

Draft: 5/23/23

Privacy Protections (H) Working Group
Virtual Meeting
May 2, 2023

The Privacy Protections (H) Working Group of the Innovation, Cybersecurity, and Technology (H) Committee met May 2, 2023. The following Working Group members participated: Katie Johnson, Chair (VA); Cynthia Amann, Co-Vice Chair, and Jo LeDuc (MO); Chris Aufenthie, Co-Vice Chair (ND); Chelsy Maller (AK); Gio Espinosa and Catherine O'Neil (AZ); Damon Diederich (CA); Kristin Fabian, Hicham Bourjaili, Anthony Francini, and Kurt Swan (CT); Erica Weyhenmeyer (IL); LeAnn Crow and Shannon Lloyd (KS); Alexander Borkowski (MD); Jeff Hayden, Chad Arnold, Renee Campbell, Danielle Torres, and Julie Merriman (MI); Molly Plummer (MT); Santana Edison and Colton Schulz (ND); Martin Swanson (NE); Teresa Green (OK); Raven Collins and Thomas Hojem (OR); Gary Jones (PA); Patrick Smock and Matt Gendron (RI); Frank Marnell (SD); Shari Maier, Amy Teshera, and Michael Walker (WA); and Lauren Van Buren, Timothy Cornelius, Rachel Cissne Carabell, and Barbara Belling (WI). Also participating were Rachael Lozano and Rebecca Smid (FL); Joseph Fraioli (IA); Hermoliva Abejar (ID); Shelley Wiseman (UT); Rebecca Nichols and Garth Shipman (VA); and Mary Block, Karla Nuissl, and Isabelle Turpin Keiser (VT).

1. Discussed Confidentiality (Section 21)

Johnson said the Working Group would like to discuss the use of the *Insurance Data Security Model Law* (#668) confidentiality wording in Section 21 of the new *Insurance Consumer Privacy Protection Model Law* (#674).

Bob Ridgeway (America's Health Insurance Plans—AHIP) said he disagreed with the frequently asked questions (FAQ) because question one noted a slight difference, but the wording in Model #668 deleted one-third of the Own Risk and Solvency Assessment (ORSA) wording. He said AHIP had argued that “shall” should not have been changed to “may” in Model #668 when referencing regulators receiving written agreement (i.e., third-party), but instead to give notice only if subpoenaed on ownership. However, AHIP had lost that battle, so it was proposing limited language again, as Model #668 was less deserving of protection. Ridgeway said AHIP members want the longer language and reiterated the same arguments they had used during discussions of Model #668. Kristin Abbott (American Council of Life Insurers—ACLI) said the confidentiality of intellectual property must be protected to avoid infringement. For Section 21 C. 3 and Section 21 C. 4, she said the ACLI prefers the stronger ORSA provisions. Cate Paolino (National Association of Mutual Insurance Companies—NAMIC) said NAMIC would submit comments similar to those mentioned by the ACLI on using the wording from Model #668 in Model #674.

Birny Birnbaum (Center for Economic Justice—CEJ) said Section 21 should be deleted because consumers need to have access to any market conduct exam that is already considered confidential. The wording he suggested is that the privacy disclosure to consumers would be confidential if submitted to regulators and that the FAQ are proprietary because they apply to consumers, who need to be able to see what is being disputed by the company. Birnbaum said consumers need to be empowered to compare companies using all information, so nothing should be considered confidential or be kept from consumers' review.

Johnson asked those commenting to submit suggested wordings in writing following the meeting. She said the Virginia Bureau of Insurance is not subject to the federal Freedom of Information Act (FOIA), but Virginia laws are. Johnson said privacy policies must be posted on company websites. Teshera said records are not held in confidence in Washington state and that the department of insurance's (DOI's) responses are not held in confidence either. Diederich said the Working Group's intention was not that information automatically would be confidential simply because it was given to regulators.

2. Discussed Retention and Deletion of Consumers' Information (Section 5) and Record Retention (Section 22)

Johnson said the Working Group would discuss the retention and deletion of consumers' information wording in Section 5 and the record retention wording in Section 22 of Model #674 next. She said the Working Group intends that companies would be allowed to keep consumers' information for as long as it is needed, but they would delete it within 90 days of the date when it is determined the information is no longer needed to conduct the business with the consumer. She said private calls with companies before this meeting have indicated that this requirement is easy for new companies to do. However, it is very difficult, if not impossible, for companies with old, legacy-based systems.

Shelby Schoensee (American Property Casualty Insurance Association—APCIA) said the section regarding “applicable to any within Section 5 (A)” should be deleted, as well as changes to Section 5 (A) (1) and Section 5 (A) (9). She asked for redress from the 90-day requirement, as it is impossible for legacy companies especially. She also said that exceptions from the federal Gramm-Leach-Bliley Act (GLBA) 502 (b) are also needed and that she had similar concerns about Section 21 and Section 22. Jennifer McAdam (ACLI) asked how Section 5 (A) and Section 5 (B) (i) could be administered without being retroactive, especially with regard to in-force business with regard to information obtained prior to the effective date of Model #674. She noted that the ACLI would like to revisit this section later as others had indicated earlier. She asked that the Working Group add experience studies regarding company insolvencies to Section 5 (b) along with 90-day deletion concerns and the notice from the company on third parties, as the deadline is unfeasible and could damage financial reporting. McAdam suggested a risk-based approach with a reasonable amount of time, along with possibly considering wording similar to that in the California Privacy Rights Act (CPRA). She said Section 5 (b) (3) should read the same as the APCIA had indicated and that the ACLI would be submitting its additional comments in writing. Paolino said she agreed with what the other trade associations had provided.

