

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
NCOIL – NAIC DIALOGUE COMMITTEE
2023 NCOIL ANNUAL MEETING – COLUMBUS, OHIO
NOVEMBER 17, 2023
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) NCOIL – NAIC Dialogue Committee met at The Renaissance Columbus Downtown Hotel in Columbus, Ohio on Friday, November 17, 2023 at 10:45 a.m.

Representative Deborah Ferguson, DDS (AR), NCOIL President and Co-Chair of the Committee, presided.

Other members of the Committee present were:

Rep. Matt Lehman (IN)	Sen. Shawn Vedaas (ND)
Rep. Michael Sarge Pollock (KY)	Asst. Pam Hunter (NY)
Rep. Brenda Carter (MI)	Sen. Bob Hackett (OH)
Sen. Lana Theis (MI)	Rep. Brian Lampton (OH)
Sen. Paul Utke (MN)	Del. Steve Westfall (WV)
Rep. Nelly Nicol (MT)	

Other legislators present were:

Sen. Larry Walker (GA)	Asm. Ken Blankenbush (NY)
Rep. Brian Lohse (IA)	Asm. Jarett Gandolfo (NY)
Rep. Rachel Roberts (KY)	Rep. Tim Barhorst (OH)
Rep. Jane Pringle (ME)	Sen. Bill DeMora (OH)
Rep. Mike McFall (MI)	Sen. George Lang (OH)
Rep. Helena Scott (MI)	Rep. Bob Peterson (OH)
Rep. Stephanie Young (MI)	Rep. Sharon Ray (OH)
Sen. Walter Michel (MS)	Rep. Forrest Bennett (OK)
Sen. Joseph Thomas (MS)	Rep. Ellyn Hefner (OK)
Rep. Bob Titus (MO)	

Also in attendance were:

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

QUORUM

Upon a Motion made by Rep. Matt Lehman (IN), NCOIL Immediate Past President, and seconded by Del. Steve Westfall (WV), the Committee voted without objection by way of a voice vote to waive the quorum requirement.

MINUTES

Upon a Motion made by Del. Westfall and seconded by Sen. Bob Hackett (OH), the Committee voted without objection by way of a voice vote to adopt the minutes of the Committee's July 21, 2023 meeting.

INTRODUCTORY REMARKS

Rep. Ferguson stated that before we get started, I really want to say how much we appreciate the NAIC and the Commissioners for participating with us. I've said before that it's really a symbiotic relationship between legislation and regulation and we really so appreciate this relationship and I'm glad we've been able to strengthen that over the years.

Oklahoma Commissioner Glen Mulready thanked Rep. Ferguson for this opportunity to have this exchange. I 100% echo your comments. I have often overlooked when I come back to NCOIL because I just think of NCOIL and I see people like Rep. Ferguson and Rep. Matt Lehman (IN), NCOIL Immediate Past President, and Commissioner Tom Considine, NCOIL CEO, but I forget some of the new people that may be here and things have not always gone as well with our two organizations as they have now. I don't think they've ever been better and so thank you for that. That takes some work to build and work on that relationship and that's just a little bit of history but I also just wanted to congratulate you, Rep. Ferguson, as you wrap up your year as NCOIL President. It's been a great year for NCOIL. Congratulations as you wrap up. I also want to bring apologies from Rhode Island Superintendent Beth Dwyer and Ohio Commissioner Judi French. They were both with us at the breakfast but had to leave. And also, Idaho Director Dean Cameron who typically is at the NCOIL conferences with me and just a couple of days ago he was asked by his Governor to take over their largest state agency, The Department of Health and Welfare, on an interim basis. He still is Director of the insurance department but he apologizes as well for not being able to be here. And one final thing is we have with us today Louisiana Commissioner Jim Donelon and for those of you who don't know he previously served in the legislature in Louisiana for 19 years. He has served this space extremely well. And just another general comment about NAIC and NCOIL. I do think when we come to these and when we have our legislative members coming to our meeting in just a matter of a couple of weeks in Orlando and working together collaboratively as we have been makes us both better. So, thank you for the opportunity.

Rep. Ferguson then asked all the participating Commissioners to introduce themselves and note whether they are elected or appointed as she just learned that not all are appointed: Kentucky Commissioner Sharon Clark (appointed); Louisiana Commissioner (elected); Oklahoma Commissioner Glen Mulready (elected); Maryland Commissioner Kathleen Birrane (appointed).

