

August 1, 2023

VIA ELECTRONIC MAIL – lalexander@naic.org

NAIC Privacy Protections Working Group
Chair, Katie Johnson
National Association of Insurance Commissioners
c/o Ms. Lois Alexander
1100 Walnut Street
Suite 1500
Kansas City, MO 64106-2197

RE: Comments on June 28, 2023 Revised Exposure Draft of the Consumer Privacy Protections Model Law (#674 v1.2)

Dear Ms. Johnson and members of the Privacy and Protections Working Group:

The Council of Insurance Agents and Brokers (The Council), the Wholesale Specialty Insurance Association (WSIA), and the National Association of Insurance and Financial Advisors (NAIFA) appreciate this opportunity to provide additional comments on the working group's revised draft of the Consumer Privacy Protection Model Law.¹ We appreciate the working group's time and effort in re-drafting version 1.2; however, we believe the current draft remains unworkable. We were very encouraged to learn that another draft will be released in the near future and possibly before the August NAIC meeting in Seattle.

In preparation for the next draft, we strongly encourage the working group and Commissioners to consider the implications of adopting a model on consumer data privacy that is highly unlikely to gain support in the states. Such a scenario, where only a few states adopt the model, could dramatically diminish the value of state-based regulation and the effectiveness of the NAIC. It is a scenario that simply cannot and should not happen. Robust Congressional efforts to regulate consumer data privacy are underway and we believe an unworkable NAIC model provides additional support for state preemption.

That said, we remain committed to assisting the working group with creating a widely adoptable model that can create necessary and desired uniformity on consumer data privacy. Below we provide some additional overarching comments on the revised draft, including:

- The law's framework does not reflect the operational realities of insurance transactions as it fails to account for the absence of direct consumer interface in many commercial transactions and imposes requirements on licensees regardless of their role in the cycle of collecting, using, and sharing a consumer's personal information.

¹ See NAIC Privacy Protections Working Group Draft #674 v1.2

- The model law’s approach to consumer notice and consent remains impractical and includes vague and undefined terms throughout, such as “additional activities” that add unnecessary confusion for licensees.
- These obligations would add unnecessary complexity to the existing web of complex state, cyber, HIPAA, GBLA, global, and potentially, federal privacy requirements.
- The law includes requirements that have no bearing on consumer privacy and are inappropriate to include in this model law.

In addition to these comments, we have also enclosed a redline with more specific suggestions.

1. Practical Concerns with Law’s Framework

We are concerned that the model law still appears to be intended for the data processing ecosystem of personal coverages, where interaction with the end consumer is much more common, but still includes commercial transactions within it’s regulatory scope. This approach is not suitable for the claims data collection processes in commercial transactions. In the commercial context, personal information is provided to insurance brokers by their corporate clients, including employers (e.g., for workers’ comp coverage) or business owners and their service providers (e.g., TPAs for CGL claims). In these instances, insurance brokers do not interact with the individual consumers directly. Indeed, entities like brokers, that are both licensees and service providers, and who do not necessarily collect PI directly from individuals (but instead, for example, from employers), face a great disadvantage under this model law. Brokers would have to rely on other entities, such as their clients, to actually obtain the consent from the individual whose information will be collected. The law does not take this into consideration when imposing requirements on insurance brokers that do not have a direct business relationship with the consumer.

The model law’s revised definition of “third party service provider” excludes licensees but fails to take into account that brokers are not the primary business in every arrangement (e.g., MGA or insurer consulting) and may process the consumer’s personal information in their role as a service provider to the insurers. The model law should account for the role of the licensee in the PI lifecycle rather than imposing the same direct compliance duties on all licensees.

Similarly, the current definition for licensee would include “unauthorized insurers,” however, unauthorized insurers are not licensed by definition. Instead, they are permitted to write business when a licensed surplus lines broker “exports” that business to the unauthorized insurer who is eligible but nonadmitted to write business in the particular jurisdiction. We are not necessarily opposed to privacy regulations for the nonadmitted market, but we would ask that any regulations be imposed by way of the existing regulatory structure and limited to entities who interact directly with the personal insured.

2. Consumer Notice and Consent Requirements

a. Notice

The model law continues to impose an unworkable consumer notification framework, particularly for commercial transactions where licensees do not have direct contact with the consumers and therefore cannot practically provide the privacy protection notice prior to processing the personal information. Additionally, the obligation to provide consumers with an additional notice of consumer privacy rights creates confusion, as all other privacy laws require that the rights be outlined together with the notice of privacy practices in a single place. We also advise the working group to revise the requirement that licensees disclosing *individual* sources of personal information, as this is not achievable for company-wide notices, particularly where this varies by client and coverage. Instead, the reporting should be disclosed by *category* of sources.

Further, a few of the consumer disclosures that remain in the law would impose an undue burden on licensees. Specifically, the obligation to provide to a consumer a list of all persons to whom personal information has been disclosed over a minimum of 4 years would create an administrative burden for brokers, as the data is shared with multiple carriers for the purpose of obtaining the best coverage for our clients and varies by client, offering, and nuances of support services required. Article III., Section 11.D.(1) creates an undue burden on licensees to ensure that consumers who have agreed to conduct a transaction electronically also (a) use the licensee's website, and (b) agree to receive notices at the website. With respect to the use of a licensee's website, tracking each consumer's use of the site would result in additional processing of personal information and tracking of consumers' use of websites.

With respect to the obligation to obtain the consumers' agreement to receive notices at the website, the Uniform Electronic Transaction Act (UETA) establishes a legal equivalence of electronic and written records wherein any information required by law to be provided in writing is satisfied if the information is provided in an electronic record capable of retention by the recipient. The model law, therefore, should permit the notice to be satisfied electronically if it is provided pursuant to the electronic transaction.

Lastly, we appreciate the exception to the notice obligation for employees, agents and representatives of licensees, however, we believe this exception must be carried through to all obligations to avoid confusion and permit licensees with employees to maintain and control all procedures necessary to ensure compliance.

b. Consent

We are concerned that the new draft's reliance on the broad term "additional activities" throughout the model, including with respect to consent requirements in Article I, Section 1.A.(5) and Article II, Section 6, creates more uncertainty for licensees. Without a clear definition of this concept, the model law fails to provide much needed certainty on licensees' consent requirements. Further, Article II, Section 6.B.(2) requires that the consent language include an expiration date, however, the model law does not provide clarity on how long a licensee may rely on the consent. Lastly, as noted above in regard to the notification

requirements, the consent obligations on licensees is entirely impractical for commercial transactions given that they not have direct contact with the consumers.

3. Consumer Rights and Deletion Obligations

Like the notice and consent obligations, the consumer rights outlined in Article IV again fails to consider the collection of personal information in the context of consumer transactions and we believe the framework must be revisited to account for instances where the data is collected from a source other than the consumer. The model law’s data retention limitations and data deletion requirements fail to consider licensees’ record retention and backup/disaster recovery practices and are more onerous than the data deletion requirements under other privacy regimes, including HIPAA. Additionally, the requirement to annually report such practices to regulators is unnecessary and burdensome. Unless the regulators intend to review the record retention and backup/disaster recovery procedures of all large licensees, we do not believe such a requirement would produce a tangible benefit to consumers when balanced when considering the administrative burden.

4. Relation to Existing State and Federal Requirements

As discussed at length in our previous comments, our members are currently subject to a variety of state, federal and global requirements on how consumer information must be handled and their rights with regard to their personal data. Our members must satisfy their obligations under the federal Health Insurance Portability and Accountability Act (HIPAA), Gramm-Leach Bliley Act (GLBA), the multitude of state privacy laws, a variety of state data breach notification requirements, and potentially, new federal privacy legislation under consideration. The model law, however, does not align with any existing privacy law and instead adds another layer to this complex web of privacy requirements that are almost impossible for any one entity to comply with simultaneously. This will unnecessarily result in an unbalanced impact on the industry with no discernable benefit to consumers. This issue becomes particularly acute for companies that are engaged in covered insurance brokering activities (for which they will have direct “controller”-like responsibility under this law), in addition to also providing various other consulting, risk management, and benefits services on behalf of clients (for which they are considered “service providers”, “processors”, and “business associates” under state privacy laws and HIPAA and must take instruction).

Lastly, the model law’s inclusion of requirements that have no relation to consumer privacy protection—such the adverse underwriting decision notice and consumer report provisions—are not appropriate to include in this law and should be removed.

* * *

Again, we appreciate the working group's continued efforts to update the consumer privacy protections models and your consideration of our comments. Please do not hesitate to contact us if we can provide additional information or answer any questions.

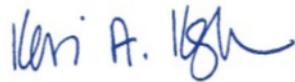
Respectfully submitted,



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New Model – Privacy Protections Working Group
Draft: 7/1/2023

INSURANCE CONSUMER PRIVACY PROTECTION MODEL LAW

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ARTICLE 1. GENERAL PROVISIONS

Section 1. Purpose and Scope

- A. The purpose of this Act is to establish (i) standards for the collection, processing, retaining, or sharing of consumers' personal information by licensees and their third-party service providers to maintain a balance between the need for information by those in the business of insurance and consumers' need for fairness and protection in the use collection, processing, retaining, or sharing of consumers' personal information; (ii) standards for licensees engaged in additional activities involving the collection, processing, retaining, or sharing consumers' personal information; and (iii) standards applicable to licensees for providing notice to consumers of the collection, processing, retention, or sharing of consumers' personal and publicly information. These standards address the need to:
- (1) Limit the collection, processing, retention, or sharing of consumers' personal information to purposes and activities required in connection with insurance transactions and additional activities;
 - (2) Enable consumers to know what personal information is collected, processed, retained, or shared;
 - (3) Enable consumers to know the sources from whom consumers' personal information is collected and with whom such information is shared;
 - (4) Enable consumers to understand why and for generally how long personal information is retained;
 - (5) Enable consumers to choose whether to consent to the collection, processing, retaining, or sharing of consumers' personal information by licensees and their third-party service providers for additional activities;
 - (6) Permit individual consumers to access personal information relating to the consumer requesting access, to verify or dispute the accuracy of the information;
 - (7) Permit consumers to obtain the reasons for adverse underwriting transactions.;
 - (8) Encourage all licensees and third-party service providers used by licensees to implement data minimization practices in the collection, processing, retaining, or sharing of consumers' personal information; and
 - (9) Provide accountability for the improper collection, processing, retaining, or sharing of consumers' personal information by licensees and any third-party service providers used by licensees in violation of this Act.
- B. The obligations imposed by this Act shall apply to licensees and third-party service providers that on or after the effective date of this Act:
- (1) Collect, process, retain, or share consumers' personal information in connection with insurance transactions;
 - (2) Engage in insurance transactions with consumers; or
 - (3) Engage in additional activities involving consumers' personal information.
- C. The protections granted by this Act shall extend to consumers:

Commented [NJ1]: Based on 670

Commented [A1]: The term "additional activities" is vague and will cause confusion. We recommend that instead of using this vague term, the model law concentrate on the prohibition of selling or sharing personal information to third parties for purposes of third party marketing, which is the focus of many state privacy laws

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- (1) Whose information is collected, processed, retained, or shared in connection with insurance transactions;
- (2) Who have engaged in the past in insurance transactions with any licensee or third-party service provider; or
- (3) Whose personal information is used in additional activities by licensees and third-party service providers.

Drafting Note: This model is intended to replace NAIC Insurance Information and Privacy Protection Model Act (#670) and Privacy of Consumer Financial and Health Information Regulation (#672). For that reason, it includes the protections for consumers that are currently provided by Models #670 and #672 and adds additional protections that reflect the business practices in the insurance industry today. The business of insurance is more global than it was 30 to 40 years ago. This model law reflects those realities and addresses the need for additional protections for consumers. This model requires notices to consumers for various privacy concerns and will supplant any notices required under Model #670, Model #672 and Gramm-Leach Bliley.

Section 2. Definitions.

As used in this Act:

A. "Address of record" means:

- (1) A consumer's last known USPS mailing address shown in the licensee's records; or
- (2) A consumer's last known email address as shown in the licensee's records, if the consumer has consented under [refer to the state's UETA statute] to conduct business electronically.
- (3) An address of record is deemed invalid if
 - (a) USPS mail sent to that address by the licensee has been returned as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the consumer have been unsuccessful; or
 - (b) The consumer's email address in the licensee's records is returned as "not-deliverable" and subsequent attempts by the licensee to obtain a current valid email address for the consumer have been unsuccessful.

B. "Adverse underwriting decision" means:

- (1) Any of the following actions by an insurer, either by itself or through its representative, with respect to insurance transactions involving primarily personal, family, or household
 - (a) A denial, in whole or in part, of insurance coverage requested by a consumer;
 - (b) A termination of insurance coverage for reasons other than nonpayment of premium;
 - (c) A rescission of the insurance policy;

Commented [KJ2]: Language taken from Model 668 (IDSA)

Commented [KJ3]: The language in this subdivision was taken from Model 672.

Commented [KJ4]: By limiting AUDs in this manner, we provide consistency with current state law (for those states that adopted Model 670 and consistency with FCRA.

Commented [A2]: An insurer, by itself or through its representatives, is the only entity that can make these types of decisions, and the insurer is the responsible entity. Where a producer makes decisions of this nature, it is only acting upon the delegated authority granted by the insurer. Seeking to figure out which "licensee" made the decision does not make sense, since licensees have no authority of their own other than that which is granted by the underwriting entity.

Paragraph (d) should be deleted, given that there are already specific laws applying to surplus lines wherein an insured already gets a specific set of warnings and notices, this is inappropriate and overlaps with existing requirements as for example the requirement for the diligent search of the admitted market.

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- (2) Notwithstanding Section 2C(1), the following insurance transactions shall not be considered adverse underwriting decisions but the insurer responsible for the occurrence shall provide the consumer with the specific reason or reasons for the occurrence in writing:
- (a) The termination of an individual policy form on a class or state-wide basis;
 - (b) A denial of insurance coverage solely because such coverage is not available on a class- or state-wide basis; or
 - (c) If requested by a consumer, any other insurer-initiated increase in premium on an insurance product purchased by a consumer.

Drafting Note: The use of the term "substandard" in Section 2 C (1) (d)(i) is intended to apply to those insurers whose rates and market orientation are directed at risks other than preferred or standard risks. To facilitate compliance with this Act, *states* should consider developing a list of insurers operating in their state which specialize in substandard risks and make it known to insurers and producers.

- C. "Affiliate" or "affiliated" means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with another person. For purposes of this definition "control" means:
- (1) Ownership, control, or power to vote twenty-five percent (25%) or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;
 - (2) Control in any manner over the election of a majority of the directors, trustees or general partners (or individuals exercising similar functions) of the company; or
 - (3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the commissioner determines.
- D. "Aggregated consumer information" means information that relates to a group or category of consumers, from which individual consumer identities have been removed, that is not linked or reasonably linkable to any consumer, household, or specific electronic device.
- E. "Biometric information" means an individual's physiological, biological, or behavioral characteristics that can be used, singly or in combination with other identifying information, to establish a consumer's identity. Biometric information may include an iris or retina scan, fingerprint, face, hand, palm, ear, vein patterns, and voice prints, from which an identifier template, such as a faceprint, a minutiae template, or a voiceprint, can be extracted; and keystroke patterns or rhythms, gait patterns or rhythm that may be used to identify a consumer.
- F. "Clear and conspicuous notice" means a notice that is reasonably understandable and designed to call attention to the nature and significance of its contents.
- G. "Collect" or "collecting" means buying, renting, gathering, obtaining, receiving, or accessing any consumers' personal information by any means.
- H. "Commissioner" means [insert the appropriate title and statutory reference for the principal insurance regulatory official of the state].

Commented [A3]: We suggest the removal of this language, as it would create an adverse underwriting decision for situations where a carrier relies on public information for underwriting.

Commented [A4]: We suggest the removal of this language, as it removes appropriate flexibility in underwriting. In addition, there are already laws precluding unfair discrimination.

Commented [KJ5]: This language comes from Model 672

Commented [KJ6]: Language from Model 672 in part.

Commented [KJ7]: Model 672 definition only applies to identified data: *to obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol or other identifying particular assigned to the individual, irrespective of the source of the underlying information*

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- I. "Consumer" means an individual who is a resident of [State], whose personal information is used, may be used, or has been used in connection with an insurance transaction, including a current or former individual (i) applicant, (ii) policyholder, (iii) insured, (iv) participant, (v) annuitant or (vi) certificate holder whose personal information is used, may be used, or has been used in connection with an insurance transaction or other financial transaction.
 - (1) A consumer shall be considered a resident of this state if the consumer's last known mailing address, as shown in the records of the licensee, is in this state unless the last known address of record is deemed invalid.
- J. "Consumer report" means the same as in Section 603(f) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(f)).
- K. "Consumer reporting agency" means a person who:
 - (1) Regularly engages, in whole or in part, in the practice of assembling or preparing consumer reports for a monetary fee;
 - (2) Obtains information primarily from sources other than insurers; and
 - (3) Furnishes consumer reports to other persons.
- L. "Cross-context behavioral advertising" means the targeting of advertising to a consumer based on the consumer's personal information obtained from the consumer's activity across businesses, distinctly branded websites, applications, or services.
- M. "Delete" and "deleted" means to remove or destroy personal information by permanently and completely erasing the personal information on existing systems such that it is not maintained in human or machine-readable form and cannot be retrieved or utilized in such form;
- N. "De-identified information" means information that cannot reasonably identify, relate to, describe, be capable of being associated with, or be linked, directly or indirectly, to a particular consumer, provided that a licensee that uses de-identified information meets all the following:
 - (1) Has implemented technical safeguards designed to prohibit re-identification of the consumer to whom the information may pertain.
 - (2) Has implemented reasonable business policies that specifically prohibit re-identification of the information.
 - (3) Has implemented business processes designed to prevent inadvertent release of de-identified information.
 - (4) Makes no attempt to re-identify the information.
- O. "Financial product or service" means a product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under Section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)). Financial service includes a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

Commented [KJ8]: This definition is similar to that in Model 672.

Commented [A5]: How is the legal representative a "consumer"? This should be addressed by stating that a consumer may exercise their rights through a legal representative with written authority, but this wording does not make sense.

Commented [A6]: Added this as a definition.

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- P. "Genetic information" means:
- (1) Subject to paragraphs (2) and (3) of this definition, with respect to an individual, information about:
 - (a) The individual's genetic tests;
 - (b) The genetic tests of family members of the individual;
 - (c) The manifestation of a disease or disorder in family members of such individual; or
 - (d) Any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by the individual or any family member of the individual.
 - 2) Any reference in this subchapter to genetic information concerning an individual or family member of an individual shall include the genetic information of:
 - (a) A fetus carried by the individual or family member who is a pregnant woman; and
 - (b) Any embryo legally held by an individual or family member utilizing an assisted reproductive technology.
 - (3) Genetic information excludes information about the sex or age of any individual.
- Q. "Health care" means:
- (1) Preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, services, procedures, tests, or counseling that:
 - (a) Relates to the physical, mental, or behavioral condition of an individual; or
 - (b) Affects the structure or function of the human body or any part of the human body, including the banking of blood, sperm, organs, or any other tissue; or
 - (2) Prescribing, dispensing, or furnishing drugs or biologicals, or medical devices, or health care equipment and supplies to an individual.
- R. "Health care provider" means a health care practitioner licensed, accredited, or certified to perform specified health care consistent with state law, or any health care facility.
- S. "Health information" means any consumer information or data except age or gender, created by or derived from a health care provider or the consumer that relates to:
- (1) The past, present, or future (i) physical, (ii) mental, or (iii) behavioral health, or condition of an individual;
 - (2) The genetic information of an individual;
 - (3) The provision of health care to an individual; or
 - (4) Payment for the provision of health care to an individual.
- T. "Institutional source" means any person or governmental entity that provides information about a consumer to a licensee other than:
- (1) A producer;

Commented [KJ9]: Taken from Model 672

Commented [KJ10]: This definition comes from Model 672

Commented [KJ11]: This definition comes from Model 672

Commented [KJ12]: Model 670

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- (2) A consumer who is the subject of the information; or
- (3) An individual acting in a personal capacity rather than in a business or professional capacity.

U. "Insurance support organization" means:.....

Commented [KJ13]: Model 670

- (1) Any person who regularly engages in the collection, processing, retention, or sharing of consumers' information for the primary purpose of providing insurers or producers information in connection with insurance transactions, including:
 - (a) The furnishing of consumer reports or investigative consumer reports to licensees or other insurance support organizations for use in connection with insurance transactions;
 - (b) The collection of personal information from licensees or other insurance support organizations to detect or prevent fraud, material misrepresentation, or material nondisclosure in connection with insurance transactions;
 - (c) The collection of any personal information in connection with an insurance transaction that may have application in transactions or activities other than insurance transactions.
- (2) Notwithstanding Subdivision (1) of this subsection, producers, government institutions, insurers, health care providers shall not be considered "insurance support organizations" for purposes of this Act.

V. "Insurance transaction" means any transaction or service to a consumer by or on behalf of a licensee and its affiliates related to:

Commented [KJ14]: Model 672 uses "Insurance product or service" means any product or service that is offered by a licensee pursuant to the insurance laws of this state.
(2) Insurance service includes a licensee's evaluation, brokerage or distribution of information that the licensee collects in connection with a request or an application from a consumer for a insurance product or service.

- (1) The underwriting or the determination of a consumer's eligibility for or the amount of coverage, rate, benefit for insurance relating to personal, family or household purposes, and the determination of the payment of a claim settlement payable to a consumer ;
- (2) Licensees or third-party service providers performing services including maintaining or servicing accounts, providing customer service, processing requests or transactions, verifying customer information, processing payments, providing financing, providing relating to insurance for personal, family or household use;
- (3) Provision of "value-added services or benefits" to a consumer in connection with an insurance transaction;
- (4) Any mathematical-based decision about a consumer that involves personal information;
- (5) Any actuarial studies related to rating, risk management, or exempt research activities for insurance for personal, family or household use conducted by or for the benefit of the licensee using consumers' personal information;
- (6) Offering, selling, or servicing of a financial product or service for personal, family or household use by the licensee or its affiliates;
- (7) Marketing or advertising products to consumers for personal, family or household use

Commented [A7]: It is inappropriate to apply this standard to customer service for commercial insurance accounts, as for example a Fortune 500 company dealing with an insurance broker. These laws were intended to benefit consumers purchasing personal lines insurance, not commercial insureds.

Commented [A8]: We believe including a prohibition in a definition is confusing and are unclear as to the working group's intent here.

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- W. "Insurer" means
 - (1) Any person or entity required to be licensed by the commissioner to assume risk, or otherwise authorized under the laws of the state to assume risk, including any corporation, association, partnership, nonprofit hospital, medical or health care service organization, health maintenance organization, reciprocal exchange, inter insurer, Lloyd's insurer, fraternal benefit society, or multiple-employer welfare arrangement;
 - (2) A self-funded plan subject to state regulation.
 - (3) A preferred provider organization administrator.
 - (4) "Insurer" does not include producers, insurance support organizations, foreign-domiciled risk retention groups, or foreign-domiciled reinsurers.
- X. "Investigative consumer report" means a consumer report or portion of a consumer report in which information about an individual's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with the individual's neighbors, friends, associates, acquaintances, or others who may have knowledge concerning such items of information.
- Y. "Joint marketing agreement" means a written contract between a licensee and one or more financial institutions to market the licensee's own products or services or for the licensee and one or more financial institutions jointly to offer, endorse, or sponsor a financial product or service.
- Z. ~~Z.~~ "Licensee" means any person licensed, authorized to operate, or registered, or required to be licensed, authorized, or registered pursuant to the insurance laws of this state but shall not include a purchasing group or a risk retention group chartered and licensed in a state other than this state or a licensee that is acting as an assuming insurer that is domiciled in another state or jurisdiction.
- AA. "Non-admitted insurer" means an insurer that has not been granted a certificate of authority or is not otherwise authorized by the commissioner to transact the business of insurance in this state.
- BB. "Ongoing business relationship" means the direct relationship of an individual consumer with a licensee whereby the consumer transacts directly with the licensee. "Ongoing business relationship" excludes an insurance intermediary that does not transact directly with consumer, and excludes an insurance transaction whereby an entity other than an individual is the first named insured.

Commented [KJ15]: Definition from Model 670

Commented [KJ16]: This definition was taken from Model 668 but is very similar to the definition in Model 672

Commented [KJ17]: Model 672

Commented [KJ18]: Definition from Model 670-added "or is not otherwise authorized"

Commented [A9]: We find this definition very unclear.

Commented [A10]: This definition is misguided and we suggest revising to reflect the fact that an excess lines insurer is not "licensed."

BB.

Drafting Note: Each state must make sure this definition is consistent with its surplus lines laws.

- CC. "Nonaffiliated third party" means:
 - (1) Any person except:
 - (a) An affiliate of a licensee; or
 - (b) A person employed jointly by a licensee and any company that is not an affiliate of the licensee; however, a nonaffiliated third party includes the other company that jointly employs the person.
 - (2) Nonaffiliated third party includes any person that is an affiliate solely by virtue of the direct or indirect ownership or control of the person by the licensee or its affiliate in conducting merchant banking or investment banking activities of the type described in Section 4(k)(4)(H) or insurance company investment activities of the type described in Section 4(k)(4)(I) of the federal Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H) and (I)).

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- DD. "Person" means any individual, corporation, association, partnership, or other legal entity.
- EE. "Personal information" means any individually identifiable information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked to a consumer that is by or on behalf of a licensee and is:
- (1) Any of the following:
- (a) Account balance information and payment history;
 - (b) The fact that an individual is or has been one of the licensee's customers or has obtained an insurance product or service from the licensee;
 - (c) Any information about the licensee's consumer if it is disclosed in a manner that indicates that the individual is or has been the licensee's consumer, unless such disclosure is required by federal or state law;
 - (d) Any information that a consumer provides to a licensee or that the licensee or its agent otherwise obtains in connection with collecting on a loan or servicing a loan;
 - (e) Any information the licensee collects through an information-collecting device from a web server, such as internet cookies, if such information can reasonably identify or link back to an individual;
 - (f) Information from a consumer report;
 - (g) Information that would enable judgments, directly or indirectly, to be made about a consumer's character, habits, avocations, finances, occupation, general reputation, credit, health, or any other personal characteristics;
 - (h) Any list, description or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personal information that is not publicly available.
 - (i) "Sensitive personal information";
 - (j) "Health information;"
 - (k) Consumers' demographic data, in any form or medium that can reasonably be used to identify an individual; or
 - (l) Collections or sets of individually identifiable information pertaining to more than one consumer.
- (2) "Personal information" does not include "de-identified information" or "aggregate consumer information."
- FF. "Precise geolocation" means any data that is used or intended to be used to locate a consumer within a geographic area that is equal to or less than the area of a circle with a radius of 1,750 feet.
- GG. "Privileged information" means any personal information that is subject to attorney client privilege.
- HH. "Process" or "processing" means any operation or set of operations performed by a licensee, whether by manual or automated means, on the personal information of any consumer, including the collection, use, sharing, storage, disclosure, analysis, deletion, retention, or modification of personal information.
- II. "Producer" means [refer here to every appropriate statutory category of producer, including agents and

Commented [KJ19]: From Model 670

Commented [KJ20]: The information in F(1)(b)-(g) was taken directly from Model 672

Commented [KJ21]: The provision in F.(1)(h) was taken from Model 670

Commented [KJ22]: Model 670

Commented [A11]: We see no need for a new definition of privileged information since it is already defined already under law. Creating a new definition adds unnecessary confusion

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brokers, required to be licensed to do business in the state].

Drafting Note: This is necessary because many states have various terms for producers, or for producers of certain types of insurers.]

- II. "Publicly available" means any information about a consumer that a licensee has a reasonable basis to believe is lawfully made available from:
- (1) Federal, state, or local government records;
 - (2) Widely distributed media; or
 - (3) Disclosures to the general public that are required to be made by federal, state or local law.

Commented [KJ23]: This definition comes from the IDSA (Model 668) and Model 672

Drafting Note: Examples of "a reasonable basis" are: (1) A licensee has a reasonable basis to believe that mortgage information is lawfully made available to the general public if the licensee has determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded; or (2) A licensee has a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if the licensee has located the telephone number online or the consumer has informed you that the telephone number is not unlisted.

Commented [KJ24]: Examples take from Model 672

- JJ. "Research activities" means systemic investigation, including development, testing, and evaluation, designed to develop or contribute to generalizable knowledge where there is sharing of personal information with nonaffiliated third parties. "Research activities" does not mean any of the following exempt research activities that are considered part of an insurance transaction:
- (1) Relating to rating or risk management;
 - (2) For actuarial studies;
 - (3) For internal (i) analytics or (ii) customer experience purposes;
 - (4) For product development;
 - (5) To an insurance support organization; or
 - (6) Subject to a research university Internal Review Board or Privacy Board approval which requires use of a process which follows confidentiality best practices and where a contract agreeing to such protection has been executed.

- KK. "Residual market mechanism" means an association, organization or other entity defined or described in Sections(s) [insert those sections of the state insurance code authorizing the establishment of a FAIR Plan, assigned risk plan, reinsurance facility, joint underwriting association, etc.]

Commented [KJ25]: Model 670 language

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Drafting Note: Those states having a reinsurance facility may want to exclude it from this definition if the state's policy is not to disclose to insureds the fact that they have been reinsured in the facility.

- LL. "Retain" "retention" or "retaining" means storing or archiving personal information that is in the continuous possession, use, or control of licensee or a third-party service provider.
- MM. "Sell" or "selling" means the exchange of personal information to a third party for monetary or other valuable consideration.
- NN. "Sensitive personal information" means" personal information including a consumer's (i) social security, driver's license, state identification card, or passport number; (ii) account log-in or financial account, debit card, or credit card numbers in combination with any required security or access code, password, or credentials allowing access to an account; (iii) precise geolocations; (iv) racial or ethnic origin, religious, or philosophical beliefs; (v) union membership; (vi) communications that are not sent by a person as an employee, officer or other representative of a business, such as personal mail, personal email, and personal text messages content, unless the person in possession is the intended recipient of the communication; (vii) genetic information; (viii) a consumer's sex life or sexual orientation; (ix) citizenship or immigration status; (x) health information; or (xi) biometric information.

Drafting Note: Those states that have enacted a consumer data protection act may want to amend this definition to match that of the state's law.

- OO. "Share," "shared," or "sharing" means (i) disclosing, (ii) disseminating, (iii) making available, (iv) releasing, (v) renting, (vi) transferring, (vii) selling, or (viii) otherwise communicating by any means, a consumer's personal information whether or not for monetary or other valuable consideration, for providing insurance transactions or additional activities for the benefit of any party.
- PP. "Termination of insurance coverage" or "termination of an insurance policy" means either a cancellation or nonrenewal of an insurance policy for personal, family or household purposes., in whole or in part, for any reason other than failing to pay a premium as required by the policy, material misrepresentation or fraud, or illegal activity.
- QQ. "Third-party service provider" means a person that contracts with a licensee that provides services to the licensee, and processes, shares, or otherwise is permitted access to personal information through its provisions of services to the licensee. "Third-party service provider" also includes a person with whom a licensee does not have a continuing business relationship and does not have a contract but may have to share personal or publicly available information in connection with an insurance transaction. Third-party service providers do not include (i) government entities; (ii) licensees; (iii) affiliates of licensees; and (iv) financial entities with whom licensees have joint marketing agreements.

Commented [KJ26]: Model 670

Commented [KJ27]: From Model 668 but modified for this model

Commented [KJ28]: This definition was taken primarily from Model 880 (rebating)

RR. "Value-added service or benefit" means a product or service provided to a consumer and

relating to an insurance policy for personal, family or household use that:

- (1) Relates to insurance coverage applied for or purchased by a consumer; and
- (2) Is primarily designed to satisfy one or more of the following:
 - (a) Provide loss mitigation or loss control services or products designed to mitigate risks related to the insurance requested by or offered to a consumer;
 - (b) Reduce claim costs or claim settlement costs;
 - (c) Provide education about liability risks or risk of loss to persons or property;

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- (d) Monitor or assess risk, identify sources of risk, or develop strategies for eliminating or reducing risk;
- (e) Enhance the health of the consumer, including care coordination;
- (f) Enhance financial wellness of the consumer through education or financial planning services;
- (g) Provide post-loss services;
- (h) Incentivize behavioral changes to improve the health or reduce the risk of death or disability of a customer (defined for purposes of this subsection as policyholder, potential policyholder, certificate holder, potential certificate holder, insured, potential insured or applicant); or
- (i) Assist in the administration of employee or retiree benefit insurance coverage.

Drafting Note: Examples of "value-added services and benefits" are services or benefits related to (i) health and wellness, (ii) telematic monitoring, or (iii) property replacement services.

- SS. "Verifiable request" means a request that the licensee can reasonably verify, using commercially reasonable methods, is made by the consumer whose personal information is the subject of the request.
- TT. "Written consent" means any method of capturing a consumer's consent that is capable of being recorded or maintained for as long as the licensee or third-party service provider has a business relationship with a consumer.

