going to work really hard not to duplicate everything Ms. Zito said because I agree with everything she said and she's already said it. But I can give a slightly different view on it that all of the issues around paper-based transactions are more acute for dental even than for medical. So obviously this is just a visual of how things work today. An employer buys a dental plan. They send a note either by email or paper to every enrollee and says, "hey do you want to opt in to electronic communications?" And that leads you to a website where you start an account and all of your health documents will flow there. The problem is in dental particularly, fewer than 1% of dental enrollees actually end up taking the opt in to electronics while many medical enrollees also skip their chance to opt in. Although I promise you they have a much better track record than 1% in getting their members to do it because let's face facts as much as my dental industry people colleagues who are here don't want to hear it, dental is not the most important thing to most employees and not even to all state legislators but the fact remains medical of course is fundamental. And of course in banking transactions everyone opts-in. Almost everyone opts-in to banking because that's your money and you use it every day. So where an industry is in your mind in terms of a priority very much has an impact on how readily you read your option to opt-in or opt-out and in dental we see a real opportunity here to take advantage of how culture has changed in the three years of the pandemic. We have watched society move electronically and I mean people at all economic sections have learned how to order food on DoorDash and do everything electronically because it was a need and we haven't dropped those things just because we're not wearing masks anymore. People are more likely to opt-in to electronic communications with their banks and brokerages like I said because that's where their money is.

So what's the solution? How do we increase the number of people who electronic opt-in? Why don't we give employers a little bit of credit. As Ms. Zito said, when they sign up for work in many

industries and certainly not all of them but in many industries it is an electronic connection that they are signing up for that's their job. They receive their instructions electronically. They receive their initiatives electronically. They receive their appraisals electronically. They receive their paychecks via bank wire and they receive that electronically. That is the direction we are going in. Let group benefit managers attest to who has access and allow them to opt-in. Like I said this is not all businesses - a trucking company might not have the same electronic connection to truck drivers as they do to other white collar executives who might work on other aspects of that particular business. So we're not saying opt-in all truck drivers to electronics. We're saying let the group benefit manager make a very educated review and then let's give every employee the absolute simple easy right. And in this matter, I totally agree with Mr. Herrell's comments earlier that the opt-out must be simple. It must be easy, not what a college educated person has to be able to read - something that a junior high school person would understand. Make it easy for them to opt-out and make it a legal requirement that they receive that option to opt-out. My colleagues already mentioned this, this is a trend legislatively beginning in 2018 with Kansas and then Louisiana in 2019 and Wyoming in 2020 and Georgia, Texas and Mississippi recently. And the last three states that have done this have all followed the same sort of legislative implementing language and conditions for allowing a group opt-in to electronics. A group benefits manager has the right to do it, but they're not mandated. They must attest and confirm that the people they are opting in have electronic literacy and electronic means to receive those communications. Opt-out must be made available at all times, anytime. They can go back and forth. That's their business. And there are exceptions to the type of health and dental plans where this should be allowed. Medicaid, Medicare, individual health and dental including public health exchange plans - these are all forms of healthcare and dental care where there isn't a group benefit manager able to attest to electronic connection. Even if they've signed up for a health plan over the internet that doesn't convey complete comfort and computer literacy and so we are saying no we're not talking about any of those plans in this proposal.

So, in summary it's a change from the current enrollee opt-in to paperless to an optional default group level opt-in with enrollee opt-out. It's needed because most health and dental enrollees never bother to read the fine print and the proposal does not include individuals for whom there can be no attestation as to whether they are connected or not. And the advantages of e-delivery have already been covered by Ms. Zito. And here I show you the typical paper transactional cost of a dental plan enrollee in a given year. There's all the documents that we have to send them every single time a date of service has occurred and some of them are once a year. An evidence of coverage (EOC) is once a year. An explanation of benefits (EOB) is after every routine cleaning, and you're at \$9.75. We sell dental plans at \$15 per person per month so for \$150 annual premium it's about 6%. So we could be lowering the cost of dental care. For dental there are twice as many people who don't have dental insurance as medical insurance and 6% could be the difference between buying a plan or not. People who have a plan are more than twice as likely to get care as people who don't. So this last slide shows some language that gets it done. This mirrors language that was passed in all of those states where we have championed this particular initiative and we are optimistic that you'll consider this here at NCOIL as a model act. I'm sure we would get more and more states to get the ball rolling on this.

