



April 3, 2023

Via email: Lois Alexander ([lalexander@naic.org](mailto:lalexander@naic.org))  
NAIC Market Regulation Manager

Katie C. Johnson (VA), Chair  
Cynthia Amann (MO), Co-Vice Chair  
Chris Aufenthie (ND), Co-Vice Chair

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

**Re: Exposure Draft of National Association of Insurance Commissioners Consumer Privacy Protection Model Law (#674)**

Dear Chair Johnson, Vice Chairs Amann and Aufenthie, and Members of the Privacy Protections Working Group:

On behalf of the National Association of Professional Insurance Agents (PIA)<sup>1</sup>, thank you for the opportunity to provide comments on the National Association of Insurance Commissioners's (NAIC) draft model law.

We appreciate the Privacy Protections Working Group's attention to the issues presented by the existing NAIC models and the effects of evolving technologies on those models. The Working Group spent this past year engaged in conversation, first among its own regulatory members and then with some industry stakeholders, identifying the policy goals of its charge to use existing state insurance privacy protections to update, to the extent necessary, the NAIC's existing model laws governing the use of consumer data.

Ultimately, the Working Group concluded that the most logical way to achieve its goals would be to replace two existing NAIC models ([Model Act #670, the Insurance Information and Privacy Protection Model Act](#), hereinafter referred to as "Model #670," and [Model Regulation #672, the Privacy of Consumer Financial and Health Information Regulation](#), hereinafter referred to as "Model #672"), with a single new one. As a result, earlier this year, the Working Group

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<sup>1</sup> PIA is a national trade association founded in 1931 whose members are insurance agents and agency owners in all 50 states, Puerto Rico, Guam, and the District of Columbia. PIA members are small business owners and insurance professionals serving insurance consumers in communities across America.

exposed the first draft of its new [Consumer Privacy Protection Model Law \(Model Law #674\)](#) (herein referred to as the “draft Model #674” or “the draft”) for comment by interested regulators and other interested stakeholders.

### **1. PIA shares the Working Group’s goal of protecting insurance consumer data.**

PIA appreciates the work that has gone into the exposure of this draft as well as the time the Working Group has already devoted to the subject over the past several months. We also appreciate the time allocated to consideration of the draft during the recent NAIC National Meeting in Louisville, and we look forward to continued collaboration with Working Group members and other interested parties during future open calls and the planned interim Working Group meeting.

We share the Working Group’s goals of ensuring that consumer data is protected; that they know how their data is being used; that they have the right to opt out of sharing their data, other than for insurance-related purposes; and that they are aware of that right and given the opportunity to exercise it. We recognize the value of giving consumers the power to limit the circumstances in which their data may be shared. We also recognize that data belonging to insurance consumers is particularly susceptible to exploitation because of the extent to which transmission of consumers’ personal information is required in the purchase of an insurance product.

Additionally, as noted in the [memo accompanying the exposure of draft MDL #674](#), the two existing NAIC models that would be superseded by this draft are decades old. In the time since the passage of each model, substantial technological advances have driven the evolution of every aspect of the insurance industry, including the work of independent insurance agents. Licensees will serve consumers better with updated guidance, and states will be better equipped to protect consumers and strengthen existing state insurance markets by giving state regulators the tools they need to protect both consumer data and the state-based insurance regulatory system.

As members of the Working Group may know, earlier this year, the 118<sup>th</sup> Congress turned its attention to the protection and privacy of consumer data, an issue that has arisen in Congress over the past several years. In late February, the House Financial Services Committee marked up [H.R. 1165, the Data Privacy Act](#), which Committee Chairman Patrick McHenry (R-NC) had identified as one of his top priorities for the year. H.R. 1165 passed out of Committee along a party-line vote but, as of the time of this writing, has not been considered by the full House.

Shortly thereafter, the House Committee on Energy and Commerce Subcommittee on Innovation, Data and Commerce held a hearing on the broader issue of privacy and data security across economic sectors.<sup>2</sup> Members of Congress are following this issue—and the NAIC’s consideration of it—closely. As in other areas of insurance law, the industry risks ever more

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<sup>2</sup> This early activity in the 118<sup>th</sup> Congress’s Energy and Commerce (E&C) Committee is especially significant because the [American Data Privacy and Protection Act \(ADPPA\)](#) successfully passed out of the E&C Committee last year with bipartisan support. The ADPPA came close to becoming law near the end of 2022, when it was considered as a possible “rider” that might ultimately have been attached to different pieces of “must-pass” legislation. The ADPPA did not become law last year, and it is expected to be reintroduced in some form in the 118<sup>th</sup> Congress.

intrusive Congressional intervention, should the NAIC process not yield a model worthy of widespread support from state regulators, members of industry, and consumer groups, and, ultimately, worthy of adoption across the states. With that in mind, we ask the members of the Working Group to view our comments in the spirit with which we intend them: not to derail the drafting process but to improve its outcome.

PIA's concerns with the MDL #674 exposure draft are set forth below. Where applicable, our recommendations are reflected by tracked changes in the attached draft markup.

**2. As we understand the goals of the Working Group, they are inconsistently and insufficiently reflected in the draft.**

Following our March 31 conversation with Working Group Chair Katie Johnson (VA), we understand that the intent of the Working Group is ultimately for the model to permit licensees the unlimited<sup>3</sup> use and sharing of consumer data to the extent necessary to engage in insurance transactions.<sup>4</sup> The model is meant to limit the collection, processing, retention, or sharing of consumer data when such data is not being used in pursuit of insurance transactions.<sup>5</sup>

Working Group members seek to circumscribe the behavior of licensees who sell their clients' information without their clients' consent, without offering their clients an opportunity to "opt out" of having their data sold, or when they sell such data to businesses that are not engaged in the sale, solicitation, or negotiation of insurance, like the landscaping business described below in footnote 5.

However, the draft does not consistently reflect this distinction, and we hope the recommendations described herein and implemented in the attached markup, will assist Working Group members in ensuring that the model reflects their intent. Similarly, although the draft does not consistently reflect this understanding, members of the Working Group know that the role of independent insurance agents in such transactions is unique, particularly as compared with that of captive agents and insurance carriers.

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<sup>3</sup> Such use and sharing of consumer data would remain subject to all existing applicable state and federal laws and regulations.

<sup>4</sup> Proper sharing of consumer data is intended to include the necessary sharing that occurs between independent insurance agents and their agency management systems (AMSs), through which agents communicate with the multitude of insurance carriers with which they have business relationships. Without AMSs, independent agents would be unable to scale their communications (requests for quotes, reports of claims, etc.) with their carrier partners competitively in the modern era.

<sup>5</sup> As an example, an independent insurance agent selling a homeowners' policy to a client is permitted to use the client data collected for the purpose of selling the homeowners' policy (and, for public policy reasons, should be encouraged) as a basis for speaking with that client about purchasing flood insurance, if the agent believes the client would benefit from flood insurance coverage (based on, for example, local floodplain management information, the location of the home in a flood-prone area, relevant FEMA maps, expertise in the area where the property is located, etc.).

On the other hand, that same independent insurance agent selling a homeowners' policy to a client would not, according to members of the working Group, be permitted to share that client data with an affiliated landscaping business in the hopes that the client will hire the landscaping business to provide the client with lawn care on their newly acquired property in the future. The former data usage is permitted, and the latter prohibited, because the former is in furtherance of an insurance transaction, while the latter is not.

We generally support the Working Group's goals as described above, but we are concerned that they are reflected inconsistently and inadequately in the draft. Through these comments and the attached markup, we will offer insight into the areas that insufficiently address the unique position of independent insurance agents or that conflict with the stated goals of the Working Group in ways that would be harmful to the independent agency system.

**3. The Purpose set forth in Article I, Section 1(A) does not appear to fully reflect the goals of the Working Group.**

To minimize the disconnect between our understanding of the Working Group's goals and the language in the draft, the attached markup includes the following suggested revisions to the Purpose provision.

**a. The Purpose does not adequately distinguish between insurance and noninsurance transactions.**

We found that no distinction was made between licensees' handling of consumer data for the purpose of engaging in the sale, solicitation, or negotiation of insurance and licensees' handling of consumer data for purposes unrelated to the business of insurance. We added language to establish that distinction at the beginning of the draft, so that vital context is made available to the reader immediately.

**b. The Purpose inaccurately suggests that consumer power over use of personal data may be unlimited.**

While PIA supports the right of consumers to grant or deny permission to insurance licensees regarding the use of their data, that right is not entirely unfettered. Consumers cannot, for example, purchase an auto insurance policy from an insurance agent without providing their drivers' license or Vehicle Identification Number (VIN), nor can they purchase a homeowners' insurance policy without providing the address of the property they wish to insure. Additionally, allowing consumers to choose which individual elements of their data may be collected, sold, or shared would place a costly administrative and financial burden on licensees and, depending on their size, could quickly drain them of human and financial resources.