RECAP OF NCOIL D.C. FLY-IN

Rep. Ferguson stated that for the newer members we started this dialogue with the Commissioners several years ago because we do have so many issues in common and we try strive to be on the same page and think about issues and the state-based control of insurance. Last month several of us from NCOIL went to D.C. for a fly-in and we discussed numerous issues with our Members of Congress and staff. I think it was a very successful meeting and I think most of the Members I talked to were for state-based control of insurance. We talked about the reintroduction of the Prohibit Auto Insurance Discrimination (PAID) Act which seeks to prohibit auto insurers from using certain factors in underwriting such as education level and marital status. Also, we talked about preserving state regulation of healthcare with possibly some waivers or amendments to the Employee Retirement Income and Security Act of 1974 (ERISA). I think there is some precedent for that as I said yesterday with other federal programs

we have waivers for Medicaid and Medicare and the Affordable Care Act (ACA) and I think certainly the Arkansas pharmacy benefits manager (PBM) law and the NCOIL PBM Model Law that eventually went to the Supreme Court in the Rutledge decision which said that states do have the opportunity to regulate actors in industries that are adjacent to and have a cost impact on ERISA plans. So, I think there is some penetration into that ERISA law and we really are advocating for waivers to that program to allow more state control, particularly of self insured plans that only have employees in our state that they would have to abide by all the state laws that we all fought so hard to protect consumers. Another issue was enacting a long term reauthorization of the National Flood Insurance Program (NFIP). I live on the Mississippi River so I certainly have concerns about that. Overall, the fly-in was a real success. We also looked at the state-based regulation of insurance of a little bit of what we talked about yesterday regarding The Department of Labor's (DOL) fiduciary rule that was overturned, but the DOL is reintroducing it. During our last dialogue in July, we spoke about your fly-in which was held in April, and do you have any questions or comments in regard to those things that we talked about at our fly-in or did you have different concerns at you're fly-in?

Cmsr. Mulready stated that as you noted, our fly-in was in April and we discussed some of the same things such as NFIP reauthorization but something on the top of our agenda that we talked about at breakfast as well was Medicare Advantage and we are really pushing hard to our delegation. We sent letters from the NAIC really to grant the States additional authority with Medicare Advantage. The problem that we see every year around this time and post enrollments is we get the calls, we get the consumer complaints that they've enrolled in a plan and it turns out there's not the providers there that they thought they were. And we have no authority to do anything to help our own Oklahoma consumers. And so we would like to have some more authority in that space. I chuckled when the response we got from them this summer was that they had noticed all their complaints were down and my comment to that was, "yeah talk to me at open enrollment. It's in the middle of summertime. Nobody's complaining right now. We're not just prior to enrollment, we're not post enrollment." So that's something big. And then I think you touched on it but the PBM piece as well there's been a lot of activity there at the federal level. Numerous states, probably close to 40 now have placed that under the insurance department, that compliance and enforcement and licensing mechanisms for PBMs. And we have our own case actually PCMA v. Mulready which is on appeal in the Tenth Circuit. And that was a setback for us on that ERISA issue, a substantial setback versus the Rutledge case. So that's on appeal at the Tenth Circuit, and if that falls through, that will probably end up at the Supreme Court as well. One other thing where I think we're all on the same page is the tri-agency rule proposal regarding short term limited duration (STLD) plans. Our letters went from the NAIC with that as well. For the most part all we focused on is that this is a state decision. Each state should be able to decide so it shouldn't come down from the federal side of things. So, we'll see where that shakes out but that was the position we took and talked a lot about that. Rep. Ferguson stated that we have a lot of concern about the federal position on those as well.

UPDATE ON DRAFT NAIC CONSUMER PRIVACY PROTECTION MODEL LAW

Rep. Ferguson stated that the next thing we wanted to talk about was the NAIC Consumer Privacy Protection Model Law. The NAIC is working to amend some of its existing models with the end result being a new NAIC Consumer Privacy Protection Model Law. The proposed amendments are on page 189 in your book. We understand that the draft model has been met with some significant concerns. Can you provide us with an update on what the next steps are? And why do you think the model's been met with so much concern?

Cmsr. Birrane stated that let me first say that the H committee, which is the parent committee that the Privacy Protection Working Group sits under met yesterday and we did two things relevant to that Model Law. The first thing that we did was we extended the time period through the end of 2024 for consideration and for drafting to occur. The second thing that we did was we received comments from industry about changing the charge slightly to allow more flexibility around what the final product will be - will it truly be a complete rewrite, or will it be an update? We accepted those comments in order to provide for that additional flexibility. I'm going to start at the end instead of the beginning because I think that probably is maybe ultimately more germane to what your concerns are and that is we have pressed not a stop button, put a pause button. Because there have been lots of comments and lots of meetings to try to really work through the various issues related to privacy in general. So, there's the big question and issue of privacy regulation in general. There's what's happening internationally. There's what's happening nationally. There are the existing state laws that exist. So, from a big picture perspective, what are those issues? And then a second consideration is then of all those issues what is really appropriate for a model law that regulates the insurance industry? And then the next piece is so what does that mean then for our modernization of the model laws that were enacted a very long time ago? One right after the passage of Gramm-Leach-Bliley. The other right after the passage of the Health Insurance Portability and Accountability (HIPAA) Act. One of which has been broadly adopted, the other which has been adopted almost nowhere.

