

**Public Comments to Revised Article V, Limits on Disclosures of Nonpublic Personal Information (672)**

**TABLE OF CONTENTS**

<b>Regulator Comments.....</b>	<b>2</b>
Iowa Department of Insurance and Financial Services .....	2
Virginia Bureau of Insurance .....	10
<b>Industry Comments.....</b>	<b>16</b>
American Council of Life Insurers (ACLI) .....	16
American Land Title Association (ALTA) .....	19
American Property Casualty Insurance Association (APCIA) .....	26
Committee of Annuity Insurers (CAI) .....	30
Independent Insurance Agents and Brokers of America (IIABA) .....	35
Insured Retirement Institute (IRI) .....	37
Lloyd's.....	38
McDermott Will & Emery.....	39
National Association of Mutual Insurance Companies (NAMIC) .....	40
Privacy4Cars .....	54
<b>Consumer Comments.....</b>	<b>63</b>
Harry Ting.....	63

**Regulator Comments:**

**Iowa Division of Insurance**

Section 18—This section could be more clear about when opt-out is required and when opt-in is required. 18.A(1)(b) could say, for example, “an opt out notice as required in Section 12, if the information is X, or an opt out notice as required in Sections 22 and 23, if the information is Y.”

Section 18.A(4)—We could consider moving this information about how to transmit notices to consumers to Section 12 (for opt out) and 23 (for op in) so form, methods, and transmission of the notices are all in one place.

Section 21.B—Instead of providing two sets of instructions here for how the licensee must provide opt-out notice, at 21.B (clear and conspicuous instructions) and 21.E (a cookie banner, a link, or other effective method), Iowa suggests requiring the opt out notice to comply with the requirements that were already set forth in Section 12.

Section 21.D—These items do not appear to be exceptions to the rule set forth in this Section that a licensee may not disclose nonpublic information for the purpose of targeted advertising unless the consumer has the right to opt out. They seem more like additional parts of the rule, describing how it will work. Consider making D(1) into 21.D, and D(2) to 21.E.

Section 21.D(3)—Should we include this requirement for any type of opt-out notice?

Section 23—“sensitive personal information” should be capitalized to indicate it is a defined term (Section 4.BB).

ARTICLE ~~VIII~~. LIMITS ON DISCLOSURES OF ~~NONPUBLIC PERSONAL FINANCIAL~~ INFORMATION

Section ~~1862~~. Limits on Disclosure of Nonpublic Personal ~~Financial~~ Information to Nonaffiliated Third Parties

- A. (1) ~~Conditions for disclosure.~~ Except as otherwise authorized in this ~~Act~~ regulation, a licensee may not, directly or through any affiliate, disclose any nonpublic personal ~~financial~~ information about a consumer to a nonaffiliated third party unless:
- (a) The licensee has provided to the consumer an initial notice as required under Section ~~95~~;
  - (b) The licensee has provided to the consumer an opt out notice as required in Section ~~12~~, if the nonpublic personal information is to be sold, or an opt in notice as required in Sections 22 and 23, if the nonpublic personal information is disclosed;
  - (c) The licensee has given the consumer a reasonable opportunity, before it discloses the information to the nonaffiliated third party, to opt out of the disclosure; and
  - (d) The consumer does not opt out or opt in depending upon the applicable requirement.
- (2) ~~Opt out definition.~~ Opt out means a direction by the consumer that the licensee not disclose nonpublic personal ~~financial~~ information about that consumer to a nonaffiliated third party, other than as permitted by Sections ~~195, 2016 and 2147~~.
- (3) Opt in means a knowing and intelligent agreement by the consumer to allow disclosure of information described in Sections 22 and 23.
- (34) Examples of reasonable opportunity to opt out. A licensee provides a consumer with a reasonable opportunity to opt out if: (NB: consider moving this section to Section 12)
- (a) By mail. The licensee mails the notices required in Paragraph (1) of this subsection to the consumer and allows the consumer to opt out by mailing a form, calling a toll-free telephone number or any other reasonable means within thirty (30) days from the date the licensee mailed the notices.
  - (b) By electronic means. A ~~consumer~~ customer opens an on-line account with a licensee and agrees to receive the notices required in Paragraph (1) of this subsection electronically in accordance with [insert state version of UETA], and the licensee allows the ~~consumer~~ customer to opt out by any reasonable means at any time. ~~within thirty (30) days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.~~

- (c) Isolated transaction with consumer. For an isolated transaction such as providing the consumer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt out if the licensee provides the notices required in Paragraph (1) of this subsection at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction, ~~whether to opt out before completing the transaction.~~

(5) A licensee provides a consumer with a reasonable opportunity to opt in if: (NB: consider moving to section 23)

(a) By mail. The licensee mails the notices required in Paragraph (1) of this subsection to the consumer and allows the consumer to opt in by mailing a form, calling a toll-free telephone number or any other reasonable means within thirty (30) days from the date the licensee mailed the notices.

(b) By electronic means. A consumer agrees to receive the notices required in Paragraph (1) of this subsection electronically in accordance with [insert state version of UETA], and the licensee allows the consumer to opt in by any reasonable means. The licensee must allow the consumer to withdraw the opt in at any time.

(c) Isolated transaction with consumer. For an isolated transaction such as providing the consumer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt in if the licensee provides the notices required in Paragraph (1) of this subsection at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction.

B. ~~Application of opt out to all consumers and all nonpublic personal financial information.~~

~~(1) A licensee shall comply with this section, regardless of whether the licensee and the consumer have established a customer relationship.~~

~~(2)~~ Unless a licensee complies with this section, the licensee may not, directly or through any affiliate, disclose any nonpublic personal ~~financial~~ information about a consumer that the licensee has collected, regardless of whether the licensee collected it before or after receiving the direction to opt out, or the election to opt in with regard to the information described in Sections 22 or 23, from the consumer.

C. ~~Partial opt out.~~ A licensee may allow a consumer to select certain nonpublic personal ~~financial~~ information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out or opt in with regard to the information described in Sections 22 or 23.

**Section 1973. Limits on Redislosure and Reuse of Nonpublic Personal ~~Financial~~ Information**

- A. (1) ~~Information the licensee receives under an exception.~~ If a licensee receives nonpublic personal ~~financial~~ information from a nonaffiliated ~~third party service provider financial institution~~ under an exception in Sections 2046 or 2117 of this ~~Act regulation~~, the licensee's disclosure and use of that information is limited as follows:
- (a) The licensee may disclose the information to the affiliates of the ~~financial institution~~ ~~third party service provider~~ from which the licensee received the information;
  - (b) The licensee may disclose the information to its affiliates, but the licensee's affiliates may, in turn, disclose and use the information only to the extent that the licensee may disclose and use the information; and
  - (c) The licensee may disclose and use the information pursuant to an exception in Sections 2046 or 2117 of this ~~Act regulation~~, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.
- (2) Example. If a licensee receives information from a nonaffiliated ~~third party service provider financial institution~~ for claims settlement purposes, the licensee may disclose the information for fraud prevention, or in response to a properly authorized subpoena. The licensee may not disclose that information to a third party for marketing purposes or use that information for its own marketing purposes.
- B. (1) ~~Information a licensee receives outside of an exception.~~ If a licensee receives nonpublic personal ~~financial~~ information from a nonaffiliated ~~financial institution~~ ~~third party service provider~~ other than under an exception in Sections 2046 or 2117 of this ~~regulation Act~~, the licensee may disclose the information only:
- (a) To the affiliates of the ~~third party service provider financial institution~~ from which the licensee received the information;
  - (b) To its affiliates, but its affiliates may, in turn, disclose the information only to the extent that the licensee may disclose the information; and
  - (c) To any other person, if the disclosure would be lawful if made directly to that person by the ~~financial institution~~ ~~third party service provider~~ from which the licensee received the information.
- (2) Example. If a licensee obtains a customer list from a nonaffiliated ~~third party service provider financial institution~~ outside of the exceptions in Sections 2046 or 2117:

- (a) The licensee may use that list for its own purposes; and
  - (b) The licensee may disclose that list to another nonaffiliated third party only if the ~~third party service provider~~financial institution from which the licensee purchased the list could have lawfully disclosed the list to that third party. That is, the licensee may disclose the list in accordance with the privacy policy of the ~~financial institution~~third party service provider from which the licensee received the list, as limited by the opt out direction of each consumer whose nonpublic personal ~~financial~~ information the licensee intends to disclose, or the election to opt in for information in Sections 22 and 23, and the licensee may disclose the list in accordance with an exception in Sections ~~2016~~ or ~~2117~~, such as to the licensee's attorneys or accountants.
- C. ~~Information a licensee discloses under an exception.~~ If a licensee discloses nonpublic personal ~~financial~~ information to a nonaffiliated third party under an exception in Sections ~~2016~~ or ~~2117~~ of this ~~Act~~regulation, the third party may disclose and use that information only as follows:
  - (1) The third party may disclose the information to the licensee's affiliates;
  - (2) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and
  - (3) The third party may disclose and use the information pursuant to an exception in Sections ~~2016~~ or ~~2017~~ in the ordinary course of business to carry out the activity covered by the exception under which it received the information.
- D. ~~Information a licensee discloses outside of an exception.~~ If a licensee discloses nonpublic personal ~~financial~~ information to a nonaffiliated third party other than under an exception in Sections ~~2016~~ or ~~2117~~ of this ~~Act~~regulation, the third party may disclose the information only:
  - (1) To the licensee's affiliates;
  - (2) To the third party's affiliates, but the third party's affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and
  - (3) To any other person, if the disclosure would be lawful if the licensee made it directly to that person.