For these reasons, we concluded that Article I, Section 1(A)(2), which would permit consumers to choose what personal information a licensee may "collect, process, retain, or share," is overly broad and could be unintentionally misleading. We hope that the more circumscribed language offered in the attached markup meets the needs of the Working Group and more accurately reflects the options available to consumers.

**c. The wording of Purpose Section 1(A)(5) is puzzling.**

We were perplexed by the wording of the provision purporting to offer a consumer the opportunity to access a licensee's version of their data so that the consumer may verify or dispute its accuracy. The spirit of this provision originated in Model #670, and we appreciate the

Working Group's notable efforts to achieve a comparatively streamlined version of the provision contained there.

However, the draft language leaves unclear whether a consumer must request access to their information from a licensee or whether the licensee is obligated to provide such access to all consumers regardless of whether they request it. Additionally, it refers both to "individual consumers" (plural) and then "the consumer" (singular), even though both refer to the same single consumer. The provision is also ambiguous about with whom this "access" resides, even though consumer access must necessarily be provided by the licensee whose record of the information is at issue.

We hope the revisions in the attached reflect our concerns with the draft Purpose language and the improvements we have described herein. To the extent that the attachment includes substantive changes to the Purpose section that are not discussed here, they are addressed elsewhere in these comments.

**4. The Drafting Note that precedes Article I, Section 2 could be clarified and moved further up in the draft.**

We understand that the Working Group intends for the current exposure draft, once finalized, to replace both Model #670 and Model #672. As such, the Drafting Note that precedes Article I, Section 2 seems unnecessarily opaque. A clearer rendition would be more useful if it appeared earlier in the draft and explicitly stated that this model is intended to replace Models #670 and #672. The first three sentences of the Drafting Note are serviceable as written, but they fail to state the obvious: that, following the finalization of Model #674, and subject to any requisite administrative NAIC proceedings, Models #670 and #672 will no longer be effective. That vital information is withheld, seemingly from the entire draft. Adding that information to the Drafting Note and moving it to the beginning of the draft would provide essential context to the reader at the point when such context is most needed.

Moreover, while Model #672 has been adopted by every state, Model #670 has not. As such, the part of the final sentence of the Drafting Note saying that this model "will supplant any [consumer privacy] notices required" by Model #670 or Model #672 is potentially confusing. States that have adopted only Model #672 or both models will presumably repeal and replace one or both in full, including the provisions governing consumer privacy notice requirements, in favor of the final version of the current draft. In that case, declaring that the consumer privacy notice requirements of both Models specifically have been supplanted is unnecessary and could needlessly confuse state lawmakers, regulators, licensees, and consumers, because they could infer incorrectly from it that other provisions of the Models remain in effect. The potential for confusion is exacerbated by the fact that the Drafting Note is placed at a point in the draft that does not specifically address consumer privacy notice requirements.

The wording of the Drafting Note also suggests that Models #670 and #672 themselves have the power to impose requirements on state licensees. In fact, state licensees are required to abide by the consumer privacy notice requirements promulgated in Models #670 and/or #672 because the models were adopted by states.

Likewise, the reference to the Gramm-Leach-Bliley Act (GLBA) at the end of the final sentence of the Drafting Note suggests that the GLBA, a federal law, directly imposed consumer notice requirements on state licensees. Rather, the GLBA included an instruction to states to adopt consumer privacy notice requirements. That instruction was the catalyst for the NAIC's promulgation of Model #672. That detail is elided in the final sentence of the existing Drafting Note but reflected in the revisions contained in the attached.

**5. For the draft to be workable, its requirements should be explicitly scalable.**

In recognition of the size and capacity variations among licensees, licensees' Model #674 obligations should be commensurate with their capacity to undertake such obligations. The NAIC's [Insurance Data Security Model Law, Model #668](#), acknowledged these variations and advised licensees to appropriately scale their Information Security Program and Risk Assessment and Management requirements such that they are commensurate with that licensee's size, scope, and complexity and the scope and complexity of its activities. However, even though the Model #674 draft liberally borrows from Model #668 elsewhere, the draft does not contain similar scalability language.

Licensees vary in size, scope, and complexity regardless of the role they play in the insurance industry, of course. However, independent insurance agencies *especially* vary enormously in size, number of employees, annual revenue, book of business value, and in the availability of nearly every imaginable resource. For that reason, PIA recommends adding a new Section 2, just before the draft's existing Section 2, setting forth a scalability provision using language similar to that used in Model #668.

If the Working Group accepts this addition, subsequent sections will require renumbering.

**6. Licensees' oversight obligations as to third parties should be set forth in more granular detail based on the nature of the third party, the nature of the licensee, and the nature of the activities they intend to undertake together.**

Article I, Section 2(A) of MDL #674 sets forth licensees' obligations with regard to the oversight of all third-party service providers and the agreements governing the relationships between licensees and their third-party service providers. Like the definition of the term "third-party service provider" itself, which we will further address below, these obligations do not distinguish among different types of third-party service providers; they demand strict adherence regardless of the types of licensees and third-party service providers at issue. In the preceding section, we addressed the issue of variations among licensees, and we have suggested a minor change to the beginning of Section 2(A) to reflect the scalability concern mentioned above.

**a. Licensees' oversight obligations as to third parties should distinguish between third parties engaged in the business of insurance or insurance-adjacent business, or those engaged in business activities unrelated to insurance.**

We now turn our attention to how differences among licensees should be considered in the context of third-party service providers, as well as variations among those third-party service providers themselves, and how the draft can adequately capture the possible combinations of licensees and third-party service providers and remain appropriately suited to all involved.

For example, our March 31 conversation with Chair Johnson suggested that the draft would benefit from establishing a more overt distinction between third-party service providers that are themselves engaged in the business of insurance or insurance-adjacent activity, and those whose primary business purpose is outside the realm of insurance.

Currently, the draft imposes the same obligations on all third-party service providers, whether the service they provide is related to insurance or not. However, third-party service providers outside the insurance industry are not otherwise subject to the requirements of the draft (or its predecessors, for that matter). Plus, the state insurance regulatory authorities ultimately responsible for enforcing these requirements have no authority over non-insurance-related third-party service providers. For these reasons, we have modified the language in the draft so that a licensee and a third-party service provider must enter into an agreement that conforms to the requirements of the draft when the agreement pertains to the business of insurance. We also modified the definition of "third-party service provider" to pertain only to third-party service providers that obtain or provide consumer data for purposes that are related to the business of insurance.

Moreover, we have also strengthened the language so that, where the third-party service provider involved in the business of insurance is subject to stricter standards than those contained in the draft, the draft standards serve as a floor rather than a ceiling. In other words, if a third-party service provider involved in the business of insurance is subject both to the draft standards and to more stringent standards, like those contained in the General Data Protection Regulation (GDPR), for instance, the third-party service provider must continue to comply with the relevant GDPR standards, assuming that they are more restrictive than the standards contained in the draft.

**b. Licensees cannot be made to negotiate contract terms with much larger and more powerful contract partners, particularly if those partners are not in the insurance industry.**

While these changes alleviate some of our concerns regarding the treatment of licensees in the context of third-party service providers, several concerns remain. In many relationships between independent insurance agents and third-party service providers, the independent agent has comparatively minimal negotiating power, irrespective of whether the third-party service provider is engaged in insurance-related business or not.

Because of the size and power disparity between many licensees (especially independent insurance agents) and the third-party service providers with whom they work, many licensees will face resistance to any demand that a third-party service provider execute a written agreement requiring its adherence to MDL #674, but the Act offers no alternative. It prohibits licensees from entering into any agreement or contract that allows any third-party service provider, irrespective of whether they are engaged in the business of insurance or not, to “collect, process, retain, or share” any consumer information in a prohibited manner.

Our concerns arise out of the frequency with which contracts of adhesion are utilized by large third-party service providers who are not engaged in the business of insurance and seek to exploit the size and power disparity between themselves and the small independent insurance agencies with whom they do business. This issue is most troubling when considered in the context of non-insurance-related businesses, because those engaged in the business of insurance or an adjacent insurance-related businesses often find it in their interest to comply with insurance-related standards, and they can expect to receive pressure from insurance business partners of all sizes if they delay doing so.

