

INSURANCE INFORMATION AND PRIVACY PROTECTION MODEL ACT

Model 670 Revisions

Initial Draft of Sections 1-3

of the

NAIC INSURANCE INFORMATION AND PRIVACY PROTECTION MODEL ACT (Model 670)

- Attached is the initial draft of Sections 1-3 of Model 670.
- **Comments from Interested Parties are due by June 3, 2022. Please send them to Lois Alexander at LAlexander@naic.org.**
- Please review the draft carefully and provide your comments timely. The Privacy Protections (H) Working Group wants your feedback to make this model work for everyone.
- As the Working Group continues its work on the remaining sections, we may amend these definitions, add definitions, or delete definitions.
- If definitions are amended, added, or deleted, you will have an opportunity to comment on those changes as well as how those changes impact other definitions or sections.
- This entire model is a work in progress throughout this year. Everything will be posted so that you can see the progress made by the Working Group.
- The Working Group will hold regular open meetings after comments are due for each drafting effort to hear your comments and concerns and to discuss the work of the Working Group with you.

Thank you,
The Privacy Protections (H) Working Group

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Preamble

~~The purpose of this~~ This Act ~~is to establish~~ establishes standards for the collection, ~~use~~ processing, retention, and disclosure sharing of information gathered in connection with insurance transactions ~~by insurance institutions, agents or insurance support organizations;~~ to maintain a balance between the need for information by those conducting the business of insurance and ~~the public's~~ consumers' need for fairness in insurance information practices; ~~including~~ The standards address the need to (i) minimize intrusiveness; (ii) ~~to~~ establish a regulatory mechanism to enable ~~natural persons~~ consumers to ascertain what information ~~is being or has been~~ is collected ~~about them in connection with insurance transactions and to~~ (iii) have allow consumers access to such information ~~for the purpose of verifying to verify or disputing~~ dispute its accuracy; (iv) limit the retention of consumers' information to that which is necessary; ~~to~~ (v) limit the disclosure of information collected ~~in connection with insurance transactions;~~ and ~~to~~ (vi) enable ~~insurance applicants and policyholders~~ consumers to obtain the reasons for any adverse ~~underwriting decision~~ insurance transactions.

Section 1. Scope

- A. The obligations imposed by this Act shall apply to those ~~insurance institutions~~ insurers, agents producers, or and insurance support organizations ~~which that~~, on or after the effective date of this Act:
- (1) In the case of life, health, and disability insurance:
 - (a) Collect, receive, or maintain information in connection with insurance transactions which pertains to ~~natural persons~~ consumers who are residents of this state, or
 - (b) Engage in insurance transactions with ~~applicants, individuals or policyholders~~ consumers who are residents of this state, and
 - (2) In the case of property or casualty insurance:
 - (a) Collect, receive, or maintain information in connection with insurance transactions involving policies, contracts, or certificates of insurance delivered, issued for delivery, or renewed in this state; or

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- (b) Engage in insurance transactions involving policies, contracts or certificates of insurance delivered, issued for delivery, or renewed in this state.
- B. The rights granted by this Act shall extend to:
- (1) In the case of life, health, or disability insurance, the following ~~persons~~ consumers who are residents of this state:
- (a) ~~Natural persons~~ Consumers who are the subject of information collected, ~~received, or maintained~~ processed, retained, or shared in connection with insurance transactions, and
- (b) ~~Applicants, individuals or policyholders~~ Consumers who engage in or seek to engage in insurance transactions, and
- (2) In the case of property or casualty insurance, the following ~~persons~~:
- (a) ~~Natural persons~~ Consumers who are the subject of information collected, ~~received, or maintained~~ processed, retained, or shared in connection with insurance transactions involving policies, contracts, or certificates of insurance delivered, issued for delivery, or renewed in this state; and
- (b) ~~Natural persons~~ Consumers who engage in or seek to engage in insurance transactions involving policies, contracts, or certificates of insurance delivered, issued for delivery, or renewed in this state.
- ~~C. For purposes of this section, a person shall be considered a resident of this State if the person's last known mailing address, as shown in the records of the insurance institution, agent, or insurance support organization, is located in this State.~~
- ~~D. C.~~ Notwithstanding Subsections A and B above, this Act shall not apply to information collected from the public records of a governmental authority and maintained by an ~~insurance institution~~ insurer or its representatives for the purpose of insuring the title to real property located in this state

Section 2. Definitions

As used in this Act:

