

Draft: 6/3/24

Privacy Protections (H) Working Group
Virtual Meeting
May 15, 2024

The Privacy Protections (H) Working Group of the Innovation, Cybersecurity, and Technology (H) Committee met May 15, 2024. The following Working Group members participated: Amy L. Beard, Chair (IN); Erica Weyhenmeyer, Vice Chair (IL); Chelsy Maller (AK); Catherine O’Neil (AZ); Jennifer Bender (CA); Kristin Fabian (CT); Jordan Esbrook and Johanna Nagel (IA); Ron Kreiter (KY); Van Dorsey (MD); Stacy Bergendahl (ME); Jeff Hayden (MI); Cynthia Amann (MO); Santana Edison (ND); Martin Swanson (NE); Teresa Green (OK); Raven Collins (OR); Gary Jones and Richard Hendrickson (PA); Patrick Smock (RI); Frank Marnell (SD); Katie Johnson (VA); John Haworth and Amy Teshera (WA); and Bryan Stevens (WY).

1. Adopted its 2023 Fall National Meeting Minutes

Beard said the Working Group met March 8 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. During this call, the Working Group received a brief presentation from NAIC staff on the history of NAIC privacy models, a review of the Privacy Protections (H) Working Group’s work over the past several years, and an update on the state privacy law landscape.

Kreiter made a motion, seconded by Smock, to adopt the Working Group’s 2023 Fall National Meeting minutes (*refer to NAIC Proceedings – Fall 2023, Privacy Protections (H) Working Group*). The motion passed unanimously.

2. Heard a Presentation from Husch Blackwell on Federal and State Privacy Legislative Efforts

During the 2024 leadership transition, Beard said the Working Group paused its work on the *Insurance Consumer Privacy Protections Model Law* (#674), but the public continued to show strong interest in privacy-related discussions. Therefore, she said the Working Group would continue to hold open calls as necessary, as well as regulator-only sessions to determine the best privacy regime to move forward and draft a new model law or a revision that reflects it. Beard said the Working Group is beginning the meeting with a subject matter expert (SME) who will enhance issues the Working Group will discuss moving forward. She also said that after taking a moment to refresh and recharge earlier this year, the Working Group is pleased to kick off its work in 2024 with a presentation on federal and state privacy legislative activities by one of the premier privacy experts in America.

David Stauss (Husch Blackwell) discussed state privacy laws, focusing on consumer data privacy laws, biometric privacy laws, and children's privacy laws. He said California was the first state to pass a consumer data privacy law (California Consumer Privacy Act of 2018—CCPA). He said some states adopted their own state-specific laws shortly thereafter using the Washington Privacy Act model as a framework even though Washington has not yet adopted it. Stauss said there are variations in the types of consumer rights provided by different state laws and that states have added additional provisions to their existing general data privacy laws, such as biometric data collection regulations.

Stauss described the various state privacy bills and laws, including those related to children's privacy, consumer health data, data brokers, and algorithmic discrimination. He said different states have passed or are in the process of passing their own privacy laws, creating a complex landscape of state laws and regulations with various definitions and requirements. He said the foundational principles of these laws include privacy policies, consumer

rights to access, delete, correct, and report their data, as well as opt-out rights for targeted advertising and profiling.

Stauss discussed the concept of universal opt-out mechanisms in privacy law, which allows individuals to easily opt out of targeted advertising cookies on websites. He said these laws mention the development of a protocol called the global privacy control signal test, which sends a signal to websites indicating that the user has opted out of targeted advertising cookies.

Stauss highlighted the emergence of employee data regulations in states such as California and Colorado, indicating that more states may follow suit in applying privacy rights to employee data. He discussed a draft bill that has not yet been introduced and said that it is uncertain whether this bill will be passed. He said there are other bills related to children's privacy and online safety that are also being considered.

3. Discussed Other Matters

Kristin Abbott (American Property Casualty Insurance Association—APCIA) said she would like to introduce a model approach to the Working Group that was drafted by a coalition of industry trade associations over the past two years using the Privacy of Consumer Financial and Health Information Regulation (#672) as a framework. The coalition believes the approach contains key concerns that the Working Group and other stakeholders have. Cate Paolino (National Association of Mutual Insurance Companies—NAMIC) said this draft focuses on key concepts, including data minimization, consumer access and deletion of data, and limited exemptions for companies with less than 35,000 customers.

Chris Petersen (Arbor Strategies) said the coalition of health carriers that he represents also participated in producing the industry model draft. He asked for it to include a safe harbor for the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) and asked the Working Group to look at adverse consequences. He said every state has passed some type of privacy law, and Model #672 already had many core privacy principles in it, so they built upon that foundation.

Weyhenmeyer said that following this meeting, the industry draft would be distributed to Working Group members, interested regulators, and interested parties (including consumer representatives) and would be posted to the Working Group's public web page. She said a new core privacy issues quick look tool would also be posted for public review. Weyhenmeyer said a notice would be sent following the call announcing a two-week comment period that would end May 30. She asked that all comments be submitted in writing and that the comments only refer to the plan for moving forward.

Swanson said he welcomes the effort to create something more acceptable to most states.

Tolga Tezer (Canopy Connect) asked if he could submit comments on the last exposure draft of Model #674. Beard said the comment period on that model expired, and the Working Group was accepting comments on the plan to move forward now.

Beard reminded attendees about the upcoming regulator-only call on June 6 and the next open call in mid-June.

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

SharePoint/NAIC Support Staff Hub/Committees/H Committee/Working Groups/Privacy/2024/Summer/May 15 Open Call