As an example of an insurance-related business for which compliance would be a priority even in the absence of small independent agencies, independent insurance agents rely heavily on agency management systems (AMSs) to communicate with the carriers with whom they partner. AMSs transmit consumer data gathered by the independent agent to their carrier partners and convey proprietary information, including policy quotes, marketing materials, and product design information, from the carrier to the agent.

As we understand it, the Working Group’s intent is to permit the largely unlimited exchange of consumer information among licensees in settings like those that exist within AMSs. Fortunately, because of their extensive connections to large insurance carriers, AMSs are likely already subject to standards similar to those contained in the draft; plus, if they were not already, they are subject to this draft’s standards by virtue of their existing relationship to carriers. Thus, while independent agents with small businesses often enter into “contracts of adhesion” out of necessity, their AMS contracts likely already comply with the draft. If they do not already, the AMS will likely make the change promptly, both to conform with applicable requirements, of course, but also because they will likely have received similar requests from other carriers and agents with whom they do business.

By contrast, the “contract of adhesion” issue persists among independent agents in their business arrangements with large, non-insurance-related companies. Corporate behemoths like Microsoft, Google, and Amazon will be reticent to change their existing data privacy practices to comply with laws that apply only to insurance licensees in certain states. Small-business licensees rarely have the luxury of negotiating the details of their relationships with relatively large third-party service providers. And when the primary business of those service providers is not insurance, compliance with NAIC models is not a given. Many licensees will be left with two unsavory options: they can be subjected to whatever consumer data privacy practice the third-party service provider typically uses, whether that practice meets the standards set forth in the draft of MDL #674, or they can altogether avoid any business relationship with the third-party service provider at issue—and probably entire categories of third-party service providers.



To create a distinction between third-party service providers engaged in the business of insurance or insurance-adjacent activities and third-party service providers engaged in non-insurance activities, we have provided recommended changes to the definitions of “third-party service provider” and “nonaffiliated third party” below.

**7. Some of the draft’s definitions are inconsistent with our understanding of the Working Group’s intent.**

**a. Article I, Section 3(B): “Additional permitted transactions”**

The definition of the term “additional permitted transactions” is both narrower and less clear than the Working Group may have intended. While it is possible that a licensee’s use of consumer data for a non-insurance-related purpose will result in a “transaction,” it is unclear whether the term “additional permitted transactions” is meant to refer only to transactions involving the consumer whose data is at issue or to refer to transactions that exclude the consumer but involve the licensee and/or the third party with whom the data is shared.

Regardless, we conclude that the licensee and any third-party recipients of the data are at least as likely to be engaged in “activities” as “transactions” unrelated to the business of insurance. Such activities could, but would not necessarily, result in transactions. We thus recast this term as “additional permitted activities” in its definition, and we attempted to make that change globally throughout the document, though we may not have succeeded.

We also conclude that Section 3(B)(1) is likely intended to refer to the marketing of non-insurance-related products or services and revised that provision accordingly. Similarly, we expect that the research activities identified in Section 3(B)(2) are unrelated to providing the consumer with insurance and have thus revised that portion as well.

**b. Article I, Section 3(C): “Adverse underwriting decision”**

We recognize that the refusal of a producer “to apply for insurance coverage with a specific insurer represented by the producer and that is requested by the consumer” is adapted from current Model Act #670, the *Insurance Information and Privacy Protection Model Act*.

However, we are concerned about the effect of Article I, Section 3(C)(1)(d) on independent agents’ freedom to manage their agencies as they see fit.

Agents adjust their strategies to meet the needs of their clients every day. If an agent does not apply for coverage with a specific carrier partner in accordance with a consumer’s request, they likely have a valid reason for that choice, and it should not be subject to evaluation by the consumer. Our concern about this provision is exacerbated by the draft’s broad definition of “consumer,” in which a consumer is defined as, among other things, a current or former applicant, policyholder, beneficiary, or claimant.

According to the draft, then, a producer will owe an explanation to a new prospective client if the producer does not apply for coverage with a specific insurer, where the producer represents that insurer and where the prospect requests such coverage be pursued. This requirement is overly

burdensome and will risk producers having to change their ordinary course of business to accommodate a prospect who may never become a client. We therefore recommend striking Article I, Section 3(C)(1)(d) in full and re-lettering the subparts that follow.

Section 3(C)(2) describes events that are *not* considered “adverse underwriting decisions,” but they require the consumer to be provided with a written reason(s) for the occurrence. The first two events are the issuance of a policy termination form “on a class or state-wide basis” [Section 3(C)(2)(a)] or a denial of coverage solely because such coverage is not available “on a class or state-wide basis” [Section 3(C)(2)(b)]. Because they are specific to class- or state-wide decisions, these two provisions will require information more readily available to the carrier than to the producer, making the carrier the best source of the requisite disclosure.

Likewise, the third of these are clearly the exclusive purview of the insurer, not the producer. There are no circumstances in which the responsibility for providing a consumer with an explanation of an “insurer-initiated” increase in premium should be assigned to a producer; producers should not be tasked with responding to these inquiries.

Additionally, while Section 3(C)(2)(c) explicitly states that consumers are entitled to explanations only upon request, Sections 3(C)(2)(a) and 3(C)(2)(b) are silent as to whether the consumer must initiate an inquiry to receive the information. We recommend that producers be relieved of the responsibility of responding to consumer requests arising from these provisions. We further recommend that the first two subparts also require a consumer request to initiate these disclosures. Finally, we recommend that insurers alone be responsible for providing them.

**c. Article I, Section 3(N): “De-identified”**

The definition of “de-identified” seems overly broad. It requires licensees to design and create business processes meant to prevent the accidental release of de-identified information, but it is far too expansive. It requires the protection of information that can “relate to” or “describe” a consumer; hair color can “describe” a consumer, and the town in which a consumer resides can “relate to” that consumer. In the attached, we offer revisions to narrow this definition to information that, if inadvertently disclosed, could be linked with a specific consumer, not a group of consumers that could number in the thousands.

**d. Article I, Section 3(T): “Insurance Support Organization”**

In Section 3(T)(1)(c), within the definition of “insurance support organization,” we offer revisions to the second mention of the word “transaction” to “activity” to enable it to conform with similar changes described in our discussion of the definition of “additional permitted transactions” above.

**e. Article I, Section 3(Z) (new definition): “Non-insurance-related third-party service provider”**

Below and in the attached, we offer a revised definition of “third-party service provider” that limits the definition to providers whose services relate to the business of insurance. That change

will exclude third-party service providers whose services are unrelated to the business of insurance, prompting the need for them to be defined elsewhere. In so doing, we recommend using the existing definition of third-party service provider as a basis while removing the reference to “insurance support organizations,” because they are necessarily associated with the business of insurance.

The definition set forth in the attached is located in alphabetical order within the “Definitions” section. If the Working Group accepts this addition, subsequent definitions will require relettering.

**f. Article I, Section 3(BB): “Personal information”**

We recognize that the definition of “personal information” is adapted from a combination of definitions included in current Models #670 and #672. However, in those models, the terms “relates to” and “describes” were limited to health care and financial information. Here, on the other hand, these terms encompass consumer information gathered in the process of engaging in any transaction, be it an insurance transaction or not. We recommend removing these descriptors because they are vague and could apply to so many characteristics that could not be easily linked with an individual consumer.

**g. Article I, Section 3(LL): “Share,” “shared,” or “sharing”**

Both before and after Section 3(LL), the phrase “additional permitted transactions” is used consistently throughout the draft. However, in Section 3(LL), “other permitted transactions” is used. We cannot be sure whether the Working Group’s intent is for this phrase to refer to “additional permitted transactions.” For that reason, we offer a revised term that we hope reflects both the Working Group’s preferred “additional” as well as our suggested change to “activities,” but we also hope to draw the Working Group’s attention to this question via our comment in the attachment.

We have some additional recommendations to the definition of “share” and its derivatives based on our understanding of the Working Group’s intent. First, we recommend the addition of language indicating that the sharing of consumer information would be “for the purpose of engaging in” additional permitted activities. Without this phrase, we are unable to discern the purpose of the original phrase “including other permitted transactions.”

We suggest striking the phrase “in which no valuable consideration is exchanged” at the end of the definition, because it is redundant with the portion that states, “whether or not for monetary or other valuable consideration.” The latter phrase covers both scenarios—involving the exchange of valuable consideration and scenarios where no valuable consideration is exchanged.

We also suggest adding “including the consumer” to the phrase “for the benefit of any party,” because we find it unclear whether “any party” is meant to refer only to those specifically mentioned in the definition, or any party at all. Bearing in mind the Working Group’s focus on the marketing of non-insurance-related products and services to insurance consumers, our recommendations seek to ensure that this definition reflects our understanding of that concern.

