

INSURANCE CONSUMER PRIVACY PROTECTION MODEL LAW

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ARTICLE 1. GENERAL PROVISIONS

Section 1. Purpose and Scope

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

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

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

Section 2. Definitions.

As used in this Act:

A. "Address of record" means:

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

B. "Adverse underwriting decision" means:

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

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

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

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

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

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

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

Commented [KJ5]: This language comes from Model 672

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

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

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

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

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

Q. "Health care" means:

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

Commented [KJ9]: Taken from Model 672

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

Commented [KJ10]: This definition comes from Model 672

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

Commented [KJ11]: This definition comes from Model 672

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

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

Commented [KJ12]: Model 670

- (1) A producer;

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

U. "Insurance support organization" means:

Commented [KJ13]: Model 670

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

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

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

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

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

W. “Insurer” means

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

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

Commented [KJ15]: Definition from Model 670

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

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

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

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

Commented [KJ17]: Model 672

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

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

BB. “Nonaffiliated third party” means:

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

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

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

Commented [KJ19]: From Model 670

(1) Any of the following:

(a) Account balance information and payment history;

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

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

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

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

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

(f) Information from a consumer report;

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

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

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

(i) "Sensitive personal information";

(j) "Health information;"

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

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

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

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

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

Commented [KJ22]: Model 670

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

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

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

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

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

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

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

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

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

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

Commented [KJ24]: Examples take from Model 672

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

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

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

Commented [KJ25]: Model 670 language

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

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

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

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

Commented [KJ26]: Model 670

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

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

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

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

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

ARTICLE II. OBLIGATIONS HANDLING CONSUMER’S PERSONAL INFORMATION

Section 3. Oversight of Third-Party Service Provider Arrangements

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

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

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

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

Section 4. Data Minimization

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

(1) The collection, processing, retention, or sharing is in compliance with this Act;

(2) The licensee provides the applicable notices required by this Act;

(3) The collection, processing, retention, or sharing of the consumer's personal information is consistent with and complies with the most recent privacy protection practices notice provided to the consumer by the licensee; and

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

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

Section 5. Sharing Limitations

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

(1) For the servicing of any insurance application, policy, contract, or certificate for a consumer, third-party claimant, or beneficiary;

(2) For compliance with a legal obligation to which the licensee is subject;

(3) For compliance with a request or directive from a law enforcement or insurance regulatory authority;

(4) For compliance with a warrant, subpoena, discovery request, judicial order, or other administrative, criminal, or civil legal process, or any other legal requirement that is binding upon the licensee collecting, processing, retaining, or sharing the personal information;

(5) For a lienholder, mortgagee, assignee, lessor, or other person shown on the records of an insurer or producer as having a legal or beneficial interest in a policy of insurance, to protect that interest provided that:

(a) No health information is shared unless the sharing would otherwise be permitted by this section, and

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

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

Commented [KJ30]: More restrictive than Model 670

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

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- (1) The disclosure is to a third party for the purpose of or in support of providing an insurance or financial product or service requested by the consumer.
- (2) A licensee provides or receives information to an insurance support organization, statistical agent, or reinsurer;
- (3) A licensee provides information to an affiliate or to a financial institution with which the licensee performs joint marketing;
- (4) The business transfers to a third party the personal information as an asset that is part of a merger, acquisition, bankruptcy, or other transaction, or a proposed merger, acquisition, bankruptcy, or other transaction in which the party assumes control of all or part of the licensee's assets; or
- (5) A consumer uses or directs the licensee to (i) disclose personal information; or (ii) interact with one or more licensees or other financial institutions.

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

Section 6. Consumers' Consent

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

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

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

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

Section 7. Retention and Deletion of Consumers' Information

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

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

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

ARTICLE III. NOTICES AND DELIVERY OF NOTICES

Section 8. Notice of Consumer Privacy Protection Practices

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

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

Section 9. Content of Consumer Privacy Protection Practices Notices

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

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

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

Section 10. Notice of Consumer Privacy Rights

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

Section 11. Delivery of Notices Required by This Act

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

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

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

ARTICLE IV. CONSUMERS' RIGHTS

Section 12. Access to Personal and Publicly Available Information

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

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

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

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

Commented [KJ35]: This section is from Model 670 with a shortening of the length of time for B 2

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

Section 14. Adverse Underwriting Decisions

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

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

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

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

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

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

Section 15 Nondiscrimination and Nonretaliation

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

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

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

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

ARTICLE VI. ADDITIONAL PROVISIONS

Section 16. Investigative Consumer Reports

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

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

Section 17. Compliance with HIPAA and HITECH

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

ARTICLE VII GENERAL PROVISIONS

Section 18. Power of Commissioner

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

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

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

Section 19. Confidentiality

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

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Commented [KJ38]: This language comes from Model 670

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

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

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

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Section 20. Record Retention

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

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Section 21. Hearings, Records, and Service of Process

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

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

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

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

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

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

Section 23. Cease and Desist Orders and Reports

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

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

Section 24. Penalties

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

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

Section 25. Judicial Review of Orders and Reports

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

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

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

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

Section 26. Individual Remedies

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

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Section 27. Immunity

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

Section 89. Obtaining Information Under False Pretenses

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

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

Section 29. Severability

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

Section 30. Conflict with Other Laws

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

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Section 32. Rules and Regulations

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

Section 33. Effective Date and Compliance Dates

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