ARTICLE II. OBLIGATIONS HANDLING CONSUMER'S PERSONAL INFORMATION

Section 3. Oversight of Third-Party Service Provider Arrangements

- A. A licensee shall exercise due diligence in selecting its third-party service providers.
- B. No licensee shall (i) engage a third-party service provider to collect, process, or retain, or share any consumer's personal information, or (ii) share any consumer's personal information with any third-party service provider for any purpose unless there is a written contract between the licensee and third-party service provider that requires the third-party service provider to abide by the provisions of this Act and the licensee's own privacy protection practices in the collection, processing, retention, or sharing of any consumer's personal information.
- C. Notwithstanding Subsection 3B, a licensee may share a consumer's publicly available information with a third-party service provider with whom the licensee has no written contract in connection with a claim only to the extent necessary to process the claim in accordance with the terms of the insurance policy.
- D. [Redacted]
- E. A contract between a licensee and third-party service provider shall require that no third-party service provider shall further share or process a consumer's personal information other than as specified in the contract with the licensee.
- F. Contracts between a licensee and any third-party service providers shall require either entity to honor the consumer's directive, whether it is an opt-in or an opt-out, to refrain from sharing the consumer's personal information with a third party for marketing purposes.

Section 4. Data Minimization

- A. No licensee shall collect, process, retain, or share a consumer's personal information unless:

Commented [A12]: As we note in our comments, we are concerned with a framework that relies on a licensee obtaining consent in a transaction where they do not have a business relationship with the consumer

Commented [A13]: The Claim should be processed in accordance with the policy, which may not be the same as what is "requested"

Commented [A14]: Suggest removing as already stated in B above.

Commented [A15]: Again, repeats what is already in B above.

Commented [A16]: Without the limitation, this would be broad enough to upend normal insurance processing and servicing.

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- (1) The collection, processing, retention, or sharing is in compliance with this Act;
- (2) The licensee provides the applicable notices required by this Act;
- (3) The collection, processing, retention, or sharing of the consumer's personal information is consistent with and complies with the most recent privacy protection practices notice provided to the consumer by the licensee; and
- (4) The collection, processing, retention, or sharing of the consumer's personal information is reasonably necessary and proportionate to achieve the purposes related to the requested insurance transaction or additional activities and not further processed, retained, or shared in a manner that is incompatible with those purposes;-

B. No licensee shall permit any of its officers, employees, or agents to collect, process, retain, or share any consumer's personal information, except as relevant and necessary as part of that person's assigned duties.

Section 5. Sharing Limitations

A. Consistent with the requirements of this Act, a licensee may collect, process, retain, or share a consumer's personal information in connection with an insurance transaction as necessary:

- (1) For the servicing of any insurance application, policy, contract, or certificate for a consumer, third-party claimant, or beneficiary;
- (2) For compliance with a legal obligation to which the licensee is subject;
- (3) For compliance with a request or directive from a law enforcement or insurance regulatory authority;
- (4) For compliance with a warrant, subpoena, discovery request, judicial order, or other administrative, criminal, or civil legal process, or any other legal requirement that is binding upon the licensee collecting, processing, retaining, or sharing the personal information;
- (5) For a lienholder, mortgagee, assignee, lessor, or other person shown on the records of an insurer or producer as having a legal or beneficial interest in a policy of insurance, to protect that interest provided that:
 - (a) No health information is shared unless the sharing would otherwise be permitted by this section, and

Commented [KJ29]: Most of these requirements were taken from Model 670 Section 13 and Model 672

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- (b) The information shared is limited to that which is reasonably necessary to permit such person to protect its interests in such policy;
- (6) To enable a licensee to detect or prevent criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with an insurance transaction;
- (7) To enable a licensee to perform data security functions to help assure the data security of its operations and personal information;
- (8) To enable a health care provider to:
 - (a) Verify the consumer's insurance coverage or benefits;
 - (b) Inform a consumer of health information of which the consumer may not be aware; or
 - (c) Conduct an operations or services audit to verify the individuals treated by the health care provider; provided only such information is shared as is reasonably necessary to accomplish the audit;

Commented [A17]: We suggest this addition as it is important to the data security of the licensee.

To permit a party or a representative of a party to a proposed or consummated sale, transfer, merger or consolidation of all or part of the business of the licensee to review the information necessary for such transaction, provided

- (d) The recipient agrees to comply with the provisions of this Act;
- (9) For an affiliate whose only use of the information is to perform an audit of a licensee provided the affiliate agrees not to process personal information for any other purpose or to share the personal information.
- (10) To permit a group policyholder to report claims experience or conduct an audit of the operations or services of a licensee, provided the information shared is reasonably necessary for the group policyholder to make the report or conduct the audit and is not otherwise shared;
- (11) To permit (i) a professional peer review organization to review the service or conduct of a healthcare provider provided the personal information is not otherwise processed or shared or (ii) to permit arbitration entities to conduct an arbitration related to a consumer's claim;
- (12) To provide information to a consumer or other licensee that is involved with the insurance transaction regarding the status of an insurance transaction;
- (13) To permit a governmental authority to determine the consumer's eligibility for health care benefits for which the governmental authority may be liable;
- (14) Pursuant to a joint marketing agreement, provided a licensee shall not, directly or through an affiliate, share a consumer's personal or publicly available information with any nonaffiliated third party for marketing to the consumer unless.
 - (a) The consumer is first provided a clear and conspicuous means to opt-out of such sharing;
 - (b) The consumer has been given a reasonable time to opt-out of the sharing; and

Commented [KJ30]: More restrictive than Model 670

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- (c) The authorization complies with Section 6 of this Act.
- (15) For the purpose of marketing the licensee's insurance or financial products or services of the licensee
- B. No licensee shall share any health information or privileged information about a consumer with a nonaffiliated third-party except in the ordinary course of an insurance transaction for payment, servicing of insurance such that the consumer would reasonably expect given the context of the sharing, such as paying the consumer's insurance claim or in the course of underwriting an insurance product:
 - (1) Without first providing the consumer a clear and conspicuous notice that such information will not be shared unless the consumer opts-in to such sharing;
 - (2) The consumer has been given a reasonable time to opt-in to the sharing; and
 - (3) The authorization complies with Section 6 of this Act.
- C. No licensee may collect, process, or share a consumer's personal information in connection with any additional activities without first providing the consumer a clear and conspicuous notice that such information will not be collected, processed, or shared unless the consumer opts-in to such collection and use of personal information. Once consent has been obtained, any person may conduct additional activities as follows:
 - (1) For non-exempt research activities:
 - (a) No consumer may be identified in any research study or report;
 - (b) All materials allowing the consumer to be identified are returned to the licensee that initiated the activity; and
 - (c) A consumer's personal information is deleted as soon as the information is no longer needed for the specific activity.
 - (2) For all additional activities:
 - (a) The person conducting the activity agrees not to further share any consumer's personal information and only use such information for the purposes for which it was shared; and
 - (b) A consumer's sensitive personal information may not be shared or otherwise provided to any nonaffiliated third party for use in connection with any additional activity involving marketing a non-insurance or non-financial product or service.
- D. A licensee may collect, process, retain, or share consumers' de-identified personal information as necessary in connection with insurance transactions and additional activities.
- E. Notwithstanding any other provision of law, no licensee or its third-party service providers may sell consumers' personal information for any type of consideration without the advance written consent of the consumer. This subsection does not prohibit the following activities:
 - (1) The disclosure is to a third party for the purpose of or in support of providing an insurance or financial product or service requested by the consumer or an insurance or financial product or service that would be reasonably expected given the context of the insurance.
 - (2) A licensee provides or receives information to an insurance support organization, statistical agent, or reinsurer;

Commented [A18]: We argue this is impractical and goes beyond other privacy laws to allow an opt-out for first-party marketing. CAN SPAM already provides a vehicle to unsubscribe from unwanted emails, and extensive telephone marketing laws exist. We are unclear as to why this would be necessary given the existing regimes and the ability of the consumer to opt-out under current law.

Commented [A19]: HIPAA allows sharing of health information for purposes of payment and health care operations such as reviewing insurance claims. If normal insurance operations require an opt in, that would seriously harm regular insurance claim processing and normal underwriting.

Commented [A20]: It is normal practice for an insurance agent and insurer to share underwriting information in the normal course, and commission and premium are involved. Why would we say these activities are without compensation?

Commented [A21]: e.g., underwriting of commercial automobile or workers' compensation policies—viewing details of larger claims

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- (3) A licensee provides information to an affiliate or to a financial institution with which the licensee performs joint marketing;
- (4) The business transfers to a third party the personal information as an asset that is part of a merger, acquisition, bankruptcy, or other transaction, or a proposed merger, acquisition, bankruptcy, or other transaction in which the party assumes control of all or part of the licensee's assets; or
- (5) A consumer uses or directs the licensee to (i) disclose personal information; or (ii) interact with one or more licensees or other financial institutions.

F. This section shall not prohibit the collection, processing, retention, or sharing of consumers' personal information with a licensee's affiliates to the extent preempted by subdivisions (b)(1)(H) or (b)(2) of Section 625 of the Fair Credit Reporting Act.

Section 6. Consumers' Consent

A. Where the consumer's consent for the collection, processing, or sharing of a consumer's personal or privileged information by a licensee is required by this Act, whether opt-in or opt-out, the licensee with a direct relationship to the consumer shall provide a reasonable means to obtain written consent and maintain a written record of such consent.

- (1) No licensee shall collect, process, or share personal information in a manner inconsistent with the choices of a consumer pursuant to this Act.
- (2) A licensee may provide the consent form together with or on the same written or electronic form as the most recent of the initial or updated notice the licensee provides or in a separate communication with the consumer.
- (2) If two (2) or more consumers jointly obtain an insurance or financial product or service from a licensee, the licensee may provide a single consent notice. Each of the joint consumers may consent or refuse to consent.
- (3) A licensee does not provide a reasonable means of obtaining express written consent if consent is required or the consumer is instructed that consent is required.
- (4) A licensee shall comply with a consumer's consent choice as soon as reasonably practicable after the licensee receives it.
- (5) Any consumer who has given consent for the collection, processing, and sharing of personal information in connection with additional activities, may revoke such consent in writing. A consumer may exercise the right to consent or to withdraw consent at any time with notice to the licensee.
- (6)
 - (a) A consumer's consent choice under this Act is effective until the consumer revokes it in writing.
 - (b) If the consumer subsequently establishes a new relationship with the licensee, the consent choices that applied to the former relationship do not apply to the new

Commented [A22]: what about driver's privacy protection act and similar laws?

Commented [A23]: The consumer would not have a direct relationship with, for example, the reinsurer of the insurance, and it is not practical, useful or reasonable to require upward parties such as a commercial workers' compensation insurer (in the absence of a claim) or a reinsurer or a wholesale broker to provide additional notices to the consumer. The result could be that the consumer is inundated with notices. Once the consumer has first provided their consent, opt-in or opt-out, it should be incumbent upon the licensee with a direct relationship to advise the others in the chain if the consumer has placed restrictions on using their personal information.

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relationship. A new relationship occurs when the consumer who previously ended all business relationships with the licensee re-establishes a business relationship more than thirty (30) days after the previous business relationship ended.

- (7) If the consumer has made conflicting choices pursuant to this section, the consumer's most recent written choice for the specific transaction or activity shall take precedence.

B. When a consumer's consent is required, no person shall use an authorization seeking a consumer's consent, whether opt-out or opt-in, to the collection, processing, or sharing of a consumer's personal or privileged information unless the authorization meets following requirements.

- (1) Is written in plain language;
- (2) Is dated;
- (3) Specifies the types of personal or privileged information authorized to be collected, processed, or shared;
- (4) Specifies the specific purposes for which the consumer's personal or privileged information is authorized to be collected, processed, or shared as permitted in Article II of this Act;

- (5) Advises the consumer that they are entitled to receive a copy of the authorization.

C. When requesting a consumer's consent to the collection, processing, or sharing of the consumer's personal information for additional activities, the written authorization shall:

- (1) Explain, in plain language, that consent is being sought to share the consumer's personal information for research activities by a person other than the licensee, or if the personal information is to be used for an additional activity, clearly explain the nature of that activity;
- (2) Permit the consumer to separately provide consent for such use of the consumer's personal information for any one or more additional activities;
- (3) Explain, in plain language, that the consumer is not required to provide consent to use the consumer's personal information for any one or all these purposes, and that the consumer will not be subject to retaliation or discrimination as outlined in Section 15, based on the consumer's choice; and
- (4) State that use of a consumer's sensitive personal information for third party marketing purposes is prohibited.
- (5) The provisions of Subsection B of this section do not apply to consumers' personal or privileged information that has been de-identified in accordance with this Act.

Section 7. Retention and Deletion of Consumers' Information

A. Once the initial consumer privacy protection practices notice has been provided to the consumer as set forth in this Act, a licensee may retain a consumer's personal information as necessary for:

- (1) Performance of any insurance transaction with a consumer who is in an ongoing business relationship with the licensee;
- (2) Performance of any processing, payment or servicing of insurance that would be reasonably expected by a consumer based upon the type of insurance being serviced;
- (3) Compliance with a legal obligation related to any insurance transaction or any additional activity involving consumers' personal information to which the licensee is subject including but not limited to any state, federal, or international statute of limitation periods

Commented [A24]: We believe this is impractical. The consent needs to be effective until withdrawn. Managing the expiration date of thousands of consents does not make sense and is unworkable.

Commented [A25]: Consider the service providers to the licensee. How would that work, for example, if the licensee utilizes a payment processing service or claims adjusting entity?

Commented [A26]: Public information should be excluded from the scope of this law since it is publicly available.

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applicable to the licensee in connection with consumers' personal information, or in connection with the possibility of litigation or claims;

- (4) Compliance with a request or directive from a law enforcement agency or state, federal, or international regulatory authorities a warrant, subpoena, discovery request, judicial order, or other administrative, criminal, or civil legal process, or another legal requirement that is binding upon a licensee;
- (5) Protection of a legal or beneficial interest in a policy of insurance, with respect to a lienholder, mortgagee, assignee, lessor, or other person shown on the records of an insurer or producer as having a legal or beneficial interest in the policy; or
- (6) Exempt research activities (i) related to insurance transactions involving consumers' personal information, or (ii) for rating or risk management purposes for or on behalf of the licensee in connection with an insurance product or service.

B. Not less than annually, a licensee shall review its retention policy and determine whether the purposes for which personal information was collected or processed remain.

- (1) Any third-party service provider in possession of the consumer's personal information shall delete such information at the earlier of:
 - (a) The date the contract the licensee has with the third-party service provider ends; or
 - (b) The date specified in such contract.
- (2) If a consumer requests a copy of the consumer's personal information that has been deleted or de-identified as provided in this Act, the licensee shall inform the consumer that the licensee and any of the licensee's third-party service providers in possession of the consumer's personal information no longer retain any of the consumer's personal information or such information has been de-identified;
- (3) A licensee shall develop policies and procedures for compliance with this section and be able to demonstrate compliance with those policies and procedures.

Commented [A27]: It is not reasonably possible for a licensee to review every single record in its possession.

ARTICLE III. NOTICES AND DELIVERY OF NOTICES

Section 8. Notice of Consumer Privacy Protection Practices

A. A licensee that collects personal information directly from a consumer with whom it has an ongoing business relationship that collects, processes, retains, or shares a consumer's personal information in connection with an insurance transaction, by whatever means used, shall provide the consumer a clear and conspicuous notices that accurately reflect the licensee's privacy protection practices. The following exceptions apply to this requirement:

- (1) No notice of privacy protection practices is required of a reinsurer or in connection with the provision of reinsurance
- (2) No notice of privacy protection practices is required in connection with the application, underwriting or servicing of a policy where the named insured purchasing the policy is not a consumer;
- (3) An employee, agent, representative or designee of a licensee, who is also a licensee, is not required to develop or provide a notice of consumer privacy protection practices to the extent that the collection, processing, retention, and sharing of personal information by the employee, agent, representative or designee of such licensee is consistent with the consumer privacy protection practices of such licensee and the licensee provides the notice required in this section.

Commented [A28]: This is simply a clarification that commercial insurance for a business such as commercial general liability is out of scope. Prior versions accomplished this through use of the descriptor "insurance for personal, family or household use."

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- (4) A licensee that does not share and does not wish to reserve the right to share, personal information of consumers except (i) in connection with an insurance transaction or (ii) as authorized under Section 5 may satisfy the notice requirements under this section by providing the initial privacy protection practices notice as set forth in Subsection 8B.
- B.
 - (1) A licensee shall provide an initial notice of privacy protection practices to a consumer at the time the licensee, directly or through a third-party service provider, first collects, processes, or shares the consumer's personal or publicly available information in connection with an insurance transaction or additional activity.
 - (2) For any consumer with whom a licensee has an ongoing business relationship and whose personal or publicly available information has been collected, processed, retained, or shared prior to the effective date of this Act in this State, a notice meeting the requirements of this Act must be provided upon renewal or any reinstatement of the consumer's policy, or upon any other activity related to an insurance transaction if the consumer has not already been provided a notice meeting the requirements of this Act.
- C. A licensee shall provide an updated privacy protection practices notice to each consumer with whom the licensee has an ongoing business relationship when the privacy protection practices of the licensee changes.
 - (1) An updated notice shall also be provided to any third-party claimant or beneficiary if there are changes in the licensee's privacy protection practices during the course of any claim in which such claimant or beneficiary is involved that directly affect such beneficiary's personal information.
- D. Each version of a licensee's privacy protection practices notice shall contain an effective date that must remain on the notice until the licensee revises the notice due to a change in its privacy protection practices. The licensee shall place a revised date on its updated notice that will remain until the notice is revised in response to additional changes in the licensee's privacy protection practices.
- E. A licensee shall honor all representations made to consumers in its most current notice, unless otherwise compelled by law. If the licensee's information practices change, the licensee remains bound by the terms of the most recent notice it has given a consumer, until a revised notice has been given.

Section 9. Content of Consumer Privacy Protection Practices Notices

- A. Any notice required by Section 8 of this Act shall state in writing all the following:
 - (1) Whether personal information has been or may be collected from any sources other than the consumer or consumers proposed for coverage, and whether such information is collected by the licensee or by third-party service providers;
 - (2) The categories of consumer's personal information that the licensee or any of its third-party service providers has or may collect, process, retain, or share;
 - (3) The purposes for which the licensee collects, processes, retains, or shares personal information;
 - (4) The sources that have been used or may be used by the licensee to collect, process, retain, or share the consumer's personal information;
 - (5) A description of the right to opt-out of sharing of personal information with third parties for marketing or an insurance or financial product or service, including marketing pursuant to a joint marketing agreement;

Commented [A29]: We suggest removing this language as it suggests that, in the case of workers compensation for example, each employee of a commercial insured is supposed to get a privacy notice when the account is being underwritten which we believe to be entirely impractical

Commented [A30]: We believe this is not realistic and may not even be possible, depending upon the law and requirements.

Commented [A31]: We suggest removing this overly burdensome requirement. There are a myriad of service providers assisting the insurance industry. This could require a licensee to set up an entire department to address these types of requests.

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- (6) A description of the requirements set forth in Section 5C if the licensee shares a consumer's personal information in connection with additional activities including:
 - (a) The requirement that the licensee obtain the consumer's express written consent for the collection, processing, retention, or sharing of a consumer's personal information for research activities not conducted by or on behalf of the licensee unless such information has been de-identified;
 - (b) The requirement for the licensee to obtain the consumer's express written consent for the collection, processing, retention, or sharing of a consumer's personal information for sharing the personal information with a third party for marketing a non-insurance or non-financial product or service.

Commented [A32]: First party marketing is typically permitted by privacy laws, provided that the information is to market the first party's own products or services. Sharing with a third party to market third party products/services has become restricted, and should be.

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(c) The requirement that the licensee obtain the consumer's express written consent for the collection, processing, retention, or sharing of a consumer's personal information for any other additional activity; and

(d) A description of the process by which a consumer may opt-out of such collection, processing, or sharing.

(7) A statement of the rights of the consumer to access, correct or amend factually incorrect personal publicly available information about the consumer in the possession of the licensee or its third-party service providers under Article IV of this Act, and the instructions for exercising such rights;

(8) A statement of the rights of non-retaliation established under Section 15 of this Act;

(9) A summary of the reasons the licensee or any third-party service provider retains personal information and the approximate period of retention or if that is not reasonably possible, the criteria used to determine the timeframe it will be retained; and

(10) A statement that no licensee or third-party service provider may sell for valuable consideration a consumer's personal information outside of insurance transactions within the scope of the licensee's business and the servicing of those transactions.

(a) .

B. If the licensee uses a consumer's personal information to engage in additional activities, in addition to the provisions in Subsection A of this section, the following information shall be included in the notice:

(1) A statement that the consumer may, but is not required to, consent to the collection, processing, sharing, and retention of the consumer's personal information for any additional activities in which the licensee or its third-party service providers engage;

(2) A description of the reasonable means by which the consumer may express written consent;

(3) That the consumer may consent to any one or more of the additional activities or refuse to consent to any one or more of the additional activities;

(4) That once consent has been given for an additional activity, the consumer may revoke consent at any time;

(5) That once consent for using a consumer's personal information for an additional activity is withdrawn, the licensee will no longer engage in such additional activity using the consumer's personal information; and

(6) That once consent to an additional activity has been revoked, any of the consumer's personal information in the possession of the licensee used solely for that additional activity will be destroyed and deleted as set forth in Section 6 of this Act.

Commented [A33]: Criteria for retention - Similar to CCPA.

Commented [A34]: Service providers, insurers, and intermediaries get paid as part of the process. The entire insurance transaction involves transferring information to a variety of parties in order to obtain insurance coverage, and there is payment involved, such as premiums, commissions and service fees.

Commented [A35]: Rather than the vague "additional activities," suggest zeroing in on third party marketing, as for example a list of names is sold to a marketing company that now sends the consumer advertisements for furniture.

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- C. The obligations imposed by this section upon a licensee may be satisfied by another licensee or third-party service provider authorized to act on its behalf.

Section 10. Notice of Consumer Privacy Rights

- A. A licensee shall provide a Notice of Consumer Privacy Rights to each consumer with whom the licensee has an ongoing business relationship.
- B. The notice required by this section shall be clear and conspicuous and inform the consumer that:
 - (a) The consumer has the right to access personal information about the consumer;
 - (b) The consumer has the right to correct or amend inaccurate or incomplete information about the consumer;
 - (c) The consumer has the right to opt-out of the sharing or sale of personal information to a third party for marketing of products or services other than those of the licensee;
 - (d) The consumer must opt-in to use of sensitive personal information for any use outside of the processing, servicing, payment or handling of an insurance transaction that would be reasonably expected by a consumer;
 - (e) The consumer has the right to request additional information about the licensee's privacy practices;
 - (f) A licensee may not retaliate against a consumer, or require a consumer to incur unreasonable expenses, in connection with exercise of rights under this Act.
- C. The notice required by this section shall be provided to the consumer at the commencement of the business relationship, and annually thereafter if the privacy notice has changed during the past 12 months.
- D. The notice required by this section shall be in addition to other notices required by this Act.
- E. The notice required by this section may be combined with other policy documents, provided that the notice content required by this section remains clear and conspicuous and is readily distinguishable from other information being provided to the consumer.

Section 11. Delivery of Notices Required by This Act

- A. A licensee shall provide any notices required by this Act so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically pursuant to [State's UETA law].
- B. A licensee may reasonably expect that a consumer will receive actual notice if the licensee:
 - (1) Hand-delivers a printed copy of the notice to the consumer;
 - (2) Mails a printed copy of the notice to the address of record of the consumer separately, or in a policy, billing, or other written communication;
 - (3) For a consumer who has agreed to conduct transactions electronically, either (i) posts the notice on the licensee's website and requires the consumer to acknowledge receipt of the notice or (ii) emails the notice to the consumer and requests a delivery receipt.
- C. A licensee may not reasonably expect that a consumer will receive actual notice of its privacy protection practices if it:

Commented [A36]: We suggest removing this language as it would be very difficult for insurers to comply.

Commented [A37]: We believe it's not beneficial to deluge the consumer with notices if there has been no change.

Commented [KJ32]: This language comes from Model 672

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- (1) Only posts a sign in its office or generally publishes advertisements of its privacy protections practices; or
- (2) Sends the notice electronically to a consumer who has not agreed to conduct business electronically with the licensee.

- (3) Provides a notice required by this Act solely by orally explaining the notice, either in person or over the telephone or other electronic device unless the licensee also sends a copy of the notice to the consumer.
- (4) Does not provide the notices required by this Act so that the consumer is able to retain them or obtain them later in writing; either electronically or on paper.

D. A licensee may reasonably expect that a consumer will receive actual notice of the licensee's privacy protection practices notice if:

- (1) If the consumer has agreed to conduct business electronically pursuant to the State's UETA and:
 - (a) The consumer uses the licensee's web site to access insurance products and services electronically and agrees to receive notices at the web site and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the web site; or
 - (b) The licensee emails the notice to the consumer's email address of record.
- (2) The licensee mails the notice to the consumer's address of record.
- (3) A licensee may not provide any notice required by this Act solely by orally explaining the notice, either in person or using an electronic means unless specifically requested to do so by the consumer, and if so the licensee shall document such request in the licensee's records
- (4) The licensee provides all notices required by this Act so that the consumer can retain and obtain the notices in writing.

E. A licensee may provide a joint notice from the licensee and one or more of its affiliates if the notice accurately reflects the licensee's and the affiliate's privacy protection practices with respect to the consumer.

F. If two (2) or more consumers jointly obtain a product or service in connection with an insurance transaction from a licensee, the licensee may satisfy the initial and updated notice requirements of Sections 8 and 9 of this Act, by providing one notice to those consumers jointly. The notice must reflect the consent of each consumer.

G. If any consumer has requested that the licensee refrain from sending updated notices of privacy protection practices and the licensee's current privacy protection practices notice remains available to the consumer upon request, the licensee shall honor the consumer's request but must continue to send any jointly insured consumer any updated notices.

H. In addition to the notice provided to consumers, a licensee shall prominently post and make available the notice required by this Act on its website, if a website is maintained by the licensee. The licensee shall design its website notice so that:

Commented [A38]: In normal course, it is the consumer's responsibility for maintaining a current email address if the consumer has already agreed to conduct transactions electronically. It is not realistic to track thousands of delivery receipts.

Commented [KJ33]: This language is from Model 672

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- (a) The notice is clear and conspicuous;
(b) The text or visual cues encourage scrolling down the page, if necessary, to view the entire notice and ensure that other elements on the web site (such as text, graphics, hyperlinks, or sound) do not distract attention from the notice, and
(c) The notice is:
(i) Placed on a screen that consumers frequently access, such as a page on which transactions are conducted; or
(ii) Accessible using a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature, and relevance of the notice.

ARTICLE IV. CONSUMERS' RIGHTS

Section 12. Access to Personal and Publicly Available Information

- A. Any consumer may submit a verifiable request to a licensee for access to the consumer's personal information in the possession of the licensee or its third-party service providers.
B. The licensee or third-party service provider shall
(1) Acknowledge the request within five (5) business days; and
(2) Verify the validity of the request; and
(3) Within forty-five (45) business days from the date such request is verified:
(a) Disclose to the consumer the categories of persons to whom the licensee or any third-party service provider has shared the consumer's personal information within the past twelve months.
(b) Provide the consumer with a summary of the consumer's personal information and the process for the consumer to request a copy of such information in the possession of the licensee.
(c) Identify the source of any consumer's personal information provided to the consumer pursuant to this subsection.
C. Personal health information in the possession of licensee and requested under Subsection A of this section, together with the identity of the source of such information, shall be supplied either directly to the consumer or as designated by the consumer, to a health care provider who is licensed to provide medical care with respect to the condition to which the information relates. If the consumer elects for the licensee to disclose the information to a health care provider designated by the consumer, the licensee shall notify the consumer, at the time of the disclosure, that it has provided the information to the designated health care provider.
D. The obligations imposed by this section upon a licensee may be satisfied by another licensee authorized to act on its behalf.
E. The rights granted to consumers in this section shall extend to any individual to the extent personal information about the individual is collected processed, retained, or shared by a licensee or its third-party service provider in connection with an insurance transaction or an additional activity.

Commented [A39]: Remove publicly available since it's public.

Commented [KJ34]: From Model 910

Commented [A40]: We believe this is overly burdensome as written.

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- F. For purposes of this section, the term "third-party service provider" does not include "consumer reporting agency" except to the extent this section imposes more stringent requirements on a consumer reporting agency than other state or federal laws.
- G. The rights granted to any consumer by this subsection shall not extend to information about the consumer that is collected, processed, retained, or shared in connection with, or in reasonable anticipation of, a claim, or civil or criminal proceeding involving the consumer, or that is subject to privilege applicable to the licensee

Section 13. Correction or Amendment of Personal or Publicly Available Information

- A. Any consumer may submit a verifiable request to a licensee to correct or amend any personal or publicly available information about the consumer in the possession of the licensee or its third-party service providers.
- B. The licensee or third-party service provider shall
 - (1) Acknowledge the request within five (5) business days; and
 - (2) Verify the validity of the request;
 - (3) Within forty-five (45) business days from the date such request is received:
 - (a) Correct or amend the personal or publicly available information in dispute; or
 - (b) If there is a specific legal basis for not correcting or amending the personal or publicly available information in question, the licensee or its third-party service provider may refuse to make such correction or amendment. However, the licensee or third-party service provider refusing to take such action shall provide the following information to the consumer:
 - (i) Written notice of the refusal to make such correction or amendment;
 - (ii) The basis for the refusal to correct or amend the information;
 - (iii) The contact information for filing a complaint with the consumer's state insurance regulator, and
 - (iv) The consumer's right to file a written statement as provided in Subsection C of this section.
 - (4) No licensee or third-party service provider may refuse to correct or amend a consumer's personal information without good cause. Such cause shall be demonstrated to commissioner of the consumer's state insurance department, upon request.

If the licensee or third-party service provider corrects or amends personal information in accordance with Subsection A. (1) of this section, the licensee or third-party service provider shall so notify the consumer in writing and will utilize the corrected information in all situations on a going forward basis.

Commented [A41]: This section is from Model Act with a shortening of the length of time for B 2

Commented [A41]: Requiring the licensee to send corrections to persons who "may have received" personal or publicly available information or insurance support organization is vague and overly burdensome given the many service providers involved in the business of insurance. It is reasonable to make sure that the licensee uses only the corrected version going forward.

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- (5) Any third-party service provider to whom the licensee furnished such personal information.
- C. Whenever a consumer disagrees with the refusal of a licensee or third-party service provider to correct or amend personal or publicly available information, the consumer shall be permitted to file with the licensee or third-party service provider a concise statement setting forth:
 - (1) The relevant and factual information that demonstrates the errors in the information held by the licensee or third-party service provider; and
 - (2) The reasons why the consumer disagrees with the refusal of the licensee or third-party service provider to correct or amend the personal or publicly available information.
- D. In the event a consumer files such statement described in Subsection C, the licensee or third-party service provider shall:
 - (1) have a process for escalating review of the consumer's request.
- E. For purposes of this section, the term "insurance support organization" does not include "consumer reporting agency" except to the extent that this section imposes more stringent requirements on a consumer reporting agency than other state or federal law.

Section 14. Adverse Underwriting Decisions

- A. In the event of an adverse underwriting decision by or on behalf of an insurer, the insurer, either itself or through its authorized representative, shall:
 - (1) Either provide in writing to the consumer at the consumer's address of record:
 - (a) The specific reason or reasons for the adverse underwriting decision, or
 - (b) That upon written request the consumer may receive the specific reason or reasons for the adverse underwriting decision in writing; and
 - (2) Provide the consumer with a summary of the rights established under Subsection C of this Section and Sections 12 and 13 of this Act.

Drafting Note: Adverse underwriting decisions include: (i) an increase in the risk; (ii) increase in rates in geographical area; (iii) increase base rates; (iv) change in insurance credit score that causes an increase in the premium; (v) the consumer has lost a discount; (vi) an insured had a claim; or (vii) a lapse in coverage.

- B. Upon receipt of a written request within ninety (90) business days from the date of a notice of an adverse underwriting decision was sent to a consumer's address of record, the insurer within fifteen (15) business days from the date of receipt of such request shall furnish to the consumer the following information in writing to the consumer's address of record:

Commented [KJ36]: The provisions in this section are largely from Model 670 with some amendments

Commented [A42]: We believe this is burdensome and not reasonably possible. The important element is that the licensee should have an escalation process.

Commented [A43]: We suggest removing this language because it is unnecessary, vague, and likely to confuse.

Commented [A44]: The decision is that of the insurer, whether by itself or through its delegated authority. Therefore, the insurer, either itself or through delegation, needs to be the one sending the notice. While an insurer may delegate this, the insurer remains responsible for its actions, either on its own or through its licensed representatives.