#### **h. Article I, Section 3(NN): “Third-party service provider”**

As drafted, the definition of “third-party service provider” does not distinguish between third-party service providers that are engaged in the business of insurance, like AMSs, and third-party service providers that are attempting to capitalize on the aggregation of consumer data for the purpose of marketing products and services that are unrelated to insurance. Based on our understanding of the Working Group’s priorities, we suggest adding “for the purpose of engaging in insurance-related business activities” to the definition, so that the term “third-party service provider” refers only to entities that obtain consumer information for insurance-related purposes, rather than all entities.

That change makes all “third-party service providers” inherently insurance-related and creates a need for a new definition of “non-insurance-related third-party service providers,” which we added as new Section 3(Z) and described above.

#### **8. Article II, Section 4(H) is overly restrictive and inconsistent with other provisions contained in the draft, and it would improperly prohibit independent agents from selling insurance policies to consumers.**

As drafted, Article II, Section 4(H) prohibits licensees from selling or sharing consumer information in exchange for any consideration. However, elsewhere in the draft, licensees are granted express permission to share consumer information in furtherance of the solicitation, sale, and negotiation of insurance.

Inevitably, such activities can result in the exchange of consideration; if an independent agent is successful, they will receive first information and ultimately payment from consumers, who will, in exchange, receive insurance policies. Similarly, the independent agent will have exchanged that consumer information with an AMS and at least one carrier, which will, if they are successful, also result in the exchange of consideration. At a minimum, this section requires substantial refinement. However, the ostensible goal of this provision, to prevent the outright sale of consumer information by licensees, is achieved elsewhere in the model. As such, we recommend its deletion.

#### **9. Remove the draft’s optional private right of action.**

The inclusion of an optional private right of action threatens the future of the independent agency system, so we were pleased to learn that the Working Group has decided to omit it going forward. In accordance with the expressed desire of the Working Group, we have stricken Article VII, Section 28 from the attached draft.

#### **10. If finalized as written, the model will challenge independent agents’ ability to conduct their business operations.**

Upon our initial review of the draft, we had concerns about the limitations it appeared to place on independent agents to provide information to consumers that may assist them in filling insurance coverage gaps they may not otherwise have realized exist. We feared that the draft language

would prohibit an agent who sold homeowners' insurance, for example, from recommending flood insurance in an area prone to flooding.

However, since our initial review, we have come to understand that the Working Group does not intend to prohibit those activities. We had concerns about agents' ability to compete for the business of former clients because the draft appeared to prohibit agents from retaining even the most basic contact information of prior clients. We realize, however, that state and federal document retention requirements will continue to ensure that agents are able to retain some basic information about their former clients and enable them to compete for those clients' business.

Naturally, agents also face the risk of being involved in litigation, be it between a client and an insurance carrier over whether coverage exists, between a client and a carrier over the amount of damages paid on a covered loss, between a client and an agent over an errors & omissions claim, or any other dispute that advances to litigation. The retention of relevant documents is vital to any possible reconstruction of the disputed event in litigation, irrespective of the events giving rise to the suit. We also had concerns that the draft inadvertently requires licensees to discard data and documentation that would otherwise be retained for litigation purposes. Again, though, state and federal document retention requirements will ensure that paperwork associated with claims and potential litigation will be appropriately retained.

## 11. Conclusion

Our comments here are far from exhaustive; we know that the Working Group expects additional feedback from us, and we have additional input we plan to provide. We look forward to a productive conversation with Working Group members on a call scheduled for later this month. At that time, we hope to be able to provide additional insights into our members' current data-sharing and consumer opt-out practices, among other issues. We appreciate the Working Group's flexibility and recognition of concerns that are specific to the independent agent community. As always, we appreciate the opportunity to provide the independent agent perspective.

Please contact me at [lpachman@pianational.org](mailto:lpachman@pianational.org) or (202) 431-1414 with any questions or concerns. Thank you for your time and consideration.

Sincerely,



Lauren G. Pachman  
Counsel and Director of Regulatory Affairs  
National Association of Professional Insurance Agents

Enclosure

**Insurance Consumer Privacy Protection Model Law #674**

**2023 Privacy Protections Working Group**

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**Drafting Note:** This model is intended to replace NAIC Model Law #670 and NAIC Model 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 30-40 years ago. This model law reflects those realities and addresses the need for additional consumer protections. This model requires notices to consumers for various privacy concerns and will supplant any notice requirements imposed by state authorities in accordance with Model #670, Model #672 and, via Model #672, the Gramm-Leach Bliley Act.

Commented [K1]: Based on Model 670

Commented [LP1]: This is a revised version of the Drafting Note that was originally located before Section 2.

## ARTICLE 1. GENERAL PROVISIONS

### Section 1. Purpose and Scope

- A. **Purpose:** This Act establishes (i) standards for the collection, processing, retaining, or sharing of consumers' personal information ~~for the purposes of enabling licensees to engage in the sale, solicitation, or negotiation of insurance and enabling licensees to engage in non-insurance-related activities, by licensees~~ to maintain a balance between the need ~~for information by of~~ those in the business of insurance ~~to collect, process, retain, and share information~~ and consumers' need for fairness and protection in the use of ~~consumers' their~~ personal information; (ii) standards for additional permitted ~~transactions-activities~~ involving ~~the collection, processing, retaining, or sharing of~~ consumers' personal information; and (iii) standards applicable to licensees for ~~providing~~ notice to consumers of the collection, processing, retention, or sharing of ~~consumers' their~~ personal information. These standards address the need to:
- (1) Limit the collection, processing, retention, or sharing of consumers' personal information to purposes required in connection with insurance transactions and additional permitted ~~activities~~ transactions;
  - (2) Enable consumers to ~~determine consent to the collection, processing, retention, or sharing of what their personal information by a licensee by requiring the licensee to provide consumers with the opportunity to opt into or out of additional permitted activities 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) ~~Upon request, a~~ Allow ~~an individual consumers-~~ to access ~~a licensee's rendition of that consumer's personal information relating to the consumer requesting access, so that said consumer to may~~ verify or dispute the accuracy of the information ~~held by the licensee;~~ and
  - (6) Allow consumers to obtain the reasons for adverse underwriting transactions.
- B. **Scope:** The obligations imposed by this Act shall apply to licensees and third-party service providers, on or after the effective date of this Act:
- (1) ~~Who c~~ Collect, process, retain, or share consumers' personal information in connection with insurance transactions;
  - (2) ~~Who e~~ Engage in insurance transactions with consumers; or
  - (3) ~~Who e-~~ Engage in additional permitted ~~transactions-activities~~ involving consumers' personal information.
- C. **Protections:** The rights granted by this Act shall extend to consumers:
- (1) Who are the subject of information collected, processed, retained, or shared in connection with insurance transactions;
  - (2) Who engage in or seek to engage in insurance transactions;



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- (3) Who have engaged in the past in insurance transactions with any licensee or third-party service provider; or
- (4) Whose personal information is used in additional permitted ~~transactions~~activities by licensees and third-party service providers.

**Drafting Note:** This model is intended to include the protections for consumers that are provided by NAIC Model Law #670 and NAIC Model Regulation #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 30-40 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. Variations in Licensee Size and Complexity

A licensee shall discharge the obligations set forth herein in a manner commensurate with the licensee's size and complexity, the nature and scope of the licensee's activities, including its use of third-party service providers, nonaffiliated third parties, and insurance support organizations; the extent to which it engages in additional permitted activities; and the sensitivity of the nonpublic information it collects, processes, retains, and shares.

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

### Section 2. Oversight of Third-Party Service Provider Arrangements

- A. To the extent feasible, a licensee shall exercise due diligence in selecting its third-party service providers.  
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 related to the business of insurance unless there is a written agreement between the licensee and third-party service provider that requires the third-party service provider to abide at least by the provisions of this Act, if not stricter provisions imposed by another authority, and the licensee's own practices in the collection, processing, retention, or sharing of any consumer's personal information.
- B. A licensee shall require all the licensee's third-party service providers engaged in businesses that are related to the business of insurance to implement appropriate measures to comply with the provisions of this Act in relation to consumers' personal information that is (i) collected, processed, or retained by or (ii) shared with or otherwise made available to the third-party service providers in connection with (i) any insurance transactions of the licensee or (ii) any additional permitted ~~transactions~~activities.
- C. No agreement or contract between a licensee and a third-party service provider 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 practices.
- D. An agreement related to the business of insurance 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 agreement(s) with the licensee.

Commented [LP2]: This drafting note has been moved to the beginning of the document.