So, the objective here is to say, the drafting group did a lot of work. They made a very good faith effort to put out a very broad model that has created a lot of controversy and a lot of comments. They have been working diligently through those comments and the request of the H Committee now to that working group is that they pause and take all of the comments that have been received to date and they integrate them into a version 2.0. That version 2.0 is not going to be completed until the beginning of the year. When it is completed, the goal is not to expose it for further comment. The goal is to bring the Commissioners together and have a discussion around where that 2.0 model currently sits. So, with the benefit of insight and thought and comment from industry, with the benefit of insight, thought and comment from this body, and from other legislators, we now need to sit at the table as Commissioners and really hash this out. What is the right direction? Are we pleased? Do we think that 2.0 is in the right place? Or do we need to pivot one place or another? That is a conversation that will be happening in the first quarter of 2024. And what I anticipate is that out of that Commissioner and senior staff level conversations around the right approach and the right direction, and an effort to build true consensus among the members, we will at that point be ready to announce I'm going to optimistically say at our spring national meeting what that direction is going to look like. But what I can assure you is that as you know the NAIC tries to work from consensus, tries to work from the middle ground to accommodate the thoughts and concerns, and the needs of all of our states and where we go from here will be reflective of that.

Rep. Matt Lehman (IN), NCOIL Immediate Past President, stated that I appreciate those comments and I appreciate what the NAIC is doing on this. I like the idea of more of an update because as we talked earlier, there's a lot of language in there about mail and things that were relevant in the 1990s so it's time to update that stuff. I think one suggestion I'd put out is you mentioned the team you kind of have working around this and at parallel to that there are the legislative bodies working on data privacy as well. And I think we all share one common theme and that is we don't really trust the federal government to take over all that data, especially with insurance. So I would ask that you would just maybe keep us at the table or this kind of dialogue works fantastic but I also think in your planning maybe reach out to legislators such as myself as I ran the bill in Indiana and other states have done that so it's important to see how that is going to work parallel with what you're doing or is it going to run into some conflict of what you're doing

so that we can cut that off at the pass. Cmsr. Birrane stated that I think that's an excellent suggestion and thank you for making it. And, what we can do is coordinate once we kind of get to that. 2.0 and we sort of have our initial discussions of how do we bring you into those discussions before we go out with something that's fully public.

UPDATE ON NAIC'S DEVELOPMENT OF MODEL BULLETIN ON ISSUES RELATING TO ARTIFICIAL INTELLIGENCE AND THE INSURANCE INDUSTRY

Rep. Ferguson stated that we addressed in a general session yesterday the impact of artificial intelligence related to the insurance industry. And as you know, we had a comment letter to the NAIC because we have concerns about some non-statutory terms in your AI bulletin. So can you comment on your bulletin and what the next steps are in further developing that and maybe removing that non statutory language?

Cmsr. Birrane stated let me talk a little bit about the process if that's okay first for those who didn't have the benefit of that yesterday. So, we all know that artificial intelligence is playing a huge role in how everybody does business these days and that includes insurance companies. And there's a lot to be gained. A lot of efficiency. A lot of consumer benefit to be gained. But there's also the potential for consumer harm. And so like any other methodology and like any other tool it has to be used within guidelines. All of our legislatures have passed significant legislation over the years that regulates the insurance industry, that regulates what it does and how it does it, and what it's allowed to consider, and what it's not allowed to consider. So, throughout the entire premium calculation or rate underwriting and rating processes through the claims processes there is substantial legislation on all of our books that guide that process. The NAIC made the determination that we do need to have a U.S. regulatory framework for the use of artificial intelligence by the insurance industry. We spent about a four or five month intensive period of providing foundational education to all of our Commissioners at the Commissioner level to make sure that we had a common ground of understanding vocabulary. We brought in experts, we brought in professors, we brought in folks that do this on a day-to-day basis to provide that foundational education and then coming out of that really understanding the basics and understanding sort of what the pros are, what the concerns are, and what drives those risks? We then met in a very lengthy session in New Hampshire at the end of 2022 and had roundtables where we sat together and said, "Okay, what's the deal?" So, the questions that each group was asked were do we want to make a statement? When? What should be its form? Should it be prescriptive or principal based? And how should it address third party vendors? And what came out of that was an amazing level of consistency and consensus. Literally every working group, very few people didn't have exactly the same views. So, one we needed to speak. Two, we needed to do it now. Three, we decided that the most appropriate approach was a regulatory bulletin that provided guidance and expectations for how to use these tools given the legislative frameworks that already exist and already govern and set standards or industry behavior.

We had robust discussion about whether it was appropriate to do a model law or a model regulation at this point. And the decision to do the model bulletin was driven by first of all we felt we had the statutory underpinnings to be able to provide that guidance, number one. And number two, we felt that in terms of time and speed that the bulletin was the most efficient way to go. That does not preclude us from in the future if it makes sense to go to another effort to look at model laws or model regulations. But in that time, in that moment, it made the most sense to us to move with the bulletin. So that's what we did. And then we also decided that it would be principles based. It would flow from the principles that were published and voted on in 2020 and that it would focus on primarily governance and risk management. And that with third parties we

were not going to try to regulate third parties through this process, but we would hold licensees responsible for the data that they use and the models that they use from third parties. Our drafting efforts, which have been again, very highly collaborative, very broad participation across all the states with over 20 states involved in the drafting process resulted in a draft that was circulated in July. We accepted comments, we came back out again with a new draft in October and we're still looking at the definitions. We appreciate the comments with respect to some definitions. We purposefully avoided wording and certain definitions that aren't defined in statute. And frankly, we avoided defining terms like unfair discrimination, recognizing that some states have specifically adopted definitions in statute. Other states have, well their courts, have done that. Where we chose to include defined terms for us were along the lines of what you would expect the department to do if these are less legal terminology. So, for example, you'll see the use of the term an adverse consumer consequence. So, we're trying to focus on in this bulletin what we are most concerned about our AI systems that have the potential to create an adverse consumer consequence.

