

Draft Pending Adoption

Attachment A

Privacy Protections (D) Working Group

7/30/20

Draft: 7/29/20

Privacy Protections (D) Working Group Conference Call May 5, 2020

The Privacy Protections (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee met via conference call May 5, 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); Chris Aufenthie (ND); Brian Fordham (OR); and Don Beatty (VA). Also participating were: Jimmy Harris and Crystal Phelps (AR); Damion Hughes (CO); Evangelina Brooks (FL); Doug Ommen (IA); Kristen Finau and Michele Mackenzie (ID); Kate Kixmiller (IN); Brenda Johnson (KS); Paul Hanson (MN); Marjorie Thompson (MO); Anders Odegard (ND); Peggy Willard-Ross (NV); Don Layson (OH); Landon Hubbart (OK); Ignatius Wheeler and Carole Cearley (TX); John Haworth (WA); and Barbara Belling (WI).

1. Heard Opening Remarks

Ms. Amann said this is the Working Group's second conference call in 2020. 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). Ms. Amann said the Working Group is charged with addressing the privacy of consumer data. She said data privacy is concerned with how data is collected and used by businesses; however, she said the security of consumer data is concerned with how data is stored and protected. She said data security is not being addressed by this Working Group, but it is being addressed by other working groups. She said NAIC staff support for related working groups are coordinating efforts to ensure that there is no overlap nor duplication of effort. She said the Working Group will continue to track and work closely, as needed, with the other working groups in this arena—the Artificial Intelligence (EX) Working Group, the Accelerated Underwriting (A) Working Group, etc.—as each has its unique set of issues that nevertheless require coordination. She said a significant change going forward is that the Working Group will address health care privacy as it applies to the *NAIC Insurance Information and Privacy Protection Model Act (#670)* and the *Privacy of Consumer Financial and Health Information Regulation (#672)* after more general privacy issues have been reviewed and discussed. She also said the Working Group will have conference calls approximately every six weeks following the Workplan/Briefing document posted on the webpage.

2. Adopted its Feb. 19, 2020, Minutes

Mr. Beatty made a motion, seconded by Ms. Weyhenmeyer, to adopt the Working Group's Feb. 19 minutes (*see Attachment A*). The motion passed unanimously.

3. Heard an Update on State and Federal Privacy Legislation

Jennifer McAdam (NAIC) said there have not been very many state legislative changes since the Working Group's Feb. 19 call. She said **more than 15 states** are now considering data privacy legislation. She said regulations for the California Consumer Privacy Act (CCPA) are currently under review and posted to the California Attorney General's website. She said four research charts updated by NAIC Legal staff on April 20 were posted on the Working Group's web page prior to today's call.

Brooke Stringer (NAIC) said there has not been a lot of activity on the federal level since the last Working Group call either. She said there has been one new bill on privacy and security introduced by U.S. Sen. Jerry Moran (R-KS), the "Consumer Data Privacy and Security Act (S. 3456)." She noted that the bill would preempt state data privacy and security laws with exceptions, and it would not supersede state laws that address financial information held by financial institutions as defined in Title V of the Gramm-Leach-Bliley Act, which includes persons providing insurance.

4. Discussed Comments Received on Model #670

Ms. Amann thanked everyone who submitted comments on the exposure draft that the state insurance regulator subject matter expert (SME) group created of key issues. She said all comments received would be discussed by the Working Group on future conference calls. She said sections 14–19 and 22–24 had been referred to NAIC Legal staff for review and an update with

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similar language from other NAIC models that were adopted recently in the interest of saving time and not recreating the wheel. She said sections 20 and 21 would require a great deal of discussion, so they will be delayed until later. She said Mr. Kreiter is working on replacing outdated definitions with pertinent standard definitions that were already adopted in other models or taken from the NAIC *Market Regulation Handbook* or *IT Exam Standards Handbook*. She asked that the Working Group read the charts prepared by NAIC Legal staff closely, as they provide a very good overview of the CCPA, the European Union's (EU's) General Data Protection Regulation (GDPR), and other state legislation. She said the Working Group may decide to update Model #670, Model #672 or both.

Chris Petersen (Arbor Strategies LLC) suggested that the Working Group consider doing a gap analysis of the existing laws first to compare the consumer privacy protection requirements in the current NAIC models to the desired future privacy protection requirements. Ms. McAdam noted that Model #670 is based on the federal Fair Credit Reporting Act (FCRA), so its requirements are closer to those required by the CCPA.

Ms. Amann said the Working Group can have this discussion when this is added to the strikeout version going forward, but it will follow the agenda and walk through Model #670 comments at this time starting with the Preamble. Mr. Hanson suggested replacing the word "institutions" with the word "entities" throughout the document. Ms. Kitt objected to the phrase "natural person," and she recommended that it be changed. Mr. Diederich said this term was defined in the Fourteenth Amendment to distinguish individuals from a legal entity. Mr. Hanson said it referred to a physical person rather than a corporation, and Mr. Kreiter concurred. Ms. McAdam said she would check to see how this was handled in the recently adopted *Insurance Data Security Model Law* (#668). Bob Ridgeway (AHIP) said this is an exclusive state standard, and there is only one, not several, set by the Attorney General in each state.

Kate Kiernan (American Council of Life Insurers—ACLI) said the ACLI distinguishes the lines of business separately, and she suggested that the modernized wording from Model #672 be inserted into Model #670. She said this would help all lines of business by having clear instruction about what consumers need to know by the line of business they are considering. She said legal transparency is very important in situations dealing with the privacy protection of insurance consumers.

Ms. Amann said the data that is currently being collected on consumers is very broad and from a multitude of sources, so it is important to use the same consumer privacy protection requirements for all lines of business. Mr. Petersen said it is not separated in Model #668. Mr. Hanson said "institutions" should be changed to "licensee" throughout the document to agree with Model #672 in order to clarify it as not meaning an agent (producer). He said Section D under Scope may not be needed, as it relates to title insurance, or it may need to be cleaned up, as it is unique to title coverage. Elizabeth Blosser (American Land Title Association—ALTA) said language specific to insurance needs to use publicly recognizable terms. Ms. Kiernan said industry finds the Definitions section the most troubling obstacle about areas needing updating. Ms. Amann said the state insurance regulators who are SMEs would refer the Working Group to other models or federal legislation.

Ron Troy (Blue Cross Blue Shield Association—BCBSA) asked what gap the Working Group is trying to fill, and he suggested that the Market Regulation and Consumer Affairs (D) Committee be contacted for clarification of the Working Group's charges.

Karrol Kitt (The University of Texas at Austin) and Brenda J. Cude (The University of Georgia) said they will submit comments related to the protection of consumer data privacy for the next Working Group call.

Ms. Kiernan said she would send the technical terms she mentioned to the Working Group.

Mr. Petersen said he would send the Model #672 terms to be used in Model #670 to the Working Group.

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

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