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#### Section 3. 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~~

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

(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. "Additional permitted ~~transactions~~activities" means collecting, processing, retaining, or sharing a consumer's personal information, with the consumer's consent, for:

- (1) ~~The purpose of marketing purposes~~non-insurance-related products or services; or
- (2) Research activities not related to ~~the provision of insurance to the consumer whose information is being collected, processed, retained, or shared, or for rating,~~ or risk management purposes for or on behalf of the licensee.

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).

C. 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;
  - (c) A rescission of the insurance policy;
  - ~~(d) Failure of a producer to apply for insurance coverage with a specific insurer represented by the producer and that is requested by a consumer;~~
  - (e) In the case of a property or casualty insurance coverage:

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- (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
  - (f) In the case of a life, health, or disability insurance coverage, an offer to insure at higher than standard rates.
- (2) Notwithstanding subsection C 1, the following insurance transactions shall not be considered adverse underwriting decisions but, if requested by a consumer, the insurer ~~or producer~~ 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 ~~2CB(4)(e)(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, Commissioners should consider developing a list of insurers operating in their state which specialize in substandard risks and make it known to insurers and producers.

- D. "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.
- E. "Biometric information" means an individual's physiological, biological, or behavioral characteristics that can be used, singly or in combination with each other or with other identifying information, to establish a consumer's identity. Biometric information includes deoxyribonucleic acid (DNA), imagery of the iris, retina, fingerprint, face, hand, palm, ear, vein patterns, and voice recordings, 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 rhythms, and sleep, health, or exercise data that contain identifying information.
- 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.

**Commented [KJ5]:** Language from Model 672 in part.

**Commented [KJ6]:** 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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- H. "Commissioner" means [insert the appropriate title and statutory reference for the principal insurance regulatory official of the state].
- I. **Consumer** means an individual and the individual's legal representative, including a current or former (i) applicant, (ii) policyholder, (iii) insured, (iv) beneficiary, (v) participant, (vi) annuitant, (vii) claimant, or (viii) certificate holder who is a resident of this state and whose personal information is used, may be used, or has been used in connection with an insurance transaction. An individual that is a mortgagor of a mortgage covered under a mortgage insurance policy is a consumer. 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 a written, oral, or other communication of information bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used in connection with an insurance transaction.
- 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. **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.
- M. "Delete" and "deleted" means to remove or destroy information 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 alone 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:

Commented [KJ7]: This definition is similar to that in Model 672.

Commented [KJ8]: Definition from Model 672

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- (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. "Health care" means:

Commented [KJ9]: Taken from Model 672

- (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.

P. "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

Q. "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.

Commented [KJ12]: WG added this update to the definition

R. "Individual" means a natural person;

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

Commented [KJ13]: Model 670

- (1) A producer;
- (2) A consumer who is the subject of the information; or

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(3) An individual acting in a personal capacity rather than in a business or professional capacity.

T. "Insurance support organization" means:

Commented [KJ14]: 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 an activity transactions ~~in~~ other than an insurance transaction.

(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.

U. "Insurance transaction" means any transaction or service by or on behalf of a licensee involving:

Commented [KJ15]: 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 determination of a consumer's eligibility for or the amount of insurance coverage, rate, benefit, payment, or claim settlement;

(2) The servicing of an insurance application, policy, contract, or certificate, or any other insurance product;

(3) Provision of "value-added services or benefits" in connection with an insurance transaction;

(4) Any mathematical-based decision that involves a consumer's personal information; or

(5) Any actuarial or research studies for rating or risk management purposes conducted by or for the benefit of the licensee using consumers' personal information.

V. "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,

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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.

**Drafting Note:** If the state regulates third party administrators who operate on behalf of insurers, the state may wish to add them to this list.

W. "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 [KJ16]: Definition from Model 670

X. "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 in regard to the excess lines placements placed pursuant to Section [insert section] of the state's laws.

Commented [KJ17]: This definition was taken from Model 668 but is very similar to the definition in Model 672

Y. "Nonaffiliated third party" means:

Commented [KJ18]: Model 672

- (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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Z. ~~"Non-insurance-related third party service provider" means any person that, for the purpose of engaging in activities unrelated to the business of insurance, obtains consumers' personal information from a licensee or provides consumers' personal information to a licensee or that:~~

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~~(1) (a) Has access to consumers' personal information through the person's provision of: (i) any services to or on behalf of a licensee; (ii) electronic applications for use by the licensee's consumers; or (iii) any other products to or on behalf of the licensee in connection with insurance transactions; or (iv) the provision of services in connection with additional permitted activities; and~~

~~(b) Is any person not otherwise defined as a licensee; or~~

~~(2) Is a vendor of personal health records.~~

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Z. ~~"Nonpublic Information" means information that is not publicly available information and is:~~

Commented [KJ19]: From Model 672

Any information concerning a consumer which because of name, number, personal mark, or other identifier can be used to identify such consumer, in combination with any one or more of the following data elements:

- (1) Social Security number,
- (2) Driver's license number or non-driver identification card number,
- (3) Account number, credit or debit card number,
- (4) Any security code, access code or password that would permit access to a consumer's financial account, or
- (5) Biometric information;

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

BB. "Personal information" means:

(1) 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:

Commented [KJ20]: From Model 670

- (a) Gathered in connection with an insurance transaction;
- (b) Gathered in connection with any other permitted transaction;

(2) Any of the following:

~~(a) Account balance information and payment history;~~

Commented [KJ21]: 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 for reporting purposes;
- (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;
- (f) Information from a consumer report;



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(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; or

Commented [KJ22]: The provision in F.(1)(h) was taken from Model 670

- (3) "Nonpublic information";
- (4) "Publicly available information;"
- (5) "Sensitive personal information";
- (6) "Health information;" or
- (7) Consumers' demographic data, in any form or medium that can reasonably be used to identify an individual.
- (8) "Personal information" includes collections or sets of individually identifiable information pertaining to more than one consumer.
- (9) "Personal information" does not include "de-identified information."

CC. "Pretext interview" means an attempt to obtain information about an individual, where an interviewer does one or more of the following:

Commented [KJ23]: Model 670

- (1) Pretends to be someone the interviewer is not;
- (2) Pretends to represent a person the interviewer is not in fact representing;
- (3) Misrepresents the true purpose of the interview; or
- (4) Refuses to provide identification upon request.

DD. "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 1,850 feet.

EE. "Process" or "processing" mean: 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 data or personal information.

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

Commented [KJ24]: Model 670

- (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.

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GG. "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.]

HH. "Publicly available" means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from:

**Commented [KJ25]:** This definition comes from the IDSA (Model 668) and Model 672

- (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.

**Commented [KJ26]:** Examples take from Modell 672

II. "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 [KJ27]:** Model 670 language

**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.

JJ. "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.

KK. "Sensitive personal information" means information that reveals (i) a consumer's social security, driver's license, state identification card, or passport number; (ii) a consumer's 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) a consumer's precise geolocations; (iv) a consumer's racial or ethnic origin, religious, or philosophical beliefs; (v) union membership; (vi) the contents of a consumer's personal mail, personal email, and personal text messages unless the person in possession is the intended recipient of the communication; (vii) a consumer's genetic data; (viii) a consumer's sex life or sexual orientation; (ix) a consumer's citizenship or immigration status; (x) a consumer's health information; or (xi) a consumer's 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.

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LL. "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 (i) by a licensee to an insurance support organization or (ii) by a licensee or insurance support organization to a third-party service provider, whether or not for monetary or other valuable consideration, for the purpose of engaging in including other additional permitted ~~transactions~~ activities ~~between~~ involving a licensee and an insurance support organization or involving a licensee or insurance support organization and a third party service provider for the benefit of any party, including the consumer in which no valuable consideration is exchanged.

Commented [KJ28]: Model 670

Commented [LP3]: Should this be "additional" to be consistent with the rest of the draft? Assuming it is, I also changed "transactions" to "activities" to make that consistent as well.

MM. "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.

Commented [KJ29]: From Model 668 but modified for this model

NN. "Third-party service provider" means any person that, for the purpose of engaging in insurance-related business activities, obtains consumers' personal information from a licensee or provides consumers' personal information to a licensee or that:

- (1) (a) Has access to consumers' personal information through the person's provision of: (i) any services to or on behalf of a licensee; (ii) electronic applications for use by the licensee's consumers; or (iii) any other products to or on behalf of the licensee in connection with insurance transactions; or (iv) the provision of services in connection with additional permitted ~~transactions~~ activities; and
- (b) Is either (i) an insurance support organization; or (ii) any person not otherwise defined as a licensee; or
- (2) Is a vendor of personal health records.

