American Property Casualty Insurance Association℠
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STATEMENT

AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION (APCIA)

S.B. No. 1108 – AN ACT CONCERNING CONSUMER PRIVACY

GOVERNMENT ADMINISTRATION AND ELECTIONS COMMITTEE

March 25, 2019

The American Property Casualty Insurance Association (APCIA)[1] appreciates the opportunity to comment on Senate Bill No. 1108, An Act Concerning Consumer Privacy. With members comprising nearly 60 percent of the U.S. property casualty insurance market, APCIA represents the broadest cross-section of home, auto, and business insurers of any national trade association.

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. While APCIA agrees that these issues must be afforded top priority, we also believe that efforts in this regard must be carefully tailored to ensure that they are workable, effective, do not pose insurmountable burdens for businesses and do not result in unintended negative consequences for businesses and consumers. APCIA opposes this legislation because, while well intentioned, we believe that it is overly broad and may result in highly problematic unintended consequences.

The insurance industry has been subject to privacy statutes and regulations for over two decades. 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 regulations implementing GLBA and/or have statutes consistent with and, in some instances, stricter than GLBA. In addition to GLBA, Connecticut insurers are subject to Conn Gen. Stat. §§38a-975 et seq., the "Connecticut Insurance Information and Privacy Protection Act" and Conn. Agencies Regs. §§38a-8-105 et. Seq., "Privacy of Consumer Financial Information." This long-established privacy landscape appropriately balances consumer protection with the legitimate business needs of all parties to an insurance transaction.

SB1108 raises significant concerns regarding unnecessary obstacles and potential unintended consequences that will overturn this long established privacy framework. Additionally, even if the General Assembly was inclined to move forward with legislation of this nature, APCIA would submit that pursuing this legislation, which appears to be based on the California Consumer Privacy

[1] Effective January 1, 2019, the American Insurance Association (AIA) and the Property Casualty Insurers Association of America (PCIAA) merged to form the American Property Casualty Insurance Association (APCIA). Representing nearly 60 percent of the U.S. property casualty insurance market, APCIA promotes and protects 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 any national trade association. APCIA members represent all sizes, structures, and regions, which protect families, communities, and businesses in the U.S. and across the globe.

Act (CCPA), is premature because the CCPA is still in the process of being implemented. Regulations implementing the CCPA have not been finalized and numerous bills are currently pending in California to remedy problems with the hastily passed CCPA. Given that the CCPA is still a work in progress in many respects, it would not seem to be wise to be duplicating a law around which there continue to be many implementation questions and problems. Additionally, requiring businesses to comply with a myriad of different states' versions of this law would make the already unworkable CCPA even more impossible from a compliance standpoint. Accordingly, Connecticut should not consider moving forward with duplicating the flawed CCPA until its provisions and implementing regulations have been finalized. Even once the CCPA provisions and regulations are finalized, Connecticut should wait to see how the provisions are working in the real world prior to implementing a similar law so as to make sure that the law is workable from a business and consumer standpoint.

In addition to these general points in opposition to this legislation, the following is a non-exclusive list of specific concerns supporting our opposition to this legislation.

Consumer

Fundamentally, it is important to remember that this is a consumer issue and the scope of the bill and definitions included therein should be narrowly tailored to meet that objective. For example, employee data and data related to a commercial transaction should be exempt. As currently defined, the term "consumer" is broad enough to include any natural person who is a Connecticut resident. "Consumer," therefore, could include an individual acting in his or her commercial or employment capacity – not only his/her personal capacity – such as an insurance agent, shareholder, vendor, or commercial insured. This is particularly concerning given the breadth of the definition of "personal information." Consider, for example, commercial insurance policies where the insurer may need to have the personal information of individuals working at a business to process a corporate executive or professional liability policy, employee information for workers' compensation, processing of a commercial auto or commercial general liability claim, or personal information about an individual principal to issue a commercial surety or fidelity bond, etc. Implementing and complying with SB1108 opt-out and disclosure obligations could unnecessarily stall or even prevent a commercial transaction from moving forward. Accordingly, APCIA believes that the definition of "Consumer" should be significantly narrowed so as to eliminate any ambiguity and appropriately narrow the scope to personal consumer transactions.

