Draft Pending Adoption

Draft: 3/12/20

Privacy Protections (D) Working Group
Conference Call
February 19, 2020

The Privacy Protections (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee met via conference call Feb. 19, 2020. The following Working Group members participated: Cynthia Amann, Chair (MO); Ron Kreiter, Vice Chair (OK); Damon Diederich (CA); Erica Weyhenmeyer (IL); LeAnn Crowe (KS): T. J. Patton (MN); Kendall Cotton (MT); Bob Harkins (NE); Chris Aufenthie (ND); Brian Fordham (OR); and Don Beatty (VA). Also participating were: Vanessa Darrah (AZ); Michele Mackenzie (ID); Jennifer Demory and Don Layson (OH); John Haworth (WA); Barbara Belling (WI); and Bill Cole (WY).

1. Heard Opening Remarks

Ms. Amann said this is the first conference call of the Working Group since its 2020 charges were adopted by the Market Regulation and Consumer Affairs (D) Committee during its Dec. 9, 2019, meeting in Austin, TX. She said the Working Group is still in the process of building its membership, as well as forming distribution lists for interested state insurance regulators and interested parties. She asked those interested in joining the Working Group or being added to a distribution list to contact Lois E. Alexander (NAIC).

2. Adopted its 2019 Fall National Meeting Minutes

Mr. Kreiter made a motion, seconded by Ms. Cotton, to adopt the Working Group's Dec. 8, 2019, minutes (*see NAIC Proceedings – Fall 2019, Market Regulation and Consumer Affairs (D) Committee, Attachment Ten*). The motion passed unanimously.

3. Heard an Update on State and Federal Privacy Legislation

Jennifer McAdams (NAIC) said 15 states—i.e., Arizona, Florida, Hawaii, Illinois, Maryland, Massachusetts, Minnesota, Nebraska, New Hampshire, New Jersey, New York, Pennsylvania, South Carolina (applies only to biometric information), Virginia and Washington—have pending data privacy legislation.

Ms. McAdams said many of the bills are comprehensive and like the California Consumer Privacy Act (CCPA). She also said several of the bills contain exemptions for entities or information subject to the Gramm-Leach-Bliley Act (GLBA). She said the New York bill was carried over from 2019, would go further than the CCPA, and would establish a fiduciary duty for companies to act in the consumer's best interest regarding the consumer's personal information. However, she said the legislation in South Carolina applied only to biometric information.

Ms. McAdams said updated legal research charts on the Privacy Protections (D) Working Group web page will be posted soon. She said one of the charts lists general state data privacy laws—laws that are applicable to all businesses and not specific to insurers. She said the chart lists the entity responsible for enforcement, exemptions, whether it is "opt-in" or "opt-out," and consumer notice requirements.

Brooke Stringer (NAIC) said there are three major legislative proposals in the U.S. Congress (Congress) currently, all of which apply to both data security and data privacy. She said some of the key issues focus on trade-offs regarding the extent of preemption, private rights of action, and the stringency of the standard.

Ms. Stringer said the Chairman of the U.S. Senate (Senate) Committee on Commerce, Science, and Transportation, Sen. Roger Wicker (R-MS), has released draft legislation that contains data privacy standards that are very high—higher than California law in several instances according to the committee website. She said it broadly preempts all state laws on data privacy and data security. She said the bill provides standards for transparency and consumer rights to access, correct and delete their data; requires affirmative consent before collecting, processing or transferring data; calls for a Federal Trade Commission (FTC) study examining the use of algorithms that may violate anti-discrimination laws; and provides for the enforcement of the bill's provisions by the FTC and state Attorney General. She said the legislation currently has a carve out for the GLBA; however,

she said the net effect of the proposal would be to preempt all state data privacy or data security laws. She said NAIC staff is working with the Senate Committee on Commerce, Science, and Transportation to try to clarify the bill language with respect to insurance.

Ms. Stringer said Sen. Maria Cantwell (D-WA), the Ranking Democrat on the Senate Committee on Commerce, Science, and Transportation has introduced her own legislation (S. 2968). She said this legislation contains standards like those in Sen. Wicker's proposal, but Sen. Cantwell's proposal allows for a private right of action and would establish a preemptive floor.

Ms. Stringer said the U.S. House of Representatives (House) Committee on Energy and Commerce has released a bipartisan draft proposal that provides the FTC with significant rulemaking authority to implement standards. However, she said questions surrounding preemption and private right of action remain subject to negotiation at this time.

4. Discussed Next Steps

Ms. Amann said it was suggested during the 2019 Fall National Meeting that a public hearing be held to determine how insurers are using the data they collect on consumers. However, she said it was determined that a public hearing will not be necessary since the charges for the Working Group are very clear regarding this issue. She said next steps include the Working Group meeting at 11:00 am on Sunday, March 22, 2020, in Phoenix, AZ at the Spring National Meeting. She said a regulator subject matter expert (SME) group would create a draft of key issues to be exposed to the Working Group for comment prior to the Spring National Meeting. She said all comments received prior to the national meeting will be discussed by the Working Group in Phoenix, AZ.

Having no further business, the Privacy Protections (D) Working group adjourned.

G:\MKTREG\DATA\D Working Groups\D WG 2020 Privacy Protections (LEA)\Attmt A-Privacyprot_219callmin.Docx