And so those are words that we're just trying to define. They're not in statute anywhere, but that's because statutes are really broad and here we're saying okay for this bulletin we're just focused on this activity. We talk about things like proportionality. So, where our bulletin says to companies we know that a great big, huge global company, multinational, that writes, \$100 billion worth of business a year is really different than one of your mono line one state workers comp carrier that writes \$100 million in premium a year. So their staffing, their needs, what they do are going to be really different. So, part of what the bulletin does is it presents the idea of proportionality and not just in terms of the robustness, but also in terms of telling companies what we want you to do and want you to focus on and your processes should be commensurate with the risk of harm to consumers. So we use that term risk of consumer harm that if you've got something that's really going to hurt a consumer like pricing decisions, you need to be more robust than maybe thinking about what your chat box says. So those are the kinds of things that are words that we're using that we are defining. If there are other specific terms that are still left in the bulletin, I know we haven't received your next comment letter, we are happy to consider those. But the goal has not really been to try to override statutes. It's tried to focus on more practical terminology that you wouldn't normally see defined in statute in any event.

Rep. Brenda Carter (MI) stated that I would like to know with artificial intelligence, have you considered it's impact on rate making and the possible discriminatory factors with rate making? Cmsr. Birrane replied absolutely and that is a huge driver of this exercise. I think it's one of the main drivers. We have to be careful to make sure that we don't limit it to that because claims administration is a huge issue as well. You know, quote unquote "fraud detection" is a huge issue as well and whose claims are considered fraudulent. And frankly, marketing practices. So, who's worthy of insurance in the first place? And then the underwriting standards. So, you're absolutely correct that that is a main driver. We do have very robust systems in place in the world of insurance that deal with the standards around discrimination. I refer to it as discrimination with a little D and discrimination with a big D. So, insurance discrimination with a little D is this idea that if you're going to charge Mary a rate that's different than Joe it has to be based on something that's different between the two of them that relates to their risk. That's the term of unfair discrimination. And then there's big D which is are your practices such that they are discriminating against protected classes, most of which are identified in statute? And the concern that exists is that sometimes it is difficult to be able to assess what those impacts and outcomes are. It is not impossible - Washington D.C. is embarked upon an analytical exercise in a market conduct exam to look at this attribute in the context of auto rating. Maryland just issued orders relating to practices that we were very concerned about in terms of the potential for redlining in this day and age. So, I can assure you that is a large driver of the work that the NAIC

does. The NAIC has a group within its C Committee and its Casualty Actuarial and Statistical Task Force that looks at large predictive models, particularly for large companies, and there are actuaries in that group.

Sen. Larry Walker (GA) stated that I've been in the insurance business long enough to remember the controversy surrounding financial responsibility as part of an underwriting process and the carriers were able to demonstrate that there was an actuarial basis to use that. And so, it's widely accepted. My concern on this AI stuff for underwriting is it seems to be a lot of black box proprietary factors going into that. And there will be tension I think between the Georgia Insurance Commissioner and the carriers with regard to transparency on that. And I wonder if your bulletin or you all discussed transparency and what factors go into that decision? I've got a new homeowners carrier that all we do is put in the address, the name and the date of birth of the prospect and they provide a homeowner rate but they decline a huge percentage of our submissions and we have no idea why and they don't tell you why. Cmsr. Birrane stated that the bulletin doesn't do deep dives into transparency. The bulletin is focused very much on the development of and use of AI from the standpoint of governance and risk management. It repeats the principles that companies need to move toward transparency but what it doesn't do and please understand that this is not the last word, this is an incremental process, and what you're talking about is what are the directives that should be placed on insurers in terms of what is the level of detail that they should be providing to consumers beyond letting them know that there is an AI system in play? What is the level of detail that should be available to consumers and to their representatives as brokers in terms of what's driving their particular denial, etc. That work is still being discussed at the NAIC. That is a next step. The bulletin does have a statement in it that reiterates what was in our principles about the need to have explainability and transparency but it does not go into specifics with respect to that and that is an area where I think states are still evolving in terms of what they think the right approach is for their state.

Sen. Walker stated that first of all I always like having an unfair advantage anytime I can. But my concern is for the consumer and really for the insurance market I guess in general in Georgia is if you've got a carrier that has built a better mousetrap, so to speak, and comes in and more or less takes the cream of the crop or cherry picks but isn't sharing in the wider population of risk and then the other carriers are going to have to be inverted and are adversely impacted by that. As an insurance commissioner, is that a concern you would share? Cmsr. Birrane stated that it's always a concern, absolutely. But that's why we exist. I do have optics into every carriers underwriting standards. I do have optics into all of their rating plans and all of their rating factors because that's what we do. We receive their rating factors. We review their rating factors. Some states are prior approval, Maryland is not. But we do evaluate all of those rating standards. And what happens with us is that when we have brokers like yourself or consumers that are saying what's going on here, we do investigate that. I'm in the middle of a large market conduct exam exactly on that issue. So, we are concerned and the typical concern is making sure that those underwriting standards meet the statutory guidelines, that they are not unfairly discriminatory and making sure that carriers write everything they have a rate for and they don't say, "Well, I have really broad underwriting standards and really great rates but I'm going to cherry pick what I want out of that because I'm not going to write everybody that qualifies." So you are absolutely correct in that and having those concerns and that those are the concerns of the Department. We use the laws that already exist and the tools that already exist to address those considerations I would say literally on a daily basis.

