

Draft: 12/11/23

Privacy Protections (H) Working Group
Orlando, Florida
December 1, 2023

The Privacy Protections (H) Working Group met in Orlando, FL, Dec. 1, 2023. The following Working Group members participated: Katie C. Johnson, Chair (VA); Cindy Amann, Vice Chair (MO); Chelsy Maller (AK); Gio Espinosa and Catherine O'Neil (AZ); Damon Diederich and Jennifer Bender (CA); George Bradner and Kristin Fabian (CT); C.J. Metcalf and Erica Weyhenmeyer (IL); Victoria Hastings (IN); LeAnn Crow (KS); Ron Kreiter (KY); Robert Wake and Sandra Darby (ME); Van Dorsey (MD); Jeff Hayden (MI); T.J. Patton (MN); Molly Plummer (MT); Martin Swanson (NE); Angela Hatchell (NC); Santana Edison (ND); Teresa Green (OK); Raven Collins (OR); Richard Hendrickson and Gary Jones (PA); Patrick Smock (RI); Frank Marnell (SD); Todd Dixon (WA); Lauren Van Buren and Tim Cornelius (WI).

1. Adopted its Summer National Meeting Minutes

Johnson said the Working Group met Nov. 30 in regulator-to-regulator session, pursuant to paragraph 3. specific companies, entities, or individuals, and paragraph 8. consideration of strategic planning issues relating to regulatory) of the NAIC Policy Statement on Open Meetings.

Amann made a motion, seconded by Diederich, to adopt the Working Group's Aug. 12 (*see NAIC Proceedings – Summer 2023, Innovation, Cybersecurity, and Technology (H) Committee, Attachment xx*) minutes with one edit that clarified the input from one of the interested parties about the gap that results when federal flood coverage is not adequate. The motion passed unanimously.

2. Heard an Update of State Privacy Legislation and Federal Privacy Activities

Jennifer Neuerburg (NAIC) said that in the continuing absence of congressional action on a comprehensive U.S. federal privacy law, many states have enacted state data privacy laws or are considering legislative action.

She said since the Summer National Meeting, the Delaware Personal Data Privacy Act (HB 154) was signed by the governor and that the Act goes into effect January 1, 2025. Neuerburg said thirteen (13) states have enacted comprehensive data privacy laws to date with eight (8) of those laws being enacted in 2023. She said at least 12 states have introduced privacy legislation in 2023 that is either comprehensive in nature or that addresses a range of data privacy issues.

Neuerburg said the NAIC has charts tracking state legislation on the NAIC's Privacy Protections Working Group Webpage if anyone wants to read more about these bills. She also said that the NAIC will continue to follow state data privacy legislation and provide an update at the next Working Group meeting.

Shana Oppenheim (NAIC) said that on February 27, 2023, the Chairman of the House Financial Services Committee Patrick McHenry (NC-10) introduced the Data Privacy Act of 2023, the federal bill that would amend the Gramm-Leach-Bliley Act (GLBA) to "modernize [] financial data privacy laws and give [] consumers more control over how their personal information is collected and used [.]". She said Chair McHenry appears to be using his political capital from his interim speakership to pass his Crypto legislation and not his data privacy legislation. Oppenheim said the NAIC will continue to monitor and update this Committee regarding federal privacy activities.

She also noted that President Biden issued an Executive Order October 31, 2023, on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence (AI), which is a comprehensive plan to ensure the responsible innovation, development, and use of AI across the federal government and the broader economy in a way that is safe, secure, and trustworthy, and that it aligns with American values and civil liberties. The order aims to set new standards for AI, emphasizing safety, security, privacy protection, equity, consumer protection, and workforce support. The order outlines eight key principles for responsible AI development and use. It also directs federal agencies to take steps to implement these principles. One of those steps has a privacy component to safeguard privacy and civil liberties by implementing measures to secure data collection and use, including the use of privacy-enhancing technologies.

3. Discussed Next Steps in the Working Group's Process for Moving Forward with Drafting the New Model

Katie Johnson said the next steps the Working Group plans to take for moving forward with drafting the new *Insurance Consumer Privacy Protections Model Law #674* (Attachment 3) could also be found on the Working Group's Webpage. She said the volunteers in the drafting group are continuing to have calls with companies that request it to discuss issues of special concern to that company to help them understand how drafting choices could affect different companies. Johnson said the drafting group has completed several sections of the new model and will have a new exposure draft (Version 2.0) ready to expose early in 2024. She said the plan calls for a regulator comment period that is to be followed by a public comment period. She also said there would be plenty of time for review and several opportunities to provide comments as well as to discuss areas of concern noted by all stakeholders.

Some Working Group members asked about the process for joining drafting group calls going forward. Johnson said Working Group members are welcome to join the drafting group at any time and that she would be happy to share or walk through her notes on any of the discussions on calls with companies. She said invitations to any future calls would be sent to members of the Working Group. Johnson said her notes on these calls are available to Working Group members and interested regulators on the Privacy Model #674 SharePoint site albeit without naming the specific companies as the notes are by Company A, Company B, etc.

4. Discussed a Referral from the Risk Retention Group (E) Task Force

Katie Johnson said the Working Group had received a referral from the Risk Retention Group Task Force about Risk Retention Groups (RRGs) and privacy requirements. She said this would be included in the discussions by the drafting group and discussed by the Working Group in a future open session.

5. Heard Part of a Presentation from Consumer's Checkbook on Access to Data, Costs, and Inherent Privacy Risks in Legacy Systems vs. Non-Legacy Systems

Eric Ellsworth (Consumer's Checkbook, Center for the Study of Services) began his presentation on access to data, costs, and inherent privacy risks in legacy systems versus non-legacy systems. He described the cost of maintaining data in both systems prior to WebEx connectivity outages becoming so frequent that the presentation had to be stopped and everyone participating virtually released from the WebEx connection. The Working Group will ask the speaker to continue this presentation in its entirety during a future meeting.

Having no further business, the Privacy Protections (H) Working Group adjourned.