- ~~A.~~ "Adverse insurance transaction" means any of the following actions regarding insurance transactions involving a consumer:
- (1) An insurer-initiated increase in premium;
- (2) An insurer-initiated decrease in coverage; or
- (3) An adverse underwriting decision.
- ~~A. B.~~ Adverse underwriting decision means:

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- (1) Any of the following actions with respect to insurance transactions involving ~~insurance coverage which is individually underwritten~~ consumers:
 - (a) A declination of insurance coverage;
 - (b) A termination of insurance coverage;
 - (c) Failure of ~~an agent~~ a producer to apply for insurance coverage with a specific ~~insurance institution insurer which the agent represents~~ represented by the producer and ~~which that~~ is requested by ~~an applicant~~ a consumer;
 - (d) In the case of a property or casualty insurance coverage:
 - (i) Placement by an ~~insurance institution insurer~~ or agent producer of a risk with a residual market mechanism, unauthorized insurer, or an ~~insurance institution insurer which that~~ specializes in substandard risks; or
 - (ii) The charging of a higher rate ~~on the basis of~~ based on information which differs from that which the applicant or policyholder furnished;
 - (e) In the case of a life, health or disability insurance coverage, an offer to insure at higher than standard rates.
- (2) Notwithstanding Paragraph (1) ~~above~~, the following actions shall not be considered adverse underwriting decisions but the ~~insurance institution insurer~~ or agent producer responsible for their occurrence shall ~~nevertheless~~ provide the ~~applicant or policyholder~~ consumer with the specific reason or reasons for their occurrence:
 - (a) The termination of an individual policy form on a class or statewide basis;
 - (b) A declination of insurance coverage solely because such coverage is not available on a class or statewide basis; or
 - (c) The rescission of a policy.

Drafting Note: The use of the term “substandard” in Section ~~2A(d)(i)2B(d)(1)~~ is intended to apply to those insurers whose rates and market orientation are directed at risks other than preferred or standard risks. To facilitate compliance with this Act, Commissioners should consider developing a list of insurers operating in their state which specialize in substandard risks and make it known to insurers and producers.

B.C. “Affiliate” or “affiliated” means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with another person.

~~C.~~ “Agent” means ~~[make reference here to every appropriate statutory category of producer, including brokers, authorized to do business in the State. This is necessary~~

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~~because in many states different types of producers, or producers for certain types of insurance institutions are referred to by specific statutory terms in the insurance code.~~

- ~~D.~~ D. “Algorithm” means a computational process derived from machine learning, statistics, or other data processing or artificial intelligence techniques, that processes data for the purpose of making a decision or facilitating human decision-making.
- ~~D.~~ “Applicant” means a consumer who seeks to contract for insurance coverage other than a person seeking group insurance that is not individually underwritten.
- ~~E.~~ E. “Biometric information” means an individual’s physiological, biological, or behavioral characteristics, including a consumer’s deoxyribonucleic acid (DNA), that can be used, singly or in combination with each other or with other identifying data, to establish consumer’s identity. Biometric information includes, but is not limited to, imagery of the iris, retina, fingerprint, face, hand, palm, vein patterns, and voice recordings, from which an identifier template, such as a faceprint, a minutiae template, or a voiceprint, can be extracted, and keystroke patterns or rhythms, gait patterns or rhythms, and sleep, health, or exercise data that contain identifying information.
- ~~F.~~ F. “Collection” means buying, renting, gathering, obtaining, receiving, or accessing any data of a consumer by any means.
- ~~E.G.~~ E.G. “Commissioner” means [insert the appropriate title and statutory reference for the principal insurance regulatory official of the state.
- ~~H.~~ H. “Consumer” means an individual, including a current or former applicant, policyholder, insured, beneficiary, claimant, and certificate holder, who is a resident of this state and whose personal information is used, or may be used, in connection with an insurance transaction. A consumer shall be considered a resident of this state if the- consumer’s last known mailing address, as shown in the records of the insurer, producer, or insurance-support organization, is located in this state.
- ~~F.I.~~ F.I. “Consumer report” means a written, oral or other communication of information bearing on a ~~natural person’s consumer’s credit worthiness~~ creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living which is used or expected to be used in connection with an insurance transaction.
- ~~G.J.~~ G.J. “Consumer reporting agency” means a person who:
- (1) Regularly engages, in whole or in part, in the practice of assembling or preparing consumer reports for a monetary fee;
 - (2) Obtains information primarily from sources other than ~~insurance institutions~~ insurers; and
 - (3) Furnishes consumer reports to other persons.
- ~~H.K.~~ H.K. “Control,” including the terms “controlled by” or “under common control with,” means the possession, direct or indirect, of the power to direct or cause the direction of the

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management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power results from an official position with or corporate office held by the person.