Commented [A45]: Note that these are all decisions that the insurer makes, or delegates the authority to another entity to make. The way this is written currently makes it appear that an insurer is free to delegate authority to an agent and itself avoid responsibility for its agent's decisions.

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- (1) The specific reason or reasons for the adverse insurance decision, if such information was not initially furnished pursuant to Subsection A(1);
- (2) The specific information that supports those reasons, provided:
 - (a) The insurer shall not be required to furnish specific privileged information if it has a reasonable suspicion, based upon specific information available for review by the commissioner, that the consumer has engaged in criminal activity, fraud, material misrepresentation or material nondisclosure, or
 - (b) Health information supplied by a health care provider shall be disclosed either directly to the consumer about whom the information relates or to a health care provider designated by the individual consumer and licensed to provide health care with respect to the condition to which the information relates,
- (3) A summary of the rights established under Subsection C and Sections 12 and 13 of this Act; and

Drafting Note: The exception in Section 14 B(2)(a) to the obligation of an insurance institution to furnish the specific items of personal or privileged information that support the reasons for an adverse underwriting decision extends only to information about criminal activity, fraud, material misrepresentation or material nondisclosure that is privileged information and not to all information.

- (4) The names and addresses of the sources that supplied the information outlined in Subsection B(2); provided, however, that the identity of any health care provider shall be disclosed either directly to the consumer or to the health care provider designated by the consumer.

C.

- (1)

D.

The obligations imposed by this section upon the insurer may be satisfied by another licensee authorized to act on its behalf.

Section 15 Nondiscrimination and Nonretaliation

A.

A licensee and third-party service providers shall not retaliate against a consumer because the consumer exercised any of the rights under this Act.-There shall be a rebuttable presumption that a licensee or third-party service provider has discriminated or retaliated against a consumer if:

- (1) The licensee or third-party service provider charges a consumer who makes an annual request for access to the consumer's personal or publicly available information pursuant to Section 12 of this Act;

Commented [A46]: This section does not accurately reflect underwriting principles and should be deleted. It seems to want the insurer to avoid basing current underwriting decisions on its previous analyses or underwriting guidelines.

Commented [A47]: These are very vague and will lead to disputes and confusion. "Additional activity" could be interpreted to mean such basics as inspections or loss control recommendations.

Commented [A48]: See above comment.

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- (2) The licensee or third-party service provider charges a consumer who requests the consumer's personal or publicly available information be amended or corrected pursuant to Section 13 of this Act; or

Drafting Note: This section incorporates similar provisions from Model 672.

- B. There shall be a rebuttable presumption that consistent with the insurer's filed or standard rules, rates, and forms, and their normal underwriting guidelines in the State in which the consumer resides, the following acts do not constitute discrimination or retaliation if the act is reasonably related to any change in price or quality of services or goods applicable to all similar customers if the licensee is an insurer, acting itself or through a producer, or third-party service provider on behalf of the insurer:
 - (1) Charges a different rate or premium to the consumer;
 - (2) Provides a different insurance product;
 - (3) Refuses to write insurance coverage for the consumer; or
 - (4) Denies a claim under an insurance product purchased by the consumer.

Commented [A49]: This is vague and will lead to disputes and confusion. We are confused by the term "unreasonable barrier" does this refer to the need to authenticate a request?

Commented [A50]: As noted above, these decisions are on the insurer, whether it has delegated authority to a representative or not.

ARTICLE VI. ADDITIONAL PROVISIONS

Section 16. Investigative Consumer Reports

- A. No licensee may prepare or request an investigative consumer report about a consumer in connection with an insurance transaction involving an application for insurance, a policy renewal, a policy reinstatement, or a change in insurance benefits unless the licensee informs the consumer in writing prior to the report being prepared that the consumer:
 - (1) May request to be interviewed in connection with the preparation of the investigative consumer report and the licensee shall conduct such interview; and
 - (2) Is entitled to receive a written copy of the investigative consumer report.
- B. If a licensee uses a third-party service provider to obtain an investigative consumer report, the written contract between the licensee and the third-party service provider shall require the third-party service provider to:
 - (1) Comply with the requirements of Subsection 18 A;
 - (2) Not otherwise use any personal information provided to the third-party service provider by the licensee or obtained by the third-party service provider in its investigation of the consumer other than to fulfill the purpose of the contract with the licensee.
- C. If a licensee requests a third-party service provider to prepare an investigative consumer report, the licensee requesting such report shall notify in writing the third-party service provider whether a personal interview has been requested by the consumer. The third-party service provider shall conduct the interview requested.
- D. A licensee that prepares or requests an investigative consumer report in connection with an insurance claim shall notify the consumer that the consumer may request to be interviewed in connection with the preparation of the investigative consumer report. However, neither the licensee

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nor the third-party service provider is required to provide a copy of an investigative report prepared in connection with an insurance claim unless compelled to do so by a state or federal court.

Section 17. Compliance with HIPAA and HITECH

- A. A licensee that is subject to and compliant with the privacy and notification rules issued by the United States Department of Health and Human Services, Parts 160 and 164 of Title 45 of the Code of Federal Regulations, established pursuant to the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191), and the Health Information Technology for Economic and Clinical Health Act (Public Law 111-5, HITECH), and collects, processes, retains, and shares all personal information in the same manner as protected health information shall be deemed to be in compliance with this Act.
B. Any such licensee shall upon request submit to the [commissioner] a written statement from an officer of the licensee certifying that the licensee collects, processes, retains, and shares all personal information in the same manner as protected health information.
C. Any such licensee that does not fully comply with Sections 17 A and B shall be subject to all provisions of this Act with respect to personal information.

ARTICLE VII GENERAL PROVISIONS

Section 18. Power of Commissioner

- A. The commissioner shall have power to examine and investigate the affairs of any licensee to determine whether the licensee has been or is engaged in any conduct in violation of this Act. This power is in addition to the powers which the commissioner has under [insert applicable statutes governing the investigation or examination of insurers]. Any such investigation or examination shall be conducted pursuant to [insert applicable statutes governing the investigation or examination of insurers].
B. The commissioner shall have the power to examine and investigate the affairs of any insurance support organization acting on behalf of a licensee that either transacts business in this state or transacts business outside this state that affects a person residing in this state to determine whether such insurance support organization has been or is engaged in any conduct in violation of this Act.

Drafting Note: Section 18 B is optional. The drafters included this language for those states that had already adopted Model 670 and those states that wish to adopt this provision.

- C. Whenever the commissioner has reason to believe that a licensee has been or is engaged in conduct in this State which violates this Act, the commissioner may take action that is necessary or appropriate to enforce the provisions of this Act.

Section 19. Confidentiality

- A. Any documents, materials, data, or information in the control or possession of the state insurance department that are furnished by a licensee, third-party service provider, or an employee or agent thereof, acting on behalf of the licensee pursuant to this Act, or that are obtained by the commissioner in any investigation, or an examination pursuant to Section 19 of this Act shall be confidential by law and privileged, shall not be subject to [insert reference to state open records, freedom of information, sunshine or other appropriate law], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's duties.

Commented [KJ37]: This provision is consistent with Model 668

Commented [KJ38]: This language comes from Model 670

Commented [KJ39]: This language comes from Model 668.

Commented [KJ40]: This language was taken from Model 668 and modified for the purposes of this model.

Commented [A51]: The commissioner should be able to receive this upon request. However, requiring the certification as a matter of course adds a burdensome and bureaucratic requirement.

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- B. Neither the commissioner nor any person who receives documents, data, materials, or information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to Section 20 A.
- C. In order to assist in the performance of the commissioner's duties under this Act, the commissioner:
- (1) May share documents, data, materials or information, including the confidential and privileged documents, data, materials, or information subject to Section 20 A, with other state, federal, and international regulatory agencies, with the National Association of Insurance commissioners, its affiliates or subsidiaries, any third-party consultant or vendor, and with state, federal, and international law enforcement authorities, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, data, materials, or information; and
 - (2) May receive documents, data, materials, or information, including otherwise confidential and privileged documents, data, materials, or information, from the National Association of Insurance commissioners, its affiliates or subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any documents, data, materials, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the documents, data, materials, or information.
 - (3) Shall enter into a written agreement with any third-party consultant or vendor governing sharing and use of documents, data, materials, or information provided pursuant to this Act, consistent with this subsection that shall:
 - (a) Specify that the third- party consultant or vendor agrees in writing to maintain the confidentiality and privileged status of the documents, data, materials, or information subject to Section 20 A;
 - (b) Specify that the ownership of the documents, data, materials, or information shared pursuant to Section 20 A with the third-party consultant or vendor remains with the commissioner, and the third-party consultant's or vendor's use of the information is subject to the direction of, the commissioner;
 - (c) Prohibit the third-party consultant or vendor from retaining the documents, data, materials, or information shared pursuant to this Act after the purposes of the contract have been satisfied; and
 - (d) Require prompt notice be given to the commissioner if any confidential documents, data, materials, or information in possession of the third-party consultant or vendor pursuant to this Act is subject to a request or subpoena to the third-party consultant or vendor for disclosure or production.
- E. No waiver of any applicable privilege or claim of confidentiality in the documents, data, materials, or information shall occur due to disclosure to the commissioner under this section or due to sharing as authorized in Section 20 C.
- F. Nothing in this Act shall prohibit the commissioner from releasing final, adjudicated actions that are open to public inspection pursuant to [insert appropriate reference to state law] to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates, or subsidiaries.

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Section 20. Record Retention

- A. Notwithstanding any other provision of law, a licensee shall maintain sufficient evidence in its records of compliance with this Act for the calendar year in which the activities governed by this Act occurred and the three calendar years thereafter.
- B. A licensee or third-party service provider shall maintain all records necessary for compliance with the requirements of this Act, including, but not limited to:
- (1) Records related to the consumer's right of access pursuant to Article IV;
 - (2) Records of authorizations and consent executed by any consumer pursuant to this Act, for as long as the consumer is in a continuing business relationship with the licensee; and
 - (3) Representative samples of any notice required to be provided to any consumer pursuant to this Act, for as long as the consumer is in a continuing business relationship with the licensee.

Commented [KJ41]: Language from Model 910

Section 21. Hearings, Records, and Service of Process

Whenever the commissioner has reason to believe that a licensee or its third-party service providers have been or are engaged in conduct in this state which violates this Act, or if the commissioner believes that a third-party service provider has been or is engaged in conduct outside this state that affects a person residing in this state and that violates this Act, the commissioner shall issue and serve upon such a licensee or its third-party service provider a statement of charges and notice of hearing to be held at a time and place fixed in the notice. The date for such hearing shall be not less than [insert number] days after the date of service.

- A. At the time and place fixed for such hearing a licensee or its third-party service provider, or third-party service provider charged shall have an opportunity to answer the charges against it and present evidence on its behalf. Upon good cause shown, the commissioner shall permit any adversely affected person to intervene, appear and be heard at such hearing by counsel or in person.
- B. At any hearing conducted pursuant to this section the commissioner may administer oaths, examine, and cross-examine witnesses and receive oral and documentary evidence. The commissioner shall have the power to subpoena witnesses, compel their attendance and require the production of books, papers, records, correspondence and other documents, and data that are relevant to the hearing. A record of the hearing shall be made upon the request of any party or at the discretion of the commissioner. If no record is made and judicial review is sought, the commissioner shall prepare a statement of the evidence for use on the review. Hearings conducted under this section shall be governed by the same rules of evidence and procedure applicable to administrative proceedings conducted under the laws of this state.
- C. Statements of charges, notices, orders, and other processes of the commissioner under this Act may be served by anyone duly authorized to act on behalf of the commissioner. Service of process may be completed in the manner provided by law for service of process in civil actions or by registered or certified mail. A copy of the statement of charges, notice, order, or other process shall be provided to the person or persons whose rights under this Act have been allegedly violated. A verified return setting forth the manner of service or return receipt in the case of registered or certified mail, shall be sufficient proof of service.

Drafting Note: Consideration should be given to the practice and procedure in each state.

Section 22. Service of Process - Third-Party Service Providers

For purposes of this Act, a third-party service provider transacting business outside this state that affects a person residing in this state shall be deemed to have appointed the commissioner to accept service of process on its behalf;

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provided the commissioner causes a copy of such service to be mailed forthwith by registered or certified mail to the third-party service provider at its last known principal place of business. The return receipt for such mailing shall be sufficient proof that the same was properly mailed by the commissioner.

Section 23. Cease and Desist Orders and Reports

- A. If, after a hearing pursuant to Section 22, the commissioner determines that licensee or its third-party service provider charged has engaged in conduct or practices in violation of this Act, the commissioner shall reduce his or her findings to writing and shall issue and cause to be served upon such licensee or its third-party service provider a copy of such findings and an order requiring such licensee or its third-party service provider to cease and desist from the conduct or practices constituting a violation of this Act.
- B. If, after a hearing, the commissioner determines that the licensee or its third-party service provider charged has not engaged in conduct or practices in violation of this Act, the commissioner shall prepare a written report which sets forth findings of fact and conclusions of law. Such report shall be served upon the insurer, producer, or insurance support organization charged and upon the person or persons, if any, whose rights under this Act were allegedly violated.
- C. Until the expiration of the time allowed for filing a petition for review or until such petition is filed, whichever occurs first, the commissioner may modify or set aside any order or report issued under this section. After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed, the commissioner may, after notice and opportunity for hearing, alter, modify, or set aside, in whole or in part, any order or report issued under this section whenever conditions of fact or law warrant such action or if the public interest so requires.

Drafting Note: Consideration should be given to the practice and procedure in each state.

Section 24. Penalties

In the case of a violation of this Act, a Licensee may be penalized in accordance with [insert general penalty statute].

Drafting Note: Consideration should be given to the practice and procedure requirements and penalty requirements in each state.

Section 25. Judicial Review of Orders and Reports

- A. Any person subject to an order of the commissioner under [Code cite] or any person whose rights under this Act were allegedly violated may obtain a review of any order or report of the commissioner by filing in the [insert title] Court of [insert county] County, within [insert number] days from the date of the service of such order or report, a written petition requesting that the order or report of the commissioner be set aside. A copy of such petition shall be simultaneously served upon the commissioner, who shall certify and file in such court the entire record of the proceeding giving rise to the order or report which is the subject of the petition. Upon filing of the petition and record the [insert title] Court shall have jurisdiction to make and enter a decree modifying, affirming, or reversing any order or report of the commissioner, in whole or in part. The findings of the commissioner as to the facts supporting any order or report, if supported by clear and convincing evidence, shall be conclusive.
- B. To the extent an order or report of the commissioner is affirmed, the Court shall issue its own order commanding obedience to the terms of the order or report of the commissioner. If any party affected by an order or report of the commissioner shall apply to the court for leave to produce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there are reasonable grounds for the failure to produce such evidence in prior proceedings, the court may order such additional evidence to be taken before the commissioner in such manner and upon such terms and conditions as the court may deem proper. The commissioner may modify his

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or her findings of fact or make new findings by reason of the additional evidence so taken and shall file such modified or new findings along with any recommendation, if any, for the modification or revocation of a previous order or report. If supported by clear and convincing evidence, the modified or new findings shall be conclusive as to the matters contained therein.

- C. An order or report issued by the commissioner shall become final:
- (1) Upon the expiration of the time allowed for the filing of a petition for review, if no such petition has been duly filed; except that the commissioner may modify or set aside an order or report; or
 - (2) Upon a final decision of the [insert title] Court if the court directs that the order or report of the commissioner be affirmed or the petition for review dismissed.
- D. No order or report of the commissioner under this Act or order of a court to enforce the same shall in any way relieve or absolve any person affected by such order or report from any liability under any law of this state.

Drafting Note: Consideration should be given to the practice and procedure in each state.

Section 26. Individual Remedies

This Act may not be construed to create or imply a private cause of action for violation of its provisions, nor may it be construed to curtail a private cause of action which would otherwise exist in the absence of this Act.

Commented [KJ42]: Language from Model #668

Section 27. Immunity

No cause of action in the nature of defamation, invasion of privacy or negligence shall arise against any person for disclosing personal or privileged information in accordance with this Act, nor shall such a cause of action arise against any person for furnishing personal or privileged information to an insurer, producer, or insurance support organization; provided, however, this section shall provide no immunity for disclosing or furnishing false information with malice or willful intent to injure any person.

Section 89. Obtaining Information Under False Pretenses

No person shall knowingly and willfully obtain information about a consumer from a licensee under false pretenses. A person found to be in violation of this section shall be fined not more than [insert dollar amount] or imprisoned for not more than [insert length of time], or both.

Drafting Note: This provision is applicable to states requiring this language.

Section 29. Severability

If any provisions of this Act or the application of the Act to any person or circumstance is for any reason held to be invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected.

Section 30. Conflict with Other Laws

- A. All laws and parts of laws of this state inconsistent with this Act are hereby superseded with respect to matters covered by this Act.
- B. Nothing in this article shall preempt or supersede existing federal or state law related to protected health information.

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Section 32. Rules and Regulations

The commissioner may issue such rules, regulations, and orders as shall be necessary to carry out the provisions of this Act.

Section 33. Effective Date and Compliance Dates

- A. This Act shall take effect on [insert a date].
- B. Licensees shall have ## years from the effective date of this Act to implement Section ## of this Act.
- C. Licensees shall have ## years from the effective date of this Act to implement Section ## of this Act.

INSURANCE CONSUMER PRIVACY PROTECTION MODEL LAW

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ARTICLE 1. GENERAL PROVISIONS

Section 1. Purpose and Scope

- A. The purpose of this Act is to establish (i) standards for the collection, processing, retaining, or sharing of consumers' personal information by licensees and their third-party service providers to maintain a balance between the need for information by those in the business of insurance and consumers' need for fairness and protection in the use collection, processing, retaining, or sharing of consumers' personal information; (ii) standards for licensees engaged in additional activities involving the collection, processing, retaining, or sharing consumers' personal information; and (iii) standards applicable to licensees for providing notice to consumers of the collection, processing, retention, or sharing of consumers' personal and publicly information. These standards address the need to:
- (1) Limit the collection, processing, retention, or sharing of consumers' personal information to purposes and activities required in connection with insurance transactions and additional activities;
 - (2) Enable consumers to know what personal information is collected, processed, retained, or shared;
 - (3) Enable consumers to know the sources from whom consumers' personal information is collected and with whom such information is shared;
 - (4) Enable consumers to understand why and for generally how long personal information is retained;
 - (5) Enable consumers to choose whether to consent to the collection, processing, retaining, or sharing of consumers' personal information by licensees and their third-party service providers for additional activities;
 - (6) Permit individual consumers to access personal information relating to the consumer requesting access, to verify or dispute the accuracy of the information;
 - (7) Permit consumers to obtain the reasons for adverse underwriting transactions;
 - (8) Encourage all licensees and third-party service providers used by licensees to implement data minimization practices in the collection, processing, retaining, or sharing of consumers' personal information; and
 - (9) Provide accountability for the improper collection, processing, retaining, or sharing of consumers' personal information by licensees and any third-party service providers used by licensees in violation of this Act.
- B. The obligations imposed by this Act shall apply to licensees and third-party service providers that on or after the effective date of this Act:
- (1) Collect, process, retain, or share consumers' personal information in connection with insurance transactions;
 - (2) Engage in insurance transactions with consumers; or
 - (3) Engage in additional activities involving consumers' personal information.
- C. The protections granted by this Act shall extend to consumers:

Commented [NJ1]: Based on 670

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- (1) Whose information is collected, processed, retained, or shared in connection with insurance transactions;
- (2) Who have engaged in the past in insurance transactions with any licensee or third-party service provider; or
- (3) Whose personal information is used in additional activities by licensees and third-party service providers.

Drafting Note: This model is intended to replace *NAIC Insurance Information and Privacy Protection Model Act (#670)* and *Privacy of Consumer Financial and Health Information Regulation (#672)*. For that reason, it includes the protections for consumers that are currently provided by Models #670 and #672 and adds additional protections that reflect the business practices in the insurance industry today. The business of insurance is more global than it was 30 to 40 years ago. This model law reflects those realities and addresses the need for additional protections for consumers. This model requires notices to consumers for various privacy concerns and will supplant any notices required under Model #670, Model #672 and Gramm-Leach Bliley.

Section 2. Definitions.

As used in this Act:

A. “Address of record” means:

- (1) A consumer’s last known USPS mailing address shown in the licensee’s records; or
- (2) A consumer’s last known email address as shown in the licensee’s records, if the consumer has consented under [refer to the state’s UETA statute] to conduct business electronically.
- (3) An address of record is deemed invalid if
 - (a) USPS mail sent to that address by the licensee has been returned as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the consumer have been unsuccessful; or
 - (b) The consumer’s email address in the licensee’s records is returned as “not-deliverable” and subsequent attempts by the licensee to obtain a current valid email address for the consumer have been unsuccessful.

B. “Adverse underwriting decision” means:

- (1) Any of the following actions with respect to insurance transactions involving primarily personal, family, or household use:
 - (a) A denial, in whole or in part, of insurance coverage requested by a consumer;
 - (b) A termination of insurance coverage for reasons other than nonpayment of Premium or, in the case of title insurance, transfer of title to the insured property or satisfaction or release of the insured lien interest;
 - (c) A rescission of the insurance policy;
 - (d) In the case of a property or casualty insurance coverage:
 - (i) Placement by an insurer or producer of a risk with a residual market mechanism, non-admitted insurer or an insurer that specializes in substandard risks;

Commented [KJ2]: Language taken from Model 668 (IDSA)

Commented [KJ3]: The language in this subdivision was taken from Model 672.

Commented [KJ4]: By limiting AUDs in this manner, we provide consistency with current state law (for those states that adopted Model 670 and consistency with FCRA).

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- (ii) The charging of a higher rate based on information which differs from that which the consumer furnished; or
- (e) In the case of a life, health, or disability insurance coverage, an offer to insure at higher than standard rates.
- (2) Notwithstanding Section 2C(1), the following insurance transactions shall not be considered adverse underwriting decisions but the insurer responsible for the occurrence shall provide the consumer with the specific reason or reasons for the occurrence in writing:
 - (a) The termination of an individual policy form on a class or state-wide basis, except in the case of termination of a title insurance policy form.
 - (b) A denial of insurance coverage solely because such coverage is not available on a class- or state-wide basis; or
 - (c) If requested by a consumer, any other insurer-initiated increase in premium on an insurance product purchased by a consumer.

Drafting Note: The use of the term “substandard” in Section 2 C (1) (d)(i) is intended to apply to those insurers whose rates and market orientation are directed at risks other than preferred or standard risks. To facilitate compliance with this Act, *states* should consider developing a list of insurers operating in their state which specialize in substandard risks and make it known to insurers and producers.

- C. “Affiliate” or “affiliated” means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with another person. For purposes of this definition “control” means:
 - (1) Ownership, control, or power to vote twenty-five percent (25%) or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;
 - (2) Control in any manner over the election of a majority of the directors, trustees or general partners (or individuals exercising similar functions) of the company; or
 - (3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the commissioner determines.
- D. “Aggregated consumer information” means information that relates to a group or category of consumers, from which individual consumer identities have been removed, that is not linked or reasonably linkable to any consumer, household, or specific electronic device.
- E. “Biometric information” means an individual’s physiological, biological, or behavioral characteristics that can be used, singly or in combination with other identifying information, to establish a consumer’s identity. Biometric information may include an iris or retina scan, fingerprint, face, hand, palm, ear, vein patterns, and voice prints, from which an identifier template, such as a faceprint, a minutiae template, or a voiceprint, can be extracted; and keystroke patterns or rhythms, gait patterns or rhythm that may be used to identify a consumer.
- F. “Clear and conspicuous notice” means a notice that is reasonably understandable and designed to call attention to the nature and significance of its contents.
- G. “Collect” or “collecting” means buying, renting, gathering, obtaining, receiving, or accessing any consumers’ personal information by any means.
- H. “Commissioner” means [insert the appropriate title and statutory reference for the principal insurance regulatory official of the state].

Commented [KJ5]: This language comes from Model 672

Commented [KJ6]: Language from Model 672 in part.

Commented [KJ7]: Model 672 definition only applies to identified data: *to obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol or other identifying particular assigned to the individual, irrespective of the source of the underlying information*

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- I. **Consumer** means an individual who is a resident of [State] and the individual’s legal representative, whose personal information is used, may be used, or has been used in connection with an insurance transaction, including a current or former (i) applicant, (ii) policyholder, (iii) insured, (iv) participant, (v) annuitant or (vi) certificate holder whose personal information is used, may be used, or has been used in connection with an insurance transaction or other financial transaction.
- (1) A consumer shall be considered a resident of this state if the consumer’s last known mailing address, as shown in the records of the licensee, is in this state unless the last known address of record is deemed invalid.
 - (2) A consumer is in an ongoing business relationship with a licensee if there is a continuing relationship between the consumer and the licensee based on one or more insurance transactions provided by the licensee. In the case of title insurance, continuation of coverage under an existing policy does not constitute an ongoing business relationship unless or until there is a claim, renewal, or modification.
- J. “Consumer report” means the same as in Section 603(f) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(f)).
- K. “Consumer reporting agency” means a person who:
- (1) Regularly engages, in whole or in part, in the practice of assembling or preparing consumer reports for a monetary fee;
 - (2) Obtains information primarily from sources other than insurers; and
 - (3) Furnishes consumer reports to other persons.
- L. “Cross-context behavioral advertising” means the targeting of advertising to a consumer based on the consumer’s personal information obtained from the consumer’s activity across businesses, distinctly branded websites, applications, or services.
- M. “Delete” and “deleted” means to remove or destroy personal information by permanently and completely erasing the personal information on existing systems such that it is not maintained in human or machine-readable form and cannot be retrieved or utilized in such form;
- N. “De-identified information” means information that cannot reasonably identify, relate to, describe, be capable of being associated with, or be linked, directly or indirectly, to a particular consumer, provided that a licensee that uses de-identified information meets all the following:
- (1) Has implemented technical safeguards designed to prohibit re-identification of the consumer to whom the information may pertain.
 - (2) Has implemented reasonable business policies that specifically prohibit re-identification of the information.
 - (3) Has implemented business processes designed to prevent inadvertent release of de-identified information.
 - (4) Makes no attempt to re-identify the information.
- O. “Financial product or service” means a product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under Section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)). Financial service includes a financial institution’s evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

Commented [KJ8]: This definition is similar to that in Model 672.

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- P. "Genetic information" means:
- (1) Subject to paragraphs (2) and (3) of this definition, with respect to an individual, information about:
 - (a) The individual's genetic tests;
 - (b) The genetic tests of family members of the individual;
 - (c) The manifestation of a disease or disorder in family members of such individual; or
 - (d) Any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by the individual or any family member of the individual.
 - 2) Any reference in this subchapter to genetic information concerning an individual or family member of an individual shall include the genetic information of:
 - (a) A fetus carried by the individual or family member who is a pregnant woman; and
 - (b) Any embryo legally held by an individual or family member utilizing an assisted reproductive technology.
 - (3) Genetic information excludes information about the sex or age of any individual.

Q. "Health care" means:

- (1) Preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, services, procedures, tests, or counseling that:
 - (a) Relates to the physical, mental, or behavioral condition of an individual; or
 - (b) Affects the structure or function of the human body or any part of the human body, including the banking of blood, sperm, organs, or any other tissue; or
- (2) Prescribing, dispensing, or furnishing drugs or biologicals, or medical devices, or health care equipment and supplies to an individual.

Commented [KJ9]: Taken from Model 672

R. "Health care provider" means a health care practitioner licensed, accredited, or certified to perform specified health care consistent with state law, or any health care facility.

Commented [KJ10]: This definition comes from Model 672

S. "Health information" means any consumer information or data except age or gender, created by or derived from a health care provider or the consumer that relates to:

Commented [KJ11]: This definition comes from Model 672

- (1) The past, present, or future (i) physical, (ii) mental, or (iii) behavioral health, or condition of an individual;
- (2) The genetic information of an individual;
- (3) The provision of health care to an individual; or
- (4) Payment for the provision of health care to an individual.

T. "Institutional source" means any person or governmental entity that provides information about a consumer to a licensee other than:

Commented [KJ12]: Model 670

- (1) A producer;

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- (2) A consumer who is the subject of the information; or
- (3) An individual acting in a personal capacity rather than in a business or professional capacity.

U. "Insurance support organization" means:

Commented [KJ13]: Model 670

- (1) Any person who regularly engages in the collection, processing, retention, or sharing of consumers' information for the primary purpose of providing insurers or producers information in connection with insurance transactions, including:
 - (a) The furnishing of consumer reports or investigative consumer reports to licensees or other insurance support organizations for use in connection with insurance transactions;
 - (b) The collection of personal information from licensees or other insurance support organizations to detect or prevent fraud, material misrepresentation, or material nondisclosure in connection with insurance transactions;
 - (c) The collection of any personal information in connection with an insurance transaction that may have application in transactions or activities other than insurance transactions.
- (2) Notwithstanding Subdivision (1) of this subsection, producers, government institutions, insurers, health care providers shall not be considered "insurance support organizations" for purposes of this Act.

V. "Insurance transaction" means any transaction or service by or on behalf of a licensee and its affiliates related to:

Commented [KJ14]: Model 672 uses "Insurance product or service" means any product or service that is offered by a licensee pursuant to the insurance laws of this state.
(2) Insurance service includes a licensee's evaluation, brokerage or distribution of information that the licensee collects in connection with a request or an application from a consumer for a insurance product or service.

- (1) The underwriting or the determination of a consumer's eligibility for or the amount of insurance coverage, rate, benefit, payment, or claim settlement;
- (2) Licensees or third-party service providers performing services including maintaining or servicing accounts, providing customer service, processing requests or transactions, verifying customer information, processing payments, providing financing, providing analytic services, providing storage, providing similar services or any similar services;
- (3) Provision of "value-added services or benefits" in connection with an insurance transaction;
- (4) Any mathematical-based decision that involves personal information;
- (5) Any actuarial studies related to rating, risk management, or exempt research activities conducted by or for the benefit of the licensee using consumers' personal information;
- (6) Offering, selling, or servicing of a financial product or service of the licensee or its affiliates;
- (7) The short-term, transient use, including, but not limited to, non-personalized advertising shown as part of a consumer's current interaction with the licensee, provided that the consumer's personal information is not disclosed to another third party and is not used to build a profile about the consumer or otherwise alter the consumer's experience outside the current interaction with the licensee;

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- (8) Enabling solely internal uses that are compatible with the context in which the consumer provided the information; or

W. "Insurer" means

- (1) Any person or entity required to be licensed by the commissioner to assume risk, or otherwise authorized under the laws of the state to assume risk, including any corporation, association, partnership, nonprofit hospital, medical or health care service organization, health maintenance organization, reciprocal exchange, inter insurer, Lloyd's insurer, fraternal benefit society, or multiple-employer welfare arrangement;
- (2) A self-funded plan subject to state regulation.
- (3) A preferred provider organization administrator.
- (4) "Insurer" does not include producers, insurance support organizations, foreign-domiciled risk retention groups, or foreign-domiciled reinsurers.

- X. "Investigative consumer report" means a consumer report or portion of a consumer report in which information about an individual's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with the individual's neighbors, friends, associates, acquaintances, or others who may have knowledge concerning such items of information.

Commented [KJ15]: Definition from Model 670

- Y. "Joint marketing agreement" means a written contract between a licensee and one or more financial institutions to market the licensee's own products or services or for the licensee and one or more financial institutions jointly to offer, endorse, or sponsor a financial product or service.

- Z. "Licensee" means any person licensed, authorized to operate, or registered, or required to be licensed, authorized, or registered pursuant to the insurance laws of this state but shall not include a purchasing group or a risk retention group chartered and licensed in a state other than this state or a licensee that is acting as an assuming insurer that is domiciled in another state or jurisdiction. "Licensee" shall also include an unauthorized insurer that accepts business placed through a licensed excess lines broker in this state, but only regarding the excess lines placements placed pursuant to Section [insert section] of the state's laws.

Commented [KJ16]: This definition was taken from Model 668 but is very similar to the definition in Model 672

- AA. "Non-admitted insurer" means an insurer that has not been granted a certificate of authority or is not otherwise authorized by the commissioner to transact the business of insurance in this state.

Commented [KJ17]: Model 672

Commented [KJ18]: Definition from Model 670-added "or is not otherwise authorized"

Drafting Note: Each state must make sure this definition is consistent with its surplus lines laws.

BB. "Nonaffiliated third party" means:

- (1) Any person except:
- (a) An affiliate of a licensee; or
- (b) A person employed jointly by a licensee and any company that is not an affiliate of the licensee; however, a nonaffiliated third party includes the other company that jointly employs the person.
- (2) Nonaffiliated third party includes any person that is an affiliate solely by virtue of the direct or indirect ownership or control of the person by the licensee or its affiliate in conducting merchant banking or investment banking activities of the type described in Section 4(k)(4)(H) or insurance company investment activities of the type described in Section 4(k)(4)(I) of the federal Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H) and (I)).

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CC. "Person" means any individual, corporation, association, partnership, or other legal entity.