Commented [KJ30]: Definition from Model 670

OO. "Unauthorized insurer" means an insurer that has not been granted a certificate of authority 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.

PP. "Value-added service or benefit" means a product or service that:

Commented [KJ31]: This definition was taken primarily from Model 880 (rebating)

- (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;
  - (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.

QQ. "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 has a business relationship with a consumer; or the licensee or service provider is required to maintain the information as provided in this Act.

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**ARTICLE II. OBLIGATIONS HANDLING CONSUMER'S PERSONAL INFORMATION**

**Section 4. Data Minimization and Sharing Limitations**

- A. No licensee shall collect, process, retain, or share a consumer's personal information unless:
- (1) The collection, processing, retention, or sharing is in connection with an insurance transaction as defined in 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 notice provided to the consumer by the licensee;
  - (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 permitted ~~transactions-activities~~ and not further processed, retained, or shared in a manner that is incompatible with those purposes; and
  - (5) The licensee or third-party service provider has obtained prior consent from any consumer whose personal information will be:
    - (a) Used in connection with an additional permitted ~~transactionactivity~~, as defined in this Act; or
    - (b) Shared with a person outside the jurisdiction of the United States, or its territories, as provided in this Act.

- B. 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 under which the consumer is an actual or prospective insured, 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;

**Commented [KJ32]:** Most of these requirements were taken from Model 670 Section 13 with some additional restrictions on sharing and processing.

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- (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:
- (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 consumers' personal information until (i) consumer privacy protection notices have been provided to the consumers and (ii) 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; or

Commented [KJ33]: More restrictive than Model 670

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- (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; or
  - (13) To permit a governmental authority to determine the consumer's eligibility for health care benefits for which the governmental authority may be liable.
- C. No licensee shall, unless legally required, collect, process, retain, or share a consumer's personal information with an entity outside of the United States and its territories, unless the licensee has provided the required notice and obtained the consumer's prior express consent to do so, as required by Article III of this Act.
- D. 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.
- E. No licensee may collect, process, retain, or share a consumer's personal information in connection with any additional permitted ~~transactions-activities~~ without consumers' prior express consent. Once consent has been given, any person may conduct marketing, actuarial studies, and research activities as follows:
- (1) For actuarial studies and 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 actuarial or research study; and
    - (c) A consumer's personal information is deleted as soon as the information is no longer needed for the specific actuarial or research study.
  - (2) For all additional permitted ~~transactionsactivities~~:
    - (a) The person conducting the marketing, actuarial study, or research activity agrees not to further share any consumer's personal information; 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 permitted ~~transactionactivity~~.
- F. A licensee may collect, process, retain, or share consumers' de-identified personal information.
- G. No licensee shall:

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- (1) Collect, process, retain, or share personal information in a manner inconsistent with the direction of a consumer pursuant to this act; or
- (2) Collect, process, retain, or share personal information in a manner requiring the prior express consent or authorization of the consumer without obtaining such prior consent.

~~H. Notwithstanding any other provision of law, no licensee may sell or share consumers' personal information for any type of consideration.~~

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

### Section 5. Retention and Deletion of Consumers' Information

- A. Once the initial consumer privacy protections 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) The servicing of an insurance application, policy, contract, or certificate under which the consumer is an actual or prospective insured, claimant, or beneficiary;
  - (2) Compliance with a legal obligation applicable to any insurance transaction involving consumers' personal information to which the licensee is subject;
  - (3) Compliance with a request or directive from a law enforcement or insurance regulatory authority;
  - (4) Compliance with a warrant, subpoena, discovery request, judicial order, or other administrative, criminal, or civil legal process, or other legal requirement that is binding upon a licensee in connection with consumers' personal information;
  - (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;
  - (6) Any record retention requirements under any state or federal law applicable to any insurance transaction involving consumers' personal information;
  - (7) Any statute of limitation periods under any state or federal law applicable to any insurance transaction involving consumers' personal information; or



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- (8) Any additional permitted ~~transaction-activity~~ provided the consumer has consented in writing to the use of the consumer's personal information for this purpose, the licensee may retain consumer's personal information for as long as the consumer's consent to an additional permitted ~~transaction-activity~~ has not been revoked pursuant to Section 9 of this Act.
- B. Once the provisions of Subsection A of this section are no longer applicable to any of a consumer's personal information held by a licensee:
  - (1) Such licensee shall completely delete all the consumer's personal information within 90 days after the provisions in Subsection A of this section no longer apply.
  - (2) Any third-party service provider in possession of the consumer's personal information shall notify the licensee that the consumer's information has been completely deleted.
  - (3) If the licensee no longer has a relationship with the consumer in connection with any insurance transactions, the licensee shall send a notice to the consumer informing the consumer that:
    - (a) The licensee and any third-party service providers no longer retain any of the consumer's personal information and
    - (b) The annual Notice of Consumer Privacy Protections required by Article III of this Act will no longer be sent to the consumer.
  - (4) A licensee shall develop policies and procedures for compliance with this section and be able to demonstrate compliance with those policies and procedures.

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#### ARTICLE III. NOTICES AND AUTHORIZATIONS

##### Section 6. Initial and Annual Notice of Consumer Information Practices

- A. A licensee that collects, processes, retains, or shares a consumer's personal information in connection with insurance transactions, by whatever means used, shall provide to consumers clear and conspicuous notices that accurately reflect its information policies and practices.
- B. An initial consumer information practices notice shall be provided to a consumer before the licensee, directly or through a third-party service provider, first does any of the following:
- (1) Collects, processes, retains, or shares the consumer's personal information in connection with an application for insurance coverage;
  - (2) Collects, processes, retains, or shares the consumer's personal information in connection with a claim under an insurance policy;
  - (3) Collects the consumer's personal information from a source other than the consumer or public records;
  - (4) Collects, processes, retains, or shares the consumer's personal information in connection with value-added services;
  - (5) Collects, processes, or shares the consumer's personal information in connection with an additional permitted ~~transaction~~activity; or
  - (6) Collects, processes, or shares the consumer's personal information, including but not limited to reviewing the consumer's policy or coverage for renewal or reinstatement, if the consumer relationship predates the applicability of this section and the consumer has not already received a notice substantially similar notice.
- C. A further information practice notice shall be provided not less than annually to each consumer with whom the licensee has an ongoing business relationship. The licensee shall conspicuously identify any material changes in its information practices.
- D. The licensee shall honor all representations made to consumers in its most current initial and annual notices, 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.
- E. When a licensee is required to provide a consumer a consent form required by this Act, the licensee shall deliver it according to Section 8.

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#### Section 7. Content of Consumer Information Practices Notices

- A. The content of any notice required by Section 6 shall state in writing all of 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 a third-party service provider;
  - (2) The specific types of personal information of the consumer that the licensee or any of its third-party service providers has or may collect, process, retain, or share;
  - (3) The specific purposes for which the licensee collects, processes, retains, or shares personal information as permitted by this Act;
  - (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 consumers' personal information may be shared for any of the purposes listed permitted in this Act, or a description of the licensee's information practices if those practices are more limited than permitted by this Act;
  - (6) That the consumer may, upon request, 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.
  - (7) A description of the following requirements as established under Section 4 of this Act:
    - (a) The requirement that the licensee or third-party service provider obtain the consumer's express written consent prior to sharing the consumer's personal information with any person in connection with the collection, processing, retention, or sharing of the consumer's personal information with a person in a jurisdiction outside of the United States and its territories; and the consumer's right to prohibit sharing of the consumer's personal information with such a person;
    - (b) 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 actuarial purposes unless such information has been de-identified;

Commented [KJ34]: This is language is consistent with Model 910 (Record Retention)

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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 research purposes unless such information has been de-identified; and
- (d) 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 product or service to the consumer;
- (8) A description of the rights of the consumer to access, correct or amend personal information about the consumer and to correct or amend factually incorrect personal information as established 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 13 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; and
- (11) A statement that no licensee or third-party service provider may sell or share for valuable consideration a consumer's personal information.
- (12) In addition to the notice provided to consumers, a licensee shall prominently post and make available the notice required by this section on its website, if a website is maintained by the licensee. ~~The licensee shall design its website notice as follows:~~
  - (a) The notice is clear and conspicuous;
  - (b) The licensee uses text or visual cues to 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 licensee either:
    - (i) Places the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or
    - (ii) Places 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.