**Section ~~20184~~. Limits on Sharing Account Number Information for Marketing Purposes**

- A. ~~General prohibition on disclosure of account numbers.~~ A licensee shall not, directly or through an affiliate, disclose, other than to a consumer reporting agency, a policy number or similar form of access number or access code for a consumer's policy or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing or other marketing through electronic mail to the consumer.
- B. Exceptions. Subsection A of this section does not apply if a licensee discloses a policy number or similar form of access number or access code:
- (1) To the licensee's service provider solely in order to perform marketing for the licensee's own products or services, as long as the service provider is not authorized to directly initiate charges to the account;
  - (2) To a licensee who is a producer solely in order to perform marketing for the licensee's own products or services; or
  - (3) To a participant in an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.
- C. Examples.
- (1) ~~Policy number.~~ A policy number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as the licensee does not provide the recipient with a means to decode the number or code.
  - (2) ~~Policy or transaction account.~~ For the purposes of this section, a policy or transaction account is an account other than a deposit account or a credit card account. A policy or transaction account does not include an account to which third parties cannot initiate charges.

**Section 21. Limits on Disclosure of Nonpublic Personal Information in Targeted Marketing**

- A. Except as otherwise authorized in this Act, a licensee may not directly or through any affiliate, disclose for the purpose of targeted advertising any nonpublic personal information about a consumer to a nonaffiliated third party unless the consumer has the right to opt out of targeted advertising.
- B. A consumer may opt out of targeted advertising by submitting an opt-out request to the licensee. The licensee shall provide clear and conspicuous instructions on how to opt out. The opt-out notice shall comply with Section 12.
- C. A licensee shall act on the request within 15 days of receipt.
- D. Exceptions. The following exceptions shall apply to this Section:

~~(1) —D. A licensee shall not be obligated to act on any request where the nonpublic personal information in the opt-out request does not match the licensee's records;~~

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~~(2E.) —A licensee is under no obligation to obtain additional data to execute the opt-out request;~~

~~F.(3) A licensee may not solicit the consumer to change their opt-out selection for twelve months. (Should this be included in Section 12?)~~

~~E. A licensee may comply with the targeted advertising opt-out requirement by:~~

~~(1) —Providing either a cookie banner or a link on the footer of their website homepage allowing a consumer to opt out of targeted advertising; or~~

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~~(2) —Using another method, if such approach can effectively identify a person and remove them from targeted advertising.~~

## **Section 22. Limits on Sale of Nonpublic Personal Information**

~~A. Before a licensee may sell nonpublic personal information:~~

~~(1) The consumer must affirmatively opt in to the sale; and~~

~~(2) Prior to opting in, the consumer must receive clear and conspicuous notice, including:~~

~~(a) A description of the categories of nonpublic personal information that the licensee intends to sell;~~

~~(b) The purpose for which the nonpublic personal information will be sold; and~~

~~(c) The consumer's right to refuse to opt in to the sale of nonpublic personal information.~~

## **Section 23. Limits on Disclosure of Sensitive Personal Information**

~~A. A Licensee may disclose a consumer's sensitive personal information only as expressly permitted or required by Article VI or other provisions of this Act, unless the consumer has affirmatively opted in, as stated in subsection B(3) below, to disclosure of their sensitive personal information after receiving clear and conspicuous notice as provided by this Section.~~

~~B. Before a licensee may disclose a consumer's Sensitive Ppersonal Iinformation for purposes other than those specified in subsection A of this Section, a licensee shall provide notice to the consumer, including:~~



- (1) A description of the categories of sensitive personal information that the licensee intends to disclose;
- (2) The purpose for which the sensitive personal information will be disclosed; and
- (3) Notice that the consumer must opt in to provide affirmative consent before the consumer's sensitive personal information may be disclosed.

## Virginia Bureau of Insurance

The Bureau generally supports the proposed language found in Article V to limit the disclosure of nonpublic personal information by licensees to nonaffiliated third parties for purposes other than the provision of insurance products to consumers and other core insurance-related business functions. The Bureau offers a few edits in the attached, including revisions seeking to further tighten the requirements on redisclosure and reuse of nonpublic personal information to enhance consumer protection.

### **Section 18. Limits on Disclosure of Nonpublic Personal Information to Nonaffiliated Third Parties**

- A. (1) Except as otherwise authorized in this Act, a licensee may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party unless:
- (a) The licensee has provided to the consumer an initial notice as required under Section 9;
  - (b) The licensee has provided to the consumer an opt out notice as required in Section 12 or an opt in notice as required in Sections 22 and 23-;
  - (c) The licensee has given the consumer a reasonable opportunity, before it discloses the information to the nonaffiliated third party, to opt out of the disclosure or has received affirmative opt-in consent to the disclosure; and
  - (d) The consumer does not opt out or has opted in depending upon the applicable requirement.
- (2) Opt out means a direction by the consumer that the licensee not disclose nonpublic personal information about that consumer to a nonaffiliated third party, other than as permitted by Sections 19, 20 and 21.
- (3) Opt in means a knowing and intelligent agreement by the consumer to allow disclosure of information described in Sections 22 and 23.
- (4) ~~A~~ licensee provides a consumer with a reasonable opportunity to opt out if:
- (a) By mail. The licensee mails the notices required in Paragraph (1) of this subsection to the consumer and allows the consumer to opt out by mailing a form, calling a toll-free telephone number or any other reasonable means within ~~sixty~~thirty (~~30~~60) days from the date the licensee mailed the notices.
  - (b) By electronic means. A consumer ~~+~~ agrees to receive the notices required in Paragraph (1) of this subsection electronically in accordance with [insert state version of UETA], and the licensee allows the consumer to opt out by any reasonable means at any time..

- (c) Isolated transaction with consumer. For an isolated transaction such as providing the consumer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt out if the licensee provides the notices required in Paragraph (1) of this subsection at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction.
- (5) A licensee provides a consumer with a reasonable opportunity to opt in if:
- (a) By mail. The licensee mails the notices required in Paragraph (1) of this subsection to the consumer and allows the consumer to opt in by mailing a form, calling a toll-free telephone number or any other reasonable means ~~within thirty (30) days from the date the licensee mailed the notices.~~
  - (b) By electronic means. A consumer agrees to receive the notices required in Paragraph (1) of this subsection electronically in accordance with [insert state version of UETA], and the licensee allows the consumer to opt in by any reasonable means. The licensee must allow the consumer to withdraw the opt in at any time.
  - (c) Isolated transaction with consumer. For an isolated transaction such as providing the consumer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt in if the licensee provides the notices required in Paragraph (1) of this subsection at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction.

**Commented [DB1]:** There does not need to be a cap on time to receive a response to an opt-in request.

- B. ~~Unless a licensee complies with this section, the licensee may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer that the licensee has collected, regardless of whether the licensee collected it before or after receiving the direction to opt out, or the election to opt in with regard to the information described in Sections 22 or 23, from the consumer.~~
- C. A licensee may allow a consumer to select certain nonpublic personal information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out or opt in with regard to the information described in Sections 22 or 23.

#### Section 19. Limits on Redislosure and Reuse of Nonpublic Personal Information

- A. (1) If a licensee receives nonpublic personal information from a nonaffiliated third party service provider under an exception in Sections 20 or 21 of this Act, ~~the licensee's disclosure and use of that information is limited as follows:~~
  - ~~(a) The licensee may disclose the information to the affiliates of the third party service provider from which the licensee received the information;~~
  - ~~(b) The licensee may disclose the information to its affiliates, but the licensee's affiliates may,~~

**Commented [DB2]:** If the licensee is receiving the nonpublic personal information under an exception and only for a specific purpose, the licensee should not be able to use and disclose the nonpublic personal information for reasons beyond that purpose.