Mr. Herrell thanked the Committee for the opportunity to speak again and stated that very briefly in terms of California context when I was at the department of insurance I spent the better part of 2013 and 2014 perhaps going into 2015 negotiating with the insurance industry about this very issue and those were long, tortured, painful negotiations. But we were not opposed to electronic delivery of things. We just wanted to make sure there were certain protections for consumers and guard posts if you will. So that's the context. I probably would have to turn in my consumer advocate card for life if I didn't point out the deep irony of when it is something that the insurance

industry or segments within the insurance industry is interested in, they can magically make it work. When it's in the consumer's interest and it forces the consumer to take an action then all of a sudden it's too costly and difficult. Let's just be aware of that irony. Our point has always been consistent, give people the maximum amount of control. Having said that, what gives me a little bit of pause in this group benefit manager situation is, does that person really know the situation of all the employees that they're attesting for? Let's think about vulnerable populations. That could be lower socioeconomic status, lower education. We're having a debate in this country about broadband access in rural communities where largely it doesn't exist. We've also had a major shift in population coming out of COVID where more people are kind of working in all kinds of places. Let's just not be in such a rush here. And I understand the business argument, I really do. The savings, etc. But let's not be in such a rush that we kind of forget some of those protections. In terms of cognitive impairment, how likely is an employee going to be to acknowledge and admit and then pass that information along that there may be an issue of cognitive impairment?

So these are signposts that I think are important we don't forget. The redundancy is important in some circumstances. I appreciate that some of that has been built into the approach here but you want to be very careful because the argument is well pieces of mail get misplaced or you know they have the old address or something like that. My personal email account is a Yahoo account. That's quickly becoming a dinosaur where most email accounts are Gmail or others. There's been stuff that I was supposed to get in my email account that I didn't get. So one of the debates we had in 2013 and 2014 in California was how do you verify? How do you certify that it was actually received? And while that technology has advanced some I don't think it's there quite yet where you have that level of confidence that you absolutely could bank on it. So these are just some bigger picture thoughts that I think are very important to the extent that NCOIL is going to go down this road. The irony is that we started this afternoon and one of the panelists talked about this sort of preposterous proposal in Oregon where people might be able to get a dividend, my word not theirs, about what it is. Well here Delta Dental to their credit has just said it saves us \$9.75 per year. Should the consumer get a little part of that? If you want me to opt-in, make your case. And maybe that case is part of the financial case and maybe if you throw a few bucks my way or give me a reduction in my rate or something maybe then I am more likely to opt-in. That is the idea that then leads to those kinds of proposals in other states and municipalities.

Rep. Bennett thanked everyone for their comments and stated that we will likely be discussing this topic in some fashion going forward so if you have any questions please let me or NCOIL staff know.

PRESENTATION ON DEVELOPMENTS IN DIRECT PROCUREMENT OF INSURANCE

Bill Bryan, Director of Providence Insurance Partners, LLC, thanked the Committee for the opportunity to speak and stated that I'll be brief and say I'm here to try to give you all money - money to which you and your taxpayers are legally entitled to and are in many cases not receiving because of the lack of understanding of the way that we place insurance works. So without further ado, with independent procurement here are the things we're going to cover. What is it? Why do we need it? Why should this body be supporting it? What can states do to support it? And then what can carriers such as ours do to make it work better? Independent procurement actually goes by several names. You may also refer to it as direct procurement, self procurement, foreign procurement, and all those terms mean the same thing. The history goes back to the late 1890s there were two U.S. Supreme Court cases then which established a constitutional right for individuals to obtain insurance outside of their jurisdiction. There's been a