Rep. Lehman stated that you hit the same concern I had when we did the NCOIL transparency model which we then passed in Indiana last session and I can get you the language. But it

basically creates that disclosure to the consumer from the carrier as to what were the largest factors going into that rate. I can give that information offline.

Rep. Ferguson stated that in the interest of time we need to move on but I will comment the non statutory word "bias" is one of our major concerns in the bulletin.

FOLLOW-UP DISCUSSION ON ACTIVITIES OF NAIC'S SECURITIES VALUATION OFFICE (SVO)

Rep. Ferguson stated that we talked about a little bit about this at the breakfast and I know there's a little controversy about it from yesterday - the SVO and their retroactive look at valuation. Can you comment on your process and why the SVO exists and when you decide to retroactively look at the rating.

Cmsr. Donelon stated that I'll hit a few points that I think are relevant to that discussion. Relying on credit rating agencies is an efficient way to review insurer investments. Not company solvency. But increasingly, we regulators have become concerned by the quality of ratings for certain classes of certain tranches of investments and have noted significant discrepancies between rating agencies for the same investment. Since capital charges are directly linked to these ratings, there's troubling potential for rating shopping by some insurers to avoid having to hold more capital. I myself in my state of Louisiana have twice engaged with the SVO on behalf of investments that were on the books for top of the line very old, over 100 year old life insurer in one case. And another in the property & casualty area that had downgrades on part of their investments and asked me to intercede which I did with the SVO and we worked it out frankly I don't know to what end whether they succeeded or not. But that is the only experience I've had in 18 years with the SVO and I consider it to have been positive and their role to be important. That rate shopping issue I think is not really relevant to the discussion that we're having but I can understand why the issue has been put forth by some of you and we are committed to working in collaboration with you to resolve those issues. You'll recall during the 2007, 2008 financial crisis that blind reliance by regulators on credit ratings in part contributed to overlooking a growing subprime mortgage crisis. Not in the insurance arena, but in the banking arena. And while Dodd-Frank required many federal regulators to take steps to reduce their reliance on such ratings, no such holistic changes have been made in state insurance regulation. In discussion this morning at breakfast the concern that has been expressed by industry for the fees being charged for the services at the SVO specifically for appeal processes that may be necessitated, we are taking that back to NAIC and we'll discuss with our internal folks the need for number one, if they are being charged additional fees for appeals which I doubt based on my experience, but if they are, the need for that which I doubt also. So, with those things said, as a result of the concerns I mentioned, a proposal was drafted by the SVO that would grant it a limited amount of discretion to review and challenge for NAIC solvency regulatory purposes only rating agency assessments of investment risk. And the proposal was exposed for public comment in May with a July deadline which is approaching. With the SVO'S proposal it's also important to note that a state insurance regulator, just like the SVO, would be able to initiate a review of a rating designation under our proposal.

Sen. Lana Theis (MI) stated that I would respectfully like to ask that you reconsider this. My issue is not just with the fees associated with it but the way that the oversight would have to work. So if a company that was going to be invested in got downgraded, their ability to go back to their rating company and say here's the reason why we think that's incorrect, that's significant. And they have an ability then to have a back and forth and that makes sense. But if their choice is to go to the regulator who regulates them there's no open discussion there. So that is a huge

problem for me. It's like the fox watching the hen house. And please forgive the reference, but there no freedom of communication back and forth. So, that's a major issue for me as well as the fees you are already effectively regulating. And I understand the concerns but the references that you're listing right now go back 15 years and this is a quantifiable measurement. You can look at the people who are currently doing the ratings and you can see whether or not they're rating beyond the solvency of the industry that they're looking at or the business that they're looking at. So I want to push back on where it is you're heading for this and I would hope that the other legislators here would do the same.

Cmsr. Birrane asked for a point of clarification - are you referring to the credit rating of the company or the credit rating of the investments? Sen. Theis stated that I am concerned generally about the SVO oversight altogether and how it interacts with the company. Cmsr. Birrane stated that this particular exercise that we've been addressing, and I'll certainly take those comments back, have been very much focused on the rating of individual investments and types of investments which obviously ultimately can have an impact on the overall credit rating of the company itself. But the primary exercise is around what is the appropriate charge on a particular investment and how does the NAIC determine that for purposes of what is allowed to be considered in statutory accounting as available capital so that when consumers make claims the money is there to pay them. Sen. Theis stated that I absolutely agree that we need to be concerned about the claims and whether or not the money is there to pay them. And we can get into all kinds of other discussions about what you consider to be valid investments and what the reasoning is behind the strength of an investment which is another discussion we're going to have later I think. But I just want to caution because of the lack of ability for a defense in what the outcome is of the ratings or what the determination is of the ratings and the complexity and the people we had speak were absolute experts on a very minute portion of review of value and the SVO will not have that level of complexity. Cmsr. Birrane stated that I appreciate that and in my years at DLA Piper I certainly worked on collateralized debt obligation (CDO) and collateralized loan obligation (CLO) investment part of things so I do very much appreciate your comments. And just for awareness, there is a new draft that is coming out that is specifically targeted at looking at that appeal and input process so I think we'll have the opportunity to review those new sections and get your feedback on those once they're out there.