Wes Bissett (Independent Insurance Agents & Brokers of America—IIABA) said the IIABA had several concerns with these sections, as the duty to remove data is very comprehensive with new concepts above what the federal requirement indicates. He wondered why the insurance industry was so strict compared to other non-insurance businesses. Bissett said he is worried that most states would not pick up nor pass such a model, so there would be no uniformity. He said Model #674 is a wholesale rewrite when a tune-up was needed—not a complete overhaul. Bissett said he agreed with the ACLI on Section 5 (b) (3), especially the requirement that small businesses need to control third parties that they do business with.

Diederich said the Working Group's job is to draft the new model so state insurance regulators can use it to regulate for the future. The old models were written several decades ago when legacy systems were written so data could not be deleted in order to avoid theft. He said that now it is known that any data can be stolen, and the only data that is theft-proof is data that is not stored. Deleted data cannot be stolen. He asked companies what state insurance regulators can do to help move them forward with new systems that replace the antiquated legacy systems. Johnson said the Working Group is looking for what would be workable, such as, perhaps, changing the 90-day rule to guardrails for licensees to use or de-identifying the data and keeping it.

Lauren Pachman (National Association of Professional Insurance Agents—PIA) asked how companies would determine when a consumer's data was no longer needed. Johnson said it would be up to the licensee to determine how long the data is needed. She said it would also be up to the licensee to write up their policy and follow it. Tricia Wood (Liberty Mutual Insurance) said, with regard to privacy and records retention, that there is a business purpose for the business records that they keep and that they are looking at not all consumer information. She also said they need a longer period to replace their existing systems.

Elizabeth Magana (Privacy4Cars) said she proposed keeping the requirements closer to the Internet of Things' (IOT's) data retention policy, which allows companies to keep the data as long as they have a legitimate business purpose. Jim Hurst said legacy systems were designed to be write once, read many (WORM), and kept forever, so historical data in such systems simply cannot comply with newer, more modern data privacy requirements. Patrick Simpson (Erie Insurance) said his company has a mix of legacy and new systems and that under New York cyber regulation, what may be feasible today should be periodically reviewed with plans for the future being brought to state insurance regulators, regardless of whether it is for a new system or changes to legacy systems. He said carriers do not want to keep legacy systems because it would not be competitive and because the more data a carrier has, the greater the risk to the company. Simpson said true de-identification would not permit re-identification. He said that as a property/casualty (P/C) insurer, Erie Insurance does have some legacy and some modern systems, as well as some changes from mainframe to cloud issues. He also said how long a change would take depends on the business, but on average, it could take less than 10 years. Hurst said he had no idea how long it would take to switch systems but that he would work to draft a final plan by the end of this year as a possibility.

Silvia Yee (Disability Rights Education & Defense Fund—DREDF) said she understood the need to maintain consumer data for claims. However, she said it seems the data to be collected is mammoth and that the carrier that gets the data can keep it forever. She advocated for a standard across the board so that consumers do not have to track down their data for every company or individual who gets it. Erica Eversman (Automotive Education & Policy Institute—AEPI) said companies need more modern equipment and systems that promote or incentivize the implementation of new technologies. Birnbaum said there is a need to have guidelines for implementing such technologies. Karrol Kitt (The University of Texas at Austin) said this is a technical issue and agrees with Simpson that legacy systems need to be replaced. Birnbaum said the infeasibility of taking data from a legacy system makes it even more imperative to strengthen the Model on the uses of consumer data due to the wide distribution of such systems.

Diederich said the new Model #674 must deal with the information being shared today, as well as with the new data that will be shared in the future. Johnson said some models have a step-up schedule with certain goals for the future and wondered if this type of schedule might work for the privacy model as well. Aufenthie said the question for those using a legacy or WORM system to answer is how long it would take to switch these systems. He also asked if companies could let state insurance regulators know how long it would take. Amann said the company would already have determined the data that is not needed before the 90-day period starts. Diederich said companies are requesting standards rather than prescriptive solutions, so companies need to let the Working Group know if they are following the National Institute of Standards and Technology (NIST), Insurance Services Office (ISO), or any other type of industry data standard.

3. Discussed Other Matters

Johnson reminded attendees about the in-person interim Working Group meeting to be held in Kansas City, MO, June 5–6. She said the purpose of this meeting is to collaborate with state insurance regulators, consumer representatives, and industry members on revised wording for the most complex topics in the new draft of Model #674. Johnson thanked state insurance regulators, consumer representatives, and industry members who had submitted requests to be added to the registration invitation for this meeting, as the venue limits seating.

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

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