

June 20, 2022

The Honorable Frank Pallone
Chairman
House Committee on Energy & Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Cathy McMorris Rodgers
Ranking Member
House Energy & Commerce Committee
2322 Rayburn House Office Building
Washington, DC 20515

The Honorable Jan Schakowsky
Chairwoman
Subcommittee on Consumer Protection
and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Gus Bilirakis
Ranking Member
Subcommittee on Consumer Protection
and Commerce
2322 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Pallone, Ranking Member McMorris Rodgers, Chairwoman Schakowsky, and Ranking Member Bilirakis:

The undersigned insurance trade associations commend the Energy and Commerce Committee for its interest in pursuing legislation that will protect the privacy of consumers. The insurance industry has a long history of protecting the privacy interests of its consumers and believe that all industries should do so. There are many sectors of the American economy that are currently subject to little or no nationwide privacy regulation, and it is appropriate for the Congress to consider the extent to which consumers in those sectors could benefit from thoughtful and reasonable regulation.

While we believe that the Committee's discussion draft of the proposed "American Data Privacy and Protection Act" (ADPPA) can foster a constructive discussion of many key privacy issues, we have some significant concerns about the practical impact the legislation will have on both consumers and businesses. For this reason, the undersigned organizations representing a majority of the property casualty insurers, agents, and brokers and would urge that the Committee move cautiously and deliberately rather than the expedited process it appears the Committee is considering.

The financial services industry, including the insurance industry, was the first sector of the economy to come under comprehensive nationwide privacy regulation. When the Gramm-Leach-Bliley Act (GLBA) was enacted over 20 years ago, it set forth a rigorous regulatory framework for protecting the privacy of nonpublic personal information of financial services consumers. That framework is enforced against insurers, agents, and brokers by state insurance regulators. While privacy is not an industry-specific issue, state insurance regulators are familiar with the insurance model, how privacy laws impact that model, and potential unintended consequences for insurance consumers that could result from privacy regulation that is not appropriately tailored to their needs. It was in recognition of this that Congress wisely delegated enforcement of the Title V GLBA privacy provisions to state insurance regulators.

Consumer complaints are taken very seriously in the insurance industry and regulatory community. Every state insurance department has a market conduct program that examines and monitors insurers' business practices, including privacy compliance. Issues that may arise are typically resolved promptly in the course of regulatory market conduct examinations. As a result, to the best of our knowledge, consumer complaints about the privacy practices of insurers, agents, and brokers are rare.

For this reason, all five state legislatures that have recently enacted privacy laws of general applicability have included a form of exemption for entities and information that is already protected under Gramm-Leach-Bliley. In part because their primary privacy concerns are focused on other parts of the economy, and in part because they know that insurance regulators (working under the GLBA framework) are protecting insurance consumers well, they have decided not to fix what is not broken. We encourage the Committee to follow their wise example and clearly exempt insurers, agents, and brokers from the scope of the ADPPA. While the discussion draft does include a GLBA provision, it differs from the approach taken in the states and we have some concerns about it. We would welcome the opportunity to work with the Committee in crafting GLBA language that will ensure that the existing, successful insurance privacy regulatory system is not disturbed.

We are also extremely concerned about the presence in the bill of a broad private right of action. In our experience, private rights of action often turn out to be less valuable to consumers than they are intended to be. Parts of the United States already suffer from being overly litigious, and this provision threatens to exacerbate the problem. The costs of the U.S. tort system to businesses and families currently amount to \$529 billion per year or \$4,323 per year per household.¹ This amounts to 2.3% of the nation's GDP. Yet only 57 cents of every dollar are paid in compensation to plaintiffs.² This costs consumers much more than it protects them. This would likely mean an increase in claims costs for insurers, which in turn could lead to higher insurance rates for consumers. This is not in the interests of consumers. We believe it is much better for the government to enforce privacy laws; this would mean consistent interpretation and implementation leading to a more stable privacy landscape for businesses and consumers. For this reason, we oppose the passage of any federal privacy bill that contains a broad private right of action such as the one in the ADPPA.

While there are other aspects of the bill that trouble us, the two we have highlighted here are of the most immediate concern to insurers, agents, and brokers. Again, we commend the Committee for its interest in this important issue and we pledge to be of assistance in any way we can to help make the bill achieve its intended goal in an appropriately targeted way.

¹ "Costs and Compensation of the U.S. Tort System, Institute for Legal Reform, US Chamber of Commerce at <https://instituteforlegalreform.com/research/costs-and-compensation-of-the-u-s-tort-system/> (adjusted for GDP and population growth)."

² *Id.*

Sincerely,



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