Sen. Bob Hackett (OH) stated that I was the one that actually defended you yesterday and after the fact a number of people criticized me and I didn't change my views. I was an investment advisor. I went through '07 and '08 crisis and I saw the mistakes and was not happy with New York. And a lot of things, if I could see it a lot of other people could see it so I don't mind having another set of eyes. The problem that came on this scenario is a lot of these people thought you were overstepping your bounds, not just for the excessive fees but were they trying to actually come in and be a rating agency yourself? And so that's when you have to go back and talk to them. I don't mind having another set of eyes involved, etc. But we need to have the expertise which I think there is good expertise with the Department of Insurance. But the concern is maybe you overstepped and gone a little too far and I'm curious to see what you say about that.

Cmsr. Donelon stated that unfortunately, in my home state of Louisiana, we've had more than our share of insolvencies over the years and we rely on the model laws that have been in place since the 1990s which were part of the accreditation process. That's core to how we operate on a national basis state by state. And the model laws are focused on individual rules relative to individual investments, not the rating of the company. And I stand to be corrected by Cmsr. Birrane but we'll certainly take your concerns back and consider the fee structure and the appeal process and the transparency of the whole process from what we've learned here with you yesterday and today. But we to my knowledge, and I defer to my colleagues, we don't want to

compete with AM Best and Demotech and the other rating agencies. And what I've heard in the hallway here is that Demotech, for one, is not concerned about us encroaching on what they do. That's not their concern. And frankly, it shouldn't be because we don't want that. We don't want to do that. So, your points are well taken and we'll take them back. But it's really statutory requirements for the evaluation and the acceptance of different categories of investments that companies put on their books for their ability to pay their claims and we are evaluating those investments of vehicles on an individual basis, not on a company wide basis.

Cmsr. Mulready stated that we received 17 comments on this which includes 45 pages and that will be part of the review at our national meeting in Orlando. Sen. Hackett stated that the only point I wanted to make is I understand the insolvencies you've had but there are other factors that led to the insolvencies. And you know that. And I know that. And there are factors that people thought you would never face on those type of claims. So, it was more than just the investments that caused the insolvency concern. In Ohio, we don't have the problem that you had down there and I ask people the question how much do you think our fund puts in to run the department of insurance? The answer is zero - everything is paid for by the private industry and premium tax dollars so there is not one dime put in by the state of Ohio because that's just the way the system runs in Ohio. Cmsr. Donelon stated that it runs the same way in my state. Sen. Hackett stated that so it's not just the investments that caused insolvency in Florida and other states. Cmsr. Donelon replied, absolutely.

Rep. Nelly Nicol (MT) stated that my question is more of a point. The appeals that get put forth are putting the companies instantly on defense so it's something that they have to argue against and as the regulator you're the one that already has the upper hand to the insurance companies. So, maybe just take that into consideration. And also, take under consideration that in every state these appeals processes aren't always on the up and up. And so, in specific states, you might have different issues with the appeals process. And beyond that, we're also looking at these things are documents that are being put in the company filings and the rating companies are going to be looking at all of that. So, maybe you're not giving them a poor rating or have anything to do with the rating. I understand that. But this does affect the company and their bottom line when you write these things down and put it in permanent record.

Cmsr. Donelon stated no question about it and I for one is a legislator was very supportive of imposing, and it's in place and it's been part of my burden in the 18 years I've been Commissioner - when I took action that companies challenged, we have now outside of my authority, a division of administrative law that oversees the department of environmental quality, and myself and the state revenue department. All of us regulators and state agencies are subject to that expedited oversight in Louisiana, by not judicial, not the court system, but by the Division of Administrative Law. I supported that. I continue to support it even though I've had my issues with it over the years. There's no such avenue available to us on a state by state basis for oversight of regulators. The courts, we don't want to go there and I don't think the companies want to go there. So, to the extent that we can under our state deferring to the domiciliary state for regulation of solvency as our accreditation system has mandated, to the extent that we can make it transparent, more user friendly, less expensive, like you have brought to our attention here in these two days, I and I think my colleagues are all in support of doing that. This has been completely off of my radar until now when I came to Columbus. I had that one investment product at a large international life insurance company and it got resolved without me even knowing how the resolution ended up to the satisfaction of the company or not. And I had another from when I was president from a different state, that also got resolved without me knowing what the outcome was. So, it hasn't been brought to my attention in 18 years as an

issue until now. But certainly, these are legitimate questions of cost, transparency, appeal process, etc. and we'll take your message back and address it at the NAIC level.