DD. "Personal information" means any individually identifiable information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked to a consumer that is by or on behalf of a licensee and is:

Commented [KJ19]: From Model 670

(1) Any of the following:

(a) Account balance information and payment history;

Commented [KJ20]: The information in F(1) (b)-(g) was taken directly from Model 672

(b) The fact that an individual is or has been one of the licensee's customers or has obtained an insurance product or service from the licensee;

(c) Any information about the licensee's consumer if it is disclosed in a manner that indicates that the individual is or has been the licensee's consumer, unless such disclosure is required by federal or state law;

(d) Any information that a consumer provides to a licensee or that the licensee or its agent otherwise obtains in connection with collecting on a loan or servicing a loan;

(e) Any information the licensee collects through an information-collecting device from a web server, such as internet cookies, if such information can reasonably identify or link back to an individual;

(f) Information from a consumer report;

(g) Information that would enable judgments, directly or indirectly, to be made about a consumer's character, habits, avocations, finances, occupation, general reputation, credit, health, or any other personal characteristics;

Commented [KJ21]: The provision in F.(1)(h) was taken from Model 670

(h) Any list, description or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personal information that is not publicly available.

(i) "Sensitive personal information";

(j) "Health information;"

(k) Consumers' demographic data, in any form or medium that can reasonably be used to identify an individual; or

(l) Collections or sets of individually identifiable information pertaining to more than one consumer.

(2) "Personal information" does not include "de-identified information," "aggregate consumer information," or "publicly available" information.

EE. "Precise geolocation" means any data that is used or intended to be used to locate a consumer within a geographic area that is equal to or less than the area of a circle with a radius of 1,750 feet.

FF. "Privileged information" means any personal information that:

Commented [KJ22]: Model 670

(1) Relates to a claim for insurance benefits or a civil or criminal proceeding involving a consumer; and

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- (2) Is collected in connection with or in reasonable anticipation of a claim for insurance benefits or civil or criminal proceeding involving a consumer.

Drafting Note: The phrase "in reasonable anticipation of a claim" contemplates that the insurer has actual knowledge of a loss but has not received formal notice of the claim.

GG. "Process" or "processing" means any operation or set of operations performed by a licensee, whether by manual or automated means, on the personal information of any consumer, including the collection, use, sharing, storage, disclosure, analysis, deletion, retention, or modification of personal information.

HH. "Producer" means [refer here to every appropriate statutory category of producer, including brokers, required to be licensed to do business in the state].

Drafting Note: This is necessary because many states have various terms for producers, or for producers of certain types of insurers.]

II. "Publicly available" means any information about a consumer that a licensee has a reasonable basis to believe is lawfully made available from:

- (1) Federal, state, or local government records;
- (2) Widely distributed media; or
- (3) Disclosures to the general public that are required to be made by federal, state or local law.

Drafting Note: Examples of "a reasonable basis" are: (1) A licensee has a reasonable basis to believe that mortgage information is lawfully made available to the general public if the licensee has determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded; or (2) A licensee has a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if the licensee has located the telephone number online or the consumer has informed you that the telephone number is not unlisted.

JJ. "Research activities" means systemic investigation, including development, testing, and evaluation, designed to develop or contribute to generalizable knowledge where there is sharing of personal information with nonaffiliated third parties. "Research activities" does not mean any of the following exempt research activities that are considered part of an insurance transaction:

- (1) Relating to rating or risk management;
- (2) For actuarial studies;
- (3) For internal (i) analytics or (ii) customer experience purposes;
- (4) For product development;
- (5) To an insurance support organization; or
- (6) Subject to a research university Internal Review Board or Privacy Board approval which requires use of a process which follows confidentiality best practices and where a contract agreeing to such protection has been executed.

KK. "Residual market mechanism" means an association, organization or other entity defined or described in Sections(s) [insert those sections of the state insurance code authorizing the establishment of a FAIR Plan, assigned risk plan, reinsurance facility, joint underwriting association, etc.]

Commented [KJ23]: This definition comes from the IDSA (Model 668) and Model 672

Commented [KJ24]: Examples take from Modell 672

Commented [KJ25]: Model 670 language

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Drafting Note: Those states having a reinsurance facility may want to exclude it from this definition if the state's policy is not to disclose to insureds the fact that they have been reinsured in the facility.

- LL. "Retain" "retention" or "retaining" means storing or archiving personal information that is in the continuous possession, use, or control of licensee or a third-party service provider.
- MM. "Sell" or "selling" means the exchange of personal information to a third party for monetary or other valuable consideration.
- NN. "Sensitive personal information" means personal information including a consumer's (i) social security, driver's license, state identification card, or passport number; (ii) account log-in or financial account, debit card, or credit card numbers in combination with any required security or access code, password, or credentials allowing access to an account; (iii) precise geolocations; (iv) racial or ethnic origin, religious, or philosophical beliefs; (v) union membership; (vi) personal mail, personal email, and personal text messages content, unless the person in possession is the intended recipient of the communication; (vii) genetic information; (viii) a consumer's sex life or sexual orientation; (ix) citizenship or immigration status; (x) health information; or (xi) biometric information.

Drafting Note: Those states that have enacted a consumer data protection act may want to amend this definition to match that of the state's law.

- OO. "Share," "shared," or "sharing" means (i) disclosing, (ii) disseminating, (iii) making available, (iv) releasing, (v) renting, (vi) transferring, (vii) selling, or (viii) otherwise communicating by any means, a consumer's personal information whether or not for monetary or other valuable consideration, for providing insurance transactions or additional activities for the benefit of any party.
- PP. "Termination of insurance coverage" or "termination of an insurance policy" means either a cancellation or nonrenewal of an insurance policy, in whole or in part, for any reason other than failing to pay a premium as required by the policy.
- QQ. "Third-party service provider" means a person that contracts with a licensee that provides services to the licensee, and processes, shares, or otherwise is permitted access to personal information through its provisions of services to the licensee. "Third-party service provider" does not include a person with whom a licensee does not have a continuing business relationship and does not have a contract but may have to share personal or publicly available information in connection with an insurance transaction. Third-party service providers do not include (i) government entities; (ii) licensees; (iii) affiliates of licensees; and (iv) financial entities with whom licensees have joint marketing agreements.
- RR. "Value-added service or benefit" means a product or service that:
 - (1) Relates to insurance coverage applied for or purchased by a consumer; and
 - (2) Is primarily designed to satisfy one or more of the following:
 - (a) Provide loss mitigation or loss control services or products designed to mitigate risks related to the insurance requested by or offered to a consumer;
 - (b) Reduce claim costs or claim settlement costs;
 - (c) Provide education about liability risks or risk of loss to persons or property;

Commented [KJ26]: Model 670

Commented [KJ27]: From Model 668 but modified for this model

Commented [KJ28]: This definition was taken primarily from Model 880 (rebating)

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- (d) Monitor or assess risk, identify sources of risk, or develop strategies for eliminating or reducing risk;
- (e) Enhance the health of the consumer, including care coordination;
- (f) Enhance financial wellness of the consumer through education or financial planning services;
- (g) Provide post-loss services;
- (h) Incentivize behavioral changes to improve the health or reduce the risk of death or disability of a customer (defined for purposes of this subsection as policyholder, potential policyholder, certificate holder, potential certificate holder, insured, potential insured or applicant); or
- (i) Assist in the administration of employee or retiree benefit insurance coverage.

Drafting Note: Examples of “value-added services and benefits” are services or benefits related to (i) health and wellness, (ii) telematic monitoring, or (iii) property replacement services.

- SS. “Verifiable request” means a request that the licensee can reasonably verify, using commercially reasonable methods, is made by the consumer whose personal information is the subject of the request.
- TT. “Written consent” means any method of capturing a consumer’s consent that is capable of being recorded or maintained for as long as the licensee or third-party service provider has a business relationship with a consumer; or the licensee or third-party service provider is required to maintain the information as provided in this Act.

ARTICLE II. OBLIGATIONS HANDLING CONSUMER’S PERSONAL INFORMATION

Section 3. Oversight of Third-Party Service Provider Arrangements

- A. A licensee shall exercise due diligence in selecting its third-party service providers.
- B. No licensee shall (i) engage a third-party service provider to collect, process, or retain, or share any consumer’s personal information, or (ii) share any consumer’s personal information with any third-party service provider for any purpose unless there is a written contract between the licensee and third-party service provider that requires the third-party service provider to abide by the provisions of this Act and the licensee’s own privacy protection practices in the collection, processing, retention, or sharing of any consumer’s personal information.
- C. Notwithstanding Subsection 3B, a licensee may share a consumer’s publicly available information with a third-party service provider with whom the licensee has no written contract in connection with a claim only to the extent necessary to provide the service requested by the consumer.
- D. A licensee shall require all the licensee’s third-party service providers to implement appropriate measures to comply with the provisions of this Act in relation to consumers’ personal information that is collected, processed, or retained by, or shared with or otherwise made available to the third-party service providers in connection with (i) any insurance transactions or (ii) any additional activities.
- E. No licensee shall permit the third-party service provider to collect, process, retain, or share any consumer’s personal information in any manner:
 - (1) Not permitted by this Act; and

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(2) Not consistent with the licensee's own privacy protection practices.

F. A contract between a licensee and third-party service provider shall require that no third-party service provider shall further share or process a consumer's personal information other than as specified in the contract with the licensee.

G. ~~Contracts between a licensee and any third-party service providers shall require either entity to honor the consumer's directive, whether it is an opt-in or an opt-out, and to refrain from collecting, processing, retaining, or sharing the consumer's personal information in a manner inconsistent with the directive of the consumer.~~

Section 4. Data Minimization

A. No licensee shall collect, process, retain, or share a consumer's personal information unless:

- (1) The collection, processing, retention, or sharing is in compliance with this Act;
- (2) The licensee provides the applicable notices required by this Act;
- (3) The collection, processing, retention, or sharing of the consumer's personal information is consistent with and complies with the most recent privacy protection practices notice provided to the consumer by the licensee; and
- (4) The collection, processing, retention, or sharing of the consumer's personal information is reasonably necessary and proportionate to achieve the purposes related to the requested insurance transaction or additional activities and not further processed, retained, or shared in a manner that is incompatible with those purposes;

B. No licensee shall permit any of its officers, employees, or agents to collect, process, retain, or share any consumer's personal information, except as relevant and necessary as part of that person's assigned duties.

Section 5. Sharing Limitations

A. Consistent with the requirements of this Act, a licensee may collect, process, retain, or share a consumer's personal information in connection with an insurance transaction as necessary:

- (1) For the servicing of any insurance application, policy, contract, or certificate for a consumer, third-party claimant, or beneficiary;
- (2) For compliance with a legal obligation to which the licensee is subject;
- (3) For compliance with a request or directive from a law enforcement or insurance regulatory authority;
- (4) For compliance with a warrant, subpoena, discovery request, judicial order, or other administrative, criminal, or civil legal process, or any other legal requirement that is binding upon the licensee collecting, processing, retaining, or sharing the personal information;
- (5) For a lienholder, mortgagee, assignee, lessor, or other person shown on the records of an insurer or producer as having a legal or beneficial interest in a policy of insurance, to protect that interest provided that:
 - (a) No health information is shared unless the sharing would otherwise be permitted by this section, and

Commented [KJ29]: Most of these requirements were taken from Model 670 Section 13 and Model 672

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- (b) The information shared is limited to that which is reasonably necessary to permit such person to protect its interests in such policy;
- (6) To enable a licensee to detect or prevent criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with an insurance transaction;
- (7) To enable a health care provider to:
 - (a) Verify the consumer's insurance coverage or benefits;
 - (b) Inform a consumer of health information of which the consumer may not be aware; or
 - (c) Conduct an operations or services audit to verify the individuals treated by the health care provider; provided only such information is shared as is reasonably necessary to accomplish the audit;
- (8) To permit a party or a representative of a party to a proposed or consummated sale, transfer, merger or consolidation of all or part of the business of the licensee to review the information necessary for such transaction, provided:
 - (a) Prior to the consummation of the sale, transfer, merger, or consolidation only such information is shared as is reasonably necessary to enable the recipient to make business decisions about the purchase, transfer, merger, or consolidation; and
 - (b) The recipient agrees not to share the acquired personal information until the recipient has complied with the provisions of this Act;
- (9) For an affiliate whose only use of the information is to perform an audit of a licensee provided the affiliate agrees not to process personal information for any other purpose or to share the personal information.
- (10) To permit a group policyholder to report claims experience or conduct an audit of the operations or services of a licensee, provided the information shared is reasonably necessary for the group policyholder to make the report or conduct the audit and is not otherwise shared;
- (11) To permit (i) a professional peer review organization to review the service or conduct of a healthcare provider provided the personal information is not otherwise processed or shared or (ii) to permit arbitration entities to conduct an arbitration related to a consumer's claim;
- (12) To provide information to a consumer regarding the status of an insurance transaction;
- (13) To permit a governmental authority to determine the consumer's eligibility for health care benefits for which the governmental authority may be liable;
- (14) Pursuant to a joint marketing agreement, provided a licensee shall not, directly or through an affiliate, share a consumer's personal or publicly available information with any nonaffiliated third party for marketing to the consumer unless.
 - (a) The consumer is first provided a clear and conspicuous means to opt-out of such sharing;
 - (b) The consumer has been given a reasonable time to opt-out of the sharing; and

Commented [KJ30]: More restrictive than Model 670

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- (c) The authorization complies with Section 6 of this Act.
- (15) For the purpose of marketing an insurance or financial product or service, provided the consumer has been given the opportunity to opt-out of such marketing as follows:
 - (a) The consumer is first provided a clear and conspicuous means to opt-out of such sharing;
 - (b) The consumer has been given a reasonable time to opt-out of the sharing; and
 - (c) The authorization complies with Section 6 of this Act.
- B. No licensee shall share any health information or privileged information about a consumer with a nonaffiliated third-party:
 - (1) Without first providing the consumer a clear and conspicuous notice that such information will not be shared unless the consumer opts-in to such sharing;
 - (2) The consumer has been given a reasonable time to opt-in to the sharing; and
 - (3) The authorization complies with Section 6 of this Act.
- C. No licensee may collect, process, or share a consumer's personal information in connection with any additional activities without first providing the consumer a clear and conspicuous notice that such information will not be collected, processed, or shared unless the consumer opts-in to such collection and use of personal information. Once consent has been obtained, any person may conduct additional activities as follows:
 - (1) For non-exempt research activities:
 - (a) No consumer may be identified in any research study or report;
 - (b) All materials allowing the consumer to be identified are returned to the licensee that initiated the activity; and
 - (c) A consumer's personal information is deleted as soon as the information is no longer needed for the specific activity.
 - (2) For all additional activities:
 - (a) The person conducting the activity agrees not to further share any consumer's personal information and only use such information for the purposes for which it was shared; and
 - (b) A consumer's sensitive personal information may not be shared or otherwise provided to any person for use in connection with any additional activity involving marketing a non-insurance or non-financial product or service.
- D. A licensee may collect, process, retain, or share consumers' de-identified personal information as necessary in connection with insurance transactions and additional activities.
- E. Notwithstanding any other provision of law, no licensee or its third-party service providers may sell consumers' personal information for any type of consideration. This subsection does not prohibit the following activities unless the licensee or third-party service provider receives money or marketable property in connection with these activities:

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- (1) The disclosure is to a third party for the purpose of or in support of providing an insurance or financial product or service requested by the consumer.
 - (2) A licensee provides or receives information to an insurance support organization, statistical agent, or reinsurer;
 - (3) A licensee provides information to an affiliate or to a financial institution with which the licensee performs joint marketing;
 - (4) The business transfers to a third party the personal information as an asset that is part of a merger, acquisition, bankruptcy, or other transaction, or a proposed merger, acquisition, bankruptcy, or other transaction in which the party assumes control of all or part of the licensee's assets; or
 - (5) A consumer uses or directs the licensee to (i) disclose personal information; or (ii) interact with one or more licensees or other financial institutions.
- F. This section shall not prohibit the collection, processing, retention, or sharing of consumers' personal information with a licensee's affiliates to the extent preempted by subdivisions (b)(1)(H) or (b)(2) of Section 625 of the Fair Credit Reporting Act.

Section 6. Consumers' Consent

- A. Where the consumer's consent for the collection, processing, or sharing of a consumer's personal or privileged information by a licensee is required by this Act, a licensee shall provide a reasonable means to obtain written consent and maintain a written record of such consent.
- (1) No licensee shall collect, process, or share personal information in a manner inconsistent with the choices of a consumer pursuant to this Act or the purposes authorized by this Act.
 - (2) A licensee may provide the consent form together with or on the same written or electronic form as the most recent of the initial or updated notice the licensee provides or in a separate communication with the consumer.
 - (2) If two (2) or more consumers jointly obtain an insurance or financial product or service from a licensee, the licensee may provide a single consent notice. Each of the joint consumers may consent or refuse to consent.
 - (3) A licensee does not provide a reasonable means of obtaining express written consent if consent is required or the consumer is instructed that consent is required.
 - (4) A licensee shall comply with a consumer's consent choice as soon as reasonably practicable after the licensee receives it.
 - (5) Any consumer who has given consent for the collection, processing, and sharing of personal information in connection with additional activities, may revoke such consent in writing. A consumer may exercise the right to consent or to withdraw consent at any time with notice to the licensee.
 - (6)
 - (a) A consumer's consent choice under this Act is effective until the consumer revokes it in writing.
 - (b) If the consumer subsequently establishes a new relationship with the licensee, the consent choices that applied to the former relationship do not apply to the new

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relationship. A new relationship occurs when the consumer who previously ended all business relationships with the licensee re-establishes a business relationship more than thirty (30) days after the previous business relationship ended.

- (7) If the consumer has made conflicting choices pursuant to this section, the consumer's most recent written choice for the specific transaction or activity shall take precedence.
- B. When a consumer's consent is required, no person shall use an authorization seeking a consumer's consent, whether opt-out or opt-in, to the collection, processing, or sharing of a consumer's personal or privileged information unless the authorization meets following requirements.
- (1) Is written in plain language;
 - (2) Is dated and contains an expiration date for the consent;
 - (3) Specifies the persons authorized to collect, process, or share the consumer's personal or privileged information consistent with the provisions of this Act;
 - (4) Specifies the types of personal or privileged information authorized to be collected, processed, or shared;
 - (5) Specifies the specific purposes for which the consumer's personal or privileged information is authorized to be collected, processed, or shared as permitted in Article II of this Act;
 - (6) Names the licensee whom the consumer is authorizing to collect, process, or share the consumer's personal or privileged information; and
 - (7) Advises the consumer that they are entitled to receive a copy of the authorization.
- C. When requesting a consumer's consent to the collection, processing, or sharing of the consumer's personal information for additional activities, the written authorization shall:
- (1) Explain, in plain language, that consent is being sought to share the consumer's personal information for research activities by a person other than the licensee, or if the personal information is to be used for an additional activity, clearly explain the nature of that activity;
 - (2) Permit the consumer to separately provide consent for such use of the consumer's personal information for any one or more additional activities;
 - (3) Explain, in plain language, that the consumer is not required to provide consent to use the consumer's personal information for any one or all these purposes, and that the consumer will not be subject to retaliation or discrimination as outlined in Section 15, based on the consumer's choice; and
 - (4) State that use of a consumer's sensitive personal information for marketing purposes is prohibited.
 - (5) The provisions of Subsection B of this section do not apply to consumers' personal or privileged information that has been de-identified in accordance with this Act.

Section 7. Retention and Deletion of Consumers' Information

- A. Once the initial consumer privacy protection practices notice has been provided to the consumer as set forth in this Act, a licensee may retain a consumer's personal information as necessary for:

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- (1) Performance of any insurance transaction with a consumer who is in an ongoing business relationship with the licensee;
 - (2) Compliance with a legal obligation to which the licensee is subject including but not limited to any state, federal, or international law or statute of limitation periods applicable to the licensee;
 - (3) Compliance with a request or directive from a law enforcement agency or state, federal, or international regulatory authorities a warrant, subpoena, discovery request, judicial order, or other administrative, criminal, or civil legal process, or another legal requirement that is binding upon a licensee;
 - (4) Protection of a legal or beneficial interest in a policy of insurance, with respect to a lienholder, mortgagee, assignee, lessor, or other person shown on the records of an insurer or producer as having a legal or beneficial interest in the policy; or
 - (5) Exempt research activities (i) related to insurance transactions involving consumers' personal information, or (ii) for rating or risk management purposes for or on behalf of the licensee in connection with an insurance product or service.
- B. Not less than annually, a licensee shall review its retention policy and all consumers' personal information in its possession and determine whether the purposes for which such personal information was collected or processed remain.
- C. Once the provisions of Subsection A of this section are no longer applicable and the licensee has made the determination that consumers' personal information is no longer needed under Subsection B of this section:
- (1) Such licensee shall completely delete all the consumer's personal information within 90 days after making this determination.
 - (2) Subject to the approval of the commissioner, any licensee that retains consumers' personal information on a system or systems where targeted disposal is not feasible, shall de-identify all such information to the extent possible.
 - (a) If such information cannot be de-identified or deleted, the licensee shall:
 - (i) Develop a written data minimization plan that provides for transitioning from such system or systems within a reasonable time frame and the projected date for such transition; and
 - (ii) Annually, report in detail the licensee's progress for such transition to its domestic regulator who shall determine the reasonableness of such plan and whether the licensee is making the appropriate progress in implementing such plan.
 - (b) A licensee has made a reasonable effort to transition from legacy systems if the licensee's transition plan is designed to be completed within 10 years after the effective date of the Act.
 - (3) The commissioner has discretion to grant exceptions for good cause shown.
 - (4) Any third-party service provider in possession of the consumer's personal information shall delete such information at the earlier of:

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- (a) The date the contract the licensee has with the third-party service provider ends;
or
 - (b) The date specified in such contract.
- (5) If a consumer requests a copy of the consumer's personal information that has been deleted or de-identified as provided in this Act, the licensee shall inform the consumer that the licensee and any of the licensee's third-party service providers in possession of the consumer's personal information no longer retain any of the consumer's personal information or such information has been de-identified;
- (6) A licensee shall develop policies and procedures for compliance with this section and be able to demonstrate compliance with those policies and procedures.

ARTICLE III. NOTICES AND DELIVERY OF NOTICES

Section 8. Notice of Consumer Privacy Protection Practices

- A. A licensee that collects, processes, retains, or shares a consumer's personal or publicly available information in connection with an insurance transaction, by whatever means used, shall provide the consumer a clear and conspicuous notices that accurately reflect the licensee's privacy protection practices. The following exceptions apply to this requirement:
- (1) No notice of privacy protection practices is required of a reinsurer or in connection with the provision of reinsurance.
 - (2) An employee, agent, representative or designee of a licensee, who is also a licensee, is not required to develop or provide a notice of consumer privacy protection practices to the extent that the collection, processing, retention, and sharing of personal information by the employee, agent, representative or designee of such licensee is consistent with the consumer privacy protection practices of such licensee and the licensee provides the notice required in this section.
 - (3) A licensee that does not share and does not wish to reserve the right to share, personal information of consumers except (i) in connection with an insurance transaction or (ii) as authorized under Section 5 may satisfy the notice requirements under this section by providing the initial privacy protection practices notice as set forth in Subsection 8B.
- B. (1) A licensee shall provide an initial notice of privacy protection practices to a consumer at the time the licensee, directly or through a third-party service provider, first collects, processes, or shares the consumer's personal information in connection with an insurance transaction or additional activity. For purposes of this subsection, consumer includes a third-party claimant or a beneficiary in connection with a claim under an insurance policy.
- (2) For any consumer with whom a licensee has an ongoing business relationship and whose personal or publicly available information has been collected, processed, retained, or shared prior to the effective date of this Act in this State, a notice meeting the requirements of this Act must be provided upon renewal or any reinstatement of the consumer's policy, or upon any other activity related to an insurance transaction if the consumer has not already been provided a notice meeting the requirements of this Act.
- C. A licensee shall provide an updated privacy protection practices notice to each consumer with whom the licensee has an ongoing business relationship when the privacy protection practices of the licensee changes.

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- (1) The licensee shall conspicuously identify any changes in its privacy protection practices that triggered the requirement for an updated notice.
 - (2) An updated notice shall also be provided to any third-party claimant or beneficiary if there are changes in the licensee's privacy protection practices during the course of any claim in which such claimant or beneficiary is involved.
- D. Each version of a licensee's privacy protection practices notice shall contain an effective date that must remain on the notice until the licensee revises the notice due to a change in its privacy protection practices. The licensee shall place a revised date on its updated notice that will remain until the notice is revised in response to additional changes in the licensee's privacy protection practices.
- E. A licensee shall honor all representations made to consumers in its most current notice, unless otherwise compelled by law, in which case the licensee shall promptly send a notice to all affected consumers explaining the changes in the licensee's information practices. If the licensee's information practices change, the licensee remains bound by the terms of the most recent notice it has given a consumer, until a revised notice has been given.

Section 9. Content of Consumer Privacy Protection Practices Notices

- A. Any notice required by Section 8 of this Act shall state in writing all the following:
- (1) Whether personal information has been or may be collected from any sources other than the consumer or consumers proposed for coverage, and whether such information is collected by the licensee or by third-party service providers;
 - (2) The categories of consumer's personal information that the licensee or any of its third-party service providers has or may collect, process, retain, or share;
 - (3) The purposes for which the licensee collects, processes, retains, or shares personal information;
 - (4) The sources that have been used or may be used by the licensee to collect, process, retain, or share the consumer's personal information;
 - (5) That the consumer may, upon request, annually obtain a list of any persons with which the licensee or any of the licensee's third-party service providers has shared the consumer's personal information within the current calendar year and, at a minimum, the three previous calendar years.
 - (6) A description of the right to opt-out of sharing of personal information for marketing or an insurance or financial product or service, including marketing pursuant to a joint marketing agreement;
 - (7) A description of the requirements set forth in Section 5C if the licensee shares a consumer's personal information in connection with additional activities including:
 - (a) The requirement that the licensee obtain the consumer's express written consent for the collection, processing, retention, or sharing of a consumer's personal information for research activities not conducted by or on behalf of the licensee unless such information has been de-identified;
 - (b) The requirement for the licensee to obtain the consumer's express written consent for the collection, processing, retention, or sharing of a consumer's personal information for marketing a non-insurance or non-financial product or service.

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- (c) The requirement that the licensee obtain the consumer's express written consent for the collection, processing, retention, or sharing of a consumer's personal information for any other additional activity; and
 - (d) A description of the process by which a consumer may opt-out of such collection, processing, or sharing.
 - (8) A statement of the rights of the consumer to access, correct or amend factually incorrect personal publicly available information about the consumer in the possession of the licensee or its third-party service providers under Article IV of this Act, and the instructions for exercising such rights;
 - (9) A statement of the rights of non-retaliation established under Section 15 of this Act;
 - (10) A summary of the reasons the licensee or any third-party service provider retains personal information and the approximate period of retention or if that is not reasonably possible, the criteria used to determine the timeframe it will be retained; and
 - (11) A statement that no licensee or third-party service provider may sell for valuable consideration a consumer's personal information.
 - (12) If the licensee or its third-party service providers processes or shares personal, privileged, or publicly available information with an entity located outside the jurisdiction of the United States and its territories, the notice must state that such information is processed or shared in this manner. This requirement does not apply if the only processing or sharing is:
 - (a) In connection with a reinsurance transaction; or
 - (b) With an affiliate of the licensee.
- B. If the licensee uses a consumer's personal information to engage in additional activities, in addition to the provisions in Subsection A of this section, the following information shall be included in the notice:
 - (1) A statement that the consumer may, but is not required to, consent to the collection, processing, sharing, and retention of the consumer's personal information for any additional activities in which the licensee or its third-party service providers engage;
 - (2) A description of the reasonable means by which the consumer may express written consent;
 - (3) That the consumer may consent to any one or more of the additional activities or refuse to consent to any one or more of the additional activities;
 - (4) That once consent has been given for an additional activity, the consumer may revoke consent at any time;
 - (5) That once consent for using a consumer's personal information for an additional activity is withdrawn, the licensee will no longer engage in such additional activity using the consumer's personal information; and
 - (6) That once consent to an additional activity has been revoked, any of the consumer's personal information in the possession of the licensee used solely for that additional activity will be destroyed and deleted as set forth in Section 6 of this Act.

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- C. The obligations imposed by this section upon a licensee may be satisfied by another licensee or third-party service provider authorized to act on its behalf.

Section 10. Notice of Consumer Privacy Rights

- A. A licensee shall provide a Notice of Consumer Privacy Rights to each consumer with whom the licensee has an ongoing business relationship.
- B. The notice required by this section shall be clear and conspicuous and inform the consumer that:
 - (a) The consumer has the right to access personal information about the consumer;
 - (b) The consumer has the right to correct or amend inaccurate or incomplete information about the consumer;
 - (c) The consumer has the right to opt-out of use of personal information for additional activities;
 - (d) The consumer must opt-in to use of sensitive personal information for additional activities;
 - (e) The consumer has the right to request additional information about the licensee's privacy practices, including identification of all persons who have received the consumer's personal information within the last three years;
 - (f) A licensee may not retaliate against a consumer, or require a consumer to incur unreasonable expenses, in connection with exercise of rights under this Act.
- C. The notice required by this section shall be provided to the consumer at least every 12 months.
- D. The notice required by this section shall be in addition to other notices required by this Act.
- E. The notice required by this section may be combined with other policy documents, provided that the notice content required by this section remains clear and conspicuous and is readily distinguishable from other information being provided to the consumer.

Section 11. Delivery of Notices Required by This Act

- A. A licensee shall provide any notices required by this Act so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically pursuant to [State's UETA law].
- B. A licensee may reasonably expect that a consumer will receive actual notice if the licensee:
 - (1) Hand-delivers a printed copy of the notice to the consumer;
 - (2) Mails a printed copy of the notice to the address of record of the consumer separately, or in a policy, billing, or other written communication;
 - (3) For a consumer who has agreed to conduct transactions electronically, either (i) posts the notice on the licensee's website and requires the consumer to acknowledge receipt of the notice or (ii) emails the notice to the consumer and requests a delivery receipt.
- C. A licensee may not reasonably expect that a consumer will receive actual notice of its privacy protection practices if it:

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- (1) Only posts a sign in its office or generally publishes advertisements of its privacy protections practices; or
 - (2) Sends the notice electronically to a consumer who has not agreed to conduct business electronically with the licensee.
 - (3) Sends the notice electronically to a consumer who has agreed to conduct business electronically with the licensee, but the licensee does not obtain a delivery receipt.
 - (4) Provides a notice required by this Act solely by orally explaining the notice, either in person or over the telephone or other electronic device unless the licensee also sends a copy of the notice to the consumer.
 - (5) Does not provide the notices required by this Act so that the consumer is able to retain them or obtain them later in writing; either electronically or on paper.
- D. A licensee may reasonably expect that a consumer will receive actual notice of the licensee's privacy protection practices notice if:
- (1) If the consumer has agreed to conduct business electronically pursuant to the State's UETA and:
 - (a) The consumer uses the licensee's web site to access insurance products and services electronically and agrees to receive notices at the web site and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the web site; or
 - (b) The licensee emails the notice to the consumer's email address of record.
 - (2) The licensee mails the notice to the consumer's address of record.
 - (3) A licensee may not provide any notice required by this Act solely by orally explaining the notice, either in person or using an electronic means unless specifically requested to do so by the consumer.
 - (4) The licensee provides all notices required by this Act so that the consumer can retain and obtain the notices in writing.
- E. A licensee may provide a joint notice from the licensee and one or more of its affiliates if the notice accurately reflects the licensee's and the affiliate's privacy protection practices with respect to the consumer.
- F. If two (2) or more consumers jointly obtain a product or service in connection with an insurance transaction from a licensee, the licensee may satisfy the initial and updated notice requirements of Sections 8 and 9 of this Act, by providing one notice to those consumers jointly. The notice must reflect the consent of each consumer.
- G. If any consumer has requested that the licensee refrain from sending updated notices of privacy protection practices and the licensee's current privacy protection practices notice remains available to the consumer upon request, the licensee shall honor the consumer's request but must continue to send any jointly insured consumer any updated notices.
- H. In addition to the notice provided to consumers, a licensee shall prominently post and make available the notice required by this Act on its website, if a website is maintained by the licensee. The licensee shall design its website notice so that:

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- (a) The notice is clear and conspicuous;
- (b) The text or visual cues encourage scrolling down the page, if necessary, to view the entire notice and ensure that other elements on the web site (such as text, graphics, hyperlinks, or sound) do not distract attention from the notice, and
- (c) The notice is:
 - (i) Placed on a screen that consumers frequently access, such as a page on which transactions are conducted; or
 - (ii) Accessible using a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature, and relevance of the notice.

