On behalf of National Association of Mutual Insurance Companies (NAMIC)\(^1\) members, thank you for the opportunity to review the materials under consideration by the NAIC’s Privacy Protection Working Group. These comments respond to the items circulated on November 22, in advance of the “Kick-Off” meeting to be held in Austin on December 8.

One of the circulated items was a poll asking about a preferred drafting legislation/regulation approach. Respectfully, as a starting point, before deciding on a specified approach (for this project, whether to amend or to draft particular models), NAMIC urges regulators to consider taking a contemplative pause to first gauge the impact of California’s not yet implemented law, and the likely passage of other state laws in 2020 – some of which may differ dramatically from California’s. Notwithstanding that recommendation, NAMIC asks that regulators take a preliminary step - analyzing and deciding what specific gaps, if any, might exist which insurance-specific language is befitting to address. Then from there, regulators could connect the need identified to the vehicle most appropriate to deliver that solution. By pressing for a decision about which privacy model should serve as the platform for the group’s work in advance of establishing what additional/revised concepts might be essential for a privacy-related insurance legal/regulatory framework, the group may not link the yet to be determined need to the document best designed to respond to that need.

Turning to some foundational ideas for a legal/regulatory privacy framework for insurance, NAMIC urges policymakers to value several important concepts:

**Workability** – Historically, insurance regulators have recognized some of the important role information plays and have allowed for various *exemptions* for operational and other reasons.

- There are vital business purposes for insurers to collect, use, and disclose information. For example, see Article IV of the NAIC’s Model “Privacy of Consumer Financial and Health Information Regulation” (#672) developed to implement the Gramm-Leach Bliley Act. This Model Regulation appears instructive on types of operational functions to preserve and facilitate. It may also be useful to review the exceptions imbedded into Section 13 of the NAIC’s 1982 “Insurance Information and Protection Model Act” (#672).
- Clear and well-crafted provisions accounting for GLBA and FCRA are important in any broader business legislation regulators may see.

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\(^1\) NAMIC is the largest property/casualty trade association in the US, serving regional and local mutual insurance companies on main streets across America as well as many large national insurers. NAMIC membership includes more than 1,400 insurance companies. NAMIC member companies write $268 billion in annual premiums. Our members account for 59% of homeowners, 46% of automobile, and 29% of business insurance markets.
Exclusivity – NAMIC strongly urges drafters to avoid dual regulation.

- NAMIC believes it is essential that any model make it clear that insurers subject to its provisions are not simultaneously subject to potentially inconsistent or even potentially conflicting other provisions of law or to potentially inconsistent or conflicting interpretations of more than one regulator.

Clarity – Obviously, whatever new provisions are enacted would not be in a vacuum.

- Each state and the federal government already have laws/regulations to address data privacy, security, and other requirements. Given that this is not a blank slate, to help avoid confusion and conflicts, new models should not be simply a disconnected additional layer of requirements. Rather, NAMIC asks that, if the NAIC moves forward with drafting, care be taken to consider how best to dovetail with existing models/laws/regulations.

- Consulting other resources may be instructive as well. Laws may require insurers to use data in a number of ways, including reporting and/or checking against databases (considering things like fraud, child support liens, OFAC watch list, Medicare/Medicaid reporting, fire loss reporting to State Fire marshals, theft/salvage claims reporting, etc.).

- Insurance regulators and the NAIC may be in a position to help educate legislators on how privacy bill language impacts the insurance industry, including the legal requirements to retain and use certain data (including the kinds of information mentioned above in the workability (and operational exemptions) discussion as well as immediately above in the bullet regarding data mandates).

Without cautious drafting in a way that considers existing laws (even those that may not be privacy-specific), unanticipated compliance conflicts and challenges may be introduced. Developing wording with clarity or implementation in mind is essential.

Effective Date – Time is need not only to analyze the issues and to draft provisions carefully, but also to allow for any changes to be made. While there’s much discussion of the California law (CCPA), even if the Working Group decides that some of the content from that law merits inclusion in an NAIC model, NAMIC asks that regulators not assume that insurers may be ready to implement that approach in the near term.

- Some regional or single-state insurers may not do business in California; their practices today may not be built around that state’s law.

- When the CCPA was passed in 2018, it moved very swiftly. Since that time, there has been confusion and a lot of activity. A multitude of bills were introduced since to revise the law as originally passed. Indeed, several bills amending the CCPA were enacted just recently. These amendments span a wide range of changes, from definitions to authentication and from biometric data to record retention (and more). In addition to this legislative activity, the original law’s implementing regulations still have not been finalized. The California Attorney General recently disseminated proposed regulations, to govern compliance with the CCPA, dealing with some practical items that have yet to be finalized (including things like notifying consumers, handling opt-out requests, and verifying identities). In early December 2019 (with the CCPA effective date looming),

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2 See Assembly Bills 25, 874, 1130, 1146, 1355, and 1564.
public hearings are being held and comments are due to the AG. Even after final promulgation, these regulations may not be the end of the changes to the California privacy landscape. With what some seem to be calling “CCPA 2.0,” efforts are underway with a ballot initiative. The initiative itself has also been unstable – with text changing. From all this activity, it appears that the California privacy requirements may be unclear today and into the future.

- According to the materials, this Working Group is learning about the foreign General Data Protection Regulation (GDPR). That regulation was in development over a long period of time, it appears the draft proposal was released in 2012. It appears that some general agreement may have been reached in December 2015 and that it was adopted in April 2016, with enforcement beginning in May 2018. News reports appear to indicate that compliance challenges continue in 2019.

For any models or states that change their privacy laws, NAMIC would like to emphasize the importance of allowing for adequate advance time before the effective date. Changes may be extremely complex. This necessitates delayed implementation and possibly guidance (consistent with the law) throughout the implementation process to facilitate compliance. Specifically, NAMIC believes that timeline should be similar to the 2-5 years that was afforded under GDPR. Even within that timeframe, a roll-out period setting forth different dates for different provisions sets-up a more measured approach to undertaking such a significant endeavor.

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Regardless of the vehicle that the Working Group may chose, if developing model wording, NAMIC asks regulators to draft carefully in a way that respects and does not cause conflict with or possible interpretation inconsistencies with the existing privacy-related insurance laws with which insurers are required to comply.

On behalf of its members, NAMIC is prepared and willing to engage on the important subject of privacy laws and regulating our industry. We look forward to working with the NAIC as the efforts of the Privacy Protection Working Group continue in 2020.