DISCUSSION ON NAIC'S DATA CALL RELATING TO PROPERTY INSURANCE MARKET

Rep. Ferguson stated that we'll move on to the next topic, a discussion of the NAIC data call relating to property insurance market. We saw the NAIC's announcement of its plan to issue a nationwide data call to help state insurance regulators better understand property markets, coverages and protection gaps in light of increasing climate risk, reinsurance cost, and inflationary pressures. We're also aware of the recent announcement by the federal insurance office (FIO) of its plan to also issue a similar data call. Starting on page 191 in your binders, you can see both the NAIC and the FIO's announcement of their recent data calls. The description of FIO's data call does seem very similar to the NAIC data call and it's our understanding that there was communication between the two of you regarding whether or not the FIO data call would be duplicative. Can you describe to us what those conversations were like and how the NAIC views FIO's data call. I'd also like to note that with this data call from FIO and with other federal actions such as the DOL's fiduciary rule and as we talked about earlier the STLD rules, there do seem to be significant threats from the federal government to intrude on the state based system of insurance regulation. It might be worth considering our respective organizations working together on some sort of joint comment letter to push back on this activity all together since we do represent the legislative and the regulatory authority for state based systems.

Cmsr. Mulready stated that I'd like to talk a little bit and then get back on track on just on what's happening with homeowners' coverage. Every single one of you at this table, every legislator is or regulator will receive phone calls from your constituents about rate increases on their homeowner's policy. I can guarantee it. I've received numerous of them. So, let me just talk a little bit about that. And I'm from Oklahoma and I like to say we're a weather state and that impacts us even more so but it is happening across the country and just quickly just like I tell my legislators at home here's what's happening - number one, we have catastrophic storms. We are having the frequency and severity greatly increasing. So, we're just seeing more and more of these catastrophic storms. In April in Oklahoma we had a tornado. That's probably approaching a \$1 billion claim. We had one public school, a high school that that claim alone is \$30 million for a public high school in Shawnee, Oklahoma. So, we're seeing more and more of those in severity and frequency. We also have an issue in the reinsurance world as you stated. And the reinsurance association folks are here and they can talk to you about the \$200 billion of capital that left the reinsurance market just due to changing interest rates and other potential investments and other things happening in our economy. Well, that does nothing but drive up costs for the reinsurance. And the third is just inflation and inflationary pressures that are happening. I experienced this personally. Just this last week we had our own roof claim. My wife was going to send off that final check and she pulled out of her file a proposal and it was for \$20,000 and she said, "Is this what I send off for the roof?" And I said "No that's the proposal from one and a half years ago, almost to the day." A year and a half ago, the same roofer who replaced our roof a year and half later, it was \$26,000. That's a 30% increase in a one and a half year period just due to inflationary trends.

So, that's what we're seeing. And now I'll get back on track. Arkansas Commissioner Alan McClain is the Chair of the NAIC's C Committee and he wanted to be here but had something come up and he wanted me to apologize that he couldn't be here. But we are in the midst of doing a data call to develop that data trying to identify coverage and protection gaps, also focused a lot on availability and affordability. I think it's important to note that within Oklahoma we have certain storms and I specifically mentioned Shawnee but you can have very

concentrated differentials within a state within the geographic area. So, we'll be focusing on that. And really just helping our regulators better understand the marketplace with that. Now we focus on solvency and we know what's happening with that and other filings but the availability and affordability, it's a little bit tougher for us to keep our finger on the pulse. And so that's really what this effort is about so we can better understand that. You mentioned FIO and their data call. I would argue that there was engagement with us. We received a letter requesting that we provide this data to them. It was a very unreasonable time period and it could not be met. I can tell you that our state, we sent back a letter saying we are happy to work on this but number one, we don't collect that data at that level at this time. And we could get it to you but we can't do it in 30 days. And I forget what the exact timeframe was but it was not a reasonable timeframe. So, I don't believe there was reasonable engagement at all with FIO. And we have pushed back on that and I think you are right to identify it as a significant threat of federal overreach. And so we, the NAIC, are doing our own data call. We are going to gather, analyze and then utilize that data for each unique market. I think what we envision is more of an ongoing collection of data as opposed to a one-time thing. But it would be more of an ongoing thing that we could continue to update and give each of us a better insight into our own markets. So, that would be more of a long term, but what we will be collecting is down to zip code level data, premiums, policies, claims, losses, limits deductibles, non-renewals and coverage types. And that data request format has not been finalized. They are working on that and hopefully we'll finalize that here in about two weeks at our national meeting. And your idea of a joint letter, I can't speak for the NAIC, but I can speak for myself, I would highly encourage that. I think that adding that weight to the two organizations pushing back on that is very helpful.

Rep. Ferguson asked if the primary function of the FIO is to collect data? What would you say is their primary function? Cmsr. Mulready stated I think that's a great question. What is your primary function? Why do you exist? I think the original idea of FIO was more on the international level representing the U.S. maybe at a federal level. But I think there are a lot of people that question what is that role and I think there is movement to sort of justify that at that position of that role like what we're seeing here with this data call.

