



October 27, 2026

Via Electronic Mail: privacywg@naic.org
Privacy Protections (H) Working Group
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106

Re: Comments on 2026 Full Exposure Draft Revising Model #672

Dear Chair Dwyer and Members of the Working Group:

The ABA Office of Insurance Advocacy (“ABA”) submits these comments on the revised exposure draft of Model #672. We support modernizing privacy practices, but modernization should not displace the federal framework Congress established for depository institutions and their affiliates that sell, solicit, or cross-market insurance—or the calibrated approach the NAIC adopted when it last aligned this model with federal law. Preserving that framework protects state regulatory authority while avoiding unnecessary restrictions on lawful competition, consumer choice, and the ability of banks to offer insurance products. We therefore ask the Working Group to add an express savings clause preserving the federal framework that governs those institutions and activities.

In *Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25 (1996), the Supreme Court held that a State may not prevent or significantly interfere with a national bank’s authority to sell insurance. Congress codified the *Barnett* standard in the Gramm-Leach-Bliley Act and extended it to all depository institutions and their affiliates. The statute does two things at once: it preserves state insurance regulation while providing that no State may, by statute, regulation, order, interpretation, or other action, prevent or significantly interfere with the ability of a depository institution or an affiliate to engage in insurance sales, solicitation, or cross-marketing.

Congress then listed thirteen safe harbors that survive that limit. A State “may impose any of the following restrictions, or restrictions that are substantially the same as but no more burdensome or restrictive than those in each of the following clauses.”¹ Those clauses are a ceiling, not a floor.

I. The NAIC Assigned the Two Privacy Safe Harbors to this Model

Only two of the thirteen clauses address consumer privacy and information sharing:

- Clause (vi) permits a State to restrict the release of a customer’s “insurance information” — premiums, terms and conditions, expiration dates, rates, and claims in the records of

¹ 15 U.S.C. § 6701(d)(2)(B).

the depository institution or an affiliate — to any person *other than* an officer, director, employee, agent, or affiliate, for the purpose of soliciting or selling insurance, *without the customer's express consent*.²

- Clause (vii) permits a State to restrict the use of health information obtained from a customer's insurance records for any purpose *other than* the licensee's activities as a licensed agent or broker, *without express consent*.³

After GLBA, the NAIC aligned its models with the thirteen safe harbors enumerated by Congress. It put eleven of the thirteen safe harbors in the Unfair Trade Practices Act. It left the two privacy harbors in this model:

During development of the 2001 amendments, regulators addressed 11 of the 13 safe harbors in the proposed amendments to the Unfair Trade Practices Act. They decided not to address the two safe harbors related to privacy, as the NAIC's privacy regulations adequately addressed privacy disclosures. 2001 Proc. 2nd Quarter 836.

The Unfair Trade Practices Act still carries the drafting note that implements that decision:

The Gramm-Leach-Bliley Act contains two 'safe harbors' that relate to information sharing. Section 104(d)(2)(B)(vi) describes the circumstances surrounding the release of a customer's insurance information. Section 104(d)(2)(B)(vii) describes the circumstances surrounding the use of a customer's health information obtained from the insurance records of the customer. If a state has adopted the NAIC's Privacy of Consumer Financial and Health Information Model Regulation, no further action is needed. If not, language implementing the two safe harbors should be considered.

The proceedings also record that the safe harbors are a ceiling:

State laws that imposed restrictions that are substantially the same as the safe harbors, but not more restrictive, were protected from federal preemption. 2000 Proc. 1st Quarter 985.

This Working Group is now amending the model the NAIC reserved to address clauses (vi) and (vii). After GLBA, the NAIC spent considerable time aligning its models with those preemption standards. We ask the Working Group to keep that design as it modernizes Model #672.