number of developments since then. The McCarran-Ferguson Act in 1945 specifically recognized procurement as a valid means and something that was not precluded by McCarran-Ferguson. There was an important case in the 1960s, *Todd Shipyards*, which again validated the use of procurement and established some rules around taxation between the states. And then there was the Nonadmitted and Reinsurance Reform Act of 2010 (NRRA) which was passed in 2010 which again addressed this issue of how to address taxation where insurance crosses state lines. The current status is it remains a fairly little-known thing. They're probably some people in this room who know a good amount about it and there are some who may not know anything about it. I find that to be true even in groups of experienced insurance people.

So it's again one of the three main methods of obtaining insurance and it is the least known and least used and therefore sometimes one that creates confusion when it is used. Why do we need it? I'm just going to go really quickly through this because I'm not here to talk about health policy. By the way my company exclusively provides stop loss and reinsurance coverage behind self-insured group health plans so we're talking about all this today anyway in the context of stop loss for group health. We have some real gaps in health insurance coverage in this country. We have about 70 million lower income Americans who are functionally uninsured because they're deductibles and their out-of-pocket annual maximums are as much as ten times their annual savings. That means that you essentially have catastrophic insurance only. It's also more than 20 million people completely uninsured. Those ranks are going to be added to considerably when we get Medicaid redeterminations about to happen over the next year. So we have some gaps and there are people innovating around those problems and coming up with interesting solutions. We work with several companies that do. Some of those things include policies that have no deductibles or low deductibles. The use of reference-based pricing which is a great tool for controlling cost is very unpopular with providers and therefore with insurance companies that have network relationships with providers. Pharmacy Benefits Manager (PBM) transparency is a big cost saving tool and it is often the case that these self-insured group plans are designed in such a way that they just don't line up with stop loss policies that are available for the many carriers in various states. I expect that to fully change over time. The market has a way of adapting to support what's out there and we adapt as well including where we seek admission and whatnot.

But generally speaking it is very difficult to find on a timely basis for a lot of these companies stop loss coverage that matches up with the innovations that people are putting in place to control costs in group health plans. Of course there's no requirement under ERISA that you have any stop loss at all. People could decide to be uninsured which would be unwise and in fact we don't work with companies that allow that. So everybody needs to find stop loss. Small businesses have it for various reasons, some for state rules, some for carrier rules who they will and won't cover and under what terms. And this puts them in a particular disadvantage when it comes to a tight labor market where they really can't compete. So why am I here asking for your help? There are really valuable products. Some of you may have encountered at some other NCOIL events or NAIC events companies that have had tremendous success going out with these low deductible or no deductible plans. They're very popular with employers and employees. The bad joke I started out with about giving you all money when procurement is used centers on the fact that this generates a lot of money in premium taxes. There is no method currently in procurement for the reporting and reliable collection of premium tax so hundreds of millions of dollars a year are going untaxed. If you look around online you'll see a lot of companies that are identifying themselves as "captives." I think of a captive as being something that is captive and is owned by a company that is insuring itself. There's a lot of companies that call themselves that when in fact they insure many companies through protected cells or what have you.