DISCUSSION ON NAIC'S UPDATED CANNABIS INSURANCE WHITE PAPER

Rep. Ferguson stated that we'll move on to an always interesting topic, cannabis. I know Ohio just passed their recreational marijuana law, but here we'll talk particularly cannabis as it relates to insurance. The NAIC recently issued a white paper to serve as a regulatory guide for understanding the market for cannabis insurance. It's obviously very topical. Can you provide a brief summary of the white paper findings and what we should be aware of as legislators?

Cmsr. Clark stated that in Kentucky this is a quick learning experience because we just recently passed our medical marijuana law so we have been scrambling to find what was the insurance impact? I didn't really think about it until I got a desperate call from our agency that will be overseeing this product. And we had a very thorough discussion on what their insurance needs are going to be because in the legislation there is a requirement for liability insurance. So, that takes me on this journey of learning more about cannabis. But in 2019 the first paper came out and it was just really looking at some of the major obstacles and where we were at that time and what a difference four years makes because we're now I think it's up to 38 states that allow medicinal marijuana plus three territories. And then there's 24 states that allow recreational. So, the insurance aspect of it. When my agency contacted me, they were saying we have to have liability insurance from that seed to the dispensary aspect of it. And then there's different components like in Kentucky it's greenhouse-only growing so that makes a little bit of difference in the liability coverage of what is needed in the limits. So, we did our homework and made

recommendations to them. Then it becomes the availability issue - are there insurance companies out there that are going to write this coverage? And right now it's primarily in the not admitted surplus lines market. We did in Kentucky just in the last six weeks have a company apply that is going to be looking about limited insurance coverage. They're not going to do the seed to the dispensary but they're a little segment, and it is an issue out there that's going to be challenging.

I can't blame the insurance companies for not wanting to step up. You have all types of interstate laws you have and are they going to be accused of criminalization processes? So really what we need to happen, most of you all have heard about The Secure and Fair Enforcement Regulation Banking Act (SAFER) law that is in Congress that protects and allows for banking institutions to deal with this. However, there is another piece of legislation with Senator Menendez in Congress. It's called the Clarifying Law Around Insurance of Marijuana Act (CLAIM). And what that Act is going to do is it's going to allow insurance companies to provide that coverage for any aspect of the operation in a state that has legalized marijuana without having any type of penalties. And it can be done on a state by state basis. California has passed legislation to protect the industry. But the easiest thing would be to have a national law on it. So it's something we're all facing and there's still concerns. But again, federal action would be the swiftest remedy.

Cmsr. Mulready stated that in Oklahoma we did, I think it was 2018, pass through initiative petition something related to marijuana that did not come through the legislature. And that caused a lot of problems because it wasn't well written, and fees were set extremely low and it has caused a lot of problems. And I know many of you have heard this week a lot about Oklahoma and the Medical Marijuana Authority (MMA). They have had their hands full. We have over 2,500 dispensaries, over 5,000 growers. It has really become a big issue. This past year in our legislature, I think it was SB-913. They passed a requirement for a \$50,000 surety bond so that's been the newest developments in this industry. We have had meetings and some conversations with some captives to come up with additional solutions outside of surplus lines so there's some potential captive opportunities there for that industry as well. I will say also I think it was a week ago today our Attorney General's organized crime unit came in and seized 72,000 pounds of illegal marijuana in the state of Oklahoma and they gathered that all and weighed that and burned it so.

Asw. Pam Hunter (NY), NCOIL Treasurer, stated that I just have a quick question consistent with the SAFER Act and you mentioning a similar piece of legislation. Would the NAIC consider taking a proactive stance and petitioning the federal government to declassify marijuana to reduce it from schedule one? It seems as we've been having this conversation relative to inflation and the market will not be able to sustain, especially with the servicers and the providers keep asking for rate increases. That's what's happening in New York and we see people who are uninsured, underinsured, people driving without insurance just because they are getting tapped with increases. And with cannabis, we have a large illicit market because the way we did it was just wrong and we messed it up really bad. But is there a way that the NAIC would take a strong stance on declassification? Because it seems to me if we did declassify it that would open up banking for this emerging business that they literally are keeping tens of millions of dollars in cash in people's homes because they can't bank it. And this is real. This is actually happening. And that would loosen up and help with the insurance market as well, insuring it's just like any other agricultural product.

Cmsr. Clark stated that I don't know how much influence we would have on that aspect of it because of course marijuana goes back to the Richard Nixon days with the Controlled

Substance Act that was passed at that point. I think I saw some recent polls for 80% of Americans were in favor of medicinal cannabis. And it was dropped off a little bit I think to 60%. The quickest way rather than us getting outside our guardrails and outside our lane I think is for the CLAIM Act and the SAFER Act to pass and that might answer the question. If they opened up that drug laws we can get into all kinds of questions and it would be a much slower process so I think the CLAIM Act and the SAFER Act are the fastest way to get there.

Cmsr. Mulready stated to Asw. Hunter that we'll bring that back, but I think that might be a little bit of a step outside of our lane for many of our members to get behind addressing the banking issue, as opposed to insurance.

ADJOURNMENT

Hearing no further business, upon a motion made by Sen. Hackett and seconded by Del. Steve Westfall (WV), the Committee adjourned at 12:00 p.m.