ARTICLE IV. CONSUMERS' RIGHTS

Section 12. Access to Personal and Publicly Available Information

- A. Any consumer may submit a verifiable request to a licensee for access to the consumer's personal and publicly available information in the possession of the licensee or its third-party service providers.
- B. The licensee or third-party service provider shall
 - (1) Acknowledge the request within five (5) business days; and
 - (2) Within forty-five (45) business days from the date such request is received:
 - (a) Disclose to the consumer the identity of those persons to whom the licensee or any third-party service provider has shared the consumer's personal information within the current year and, at a minimum, the three calendar years prior to the date the consumer's request is received.
 - (b) Provide the consumer with a summary of the consumer's personal information and the process for the consumer to request a copy of such information in the possession of the licensee.
 - (c) Identify the source of any consumer's personal information provided to the consumer pursuant to this subsection.
- C. Personal health information in the possession of licensee and requested under Subsection A of this section, together with the identity of the source of such information, shall be supplied either directly to the consumer or as designated by the consumer, to a health care provider who is licensed to provide medical care with respect to the condition to which the information relates. If the consumer elects for the licensee to disclose the information to a health care provider designated by the consumer, the licensee shall notify the consumer, at the time of the disclosure, that it has provided the information to the designated health care provider.
- D. The obligations imposed by this section upon a licensee may be satisfied by another licensee authorized to act on its behalf.
- E. The rights granted to consumers in this section shall extend to any individual to the extent personal information about the individual is collected processed, retained, or shared by a licensee or its third-party service provider in connection with an insurance transaction or an additional activity.

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- F. For purposes of this section, the term “third-party service provider” does not include “consumer reporting agency” except to the extent this section imposes more stringent requirements on a consumer reporting agency than other state or federal laws.
- G. The rights granted to any consumer by this subsection shall not extend to information about the consumer that is collected, processed, retained, or shared in connection with, or in reasonable anticipation of, a claim, or civil or criminal proceeding involving the consumer.

Section 13. Correction or Amendment of Personal or Publicly Available Information

- A. Any consumer may submit a verifiable request to a licensee to correct or amend any personal information about the consumer in the possession of the licensee or its third-party service providers.
- B. The licensee or third-party service provider shall
 - (1) Acknowledge the request within five (5) business days; and
 - (2) Within fifteen (15) business days from the date such request is received:
 - (a) Correct or amend the personal information in dispute; or
 - (b) If there is a specific legal basis for not correcting or amending the personal information in question, the licensee or its third-party service provider may refuse to make such correction or amendment. However, the licensee or third-party service provider refusing to take such action shall provide the following information to the consumer:
 - (i) Written notice of the refusal to make such correction or amendment;
 - (ii) The basis for the refusal to correct or amend the information;
 - (iii) The contact information for filing a complaint with the consumer’s state insurance regulator, and
 - (iv) The consumer’s right to file a written statement as provided in Subsection C of this section.
 - (3) No licensee or third-party service provider may refuse to correct or amend a consumer’s personal or publicly available information without good cause. Such cause shall be demonstrated to commissioner of the consumer’s state insurance department, upon request.
- C. If the licensee or third-party service provider corrects or amends personal information in accordance with Subsection A. (1) of this section, the licensee or third-party service provider shall so notify the consumer in writing and furnish the correction or amendment to:

- (1) Any person specifically designated by the consumer who may have, received such personal information within the preceding two (2) years;
- (2) Any insurance support organization whose primary source of personal information is insurers if the insurance support organization has systematically received such personal information from the insurer within the preceding five (5) years; provided, however, that the correction or amendment need not be furnished if the insurance support organization no longer maintains personal information about the consumer;

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- (3) Any third-party service provider that furnished such personal information.
- D. Whenever a consumer disagrees with the refusal of a licensee or third-party service provider to correct or amend personal information, the consumer shall be permitted to file with the licensee or third-party service provider a concise statement setting forth:
- (1) The relevant and factual information that demonstrates the errors in the information held by the licensee or third-party service provider; and
 - (2) The reasons why the consumer disagrees with the refusal of the licensee or third-party service provider to correct or amend the personal information.
- E. In the event a consumer files such statement described in Subsection C, the licensee or third-party service provider shall:
- (1) Include the statement with the disputed personal information and provide a copy of the consumer's statement to anyone reviewing the disputed personal information; and
 - (2) In any subsequent disclosure of the personal information that is the subject of disagreement, the licensee or third-party service provider clearly identify the matter or matters in dispute and include the consumer's statement with the personal or publicly available information being disclosed.
- F. The rights granted to a consumer by this subsection shall not extend to personal about the consumer that is collected processed, retained, or shared in connection with or in reasonable anticipation of a claim, or civil or criminal proceeding involving the consumer.
- G. For purposes of this section, the term "insurance support organization" does not include "consumer reporting agency" except to the extent that this section imposes more stringent requirements on a consumer reporting agency than other state or federal law.

Section 14. Adverse Underwriting Decisions

- A. In the event of an adverse underwriting decision the licensee responsible for the decision shall:
- (1) Either provide in writing to the consumer at the consumer's address of record:
 - (a) The specific reason or reasons for the adverse underwriting decision, or
 - (b) That upon written request the consumer may receive the specific reason or reasons for the adverse underwriting decision in writing; and
 - (2) Provide the consumer with a summary of the rights established under Subsection C of this Section and Sections 12 and 13 of this Act.

Drafting Note: Adverse underwriting decisions include: (i) an increase in the risk; (ii) increase in rates in geographical area; (iii) increase base rates; (iv) change in insurance credit score that causes an increase in the premium; (v) the consumer has lost a discount; (vi) an insured had a claim; or (vii) a lapse in coverage.

- B. Upon receipt of a written request within ninety (90) business days from the date of a notice of an adverse underwriting decision was sent to a consumer's address of record, the licensee within fifteen (15) business days from the date of receipt of such request shall furnish to the consumer the following information in writing to the consumer's address of record:

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- (1) The specific reason or reasons for the adverse insurance decision, if such information was not initially furnished pursuant to Subsection A(1);
- (2) The specific information that supports those reasons, provided:
 - (a) A licensee shall not be required to furnish specific privileged information if it has a reasonable suspicion, based upon specific information available for review by the commissioner, that the consumer has engaged in criminal activity, fraud, material misrepresentation or material nondisclosure, or
 - (b) Health information supplied by a health care provider shall be disclosed either directly to the consumer about whom the information relates or to a health care provider designated by the individual consumer and licensed to provide health care with respect to the condition to which the information relates,
- (3) A summary of the rights established under Subsection C and Sections 12 and 13 of this Act; and

Drafting Note: The exception in Section 14 B(2)(a) to the obligation of an insurance institution or agent to furnish the specific items of personal or privileged information that support the reasons for an adverse underwriting decision extends only to information about criminal activity, fraud, material misrepresentation or material nondisclosure that is privileged information and not to all information.

- (4) The names and addresses of the sources that supplied the information outlined in Subsection B(2); provided, however, that the identity of any health care provider shall be disclosed either directly to the consumer or to the health care provider designated by the consumer.
- C. No licensee may base an adverse underwriting decision:
- (1) Solely on the loss history of the previous owner of the property to be insured.
 - (2) Personal information obtained from a third-party service provider whose primary unless further supporting information is provided to the licensee.
 - (3) Any previous adverse underwriting decision received by the consumer unless such inquiries also request the reasons for any previous adverse underwriting decision.
- D. The obligations imposed by this section upon a licensee may be satisfied by another licensee authorized to act on its behalf.

Section 15 Nondiscrimination and Nonretaliation

- A. A licensee and third-party service providers shall not retaliate against a consumer because the consumer exercised any of the rights under this Act.—There shall be a rebuttable presumption that a licensee or third-party service provider has discriminated or retaliated against a consumer if:
- (1) The consumer is required to consent to an additional activity to obtain a particular product, coverage, rate, or service;
 - (2) The consumer is required to consent to an additional activity to obtain an insurance transaction;
 - (3) The licensee or third-party service provider charges a consumer who makes an annual request for access to the consumer's personal or publicly available information pursuant to Section 12 of this Act;

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- (4) The licensee or third-party service provider charges a consumer who requests the consumer's personal or publicly available information be amended or corrected pursuant to Section 13 of this Act; or
- (5) The licensee or third-party service provider creates unreasonable barriers to a consumer's exercise of the rights provided in Sections 12 and 13 of this Act.

Drafting Note: This section incorporates similar provisions from Model 672.

- B. There shall be a rebuttable presumption that consistent with a licensee's filed rules, rates, and forms, and normal underwriting guidelines in the State in which the consumer resides, the following acts do not constitute discrimination or retaliation if the act is reasonably related to any change in price or quality of services or goods applicable to all customers if the licensee is an insurer or a producer, or if a third-party service provider on behalf of a licensee:
 - (1) Charges a different rate or premium to the consumer;
 - (2) Provides a different insurance product,
 - (3) Refuses to write insurance coverage for the consumer; or
 - (4) Denies a claim under an insurance product purchased by the consumer.

ARTICLE VI. ADDITIONAL PROVISIONS

Section 16. Investigative Consumer Reports

- A. No licensee may prepare or request an investigative consumer report about a consumer in connection with an insurance transaction involving an application for insurance, a policy renewal, a policy reinstatement, or a change in insurance benefits unless the licensee informs the consumer in writing prior to the report being prepared that the consumer:
 - (1) May request to be interviewed in connection with the preparation of the investigative consumer report and the licensee shall conduct such interview; and
 - (2) Is entitled to receive a written copy of the investigative consumer report.
- B. If a licensee uses a third-party service provider to obtain an investigative consumer report, the written contract between the licensee and the third-party service provider shall require the third-party service provider to:
 - (1) Comply with the requirements of Subsection 18 A;
 - (2) Not otherwise use any personal information provided to the third-party service provider by the licensee or obtained by the third-party service provider in its investigation of the consumer other than to fulfill the purpose of the contract with the licensee.
- C. If a licensee requests a third-party service provider to prepare an investigative consumer report, the licensee requesting such report shall notify in writing the third-party service provider whether a personal interview has been requested by the consumer. The third-party service provider shall conduct the interview requested.
- D. A licensee that prepares or requests an investigative consumer report in connection with an insurance claim shall notify the consumer that the consumer may request to be interviewed in connection with the preparation of the investigative consumer report. However, neither the licensee

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nor the third-party service provider is required to provide a copy of an investigative report prepared in connection with an insurance claim unless compelled to do so by a state or federal court.

Section 17. Compliance with HIPAA and HITECH

- A. A licensee that is subject to and compliant with the privacy and notification rules issued by the United States Department of Health and Human Services, Parts 160 and 164 of Title 45 of the Code of Federal Regulations, established pursuant to the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191), and the Health Information Technology for Economic and Clinical Health Act (Public Law 111-5, HITECH), and collects, processes, retains, and shares all personal information in the same manner as protected health information shall be deemed to be in compliance with this Act.
- B. Any such licensee shall submit to the [commissioner] a written statement from an officer of the licensee certifying that the licensee collects, processes, retains, and shares all personal information in the same manner as protected health information.
- C. Any such licensee that does not fully comply with Sections 17 A and B shall be subject to all provisions of this Act with respect to personal information.

ARTICLE VII GENERAL PROVISIONS

Section 18. Power of Commissioner

- A. The commissioner shall have power to examine and investigate the affairs of any licensee to determine whether the licensee has been or is engaged in any conduct in violation of this Act. This power is in addition to the powers which the commissioner has under [insert applicable statutes governing the investigation or examination of insurers]. Any such investigation or examination shall be conducted pursuant to [insert applicable statutes governing the investigation or examination of insurers].
- B. The commissioner shall have the power to examine and investigate the affairs of any insurance support organization acting on behalf of a licensee that either transacts business in this state or transacts business outside this state that affects a person residing in this state to determine whether such insurance support organization has been or is engaged in any conduct in violation of this Act.

Drafting Note: Section 18 B is optional. The drafters included this language for those states that had already adopted Model 670 and those states that wish to adopt this provision.

- C. Whenever the commissioner has reason to believe that a licensee has been or is engaged in conduct in this State which violates this Act, the commissioner may take action that is necessary or appropriate to enforce the provisions of this Act.

Section 19. Confidentiality

- A. Any documents, materials, data, or information in the control or possession of the state insurance department that are furnished by a licensee, third-party service provider, or an employee or agent thereof, acting on behalf of the licensee pursuant to this Act, or that are obtained by the commissioner in any investigation, or an examination pursuant to Section 19 of this Act shall be confidential by law and privileged, shall not be subject to [insert reference to state open records, freedom of information, sunshine or other appropriate law], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's duties.

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Commented [KJ39]: This language comes from Model 668.

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- B. Neither the commissioner nor any person who receives documents, data, materials, or information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to Section 20 A.
- C. In order to assist in the performance of the commissioner's duties under this Act, the commissioner:
- (1) May share documents, data, materials or information, including the confidential and privileged documents, data, materials, or information subject to Section 20 A, with other state, federal, and international regulatory agencies, with the National Association of Insurance commissioners, its affiliates or subsidiaries, any third-party consultant or vendor, and with state, federal, and international law enforcement authorities, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, data, materials, or information; and
 - (2) May receive documents, data, materials, or information, including otherwise confidential and privileged documents, data, materials, or information, from the National Association of Insurance commissioners, its affiliates or subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any documents, data, materials, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the documents, data, materials, or information.
 - (3) Shall enter into a written agreement with any third-party consultant or vendor governing sharing and use of documents, data, materials, or information provided pursuant to this Act, consistent with this subsection that shall:
 - (a) Specify that the third- party consultant or vendor agrees in writing to maintain the confidentiality and privileged status of the documents, data, materials, or information subject to Section 20 A;
 - (b) Specify that the ownership of the documents, data, materials, or information shared pursuant to Section 20 A with the third-party consultant or vendor remains with the commissioner, and the third-party consultant's or vendor's use of the information is subject to the direction of, the commissioner;
 - (c) Prohibit the third-party consultant or vendor from retaining the documents, data, materials, or information shared pursuant to this Act after the purposes of the contract have been satisfied; and
 - (d) Require prompt notice be given to the commissioner if any confidential documents, data, materials, or information in possession of the third-party consultant or vendor pursuant to this Act is subject to a request or subpoena to the third-party consultant or vendor for disclosure or production.
- E. No waiver of any applicable privilege or claim of confidentiality in the documents, data, materials, or information shall occur due to disclosure to the commissioner under this section or due to sharing as authorized in-Section 20 C.
- F. Nothing in this Act shall prohibit the commissioner from releasing final, adjudicated actions that are open to public inspection pursuant to [insert appropriate reference to state law] to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates, or subsidiaries.

Section 20. Record Retention

- A. Notwithstanding any other provision of law, a licensee shall maintain sufficient evidence in its records of compliance with this Act for the calendar year in which the activities governed by this Act occurred and the three calendar years thereafter.
- B. A licensee or third-party service provider shall maintain all records necessary for compliance with the requirements of this Act, including, but not limited to:
- (1) Records related to the consumer's right of access pursuant to Article IV;
 - (2) Copies of authorizations and consent\ executed by any consumer pursuant to this Act, for as long as the consumer is in a continuing business relationship with the licensee; and
 - (3) Representative samples of any notice required to be provided to any consumer pursuant to this Act, for as long as the consumer is in a continuing business relationship with the licensee.

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Section 21. Hearings, Records, and Service of Process

Whenever the commissioner has reason to believe that a licensee or its third-party service providers have been or are engaged in conduct in this state which violates this Act,[or if the commissioner believes that a third-party service provider has been or is engaged in conduct outside this state that affects a person residing in this state and that violates this Act], the commissioner shall issue and serve upon such a licensee or its third-party service provider a statement of charges and notice of hearing to be held at a time and place fixed in the notice. The date for such hearing shall be not less than [insert number] days after the date of service.

- A. At the time and place fixed for such hearing a licensee or its third-party service provider[, or third-party service provider] charged shall have an opportunity to answer the charges against it and present evidence on its behalf. Upon good cause shown, the commissioner shall permit any adversely affected person to intervene, appear and be heard at such hearing by counsel or in person.
- B. At any hearing conducted pursuant to this section the commissioner may administer oaths, examine, and cross-examine witnesses and receive oral and documentary evidence. The commissioner shall have the power to subpoena witnesses, compel their attendance and require the production of books, papers, records, correspondence and other documents, and data that are relevant to the hearing. A record of the hearing shall be made upon the request of any party or at the discretion of the commissioner. If no record is made and if judicial review is sought, the commissioner shall prepare a statement of the evidence for use on the review. Hearings conducted under this section shall be governed by the same rules of evidence and procedure applicable to administrative proceedings conducted under the laws of this state.
- C. Statements of charges, notices, orders, and other processes of the commissioner under this Act may be served by anyone duly authorized to act on behalf of the commissioner. Service of process may be completed in the manner provided by law for service of process in civil actions or by registered or certified mail. A copy of the statement of charges, notice, order, or other process shall be provided to the person or persons whose rights under this Act have been allegedly violated. A verified return setting forth the manner of service or return receipt in the case of registered or certified mail, shall be sufficient proof of service.

Drafting Note: Consideration should be given to the practice and procedure in each state.

Section 22. Service of Process -Third-Party Service Providers

For purposes of this Act, a third-party service provider transacting business outside this state that affects a person residing in this state shall be deemed to have appointed the commissioner to accept service of process on its behalf;

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provided the commissioner causes a copy of such service to be mailed forthwith by registered or certified mail to the third-party service provider at its last known principal place of business. The return receipt for such mailing shall be sufficient proof that the same was properly mailed by the commissioner.

Section 23. Cease and Desist Orders and Reports

- A. If, after a hearing pursuant to Section 22, the commissioner determines that licensee or its third-party service provider charged has engaged in conduct or practices in violation of this Act, the commissioner shall reduce his or her findings to writing and shall issue and cause to be served upon such licensee or its third-party service provider a copy of such findings and an order requiring such licensee or its third-party service provider to cease and desist from the conduct or practices constituting a violation of this Act.
- B. If, after a hearing, the commissioner determines that the licensee or its third-party service provider charged has not engaged in conduct or practices in violation of this Act, the commissioner shall prepare a written report which sets forth findings of fact and conclusions of law. Such report shall be served upon the insurer, producer, or insurance support organization charged and upon the person or persons, if any, whose rights under this Act were allegedly violated.
- C. Until the expiration of the time allowed for filing a petition for review or until such petition is filed, whichever occurs first, the commissioner may modify or set aside any order or report issued under this section. After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed, the commissioner may, after notice and opportunity for hearing, alter, modify, or set aside, in whole or in part, any order or report issued under this section whenever conditions of fact or law warrant such action or if the public interest so requires.

Drafting Note: Consideration should be given to the practice and procedure in each state.

Section 24. Penalties

In the case of a violation of this Act, a Licensee may be penalized in accordance with [insert general penalty statute].

Drafting Note: Consideration should be given to the practice and procedure requirements and penalty requirements in each state.

Section 25. Judicial Review of Orders and Reports

- A. Any person subject to an order of the commissioner under [Code cite] or any person whose rights under this Act were allegedly violated may obtain a review of any order or report of the commissioner by filing in the [insert title] Court of [insert county] County, within [insert number] days from the date of the service of such order or report, a written petition requesting that the order or report of the commissioner be set aside. A copy of such petition shall be simultaneously served upon the commissioner, who shall certify and file in such court the entire record of the proceeding giving rise to the order or report which is the subject of the petition. Upon filing of the petition and record the [insert title] Court shall have jurisdiction to make and enter a decree modifying, affirming, or reversing any order or report of the commissioner, in whole or in part. The findings of the commissioner as to the facts supporting any order or report, if supported by clear and convincing evidence, shall be conclusive.
- B. To the extent an order or report of the commissioner is affirmed, the Court shall issue its own order commanding obedience to the terms of the order or report of the commissioner. If any party affected by an order or report of the commissioner shall apply to the court for leave to produce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there are reasonable grounds for the failure to produce such evidence in prior proceedings, the court may order such additional evidence to be taken before the commissioner in such manner and upon such terms and conditions as the court may deem proper. The commissioner may modify his

Version 1.2

or her findings of fact or make new findings by reason of the additional evidence so taken and shall file such modified or new findings along with any recommendation, if any, for the modification or revocation of a previous order or report. If supported by clear and convincing evidence, the modified or new findings shall be conclusive as to the matters contained therein.

- C. An order or report issued by the commissioner shall become final:
- (1) Upon the expiration of the time allowed for the filing of a petition for review, if no such petition has been duly filed; except that the commissioner may modify or set aside an order or report; or
 - (2) Upon a final decision of the [insert title] Court if the court directs that the order or report of the commissioner be affirmed or the petition for review dismissed.
- D. No order or report of the commissioner under this Act or order of a court to enforce the same shall in any way relieve or absolve any person affected by such order or report from any liability under any law of this state.

Drafting Note: Consideration should be given to the practice and procedure in each state.

Section 26. Individual Remedies

This Act may not be construed to create or imply a private cause of action for violation of its provisions, nor may it be construed to curtail a private cause of action which would otherwise exist in the absence of this Act.

Commented [KJ42]: Language from Model #668

Section 27. Immunity

No cause of action in the nature of defamation, invasion of privacy or negligence shall arise against any person for disclosing personal or privileged information in accordance with this Act, nor shall such a cause of action arise against any person for furnishing personal or privileged information to an insurer, producer, or insurance support organization; provided, however, this section shall provide no immunity for disclosing or furnishing false information with malice or willful intent to injure any person.

Section 89. Obtaining Information Under False Pretenses

No person shall knowingly and willfully obtain information about a consumer from a licensee under false pretenses. A person found to be in violation of this section shall be fined not more than [insert dollar amount] or imprisoned for not more than [insert length of time], or both.

Drafting Note: This provision is applicable to states requiring this language.

Section 29. Severability

If any provisions of this Act or the application of the Act to any person or circumstance is for any reason held to be invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected.

Section 30. Conflict with Other Laws

- A. All laws and parts of laws of this state inconsistent with this Act are hereby superseded with respect to matters covered by this Act.
- B. Nothing in this article shall preempt or supersede existing federal or state law related to protected health information.

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Section 32. Rules and Regulations

The commissioner may issue such rules, regulations, and orders as shall be necessary to carry out the provisions of this Act.

Section 33. Effective Date and Compliance Dates

- A. This Act shall take effect on [insert a date].
- B. Licensees shall have ## years from the effective date of this Act to implement Section ## of this Act.
- C. Licensees shall have ## years from the effective date of this Act to implement Section ## of this Act.

Date: July 31, 2023

To: NAIC Privacy Protections Working Group

From: American Land Title Association (ALTA)

Re: Comments on Updated Draft Model 674

AMERICAN
LAND TITLE
ASSOCIATION



The American Land Title Association (ALTA), representing the real estate settlement services, abstract and title insurance industry, appreciates the opportunity to provide feedback on the most recent draft of proposed Model 674. We also appreciate the previous opportunities to submit comments, suggest legislative text, and have conversations with the Privacy Protections Working Group. It appears much of the feedback we provided was not incorporated in this latest draft. As detailed below, the Privacy Protections Working Group should use an existing comprehensive data privacy law as the foundation for further drafting efforts, as that would address significant concerns around scope, implementation, and conflicts with existing law remaining in this current draft.

Consistency with Existing Privacy Frameworks

While we share the goal of providing appropriate privacy protections to consumers, compliance with the current draft is unworkable for the title insurance industry and incompatible with our core business of insuring and facilitating real estate transactions. Key components of the current draft present fundamental challenges, due primarily to the draft's departure from established data privacy and security frameworks. This deviation creates conflicts with existing laws, resulting in confusion for consumers and making compliance extremely burdensome or in some instances, not reasonably possible. For example, the proposed model creates insurmountable conflicts with the Gramm-Leach-Bliley Act (GLBA) under which consumers are to be provided privacy notices and have specified rights with respect to their non-public personal information.

The proposed model's inconsistencies with existing data privacy laws will have wide-ranging implications. We recommend utilizing the Gramm-Leach-Bliley Act (GLBA), a law the insurance industry is deeply familiar with and has followed for over 20 years, as a starting point and foundation for further drafting. Where appropriate and relevant to the insurance industry, concepts from more recent privacy laws, such as the Colorado Privacy Act (CPA), the Virginia Consumer Data Protection Act (VCDPA), or similar law can be incorporated into the model law. The current draft of the model moves well beyond established structure for privacy and security compliance, increasing potential harm to both business and consumers, as well as the economy. Notably, the proposed model would be the most stringent and far-reaching data privacy law ever enacted, targeted solely at the insurance industry.

Alignment with privacy laws currently in effect for the insurance industry would address concerns around:

- Definitions
- Transactional use of data
- Marketing
- Notice requirements
- Third-party oversight
- Data sharing and selling
- Small business exceptions
- Publicly available data exemptions

We also recommend that the working group consider whether any legislature would enact proposed Model 674 in its current form. Legislators will raise significant questions as to the justification for insurance industry-specific legislation that exceeds the scope and provisions of industry-agnostic privacy laws now existing in California, Colorado, Connecticut, Delaware, Florida, Indiana, Iowa, Montana, Oregon, Tennessee, Texas, Utah, and Virginia. These thirteen states represent approximately 41% of the US population. Additionally, efforts in the United States Congress to update GLBA are relevant to this working group's process and should be taken into consideration.

Small Business Exemption

All comprehensive state data privacy laws providing consumers with data privacy rights include exemptions for small businesses. A similar exemption for insurance companies qualifying as small businesses should be provided for the model's provisions going beyond the scope of GLBA notification and disclosure requirements.

Fraud Exemption

Proposed Model 674 does not include a provision that allows business entities to exempt records and/or data for fraud prevention. The CCPA and similar privacy laws include exemptions from the definition of personal information for "lawfully obtained, truthful information that is a matter of public concern" maintained to "ensure security and integrity" so that these entities are able to keep records of bad actors to prevent future harm and more importantly not be required to provide such information to the potential bad actors. Without a provision of this nature, bad actors could demand information about themselves to circumvent detection or request deletion of their names from fraudulent activity lists maintained to protect consumers from their nefarious acts.

Use of Standard Definitions

Despite what appears to be the working group's efforts to align the model law with the CCPA, the draft deviates substantially from both the CCPA and other well-established privacy and

security frameworks to which the insurance industry must adhere. In particular, some of the definitions within the proposed model are overly broad.

The definition of “consumer” goes well beyond the scope of Model 672 to include persons with which a licensee has no financial, transactional, or intentional relationship. As we have discussed with the working group, our industry’s access to and use of public real estate records to establish a chain of title is essential to real estate conveyancing, securitization, and the issuance of title insurance. The same issues are present relating to title insurance provided by the title industry for personal property interests. The proposed definition of “consumer” is so broad that every individual identified within the public land records searched and examined by a title insurer or agency would be a “consumer” under the proposed model, as those records are “used in connection with an insurance transaction.” This definition creates countless “consumers” whose documents are recorded in the land records as part of the chain of title. The title insurance industry would be obligated to provide a privacy notice before commencing work on a title insurance order. These “consumers” are not involved in the transaction in which title insurance is issued. Even if a title agent or insurer could take on the burdensome task of notifying every person in the chain of title to a property, the contact information for this unique class of consumers is not available from the public records or any other source available to a title agent or insurer. This unworkable and unduly burdensome process brought about by the proposed definition of “consumers” is of no benefit to these consumers who expected that their public record data would be used in future real estate or personal property transactions when they executed a document with the intent that it be recorded in the public records. We suggest adding an exclusion to the definition of “personal information” similar to the exclusion in the CCPA that removes information that is “publicly available or lawfully obtained” from the definition of public information to address this issue.

Additionally, provisions of the definition of “insurance transaction” are not tied to insurance and would include any company that provides any service to a licensee or its affiliates, encompassing a huge swath of companies and industries globally and creating significant constitutional issues given the anticipated impairment of interstate commerce by such a provision.

Real Estate Specific Considerations

Finally, even with the working group’s latest updates to related legislative text, the issues below remain unresolved for the title industry and for the performance of real estate and personal property transactions for businesses and consumers. Specifically, the inability to appropriately use the land records would be detrimental to the real estate market, which represents 17% of the US economy. The impact of these unresolved matters on the ability of the title insurance industry to provide its services benefiting businesses and consumers should be carefully considered by the Privacy Protections Working Group. For reference, we have attached redline comments and feedback on the draft.

- **Additional data collection, purchase, and retention**

Title insurance is a one-time premium for a policy which provides coverage for as long as the insured or its heirs owns the property or, for a lender's policy, until the loan is paid off.

- Industry does not currently track the continued homeownership or loan status of the insured. To comply with this act, that data would have to be collected, purchased, analyzed, and retained, resulting in the industry's over-collection and retention of consumer data, which would run directly counter to the model law's data minimization concepts.

- **Unnecessary and confusing communication with consumers**

Once a title insurance policy is issued, there is a continuation of policy coverage but no on-going customer relationship due to the lack of recurring premium payment or policy expiration.

- Compliance with this act requires ongoing communication with consumers about industry policy coverage and other factors that don't impact the consumer directly.

- **Unnecessary contracts for transactional data sharing**

The title clearance process requires sharing of information from public records among participants in a real estate transaction.

- This act would require the licensee to enter into a contract with every real estate agent, transaction participant, and third party from whom it receives, or with whom it shares, consumer information in the context of a real estate transaction.

- **Inability to utilize public land records**

Real estate transfer, financing, or title policy issuance cannot happen without access to and use of public land, court, and tax records. Title companies record the deed and mortgage to memorialize the transfer of property ownership and the lender's lien interest within the public records at the close of the transaction.

- The inclusion of publicly available information in many provisions of this act would impede industry use of the land records and threaten certainty in real estate transfers. Additionally, restrictions on sharing information would prevent title companies from placing updated and current documents in the land records, impeding constructive notice which is foundational to determination of property ownership in the US.

Thanks again for this opportunity to provide comments. Should you have questions regarding this feedback, please contact Elizabeth Blosser at eblosser@alta.org.



August 7, 2023

Katie Johnson, Chair
Cynthia Amann, Vice Chair
Privacy Protections (H) Working Group
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

Attn: Lois Alexander NAIC Market Regulation Manager
Via email: lalexander@naic.org

Re: Comments on Version 1.2 of the Draft Insurance Consumer Privacy Protection Model Law (#674)

Dear Chair Johnson and Vice Chair Amann:

The U.S. Chamber of Commerce (“Chamber”) appreciates the opportunity to provide comments on Version 1.2 of the Draft Insurance Consumer Privacy Protection Model Law (“Model Law”).¹ The Chamber represents industries from all sectors including the insurance and financial services sectors. As such, the Chamber has serious concerns that the proposed Model Law would directly and indirectly impact many parts of the economy. Accordingly, we respectfully request that the Working Group reassess the need for model insurance privacy legislation.

The data-driven economy has a profound positive impact on the economy by promoting public health, safety, and financial inclusion.² To properly protect the privacy of Americans and to prevent a confusing patchwork of laws while also fostering innovation, government must encourage uniformity and harmonization of data protection laws. For example, one study has shown that a patchwork of privacy laws would cost the American economy \$1 trillion over ten years, and \$200 billion of that burden would be shouldered by small businesses.³ A patchwork of state laws would discourage businesses, particularly smaller ones, from innovating with data and 80 percent of small businesses maintain that losing access to data will harm their operations.⁴

¹ https://content.naic.org/sites/default/files/inline-files/Exposure%20Draft-Consumer%20Privacy%20Protection%20Model%20Law%20%23674%20as%20of%207-11-23_0.pdf

² https://americaninnovators.com/wp-content/uploads/2020/01/CTEC_DataForGood_v4-DIGITAL.pdf

³ <https://www2.itif.org/2022-state-privacy-laws.pdf>

⁴ <https://americaninnovators.com/wp-content/uploads/2022/08/Empowering-Small-Business-The-Impact-of-Technology-on-U.S.-Small-Business.pdf>

Given the need to prevent a patchwork of differing and conflicting state laws, we support a federal national privacy law that establishes one privacy standard for the United States. However, we are concerned about the National Association of Insurance Commissioners' decision to pursue a novel model privacy law as states are already passing a consensus approach to comprehensive privacy laws. With the exception of California, twelve state legislatures have passed comprehensive privacy legislation that generally follows a model adopted by states like Colorado, Oregon, Texas, and Virginia.⁵ The business community sees no need for novel model state privacy legislation that would be another layer of compliance for companies, particularly those that must comply with the consensus state privacy bills or the Gramm-Leach-Bliley Act.

For example, we offer the following ways in which novel or conflicting approaches in the Model Law would contribute to a state patchwork:

- **Basic Definitions**—The definitions in the Model Law regarding “biometric information,” “consumer,” “de identified,” “personal information,” and “sensitive personal data” do not align with existing state comprehensive laws. These definitions are fundamental to establishing uniformity in compliance for companies already having to operationalize existing state and federal laws. In addition, there is an inclusion of requirements for any “additional activities” throughout the Model Law, introducing an undefined term and additional unworkable requirements.
- **Publicly Available Information**—The Model Law would put in place restrictions on the sharing of publicly available information. This approach starkly contrasts with state laws that explicitly and wholly exempt this category of data from the scope of their bills.
- **Sensitive Data**—The Model Law would put in place prohibitions on the sharing of sensitive data. No state privacy bill has placed outright prohibitions on this practice. In fact, all states have provided for an opt-in model of sharing. This data can be particularly useful in providing services and products in an equitable manner.
- **Opt-in/Opt-out**—The Model Law is confusing as to what different processes must be followed regarding opt-in as opposed to opt-out requirements.
- **Notice Timing and Delivery**— The Model Law introduces prescriptive requirements for multiple disclosures and lengthy notices, including requirements for additional delivery as well as confirmations. This not only increases the burden to the client but also introduces additional cost while not embracing modernization.

