

## Draft Pending Adoption

Draft: 8/28/22

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

The Privacy Protections (H) Working Group of the Innovation, Cybersecurity, and Technology (H) Committee met in Portland, OR, Aug. 9, 2022. The following Working Group members participated: Katie Johnson, Chair, and Scott A. White (VA); Cynthia 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); Antonya Debose and Teresa Green (OK); Raven Collins, Brian Fordham, and Cassie Soucy (OR); Gary Jones (PA); Frank Marnell (SD); Mark Worman (TX); Todd Dixon (WA); and Rachel Cissne Carabell and Richard Wicka (WI).

### 1. Adopted its Aug. 2 Minutes

Ms. Johnson said the Working Group met Aug. 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 work plan for 2022; 2) adopted the Request for NAIC Model Law Development replacing the NAIC Insurance Information and Privacy Protection Model Act (#670) and the Privacy of Consumer Financial and Health Information Regulation (#672) with one new model; and 3) discussed the Working Group's revised work plan.

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 Model #670. The drafting group of subject matter experts (SMEs) 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 Mr. Kreiter, to adopt the Working Group's Aug. 2 (Attachment Four-A) minutes. The motion passed unanimously.

### 2. Heard Updates on State and Federal Privacy Legislation

Jennifer McAdam (NAIC) said she reported during the Working Group's June 15 meeting that Connecticut had recently adopted An Act Concerning Personal Data Privacy and Online Monitoring (CTDPA). She said there are now five generally applicable state data privacy laws in: 1) California; 2) Colorado; 3) Connecticut; 4) Utah; and 5) 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: 1) the District of Columbia; 2) Massachusetts; 3) Michigan; 4) New Jersey; 5) Ohio; and 6) Pennsylvania. Ms. McAdam said these bills are all still in their committees of origin, so there has not been much movement with them. She said the District of Columbia bill is based on the Uniform Law Commission's (ULC'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 web page 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

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of enforcement (whether by the attorney general or a private right of action), and any federal Gramm-Leach-Bliley Act (GLBA) or federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) exemptions. She said her office would continue to follow state data privacy legislation and update the Working Group during its next meeting.

Brooke Stringer (NAIC) reminded the Working Group that the U.S. House Committee on Energy and Commerce approved the American Data Privacy and Protection Act (ADPPA) (H.R. 8152) on July 20 by a vote of 53-2. She said the bill was authored by: Frank Pallone Jr. (D-NJ), chair of the House Committee on Energy and Commerce; Cathy McMorris Rodgers (R-WA), ranking member of the House Committee on Energy and Commerce; and Roger Wicker (R-MS), ranking member of the U.S. Senate Committee on Commerce, Science, and Transportation. She said the bill 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. Anna G. 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 two 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 Maria Cantwell (D-WA), chair of the Senate Committee on Commerce, Science, and Transportation, has not signed on to the bill. She said the House Committee on Energy and Commerce 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 its Next Steps on the *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. She said the white paper will be exposed for public comment in December 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.

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### **4. Discussed its Next Steps for the Drafting of the Model and the Working Group's Final Work Plan**

Ms. Johnson said that the Request for NAIC Model Law Development that was adopted during the Working Group's Aug. 2 meeting was for the Working Group to formally request approval to move forward with the creation of one new model to replace the existing privacy Model #670 and Model #672 rather than update them. She said this change was made in response to comments from Working Group members, interested state insurance 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 Request for NAIC Model Law Development 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 Model #670 and Model #672 as needed. As noted during prior Working Group meetings, she said the work plan and its schedule have been revised to address the needs of the Working Group to meet its charges and timeline. The new work plan 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 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 closely with the Innovation, Cybersecurity, and Technology (H) Committee and its other working groups in this arena by meeting on a monthly basis—the Big Data and Artificial Intelligence (H) Working Group, the Cybersecurity (H) Working Group, and the E-Commerce (H) Working Group, as well as those not under the Committee, such as the Accelerated Underwriting (A) 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.

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