

April 23, 2020

Mr. William McGeeveran,  
Reporter, ULC Collection and Use of Personally Identifiable Data  
Mondale Hall  
222 19<sup>th</sup> Avenue, South  
Minneapolis, MN 55455

Dear Mr. McGeeveran:

The American Property Casualty Insurance Association (APCIA)<sup>1</sup> appreciates the opportunity to provide feedback on the Uniform Law Commission's Collection and Use of Personally Identifiable Data Act (Discussion Draft). The comments below underscore the foundational importance of uniformity, consumer protection, and reasonable enforcement mechanisms. We look forward to productive collaboration with the Drafting Committee throughout the coming months to strengthen these core principles.

### **Uniformity**

Insurers have long been subject to the United States' financial industry's comprehensive privacy framework. Insurers are "financial institutions" for the purpose of the Gramm-Leach-Bliley Act (GLBA) and all 50 states and the District of Columbia have adopted implementing regulations and/or have statutes consistent with and, in some instances, stricter than GLBA.<sup>2</sup> The legal framework of privacy laws for insurance entities is robust and addresses issues related to: transparency, consumer notice, access, correction and sharing permissions. This framework is also currently under consideration by state insurance commissioners for any necessary updates.

New and proposed all-industry privacy laws are well intentioned but add an additional layer of requirements that conflict with the insurance privacy regime and do not account for unique and necessary business transactions. Therefore, the insurance industry is at risk of not only multi-state inconsistency, but also inconsistency within an individual state. These inconsistencies can result in consumer dissatisfaction and unnecessary increased corporate compliance costs. As

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<sup>1</sup> APCIA is the preeminent national trade association representing nearly 60 percent of the U.S. property casualty insurance market promoting and protecting the viability of private competition for the benefit of consumers and insurers. APCIA represents the broadest cross-section of home, auto, and business insurers of all sizes, structures, and regions of any national trade association with members doing business locally, nationally, and globally.

<sup>2</sup> The insurance specific state laws and regulations are largely based on the National Association of Insurance Commissioners' (NAIC) "Insurance Information and Privacy Protection Model Act" (IIPPA) and/or the "Privacy of Consumer Financial and Health Information Model Regulation" (PCFHI).

such, it is critical that a model include an entity-based GLBA exemption along with an exemption for business to business transactions.

### **Consumer Protection**

The insurance industry appreciates the significant responsibility it has to maintain the privacy and security of information while balancing practical day-to-day business applications. As such, consumer privacy and data security are priority issues for the insurance industry and insurers devote considerable resources to protect data, information systems, and consumer trust. A well-drafted flexible, harm- and risk-focused U.S. privacy framework can achieve strong consumer protections while advancing innovation and necessary business processes and procedures. The current draft's broad restrictions on profiling, the privacy commitment, the creation of legal fiduciary obligations, and sweeping definitions are some areas where we have concerns. Excessive requirements have the unintended consequences of consumer confusion and burdensome compliance obligations that divert corporate resources better spent identifying and handling privacy risks.

### **Reasonable Enforcement**

#### *Private Right of Action*

APCIA strongly opposes a private right of action. Companies endeavor to do the right thing. A private right of action for violations of a complicated comprehensive privacy framework serves only as a gotcha exercise and not as a tool to correct and punish egregious corporate behavior. Further, a private right of action will only create a patchwork of legal opinions, which will erode the uniformity objectives of this Discussion Draft. Finally, we question whether a private right of action will provide consumers any tangible benefits in the event of a concrete violation.

#### *Implementation Timeframes*

The implementation window for complying with any new privacy law should account for time to understand the requirements, any contemplated regulatory authority and necessary business actions. At a minimum, the draft should consider a two-year implementation window with strong preemption of any local ordinances during that timeframe.

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APCIA thanks you for attention to this important issue. These comments are just the beginning of this important discussion and APCIA looks forward to continuing to work with you on this matter and welcome any questions or follow-up that you may have.

Sincerely,

Angela Gleason  
Senior Director, Cybersecurity & Counsel  
American Property Casualty Insurance Association