⁵ <https://americaninnovators.com/2023-data-privacy/>

- **Entity and Existing Law Exemptions**—The Model Law does not match the same exception list for entities not subject to the Model Law as the state comprehensive privacy law consensus approach. We urge the Working Group to reconsider its approach and to harmonize with current state law. Additionally, the Model Law does not provide exemptions for following laws like the Drivers Privacy Protection.
- **Joint Marketing**—Our members have raised concerns that joint marketing between financial institutions as authorized by the Gramm-Leach-Bliley Act may be restricted by new requirements.
- **Insurance Transaction**—Given the required contracts with third parties involved in “insurance transactions” the Model Law could potentially sweep in companies not traditionally regulated by insurance regulators.
- **Adverse Underwriting Decisions**—The Model Law would require notice and mandatory explanations to individuals for adverse underwriting decisions. No state comprehensive privacy law requires companies to provide notice for why they make business decisions on services or products provided. Additionally, such an approach could lead to costly litigation and business uncertainty.
- **Retention and Deletion**— The Model Law would provide prescriptive requirements concerning legacy systems which are extremely costly and burdensome. No other laws and regulations have provided such direction on licensees’ technologies but have understood the ability for licensees to apply requirements in an applicable and risk-based manner, given protection and security has been applied.
- **Mandated Response Times**— The response times for access, correction, and deleted under the Model Law is only 15 days. This is significantly shorter than any other regime. Europe’s General Data Protection Regulation provides 30 days for a response and various State regimes are generally 45 days. This inconsistent requirement is a significant burden on companies to provide the data required in an access request or provide consideration and a decision on a correction request. Additionally, the time for verifying the identity of the requester is included in that 15-day time frame.

The concerns highlighted in this letter are a non-exhaustive list of ways the Model Law does not align with current U.S. privacy law and could otherwise create unforeseen consequences throughout the economy. For this reason, we urge you to reconsider whether it is prudent to develop a novel model law that would have economy-wide impacts as opposed to approaches already taken by states and Congress.

Sincerely,

A handwritten signature in black ink that reads "Jordan Crenshaw". The signature is written in a cursive, flowing style.

Jordan Crenshaw
Senior Vice President
Chamber Technology Engagement Center
U.S. Chamber of Commerce



REINSURANCE ASSOCIATION OF AMERICA

August 7, 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 Additional Comments and Redline 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 supplemental 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. As indicated in our letter dated July 27, 2023, the RAA appreciates the changes already made by the Working Group to address some of the issues raised by the RAA with the prior exposure draft but we continue to have some concerns, which the RAA believes can be addressed through our suggested redline changes (attached). The RAA also continues to support the concerns raised in our letters dated April 3, 2023 and July 27, 2023 and also by our primary insurance colleagues. As noted in our July 27 letter, 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 we propose some slight clarification on the notice section in the attached redline.

In addition, following the release of the latest exposure draft, the RAA has one significant remaining reinsurance-related concern with the current draft: the continuing lack of clarity as to whether and the extent to which reinsurers would fall within the definitions of "insurer", "licensee", and/or "third-party service provider", which creates confusion as to how the law would apply to reinsurers and what their obligations would be under it. The RAA proposes exempting reinsurers from the definitions of "insurer", "licensee", and/or "third-party service provider" and

instead creating two new definitions of “reinsurer” and “reinsurance” to clarify expectations for reinsurers and reinsurance under the model law. As currently drafted, the RAA does not believe it makes sense for many of the model act’s requirements to apply to reinsurers or assuming insurers or reinsurance transactions. Reinsurers’ clients are entities and not individuals, reinsurers are providing services only to those entities, and reinsurers are collecting limited personal information. When reinsurers receive personal information, it is provided to reinsurers not from consumers but from insurers who have collected it from their own customers and have direct obligations to those customers regarding the collection, use and sharing of their personal information. However, we do not believe reinsurers or reinsurance transactions should be completely exempt from all the provisions of this act and think that inserting these new definitions will clarify exactly what expectations are being placed on reinsurers and their subsequent obligations. The RAA intends for our proposed revisions to clarify any ongoing confusion about the role of reinsurers in the current draft of the model.

The RAA appreciates the ongoing 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,

A handwritten signature in black ink, appearing to read "Karalee C. Morell". The signature is written in a cursive, flowing style.

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

Attachment

INSURANCE CONSUMER PRIVACY PROTECTION MODEL LAW REDLINE

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ARTICLE 1. GENERAL PROVISIONS

Section 1. Purpose and Scope

- A. The purpose of this Act is to establish (i) standards for the collection, processing, retaining, or sharing of consumers' personal information by licensees and their third-party service providers to maintain a balance between the need for information by those in the business of insurance and consumers' need for fairness and protection in the use collection, processing, retaining, or sharing of consumers' personal information; (ii) standards for licensees engaged in additional activities involving the collection, processing, retaining, or sharing consumers' personal information; and (iii) standards applicable to licensees for providing notice to consumers of the collection, processing, retention, or sharing of consumers' personal and publicly information. These standards address the need to:
- (1) Limit the collection, processing, retention, or sharing of consumers' personal information to purposes and activities required in connection with insurance transactions and additional activities;
 - (2) Enable consumers to know what personal information is collected, processed, retained, or shared;
 - (3) Enable consumers to know the sources from whom consumers' personal information is collected and with whom such information is shared;
 - (4) Enable consumers to understand why and for generally how long personal information is retained;
 - (5) Enable consumers to choose whether to consent to the collection, processing, retaining, or sharing of consumers' personal information by licensees and their third-party service providers for additional activities;
 - (6) Permit individual consumers to access personal information relating to the consumer requesting access, to verify or dispute the accuracy of the information;
 - (7) Permit consumers to obtain the reasons for adverse underwriting transactions;
 - (8) Encourage all licensees and third-party service providers used by licensees to implement data minimization practices in the collection, processing, retaining, or sharing of consumers' personal information; and
 - (9) Provide accountability for the improper collection, processing, retaining, or sharing of consumers' personal information by licensees and any third-party service providers used by licensees in violation of this Act.
- B. The obligations imposed by this Act shall apply to licensees and third-party service providers that on or after the effective date of this Act:
- (1) Collect, process, retain, or share consumers' personal information in connection with insurance transactions;
 - (2) Engage in insurance transactions with consumers; or
 - (3) Engage in additional activities involving consumers' personal information.
- C. The protections granted by this Act shall extend to consumers:

- (1) Whose information is collected, processed, retained, or shared in connection with insurance transactions;
- (2) Who have engaged in the past in insurance transactions with any licensee or third-party service provider; or
- (3) Whose personal information is used in additional activities by licensees and third-party service providers.

Drafting Note: This model is intended to replace *NAIC Insurance Information and Privacy Protection Model Act (#670)* and *Privacy of Consumer Financial and Health Information Regulation (#672)*. For that reason, it includes the protections for consumers that are currently provided by Models #670 and #672 and adds additional protections that reflect the business practices in the insurance industry today. The business of insurance is more global than it was 30 to 40 years ago. This model law reflects those realities and addresses the need for additional protections for consumers. This model requires notices to consumers for various privacy concerns and will supplant any notices required under Model #670, Model #672 and Gramm-Leach Bliley.

Section 2. Definitions.

As used in this Act:

A. “Address of record” means:

- (1) A consumer’s last known USPS mailing address shown in the licensee’s records; or
- (2) A consumer’s last known email address as shown in the licensee’s records, if the consumer has consented under [refer to the state’s UETA statute] to conduct business electronically.
- (3) An address of record is deemed invalid if
 - (a) USPS mail sent to that address by the licensee has been returned as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the consumer have been unsuccessful; or
 - (b) The consumer’s email address in the licensee’s records is returned as “not-deliverable” and subsequent attempts by the licensee to obtain a current valid email address for the consumer have been unsuccessful.

B. “Adverse underwriting decision” means:

- (1) Any of the following actions by an insurer with respect to insurance transactions involving primarily personal, family, or household use:
 - (a) A denial, in whole or in part, of insurance coverage requested by a consumer;
 - (b) A termination of insurance coverage for reasons other than nonpayment of premium;
 - (c) A rescission of the insurance policy;
 - (d) In the case of a property or casualty insurance coverage:
 - (i) Placement by an insurer or producer of a risk with a residual market mechanism, non-admitted insurer or an insurer that specializes in substandard risks;

- (ii) The charging of a higher rate based on information which differs from that which the consumer furnished; or
 - (e) In the case of a life, health, or disability insurance coverage, an offer to insure at higher than standard rates.
- (2) Notwithstanding Section 2C(1), the following insurance transactions shall not be considered adverse underwriting decisions but the insurer responsible for the occurrence shall provide the consumer with the specific reason or reasons for the occurrence in writing:
- (a) The termination of an individual policy form on a class or state-wide basis;
 - (b) A denial of insurance coverage solely because such coverage is not available on a class- or state-wide basis; or
 - (c) If requested by a consumer, any other insurer-initiated increase in premium on an insurance product purchased by a consumer.

Drafting Note: The use of the term “substandard” in Section 2 C (1) (d)(i) is intended to apply to those insurers whose rates and market orientation are directed at risks other than preferred or standard risks. To facilitate compliance with this Act, *states* should consider developing a list of insurers operating in their state which specialize in substandard risks and make it known to insurers and producers.

- C. “Affiliate” or “affiliated” means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with another person. For purposes of this definition “control” means:
- (1) Ownership, control, or power to vote twenty-five percent (25%) or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;
 - (2) Control in any manner over the election of a majority of the directors, trustees or general partners (or individuals exercising similar functions) of the company; or
 - (3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the commissioner determines.
- D. “Aggregated consumer information” means information that relates to a group or category of consumers, from which individual consumer identities have been removed, that is not linked or reasonably linkable to any consumer, household, or specific electronic device.
- E. “Biometric information” means an individual’s physiological, biological, or behavioral characteristics that can be used, singly or in combination with other identifying information, to establish a consumer’s identity. Biometric information may include an iris or retina scan, fingerprint, face, hand, palm, ear, vein patterns, and voice prints, from which an identifier template, such as a faceprint, a minutiae template, or a voiceprint, can be extracted; and keystroke patterns or rhythms, gait patterns or rhythm that may be used to identify a consumer.
- F. “Clear and conspicuous notice” means a notice that is reasonably understandable and designed to call attention to the nature and significance of its contents.
- G. “Collect” or “collecting” means buying, renting, gathering, obtaining, receiving, or accessing any consumers’ personal information by any means.
- H. “Commissioner” means [insert the appropriate title and statutory reference for the principal insurance regulatory official of the state].

- I. “Consumer” means an individual who is a resident of [State] ~~and the individual’s legal representative~~, whose personal information is used, may be used, or has been used in connection with an insurance transaction, including a current or former individual (i) applicant, (ii) policyholder, (iii) insured, (iv) participant, (v) annuitant or (vi) certificate holder whose personal information is used, may be used, or has been used in connection with an insurance transaction or other financial transaction.
- (1) A consumer shall be considered a resident of this state if the consumer’s last known mailing address, as shown in the records of the licensee, is in this state unless the last known address of record is deemed invalid.
 - (2) A consumer is in an ongoing business relationship with a licensee if there is a continuing relationship between the consumer and the licensee based on one or more insurance transactions provided by the licensee.
- J. “Consumer report” means the same as in Section 603(f) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(f)).
- K. “Consumer reporting agency” means a person who:
- (1) Regularly engages, in whole or in part, in the practice of assembling or preparing consumer reports for a monetary fee;
 - (2) Obtains information primarily from sources other than insurers; and
 - (3) Furnishes consumer reports to other persons.
- L. “Cross-context behavioral advertising” means the targeting of advertising to a consumer based on the consumer’s personal information obtained from the consumer’s activity across businesses, distinctly branded websites, applications, or services.
- M. “Delete” and “deleted” means to remove or destroy personal information by permanently and completely erasing the personal information on existing systems such that it is not maintained in human or machine-readable form and cannot be retrieved or utilized in such form;
- N. “De-identified information” means information that cannot reasonably identify, relate to, describe, be capable of being associated with, or be linked, directly or indirectly, to a particular consumer, provided that a licensee that uses de-identified information meets all the following:
- (1) Has implemented technical safeguards designed to prohibit re-identification of the consumer to whom the information may pertain.
 - (2) Has implemented reasonable business policies that specifically prohibit re-identification of the information.
 - (3) Has implemented business processes designed to prevent inadvertent release of de-identified information.
 - (4) Makes no attempt to re-identify the information.
- O. “Financial product or service” means a product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under Section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)). Financial service includes a financial institution’s evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

- P. "Genetic information" means:
- (1) Subject to paragraphs (2) and (3) of this definition, with respect to an individual, information about:
 - (a) The individual's genetic tests;
 - (b) The genetic tests of family members of the individual;
 - (c) The manifestation of a disease or disorder in family members of such individual; or
 - (d) Any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by the individual or any family member of the individual.
 - 2) Any reference in this subchapter to genetic information concerning an individual or family member of an individual shall include the genetic information of:
 - (a) A fetus carried by the individual or family member who is a pregnant woman; and
 - (b) Any embryo legally held by an individual or family member utilizing an assisted reproductive technology.
 - (3) Genetic information excludes information about the sex or age of any individual.
- Q. "Health care" means:
- (1) Preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, services, procedures, tests, or counseling that:
 - (a) Relates to the physical, mental, or behavioral condition of an individual; or
 - (b) Affects the structure or function of the human body or any part of the human body, including the banking of blood, sperm, organs, or any other tissue; or
 - (2) Prescribing, dispensing, or furnishing drugs or biologicals, or medical devices, or health care equipment and supplies to an individual.
- R. "Health care provider" means a health care practitioner licensed, accredited, or certified to perform specified health care consistent with state law, or any health care facility.
- S. "Health information" means any consumer information or data except age or gender, created by or derived from a health care provider or the consumer that relates to:
- (1) The past, present, or future (i) physical, (ii) mental, or (iii) behavioral health, or condition of an individual;
 - (2) The genetic information of an individual;
 - (3) The provision of health care to an individual; or
 - (4) Payment for the provision of health care to an individual.
- T. "Institutional source" means any person or governmental entity that provides information about a consumer to a licensee other than:
- (1) A producer;

- (2) A consumer who is the subject of the information; or
- (3) An individual acting in a personal capacity rather than in a business or professional capacity.

U. "Insurance support organization" means:

- (1) Any person who regularly engages in the collection, processing, retention, or sharing of consumers' information for the primary purpose of providing insurers or producers information in connection with insurance transactions, including:
 - (a) The furnishing of consumer reports or investigative consumer reports to licensees or other insurance support organizations for use in connection with insurance transactions;
 - (b) The collection of personal information from licensees or other insurance support organizations to detect or prevent fraud, material misrepresentation, or material nondisclosure in connection with insurance transactions;
 - (c) The collection of any personal information in connection with an insurance transaction that may have application in transactions or activities other than insurance transactions.
- (2) Notwithstanding Subdivision (1) of this subsection, producers, government institutions, insurers, health care providers shall not be considered "insurance support organizations" for purposes of this Act.

V. "Insurance transaction" means any transaction or service to a consumer by or on behalf of a licensee and its affiliates related to:

- (1) The underwriting or the determination of a consumer's eligibility for or the amount of insurance coverage, rate ~~or~~, benefit relating to personal family or household purposes, and the payment, or claim settlement payable to a consumer;
- (2) Licensees or third-party service providers performing services including ~~m~~Maintaining or servicing accounts, providing customer service, processing requests or transactions, verifying customer information, processing payments, providing financing, providing analytic services, providing storage, providing similar services or any similar services relating to insurance for personal, family or household use;
- (3) Provision of "value-added services or benefits" to a consumer in connection with an insurance transaction;
- (4) Any mathematical-based decision that involves personal information;
- (5) Any actuarial studies related to rating, risk management, or exempt research activities for insurance for personal, family or household use conducted by or for the benefit of the licensee using consumers' personal information;
- (6) Offering, selling, or servicing of a financial product or service for personal, family or household use by~~of~~ the licensee or its affiliates;
- (7) The short-term, transient use, including, but not limited to, non-personalized advertising shown as part of a consumer's current interaction with the licensee, provided that the consumer's personal information is not disclosed to another third party and is not used to

build a profile about the consumer or otherwise alter the consumer's experience outside the current interaction with the licensee;

- (8) Enabling solely internal uses that are compatible with the context in which the consumer provided the information; or

W. "Insurer" means

- (1) Any person or entity required to be licensed by the commissioner to assume risk, or otherwise authorized under the laws of the state to assume risk, including any corporation, association, partnership, nonprofit hospital, medical or health care service organization, health maintenance organization, reciprocal exchange, inter insurer, Lloyd's insurer, fraternal benefit society, or multiple-employer welfare arrangement;
- (2) A self-funded plan subject to state regulation.
- (3) A preferred provider organization administrator.
- (4) "Insurer" does not include producers, insurance support organizations, foreign-domiciled risk retention groups, or ~~foreign-domiciled~~ reinsurers.

X. "Investigative consumer report" means a consumer report or portion of a consumer report in which information about an individual's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with the individual's neighbors, friends, associates, acquaintances, or others who may have knowledge concerning such items of information.

Y. "Joint marketing agreement" means a written contract between a licensee and one or more financial institutions to market the licensee's own products or services or for the licensee and one or more financial institutions jointly to offer, endorse, or sponsor a financial product or service.

Z. "Licensee" means any person licensed, authorized to operate, or registered, or required to be licensed, authorized, or registered pursuant to the insurance laws of this state but shall not include a purchasing group or a risk retention group chartered and licensed in a state other than this state or a licensee that is acting ~~as an assuming reinsurer that is domiciled in another state or jurisdiction~~. "Licensee" shall also include an unauthorized insurer that accepts business placed through a licensed excess lines broker in this state, but only regarding the excess lines placements placed pursuant to Section [insert section] of the state's laws.

AA. "Non-admitted insurer" means an insurer that has not been granted a certificate of authority or is not otherwise authorized by the commissioner to transact the business of insurance in this state.

Drafting Note: Each state must make sure this definition is consistent with its surplus lines laws.

BB. "Nonaffiliated third party" means:

- (1) Any person except:
 - (a) An affiliate of a licensee; or
 - (b) A person employed jointly by a licensee and any company that is not an affiliate of the licensee; however, a nonaffiliated third party includes the other company that jointly employs the person.
- (2) Nonaffiliated third party includes any person that is an affiliate solely by virtue of the direct or indirect ownership or control of the person by the licensee or its affiliate in conducting merchant banking or investment banking activities of the type described in

Section 4(k)(4)(H) or insurance company investment activities of the type described in Section 4(k)(4)(I) of the federal Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H) and (I)).

- CC. "Person" means any individual, corporation, association, partnership, or other legal entity.
- DD. "Personal information" means any individually identifiable information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked to a consumer that is by or on behalf of a licensee ~~and is:~~
- (1) Any of the following:
 - (a) Account balance information and payment history;
 - (b) The fact that an individual is or has been one of the licensee's customers or has obtained an insurance product or service from the licensee;
 - (c) Any information about the licensee's consumer if it is disclosed in a manner that indicates that the individual is or has been the licensee's consumer, unless such disclosure is required by federal or state law;
 - (d) Any information that a consumer provides to a licensee or that the licensee or its agent otherwise obtains in connection with collecting on a loan or servicing a loan;
 - (e) Any information the licensee collects through an information-collecting device from a web server, such as internet cookies, if such information can reasonably identify or link back to an individual;
 - (f) Information from a consumer report;
 - (g) Information that would enable judgments, directly or indirectly, to be made about a consumer's character, habits, avocations, finances, occupation, general reputation, credit, health, or any other personal characteristics;
 - (h) Any list, description or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personal information that is not publicly available.
 - (i) "Sensitive personal information";
 - (j) "Health information;"
 - (k) Consumers' demographic data, in any form or medium that can reasonably be used to identify an individual; or
 - (l) Collections or sets of individually identifiable information pertaining to more than one consumer.
 - (2) "Personal information" does not include "de-identified information" or "aggregate consumer information."
- EE. "Precise geolocation" means any data that is used or intended to be used to locate a consumer within a geographic area that is equal to or less than the area of a circle with a radius of 1,750 feet.

FF. "Privileged information" means any personal information that:

- (1) Relates to a claim for insurance benefits or a civil or criminal proceeding involving a consumer; and
- (2) Is collected in connection with or in reasonable anticipation of a claim for insurance benefits or civil or criminal proceeding involving a consumer.

Drafting Note: The phrase "in reasonable anticipation of a claim" contemplates that the insurer has actual knowledge of a loss but has not received formal notice of the claim.

GG. "Process" or "processing" means any operation or set of operations performed by a licensee, whether by manual or automated means, on the personal information of any consumer, including the collection, use, sharing, storage, disclosure, analysis, deletion, retention, or modification of personal information.

HH. "Producer" means [refer here to every appropriate statutory category of producer, including brokers, required to be licensed to do business in the state].

Drafting Note: This is necessary because many states have various terms for producers, or for producers of certain types of insurers.]

II. "Publicly available" means any information about a consumer that a licensee has a reasonable basis to believe is lawfully made available from:

- (1) Federal, state, or local government records;
- (2) Widely distributed media; or
- (3) Disclosures to the general public that are required to be made by federal, state or local law.

Drafting Note: Examples of "a reasonable basis" are: (1) A licensee has a reasonable basis to believe that mortgage information is lawfully made available to the general public if the licensee has determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded; or (2) A licensee has a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if the licensee has located the telephone number online or the consumer has informed you that the telephone number is not unlisted.

JJ.

"Reinsurer" means: (1) a legal entity primarily engaged in assuming all or part of the risk associated with existing insurance policies originally underwritten by insurers or (2) a legal entity known as a retrocessionaire that accepts all or part of one or more reinsurance policies issued by a reinsurer.

KK. "Reinsurance" means a contract in which: (1) an insurer transfers risk to a reinsurer and the reinsurer assumes all or part of one or more insurance policies issued by the insurer; or (2) a reinsurer transfers risk to a retrocessionaire and the retrocessionaire assumes all or part of one or more reinsurance policies issued by the reinsurer.

LL. "Research activities" means systemic investigation, including development, testing, and evaluation, designed to develop or contribute to generalizable knowledge where there is sharing of personal information with nonaffiliated third parties. "Research activities" does not mean any of the following exempt research activities that are considered part of an insurance transaction:

- (1) Relating to rating or risk management;

- (2) For actuarial studies;
- (3) For internal (i) analytics or (ii) customer experience purposes;
- (4) For product development;
- (5) To an insurance support organization; or
- (6) Subject to a research university Internal Review Board or Privacy Board approval which requires use of a process which follows confidentiality best practices and where a contract agreeing to such protection has been executed.

~~KKMM~~. "Residual market mechanism" means an association, organization or other entity defined or described in Sections(s) [insert those sections of the state insurance code authorizing the establishment of a FAIR Plan, assigned risk plan, reinsurance facility, joint underwriting association, etc.]

Drafting Note: Those states having a reinsurance facility may want to exclude it from this definition if the state's policy is not to disclose to insureds the fact that they have been reinsured in the facility.

~~LN~~. "Retain" "retention" or "retaining" means storing or archiving personal information that is in the continuous possession, use, or control of licensee or a third-party service provider.

~~MMOO~~. "Sell" or "selling" means the exchange of personal information to a third party for monetary or other valuable consideration.

~~NNPP~~. "Sensitive personal information" means" personal information including a consumer's (i) social security, driver's license, state identification card, or passport number; (ii) account log-in or financial account, debit card, or credit card numbers in combination with any required security or access code, password, or credentials allowing access to an account; (iii) precise geolocations; (iv) racial or ethnic origin, religious, or philosophical beliefs; (v) union membership; (vi) personal mail, personal email, and personal text messages content, unless the person in possession is the intended recipient of the communication; (vii) genetic information; (viii) a consumer's sex life or sexual orientation; (ix) citizenship or immigration status; (x) health information; or (xi) biometric information.

Drafting Note: Those states that have enacted a consumer data protection act may want to amend this definition to match that of the state's law.

~~QQQQ~~. "Share," "shared," or "sharing" means (i) disclosing, (ii) disseminating, (iii) making available, (iv) releasing, (v) renting, (vi) transferring, (vii) selling, or (viii) otherwise communicating by any means, a consumer's personal information whether or not for monetary or other valuable consideration, for providing insurance transactions or additional activities for the benefit of any party.

~~RRPP~~. "Termination of insurance coverage" or "termination of an insurance policy" means either a cancellation or nonrenewal of an insurance policy for personal, family or household purposes, in whole or in part, for any reason other than failing to pay a premium as required by the policy.

~~SSQQ~~. "Third-party service provider" means a person that contracts with a licensee that provides services to the licensee, and processes, shares, or otherwise is permitted access to personal information through its provisions of services to the licensee. "Third-party service provider" also includes a person with whom a licensee does not have a continuing business relationship and does not have a contract but may have to share personal or publicly available information in connection with an insurance transaction. Third-party service providers do not include (i) government entities; (ii)

licensees; (iii) affiliates of licensees; ~~(iv) reinsurers~~; and ~~(iv)~~ financial entities with whom licensees have joint marketing agreements.

~~TTRR~~. “Value-added service or benefit” means a product or service provided to a consumer relating to an insurance policy for personal, family or household use that:

- (1) Relates to insurance coverage applied for or purchased by a consumer; and
- (2) Is primarily designed to satisfy one or more of the following:
 - (a) Provide loss mitigation or loss control services or products designed to mitigate risks related to the insurance requested by or offered to a consumer;
 - (b) Reduce claim costs or claim settlement costs;
 - (c) Provide education about liability risks or risk of loss to persons or property;
 - (d) Monitor or assess risk, identify sources of risk, or develop strategies for eliminating or reducing risk;
 - (e) Enhance the health of the consumer, including care coordination;
 - (f) Enhance financial wellness of the consumer through education or financial planning services;
 - (g) Provide post-loss services;
 - (h) Incentivize behavioral changes to improve the health or reduce the risk of death or disability of a customer (defined for purposes of this subsection as policyholder, potential policyholder, certificate holder, potential certificate holder, insured, potential insured or applicant); or
 - (i) Assist in the administration of employee or retiree benefit insurance coverage.

Drafting Note: Examples of “value-added services and benefits” are services or benefits related to (i) health and wellness, (ii) telematic monitoring, or (iii) property replacement services.

~~UUSS~~. “Verifiable request” means a request that the licensee can reasonably verify, using commercially reasonable methods, is made by the consumer whose personal information is the subject of the request.

~~VVTF~~. “Written consent” means any method of capturing a consumer’s consent that is capable of being recorded or maintained for as long as the licensee or third-party service provider has a business relationship with a consumer; or the licensee or third-party service ~~provider~~ is required to maintain the information as provided in this Act.

ARTICLE II. OBLIGATIONS HANDLING CONSUMER’S PERSONAL INFORMATION

Section 3. Oversight of Third-Party Service Provider Arrangements

- A. A licensee shall exercise due diligence in selecting its third-party service providers.
- B. No licensee shall (i) engage a third-party service provider to collect, process, or retain, or share any consumer’s personal information, or (ii) share any consumer’s personal information with any third-party service provider for any purpose unless there is a written contract between the licensee and third-party service provider that requires the third-party service provider to abide by the provisions

of this Act and the licensee's own privacy protection practices in the collection, processing, retention, or sharing of any consumer's personal information.

- C. Notwithstanding Subsection 3B, a licensee may share a consumer's publicly available information with a third-party service provider with whom the licensee has no written contract in connection with a claim only to the extent necessary to provide the service requested by the consumer.
- D. A licensee shall require all the licensee's third-party service providers to implement appropriate measures to comply with the provisions of this Act in relation to consumers' personal information that is collected, processed, or retained by, or shared with or otherwise made available to the third-party service providers in connection with (i) any insurance transactions or (ii) any additional activities.
- E. No licensee shall permit the third-party service provider to collect, process, retain, or share any consumer's personal information in any manner:
 - (1) Not permitted by this Act; and
 - (2) Not consistent with the licensee's own privacy protection practices.

F. This Section 3 shall apply to reinsurers and reinsurance transactions only if the reinsurance transaction involves the collection, processing or sharing of consumer's personal information with a third party service provider.

FG. A contract between a licensee and third-party service provider shall require that no third-party service provider shall further share or process a consumer's personal information other than as specified in the contract with the licensee.

~~G. Contracts between a licensee and any third party service providers shall require either entity to honor the consumer's directive, whether it is an opt in or an opt out, and to refrain from collecting, processing, retaining, or sharing the consumer's personal information in a manner inconsistent with the directive of the consumer.~~

Section 4. Data Minimization

- A. No licensee shall collect, process, retain, or share a consumer's personal information unless:
 - (1) The collection, processing, retention, or sharing is in compliance with this Act;
 - (2) The licensee provides the applicable notices required by this Act;
 - (3) The collection, processing, retention, or sharing of the consumer's personal information is consistent with and complies with the most recent privacy protection practices notice provided to the consumer by the licensee; and
 - (4) The collection, processing, retention, or sharing of the consumer's personal information is reasonably necessary and proportionate to achieve the purposes related to the requested insurance transaction or additional activities and not further processed, retained, or shared in a manner that is incompatible with those purposes;
- B. B.—No licensee shall permit any of its officers, employees, or agents to collect, process, retain, or share any consumer's personal information, except as relevant and necessary as part of that person's assigned duties.
- C. No reinsurer shall collect, process, retain or share a consumer's personal information unless:
 - (1) The collection, processing, retention or sharing is in compliance with the provisions of this Act that apply to reinsurers;

(2) The collection, processing, retention, or sharing of the consumer's personal information is consistent with and complies with the most recent privacy notice provided by the reinsurer on its website; and

(3) The collection, processing, retention, or sharing of the consumer's personal information is reasonably necessary and proportionate to achieve the purposes related to the reinsurance transaction or additional activities and not further processed, retained, or shared in a manner that is incompatible with those purposes.

Section 5. Sharing Limitations

A. Consistent with the requirements of this Act, a licensee may collect, process, retain, or share a consumer's personal information in connection with an insurance transaction as necessary:

- (1) For the servicing of any insurance application, policy, contract, or certificate for a consumer, third-party claimant, or beneficiary;
- (2) For compliance with a legal obligation to which the licensee is subject;
- (3) For compliance with a request or directive from a law enforcement or insurance regulatory authority;
- (4) For compliance with a warrant, subpoena, discovery request, judicial order, or other administrative, criminal, or civil legal process, or any other legal requirement that is binding upon the licensee collecting, processing, retaining, or sharing the personal information;
- (5) For a lienholder, mortgagee, assignee, lessor, or other person shown on the records of an insurer or producer as having a legal or beneficial interest in a policy of insurance, to protect that interest provided that:
 - (a) No health information is shared unless the sharing would otherwise be permitted by this section, and
 - (b) The information shared is limited to that which is reasonably necessary to permit such person to protect its interests in such policy;
- (6) To enable a licensee to detect or prevent criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with an insurance transaction;
- (7) To enable a health care provider to:
 - (a) Verify the consumer's insurance coverage or benefits;
 - (b) Inform a consumer of health information of which the consumer may not be aware; or
 - (c) Conduct an operations or services audit to verify the individuals treated by the health care provider; provided only such information is shared as is reasonably necessary to accomplish the audit;
- (8) To permit a party or a representative of a party to a proposed or consummated sale, transfer, merger or consolidation of all or part of the business of the licensee to review the information necessary for such transaction, provided:

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- (a) Prior to the consummation of the sale, transfer, merger, or consolidation only such information is shared as is reasonably necessary to enable the recipient to make business decisions about the purchase, transfer, merger, or consolidation; and
 - (b) The recipient agrees not to share the acquired personal information until the recipient has complied with the provisions of this Act;
 - (9) For an affiliate whose only use of the information is to perform an audit of a licensee provided the affiliate agrees not to process personal information for any other purpose or to share the personal information.
 - (10) To permit a group policyholder to report claims experience or conduct an audit of the operations or services of a licensee, provided the information shared is reasonably necessary for the group policyholder to make the report or conduct the audit and is not otherwise shared;
 - (11) To permit (i) a professional peer review organization to review the service or conduct of a healthcare provider provided the personal information is not otherwise processed or shared or (ii) to permit arbitration entities to conduct an arbitration related to a consumer's claim;
 - (12) To provide information to a consumer regarding the status of an insurance transaction;
 - (13) To permit a governmental authority to determine the consumer's eligibility for health care benefits for which the governmental authority may be liable;
 - (14) Pursuant to a joint marketing agreement, provided a licensee shall not, directly or through an affiliate, share a consumer's personal or publicly available information with any nonaffiliated third party for marketing to the consumer unless.
 - (a) The consumer is first provided a clear and conspicuous means to opt-out of such sharing;
 - (b) The consumer has been given a reasonable time to opt-out of the sharing; and
 - (c) The authorization complies with Section 6 of this Act.
 - (15) For the purpose of marketing an insurance or financial product or service, provided the consumer has been given the opportunity to opt-out of such marketing as follows:
 - (a) The consumer is first provided a clear and conspicuous means to opt-out of such sharing;
 - (b) The consumer has been given a reasonable time to opt-out of the sharing; and
 - (c) The authorization complies with Section 6 of this Act.
- B. No licensee shall share any health information or privileged information about a consumer with a nonaffiliated third-party:
- (1) Without first providing the consumer a clear and conspicuous notice that such information will not be shared unless the consumer opts-in to such sharing;
 - (2) The consumer has been given a reasonable time to opt-in to the sharing; and
 - (3) The authorization complies with Section 6 of this Act.