~~in turn, disclose and use the information only to the extent that the licensee may disclose and use the information; and~~

~~(c) —~~ The licensee may disclose and use the information pursuant to an exception in Sections 20 or 21 of this Act, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.

- (2) Example. If a licensee receives information from a nonaffiliated third party service provider for ~~claims settlement purposes~~, the licensee may disclose the information for fraud prevention, or in response to a properly authorized subpoena. The licensee may not disclose that information to a third party for marketing purposes or use that information for its own marketing purposes.

**Commented [DB3]:** This purpose does not align with the purposes stated in Sections 20 or 21.

B. (1) If a licensee receives nonpublic personal information from a nonaffiliated third party service provider other than under an exception in Sections 20 or 21 of this Act, the licensee may disclose the information only:

(a) To the affiliates of the third party service provider from which the licensee received the information;

(b) To its affiliates, but its affiliates may, in turn, disclose the information only to the extent that the licensee may disclose the information; and

(c) ~~Consistent with the other provisions of this Act~~~~To any other person, if the disclosure would be lawful if made directly to that person by the third party service provider from which the licensee received the information.~~

- (2) Example. If a licensee obtains a customer list from a nonaffiliated third party service provider outside of the exceptions in Sections 20 or 21:

(a) The licensee may use that list for its own purposes consistent with this Act; and

(b) The licensee may disclose that list to another nonaffiliated third party only as permitted by this Act~~if the third party service provider from which the licensee purchased the list could have lawfully disclosed the list to that third party. That is, the licensee may disclose the list in accordance with the privacy policy of the third party service provider from which the licensee received the list, as limited by the opt-out direction of each consumer whose nonpublic personal information the licensee intends to disclose, or the election to opt-in for information in Sections 22 and 23, and the licensee may disclose the list in accordance with an exception in Sections 20 or 21, such as to the licensee's attorneys or accountants.~~

C. If a licensee discloses nonpublic personal information to a nonaffiliated third party under an exception in Sections 20 or 21 of this Act, the third party may disclose and use that information only as follows:

- (1) The third party may disclose the information to the licensee's affiliates; ~~and~~
- (2) ~~The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and~~
- (3) The third party may disclose and use the information pursuant to an exception in Sections 20 or 21 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

D. If a licensee discloses nonpublic personal information to a nonaffiliated third party other than under an exception in Sections 20 or 21 of this Act, the third party may disclose the information only:

- (1) To the licensee's affiliates; ~~and~~
- (2) ~~To the third party's affiliates, but the third party's affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and~~
- (3) To any other person, if the disclosure would be lawful if the licensee made it directly to that person.

#### Section 20. Limits on Sharing Account Number Information for Marketing Purposes

- A. A licensee shall not, directly or through an affiliate, disclose, ~~other than to a consumer reporting agency,~~ a policy number or similar form of access number or access code for a consumer's policy or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing or other marketing through electronic mail to the consumer.
- B. Exceptions. Subsection A of this section does not apply if a licensee discloses a policy number or similar form of access number or access code:
  - (1) To the licensee's service provider solely in order to perform marketing for the licensee's own products or services, as long as the service provider is not authorized to directly initiate charges to the account;
  - (2) To a licensee who is a producer solely in order to perform marketing for the licensee's own products or services; or
  - (3) To a participant in an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.
- C. Examples.
  - (1) A policy number, or similar form of access number or access code, does not

**Commented [DB4]:** Recommend deleting. A licensee would not be disclosing this information to a consumer reporting agency for telemarketing, direct mail marketing, or other marketing through electronic mail.

include a number or code in an encrypted form, as long as the licensee does not provide the recipient with a means to decode the number or code.

- (2) ~~For the purposes of this section, a policy or transaction account is an account other than a deposit account or a credit card account. A policy or transaction account does not include an account to which third parties cannot initiate charges.~~

**Section 21. Limits on Disclosure of Nonpublic Personal Information in Targeted Marketing**

- A. Except as otherwise authorized in this Act, a licensee may not directly or through any affiliate, disclose for the purpose of targeted advertising any nonpublic personal information about a consumer to a nonaffiliated third party unless the consumer has the right to opt out of targeted advertising.
- B. A consumer may opt out of targeted advertising by submitting an opt-out request to the licensee. The licensee shall provide clear and conspicuous instructions on how to opt out.
- C. A licensee shall act on the request within 15 days of receipt.
- D. Exceptions. The following exceptions shall apply to this Section:
- (1) A licensee shall not be obligated to act on any request where the nonpublic personal information in the opt-out request does not match the licensee's records;
- (2) A licensee is under no obligation to obtain additional data to execute the opt-out request;
- (3) A licensee may not solicit the consumer to change their opt-out selection for twelve months.
- E. A licensee may comply with the targeted advertising opt-out requirement by:
- (1) Providing either a cookie banner or a link on the footer of their website homepage allowing a consumer to opt out of targeted advertising; or
- (2) Using another method, if such approach can effectively identify a person and remove them from targeted advertising.

**Section 22. Limits on Sale of Nonpublic Personal Information**

- A. Before a licensee may sell nonpublic personal information:
- (1) The consumer must affirmatively opt in to the sale; and
- (2) Prior to opting in, the consumer must receive clear and conspicuous notice, including:

**Commented [DB5]:** Recommend deleting for lack of relevance.

**Commented [DB6]:** 1) Use of the term in this section is "targeted advertising" so it should align with the term in the section title – either marketing or advertising.

(2) Recommend adding a definition for "targeted marketing" in the definitions section.

One option from the definition of "targeted advertising" found in Section 59.1-575 of the Code of Virginia that could be amended for marketing:

"Targeted advertising" means displaying advertisements to a consumer where the advertisement is selected based on personal data obtained from that consumer's activities over time and across nonaffiliated websites or online applications to predict such consumer's preferences or interests. "Targeted marketing" does not include:

1. Advertisements based on activities within a controller's own websites or online applications;
2. Advertisements based on the context of a consumer's current search query, visit to a website, or online application;
3. Advertisements directed to a consumer in response to the consumer's request for information or feedback; or
4. Processing personal data processed solely for measuring or reporting advertising performance, reach, or frequency.

- (a) A description of the categories of nonpublic personal information that the licensee intends to sell;
- (b) A description of the categories of recipients of the nonpublic personal information the licensee intends to sell;
- ~~(c)~~ The purpose for which the nonpublic personal information will be sold; and
- ~~(ed)~~ The consumer's right to refuse to opt in to the sale of nonpublic personal information.

**Section 23. Limits on Disclosure of Sensitive Personal Information**

- A. A Licensee may disclose a consumer's sensitive personal information only as expressly permitted or required by Article VI or other provisions of this Act, unless the consumer has affirmatively opted in, as stated in subsection B(3) below, to disclosure of their sensitive personal information after receiving clear and conspicuous notice as provided by this Section.
- B. Before a licensee may disclose a consumer's sensitive personal information for purposes other than those specified in subsection A of this Section, a licensee shall provide notice to the consumer, including:
  - (1) A description of the categories of sensitive personal information that the licensee intends to disclose;
  - (2) A description of the categories of recipients of the nonpublic personal information the licensee intends to sell;
  - (3) The purpose for which the sensitive personal information will be disclosed; and
  - ~~(4)~~ Notice that the consumer must opt in to provide affirmative consent before the consumer's sensitive personal information may be disclosed.

## **Industry Comments:**

### **American Council of Life Insurers (ACLI)**

ACLI appreciates the opportunity to provide comments on Article V Sections 18-23 of the Chair's Draft to the Privacy Protections (H) Working Group. We continue our diligent effort in providing thoughtful comments that also reflect consumer interests and licensee operations to meet those interests. While we appreciate the Working Group's ongoing process soliciting stakeholder input on a section-by-section basis, we note that our views on draft Article V are heavily dependent on exceptions in Article VI that have not been released for comment yet. Given the interdependence of these two sections, we are not able to provide informed redlines on Article V.

In order to provide affordable and available products to consumers, any proposed revisions to Article VI must create opportunities for appropriate circumstances under which a licensee can disclose a consumer's information. Accordingly, absent the opportunity to comment on Article VI in conjunction with Article V, we focus the below comments on considerations that should be made in revising Article V, keeping those exceptions in mind.

Further, in consideration of the below suggestions, we recommend the Working Group consider consistency with the current GLBA framework where possible to reduce the patchwork of compliance and current lack of cohesion in opt-in and opt-out approaches. For consent, it is particularly important to consider the opt-out approach in longstanding GLBA.

