

Draft Pending Adoption

Attachment A
Privacy Protections (H) Working Group
12/12/22

Draft: 8/16/22

Privacy Protections (H) Working Group
Portland, Oregon
August 9, 2022

The Privacy Protections (H) Working Group of the Innovations, Cybersecurity, and Technology (H) Committee met in Portland, OR, Aug. 9, 2022. The following Working Group members participated: Katie Johnson, Chair (VA); Cindy Amann, Co-Vice Chair (MO); Chris Aufenthie, Co-Vice Chair (ND); Damon Diederich (CA); George Bradner (CT); LeAnn Crow (KS); Ron Kreiter (KY); Kathleen A. Birrane and Van Dorsey (MD); Robert Wake (ME); T.J. Patton (MN); Troy Downing and Molly Plummer (MT); Martin Swanson (NE); Antwonya Debose and Teresa Green (OK); Raven Collins, Brian Fordham, and Cassie Soucy (OR); Gary Jones (PA); Frank Marnell (SD); Mark Worman (TX); Scott A. White (VA); Todd Dixon (WA); Rachel Cissne Carabell and Richard Wicka (WI).

1. Adopted its August 2 Minutes

Ms. Johnson said the Working Group met August 2. During this meeting, the Working Group took the following action: 1) adopted its June 15 minutes, which included updates on state and federal privacy legislation and a discussion of the Working Group's initial workplan for 2022; 2) adopted the Request for NAIC Model Law Development replacing Model #670 and Model #672 with one new model; and 3) discussed the Working Group's revised workplan.

The Working Group also met three times in regulator-to-regulator session, pursuant to paragraph 8 (consideration of strategic planning issues) of the NAIC Policy Statement on Open Meetings, to review draft revisions of sections 1-12 of NAIC Model Acts #670. The drafting group of subject matter experts met several times to conduct the initial drafting of the *Consumer Data Ownership and Use* white paper and once on the consumer data privacy ownership and use survey.

Ms. Amann made a motion, seconded by Ron Kreiter, to adopt the Working Group's August 2 (Attachment A) minutes. The motion passed unanimously.

2. Heard Updates on State and Federal Privacy Legislation

Jennifer McAdam said she reported at the June 15 Working Group meeting that Connecticut had recently adopted, "An Act Concerning Personal Data Privacy and Online Monitoring." She said there are now five generally applicable state data privacy laws in California, Colorado, Connecticut, Utah, and Virginia. Ms. McAdam said there has not been much activity since June; however, she said some state legislatures are still in session and there are privacy bills currently pending in six jurisdictions: the District of Columbia, Massachusetts, Michigan, New Jersey, Ohio, and Pennsylvania. Ms. McAdam said these bills are all still in their committees of origin so there hasn't been much movement with them. She said the DC bill is based on the Uniform Law Commission's model privacy bill, the Uniform Personal Data Protection Act (UPDPA). Ms. McAdam said that Nebraska and Oklahoma had also introduced legislation based on the UPDPA earlier this year but that those bills died when their sessions ended. She said charts tracking state legislation are posted on the Privacy Protections (H) Working Group's webpage for those wanting to read more about these bills. Ms. McAdam said the charts list the business obligations imposed, the consumer rights provided, the manner of enforcement (whether by the Attorney General or a private right of action), and any Gramm-Leach-Bliley (GLBA) or Health Insurance Portability and Accountability Act (HIPAA)

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exemptions. She said her office would continue to follow state data privacy legislation and update the Working Group at the next meeting.