- L. “Cross-context behavioral advertising” means the targeting of advertising to a consumer based on the consumer’s personal information obtained from the consumer’s activity across businesses, distinctly branded websites, applications, or services.
- M. “Delete” means to remove or destroy information such that it is not maintained in human or machine-readable form and cannot be retrieved or utilized in such form in the normal course of business;
- ~~N~~ “Declination of insurance coverage” means a denial, in whole or in part, ~~by an insurance institution or agent~~ of ~~requested~~ insurance coverage requested by a consumer.
- O. “De-identified” means information that cannot reasonably identify, relate to, describe, be capable of being associated with, or be linked, directly or indirectly, to a particular consumer, provided that an insurer, producer, or insurance support organization that uses de-identified information:
- (1) Has implemented technical safeguards that prohibit reidentification of the consumer to whom the information may pertain.
 - (2) Has implemented business processes that specifically prohibit reidentification of the information.
 - (3) Has implemented business processes to prevent inadvertent release of de-identified information.
 - (4) Makes no attempt to reidentify the information.
- P. “Health care” means:
- (1) Preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, services, procedures, tests or counseling that:
 - (a) Relates to the physical, mental or behavioral condition of an individual; or
 - (b) Affects the structure or function of the human body or any part of the human body, including the banking of blood, sperm, organs, or any other tissue; or
 - (2) Prescribing, dispensing, or furnishing to an individual drugs or biologicals, or medical devices, or health care equipment and supplies
- Q. “Health information” means any information or data except age or gender, whether oral or recorded in any form or medium, created by or derived from a health care provider or the consumer that relates to:

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- (1) The past, present, or future (i) physical, (ii) mental, or (iii) behavioral health or condition of an individual;
- (2) The provision of health care to an individual; or
- (3) Payment for the provision of health care to an individual.

R. "Health care provider" means a physician or other health care practitioner licensed, accredited or certified to perform specified health services consistent with state law, or any health care facility.

~~J. "Individual" means a natural person who:~~

- ~~(1) In the case of property or casualty insurance, is a past, present or proposed named insured or certificateholder;~~
- ~~(2) In the case of life, health or disability insurance, is a past, present or proposed principal insured or certificateholder;~~
- ~~(3) Is a past, present or proposed policyowner;~~
- ~~(4) Is a past or present applicant;~~
- ~~(5) Is a past or present claimant; or~~
- ~~(6) Derived, derives or is proposed to derive insurance coverage under an insurance policy or certificate subject to this Act~~

K.S. "Institutional source" means any person or governmental entity that provides information about an individual a consumer to an agent a producer, ~~insurance institution insurer~~, or insurance support organization, other than:

- (1) An agent A producer;
- (2) The individual A consumer who is the subject of the information; or
- (3) A natural person An individual acting in a personal capacity rather than in a business or professional capacity.

~~LT. "Insurance institution "Insurer" means: any corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyd's insurer, fraternal benefit society or other person engaged in the business of insurance, including health maintenance organizations, medical service plans and hospital service plans as defined in [insert the applicable section of the State insurance code which defines health maintenance organizations or medical or hospital service plans.] "Insurance institution" shall not include agents or insurance support organizations.~~

- (1) Any person or entity required to be licensed by the commissioner to assume risk, or otherwise authorized under the laws of the state to assume risk, including any corporation, association, partnership, nonprofit hospital, medical or health care service organization, health maintenance organization, reciprocal exchange, inter

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- insurer, Lloyd's insurer, fraternal benefit society, or multiple-employer welfare arrangement;
- (2) A self-funded plan subject to state regulation.
- (3) A preferred provider organization administrator.
- (4) "Insurer" shall not include producers, insurance support organizations, foreign-domiciled risk retention groups, or foreign-domiciled reinsurers.

Drafting Note: If the state regulates third party administrators who operate on behalf of insurers, the state may wish to add them to this list.

