July 27, 2023

Katie Johnson, Chair  
Privacy Protections (H) Working Group  
National Association of Insurance Commissioners  
c/o Ms. Lois Alexander  
Manager – Market Regulation  
Via email lalexander@naic.org

Re: RAA Comments Regarding Exposure Draft of New Consumer Privacy Protections Model Law #674

Dear Ms. Johnson:

The Reinsurance Association of America (RAA) appreciates the opportunity to submit comments to the Privacy Protections (H) Working Group regarding the most recent exposure draft of the Consumer Privacy Protections Model Law (#674). The Reinsurance Association of America (RAA) is a national trade association representing reinsurance companies doing business in the United States. RAA membership is diverse, including reinsurance underwriters and intermediaries licensed in the U.S. and those that conduct business on a cross-border basis. The RAA also has life reinsurance affiliates and insurance-linked securities (ILS) fund managers and market participants that are engaged in the assumption of property/casualty risks. The RAA represents its members before state, federal and international bodies.

The RAA appreciates the Working Group’s continued thoughtful engagement to update the model act. The RAA is pleased the Working Group has moved to address some of the concerns raised by the RAA with the prior exposure draft but some concerns have yet to be addressed. The RAA also continues to support the concerns raised in our letter dated April 3, 2023 and by our primary insurance colleagues and, rather than reiterating those comments, will focus our comments on reinsurance specific issues at this time. The RAA supports and appreciates the changes in the updated exposure draft to exempt reinsurers from notice requirements and remove the restriction on sharing data across international borders, although some slight clarification on the notice section may still be needed.

The RAA has one primary reinsurance-related concern remaining with the current draft: the continuing lack of clarity as to whether and the extent to which reinsurers would fall within the definitions of “insurers”, “licensees”, and/or “third-party service providers”, which creates confusion as to how the law would apply to reinsurers and what their obligations would be under it.
As drafted, the definitions treat reinsurers inconsistently, including potential different treatment of foreign-domiciled reinsurers and domestic reinsurers. For example, under the definition of “insurer”, reinsurers seem to be included under subsection (1), but subsection (4) exempts foreign-domiciled reinsurers. The definition of “licensee” seems to similarly exclude only assuming insurers domiciled in another state or jurisdiction. Lastly, even if reinsurers are not considered insurers or licensees, the broad definition of “third-party service provider” including “any person that obtains consumers’ personal information from a licensee” could be read to include any reinsurer not falling within the definitions of insurer or licensee. The definitions require revision with respect to scope and application to reinsurers. The RAA is also concerned that the current definitions would put entities like (re)insurance brokers, considered both a “licensee” and “third-party service provider”, at a double disadvantage for consent requirements, given the nature of their business and interactions with insurance companies. This is in contrast to all other key privacy laws which recognize different obligations for primary businesses than for service providers. The RAA believes that a new definition defining reinsurers and/or reinsurance may be needed to address this issue.

The RAA is still in the process of receiving feedback from its members on this issue and plans to submit additional follow-up comments and suggested redline changes prior to the Summer National Meeting in Seattle. These brief initial comments serve only to continue to highlight the remaining concerns the RAA has for the Working Group.

The RAA understands the efforts to amend this model will be ongoing for quite some time. The RAA appreciates the opportunity to work with you on this important project and specifically to address the reinsurance-specific concerns. We would be happy to meet with members of the Privacy Protections (H) Working Group and NAIC staff to discuss reinsurance operations and the regulation of reinsurance under state law. We look forward to further engagement on these issues.

Sincerely,

Karalee C. Morell
SVP and General Counsel
Reinsurance Association of America