While we recognize the modernization of Model 672 necessitates updates to certain provisions, the current Article V continues to pose challenges to the operations of licensees in the absence of strong exceptions in Article VI. We acknowledge the Working Group's efforts to strike an appropriate balance between opt in and opt out for consumers to empower the consumer, while still safeguarding the consumer interest in affordable and accessible insurance products.

Lastly, the comments below reflect our ongoing general concerns with placing the insurance industry at a competitive disadvantage given other industry opt-out regulatory constructs. As an example of this harm, Regulation S-P continues to be an opt-out provision but without clarity in language on exceptions and definitions, routinely putting insurers at a disadvantage. In order to continue providing crucial products to consumers, it is important to consider the landscape outside of the insurance industry to avoid becoming a sole outlier.

### **ACLI's Specific Comments and Questions on Article V**

#### **Section 18 Limits on Disclosure of Nonpublic Personal Information to Nonaffiliated Third Parties**

- In Section 18(3), what does "knowing and intelligent agreement" mean and how will insurers confirm this? The notice protocols in Section 22 and 23 are sufficient to address this concern and we suggest replacing "knowing and intelligent" with a reference to Section 22 and 23.
- Section 18A(4)(b) revisions remove any timeframe requirement for licensees to comply with a consumer's opt out notice. Licensees should be given 15 days in line with the opt-outs under Section 21 to comply with the consumer's request.



#### **Section 19, Limits on Redisclosure and Reuse of Nonpublic Personal Information**

- Section 19A(1) and the remainder of this Section replace the term “financial institution” with “third party service provider.” We believe this is a mistake or drafting error and should be reversed.
- The GLBA and Sections 15, 16, and 17 of current NAIC Model 672 provide three categories of exceptions to the limits on disclosures of Nonpublic Personal Financial Information to third-parties: 1) to service providers to perform services for the financial institution and for joint marketing with other financial institutions; 2) various types of information-sharing that are necessary for processing or administering a financial transaction requested or authorized by the consumer; and 3) disclosures for purposes of preventing fraud, responding to judicial process or a subpoena, or complying with federal, state, or local laws. Consumers should not have the opportunity to opt-out of these important exceptions.

#### **Section 21 Limits on Disclosure of Nonpublic Personal Information in Targeted Marketing**

- We suggest changes to Section 21(C) reflecting 15 business days for consistency in compliance timelines with other laws and regulations concerning targeted advertising.
- We remain concerned with the lack of definition of “targeted advertising” and encourage exploration of Definitions as the next part of this drafting effort. We suggest the following definition:
  - “Targeted Advertising” means displaying online advertisements to a consumer where the advertisement is selected based upon data that is linked or reasonably linkable to an identified or identifiable natural person obtained from that consumer’s activities across nonaffiliated websites or online applications over time to predict such consumer’s preferences or interests. “Targeted advertising” does not include:
    - Online advertisements based on activities within a Licensee’s own websites or online applications;
    - Online advertisements based on the context of a consumer’s current search query, visit to a website, or online application;
    - Online advertisements directed to a consumer in response to the consumer’s request for information or feedback; or
    - Processing personal data solely for measuring or reporting advertising performance, reach, or frequency.
- As a technical matter, we suggest Section 21(D)(3) stand as its own requirement, not a subsection “exception” under D.
- In Section 21(E)(1), we suggest adding “or within a mobile application” after “website homepage.”

#### **Section 22 Limits on Sale of Nonpublic Personal Information**

- We remain concerned with the lack of definition for “sale” and encourage exploration of Definitions as the next part of this drafting effort.
- Further, GLBA was originally created due to concerns of selling and sharing information and provides a means to share information for legitimate business purposes with notice and opt-out. Licensees do not sell but instead share information with third parties under exceptions and require third parties to contract to use that information for that purpose.

#### **Section 23 Limits on Disclosure of Sensitive Personal Information**

- The entirety of Section 23, and thus Article V, is heavily dependent on resolution of the revised Article VI. There are certain common and expected circumstances where an insurer may need to

disclose nonpublic personal information. Substantial changes to Article VI would severely disrupt Article V and the ability of licensees to provide affordable and available products to consumers. Not only would this create a system that would harm consumers and impact their ability to receive key products, it would also make the insurance industry an outlier within the financial services industry.

- In Section 23(A), there is a specific reference to Article VI and any revisions should make clear that the exceptions permitting disclosure of nonpublic personal information also apply to permit disclosure of “sensitive personal information” under Section 23.
- Section 23(B)(3) should allow explicit permission for licensees to disclose sensitive personal information to service providers to provide the requested service or insurance coverage to the consumer. Absent this permission or exception in Article VI, this should be made clear here. Disclosure of sensitive personal information to affiliates should also be addressed in this Section.
- Lastly, there are some licensees who serve specific under-served consumer communities or markets. These licensees provide crucial products to reach diverse groups and, under Section 23, would not be allowed to use certain demographic data that falls under the current Sensitive Personal Information definition to solicit such communities and persons.

American Land Title Association (ALTA)

ARTICLE ~~VIII~~. LIMITS ON DISCLOSURES OF ~~NONPUBLIC PERSONAL FINANCIAL~~ INFORMATION

Section ~~1862~~. Limits on Disclosure of Nonpublic Personal ~~Financial~~ Information to Nonaffiliated Third Parties

- A. (1) ~~Conditions for disclosure.~~ Except as otherwise authorized in this ~~Act~~ regulation, a licensee may not, directly or through any affiliate, disclose any nonpublic personal ~~financial~~ information about a consumer to a nonaffiliated third party unless:
- (a) The licensee has provided to the consumer an initial notice as required under Section ~~95~~;
  - (b) The licensee has provided to the consumer an opt out notice as required in Section ~~128~~ or an opt in notice as required in Sections 22 and 23;
  - (c) The licensee has given the consumer a reasonable opportunity, before it discloses the information to the nonaffiliated third party, to opt out of the disclosure; and
  - (d) The consumer does not opt out ~~or opt in depending upon the applicable requirement.~~
- (2) ~~Opt out definition.~~ Opt out means a direction by the consumer that the licensee not disclose nonpublic personal ~~financial~~ information about that consumer to a nonaffiliated third party, other than as permitted by Sections ~~195, 2016~~ and ~~2147~~.
- (3) Opt in means a knowing and intelligent agreement by the consumer to allow disclosure of information described in Sections 22 and 23.
- (34) ~~Examples of reasonable opportunity to opt out.~~ A licensee provides a consumer with a reasonable opportunity to opt out if:
- (a) By mail. The licensee mails the notices required in Paragraph (1) of this subsection to the consumer and allows the consumer to opt out by mailing a form, calling a toll-free telephone number or any other reasonable means within thirty (30) days from the date the licensee mailed the notices.
  - (b) By electronic means. A ~~consumer~~ ~~customer~~ opens an on-line account with a licensee and agrees to receive the notices required in Paragraph (1) of this subsection electronically ~~in accordance with [insert state version of UETA]~~, and the licensee allows the ~~consumer~~ ~~customer~~ to opt out by any reasonable means ~~at any time.~~ ~~within thirty (30) days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.~~

**Commented [EB7]:** For compliance and consistency, this section should be aligned with the approach of current state privacy laws. Look at CCPA as a model. Of specific concern is an opt in for use of various types of data in the context of normal business transaction. In real estate transaction, an opt out prior to a closing would halt the entire process.

**Commented [EB8]:** Would this require the use and retention of a specific form to prove consent?

- (c) Isolated transaction with consumer. For an isolated transaction such as providing the consumer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt out if the licensee provides the notices required in Paragraph (1) of this subsection at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction, ~~whether to opt out before completing the transaction.~~

(5) A licensee provides a consumer with a reasonable opportunity to opt in if:

- (a) By mail. The licensee mails the notices required in Paragraph (1) of this subsection to the consumer and allows the consumer to opt in by mailing a form, calling a toll-free telephone number or any other reasonable means within thirty (30) days from the date the licensee mailed the notices.
- (b) By electronic means. A consumer agrees to receive the notices required in Paragraph (1) of this subsection electronically in accordance with [insert state version of UETA], and the licensee allows the consumer to opt in by any reasonable means. The licensee must allow the consumer to withdraw the opt in at any time.
- (c) Isolated transaction with consumer. For an isolated transaction such as providing the consumer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt in if the licensee provides the notices required in Paragraph (1) of this subsection at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction.

B. ~~Application of opt out to all consumers and all nonpublic personal financial information.~~

~~(1) A licensee shall comply with this section, regardless of whether the licensee and the consumer have established a customer relationship.~~

~~(2)~~ Unless a licensee complies with this section, the licensee may not, directly or through any affiliate, disclose any nonpublic personal ~~financial~~ information about a consumer that the licensee has collected, regardless of whether the licensee collected it before or after receiving the direction to opt out, or the election to opt in with regard to the information described in Sections 22 or 23, from the consumer.