- C. No licensee may collect, process, or share a consumer's personal information in connection with any additional activities without first providing the consumer a clear and conspicuous notice that such information will not be collected, processed, or shared unless the consumer opts-in to such collection and use of personal information. Once consent has been obtained, any person may conduct additional activities as follows:
- (1) For non-exempt research activities:
 - (a) No consumer may be identified in any research study or report;
 - (b) All materials allowing the consumer to be identified are returned to the licensee that initiated the activity; and
 - (c) A consumer's personal information is deleted as soon as the information is no longer needed for the specific activity.
 - (2) For all additional activities:
 - (a) The person conducting the activity agrees not to further share any consumer's personal information and only use such information for the purposes for which it was shared; and
 - (b) A consumer's sensitive personal information may not be shared or otherwise provided to any person for use in connection with any additional activity involving marketing a non-insurance or non-financial product or service.
- D. A licensee may collect, process, retain, or share consumers' de-identified personal information as necessary in connection with insurance transactions and additional activities.
- E. Notwithstanding any other provision of law, no licensee or its third-party service providers may sell consumers' personal information for any type of consideration. This subsection does not prohibit the following activities unless the licensee or third-party service provider receives money or marketable property in connection with these activities:
- (1) The disclosure is to a third party for the purpose of or in support of providing an insurance or financial product or service requested by the consumer.
 - (2) A licensee provides or receives information to an insurance support organization, statistical agent, or reinsurer;
 - (3) A licensee provides information to an affiliate or to a financial institution with which the licensee performs joint marketing;
 - (4) The business transfers to a third party the personal information as an asset that is part of a merger, acquisition, bankruptcy, or other transaction, or a proposed merger, acquisition, bankruptcy, or other transaction in which the party assumes control of all or part of the licensee's assets; or
 - (5) A consumer uses or directs the licensee to (i) disclose personal information; or (ii) interact with one or more licensees or other financial institutions.
- F. This section shall not prohibit the collection, processing, retention, or sharing of consumers' personal information with a licensee's affiliates to the extent preempted by subdivisions (b)(1)(H) or (b)(2) of Section 625 of the Fair Credit Reporting Act.

G. The following subsections of this section shall apply to reinsurers and reinsurance transactions: 5.A.(1), (2), (3), (4), (6), (8) and (9).

Section 6. Consumers' Consent

- A. Where the consumer's consent for the collection, processing, or sharing of a consumer's personal or privileged information by a licensee is required by this Act, whether opt-in or opt-out, a licensee shall provide a reasonable means to obtain written consent and maintain a written record of such consent.
- (1) No licensee shall collect, process, or share personal information in a manner inconsistent with the choices of a consumer pursuant to this Act.
 - (2) A licensee may provide the consent form together with or on the same written or electronic form as the most recent of the initial or updated notice the licensee provides or in a separate communication with the consumer.
 - (2) If two (2) or more consumers jointly obtain an insurance or financial product or service from a licensee, the licensee may provide a single consent notice. Each of the joint consumers may consent or refuse to consent.
 - (3) A licensee does not provide a reasonable means of obtaining express written consent if consent is required or the consumer is instructed that consent is required.
 - (4) A licensee shall comply with a consumer's consent choice as soon as reasonably practicable after the licensee receives it.
 - (5) Any consumer who has given consent for the collection, processing, and sharing of personal information in connection with additional activities, may revoke such consent in writing. A consumer may exercise the right to consent or to withdraw consent at any time with notice to the licensee.
 - (6)
 - (a) A consumer's consent choice under this Act is effective until the consumer revokes it in writing.
 - (b) If the consumer subsequently establishes a new relationship with the licensee, the consent choices that applied to the former relationship do not apply to the new relationship. A new relationship occurs when the consumer who previously ended all business relationships with the licensee re-establishes a business relationship more than thirty (30) days after the previous business relationship ended.
 - (7) If the consumer has made conflicting choices pursuant to this section, the consumer's most recent written choice for the specific transaction or activity shall take precedence.
- B. When a consumer's consent is required, no person shall use an authorization seeking a consumer's consent, whether opt-out or opt-in, to the collection, processing, or sharing of a consumer's personal or privileged information unless the authorization meets following requirements.
- (1) Is written in plain language;
 - (2) Is dated and contains an expiration date for the consent;
 - (3) Specifies the persons authorized to collect, process, or share the consumer's personal or privileged information consistent with the provisions of this Act;

- (4) Specifies the types of personal or privileged information authorized to be collected, processed, or shared;
 - (5) Specifies the specific purposes for which the consumer's personal or privileged information is authorized to be collected, processed, or shared as permitted in Article II of this Act;
 - (6) Names the licensee whom the consumer is authorizing to collect, process, or share the consumer's personal or privileged information; and
 - (7) Advises the consumer that they are entitled to receive a copy of the authorization.
- C. When requesting a consumer's consent to the collection, processing, or sharing of the consumer's personal information for additional activities, the written authorization shall:
- (1) Explain, in plain language, that consent is being sought to share the consumer's personal information for research activities by a person other than the licensee, or if the personal information is to be used for an additional activity, clearly explain the nature of that activity;
 - (2) Permit the consumer to separately provide consent for such use of the consumer's personal information for any one or more additional activities;
 - (3) Explain, in plain language, that the consumer is not required to provide consent to use the consumer's personal information for any one or all these purposes, and that the consumer will not be subject to retaliation or discrimination as outlined in Section 15, based on the consumer's choice; and
 - (4) State that use of a consumer's sensitive personal information for marketing purposes is prohibited.
 - (5) The provisions of Subsection B of this section do not apply to consumers' personal or privileged information that has been de-identified in accordance with this Act.

Section 7. Retention and Deletion of Consumers' Information

- A. Once the initial consumer privacy protection practices notice has been provided to the consumer as set forth in this Act, a licensee may retain a consumer's personal or publicly information as necessary for:
- (1) Performance of any insurance transaction with a consumer who is in an ongoing business relationship with the licensee;
 - (2) Compliance with a legal obligation related to any insurance transaction or any additional activity involving consumers' personal information to which the licensee is subject including but not limited to any state, federal, or international statute of limitation periods applicable to the licensee in connection with consumers' personal information;
 - (3) Compliance with a request or directive from a law enforcement agency or state, federal, or international regulatory authorities a warrant, subpoena, discovery request, judicial order, or other administrative, criminal, or civil legal process, or another legal requirement that is binding upon a licensee;
 - (4) Protection of a legal or beneficial interest in a policy of insurance, with respect to a lienholder, mortgagee, assignee, lessor, or other person shown on the records of an insurer or producer as having a legal or beneficial interest in the policy; or

- (5) Exempt research activities (i) related to insurance transactions involving consumers' personal information, or (ii) for rating or risk management purposes for or on behalf of the licensee in connection with an insurance product or service.
- B. Not less than annually, a licensee shall review its retention policy and all consumers' personal information in its possession and determine whether the purposes for which such personal information was collected or processed remain.
- C. Once the provisions of Subsection A of this section are no longer applicable and the licensee has made the determination that consumers' personal information is no longer needed under Subsection B of this section:
- (1) Such licensee shall completely delete all the consumer's personal information within 90 days after making this determination.
 - (2) Subject to the approval of the commissioner, any licensee that retains consumers' personal information on a system or systems where targeted disposal is not feasible, shall de-identify all such information to the extent possible.
 - (a) If such information cannot be de-identified or deleted, the licensee shall:
 - (i) Develop a written data minimization plan that provides for transitioning from such system or systems within a reasonable time frame and the projected date for such transition; and
 - (ii) Annually, report in detail the licensee's progress for such transition to its domestic regulator who shall determine the reasonableness of such plan and whether the licensee is making the appropriate progress in implementing such plan.
 - (b) A licensee has made a reasonable effort to transition from legacy systems if the license's transition plan is designed to be completed within 10 years after the effective date of the Act.
 - (3) The commissioner has discretion to grant exceptions for good cause shown.
 - (4) Any third-party service provider in possession of the consumer's personal information shall delete such information at the earlier of:
 - (a) The date the contract the licensee has with the third-party service provider ends; or
 - (b) The date specified in such contract.
 - (5) If a consumer requests a copy of the consumer's personal information that has been deleted or de-identified as provided in this Act, the licensee shall inform the consumer that the licensee and any of the licensee's third-party service providers in possession of the consumer's personal information no longer retain any of the consumer's personal information or such information has been de-identified;
 - (6) A licensee shall develop policies and procedures for compliance with this section and be able to demonstrate compliance with those policies and procedures.

D, A reinsurer in possession of the consumer's personal information may retain a consumer's personal information as necessary for:

(1) Performance of any reinsurance transaction with an insurer who is in an ongoing

business relationship with the reinsurer;

(2) Compliance with a legal obligation

(3) Compliance with a request or directive from a law enforcement agency or state, federal, or international regulatory authorities a warrant, subpoena, discovery request, judicial order, or other administrative, criminal, or civil legal process, or another legal requirement that is binding upon a licensee;

ARTICLE III. NOTICES AND DELIVERY OF NOTICES

Section 8. Notice of Consumer Privacy Protection Practices

- A. A licensee that collects, processes, retains, or shares a consumer's personal or publicly available information in connection with an insurance transaction, by whatever means used, shall provide the consumer a clear and conspicuous notices that accurately reflect the licensee's privacy protection practices. The following exceptions apply to this requirement:
- (1) No notice of privacy protection practices is required of a reinsurer or in connection with the provision of reinsurance.
 - (2) An employee, agent, representative or designee of a licensee, who is also a licensee, is not required to develop or provide a notice of consumer privacy protection practices to the extent that the collection, processing, retention, and sharing of personal information by the employee, agent, representative or designee of such licensee is consistent with the consumer privacy protection practices of such licensee and the licensee provides the notice required in this section.
 - (3) A licensee that does not share and does not wish to reserve the right to share, personal information of consumers except (i) in connection with an insurance transaction or (ii) as authorized under Section 5 may satisfy the notice requirements under this section by providing the initial privacy protection practices notice as set forth in Subsection 8B.
- B. (1) A licensee shall provide an initial notice of privacy protection practices to a consumer at the time the licensee, directly or through a third-party service provider, first collects, processes, or shares the consumer's personal or publicly available information in connection with an insurance transaction or additional activity. For purposes of this subsection, consumer includes a third-party claimant or a beneficiary in connection with a claim under an insurance policy.
- (2) For any consumer with whom a licensee has an ongoing business relationship and whose personal or publicly available information has been collected, processed, retained, or shared prior to the effective date of this Act in this State, a notice meeting the requirements of this Act must be provided upon renewal or any reinstatement of the consumer's policy, or upon any other activity related to an insurance transaction if the consumer has not already been provided a notice meeting the requirements of this Act.
- C. A licensee shall provide an updated privacy protection practices notice to each consumer with whom the licensee has an ongoing business relationship when the privacy protection practices of the licensee changes.
- (1) The licensee shall conspicuously identify any changes in its privacy protection practices that triggered the requirement for an updated notice.

- (2) An updated notice shall also be provided to any third-party claimant or beneficiary if there are changes in the licensee's privacy protection practices during the course of any claim in which such claimant or beneficiary is involved.
- D. Each version of a licensee's privacy protection practices notice shall contain an effective date that must remain on the notice until the licensee revises the notice due to a change in its privacy protection practices. The licensee shall place a revised date on its updated notice that will remain until the notice is revised in response to additional changes in the licensee's privacy protection practices.
 - E. A licensee shall honor all representations made to consumers in its most current notice, unless otherwise compelled by law, in which case the licensee shall promptly send a notice to all affected consumers explaining the changes in the licensee's information practices. If the licensee's information practices change, the licensee remains bound by the terms of the most recent notice it has given a consumer, until a revised notice has been given.

Section 9. Content of Consumer Privacy Protection Practices Notices

- A. Any notice required by Section 8 of this Act shall state in writing all the following:
 - (1) Whether personal information has been or may be collected from any sources other than the consumer or consumers proposed for coverage, and whether such information is collected by the licensee or by third-party service providers;
 - (2) The categories of consumer's personal information that the licensee or any of its third-party service providers has or may collect, process, retain, or share;
 - (3) The purposes for which the licensee collects, processes, retains, or shares personal information;
 - (4) The sources that have been used or may be used by the licensee to collect, process, retain, or share the consumer's personal information;
 - (5) That the consumer may, upon request, annually obtain a list of any persons with which the licensee or any of the licensee's third-party service providers has shared the consumer's personal information within the current calendar year and, at a minimum, the three previous calendar years.
 - (6) A description of the right to opt-out of sharing of personal information for marketing or an insurance or financial product or service, including marketing pursuant to a joint marketing agreement;
 - (7) A description of the requirements set forth in Section 5C if the licensee shares a consumer's personal information in connection with additional activities including:
 - (a) The requirement that the licensee obtain the consumer's express written consent for the collection, processing, retention, or sharing of a consumer's personal information for research activities not conducted by or on behalf of the licensee unless such information has been de-identified;
 - (b) The requirement for the licensee to obtain the consumer's express written consent for the collection, processing, retention, or sharing of a consumer's personal information for marketing a non-insurance or non-financial product or service.

- (c) The requirement that the licensee obtain the consumer's express written consent for the collection, processing, retention, or sharing of a consumer's personal information for any other additional activity; and
 - (d) A description of the process by which a consumer may opt-out of such collection, processing, or sharing.
 - (8) A statement of the rights of the consumer to access, correct or amend factually incorrect personal publicly available information about the consumer in the possession of the licensee or its third-party service providers under Article IV of this Act, and the instructions for exercising such rights;
 - (9) A statement of the rights of non-retaliation established under Section 15 of this Act;
 - (10) A summary of the reasons the licensee or any third-party service provider retains personal information and the approximate period of retention or if that is not reasonably possible, the criteria used to determine the timeframe it will be retained; and
 - (11) A statement that no licensee or third-party service provider may sell for valuable consideration a consumer's personal information.
 - (12) If the licensee or its third-party service providers processes or shares personal, privileged, or publicly available information with an entity located outside the jurisdiction of the United States and its territories, the notice must state that such information is processed or shared in this manner. This requirement does not apply if the only processing or sharing is:
 - (a) In connection with a reinsurance transaction; or
 - (b) With an affiliate of the licensee.
- B. If the licensee uses a consumer's personal information to engage in additional activities, in addition to the provisions in Subsection A of this section, the following information shall be included in the notice:
- (1) A statement that the consumer may, but is not required to, consent to the collection, processing, sharing, and retention of the consumer's personal information for any additional activities in which the licensee or its third-party service providers engage;
 - (2) A description of the reasonable means by which the consumer may express written consent;
 - (3) That the consumer may consent to any one or more of the additional activities or refuse to consent to any one or more of the additional activities;
 - (4) That once consent has been given for an additional activity, the consumer may revoke consent at any time;
 - (5) That once consent for using a consumer's personal information for an additional activity is withdrawn, the licensee will no longer engage in such additional activity using the consumer's personal information; and
 - (6) That once consent to an additional activity has been revoked, any of the consumer's personal information in the possession of the licensee used solely for that additional activity will be destroyed and deleted as set forth in Section 6 of this Act.
- C. The obligations imposed by this section upon a licensee may be satisfied by another licensee or third-party service provider authorized to act on its behalf.

Section 10. Notice of Consumer Privacy Rights

- A. A licensee shall provide a Notice of Consumer Privacy Rights to each consumer with whom the licensee has an ongoing business relationship.
- B. The notice required by this section shall be clear and conspicuous and inform the consumer that:
 - (a) The consumer has the right to access personal information about the consumer;
 - (b) The consumer has the right to correct or amend inaccurate or incomplete information about the consumer;
 - (c) The consumer has the right to opt-out of use of personal information for additional activities;
 - (d) The consumer must opt-in to use of sensitive personal information for additional activities;
 - (e) The consumer has the right to request additional information about the licensee's privacy practices, including identification of all persons who have received the consumer's personal information within the last three years;
 - (f) A licensee may not retaliate against a consumer, or require a consumer to incur unreasonable expenses, in connection with exercise of rights under this Act.
- C. The notice required by this section shall be provided to the consumer at least every 12 months.
- D. The notice required by this section shall be in addition to other notices required by this Act.
- E. The notice required by this section may be combined with other policy documents, provided that the notice content required by this section remains clear and conspicuous and is readily distinguishable from other information being provided to the consumer.

Section 11. Delivery of Notices Required by This Act

- A. A licensee shall provide any notices required by this Act so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically pursuant to [State's UETA law].
- B. A licensee may reasonably expect that a consumer will receive actual notice if the licensee:
 - (1) Hand-delivers a printed copy of the notice to the consumer;
 - (2) Mails a printed copy of the notice to the address of record of the consumer separately, or in a policy, billing, or other written communication;
 - (3) For a consumer who has agreed to conduct transactions electronically, either (i) posts the notice on the licensee's website and requires the consumer to acknowledge receipt of the notice or (ii) emails the notice to the consumer and requests a delivery receipt.
- C. A licensee may not reasonably expect that a consumer will receive actual notice of its privacy protection practices if it:
 - (1) Only posts a sign in its office or generally publishes advertisements of its privacy protections practices; or

- (2) Sends the notice electronically to a consumer who has not agreed to conduct business electronically with the licensee.
 - (3) Sends the notice electronically to a consumer who has agreed to conduct business electronically with the licensee, but the licensee does not obtain a delivery receipt.
 - (4) Provides a notice required by this Act solely by orally explaining the notice, either in person or over the telephone or other electronic device unless the licensee also sends a copy of the notice to the consumer.
 - (5) Does not provide the notices required by this Act so that the consumer is able to retain them or obtain them later in writing; either electronically or on paper.
- D. A licensee may reasonably expect that a consumer will receive actual notice of the licensee's privacy protection practices notice if:
- (1) If the consumer has agreed to conduct business electronically pursuant to the State's UETA and:
 - (a) The consumer uses the licensee's web site to access insurance products and services electronically and agrees to receive notices at the web site and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the web site; or
 - (b) The licensee emails the notice to the consumer's email address of record.
 - (2) The licensee mails the notice to the consumer's address of record.
 - (3) A licensee may not provide any notice required by this Act solely by orally explaining the notice, either in person or using an electronic means unless specifically requested to do so by the consumer.
 - (4) The licensee provides all notices required by this Act so that the consumer can retain and obtain the notices in writing.
- E. A licensee may provide a joint notice from the licensee and one or more of its affiliates if the notice accurately reflects the licensee's and the affiliate's privacy protection practices with respect to the consumer.
- F. If two (2) or more consumers jointly obtain a product or service in connection with an insurance transaction from a licensee, the licensee may satisfy the initial and updated notice requirements of Sections 8 and 9 of this Act, by providing one notice to those consumers jointly. The notice must reflect the consent of each consumer.
- G. If any consumer has requested that the licensee refrain from sending updated notices of privacy protection practices and the licensee's current privacy protection practices notice remains available to the consumer upon request, the licensee shall honor the consumer's request but must continue to send any jointly insured consumer any updated notices.
- H. In addition to the notice provided to consumers, a licensee shall prominently post and make available the notice required by this Act on its website, if a website is maintained by the licensee. The licensee shall design its website notice so that:
- (a) The notice is clear and conspicuous;

- (b) The text or visual cues encourage scrolling down the page, if necessary, to view the entire notice and ensure that other elements on the web site (such as text, graphics, hyperlinks, or sound) do not distract attention from the notice, and
- (c) The notice is:
 - (i) Placed on a screen that consumers frequently access, such as a page on which transactions are conducted; or
 - (ii) Accessible using a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature, and relevance of the notice.

ARTICLE IV. CONSUMERS' RIGHTS

Section 12. Access to Personal and Publicly Available Information

- A. Any consumer may submit a verifiable request to a licensee for access to the consumer's personal and publicly available information in the possession of the licensee or its third-party service providers.
- B. The licensee or third-party service provider shall
 - (1) Acknowledge the request within five (5) business days; and
 - (2) Within forty-five (45) business days from the date such request is received:
 - (a) Disclose to the consumer the identity of those persons to whom the licensee or any third-party service provider has shared the consumer's personal information within the current year and, at a minimum, the three calendar years prior to the date the consumer's request is received.
 - (b) Provide the consumer with a summary of the consumer's personal information and the process for the consumer to request a copy of such information in the possession of the licensee.
 - (c) Identify the source of any consumer's personal information provided to the consumer pursuant to this subsection.
- C. Personal health information in the possession of licensee and requested under Subsection A of this section, together with the identity of the source of such information, shall be supplied either directly to the consumer or as designated by the consumer, to a health care provider who is licensed to provide medical care with respect to the condition to which the information relates. If the consumer elects for the licensee to disclose the information to a health care provider designated by the consumer, the licensee shall notify the consumer, at the time of the disclosure, that it has provided the information to the designated health care provider.
- D. The obligations imposed by this section upon a licensee may be satisfied by another licensee authorized to act on its behalf.
- E. The rights granted to consumers in this section shall extend to any individual to the extent personal information about the individual is collected processed, retained, or shared by a licensee or its third-party service provider in connection with an insurance transaction or an additional activity.

- F. For purposes of this section, the term “third-party service provider” does not include “consumer reporting agency” except to the extent this section imposes more stringent requirements on a consumer reporting agency than other state or federal laws.
- G. The rights granted to any consumer by this subsection shall not extend to information about the consumer that is collected, processed, retained, or shared in connection with, or in reasonable anticipation of, a claim, or civil or criminal proceeding involving the consumer.

Section 13. Correction or Amendment of Personal or Publicly Available Information

- A. Any consumer may submit a verifiable request to a licensee to correct or amend any personal or publicly available information about the consumer in the possession of the licensee or its third-party service providers.
- B. The licensee or third-party service provider shall
 - (1) Acknowledge the request within five (5) business days; and
 - (2) Within fifteen (15) business days from the date such request is received:
 - (a) Correct or amend the personal or publicly available information in dispute; or
 - (b) If there is a specific legal basis for not correcting or amending the personal or publicly available information in question, the licensee or its third-party service provider may refuse to make such correction or amendment. However, the licensee or third-party service provider refusing to take such action shall provide the following information to the consumer:
 - (i) Written notice of the refusal to make such correction or amendment;
 - (ii) The basis for the refusal to correct or amend the information;
 - (iii) The contact information for filing a complaint with the consumer’s state insurance regulator, and
 - (iv) The consumer’s right to file a written statement as provided in Subsection C of this section.
 - (3) No licensee or third-party service provider may refuse to correct or amend a consumer’s personal or publicly available information without good cause. Such cause shall be demonstrated to commissioner of the consumer’s state insurance department, upon request.
- C. If the licensee or third-party service provider corrects or amends personal publicly available information in accordance with Subsection A. (1) of this section, the licensee or third-party service provider shall so notify the consumer in writing and furnish the correction or amendment to:
 - (1) Any person specifically designated by the consumer who may have, received such personal or publicly available information within the preceding two (2) years;
 - (2) Any insurance support organization whose primary source of personal information is insurers if the insurance support organization has systematically received such personal information from the insurer within the preceding five (5) years; provided, however, that the correction or amendment need not be furnished if the insurance support organization no longer maintains personal information about the consumer;

- (3) Any third-party service provider that furnished such personal or publicly available information.
- D. Whenever a consumer disagrees with the refusal of a licensee or third-party service provider to correct or amend personal or publicly available information, the consumer shall be permitted to file with the licensee or third-party service provider a concise statement setting forth:
- (1) The relevant and factual information that demonstrates the errors in the information held by the licensee or third-party service provider; and
 - (2) The reasons why the consumer disagrees with the refusal of the licensee or third-party service provider to correct or amend the personal or publicly available information.
- E. In the event a consumer files such statement described in Subsection C, the licensee or third-party service provider shall:
- (1) Include the statement with the disputed personal or publicly available information and provide a copy of the consumer's statement to anyone reviewing the disputed personal or publicly available information; and
 - (2) In any subsequent disclosure of the personal or publicly available information that is the subject of disagreement, the licensee or third-party service provider clearly identify the matter or matters in dispute and include the consumer's statement with the personal or publicly available information being disclosed.
- F. The rights granted to a consumer by this subsection shall not extend to personal or publicly available information about the consumer that is collected, processed, retained, or shared in connection with or in reasonable anticipation of a claim, or civil or criminal proceeding involving the consumer.
- G. For purposes of this section, the term "insurance support organization" does not include "consumer reporting agency" except to the extent that this section imposes more stringent requirements on a consumer reporting agency than other state or federal law.

Section 14. Adverse Underwriting Decisions

- A. In the event of an adverse underwriting decision the licensee responsible for the decision shall:
- (1) Either provide in writing to the consumer at the consumer's address of record:
 - (a) The specific reason or reasons for the adverse underwriting decision, or
 - (b) That upon written request the consumer may receive the specific reason or reasons for the adverse underwriting decision in writing; and
 - (2) Provide the consumer with a summary of the rights established under Subsection C of this Section and Sections 12 and 13 of this Act.

Drafting Note: Adverse underwriting decisions include: (i) an increase in the risk; (ii) increase in rates in geographical area; (iii) increase base rates; (iv) change in insurance credit score that causes an increase in the premium; (v) the consumer has lost a discount; (vi) an insured had a claim; or (vii) a lapse in coverage.

- B. Upon receipt of a written request within ninety (90) business days from the date of a notice of an adverse underwriting decision was sent to a consumer's address of record, the licensee within fifteen (15) business days from the date of receipt of such request shall furnish to the consumer the following information in writing to the consumer's address of record:

- (1) The specific reason or reasons for the adverse insurance decision, if such information was not initially furnished pursuant to Subsection A(1);
- (2) The specific information that supports those reasons, provided:
 - (a) A licensee shall not be required to furnish specific privileged information if it has a reasonable suspicion, based upon specific information available for review by the commissioner, that the consumer has engaged in criminal activity, fraud, material misrepresentation or material nondisclosure, or
 - (b) Health information supplied by a health care provider shall be disclosed either directly to the consumer about whom the information relates or to a health care provider designated by the individual consumer and licensed to provide health care with respect to the condition to which the information relates,
- (3) A summary of the rights established under Subsection C and Sections 12 and 13 of this Act; and

Drafting Note: The exception in Section 14 B(2)(a) to the obligation of an insurance institution or agent to furnish the specific items of personal or privileged information that support the reasons for an adverse underwriting decision extends only to information about criminal activity, fraud, material misrepresentation or material nondisclosure that is privileged information and not to all information.

- (4) The names and addresses of the sources that supplied the information outlined in Subsection B(2); provided, however, that the identity of any health care provider shall be disclosed either directly to the consumer or to the health care provider designated by the consumer.
- C. No licensee may base an adverse underwriting decision:
- (1) Solely on the loss history of the previous owner of the property to be insured.
 - (2) Personal information obtained from a third-party service provider whose primary unless further supporting information is provided to the licensee.
 - (3) Any previous adverse underwriting decision received by the consumer unless such inquiries also request the reasons for any previous adverse underwriting decision.
- D. The obligations imposed by this section upon a licensee may be satisfied by another licensee authorized to act on its behalf.

Section 15 Nondiscrimination and Nonretaliation

- A. A licensee and third-party service providers shall not retaliate against a consumer because the consumer exercised any of the rights under this Act.-There shall be a rebuttable presumption that a licensee or third-party service provider has discriminated or retaliated against a consumer if:
- (1) The consumer is required to consent to an additional activity to obtain a particular product, coverage, rate, or service;
 - (2) The consumer is required to consent to an additional activity to obtain an insurance transaction;
 - (3) The licensee or third-party service provider charges a consumer who makes an annual request for access to the consumer's personal or publicly available information pursuant to Section 12 of this Act;

- (4) The licensee or third-party service provider charges a consumer who requests the consumer's personal or publicly available information be amended or corrected pursuant to Section 13 of this Act; or
- (5) The licensee or third-party service provider creates unreasonable barriers to a consumer's exercise of the rights provided in Sections 12 and 13 of this Act.

Drafting Note: This section incorporates similar provisions from Model 672.

- B. There shall be a rebuttable presumption that consistent with a licensee's filed rules, rates, and forms, and normal underwriting guidelines in the State in which the consumer resides, the following acts do not constitute discrimination or retaliation if the act is reasonably related to any change in price or quality of services or goods applicable to all customers if the licensee is an insurer or a producer, or if a third-party service provider on behalf of a licensee:
 - (1) Charges a different rate or premium to the consumer;
 - (2) Provides a different insurance product,
 - (3) Refuses to write insurance coverage for the consumer; or
 - (4) Denies a claim under an insurance product purchased by the consumer.

ARTICLE VI. ADDITIONAL PROVISIONS

Section 16. Investigative Consumer Reports

- A. No licensee may prepare or request an investigative consumer report about a consumer in connection with an insurance transaction involving an application for insurance, a policy renewal, a policy reinstatement, or a change in insurance benefits unless the licensee informs the consumer in writing prior to the report being prepared that the consumer:
 - (1) May request to be interviewed in connection with the preparation of the investigative consumer report and the licensee shall conduct such interview; and
 - (2) Is entitled to receive a written copy of the investigative consumer report.
- B. If a licensee uses a third-party service provider to obtain an investigative consumer report, the written contract between the licensee and the third-party service provider shall require the third-party service provider to:
 - (1) Comply with the requirements of Subsection 18 A;
 - (2) Not otherwise use any personal information provided to the third-party service provider by the licensee or obtained by the third-party service provider in its investigation of the consumer other than to fulfill the purpose of the contract with the licensee.
- C. If a licensee requests a third-party service provider to prepare an investigative consumer report, the licensee requesting such report shall notify in writing the third-party service provider whether a personal interview has been requested by the consumer. The third-party service provider shall conduct the interview requested.
- D. A licensee that prepares or requests an investigative consumer report in connection with an insurance claim shall notify the consumer that the consumer may request to be interviewed in connection with the preparation of the investigative consumer report. However, neither the licensee

nor the third-party service provider is required to provide a copy of an investigative report prepared in connection with an insurance claim unless compelled to do so by a state or federal court.

Section 17. Compliance with HIPAA and HITECH

- A. A licensee and a reinsurer that is subject to and compliant with the privacy and notification rules issued by the United States Department of Health and Human Services, Parts 160 and 164 of Title 45 of the Code of Federal Regulations, established pursuant to the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191), and the Health Information Technology for Economic and Clinical Health Act (Public Law 111-5, HITECH), and collects, processes, retains, and shares all personal information in the same manner as protected health information shall be deemed to be in compliance with this Act.
- B. Any such licensee and any such reinsurer shall submit to the [commissioner] a written statement from an officer of the licensee or of the reinsurer certifying that the licensee or reinsurer collects, processes, retains, and shares all personal information in the same manner as protected health information.
- C. Any such licensee or reinsurer that does not fully comply with Sections 17 A and B shall be subject to all provisions of this Act with respect to personal information.

ARTICLE VII GENERAL PROVISIONS

Section 18. Power of Commissioner

- A. The commissioner shall have power to examine and investigate the affairs of any licensee and reinsurer to determine whether the licensee or reinsurer has been or is engaged in any conduct in violation of this Act. This power is in addition to the powers which the commissioner has under [insert applicable statutes governing the investigation or examination of insurers]. Any such investigation or examination shall be conducted pursuant to [insert applicable statutes governing the investigation or examination of insurers].
- B. The commissioner shall have the power to examine and investigate the affairs of any insurance support organization acting on behalf of a licensee that either transacts business in this state or transacts business outside this state that affects a person residing in this state to determine whether such insurance support organization has been or is engaged in any conduct in violation of this Act.

Drafting Note: Section 18 B is optional. The drafters included this language for those states that had already adopted Model 670 and those states that wish to adopt this provision.

- C. Whenever the commissioner has reason to believe that a licensee or a reinsurer has been or is engaged in conduct in this State which violates this Act, the commissioner may take action that is necessary or appropriate to enforce the provisions of this Act.