Personal Information

APCIA also believes that the scope of the definition of "personal information" in this bill is far too inclusive. For example, inclusion of information "capable of being associated with, or could be reasonably linked, directly or indirectly, with a particular consumer or household" is very problematic. The list could be exhaustive in this context, to include even pseudonymized information. In addition, the household information could be so tangential that there is no ability to associate a single individual with the information, yet it is considered "personal information" under a strict reading.

We also question how an Internet Protocol Address (IP Address) can be considered "personal information" or a "unique identifier." Given the sharing restrictions and notification obligations, considering an IP Address personal information could actually harm consumers rather than provide any consumer benefit.

Sale

The current definition of sale includes "other valuable consideration." From a property/casualty insurance perspective this is particularly concerning as it has the potential to impact important information sharing arrangements in the context of fraud prevention, claims handling, underwriting, and other necessary business functions. For instance, insurers participate in contributory databases to share information to prevent fraud and material misrepresentations. These are critical functions that benefit not only consumers but society. In addition, a 3rd party may require personal information to perform a necessary business function that they then de-identify and aggregate for their own purposes.

Privileged Information

APCIA questions the protections SB1108 provides for confidential and privileged information. Currently, the only protection is a limited exemption tied to an "evidentiary privilege." This is extremely narrow and creates a high burden to meet with multiple complex legal issues. The exemption does not account for information of a sensitive or confidential nature. There also has to be a Connecticut evidentiary rule that is applicable negating the possibility of cross border litigation needs and suggests that a proceeding must already be in place. Hence, an individual that might be contemplating litigation, or even fraud, is able to obtain information from the business to prepare their case. The Connecticut legislature has already recognized that such disclosures are not in the public interest in the insurance context. Conn Gen. Stat. §§38a-975 et seq., the Insurance Information Privacy Protection Act, has a privilege exemption that applies when there is reasonable anticipation that a claim or criminal proceeding will be filed.

Notice

A business that collects a consumer's personal information shall, at or before the point of collection, inform consumers as to the categories of personal information to be collected and the purposes for which the categories of personal information shall be used. APCIA believes there are potential unintended consequences that will only serve to confuse and frustrate consumers. For instance, consumers may receive multiple notifications for a single transaction, because the obligation is not limited to the business that has the direct relationship with the consumer. Additionally, businesses should be provided flexibility to meet this notification obligation. Given the broad scope of recipients it may be difficult to identify all individuals in an efficient and timely manner.

Production of Personal Information

There are multiple sections of SB1108 that require information be disclosed in a readily useable format upon receipt of a verifiable consumer request. How is a business to determine under which section the verifiable consumer request has been made? What are the practicable distinctions between these sections? If a business discloses the "incorrect" information, would a business be liable for failure to distinguish between these similar portions of the statute? Clarification on the responsibilities of businesses in responding to verifiable consumer requests is necessary for businesses to comply properly with CCPA's requirements.

GLBA Exemption

SB1108 contains a GLBA exemption that is based on the personal information collected, processed, sold or disclosed pursuant to GLBA. Of significance, the exemption only applies if there is a conflict between SB1108 and GLBA causing a business to have to make the difficult decision as to where there is a conflict and if the enforcing regulator or attorney general will agree. Further, without an entity-based exemption, the differences in the definitions of "personal information" in

GLBA and SB1108 establishes a legal framework of competing obligations that could, for instance, necessitate multiple privacy notices ultimately confusing consumers. It is critical that this exemption be changed to an entity based exemption and eliminate the "in conflict" language. The GLBA exemption could read as follows: "Section 1 to 18, inclusive, of this act shall not apply to a business or an affiliate of a business subject to, or governed by, or personal identifying information processed, collected, used, sold, or disclosed under the Gramm-Leach-Bliley Act (Pub. L. No. 106-102) and implementing regulations."

Operational Effective Date

It will take a company significantly longer than a year to first determine how to comply with unworkable restrictions in SB1108 and second to implement the requirement. We recommend a five-year implementation timeframe.

The information above provides just a few illustrations as to why SB1108 may create unintended consequences that could potentially harm rather than benefit consumers. For these reasons we oppose SB1108.

For the foregoing reasons, APCIA urges your Committee NOT to advance this bill.