C. ~~Partial opt out.~~ A licensee may allow a consumer to select certain nonpublic personal ~~financial~~ information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out or opt in with regard to the information described in Sections 22 or 23.

Section 1973. **Limits on Redisclosure and Reuse of Nonpublic Personal Financial Information**

- A. (1) ~~Information the licensee receives under an exception.~~ If a licensee receives nonpublic personal ~~financial~~ information from a nonaffiliated ~~third party service provider~~ ~~financial institution~~ under an exception in Sections 2046 or 2117 of this ~~Act~~ ~~regulation~~, the licensee's disclosure and use of that information is limited as follows:

- (a) The licensee may disclose the information to the affiliates of the ~~financial institution~~ ~~third party service provider~~ from which the licensee received the information;
- (b) The licensee may disclose the information to its affiliates, but the licensee's affiliates may, in turn, disclose and use the information only to the extent that the licensee may disclose and use the information; and
- (c) The licensee may disclose and use the information pursuant to an exception in Sections 2046 or 2117 of this ~~Act~~ ~~regulation~~, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.

- (2) Example. If a licensee receives information from a nonaffiliated ~~third party service provider~~ ~~financial institution~~ for claims settlement purposes, the licensee may disclose the information for fraud prevention, or in response to a properly authorized subpoena. The licensee may not disclose that information to a third party for marketing purposes or use that information for its own marketing purposes.

- B. (1) ~~Information a licensee receives outside of an exception.~~ If a licensee receives nonpublic personal ~~financial~~ information from a nonaffiliated ~~financial institution~~ ~~third party service provider~~ other than under an exception in Sections 2046 or 2117 of this ~~regulation~~ ~~Act~~, the licensee may disclose the information only:

- (a) To the affiliates of the ~~third party service provider~~ ~~financial institution~~ from which the licensee received the information;
- (b) To its affiliates, but its affiliates may, in turn, disclose the information only to the extent that the licensee may disclose the information; and
- (c) To any other person, if the disclosure would be lawful if made directly to that person by the ~~financial institution~~ ~~third party service provider~~ from which the licensee received the information.

- (2) Example. If a licensee obtains a customer list from a nonaffiliated ~~third party service provider~~ ~~financial institution~~ outside of the exceptions in Sections 2046 or 2117:

**Commented [EB9]:** Under existing law it is the responsibility of the party providing the information to ensure compliance via the contract process. The concept of this Section works in 672 because both entities are financial institutions subject to the same data use requirements. Expansion is problematic given the jurisdiction of the regulator and varying data use requirements. Contracts terms protect consumers when regulators do not have jurisdiction to enforce rules related to third parties.

- (a) The licensee may use that list for its own purposes; and
  - (b) The licensee may disclose that list to another nonaffiliated third party only if the ~~third party service provider~~~~financial institution~~ from which the licensee purchased the list could have lawfully disclosed the list to that third party. That is, the licensee may disclose the list in accordance with the privacy policy of the ~~financial institution~~~~third party service provider~~ from which the licensee received the list, as limited by the opt out direction of each consumer whose nonpublic personal ~~financial~~ information the licensee intends to disclose, ~~or the election to opt in for information in Sections 22 and 23,~~ and the licensee may disclose the list in accordance with an exception in Sections ~~2016~~ or ~~2117~~, such as to the licensee's attorneys or accountants.
- C. ~~Information a licensee discloses under an exception.~~ If a licensee discloses nonpublic personal ~~financial~~ information to a nonaffiliated third party under an exception in Sections ~~2016~~ or ~~2117~~ of this ~~Act~~~~regulation~~, the third party may disclose and use that information only as follows:
- (1) The third party may disclose the information to the licensee's affiliates;
  - (2) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and
  - (3) The third party may disclose and use the information pursuant to an exception in Sections ~~2016~~ or ~~2017~~ in the ordinary course of business to carry out the activity covered by the exception under which it received the information.
- D. ~~Information a licensee discloses outside of an exception.~~ If a licensee discloses nonpublic personal ~~financial~~ information to a nonaffiliated third party other than under an exception in Sections ~~2016~~ or ~~2117~~ of this ~~Act~~~~regulation~~, the third party may disclose the information only:
- (1) To the licensee's affiliates;
  - (2) To the third party's affiliates, but the third party's affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and
  - (3) To any other person, if the disclosure would be lawful if the licensee made it directly to that person.

**Section ~~20184~~. Limits on Sharing Account Number Information for Marketing Purposes**

- A. ~~General prohibition on disclosure of account numbers.~~ A licensee shall not, directly or through an affiliate, disclose, other than to a consumer reporting agency, a policy number or similar form of access number or access code for a consumer's policy or transaction

account to any nonaffiliated third party for use in telemarketing, direct mail marketing or other marketing through electronic mail to the consumer.

B. Exceptions. Subsection A of this section does not apply if a licensee discloses a policy number or similar form of access number or access code:

- (1) To the licensee's service provider solely in order to perform marketing for the licensee's own products or services, as long as the service provider is not authorized to directly initiate charges to the account;
- (2) To a licensee who is a producer solely in order to perform marketing for the licensee's own products or services; or
- (3) To a participant in an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

C. Examples.

- (1) ~~Policy number.~~ A policy number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as the licensee does not provide the recipient with a means to decode the number or code.
- (2) ~~Policy or transaction account.~~ For the purposes of this section, a policy or transaction account is an account other than a deposit account or a credit card account. A policy or transaction account does not include an account to which third parties cannot initiate charges.

**Section 21. Limits on Disclosure of Nonpublic Personal Information in Targeted Marketing**

A. Except as otherwise authorized in this Act, a licensee may not directly or through any affiliate, disclose for the purpose of targeted advertising any nonpublic personal information about a consumer to a nonaffiliated third party unless the consumer has the right to opt out of targeted advertising.

B. A consumer may opt out of targeted advertising by submitting an opt-out request to the licensee. The licensee shall provide clear and conspicuous instructions on how to opt out.

C. A licensee shall act on the request within 15 days of receipt.

D. Exceptions. The following exceptions shall apply to this Section:

(1) A licensee shall not be obligated to act on any request where the nonpublic personal information in the opt-out request does not match the licensee's records;

(2) A licensee is under no obligation to obtain additional data to execute the opt-out request;

**Commented [EB10]:** There are now laws in over 20 states applicable to targeted marketing. For consistency, look at mirroring CPRA. Additionally, is the intent of this text to apply to digital advertising/cross-context advertising, or other types of ads/marketing as well?

(3) A licensee may not solicit the consumer to change their opt-out selection for twelve months.

**Commented [EB11]:** This time period seems very long, given how frequently consumers visit websites.

E. A licensee may comply with the targeted advertising opt-out requirement by:

- (1) Providing either a cookie banner or a link on the footer of their website homepage allowing a consumer to opt out of targeted advertising; or
- (2) Using another method, if such approach can effectively identify a person and remove them from targeted advertising.

## **Section 22. Limits on Sale of Nonpublic Personal Information**

A. Before a licensee may sell nonpublic personal information:

- (1) The consumer must affirmatively opt in to the sale; and
- (2) Prior to opting in, the consumer must receive clear and conspicuous notice, including:
  - (a) A description of the categories of nonpublic personal information that the licensee intends to sell;
  - (b) The purpose for which the nonpublic personal information will be sold; and
  - (c) The consumer's right to refuse to opt in to the sale of nonpublic personal information.

## **Section 23. Limits on Disclosure of Sensitive Personal Information**

A. A Licensee may disclose a consumer's sensitive personal information only as expressly permitted or required by Article VI or other provisions of this Act, unless the consumer has affirmatively opted in, as stated in subsection B(3) below, to disclosure of their sensitive personal information after receiving clear and conspicuous notice as provided by this Section.

B. Before a licensee may disclose a consumer's sensitive personal information for purposes other than those specified in subsection A of this Section, a licensee shall provide notice to the consumer, including:

- (1) A description of the categories of sensitive personal information that the licensee intends to disclose;
- (2) The purpose for which the sensitive personal information will be disclosed; and



(3) Notice that the consumer must opt in to provide affirmative consent before the consumer's sensitive personal information may be disclosed.

**Commented [EB12]:** There should be an allowance for consumer requested transaction use of data.

## **American Property Casualty Insurance Association (APCIA)**

### **Article V- Limits on Disclosures of Nonpublic Personal Information**

While we respect and appreciate the Working Group's Article-by-Article approach, our review of Article V underscores the growing difficulty in providing fully informed feedback. Several earlier sections have been revised, but without a consolidated draft, it's challenging to assess the full context and cumulative impact.