II. The Draft's Provisions Go Beyond the Safe Harbors Congress Authorized

Clauses (vi) and (vii) are the only two of the thirteen safe harbors that address information sharing. Both are narrow. They apply only to specified *insurance information* and to *health information* taken from insurance records. They authorize express consent — an opt-in — and only in the narrow circumstances those clauses describe. Congress knew how to require an opt-in. It did so in those two clauses, and only there.

² 15 U.S.C. § 6701(d)(2)(B)(vi).

³ 15 U.S.C. § 6701(d)(2)(B)(vii).

The draft does not stay inside that dataset or those conditions. It creates new categories of information that are much broader than the insurance and health records Congress named. The provisions on sales, targeted advertising, and sensitive personal information, among others, then attach new consent and use limits those clauses do not contain.

A state restriction that broadens the categories of information Congress listed, or that adds new conditions the safe harbors do not contain, is “more burdensome or restrictive than” the restrictions Congress authorized. It is therefore outside the safe harbors. The general rule then applies: no State may prevent or significantly interfere with a depository institution or an affiliate from selling, soliciting, or cross-marketing insurance. New consent or use limits on the information those institutions use to offer insurance would prevent or significantly interfere with those activities.

III. 15 U.S.C. § 6807 Does Not Authorize the Draft as Applied to Banks. Insurance Regulation Is Subject to 15 U.S.C. § 6701.

While Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801–6809, lets a State adopt a privacy law that is “more protective” of consumers than federal law, Title V does not eliminate what Congress did when a privacy rule would interfere with a bank’s ability to sell insurance.

Congress enacted two rules in the Gramm-Leach-Bliley Act, in two titles, to serve two distinct purposes.

First, Title V is a privacy floor. Section 6807 lets a State go further on privacy.

Second, 15 U.S.C. § 6701 is a bank-insurance rule. It provides that no State may prevent or significantly interfere with a depository institution or its affiliate from selling, soliciting, or cross-marketing insurance. That provision is not in Title V. A savings clause in the privacy title does not repeal a preemption clause in the bank-insurance title. Congress also specified which rule governs when the two intersect.

State insurance authorities enforce Title V “subject to section 6701 of this title.”⁴ And “[t]he insurance activities of any person (including a national bank exercising its power to act as agent under section 92 of title 12) shall be functionally regulated by the States, subject to section 6701 of this title.”⁵ “Subject to section 6701” means the privacy title yields. A finding that a state law is “more protective” under 15 U.S.C. § 6807 cannot authorize what 15 U.S.C. § 6701 forbids.

IV. The Working Group Should Add an Express Savings Clause Under 15 U.S.C. § 6701.

The proposed draft already demonstrates how to incorporate a federal-law carve-out: it provides that a licensee complying with the HIPAA Privacy Rule is deemed to comply with this Act. The draft should extend the same care to depository institutions and their affiliates by including a parallel provision reflecting the requirements of 15 U.S.C. § 6701. We therefore ask the Working Group to insert the following:

⁴ 15 U.S.C. § 6805(a)(6).

⁵ 15 U.S.C. § 6711.

Nothing in this Act shall apply to a depository institution, or an affiliate of a depository institution, that is subject to Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801–6809, with respect to insurance sales, solicitation, or cross-marketing activities protected by 15 U.S.C. § 6701. Compliance with Title V shall be deemed compliance with this Act with respect to those institutions and activities.

This savings clause would allow the Working Group to modernize Model #672 for the insurance market without imposing new conditions on institutions that Congress expressly placed under a different federal framework. It would also preserve the NAIC's prior efforts to keep this model within the safe harbors Congress established and enable states to adopt the model without reopening a question federal law has already resolved.

We respectfully urge the Working Group to adopt these revisions in recognition of the distinct federal framework governing depository institutions and their insurance affiliates. Thank you for your consideration.

Respectfully submitted,

A handwritten signature in black ink, reading "J. Kevin A. McKechnie". The signature is written in a cursive, flowing style with a large initial "J" and "K".

J. Kevin A. McKechnie
Executive Director