

SENATE FINANCE COMMITTEE

MARYLAND SB0698: Consumer Protection—Online and Biometric Data Privacy

UNFAVORABLE

March 8, 2023

Chairwoman Griffith and Members of the Senate Finance Committee:

On behalf of the National Association of Mutual Insurance Companies¹ (NAMIC) thank you for the opportunity to submit this statement in opposition to Senate Bill 698.

NAMIC consists of more than 1,500 member companies, including seven of the top 10 property/casualty insurers in the United States. The association supports local and regional mutual insurance companies on main streets across America as well as many of the country's largest national insurers.

The insurance industry takes consumer privacy very seriously and have been subject to numerous laws and regulations for years for the protection of consumer data. Our industry's commitment to appropriate use and safeguarding of consumer information has helped establish what has become a comprehensive federal and state regulatory framework governing the use and disclosure of personal information for the insurance industry.

Exceptions for GLBA-Subject Financial Institutions

When considering the broad privacy landscape, NAMIC encourages legislators to fully understand all the existing frameworks of laws and regulations currently in place, which can vary significantly from industry to industry. New provisions would not be enacted in a vacuum. This is especially true for insurance -- each state and the federal government already has robust laws/regulations to address data privacy, security, and other requirements. By recognizing that this is not a blank slate and to forestall confusion and conflicts, NAMIC advocates that new provisions are not a disconnected additional layer of obligations. To avoid unintended consequences, NAMIC encourages policy makers to recognize existing laws and regulations.

Given the vital business purposes for data in the insurance transaction, historically policy makers have recognized the important role information plays in insurance and, with certain protections in place, they have allowed collection, use, and disclose for operational and other reasons.

Title V of the Gramm-Leach-Bliley Act (GLBA)² provides a landmark privacy framework for financial services, including insurance. It sets forth notice requirements and standards for the disclosure of nonpublic personal financial information – it specifically requires giving customers the opportunity to opt-out of certain disclosures. Under GLBA, functional financial institution regulators implemented the privacy standards. Given concerns with consistency, the National Association of Insurance Commissioners (NAIC) has adopted multiple model laws with regard to data privacy and cybersecurity³. And states have moved forward with

¹ NAMIC member companies write \$357 billion in annual premiums and represent 69 percent of homeowners, 56 percent of automobile, and 31 percent of the business insurance markets. Through its advocacy programs NAMIC promotes public policy solutions that benefit member companies and the policyholders they serve and fosters greater understanding and recognition of the unique alignment of interests between management and policyholders of mutual companies.

² See 15 U.S.C. Sec. 6801 et. seq.



adopting those models. For insurers, the Maryland Insurance Administration (MIA) regulates privacy matters (including consistent with Md. Code regs. 31.16.08.01 to 31.16.08.24) and provides robust oversight.

When it comes to retaining information, today insurers are already subject to specific record retention requirements. This information is important for several reasons. Insurers need to have information available for claims and litigation and insurance regulators rely on data for market conduct purposes. Again, insurance-related data is subject to numerous existing laws and regulations.

While NAMIC is pleased to see the inclusion of a GLBA exemption in HB 807, the exception should apply to both the data and entity subject to the GLBA as follows:

Nothing in this Act shall be deemed to apply in any manner to data or to a financial institution or an affiliate of a financial institution that is subject to Title V of the federal "Gramm-Leach-Bliley Act of 1999," 15 U.S.C. s.6801 et seq. and the rules and implementing regulations promulgated thereunder or to Maryland Insurance Code Ann. Sec. 2-109 and the rules and implementing regulations promulgated thereunder.

Private Right of Action

As drafted, Senate Bill 698 would establish a private right of action under Sec. 13-408. A private right of action distracts from the goal of meaningful and real privacy protections where a knowledgeable agency or regulator ensures that businesses is protecting data. Private lawsuits could sweep in technical non-compliance items, and it could further erode uniformity. The concept is extremely objectionable as it could add costs to doing business for everyone, including the consumer. NAMIC urges policymakers to avoid the pitfalls associated with inviting privacy class actions lawsuits.

The U.S. Chamber Institute for Legal Reform (ILR) 2019 paper highlights the superior consumer protection of regulator enforcement over a private right of action. It concluded:

... privacy statutes that are enforced by government agencies provide a robust process through which noncompliance with protected privacy interests can be identified, remedied, and monitored while promoting consistency, fairness, and innovation.⁴

Thank you for taking the time to consider our position on Senate Bill 698.

Sincerely,

Matt Overturf
Regional Vice President
Ohio Valley/Mid-Atlantic Region

³See NAIC Model Laws [668](#), [670](#), [672](#), [673](#)

⁴ https://www.instituteforlegalreform.com/uploads/sites/1/III-Suited_-_Private_Rights_of_Action_and_Privacy_Claims_Report.pdf