Reviewing Articles in isolation, often alongside outdated or partial documents, increases the risk of inconsistencies and limits understanding of how the regulation will function in practice.

Many provisions are interdependent, and key terms, such as "sale" and "targeted marketing," remain undefined. While we understand definitions will be revisited later, addressing some foundational terms earlier could improve the quality of feedback on substantive provisions.

Due to these challenges, we are not providing redlines at this time but offer the following comments on Article V to help advance strong, workable consumer protections. We remain committed to ongoing engagement as the draft evolves.

### **Section 18. Limitation on Disclosure of Nonpublic Personal Information to Nonaffiliated Third Parties**

#### *Typographical and Syntax Issues*

- Section 18(A)(1)(b) appears to contain a typographical error referencing "Section 12" and should likely be "Section 21."
- Section 18(A)(1)(d) contains syntax issues that obscure the intended meaning. We believe the intent is to convey that disclosure may proceed if the consumer does not opt out or opts in, depending on the applicable requirement. The current phrasing could be misread to imply disclosure is blocked until the consumer does not opt in, which is confusing.

#### *Overbroad Language in 18(A)(2)*

This provision may unintentionally create a broader opt-out right than intended. Because Section 21 already sets forth the consumer's opt-out rights, it is unclear why this section attempts to define opt-out more broadly. We recommend clarifying that a consumer must take an affirmative step to opt out, avoiding expansive interpretations that go beyond Section 21's scope.

#### *Consent Standard in 18(A)(3)*

The requirement for a "knowing and intelligent agreement" is unfamiliar as a consent standard. The more common and accepted standard is "knowing and voluntary." We suggest aligning language accordingly to avoid confusion.

#### *Notice for Targeted Marketing in 18(A)(4)(a)*

This section applies to the only opt out which is "targeted marketing". At this point, "targeted marketing" is undefined. If "targeted marketing" refers to cross-context advertising, providing 30 days' notice prior to ad distribution is impractical. Given the nature of advertising delivery, "reasonable notice" is more appropriate than a fixed 30-day requirement.

#### *Opt-in Time Limits in 18(5)(a)*

There should be no fixed time limit restricting when a consumer may opt in. Consumers should be able to opt in at any time following notice receipt.

### **Section 19. Limits on Redisclosure and Reuse of Nonpublic Personal Information**

#### *Change from “Nonaffiliated Financial Institution” to “Nonaffiliated Third Party Service Provider”*

APCIA members seek clarification on the rationale for this substitution. The broad language may unduly restrict insurers’ ability to leverage data collected via TPSPs, affecting marketing and other operational uses. If a third-party service provider provides information to the licensee, why should the licensee’s use of that information be restricted? TPSPs act on behalf of licensees, so limiting use of this data may unintentionally hinder legitimate business functions, including marketing.

#### *Section 19(A)(1)(c) Restriction on Data Use*

This subsection restricts use of TPSP data solely to the acts listed in Sections 20 and 21, which unduly limits legitimate data use. Licensees should be able to use third-party data for lawful purposes beyond those narrow categories.

#### *Section 19(A)(2) Conflicting Examples*

The example prohibits sharing TPSP data with fourth parties for marketing, even if the licensee received a marketing list from the TPSP. This may inadvertently prohibit licensees from engaging other TPSPs for marketing on their behalf.

#### *Legal and Regulatory Exceptions*

We recommend including language affirming the right to disclose nonpublic personal information as necessary to defend or bring legal claims, respond to law enforcement or regulatory inquiries, and in the context of business sales or transfers. We also recommend the inclusion of language affirming the right to disclose, without consent, nonpublic personal information in exigent circumstances where necessary or appropriate to avoid, limit or remediate harm to person or property.

### **Section 20. Limits on Sharing Account Number Information for Marketing Purposes**

#### *Definition of Access Code/Number Too Broad*

The term “access code” is undefined and could unintentionally cover innocuous marketing identifiers (e.g., campaign tracking numbers). If the intent is to protect policy-related access credentials, the language should clearly reflect that, avoiding overbreadth.

#### *Clarification Requested Regarding Marketing Beneficiary*

It is unclear whether this subsection regulates marketing done by the nonaffiliated third party or marketing conducted for the licensee’s benefit. Clarification would help avoid unintended restrictions.

#### *Minimal Impact of Proposed Strikethroughs*

The proposed deletions do not seem to affect practical guidance currently. We recommend retaining the original language to avoid unintended consequences.

## Section 21. Limits on Disclosure of Nonpublic Personal Information in Targeted Marketing

### *Need for Definition of “Targeted Marketing”*

As with other terms, the lack of a clear definition for “targeted marketing” hinders the ability to provide meaningful comment. This term can encompass a wide range of practices, such as cross-context behavioral advertising (e.g., serving ads on a social media platform based on a user’s activity on a separate website), demographic-based advertising on social media, retargeting ads after a user abandons an online process, or even mailing physical postcards to individuals from a purchased list. Certain practices, particularly behavioral or cross-context advertising, have traditionally fallen outside the scope of GLBA. Therefore, a clear definition is essential to ensure alignment with state privacy laws and to clarify compliance obligations.

For “targeted marketing,” APCIA recommends the following definition:

*“Targeted marketing” means displaying online advertisements to a consumer where the advertisement is selected based upon data that is linked or reasonably linkable to an identified or identifiable natural person obtained from that consumer’s activities across nonaffiliated websites or online applications over time to predict such consumer’s preferences or interests. “Targeted marketing” does not include: Online advertisements based on activities within a Licensee’s own websites or online applications; Online advertisements based on the context of a consumer’s current search query, visit to a website, or online application; Online advertisements directed to a consumer in response to the consumer’s request for information or feedback; or Processing personal data solely for measuring or reporting advertising performance, reach, or frequency.*

### *Scope Regarding Consumers vs. Non-Consumers*

It is unclear if Section 21’s limitations apply only after an individual becomes a consumer or also beforehand. This distinction is important to avoid jurisdictional conflicts with state laws such as CCPA and emerging insurance privacy statutes.

### *Section 21(D)(3) Clarification*

This provision functions as a mandatory requirement on licensees once an opt-out is received rather than an exception, and this should be reflected.

### *Section 21(e)(1) on Cookie Banners*

Requiring a cookie banner for targeted advertising opt-outs is an impractical solution, given opt-outs must be effective across multiple channels (e.g., direct mail). A more flexible approach to opt-out mechanisms is needed.

## Section 22. Limits on Sale of Nonpublic Personal Information

### *Definition of “Sale” and Scope*

Like “targeted marketing,” “sale” requires clear definition to fully assess the scope and implications of Article V. As previously noted, APCIA recommends that the Working Group include a definition for “sale” that follows from a traditional understanding of sale, which requires the exchange of money and is not tied to services being provided. This avoids broad interpretations that could impact legitimate data sharing practices.

#### *Applicability to Consumer Status*

Clarification is needed regarding whether sale restrictions apply only after an individual becomes a consumer or extend to prospective consumers, which has implications for compliance and overlaps with state privacy laws.

#### *Legal and Regulatory Exceptions*

As with Section 19, explicit carve-outs are necessary for disclosures made in connection with legal defense, law enforcement, regulatory requests, and business transactions, as well as in exigent circumstances where disclosure is necessary or appropriate to prevent, mitigate, or remediate harm to persons or property.

### **Section 23. Limits on Disclosure of Sensitive Personal Information**

#### *Incomplete Draft Hinders Assessment*

Without a full draft, particularly a finalized and revised Article VI, it remains unclear what uses of sensitive personal information will be permitted. In the absence of this clarity, it is difficult to evaluate the scope of allowable uses and potential restrictions. Substantial changes to Article VI could undermine Article V and disrupt licensees' ability to offer their products to consumers. Many sensitive data elements are critical for processing transactions, where obtaining opt-in consent is not practical. Furthermore, the proposed changes risk making the insurance industry an outlier within the broader financial services sector.

#### *Legal and Regulatory Exceptions Needed*

Similar to prior sections, a clear statement should affirm that disclosures necessary for legal claims, regulatory compliance, and business transactions are permitted, along with those made in response to law enforcement requests or exigent circumstances where needed to prevent, mitigate, or remediate harm to individuals or property.

### **Conclusion**

Privacy is a critical issue, and any insurance-specific approach must reconcile with the context of the industry, align with the broader landscape for financial institutions nationally, and consider certain state and federal requirements. Any privacy model law ultimately developed by the NAIC must be practical, reasonable, and workable. It must ensure that its provisions are integrated and work well together and achieve the intended objective of protecting consumers while allowing licensees to meet their business obligations.

