REQUEST FOR NAIC MODEL LAW DEVELOPMENT

This form is intended to gather information to support the development of a new model law or amendment to an existing model law. Prior to development of a new or amended model law, approval of the respective parent committee and the NAIC's Executive (EX) Committee is required. The NAIC's Executive (EX) Committee will consider whether the request fits the criteria for model law development. Please complete all questions and provide as much detail, as necessary, to help in this determination.

Please check whether this is: ☐ **New Model Law**   **or**   ☒ **Amendment to Existing Model**

1. **Name of group to be responsible for drafting the model:**

   Privacy Protections (H) Working Group

2. **NAIC staff support contact information:**

   Lois E. Alexander
   Market Regulation Manager II
   lalexander@naic.org
   816-783-8517

3. **Please provide a brief description of the proposed new model or the amendment(s) to the existing model. If you are proposing a new model, please also provide a proposed title. If an existing model law, please provide the title, attach a current version to this form, and reference the section(s) proposed to be amended.**

   The NAIC's models addressing data privacy—*NAIC Insurance Information and Privacy Protection Model Act* (#670) and *Privacy of Consumer Financial and Health Information Regulation* (#672)—were adopted several decades ago. After studying this issue over the past two years, the Privacy Protections (H) Working Group has determined that revisions are necessary to the consumer protections and the corresponding obligations of entities licensed by the insurance department to reflect the extensive innovations that have been made in communications and technology over these decades.

4. **Does the model law meet the Model Law Criteria?**   ☒ **Yes**   **or**   ☐ **No**   **(Check one)**

   (If answering no to any of these questions, please reevaluate charge and proceed accordingly to address issues).

   a. **Does the subject of the model law necessitate a national standard and require uniformity amongst all states?**   ☒ **Yes**   **or**   ☐ **No**   **(Check one)**

      If yes, please explain why:

      Access to consumer data by insurance companies, insurance producers, and their third-party vendors has multiplied exponentially via the internet, telematics, and other data tracking technology. This, in turn, has increased the use of complex algorithms, including machine learning (ML) and artificial intelligence (AI). State insurance regulators applying current model law and regulation requirements to consumer privacy notifications have encountered questions about the extent of consumer ownership and control of the use of such consumer data by the insurance industry. Consumers are faced with opt-in/opt-out decisions that leave questions as to whether they may have given away their rights to control their personal data, much of which insurers do not even need to determine insurability and risk.

b. **Does Committee believe NAIC members should devote significant regulator and Association resources to educate, communicate and support this model law?**

☒ **Yes**   **or**   ☐ **No**   **(Check one)**

5. **What is the likelihood that your Committee will be able to draft and adopt the model law within one year from the date of Executive (EX) Committee approval?**

☒ **1**   ☐ **2**   ☐ **3**   ☐ **4**   ☐ **5**   **(Check one)**

High Likelihood   **Low Likelihood**

Explanation, if necessary: The Privacy Protections (H) Working Group has a work plan in place that is posted on the Working Group's web page and drafting groups committed to drafting and adopting revisions to Models #670 and Model #672 by the 2023 Summer National Meeting.

6. **What is the likelihood that a minimum two-thirds majority of NAIC members would ultimately vote to adopt the proposed model law?**

☒ **1**   ☐ **2**   ☐ **3**   ☐ **4**   ☐ **5**   **(Check one)**

High Likelihood   **Low Likelihood**

Explanation, if necessary: NAIC members are aware of the need for revisions to consumer privacy protections via notifications and education to consumers regarding standards for insurers' responsibilities regarding collection, use, and disclosure of information gathered in connection with insurance transactions.

7. **What is the likelihood that state legislatures will adopt the model law in a uniform manner within three years of adoption by the NAIC?**

☐ **1**   ☐ **2**   ☒ **3**   ☐ **4**   ☐ **5**   **(Check one)**

High Likelihood   **Low Likelihood**

Explanation, if necessary:

8. **Is this model law referenced in the NAIC Accreditation Standards? If so, does the standard require the model law to be adopted in a substantially similar manner?**

It is not.

9. **Is this model law in response to or impacted by federal laws or regulations? If yes, please explain.**

The federal Gramm-Leach-Bliley Act (GLBA), enacted in 1999, imposed privacy and security standards on financial institutions and directed state insurance commissioners to adopt certain data privacy and data security regulations. Model #672 is the regulation adopted in response to the GLBA.