And in very few cases are the premium taxes ever reported or paid by those companies. The NRAA which I mentioned called for the establishment of national compacts amongst the states. Unfortunately although there were two very well intentioned and strenuous efforts made to create those compacts, they failed. So there aren't any currently. It's the wild west. We had an experience a year ago or so and we said you know what we're going to require our insurers to report and pay and demonstrate to us that they've paid other taxes. And it happened to be that this program was being piloted in a state I'm not going to name the state for reasons you'll see in a second. And we're going to require you to report and pay that. And they did. Everybody paid. And you know we thought maybe thank you notes would be coming. Instead what came was a lot of confusion, calls, questions, investigations and to this day now those are continuing. I heard a story last week, an investigator called up one of these people who paid their premium tax and wanted to ask them a bunch of questions about how he found out about the insurance company and how it worked and all that. And he said, "listen first I don't know, I don't remember. Secondly this is the best insurance that I've had in my company in 30 years. And three I got better things to do." And he hung up the phone. So we found that the lack of understanding is an unhelpful situation. Finally, typically what we've seen when you have this sort of situation where you have a lack of clarity and a need for some sort of standardization that's not coming, the feds arrive shortly thereafter. So we think that is a definite possibility in this area and one that we would assume that NCOIL as well as the NAIC would disfavor.

What can we do? We would very much like to see and I've discussed this with some leadership here at NCOIL, the possibility of model acts and whatnot. We haven't come forth with one because the truth is more than 40 states already have legislation about direct procurement, about how it's supposed to work and what the taxes are and all that. So we're a little unsure as to what a model act would actually say when all these laws already exist. However, there certainly could be guidance established to say here is a standardized procedure for the reporting and remittance of tax and we would very much like to see that. We also think there's value to establishing online directories by state where even for foreign or out of state insurers where information can be posted like key financial information and warnings by people who've had bad experiences and things like that. So we think there's a lot that states could do but the biggest thing is really standardizing this reporting process. I can say our company and I'm sure many others would really welcome the opportunity if we had clarity as to how this was going to work to demand the insurers give us the authority to report premium taxes due to the states and in fact pay them on their behalf and it would result in a much cleaner system and a lot more taxes collected. What else can we do? As I just mentioned we can demand that authority to report the taxes and perhaps pay them. We already do encourage and facilitate timely reporting and payment of taxes. We can also educate and listen. I spent the last eight months flying around the country talking to many of you and others about this issue. It's pretty esoteric and frankly I've made a lot of eyes glaze over but I keep going. And finally we really welcome input as to any thoughts anyone might have as to a better way to do this in terms of just again providing clarity and a better method and if you have any of those thoughts please reach out to me.

ANY OTHER BUSINESS

Rep. Bennett stated that at our last meeting in New Orleans we heard from Eric Haar, Director of Gov't and Industry Relations at the Federal Home Loan Bank (FHLB) of Dallas and he gave a presentation on the FHLB system and a couple of insurance specific issues within that system and Mr. Haar is here today to provide a quick update.

Mr. Haar thanked the Committee for the opportunity to speak again about FHLB lending to insurance companies. The FHLB system is a government-sponsored enterprise, a GSE, created

by Congress back in the 1930s. We lend money to insurance companies. We also lend money to banks and credit unions but when we lend money to an insurance company they will typically use the dollars they borrow from their regional FHLB to buy mortgage-backed securities or treasuries for the benefit of the organization. They can also borrow money from us to pay shareholder claims and policyholder claims. The issue that we encounter and this is a potential model law for later this year is when an FHLB lends a dollar to an insurance company we take a little more than a dollar in collateral from them as a backstop to what we lend to them. If an insurer gets into financial trouble or goes into receivership a receiver can place a hold or a stay on all the assets of that failed or failing insurance company thus prohibiting a FHLB from accessing its collateral. That creates delays, it creates legal problems and we are forced to charge insurance companies less favorable lending rates when we lend to them in states where we don't have a fix. So, in 23 states the FHLBs have worked to pass legislation successfully making it clear that a FHLB shall not be delayed from accessing the collateral and only the collateral that it is due. And we work in partnership with insurance commissioners and the receiver and the insurance company so that we have a positive resolution for everyone involved. And so we will be approaching this committee later this year again with this issue.

Rep. Bennett thanked Mr. Haar and stated that it is likely we'll continue discussing this topic in some fashion going forward.

ADJOURNMENT

Hearing no further business, upon a motion made by Sen. Hackett and seconded by Rep. Lehman, the Committee adjourned at 3:00 p.m.