## Committee of Annuity Insurers (CAI)

### OVERVIEW

The CAI recognizes and appreciates the Working Group's ongoing efforts to enhance privacy protections for consumers through a revised version of Model 672, an established and time-tested framework.

As requested, our comments below focus on issues raised by revised Article V of the Chair's Draft. However, the Committee's ability to meaningfully comment on the proposed language, and proposed revisions to Model 672 generally, is significantly limited by the piecemeal approach of releasing proposed language. Here, evaluating the impact of proposed revisions to Article V is necessarily dependent on exceptions provided in Article VI and the meaning of the undefined key terms "sale" and "targeted marketing". Overly broad definitions of these terms or future revisions to Article VI would substantively alter the meaning and impact of the current proposed revisions to Article V. ***Accordingly, it is imperative that at some point the Working Group expose a comprehensive proposed draft of revised Model 672 that would allow stakeholders to more meaningfully assess and comment on the proposed revisions.*** It is important that current Article VI exemptions, which were thoughtfully crafted and are time-tested, remain in place.

The Committee appreciates that the proposed revisions to Article V recognize that an opt-out approach is appropriate in many circumstances to provide meaningful privacy protections to consumers without unduly impeding the ability of insurance licensees to conduct normal operations and compete in the broader financial services marketplace. However, the opt-in (consent) approach for limiting the sale of NPI or disclosure of SPI would pose significant challenges and would put the insurance industry at a competitive disadvantage with other financial services providers. That said, we recognize and appreciate the Working Group's efforts to find a workable compromise between the contrary approaches being advocated for by different stakeholders.

### COMMENTS

#### **Insurers Must Not Be At a Competitive Disadvantage**

As noted, the Committee continues to be very concerned about an opt-in (consent) approach, including a limited opt-in approach, because that approach would put annuity insurers at a competitive disadvantage compared to competing non-insurance retirement products. Annuity products compete with traditional investment accounts, like bank savings accounts and mutual funds, among others. Annuity products provide unique benefits to consumers -- like guaranteed income and limited downside risk -- that cannot be replicated by traditional retirement savings products. Those competing products are regulated under GLBA through the SEC's recently updated Regulation S-P, which continues to take an opt-out approach consistent with current Model 672. Those products are not subject to privacy rules under state insurance laws. If revised Model 672 subjects annuity insurers to materially more limiting and burdensome standards than the standards applicable to traditional retirement savings products, it will hamstring insurers from effectively competing in the broader financial services marketplace; financial advisors would be less likely to recommend annuity products and consumers who would benefit from an annuity would be less likely to have access to them.

Maintaining an opt-out approach is the best way to ensure annuity insurers can remain competitive in marketing their products to consumers who could benefit from them. That said, it is possible that some limited opt-in requirements could be workable, provided appropriate exemptions are in place. Accordingly, whether the current suggested approach set forth in Article V is workable will depend heavily on whether and how other sections of the Chair's Draft is revised, including Article VI.

#### **Section 22 – Limit on Sale of NPI**

##### **1. The definition of a "sale" of NPI must be defined.**

As the Committee previously noted in response to proposed revisions to Article III, the Chair's Draft does not currently define what constitutes the "sale" or "selling" of NPI. Accordingly, we do not know what the intended scope of application of the limits of Section 22 would be under the Chair's Draft. Therefore, the Committee cannot identify what issues and additional considerations may be raised by the proposed language since any such issues are necessarily dependent on the definition of a "sale" of NPI. Other existing modern privacy frameworks have diverged on the scope of what constitutes the "sale" of personal information, and so there is not a single common understanding of the term's meaning. Some frameworks, such as the CCPA, define the term extremely broadly such that almost any disclosure of NPI to a third party could constitute a "sale" of information. Others, like the comprehensive privacy laws adopted in Virginia and other states, define the term more narrowly as disclosing personal data for monetary consideration. Necessarily, the more broadly the term "sale" is defined, the more potential significant interpretative issues will arise. Accordingly, the term "sale" should be defined in the Chair's Draft to reflect the more common, and widely adopted, definition of a "sale" as the disclosure of NPI for monetary consideration.

Please note that depending on how the Working Group proposes to define a "sale" of NPI, there may be considerable additional issues and concerns that arise with respect to Section 22 that will necessitate further comment.

CAI Recommendation. A "sale" of NPI should be defined in Section 4 as follows:

"Sale" or "selling" of nonpublic personal information means the exchange of nonpublic personal information for monetary consideration by the licensee to a non-affiliated third party.

"Sale" or "selling" nonpublic personal information does not include:

(1) The disclosure of nonpublic personal information to a service provider that processes the nonpublic personal information on behalf of the licensee;

(2) The disclosure of nonpublic personal information to a third party for purposes of providing a product or service requested by the consumer or as otherwise permitted under Article VI of this Act;

(3) The disclosure or transfer of nonpublic personal information to an affiliate of the licensee;

(4) The disclosure of information that the consumer (i) intentionally made available to the general public via a channel of mass media and (ii) did not restrict to a specific audience;

or

(5) The disclosure or transfer of personal data to a third party as an asset that is part of a merger, acquisition, bankruptcy, or other transaction in which the third party assumes control of all or part of the licensee's assets.

### **Section 21 – Limits on Disclosure of NPI in Targeted Marketing**

The Chair's Draft also does not currently define the term "targeted Marketing". Similar to our comment on Section 22 above, the ultimate scope and impact of proposed Section 21 inherently depends on how "targeted marketing" is defined as well as what exemptions may be provided, including exemptions under Article VI. Therefore, we cannot identify what issues and additional considerations may be raised by the proposed language without a definition of "targeted marketing."

*CAI Recommendation.* We support adoption of the definition of "targeted marketing" previously proposed as part of the industry draft submitted by a joint trades group:

*(1) "Targeted advertising" means displaying online advertisements to a consumer where the advertisement is selected based upon data that is linked or reasonably linkable to an identified or identifiable natural person obtained from that consumer's activities across nonaffiliated websites or online applications over time to predict such consumer's preferences or interests.*

*(2) "Targeted advertising" does not include:*

- (a) Online advertisements based on activities within a Licensee's own websites or online applications;*
- (b) Online advertisements based on the context of a consumer's current search query, visit to a website, or online application;*
- (c) Online advertisements directed to a consumer in response to the consumer's request for information or feedback; or*
- (d) Processing personal data solely for measuring or reporting advertising performance, reach, or frequency.*

Additionally, proposed Section 21 would require that licensees act on an opt-out request within **15** days of receipt. This directly conflicts with a parallel requirement exposed as part of Revised Article IV, Section 14, which would require licensees to comply with a consumer's opt-out direction no later than **10** days after receipt

*CAI Recommendation.* One of these duplicative provisions should be deleted, and the remaining provision should allow **30** days for compliance, which more appropriately reflects the operational realities of implementing opt-out requests across systems and use cases.

### **Section 23 – Limit on Use and Disclosure of Sensitive Personal Information ("SPI")**

As discussed above, the CAI continues to be concerned about taking an opt-in approach and how that may impact annuity insurers' ability to compete in the financial services market. Additionally, Section 23 should be revised to clarify that it only limits disclosure of SPI to nonaffiliated third parties. As currently drafted, the limit applies to "disclosure" generally, as opposed to disclosures to a nonaffiliated third party. It is therefore unclear whether Section 23 would also potentially limit disclosure of SPI to affiliates. Other limitations on disclosure, including Section 21 on targeted marketing and the existing opt-out right under Section 18, clearly specify that disclosure of NPI to third parties is what is restricted. This established and tested approach recognizes that affiliated companies often maintain integrated systems and operate as part of a single broader group with which consumers intentionally interact. Requiring consent to disclose SPI to affiliates would pose a significant burden on insurers without a corresponding benefit to consumers.



CAI Recommendation. Section 23 should be revised as follows:

- A. A Licensee may disclose a consumer's sensitive personal information to a nonaffiliated third party only as expressly permitted or required by Article VI or other provisions of this Act, unless the consumer has affirmatively opted in, as stated in subsection B(3) below, to disclosure of their sensitive personal information after receiving clear and conspicuous notice as provided by this Section.
- B. Before a licensee may disclose a consumer's sensitive personal information to a nonaffiliated third party for purposes other than those specified in subsection A of this Section, a licensee shall provide notice to the consumer, including: . . . .

