



Insurance Regulation Committee



THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS' FOCUS ON CYBERSECURITY

By: Daniel A. Cotter

In November 2014, the National Association of Insurance Commissioners (“NAIC”) established the Cybersecurity Task Force (the “Task Force”) to help “coordinate insurance issues related to cybersecurity.” One of the main tasks of the Task Force is to “monitor developments in the area of cybersecurity.” The Task Force has been extremely active in its first eleven months of existence. In April 2015, it issued its [“Principles for Effective Cybersecurity: Insurance Regulatory Guidance”](#) (“NAIC Principles”) and on October 14, 2015, it issued its “Cybersecurity Bill of Rights” (“NAIC Bill of Rights”). This insurance regulatory update addresses these two issuances by the Task Force.

The NAIC Principles

The NAIC Principles are based on the Security Industry and Financial Markets Association’s [“Principles for Effective Cybersecurity Regulatory Guidance.”](#) The NAIC Principles were issued by the Task Force to “establish insurance regulatory guidance” that recognizes the complementary nature of the industry and regulators while protecting consumers. When the

NAIC Principles were published after adoption in April 2015, NAIC President and Montana Commissioner of Securities and Insurance Monica J. Lindeen stated:

“These principles will serve as the foundation for protection of sensitive

Continued on page 11

IN THIS ISSUE:

The National Association Of Insurance Commissioners’ Focus On Cybersecurity	1
Letter From The Chair	3
Self-Driving Cars: Impact On Accident Rates, Insurance Costs And Rate Structure	5
The Ability Of Insurers To Use Price Optimization Given Recent State Actions	9
2016 TIPS Calendar	13

THE NATIONAL ASSOCIATION...

Continued from page 1

consumer information held by insurers as well as insurance producers and guide regulators who oversee the insurance industry.”

There are twelve NAIC Principles:

State insurance regulators should ensure that the industry protects personally identifiable consumer information from cybersecurity risks, as well as timely notice of any breach.

1. Information collected and stored by the industry should be “appropriately safeguarded.”
2. State insurance regulators also have an obligation to protect information collected, stored, or transferred by the insurance departments or the NAIC.
3. Cybersecurity regulatory guidance for the insurance industry should be consistent with the National Institute of Standards and Technology (NIST) framework.
4. Regulatory guidance must be “risk-based and must consider the resources of the insurer or insurance producer.”
5. State insurance regulators must provide “appropriate regulatory oversight,” including financial examinations and market conduct examinations focused on cybersecurity.
6. Incident response planning is key.
7. Vendor management is crucial for the industry and regulators.
8. Cybersecurity should be part of the industry’s enterprise risk management (“ERM”) process.
9. Internal audit findings of “material risk” should be reviewed with the entity’s board of directors and appropriate committee.
10. The industry should use an information-sharing and analysis organization to keep abreast of threats and vulnerabilities.
11. Training of personnel is essential.

The (“NAIC”) established the Cybersecurity Task Force, [which] has been extremely active. It issued “Principles for Effective Cybersecurity: Insurance Regulatory Guidance” [and] “Cybersecurity Bill of Rights” (“NAIC Bill of Rights”). This insurance regulatory update addresses these two issuances by the Task Force.

The NAIC Principles are consistent with best practices in the cybersecurity area, including assessment of policies and procedures, protection of personal information, board involvement, and incorporation into ERM. Based on the NAIC Principles, insurers will start to experience heightened scrutiny of their information security practices, ERM programs and cybersecurity preparation.

Cybersecurity Bill of Rights

On October 14, 2015, the Cybersecurity Task Force adopted the Cybersecurity Bill of Rights, despite substantial objections by the insurance industry. The bulk of the comments submitted by the various trade associations for the insurance industry expressed concerns with the fifty-state system of regulation and the vast differences amongst those states in defining various terms such as “personal information.” The industry also expressed concerns that the NAIC Bill of Rights both imposed stricter notice requirements than the forty-seven jurisdictions that currently have notice requirements in the event of a breach and imposed remediation requirements to which the insurance companies currently may not be subject.

The NAIC Bill of Rights expands upon the previously-adopted NAIC Principles. The NAIC Bill of Rights informs consumers that they have the right to know what kinds of personal information is collected and stored by the industry.

In addition, consumers have the right to understand the privacy practices of individual insurers, who are now required to post their privacy practices on their websites in addition to making those practices available in hard copy, which was already a requirement. The NAIC Bill of Rights provides consumers with an expectation that the industry will “take reasonable steps to keep unauthorized persons from seeing, stealing, or using your personal information.” If a breach does occur, the NAIC Bill of Rights requires notice to consumers within “60 days after a data breach is discovered.” The affected insurance company must also provide detailed information to the consumers addressing, among other things, the nature of the breach and the data impacted.

If there is a breach, the NAIC Bill of Rights also provides for each affected consumer to receive at least one (1) year of identity theft protection, funded by the affected insurance company. The final right spells out the

consumer's rights in the event the consumer's identity is stolen. This last right does not directly impact the insurance company, but merely summarizes the rights available to a victim of identity theft.

Conclusion

Cyber breaches have impacted the insurance industry and will continue to do so. In the last twelve months, the NAIC has increased its scrutiny of cybersecurity, the industry's preparation for cyber-breaches, and the steps the industry has taken to combat data breaches. The newly-created Cybersecurity Task Force has taken steps to ensure that the industry is adequately addressing the threat of cybersecurity breaches. The NAIC's adoption of the NAIC Principles in April 2015 and its adoption of the NAIC Bill of Rights in October 2015 are likely the first of many actions we will see from the NAIC and the Cybersecurity Task Force relating to cybersecurity and data protection. Insurers and related companies in the industry will need to review their internal information security and privacy practices and work to ensure that best practices are being implemented to reduce their exposure to cybersecurity threats. ⚖️

Dan Cotter is a partner at Butler Rubin Saltarelli & Boyd LLP, where he chairs the Insurance Regulatory and Transactions practice.

SAVE THE DATE

MAY 11-15, 2016

Intercontinental Buckhead, Atlanta, GA

THE
TIPS
SECTION
CONFERENCE

MAY 11 - 15 2016

INTERCONTINENTAL BUCKHEAD | ATLANTA, GA



THE TIPS SECTION CONFERENCE

Join your colleagues for the premier CLE conference for insurance, defense, corporate, and plaintiffs attorneys.

THE SECOND ANNUAL TIPS SECTION CONFERENCE WILL FEATURE:

- More than 25 hours of top-notch CLE programming, including ethics credit, to meet all of your educational needs
- Practice area-specific CLE tracks featuring premier speakers including judges and in-house counsel covering hot topics and the latest developments
- Numerous opportunities to network with insurance, defense, corporate and plaintiffs attorneys, judges and local lawyers
- Exclusive networking events for young lawyers
- Substantive business meetings for 31 practice-specific general committees
- Entertaining social events in contemporary Buckhead

For more information visit americanbar.org/tips