M.U. "Insurance support organization" means:

- (1) Any person who ~~regularly~~ engages, ~~in whole or in part,~~ in the ~~practice of assembling or collecting~~ collection, processing, or sharing of consumers' information ~~about natural persons for the primary purpose of providing the information to an insurance institution or producer for in connection with~~ insurance transactions, including:
- (a) The furnishing of consumer reports or investigative consumer reports to ~~an insurance institution insurers, or agent producers, or other insurance support organizations~~ for use in connection with ~~an insurance transaction transactions, or~~
- (b) The collection of personal information from ~~insurance institutions insurers, agents producers~~ or other insurance support organizations ~~for the purpose of detecting to detect or preventing prevent~~ fraud, material misrepresentation, or material nondisclosure in connection with insurance ~~underwriting or insurance claim activity transactions.~~
- (c) The collection of any personal information in connection with an insurance transaction that may have application in transactions in other than an insurance transaction.
- (2) Notwithstanding ~~Paragraph Paragraph~~ (1) ~~above, these persons shall not be considered "insurance support organizations" for purposes of this Act: agents producers, government institutions, insurance institutions insurers, medical care institutions, and medical professionals health care providers shall not be considered "insurance support organizations" for purposes of this Act.~~

N.V. "Insurance transaction" means any transaction by or behalf of an insurer, producer, or insurance support organization involving ~~insurance primarily for personal, family or household needs rather than business or professional needs which entails:~~

- (1) The determination of ~~an individual's a consumer's~~ eligibility for an insurance coverage, rate, benefit, ~~or~~ payment, or claim settlement; ~~or~~

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(2) The servicing of an insurance application, policy, contract, or certificate;

(3) Marketing of a product or service to a consumer; or

(4) Any algorithm-based decision that involves a consumer's personal information.

O.W. "Investigative consumer report" means a consumer report or portion thereof of a consumer report in which information about a natural person's an individual's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with the person's individual's neighbors, friends, associates, acquaintances or others who may have knowledge concerning such items of information.

~~P. "Medical care institution" means any facility or institution that is licensed to provide health care services to natural persons, including but not limited to: health-maintenance organizations, home health agencies, hospitals, medical clinics, public health agencies, rehabilitation agencies and skilled nursing facilities.~~

~~Q. "Medical professional" means any person licensed or certified to provide health care services to natural persons, including but not limited to, a chiropractor, clinical dietician, clinical psychologist, dentist, nurse, occupational therapist, optometrist, pharmacist, physical therapist, physician, podiatrist, psychiatric social worker or speech therapist.~~

~~R. "Medical record information" means personal information which:~~

~~(1) Relates to an individual's physical or mental condition, medical history or medical treatment; and~~

~~(2) Is obtained from a medical professional or medical care institution, from the individual, or from the individual's spouse, parent or legal guardian.~~

~~X. "Nonaffiliated third party" means any person except:~~

~~(1) An affiliate of an insurer, producer, or insurance support organization; or~~

~~(2) A person employed jointly by an insurer, producer, or insurance support organization and any company that is not an affiliate of the insurer, producer, or insurance support organization; however, a nonaffiliated third party includes the other company that jointly employs the person.~~

~~Y. "Nonpublic Information" means information that is not publicly available Information and is:~~

~~Any information concerning a consumer which because of name, number, personal mark, or other identifier can be used to identify such consumer, in combination with any one or more of the following data elements:~~

~~(1) Social Security number,~~

~~(2) Driver's license number or non-driver identification card number,~~

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(3) Account number, credit or debit card number,

(4) Any security code, access code or password that would permit access to a consumer's financial account, or

(5) Biometric records;

~~S.Z.~~ "Person" means any ~~natural person individual~~, corporation, association, partnership, or other legal entity.

~~T.AA.~~ "Personal information" means any individually identifiable information gathered in connection with an insurance transaction ~~from which that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked to a consumer, or which could enable~~ judgments, ~~directly or indirectly, to~~ be made about a consumer's character, habits, avocations, finances, occupation, general reputation, credit, health, or any other personal characteristics. ~~"Personal information" includes both public and nonpublic information as well as "sensitive personal information" but does not include "de-identified information."~~ "Personal information" ~~also~~ includes ~~an individual's a consumer's~~ name, address, ~~date of birth, and "medical record health~~ information. ~~but does not include "privileged information."~~

~~U.~~ "Policyholder" means any person who:

~~(1) In the case of individual property or casualty insurance, is a present named insured;~~

~~(2) In the case of individual life, health, or disability insurance, is a present policyowner; or~~

~~(3) In the case of group insurance which is individually underwritten, is a present group certificateholder.~~

~~V.BB.~~ "Pretext interview" means ~~an interview whereby a person, in~~ an attempt to obtain information about a ~~natural person consumer~~, where an interviewer ~~performs~~ does one or more of the following acts:

(1) Pretends to be someone ~~he or she~~ the interviewer is not;

(2) Pretends to represent a person ~~he or she~~ the interviewer is not in fact representing;

(3) Misrepresents the true purpose of the interview; or

(4) Refuses to provide identification upon request.

~~CC.~~ "Precise geolocation" means any data that is used or intended to be used to locate a consumer within a geographic area that is equal to or less than the area of a circle with a radius of 1,850 feet.

