

May 30, 2024

NAIC Privacy Protections (H) Working Group
NAIC Central Office
1100 Walnut Street
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Attn: Lois Alexander, NAIC Market Regulation Manager
Via email: lalexander@naic.org

Dear Chair Beard, Vice Chair Weyhenmeyer, and Members of the Privacy Protections Working Group:

The undersigned joint trades¹ appreciate the Privacy Protections (H) Working Group (PPWG or Working Group) requesting feedback on the appropriate path forward for the working group to accomplish your charges “to draft a new/revised Privacy Protections Model Act to replace/update NAIC models such as Model #670 and/or Model #672.”

Privacy is an important matter, and an insurance-specific approach must accomplish several goals simultaneously: reconcile with the context of the insurance industry, align with the broader landscape for other financial institutions² nationally, and consider certain state and federal requirements. More specifically, a privacy model law ultimately developed by the NAIC must be operationally practical, reasonable, and workable. It must ensure that its provisions are integrated and work well together and achieve the intended objective of protecting consumers while allowing licensees to meet their business obligations.

In the May 15 email from PPWG Chair Beard, comments were sought on two questions as a basis for helping the Working Group chart its path forward. To streamline your consideration, we have consolidated our joint trade response.

1. Discontinuing Work on Draft NAIC Privacy Model #674

The undersigned joint trades strongly oppose continued consideration of NAIC Privacy Draft Model #674. The purpose of updating privacy laws specific to the insurance industry is to align our privacy protection requirements with those key generally applicable privacy requirements in a way that respects the context of insurance. Draft Model #674 would discard the structure insurers have been working under – the one that at a high-level aligns with other financial institutions – and would replace it with something that is being called “radically different.” It threatens to introduce significant disruptions for consumers, regulators, and industry players alike.

¹ American Bankers Association *Office of Insurance Advocacy* (ABA); American Council of Life Insurers (ACLI); America’s Health Insurance Plans (AHIP); American Property Casualty Insurance Association (APCIA); Consumer Credit Industry Association (CCIA); The Council of Insurance Agents and Brokers (CIAB); Independent Insurance Agents & Brokers of America (IIABA); Insured Retirement Institute (IRI); National Association of Insurance and Financial Advisors (NAIFA); National Association of Mutual Insurance Companies (NAMIC); National Association of Professional Insurance Agents (PIA); Wholesale and Specialty Insurance Association (WSIA).

² See 15 U.S.C. §6809(3).

2. Leverage NAIC's Existing Model #672; Take the 672-Plus option provided by Industry into consideration

The undersigned joint trades recommend the Working Group revise existing Model #672, taking the 672-Plus option as provided by industry into consideration, for several reasons, including those highlighted below.

Building on Past Success - The NAIC has been a leader in setting standards and expectations for the protection of consumer privacy for decades. Recognizing the unique nature of the business of insurance, the NAIC developed Model #672 to implement the Gramm-Leach-Bliley Act's (GLBA) standards for how insurance companies collect, use, and disclose consumer personal information. Amending the well-established and relatively uniform Model #672 framework with enhanced consumer protections, rather than starting anew, will appropriately bolster the regulation of insurer data privacy and promote consistency for consumers, companies, and regulators. The approach builds onto the well-established and uniform framework. It largely expands the existing requirements, while minimizing disruption of operations that work well today.

Incorporates Many Wide-Spread Key Core State Comprehensive Privacy Law Aspects - The features of the 672-Plus concept have their origin in the state comprehensive privacy laws, which nearly one-third of states have enacted. While they do have some differences, by-and-large these laws are similar and include many of the same components. One message we have heard from regulators is a desire to essentially expand some of these new state requirements to the insurance industry, in a way that makes sense for and is relevant to our industry. The 672-Plus concept incorporates some of the more wide-spread key aspects from those state privacy laws.

For example, its new provisions include: data minimization, consumer requests (for access, correction, and deletion), as well as consumer options to limit (such as for targeted advertising).

Following the approach taken under the state comprehensive laws, the 672-Plus wording would include a limited exemption for licensees that deal with fewer than 35,000 resident consumers - but this draft is more rigorous than the state laws because even entities that qualify for the exemption would still be subject to numerous requirements (including, but not limited to, heightened notice obligations).

Some other changes contemplated in the 672-Plus concept include: modernizing delivery (or access to notice); and expanding requirements relating to contracts with third party service providers.

While the 672-Plus concept represents a positive trajectory, the proposal may need further refinement and fine-tuning, including seeing whether the provisions dovetail as they should. We eagerly anticipate collaborating with regulators and other stakeholders as drafting continues to evolve.

Conclusion

We appreciate the opportunity to have our members' constructive feedback considered and look forward to ongoing and robust dialogue as the drafting process continues. Again, we support:

- (1) Discontinuing the wholesale "new wording" that was being contemplated through the Draft Model #674 effort; and
- (2) Building from a known and relatively uniform platform by adding -- core key concepts from the state comprehensive laws adapted for the context of the nature of the insurance consumer relationship,

products and services, and regulatory structure – to existing Model #672 to formalize a modernized and expanded 672-Plus model to be available for the states.

Please do not hesitate to contact any of the organizations below with questions.

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