Section 19. Confidentiality

- A. Any documents, materials, data, or information in the control or possession of the state insurance department that are furnished by a licensee, third-party service provider, reinsurer or an employee or agent thereof, acting on behalf of the licensee or reinsurer pursuant to this Act, or that are obtained by the commissioner in any investigation, or an examination pursuant to Section 19 of this Act shall be confidential by law and privileged, shall not be subject to [insert reference to state open records, freedom of information, sunshine or other appropriate law], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's duties.

- B. Neither the commissioner nor any person who receives documents, data, materials, or information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to Section 20 A.
- C. In order to assist in the performance of the commissioner's duties under this Act, the commissioner:
- (1) May share documents, data, materials or information, including the confidential and privileged documents, data, materials, or information subject to Section 20 A, with other state, federal, and international regulatory agencies, with the National Association of Insurance commissioners, its affiliates or subsidiaries, any third-party consultant or vendor, and with state, federal, and international law enforcement authorities, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, data, materials, or information; and
 - (2) May receive documents, data, materials, or information, including otherwise confidential and privileged documents, data, materials, or information, from the National Association of Insurance commissioners, its affiliates or subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any documents, data, materials, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the documents, data, materials, or information.
 - (3) Shall enter into a written agreement with any third-party consultant or vendor governing sharing and use of documents, data, materials, or information provided pursuant to this Act, consistent with this subsection that shall:
 - (a) Specify that the third- party consultant or vendor agrees in writing to maintain the confidentiality and privileged status of the documents, data, materials, or information subject to Section 20 A;
 - (b) Specify that the ownership of the documents, data, materials, or information shared pursuant to Section 20 A with the third-party consultant or vendor remains with the commissioner, and the third-party consultant's or vendor's use of the information is subject to the direction of, the commissioner;
 - (c) Prohibit the third-party consultant or vendor from retaining the documents, data, materials, or information shared pursuant to this Act after the purposes of the contract have been satisfied; and
 - (d) Require prompt notice be given to the commissioner if any confidential documents, data, materials, or information in possession of the third-party consultant or vendor pursuant to this Act is subject to a request or subpoena to the third-party consultant or vendor for disclosure or production.
- E. No waiver of any applicable privilege or claim of confidentiality in the documents, data, materials, or information shall occur due to disclosure to the commissioner under this section or due to sharing as authorized in-Section 20 C.
- F. Nothing in this Act shall prohibit the commissioner from releasing final, adjudicated actions that are open to public inspection pursuant to [insert appropriate reference to state law] to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates, or subsidiaries.

Section 20. Record Retention

- A. Notwithstanding any other provision of law, a licensee and reinsurer shall maintain sufficient evidence in its records of compliance with this Act for the calendar year in which the activities governed by this Act occurred and the three calendar years thereafter.
- B. A licensee or third-party service provider shall maintain all records necessary for compliance with the requirements of this Act, including, but not limited to:
 - (1) Records related to the consumer's right of access pursuant to Article IV;
 - (2) Copies of authorizations and consent\ executed by any consumer pursuant to this Act, for as long as the consumer is in a continuing business relationship with the licensee; and
 - (3) Representative samples of any notice required to be provided to any consumer pursuant to this Act, for as long as the consumer is in a continuing business relationship with the licensee.

Section 21. Hearings, Records, and Service of Process

Whenever the commissioner has reason to believe that a licensee, ~~or~~ its third-party service providers, or a reinsurer have been or are engaged in conduct in this state which violates this Act, [or if the commissioner believes that a third-party service provider has been or is engaged in conduct outside this state that affects a person residing in this state and that violates this Act], the commissioner shall issue and serve upon such a licensee, ~~or~~ its third-party service provider, or a reinsurer a statement of charges and notice of hearing to be held at a time and place fixed in the notice. The date for such hearing shall be not less than [insert number] days after the date of service.

- A. At the time and place fixed for such hearing a licensee, ~~or~~ its third-party service provider, or a reinsurer [, or third-party service provider] charged shall have an opportunity to answer the charges against it and present evidence on its behalf. Upon good cause shown, the commissioner shall permit any adversely affected person to intervene, appear and be heard at such hearing by counsel or in person.
- B. At any hearing conducted pursuant to this section the commissioner may administer oaths, examine, and cross-examine witnesses and receive oral and documentary evidence. The commissioner shall have the power to subpoena witnesses, compel their attendance and require the production of books, papers, records, correspondence and other documents, and data that are relevant to the hearing. A record of the hearing shall be made upon the request of any party or at the discretion of the commissioner. If no record is made and ~~if~~ judicial review is sought, the commissioner shall prepare a statement of the evidence for use on the review. Hearings conducted under this section shall be governed by the same rules of evidence and procedure applicable to administrative proceedings conducted under the laws of this state.
- C. Statements of charges, notices, orders, and other processes of the commissioner under this Act may be served by anyone duly authorized to act on behalf of the commissioner. Service of process may be completed in the manner provided by law for service of process in civil actions or by registered or certified mail. A copy of the statement of charges, notice, order, or other process shall be provided to the person or persons whose rights under this Act have been allegedly violated. A verified return setting forth the manner of service or return receipt in the case of registered or certified mail, shall be sufficient proof of service.

Drafting Note: Consideration should be given to the practice and procedure in each state.

Section 22. Service of Process -Third-Party Service Providers

For purposes of this Act, a third-party service provider transacting business outside this state that affects a person residing in this state shall be deemed to have appointed the commissioner to accept service of process on its behalf; provided the commissioner causes a copy of such service to be mailed forthwith by registered or certified mail to the third-party service provider at its last known principal place of business. The return receipt for such mailing shall be sufficient proof that the same was properly mailed by the commissioner.

Section 23. Cease and Desist Orders and Reports

- A. If, after a hearing pursuant to Section 22, the commissioner determines that licensee ~~or~~ its third-party service provider or a reinsurer charged has engaged in conduct or practices in violation of this Act, the commissioner shall reduce his or her findings to writing and shall issue and cause to be served upon such licensee ~~or~~ its third-party service provider or a reinsurer a copy of such findings and an order requiring such licensee or ~~its~~ third-party service provider or a reinsurer to cease and desist from the conduct or practices constituting a violation of this Act.
- B. If, after a hearing, the commissioner determines that the licensee or its third-party service provider or a reinsurer charged has not engaged in conduct or practices in violation of this Act, the commissioner shall prepare a written report which sets forth findings of fact and conclusions of law. Such report shall be served upon the insurer, producer, ~~or~~ insurance support organization or reinsurer charged and upon the person or persons, if any, whose rights under this Act were allegedly violated.
- C. Until the expiration of the time allowed for filing a petition for review or until such petition is filed, whichever occurs first, the commissioner may modify or set aside any order or report issued under this section. After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed, the commissioner may, after notice and opportunity for hearing, alter, modify, or set aside, in whole or in part, any order or report issued under this section whenever conditions of fact or law warrant such action or if the public interest so requires.

Drafting Note: Consideration should be given to the practice and procedure in each state.

Section 24. Penalties

In the case of a violation of this Act, a Licensee may be penalized in accordance with [insert general penalty statute].

Drafting Note: Consideration should be given to the practice and procedure requirements and penalty requirements in each state.

Section 25. Judicial Review of Orders and Reports

- A. Any person subject to an order of the commissioner under [Code cite] or any person whose rights under this Act were allegedly violated may obtain a review of any order or report of the commissioner by filing in the [insert title] Court of [insert county] County, within [insert number] days from the date of the service of such order or report, a written petition requesting that the order or report of the commissioner be set aside. A copy of such petition shall be simultaneously served upon the commissioner, who shall certify and file in such court the entire record of the proceeding giving rise to the order or report which is the subject of the petition. Upon filing of the petition and record the [insert title] Court shall have jurisdiction to make and enter a decree modifying, affirming, or reversing any order or report of the commissioner, in whole or in part. The findings of the commissioner as to the facts supporting any order or report, if supported by clear and convincing evidence, shall be conclusive.
- B. To the extent an order or report of the commissioner is affirmed, the Court shall issue its own order commanding obedience to the terms of the order or report of the commissioner. If any party affected by an order or report of the commissioner shall apply to the court for leave to produce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and

that there are reasonable grounds for the failure to produce such evidence in prior proceedings, the court may order such additional evidence to be taken before the commissioner in such manner and upon such terms and conditions as the court may deem proper. The commissioner may modify his or her findings of fact or make new findings by reason of the additional evidence so taken and shall file such modified or new findings along with any recommendation, if any, for the modification or revocation of a previous order or report. If supported by clear and convincing evidence, the modified or new findings shall be conclusive as to the matters contained therein.

- C. An order or report issued by the commissioner shall become final:
- (1) Upon the expiration of the time allowed for the filing of a petition for review, if no such petition has been duly filed; except that the commissioner may modify or set aside an order or report; or
 - (2) Upon a final decision of the [insert title] Court if the court directs that the order or report of the commissioner be affirmed or the petition for review dismissed.
- D. No order or report of the commissioner under this Act or order of a court to enforce the same shall in any way relieve or absolve any person affected by such order or report from any liability under any law of this state.

Drafting Note: Consideration should be given to the practice and procedure in each state.

Section 26. Individual Remedies

This Act may not be construed to create or imply a private cause of action for violation of its provisions, nor may it be construed to curtail a private cause of action which would otherwise exist in the absence of this Act.

Section 27. Immunity

No cause of action in the nature of defamation, invasion of privacy or negligence shall arise against any person for disclosing personal or privileged information in accordance with this Act, nor shall such a cause of action arise against any person for furnishing personal or privileged information to an insurer, producer, or insurance support organization; provided, however, this section shall provide no immunity for disclosing or furnishing false information with malice or willful intent to injure any person.

Section 89. Obtaining Information Under False Pretenses

No person shall knowingly and willfully obtain information about a consumer from a licensee under false pretenses. A person found to be in violation of this section shall be fined not more than [insert dollar amount] or imprisoned for not more than [insert length of time], or both.

Drafting Note: This provision is applicable to states requiring this language.

Section 29. Severability

If any provisions of this Act or the application of the Act to any person or circumstance is for any reason held to be invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected.

Section 30. Conflict with Other Laws

- A. All laws and parts of laws of this state inconsistent with this Act are hereby superseded with respect to matters covered by this Act.
- B. Nothing in this article shall preempt or supersede existing federal or state law related to protected health information.

Section 32. Rules and Regulations

The commissioner may issue such rules, regulations, and orders as shall be necessary to carry out the provisions of this Act.

Section 33. Effective Date and Compliance Dates

- A. This Act shall take effect on [insert a date].
- B. Licensees shall have ## years from the effective date of this Act to implement Section ## of this Act.
- C. Licensees shall have ## years from the effective date of this Act to implement Section ## of this Act.
- D. Reinsurers shall have ## years from the effective date of this Act to implement Sections ## of this Act.



Sarah M. Ohs
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August 7, 2023

Katie Johnson, Chair
Cynthia Amann, Vice Chair
Privacy Protections Working Group
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

Attn: Lois Alexander NAIC Market Regulation Manager
Via email: lalexander@naic.org

RE: Comments on Version 1.2 of the Draft Insurance Consumer Privacy Protection Model Law

Dear Chair Jonson and Vice Chair Amann:

I write on behalf of the Consumer Data Industry Association (CDIA) to express our concerns with the current draft of the Insurance Consumer Privacy Protection Model law. While this bill strives to create privacy legislation aimed at protecting consumers, as drafted it has the potential to create significant unintended consequences that could undermine privacy and data security.

The Consumer Data Industry Association (CDIA) is the voice of the consumer reporting industry, representing consumer reporting agencies including the nationwide credit bureaus, regional and specialized credit bureaus, background check companies, and others. Founded in 1906, CDIA promotes the responsible use of consumer data to help consumers achieve their financial goals, and to help businesses, governments and volunteer organizations avoid fraud and manage risk. Through data and analytics, CDIA members empower economic opportunity, helping ensure fair and safe transactions for consumers, facilitating competition and expanding consumers' access to financial and other products suited to their unique needs.

We believe the solution to privacy concerns are best handled at the federal level rather than a patchwork of privacy regulations by the states. However, as states have decided to enact comprehensive privacy laws, we have worked with the 12 states who have passed comprehensive privacy legislation, to ensure the laws are harmonious with one another and federal laws. This NAIC model does not appear to take into consideration the existing 12 state comprehensive privacy laws that generally follow a model. We therefore do not understand the necessity for an additional model bill that reinvents definitions which have been agreed upon by both consumer advocates and the business community in existing state laws. For example, the definitions of consumer and personal information in the model bill differ from existing laws, potentially creating compliance

issues for companies. The regulation of third parties is very broad and goes beyond existing laws. In addition, the model bill places restrictions on publicly available information, where existing privacy laws provide an exemption for publicly available information. Other exemptions do not appear in this legislation that are standard in existing comprehensive privacy laws. Furthermore, this model legislation creates burdensome notice provisions which are unnecessary.

These are just a few of our concerns with the model draft that has been provided. We believe it unnecessarily conflicts with model state privacy laws that have come to fruition after years of discussions by both the public and private sectors. Our members take very seriously the concerns of privacy and data security and use data fairly, responsibly, and thoughtfully. We urge you to reconsider whether it is necessary to develop a new model law. States have worked hard to address privacy concerns while acknowledging the importance of being consistent with their basic definitions and approach. This has been very intentional, to not create a patchwork of rules and regulations that are incongruent with one another. Unfortunately, this model does not follow that approach and for those reasons we urge you to reconsider whether it is necessary to develop an outlier model.

Thank you for your consideration of our comments. I would be happy to answer any further questions you might have. I can be reached at sohs@cdiaonline.org.

Sincerely,



Sarah M. Ohs

Director of Government Relations



August 7, 2023

Via email to Ms. Lois Alexander, NAIC Market Regulation Manager, lalexander@naic.org

Katie Johnson, Chair
Privacy Protections (H) Working Group
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106

Re: Comments on NAIC Consumer Privacy Protection Model Law #674

Dear Chair Johnson,

The MIB Group, Inc. (“MIB”) thanks the Privacy Protections (H) Working Group (PPWG) for the opportunity to provide comments in response to the updated draft of Consumer Privacy Protection Model Law #674 (the “Model”). MIB is a trusted data and digital technology partner to the life insurance industry, providing underwriting risk assessment, fraud detection and compliance services for over a hundred years. MIB—a consumer reporting agency regulated by FCRA—provides its Code Solutions platform to facilitate the exchange and reporting of consumer information (used by over 99% of the life insurers in the United States and Canada). The Code Solutions platform is a shared, confidential, industry-wide information exchange operated by MIB and used by MIB Members¹ to reduce fraud and identify inaccuracies during the underwriting of life, health, disability income, and long-term care insurance.

As discussed on PPWG’s call on July 25, and in the comment letters by fellow-industry members, the Model currently includes a number of inconsistencies, fragmented provisions, and undefined or unclear terms which need to be addressed prior to completion of the Model. The comments below are intended to highlight and propose solutions to specific concerns with Section 5, as well as inconsistencies with the Fair Credit Reporting Act.

Sharing Limitations

MIB generally supports the permitted collection, processing, retention, or sharing, of a consumer’s personal information, as listed in Section 5(A), but finds Sections 5(B) and 5(E) to be contradictory and antithetical to the purpose of Section 5(A). Under Section 5(A), a licensee may, in relevant part, share a consumer’s personal information for the servicing of an insurance application, or to enable a licensee to detect or prevent criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with an insurance transaction. See Model §§ 5(A)(1), 5(A)(6). As described below, Section 5(B) restricts the sharing of certain consumer personal information – namely health or privileged information – with nonaffiliated third parties, in a manner that hinders these crucial insurance activities. Additionally, Section 5(E) restricts the sharing of consumer personal information by licensees and third-party service providers for any type of consideration, which further compounds MIB’s concerns regarding these activities.

¹ MIB is member owned. MIB Members furnish each individual applying for life insurance with a written MIB pre-notice and obtains an authorization: (i) expressly naming MIB as an information source; and (ii) eliciting the insured’s affirmative consent to search MIB’s database and report information back to MIB.



A. Section 5(B)

Section 5(B) prohibits licensees from sharing health information or privileged information about a consumer with a nonaffiliated third party² unless a consumer opts-in. Life insurers need to be able to continue to share certain health and privileged information with service providers in connection with an insurance transaction, including for the purpose of detecting and preventing fraud. Section 5(B) imposes unnecessary burdens on the sharing of information with nonaffiliated third parties that, in conjunction with the requirements of Section 6, will lead to a significantly more laborious and confusing pre-notice and authorization process for both industry members and consumers.

The requirements imposed by Section 5(B) should only be applied to “additional activities,”³ rather than applying them to the sharing of information in connection with insurance transactions, more broadly. As stated above, pursuant to Section 5(A)(6), sharing consumers’ personal information for fraud detection and prevention is a permissible activity. At minimum, it is imperative that this permission be extended to Section 5(B)—if not Section 5, as a whole—by including an exemption with respect to information shared for detecting or preventing fraud, so that consumers cannot weaponize opt-in provisions to evade the safeguards provided by service providers, like MIB.

B. Section 5(E)

As drafted, Section 5(E) is also problematic. Of course, MIB supports the general prohibition on the sale of personal information, but MIB has concerns about the drafting of the exceptions that follow. For example, as drafted,⁴ Section 5(E)(2) prohibits a licensee from receiving information from, or providing information to, an insurance support organization, such as MIB, if that activity involves consideration paid to a third-party service provider, which as defined would also include MIB.

As noted above, MIB has provided essential underwriting tools for fraud prevention and detection for over a century. Section 5(E) appears to prohibit MIB from receiving life insurance application data from, and providing code information to, MIB Members in exchange for payment. This prohibition directly contradicts the express purposes permitted under Sections 5(A)(1) and 5(A)(6).

MIB respectfully requests the PPWG consider incorporating any or all of the following revisions: (i) striking “unless the licensee or third-party service provider receives money or marketable property

² MIB also concurs with ACLI’s Comment regarding the definition of “nonaffiliated third parties”:

The definition of “nonaffiliated third party” does not expressly exclude service providers and/or insurance support organizations. This is important in particular because Section 5(B) prohibits sharing health information and privileged information about a consumer with a nonaffiliated third party unless a consumer opts-in. Life insurers need to share that information with service providers in order to make underwriting decisions (e.g., sharing with a service provider to send paramedical providers for underwriting medical examinations), service claims or provide other services to in-force policy holders (e.g., sharing with a service provider to do an assessment of health status under a long-term care or disability insurance policy).

³ “Additional activities” is an undefined term in the Model but is nevertheless utilized throughout the current draft to impose obligations on the sharing of consumers’ personal information. This term must be defined, and should be defined, in a manner that distinguishes the included activities from those considered an “insurance transaction.”

⁴ As written, Section 5(E)(2), reads “A licensee provides or receives information to an insurance support organization, statistical agent, or reinsurer” however we believe the provision is intended to include information provided to and received *from* insurance support organizations.



in connection with these activities," from Section 5(E); (ii) exempting fraud protection services with an exemption that reads, "This Section does not apply in the context of personal information provided to, or obtained by, a third-party service provider or an insurance support organization primarily for the purpose of fraud detection;" and/or (iii) amending the definitions of "third-party service provider" and "insurance support organization" in a manner that clarifies that insurance support organizations are not third-party service providers prohibited from receiving money in connection their services.

The Fair Credit Reporting Act and Consumer Reporting Agencies

The Fair Credit Reporting Act ("FCRA") protects information collected by consumer reporting agencies and prohibits the disclosure of protected information to any recipient who does not have the authority to receive the information under the Act. MIB is a consumer reporting agency under federal law, and MIB complies with the obligations imposed on all consumer reporting agencies under FCRA. However, the Model's definition of "consumer reporting agencies" excludes MIB, altogether, because MIB's primary source of information is its member insurers. The Model should show deference to the federally imposed definition of consumer reporting agency, consistent with Model 672.

Further, the Model imposes obligations on consumer reporting agencies that are inconsistent with federal law. For example, Section 13(B)(2) of the Model imposes shorter deadlines for responses to requests to correct or amend consumer information than imposed by FCRA under Section 1681i(a)(1)(A).⁵ Compliance with these shorter deadlines may be difficult, as sufficient time is necessary to thoroughly investigate and review each request. The Model should be drafted to compliment FCRA, not contradict it. Incorporating obligations that are inconsistent with those imposed under FCRA may present preemption questions and will likely lead to less uniformity among the states. The existing standards under FCRA provide the necessary consumer protections and are feasible for the industry from a compliance and implementation standpoint. The Model should show deference to the obligations imposed by FCRA.

We thank the PPWG for considering MIB's feedback. MIB would be happy to address any questions you may have and looks forward to the opportunity to review future exposure drafts of the Model. Please do not hesitate to contact MIB at CCorado@MIB.com.

Sincerely,

A handwritten signature in black ink that reads "Christie Corado". The signature is written in a cursive, flowing style.

Christie Corado
*EVP, General Counsel, Chief Privacy Officer and
Corporate Secretary of MIB Group, Inc.*

⁵ FCRA requires consumer reporting agencies to correct or amend disputed personal or publicly available information about a consumer within 30-days (or up to 45 days, under specific circumstances) of receiving a related request from a consumer. See 15 U.S. Code § 1681i(a)(1)(A)-(B). However, the Model requires a third-party service provider to either correct or provide a response within fifteen days. See Model Section 13(B)(2).

Section 3. Oversight of Third-Party Service Provider Arrangements

- A. A licensee shall exercise due diligence in selecting its third-party service providers.
- B. (1) No licensee shall (i) engage a third-party service provider to collect, process, or retain, or share any consumer's personal information, or (ii) share any consumer's personal information with any third-party service provider for any purpose unless there is a written contract between the licensee and third-party service provider with respect to personal information obtained from or on behalf of the licensee that:
 - (a) Requires the third-party service provider or any subcontractor of such third-party service to collect, process, retain, or share the personal information obtained from or on behalf of the licensee as specifically set forth in the contract;
 - (b) Prohibits the third-party service provider and its subcontractors from collecting, processing, retaining, or sharing the personal information referenced in Subdivision 3B(1)(a) for any other purposes; and
 - (c) Requires the deletion of such personal information when the information is no longer needed.
- (2) The contract between the licensee and any third-party service provider shall require the third-party service provider or its subcontractor to protect the personal information of the licensee's consumers as set forth in Sections _____ of this Act.
- C. Notwithstanding Subsection 3B, a licensee may share a consumer's personal or publicly available information with a third-party service provider with whom the licensee has no written contract in connection with an insurance transaction only to the extent necessary to provide limited services requested by the licensee in connection with a claim or other temporary relationships between the licensee and the third-party service provider.

Drafting Note: This section applies to the provision of towing services, damage clean-up services, and other incidental and temporary services required to settle a claim or provide an insurance product.

- D. Contracts between a licensee and any third-party service providers shall require the third party-service provider to honor the consumer's choice directive, whether it is an opt-in or an opt-out.

Alternate Language (from NAMIC)

- (A) An insurer shall exercise reasonable risk-based due diligence with its third-party service providers.
- (B) A contract between a licensee and a third-party service provider shall govern the processing of personal information performed on behalf of the licensee.
 - (1) The contract shall clearly set forth:
 - (a) Instructions for processing personal information;
 - (b) The nature and purpose of processing;
 - (c) The type of personal information subject to processing;
 - (d) The duration of processing, and

- (e) The rights and obligations of both parties.
- (2) The contract shall also include requirements that the third-party service provider:
- (a) Ensure that each person processing personal information is subject to a duty of confidentiality with respect to the information
 - (b) At the licensee's direction, delete or return all personal information to the licensee as requested at the end of the provision of services, unless retention of the personal information is required by law or otherwise agreed to by contract;
 - (c) Upon the reasonable request of the licensee make available to the licensee all information in its possession necessary to demonstrate the third-party service provider's compliance with the obligations in this Act;
 - (d) Engage any subcontractor pursuant to a written contract that requires the subcontractor to meet the obligations of the third-party service provider with respect to the personal information.
 - (e) Prohibit the third-party service provider from use of personal information for any purpose other than the purposes specified in the agreement with the insurer.
 - (f) Nothing in this section shall be construed to relieve a licensee or a third-party service provider from the liabilities imposed on it by virtue of its role in the processing relationship as defined by this Act.



To: Director Chlora Lindley-Myers, NAIC President
Commissioner Andrew Mais, NAIC President-Elect
Commissioner Jon Godfread, Vice-President
Commissioner Scott White, NAIC Secretary-Treasurer

From: Matt Eyles, AHIP President & CEO

Date: August 9, 2023

RE: AHIP Priorities – NAIC 2023 Summer National Meeting

Thank you for your deep commitment to ensuring Americans have access to high quality, equitable, and affordable health insurance coverage. Your leadership on these issues is critically important. AHIP and our member plans continue to appreciate your partnership as we advance this work together. Below please find a high-level summary of the issues that we will be focused on during the NAIC 2023 Summer National Meeting.

Medicaid Redeterminations. AHIP continues to be deeply engaged with federal and state policymakers, stakeholders, and enrollees to ensure they do not lose access to health insurance coverage while states work to determine the Medicaid eligibility of almost 95 million Americans. Health Insurance providers are taking important steps to mitigate gaps in coverage and ensure Americans maintain continuous access to health care and AHIP continues to collaborate closely with the Connecting to Coverage Coalition, a coalition of patient groups, providers, plans, and employer -related groups, to educate, share best practices, and identify challenges.

In July, the U.S. Centers for Medicare, and Medicaid Services (CMS) posted the first batch of Medicaid Redetermination data reported under the Consolidated Appropriations Act, 2023. The data represents the outcome of renewals due in April 2023 in 18 states (AR, AZ, CT, FL, IA, ID, IN, KS, NE, NH, NM, OH, OK, PA, SD, UT, WV, and WY) that had completed at least one full cohort of unwinding-related renewals as of April 30. Key takeaways include:

- More than 2 million people went through a full renewal process.
- Of those, nearly half (45.5%) were successfully reenrolled in Medicaid and CHIP, and more than half (55%) of those renewed were done automatically (through an ex parte data review).
- Approximately one third (32.2%) lost their Medicaid and/or CHIP coverage. Within that group, 79% of terminations were for procedural reasons.
- Just over 22% of people due for renewal in April were still pending with the state at the end of the month.
- Many people leaving Medicaid or CHIP may transition to Marketplace coverage. There were nearly 44,000 new plan selections from consumers who previously had Medicaid or CHIP enrollment in the 14 HealthCare.gov states that completed at least one full cohort of renewals by April.

In June, the U.S. Department of Health and Human Services announced new state flexibilities to help keep Americans covered as states resume Medicaid and CHIP renewals. States can consider adopting these new CMS flexibilities, including two key flexibilities that may have the most significant impact in ensuring Medicaid-eligible Americans are not inappropriately disenrolled (i.e., for procedural or administrative reasons):

- Postpone disenrollments for one month before disenrolling someone for administrative reasons, giving the state and other appropriate stakeholders (e.g., providers, MCOs, navigators, and others) time to continue outreach to people and support them in completing the necessary paperwork.
- Extend the reconsideration period past 90 days, giving people who lose coverage for procedural reasons additional time to re-establish eligibility, without having to start the application process from scratch.

Pharmacy Benefit Manager (PBM) White Paper. AHIP remains deeply engaged with the NAIC on the development of the draft PBM white paper. AHIP recently urged the NAIC Pharmacy Benefit Manager Regulatory Issues (B) Subgroup to reevaluate some of the language and passages in the white paper that include biased, unsubstantiated references and requested further analyses of the July 23 version of the draft white paper. We believe the bias included in the current draft jeopardizes the credibility of an NAIC resource, which should comprehensively inform, educate, and provide factual information to its audience. We will continue to work with members of the Regulatory Framework Taskforce, stressing the importance of making additional revisions to address all stakeholders in the supply chain in a complete, straightforward and unbiased manner.

Consumer Privacy. AHIP is guided by these core principles about consumer data privacy that were developed under the guidance of and approved by the AHIP Board of Directors:

- Everyone deserves the peace of mind of knowing that their personal health information is private and protected.
- Every person should have access to their data and be able to know easily how their health information may be shared.
- Consumers should be informed in a way that is clear, concise, and easy to understand about how to access their personal health information and how it could be used and disclosed.
- Personal health information should be protected no matter who holds the data.
- As health and health-related data become more interoperable, entities that collect, use, store, or disclose consumer health information should be required to comply with the Health Insurance Portability and Accountability Act (HIPAA) or new HIPAA-like protection requirements.
- The commercial sale of identifiable health information should be prohibited without the agreement of the individual.

With these guiding principles in mind, AHIP members are pleased that regulators are likely to include a full HIPAA Safe Harbor to avoid undue expense and regulatory waste to health insurers and their consumers, and we continue to work collaboratively with regulators on this point. AHIP members that offer HIPAA excepted benefit products are, however, concerned that the timeframe set by regulators is much too aggressive for subject matter so complex and heavily federally regulated. We will work with the NAIC to address these concerns and will also continue to advocate that entities that collect, use, store, or disclose consumer health information should be required to comply with HIPAA or new HIPAA-like protection requirements.

Mental Health Parity. As AHIP evaluates the new proposals and documents released by the U.S. Departments of Health and Human Services, Labor, and Treasury to amend regulations under the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA), we want to reiterate and make clear that mental health is good health, period. Everyone deserves access to mental health care, and that access should be on par with physical health.

Access to mental health has been, and continues to be, challenging primarily because of a shortage and lack of clinicians. This is why for years health insurance providers have implemented programs and strategies to expand networks and increase access. Those approaches include creating new coverage pathways with expanded access through telehealth and new technologies, as well as integrating mental

and physical health care. It also involves working with primary care doctors on identifying mental health needs, providing pathways to care, and incorporating quality and value.

The significant increase in the use of mental health care provides strong evidence that MHPAEA is working to provide patients with access to the quality, affordable health care they need. Even before the pandemic's massive impact on mental health needs, a [FAIR Health study](#) showed the number of private insurance claims for behavioral health diagnoses increased 108% from 2007-2017, indicating more people are getting treatment in the decade since the Mental Health Parity and Addiction Equity Act was enacted.

AHIP members have a consistent, clear commitment to improving access to mental health, as well as solutions that will work for Americans. We look forward to continuing our work with clinicians, patients, regulators, and other stakeholders to continue to improve access.

Affiliated Agreements. The efforts of the Risk-Focused Surveillance (E) Working Group to improve and strengthen the Form D process for regulatory approval of insurer agreements with affiliates for service contracts is nearing a close. Nearly all of the issues have been resolved to the mutual satisfaction of industry and regulators, but the issue of “cost-plus” agreements continues to be a concern. Although most states allow these agreements and have been approving them for years, a minority of the states on the Working Group do not permit them and are opposed to the Examiners’ and Analysts’ Handbooks addressing their approval unless as “a last resort.” This position does not reflect current use and is not practical in the global insurance economy. Some nations require the use of “cost-plus” agreements, and they are regularly used across the United States. The provisions in the Handbooks addressing this issue must be objective and without bias for or against any particular type of affiliate agreement since there is no basis for such preference in the enabling legislation. The Handbooks must also be flexible in order to allow for state-specific practices.

Artificial Intelligence. AHIP’s members are using Artificial Intelligence (AI) to transform health care and administrative processes to benefit the people they serve. At the same time, our members are committed to ensuring the application of AI is safe, transparent, explainable, and ethical. AHIP and its members also seek to ensure biases are neither perpetuated nor introduced in the development and application of AI that could negatively impact certain subpopulations. AHIP is currently reviewing the recent exposure of the 10-page NAIC Model Bulletin on Use of Algorithms, Predictive Models, and Artificial Intelligence Systems. We look forward to discussing this issue with regulators during the August meeting and submitting more detailed comments in September.

Long Term Care (LTC) Insurance. For years, it has long been known that many long-term care insurance companies were charging insufficient premiums, and there remains a very real threat of additional (LTC) insurance insolvencies. This threat, combined with other recent health company insolvencies, such as Bright Healthcare and Friday Health Plans, could cause a substantial impact on the national guaranty fund system, challenging the system’s ability to pay consumer claims. Regulators and industry have been working together to ensure companies will be able to charge and collect sufficient premiums or adjust benefits to ensure the payment of claims. As part of this effort, AHIP and our members remain committed to working with regulators on their review of actuarial methodologies used to evaluate rate increases and the goal of reaching one common methodology, that states and industry can support, which would be used by the NAIC’s Multi-State Rate Review (MSRR) team. In order to ensure that policyholders receive the benefits that were promised, it is vital that states follow the recommendations of the MSRR team in approving needed actuarially justified premium increases for this product line.

In closing, AHIP remains grateful for and committed to the work of NAIC. As this will be my final memo to NAIC leadership in my role as AHIP President & CEO, I wanted to express my sincere appreciation for the opportunity to work with NAIC since joining the association in 2015. Please continue to call on AHIP and our staff at any time for information or assistance on these or any other health-insurance related issues.