

**Center for  
Economic Justice**

**Independent Insurance  
Agents & Brokers of  
America**

December 8, 2015

The Honorable Monica Lindeen  
President  
National Association of Insurance Commissioners  
1100 Walnut Street, Suite 1500  
Kansas City, MO 64106-2197

The Honorable Adam Hamm  
Chairman, Cybersecurity Task Force  
National Association of Insurance Commissioners  
1100 Walnut Street, Suite 1500  
Kansas City, MO 64106-2197

**Re: Cybersecurity Bill of Rights**

Dear Commissioner Lindeen and Commissioner Hamm:

On behalf of the Center for Economic Justice (CEJ) and the Independent Insurance Agents & Brokers of America (IIABA), we write to comment on the proposed Cybersecurity Bill of Rights and to propose a few revisions to the document. We appreciate the work being performed by the National Association of Insurance Commissioners (NAIC) and its Cybersecurity Task Force in this area and recognize that the issues you are exploring can be complex and challenging. Our organizations believe the recommendations below provide a meaningful and viable path forward, and we thank you in advance for your consideration of our perspective.

**General Comments**

There has been confusion about whether the Cybersecurity Bill of Rights is intended to identify rights and consumer protections that exist under state and federal law today or whether it is designed to be aspirational in nature and to help frame the task force's subsequent examination and revision of the NAIC's privacy-related model acts. Although the drafters have indicated that the document is intended to serve the latter purpose, aspects of the document continue to raise questions and cause uncertainty. In order to put this issue to rest and to eliminate any possible confusion, we urge the NAIC to tweak the document in minor ways prior to its final adoption. Specifically, we recommend that the NAIC modify the document in three respects:

- Title – The current title and the reference to a Bill of Rights imply that the document is designed to describe the existing state of cybersecurity law. In order to more accurately capture the purpose of the document, we recommend that it be identified as “The NAIC Cybersecurity Consumer Information Protection and Data Breach Roadmap” or something similar.
- Introductory Sentence – As currently drafted, the document states that consumers “*have the right to*” certain things. This unequivocal statement is not accurate and does not reflect current law. Accordingly, we recommend the document’s introductory sentence be modified to read “*The NAIC believes insurance consumers should be entitled to*” or something similar.
- Disclaimer – The document indicates that it “*describes what [a consumer] can expect*” and outlines “*[one’s] rights as an insurance consumer.*” These statements, located at the bottom of the first page, inaccurately suggest that the document is a description and reflection of current law, and we urge the NAIC to similarly revise this provision in a manner that is consistent with its intended aspirational nature.

We thank you in advance for your consideration of these recommendations. These proposed revisions are truly modest and do not undermine or devalue the document in any way, and they would enhance the document by eliminating much of the confusion and controversy that currently exists. The adoption of this document (with these revisions) is of critical and particular importance to the consumer community, which urged the NAIC to address these topics during the consideration of the “Principles for Effective Cybersecurity: Insurance Regulatory Guidance” earlier this year, and its approval in the near future would complement the earlier work of the task force and honor previous commitments made to consumer advocates. Completion of the work on this document would also allow the task force to move on to other important tasks in 2016 and beyond.

### **Principle #5**

CEJ and IIABA also urge the NAIC to eliminate Principle #5 (which suggests that consumers have a right to one year of identity theft protection in certain situations) and replace this particular provision with a call for strong credit freeze protection.

Identity theft protection does little to help a consumer when his or her personal information has been stolen or lost, and many have questioned the benefit and usefulness of these services. Moreover, identity theft protection has particularly little, if any, value to consumers for certain types of data (e.g. credit card numbers) and no value in connection with other types of information (e.g. Social Security numbers, personal medical data). In addition, it is troubling that policymakers might reward credit reporting agencies with additional revenue and compel insurance entities that have been hacked to purchase these dubious services. Several such vendors have been charged with false advertising, deceptive marketing practices, and failing to protect the personal information that they themselves maintain.

A more effective and useful consumer protection in the aftermath of a data breach of personal information is a credit freeze, and we urge the NAIC to replace the current Principle #5 with a statement concerning this option. Credit freezes are a creation of state law and are an incredibly effective and powerful consumer protection, but many consumers are unaware of this option and some existing laws make it challenging to put a freeze in place. The NAIC could address this issue by adding a new principle suggesting that consumers who receive a data breach notice from an insurance entity should (1) have the ability to put a credit freeze in place quickly and (2) be able to implement and temporarily lift a freeze without paying a fee to one or more credit reporting agencies or submitting a police report. While nearly every state has some form of credit freeze statute in place today, many of those laws would need to be revised and updated to achieve consistency with the principle outlined above. The inclusion of a statement regarding credit freezes would be consistent with the aspirational nature of the document and would call attention to the benefits and protection that credit freezes provide to adversely affected consumers.

CEJ and IIABA thank you for the opportunity to submit these joint comments and for your consideration of our recommendations. If we can provide you with any additional information or assistance, please feel free to contact us.

*Birny Birnbaum*

Birny Birnbaum  
Executive Director  
Center for Economic Justice  
[birny@sbcglobal.net](mailto:birny@sbcglobal.net)

Wesley Bissett  
Senior Counsel, Government Affairs  
Independent Insurance Agents & Brokers  
of America  
[wes.bissett@iiaba.net](mailto:wes.bissett@iiaba.net)