Commented [KJ35]: This language is from Model 672

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- B. If the licensee uses a consumer's personal information to engage in additional permitted ~~transactions~~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 permitted ~~transactions~~activities in which the licensee engages;
  - (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 permitted ~~transactions~~activities or refuse to consent to any one or more of the additional permitted ~~transactions~~activities;
  - (4) That once consent has been given for an additional permitted ~~transaction~~activity, the consumer may revoke consent at any time;
  - (5) That once consent for using a consumer's personal information for an additional permitted ~~transaction~~activity is withdrawn, the licensee will no longer engage in such additional permitted ~~transaction~~activity using the consumer's personal information; and
  - (6) That once consent to an additional permitted ~~transaction~~activity has been revoked, any of the consumer's personal information in the possession of the licensee used solely for that additional permitted ~~transaction~~activity will be destroyed and deleted as set forth in Section 5 of this Act.
- C. If the licensee shares consumers' personal information with a person who will collect, process, retain, or share consumers' personal information in a jurisdiction outside of the United States and its territories, the following information shall additionally be included in any notice required by Section 6 of this Act:
- (1) A statement that the consumer may, but is not required to, consent to the collection, processing, retention, or sharing, of the consumer's personal information a jurisdiction outside of the United States and its territories;
  - (2) A description of the reasonable means by which the consumer may express written consent;
  - (3) That once consent has been given for the collection, processing, retention, or sharing of consumers' personal information in a jurisdiction outside the United States and its territories, a consumer may revoke consent at any time; and
  - (4) That once consent for the collection, processing, retention, or sharing of consumers' personal information by a person in a jurisdiction outside the United States and its territories has been revoked, any of the consumer's

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personal information in the possession of such person shall be deleted as set forth in Section 5 of this Act.

- E. 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 8. Delivery of Notices Required by This Act

Commented [KJ36]: This language comes from Model 672

- 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, posts the notice on the electronic site and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service or emails the notice to the consumer and requests a delivery receipt ;
- C. A licensee may not, however, reasonably expect that a consumer will receive actual notice of its privacy policies and practices if it:
- (1) Only posts a sign in its office or generally publishes advertisements of its privacy policies and practices; or
  - (2) Sends the notice electronically to a consumer who has not agreed to conduct business electronically with the licensee in connection with an insurance transaction or an additional permitted transactionactivity.
  - (3) Sends the notice electronically to a consumer who has agreed to conduct business electronically with the licensee in connection with an insurance transaction or an additional permitted transactionactivity, but the licensee does not obtain a delivery receipt.
- D. A licensee may reasonably expect that a consumer will receive actual notice of the licensee's annual privacy notice if:
- (1) 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

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- (2) The licensee mails or emails 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 over the telephone.
  - (4) The licensee provides all notices required by this Act so that the consumer can retain them or obtain them later in writing or, if the consumer agrees, electronically.
- 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 practices with respect to the consumer.
- F. If two (2) or more consumers jointly obtain an insurance product or service from a licensee, the licensee may satisfy the initial and annual notice requirements of Sections 6 and 7 of this Act, respectively, 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 an annual notice of consumer privacy protections and the licensee's current privacy protections 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 the annual notice.

### Section 9. Consumers' Consent- How Obtained

- A. Where the consumer's consent for the collection, processing, or sharing of consumers' personal 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.
- (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 annual notice the licensee provides in accordance with Section 6.
  - (3) If two (2) or more consumers jointly obtain an insurance 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.
  - (4) 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.
  - (5) A licensee shall comply with a consumer's consent directive as soon as reasonably practicable after the licensee receives it.

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- (7) Any consumer who has given consent for the use of personal information in connection with additional permitted ~~transactions~~activities, may revoke consent for collection, processing, retention, or sharing of such consumer's personal information. A consumer may exercise the right to consent or to withdraw consent at any time.
  - (8)
    - (a) A consumer's consent directive under this section is effective until the consumer revokes it in writing.
    - (b) If the consumer subsequently establishes a new relationship with the licensee, the consent directive for any specific activity that applied to the former relationship does 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.
  - (9) If the consumer has made conflicting directives pursuant to this section, the consumer's most recent directive for the specific activity shall take precedence.
  - (10) Contracts between a licensee and any third-party service providers shall require either entity receiving to honor the consumer's directive pursuant to this section, and to refrain from collecting, processing, retaining, or sharing the consumer's personal information in a manner inconsistent with the directive of the consumer.
- B. When requesting a consumer's consent to use the consumer's personal information for actuarial studies conducted by a person other than the licensee, or research or marketing activities by anyone, as required by this Act, the consent request shall:
- (1) Be clear and conspicuous;
  - (2) Explain, in plain language, that consent is being sought to use the consumer's personal information for actuarial studies by a person other than the licensee, or for research or marketing activities;
  - (3) Permit the consumer to separately provide consent for use of the consumer's personal information other than sensitive personal information for any one or more additional permitted ~~transactions~~activities;
  - (4) 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 13, based on the consumer's choice; and
  - (5) State that use of a consumer's sensitive personal information for marketing purposes is prohibited.



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- (6) 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 10. Content of Authorizations

Commented [KJ37]: Language from Model 670

- A. No person shall use an authorization for the collection, processing, or sharing of a consumer's personal or privileged information in connection with an insurance transaction 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 specific and explicit 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) Names the licensee whom the consumer is authorizing to collect, process, or share the consumer's personal or privileged information;
  - (6) Advises the consumer that they are entitled to receive a copy of the authorization.
- B. No authorization signed by a consumer shall be valid for longer than:
- (1) For an authorization signed for the purpose of collecting, processing, or sharing a consumer's personal or privileged information in connection with an application for insurance, a reinstatement of an insurance policy, or a request for change in insurance benefits:
    - (a) Twenty-four (24) months from the date the authorization is signed if the application or request involves life, health, or disability insurance; or
    - (b) Ninety (90) days from the date the authorization is signed if the application or request involves property or casualty insurance;
  - (2) For an authorization signed for the purpose of collecting, processing, or sharing a consumer's personal or privileged information in connection with a claim for benefits under an insurance policy, for the duration of the claim.

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- (3) For an authorization signed for the purpose of collecting, processing, or sharing a consumer's personal information in connection with loss prevention under an insurance policy, for the duration of the product or service.
- (4) For an authorization signed for the purpose of collecting, processing, or sharing a consumer's personal information in connection with an additional permitted ~~transaction~~ activity, no longer than 12 months.

**Drafting Note:** The standard established by this section for disclosure authorization forms is intended to supersede any existing requirements a state may have adopted even if such requirements are more specific or applicable to particular authorizations such as medical information authorizations. This section is intended to be the exclusive statutory standard for all authorization forms utilized by licensees. This section does not preclude the inclusion of a disclosure authorization in an application form nor invalidate any disclosure authorizations in effect prior to the effective date of this Act. Nor does this section preclude a licensee from obtaining, in addition to its own authorization form which complies with this section, an additional authorization form required by the person from whom disclosure is sought.

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#### ARTICLE IV. CONSUMERS' RIGHTS

##### Section 11. Access to Personal Information

- A. Any consumer, after proper identification, may submit a written request to a licensee for access to the consumer's personal information in the possession of the licensee.
- B. The licensee or any 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) 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 permitted ~~transaction~~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

Commented [KJ38]: From Model 910

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connection with, or in reasonable anticipation of, a claim or civil or criminal proceeding involving the consumer.

#### Section 12. Correction or Amendment of Personal Information

- A. Any consumer, after proper identification, may submit a written request to a licensee to correct or amend any personal information about the consumer within the possession of the licensee.
- B. The licensee or any 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 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 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.
- C. If the licensee corrects or amends personal information in accordance with Subsection A. (1) of this section, the licensee 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

Commented [KJ39]: This section is from Model 670 with a shortening of the length of time for B 2

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furnished if the insurance support organization no longer maintains personal information about the consumer;

(3) Any third-party service provider that furnished such personal information.

D. Whenever a consumer disagrees with the refusal of a licensee to correct or amend personal information, the consumer shall be permitted to file with the licensee a concise statement setting forth:

(1) The relevant and factual information that demonstrates the errors in the information held by the licensee; and

(2) The reasons why the consumer disagrees with the refusal of the licensee to correct or amend the personal information.

E. In the event a consumer files such statement described in Subsection C, the insurer, producer, or insurance support organizations 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 by the insurer, producer, or support organization of the personal information that is the subject of disagreement, clearly identify the matter or matters in dispute and include the consumer's statement with the personal information being disclosed.