~~DD.~~ "Process" and "processing" mean: any operation or set of operations performed, whether by manual or automated means, on consumers' personal information or on sets of

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consumers' personal information, such as the collection, use, storage, disclosure, analysis, deletion, or modification of data or personal information.

~~WEE.~~ "Privileged information" means any ~~individually identifiable personal~~ information that:

- (1) Relates to a claim for insurance benefits or a civil or criminal proceeding involving ~~an individual a consumer~~; and
- (2) Is collected in connection with or in reasonable anticipation of a claim for insurance benefits or civil or criminal proceeding involving ~~an individual a consumer~~;

~~provided, however, information otherwise meeting the requirements of this subsection shall nevertheless be considered "personal information" under this Act if it is disclosed in violation of Section 13 of this Act.~~

Drafting Note: The phrase "in reasonable anticipation of a claim" contemplates that the insurer has knowledge of a loss but has not received formal notice of the claim.

FF. "Producer" means [refer here to every appropriate statutory category of producer, including brokers, required to be licensed to do business in the state].

Drafting Note: This is necessary because many states have various terms for producers, or for producers of certain types of insurers.]

~~XGG.~~ "Residual market mechanism" means an association, organization or other entity defined or described in Sections(s) [insert those sections of the state insurance code authorizing the establishment of a FAIR Plan, assigned risk plan, reinsurance facility, joint underwriting association, etc.]

Drafting Note: Those states having a reinsurance facility may want to exclude it from this definition if the state's policy is not to disclose to insureds the fact that they have been reinsured in the facility.

HH. "Sensitive personal information" means":

- (1) Personal information that reveals (i) a consumers' social security, driver's license, state identification card, or passport number; (ii) a consumer's account log-ins or financial account, debit card, or credit card numbers in combination with any required security or access code, password, or credentials allowing access to an account; (iii) a consumer's' precise geolocations; (iv) a consumer's racial or ethnic origin, religious, or philosophical beliefs, or union membership; (v) the contents of a consumer's mail, email, and text messages unless the person in possession is the intended recipient of the communication; (vi) a consumer's genetic data; (vii) a consumer's sex life or sexual orientation; (viii) a consumer's citizenship or immigration status; or
- (2) The processing of biometric information for the purpose of uniquely identifying a consumer;

Drafting Note: Those states that have enacted a consumer data protection act may want to amend this definition to match that of the state's law.

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- II. “Share,” “shared,” or “sharing” means (i) disclosing, (ii) disseminating, (iii) making available, (iv) releasing, (v) renting, (vi) transferring, or (vii) otherwise communicating orally, in writing or by electronic or other means, a consumer’s personal information by an insurer, producer, or insurance support organization to a third party, whether or not for monetary or other valuable consideration, including transactions between an insurer, producer, or insurance support organization and a third party for marketing or targeted marketing for the benefit of any party in which no money is exchanged.
- JJ. “Targeted marketing” includes “cross-context behavioral advertising”
- ~~YKK.~~ "Termination of insurance coverage" or "termination of an insurance policy" means either a cancellation or nonrenewal of an insurance policy, in whole or in part, for any reason other than failing to pay a premium as required by the policy.
- MM. “Third-party data” means data that has been transferred by the nonaffiliated third party to an insurer or producer.
- Z.NN. "Unauthorized insurer" means an ~~insurance institution insurer~~ that has not been granted a certificate of authority by the Commissioner to transact the business of insurance in this state.

Drafting Note: Each state must make sure this definition is consistent with its surplus lines laws.

Section 3. Pretext Interviews

No ~~insurance institution insurer, agent producer~~ or insurance support organization shall use or authorize the use of pretext interviews to obtain information in connection with an insurance transaction; provided, however, that a pretext interview may be undertaken to obtain information from ~~a person~~ an individual or ~~institution~~ legal entity that does not have a generally or statutorily recognized privileged relationship with the ~~person~~ consumer about whom the information relates ~~for the purpose of investigating to investigate~~ a claim where, based upon specific information available for review by the Commissioner, there is a reasonable basis for suspecting criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with the claim.

Drafting Note: Some states may desire to eliminate the exception in this section and thereby prohibit pretext interviews in all instances. Other states may desire to broaden the exception so that pretext interviews can be utilized in underwriting and rating situations as well as claim situations. States may either expand or limit the prohibition against pretext interviews suggested in this section to accommodate their individual needs and circumstances. Deviation from the standard developed here should not seriously undermine efforts to achieve uniform rules for insurance information practices throughout the various states.