Brooke Stringer reminded the Working Group that the U.S. House Energy and Commerce Committee approved H.R. 8152, the American Data Privacy and Protection Act (ADPPA) on July 20 by a vote of 53-2. She said House Energy and Commerce Committee Chairman Pallone (D-NJ), and Ranking Member McMorris Rodgers (R-WA) and Senate Commerce Committee Ranking Member Wicker (R-MS) authored the bill, which is being viewed as a breakthrough compromise on two major sticking points for Congress - preemption and private right of action. Ms. Stringer said that the ADPPA would preempt most state privacy laws with some nuanced exceptions and that GLBA and HIPAA covered entities are not carved out specifically but are deemed to be in compliance if the entities comply with those laws. She said that, even though the ADPPA includes a GLBA provision, the insurance trades are advocating for language that would clearly exempt insurers, agents, and brokers from the scope of the ADPPA. Ms. Stringer said that during the markup of the bill, Rep. Eshoo (D-CA) offered an amendment that would have modified the bill's preemption provision to allow states to create stricter laws, but it did not pass. She said the bill provides consumers who believe their rights under the law were violated with the option of suing companies in federal court; however, the private right of action would not take effect until 2 years after the law is enacted. The bill also provides a small business exemption to the private right of action. Ms. Stringer said this is the first time a comprehensive federal privacy bill has advanced out of committee and that could be made available for a full chamber vote; however, she said time is short with the August recess and an upcoming focus shift to midterm elections. Ms. Stringer said the bill faces some headwinds in that Senate Committee Chairwoman Maria Cantwell (D-WA) has not signed on to the bill. She said the House Energy and Commerce Committee has made some changes to the bill in areas where she had some concerns, so it remains to be seen how the bill may fare in the Senate as no Senate Democrat has yet signed on to the bill. Ms. Stringer said she would keep the Working Group posted and she encouraged the Working Group to keep up its important work.

3. Discussed the Next Steps on Consumer Data Ownership and Use White Paper

Ms. Johnson said the Working Group is still getting responses to the survey and that, even though the deadline was July 28, the Working Group will keep the survey tool open to encourage as many responses as possible from anyone who is interested. She said the Working Group is in the process of reviewing and compiling the responses already received. Ms. Johnson said the results will be summarized for use by the Working Group in helping to guide the discussion and drafting of the white paper on consumer data ownership and use assigned to the Working Group in its 2022 charges from its parent committee. She said the white paper will be exposed for public comment in September and discussed under normal NAIC transparency guidelines.

Mr. Aufenthie said the main points of the white paper will consist of a brief history; current personal data collected; use of consumer data for legal and economic purposes; recommendations regarding who owns the data; and what changes should be implemented. He thanked responders for their input through the survey and said the purpose of the survey was to start the conversation only. Mr. Aufenthie said there would be a two-month response period for submitting comments that would be the basis for discussion regarding the initial draft.

4. Discussed Next Steps for the Drafting of the Model and the Working Group's Final Workplan

Ms. Johnson said that the Model Law Request that was adopted on the Aug. 2 call was for the Working Group to formally request approval to move forward with the creation of one new model to replace existing privacy models 670 and 672 rather than to update them. She said this change was made in response to comments from Working

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Group members, interested regulators, interested parties from the insurance industry, and consumer representatives asking for one new model as well as due to the extensive nature of revising models that were written several decades ago.

Ms. Johnson said adoption of the MLR by the Working Group was a part of the standard review process necessary to move forward with the Working Group's charges to review and change NAIC privacy models, such as the *NAIC Insurance Information and Privacy Protections Model Act (#670)* and the *NAIC Privacy of Consumer Financial and Health Information Regulation (#672)* as needed. *As noted during prior working group calls, she said the workplan and its schedule have been revised to address the needs of the Working Group to meet its charges and timeline. The new workplan is in the meeting materials posted on the NAIC Website.*

Ms. Johnson said the drafting group for the model language has been working all summer and is on track to post the draft model for comment in early December. She said a two-month comment period will be given for review of the initial exposure draft of the model. She said given the comments received from interested parties who are concerned about provisions that they believe could possibly be included in the draft, the drafting group wanted to provide the following information: 1) that the drafting group is not recommending a private right of action in the draft model; and 2) that the drafting group is considering language to provide a safe-harbor for HIPAA entities/data in the model.

Ms. Johnson said that the Working Group is continuing to work very closely with its parent Committee and its other Working Groups in this arena by meeting on a monthly basis – the Big Data and Artificial Intelligence Working Group, the Cybersecurity Working Group, and the E-Commerce Working Group as well as those not under the H Committee, such as the Accelerated Underwriting Working Group, as each Working Group has its unique set of issues that nevertheless require coordination, especially with regard to definitions.

5. Discussed Other Matters

Ms. Johnson reminded attendees about the upcoming Insurance Summit, which will be held in Kansas City, MO, Sept. 19–23.

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

[Minutes National Meeting PPWG.docx](#)