



**MPL Association Feedback on Proposed Changes To
NAIC Insurance Information and Privacy Protection Model Act (MDL#670)
Wednesday, April 29, 2020**

In general – It is very difficult to respond Agree/Disagree/Discuss when a substantial number of the “comments” were questions for which there was no immediate answer. In addition, some comments appear to be before the section to which the comments applied, others after, further causing confusion.

Preamble – **Agree** language should be updated to reflect current usage/terminology

Sec. 1. Scope –

- **A. Agree** that language should be streamlined, and terminology revised.
- **D. Agree** that all publicly available information should be carved out.

Sec. 2. Definitions – **Agree with Comments**

- **A. Agree** with using Market Regulations Handbook definition.
- **B-Z. Flag for discussion.** All definitions for which there is not consensus between regulators, and stakeholders, should be discussed in order to ensure clarity for all parties.

Sec. 3. Pretext Interviews – **No Comments**

Sec. 4. Notice of Insurance Information Practices – **Flag for discussion**

- Based on the number and variety of comments received for this section, the entire section should be thoroughly discussed.

Sec. 5. Marketing and Research Surveys – **No Comments**

Sec. 6. Content of Disclosure Authorization Forms

- **Disagree** with requiring covered entities to seek approval of Disclosure Authorization Forms from state insurance regulators.
- **Disagree** with recommendation to adopt an “opt in” posture for marketing disclosures.
- **Agree** that drafting note should be more prominent so as to highlight supremacy of this act over all other state data privacy requirements applicable to insurers.

Sec. 7. Investigative Consumer Reports – No comments

Sec. 8. Access to Recorded Personal Information – Flag for discussion

- **A.** The term *recorded personal information* should be updated, perhaps by using more updated terminology such as *protected personal information*.
- **C-G.** The number and nature of comments suggest a thorough vetting of this section is necessary.

Sec. 9. Correction, Amendment or Deletion of Recorded Personal Information

- **(A)(2)(b). Disagree** as the notification requirements in the model are sufficient.
- **A. Disagree** that a *right to be forgotten* provision is necessary. MPL insurers need to retain personal information for legitimate business practices and legal purposes. Given the “long-tail” nature of MPL insurance, our member companies are required to store long-term underwriting, claims, and risk management information. Additionally, several states have laws on the books that require insurance companies to retain information for a certain number of years.
- **General.** Agree that this model law and its provisions should not conflict with federal and state laws related to data privacy.

Sec. 10. Reasons for Adverse Underwriting Decisions

- **B. Disagree** with suggestion that the time frames permitted for insurers to provide the reasons for an adverse underwriting decision are too lengthy. Insurers need adequate time to investigate and compose formal correspondences that detail the reasons for adverse underwriting decisions.

Sec. 11. Information Concerning Previous Adverse Underwriting Decisions – Agree with Comments

- This section seems better suited in another model act.

Sec. 12. Previous Adverse Underwriting Decisions – Agree with Comments

- This section seems better suited in another model act.

Sec. 13. Disclosure Limitations and Conditions – Flag for Discussion

- Based on the number and variety of comments received for this section, the entire section should be thoroughly discussed.

Sec. 14. Power of Commissioner

- **General. Agree** that definitions should be consistent and all language should be updated to reflect current usage/terminology
- **A-B. Disagree** that the power of the Commissioner needs to extend to 3rd party vendors.
- **A-B. Agree** that Subsections (A) and (B) can be consolidated into one subsection.

Sec. 15. Hearings, Witnesses, Appearances, Production of Books & Service of Process - Agree

Sec. 16. Service of Process – Insurance Support Organizations – Agree

Sec. 17. Cease and Desist Orders and Reports – No Comments

Sec. 18. Penalties

- **Flag for discussion.** We recommend a tiered penalty approach that discounts civil penalties based on the severity of the infraction, whether the covered entity attempts corrective action, and the covered entity's past behavior.

Sec. 19. Judicial Review of Orders and Reports – No Comments

Sec. 20. Individual Remedies

- **Flag for discussion.** We strongly object to the retention of a private rights of action in this model bill. The ability of state officials to collect penalties should sufficiently ensure compliance.

Sec. 21. Immunity

- **Disagree** that changes to the immunity provision are necessary.

Sec. 22. Obtaining Information Under False Pretenses – Agree with Comments

Sec. 23. Severability – No comments

Sec. 24. Effective Date – No comments