



May 21, 2024

Honorable Cathy McMorris Rodgers, Chair
House Energy & Commerce Committee
Washington, DC 20515

Honorable Frank Pallone, Ranking Member
House Energy & Commerce Committee
Washington, DC 20515

Re: American Privacy Rights Act

Dear Chair Rodgers and Ranking Member Pallone:

On behalf of the National Association of Professional Insurance Agents (PIA),¹ thank you for the opportunity to express our concerns with the American Privacy Rights Act (APRA) of 2024, which was recently released by the House Energy and Commerce (E&C) Committee and is expected to be marked up there soon. Unfortunately, PIA cannot support the APRA as written.

Background

Since early 2023, members of Congress have been trying to pass a federal data privacy law that would create a new framework for how insurance entities collect, share, and use consumer information. The American Privacy Rights Act represents another foray into this challenging arena. The APRA would regulate consumer data privacy and security and provide consumers with more control over the collection of their personal information by covered entities. It would also limit the ability of covered entities to collect and use consumer data beyond necessary and limited purposes. Importantly, the APRA would preempt the voluminous library of state law that has already been established to address these issues. While the APRA exempts specific types of data, it would apply to all companies subject to the Federal Trade Commission (FTC), as well as to nonprofit entities and would authorize enforcement by the FTC and state attorneys general.

PIA's concerns about the effect of APRA on the insurance industry, and on independent insurance agents specifically, are numerous; we have set forth a few of them below:

1. McCarran-Ferguson Act Exempts Insurance Industry from Federal Oversight.

Congress's delegation of insurance regulatory authority was formalized more than 75 years ago, but states have been the primary source of insurance regulation for over a century. The 1945 McCarran-Ferguson Act formalized the insurance industry's longstanding exemption from most federal oversight. At the time, Congress opted to assign the task of regulating insurance entities to the states, and, since then, it has reinforced that position repeatedly.

Throughout the century-plus of state-based insurance oversight, the regime has worked well for regulators, consumers, and members of the industry because, comparatively, state insurance regulators

¹ PIA is a national trade association whose members are independent insurance agents in all 50 states, Puerto Rico, and the District of Columbia. Its insurance professionals offer insurance products and services across America.

have greater familiarity with and flexibility to address their residents' specific geographic and economic needs in the context of insurance.

2. Because of Gramm-Leach-Bliley Act (GLBA), State Insurance Regulators Already Protect Consumer Data.

In 1999, the passage of GLBA threatened insurance businesses with federal regulation of consumer data if state insurance regulators did not develop their own protections; as a result, all 50 states acted quickly to develop data privacy laws, and all currently have strong consumer data oversight. The federal passage of a detailed statutory or regulatory regime, like the one conceived of in the APRA, would be unduly burdensome to insurance licensees and duplicative of existing state laws and regulations.

Appropriately, the APRA provides exemptions for entities that are subject to and in compliance with GLBA and/or the Health Insurance Portability and Accountability Act (HIPAA). State insurance regulators should be accorded the same deference, and the APRA should therefore include an exemption for insurance entities licensed and regulated by state insurance departments.

3. Concurrent State and Federal Data Privacy Oversight Will Be Further Complicated by the APRA.

As mentioned above, the GLBA and HIPAA already address data privacy at the federal level, and, since the passage of the GLBA, the states have globally addressed it as well. The APRA is an attempt to solve a problem that does not exist by creating additional sources of law with which state-regulated entities would be forced to comply. It would cause increased confusion among insurance licensees without providing any meaningful benefit to consumers.

4. The National Association of Insurance Commissioners Continues to Update Its Data Privacy Regime.

Following the enactment of the GLBA, the National Association of Insurance Commissioners (NAIC) developed a suite of model laws to guide states in developing their own data privacy protection regimes. Since then, the NAIC has engaged in several rounds of updates and additions to its model laws, and those efforts are ongoing at the time of this writing. Because the NAIC represents state insurance commissioners, it is better positioned than Congress to provide comprehensive recommendations to states through its model law development and modernization processes. In accordance with McCarran-Ferguson, the states are the proper venue for the implementation of such changes.

As always, PIA appreciates the opportunity to provide the independent agent perspective and welcomes any questions you may have.

Sincerely,



Jon Gentile
Chief Public Affairs & Advocacy Officer
National Association of Professional Insurance Agents