F. The rights granted to a consumer by this subsection shall not extend to personal 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 13. 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 permitted ~~transaction-~~  
activity to obtain a particular product, coverage, rate, or service;

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- (2) The consumer is required to consent to an additional permitted ~~transaction~~ activity in order to provide consent that is otherwise required to obtain an insurance transaction;
- (3) The consumer is required to consent to collection, processing, retention, or sharing of the consumer's information in a jurisdiction outside of the United States and its territories to obtain a particular product, coverage, rate, or service; or
- (4) The consumer is required to consent to collection, processing, retention, or sharing of the consumer's information in a jurisdiction outside of the United States and its territories in order to provide consent that is otherwise required to obtain an insurance transaction.

**Drafting Note:** This section is meant to incorporate similar provisions from Model 672 in this model.

- B. There shall be a rebuttable presumption that consistent with the 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:
  - (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.

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**ARTICLE V. ADVERSE UNDERWRITING DECISIONS; OTHER TRANSACTIONS [OPTIONAL]**

**Section 14. Adverse Underwriting Decisions**

Commented [KJ40]: The provisions in this section are largely from Model 670 with some amendments

- A. Notice of an adverse underwriting decision. 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 11 and 12 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; (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 ten (10) 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 11 and 12 of this Act; and

**Drafting Note:** The exception in Section 10B(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.

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- (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. The obligations imposed by this section upon a licensee may be satisfied by another licensee authorized to act on its behalf.

#### Section 15. Information Concerning Previous Adverse Underwriting Decisions

No licensee may make inquiries in connection with an insurance transaction concerning:

- A. Any previous adverse underwriting decision received by a consumer; or
- B. Any previous insurance coverage obtained by a consumer through a residual market mechanism;

unless such inquiries also request the reasons for any previous adverse underwriting decision or the reasons why insurance coverage was previously obtained through a residual market mechanism.

#### Section 16. Previous Adverse Underwriting Decisions

No licensee may base an adverse underwriting decision in whole or in part on any of the following:

- A. A previous adverse underwriting decision or that a consumer previously obtained insurance coverage through a residual market mechanism. However, an insurer or producer may base an adverse underwriting decision on further information obtained from a licensee responsible for a previous adverse underwriting decision;
- B. Personal information received from third-party service providers whose primary source of information is insurers. However, a licensee may base an adverse underwriting decision on further supporting information obtained from a third-party service provider; or
- C. Solely on the loss history of the previous owner of the property to be insured.



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#### ARTICLE VI. ADDITIONAL PROVISIONS

##### Section 17. Pretext Interviews [OPTIONAL]

No licensee shall use or authorize the use of pretext interviews to obtain information in connection with an insurance transaction; provided, however, that a pretext interview may be undertaken to obtain information from an individual or legal entity that does not have a generally or statutorily recognized privileged relationship with the consumer about whom the information relates to investigate a claim where, based upon specific information available for review by the Commissioner, there is a reasonable basis for suspecting criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with the claim.

**Drafting Note:** Some states may desire to eliminate the exception in this section and thereby prohibit pretext interviews in all instances. Other states may desire to broaden the exception so that pretext interviews can be utilized in underwriting and rating situations as well as claim situations. States may either expand or limit the prohibition against pretext interviews suggested in this section to accommodate their individual needs and circumstances. Deviation from the standard developed here should not seriously undermine efforts to achieve uniform rules for insurance consumer privacy protections throughout the various states.

##### Section 18. Investigative Consumer Reports [OPTIONAL]

- 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
  - (2) Is entitled to receive a copy of the investigative consumer report.
- B. If a licensee prepares an investigative consumer report, the insurer or producer shall conduct a personal interview of a consumer if requested by that consumer.
- 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. The licensee shall provide a written copy of the investigative consumer report to the consumer.
- E. Notwithstanding Subsections A through D of this section, any 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,

Commented [K41]: This language with modifications for clarity came from Model 67.0

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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 19. 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:
- (1) Shall be deemed to comply with Sections 4-8 of this Act provided:
    - (a) The licensee obtains the consent of the consumer prior to engaging in any additional permitted ~~transactions~~activities; as defined in this Act; and
    - (b) The licensee obtains all necessary consent of consumers' whose personal information is shared with a person outside the jurisdiction of the United States or its territories, as provided in this Act; and
  - (2) Must comply with the remaining sections of this Act, as applicable.
- B. The licensee shall submit to the [Commissioner] a written statement certifying that the licensee comply with the requirements of Subsections A of this section.
- C. Subsections A and B of this section apply to such licensee if the [Commissioner] has not issued a determination finding that the applicable federal regulations are materially less stringent than the requirements of this Act and if the licensee has complied with the requirements of this section.

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#### ARTICLE VII GENERAL PROVISIONS

##### Section 20. Power of Commissioner

- A. The Commissioner shall have power to examine and investigate into the affairs of every licensee doing business in this state to determine whether such licensee has been or is engaged in any conduct in violation of this Act.
- B. The Commissioner shall have the power to examine and investigate the affairs of every 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.

Commented [KJ42]: This language comes from Model 670

**Drafting Note:** Section 21 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.

##### Section 21. Confidentiality

- A. Any documents, materials or other information in the control or possession of the 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 an investigation or examination pursuant to [Code Section] 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 received documents, materials or other 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 this Act.
- C. To assist in the performance of the Commissioner's duties under this Act, the Commissioner may:
- (1) Share documents, materials or other information, including the confidential and privileged documents, materials or information subject to this Act, with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates or subsidiaries, 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 document, material, or other information;
  - (2) Receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the National

Commented [KJ43]: This language was taken from Model 668 and modified for the purposes of this model.

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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 document, material 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 document, material or information;

- (3) Share documents, materials, or other information subject to this Act, with a third-party consultant or vendor provided the consultant agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information; and
  - (4) Enter into agreements governing sharing and use of information consistent with this subsection.
- D. No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur due to disclosure to the Commissioner under this section or due to sharing as authorized in this section.
- E. 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 22 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. Additionally, 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.

Commented [KJ44]: Language from Model 910

### Section 23. 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

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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. The items in [] are optional and dependent on the state's authority.

#### Section 24. 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

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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 25. Cease and Desist Orders and Reports

- A. If, after a hearing pursuant to Section 23, 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 26. Penalties

- A. In any case where a hearing pursuant to Section 23 results in the finding of a knowing violation of this Act, the Commissioner may, in addition to the issuance of a cease and desist order as prescribed in Section 25, order payment of a monetary penalty of not more than [dollar amount] for each violation but not to exceed [dollar] in the aggregate for multiple violations.
- B. Any person who violates a cease and desist order of the Commissioner may, after notice and hearing and upon order of the Commissioner, be subject to one or more of the following penalties, at the discretion of the Commissioner:
  - (1) A monetary penalty of not more than [dollar amount] for each violation;

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- (2) A monetary penalty of not more than [dollar amount] if the Commissioner finds that violations have occurred with such frequency as to constitute a general business practice; or
- (3) Suspension or revocation of the license of a licensee.

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

#### Section 27. 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

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- (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 28. Individual Remedies~~

##### ~~A. No Private Cause of Action [OPTIONAL].~~

~~Nothing in this Act shall be construed to create or imply a private cause of action for violation of its provisions, nor shall it be construed to curtail a private cause of action which would otherwise exist in the absence of this Act.~~

##### ~~B. Private Cause of Action [OPTIONAL].~~

- ~~(1) If a licensee or one or more of its third-party service providers fail to comply with this Act with respect to the rights granted under this Act, any person whose rights are violated may apply to the [insert title] Court of this state, or any other court of competent jurisdiction, for appropriate equitable relief.~~
- ~~(2) If a licensee or one or more of its third-party service provider discloses information in violation of this Act, the licensee shall be liable for damages sustained by the individual about whom the information relates; provided, however, that no individual shall be entitled to a monetary award which exceeds the actual damages sustained by the individual.~~
- ~~(3) In any action brought pursuant to this section, the court may award the cost of the action and reasonable attorney's fees to the prevailing party.~~
- ~~(4) An action under this section shall be brought within [two (2)] years from the date the alleged violation is or should have been discovered.~~
- ~~(5) Except as specifically provided in this section, there shall be no remedy or recovery available to individuals, in law or in equity, for occurrences constituting a violation of any provisions of this Act.~~
- ~~(6) No private cause of action may be brought unless there is an actual victim and actual damages. Damages sought shall be actual damages.~~
- ~~(7) No claim under this Act may be used to leverage class action litigation.~~



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~~Drafting Note: Consideration should be given to the practice and procedure in each state. A state may choose to adopt either Section A or Section B or neither of these sections. However, adopting one or the other of these provisions makes it clearer what the consumers' rights are.~~

#### Section 29. 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 30. 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 31. 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 32. 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 health information.

#### Section 33. Rules and Regulations

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

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**Section 34. Effective Date**

This Act shall take effect on [insert a date].