#### **Section 18 – Definition of “Opt-In”.**

As drafted, Subsection 18.A.(3) would define “opt-in” as “a knowing and intelligent agreement by the consumer to allow disclosure of information . . . .” It is unclear what would constitute a “knowing and intelligent” agreement by a consumer, or what is intended to be accomplished through this definition. Presumably, it is not intended that licensees be put in the position of deciding whether a consumer’s knowing consent was the “intelligent” thing to do.

CAI Recommendation. To the extent an opt-in approach is retained at all, Subsection 18.A.(3) should be revised as follows:

- (3) Opt in means an knowing and intelligent agreement by the consumer to allow disclosure of information described in Sections 22 and 23.

#### **Section 19 – Limits on Redisclosure and Reuse of NPI**

As drafted, it is unclear what the revisions to Section 19 are intended to accomplish. Under existing Model 672, the equivalent section functions to define how a licensee who receives NPI under any exemption in Model 672 is permitted to further use or disclose that NPI. It generally allows them to use the NPI for exempted purposes (i.e. Article VI exempted purposes under the Chair’s Draft) or to disclose NPI in ways that the original disclosing financial institution would have been permitted to disclose the NPI directly.

Revised Section 19 does not carry out this same function. Rather, it would appear to only apply to NPI received pursuant to the exemptions defined in Sections 20 and 21 of revised Article V, but not the exemptions provided in Article VI. Additionally, it would appear to apply only to NPI received from nonaffiliated third party service providers, but not necessarily other financial institutions who are not service providers (e.g. NPI disclosed from a ceding insurer to a reinsurer). Accordingly, these revisions would dismantle the overall framework and structure of existing Model 672 without providing a replacement framework. It is not clear this was an intentional outcome of the proposed revisions to Article V.

CAI Recommendation. Section 19 should be revised to maintain the current structure and function of this section under existing Model 672, while accounting for newly added exemptions in Section 20 and 21 of the Chair’s Draft, by specifying that the limits apply to “NPI received from a nonaffiliated financial institution or third part services provider under an exception in Sections 20 or

21 *or in Article VI of this Act*

## **Independent Insurance Agents & Brokers of America (IIABA)**

### **Section 18**

#### *General Comments*

Section 18 is intended to establish the conditions that a licensee must satisfy in order to disclose nonpublic personal information to a nonaffiliated third party. These provisions would ordinarily be straightforward and easy to understand, but the proposed revisions to this section attempt to also address the requirements that must be met by licensees who seek to sell nonpublic personal information or disclose sensitive personal information pursuant to Sections 22 and 23 respectively. The end product conflates and confuses these distinct issues and will be difficult for licensees to understand and comply with. IIABA urges the working group to eliminate the opt in references added in Section 18 (A)(1)(b and d), (A)(3), (A)(5), and (C) and to instead address those requirements in Sections 22 and 23 (or in a single section devoted to all opt in-related obligations).

#### *Section 18(A)(3)*

We note above that any definition of “opt in” should be removed from Section 18 and added instead to Sections 22 and 23 (or a consolidated opt in section) or even to Section 7, but we also have concern with the suggestion that “opt in” means “a knowing and intelligent agreement ...” We are not convinced that a definition of “opt in” is needed in any event, but this particular proposed definition is a source of concern and confusion.

#### *Section 18(A)(4)*

The proposed revisions would delete the title associated with this paragraph (“Examples of reasonable opportunity to opt out”), but we worry this seemingly subtle change could have a more substantive impact. The paragraph currently provides a non-exhaustive list of three options that licensees may utilize when providing a consumer with the opportunity to opt out, but the removal of the title (without any other changes to the text) suggests that the three options described are the only means to comply with the obligation.

#### *Section 18(A)(5)*

As we note above, any provisions that address the manner in which a consumer would provide consent should be incorporated into the sections or section that actually establish opt in obligations.

In addition, Section 18(A)(5) as currently drafted suggests there would be instances in which a licensee would be required to separately obtain a consumer’s consent in order to provide that individual with the insurance quote(s) they have requested. We are confused why this would be necessary and hope the working group will outline what it is contemplating and how such a requirement would be good public policy.

## Section 22

Section 22 is a newly proposed section that would restrict and regulate the ability of licensees to sell nonpublic personal information, and this is also a subject addressed by the quickly expanding universe of comprehensive state privacy laws. As we noted in our December 2024 comment letter, IIABA is concerned the working group's proposal neither offers clarity about what constitutes a "sale" nor provides exemptions for necessary business purposes. The state laws make clear, in contrast, that restrictions on the sale of such information do not hinder the ability of a business to share information with a third party in order to provide a product or service at the request of a consumer. The state statutes also clarify that limitations on the sale of nonpublic personal information do not restrict the ability of entities to transfer information in connection with a proposed or actual sale, acquisition, merger, bankruptcy, exchange, or other transaction of all or a portion of a business or operating unit. These are critical issues for agents and brokers, and we urge the working group to make this section more consistent with the existing comprehensive state privacy laws by providing needed exemptions or otherwise ensuring that this section does not restrict necessary and reasonable business practices in unwarranted ways.

## Section 23

Section 23 would establish a regulatory framework that would outline the conditions that must be satisfied in order for licensees to disclose "sensitive personal information" to others, and the provision would require consent in order to disclose such information to others *unless* the disclosure is otherwise permitted or required by the model.

It is a challenge to offer substantive comments on the appropriateness of the proposed framework for at least two reasons. First, we do not know the universe of information that these mandates are intended to apply to. The working group would ideally discuss and identify the types of information it believes are in need of these new statutory protections before it jumps to consideration of how any new requirements should be crafted. Second, Section 23(A) is confusing in its description of those instances when consent is not required, and we suggest the following as an alternative:

*A Licensee may disclose a consumer's sensitive personal information only for those purposes and uses identified in Article VI and as expressly permitted or required by Article VI or other provisions of this Act, unless the consumer has affirmatively opted in, as stated in subsection B(3) below, to disclosure of their sensitive personal information after receiving clear and conspicuous notice as provided by this Section.*

### **Insured Retirement Institute (IRI)**

Per the Working Group's request, we are only providing comments at this time on **Article V, Limits on Disclosures of Nonpublic Personal Information**.

Overall, our members generally have significant concerns with new requirements that don't align and conflict with the Gramm-Leach-Bliley Act (GLBA), which covers much of our members' data. Layering new requirements on top of what is already in place and changing the approach from "opt-out" to "out-in" creates confusion for customers and complications for compliance. For example, having a completely different approach to how "sensitive personal information" is handled will be challenging to implement and will also subject insurance companies to a different standard than other financial institutions. We would urge the Working Group to ensure consistency with the requirements of GLBA. Without that, there is risk of creating a patchwork of compliance requirements and inconsistency and confusion for consumers.

Additionally, we'd encourage the Working Group to consider defining some of the terms in this section, such as "targeting advertising", "solicit" and "sale" to ensure clarity and consistency. It is challenging for us to provide substantive feedback on the provisions without some of these key definitions.

Finally, we would also like to offer the following comments on specific provisions:

- 1) **Section 19 (Limits on Rediscovery and Reuse of Nonpublic Personal Information):** There is confusion about the updated reference to "third party service provider" and who this is intended to include. Inconsistency with terms raises concern and question about compliance. These updates also seem to imply that carriers would need to know and monitor the privacy policies of these third parties, which may not be feasible.
- 2) **Section 21(C) (Limits on Disclosure of Nonpublic Personal Information in Targeted Marketing)** – We suggest extending the timeframe to act on an optout request to "30 days of receipt".

### Lloyd's

We recognize the PPWG process for reviewing Model #672 is progressing section by section and that comments have not yet been requested on the definitions section of Model #672. However, we are submitting this comment now as we believe that Article V provides an important opportunity to consider how Model #672 should be applied in the context of the surplus lines market.

The surplus lines market provides coverage for complex risks and is an important source of capacity in US geographies that have significant exposure to natural disasters. It is a secondary market to be accessed when coverage cannot be purchased from licensed insurers. As a result, consumers do not deal directly with surplus lines insurers. Rather it is surplus lines brokers that gather the information needed to determine the right placement option for a consumer.

Model #672 deviates from the typical definition of "licensee" used in most NAIC models by adding an additional sentence which incorporates unauthorized insurers into the definition of licensee. Lloyd's believes that the inclusion of unauthorized insurers in the definition of licensee creates fundamental problems in regard to how Model #672 will apply in the surplus lines market. We note that in other NAIC Models, such as the NAIC Cybersecurity Model #668, unauthorized insurers have not been considered licensees because they do not maintain a certificate of authority or license. This is also generally the case throughout state insurance laws on myriad topics; a "licensee" typically means a licensed insurance producer or an admitted insurer. The licensee in a surplus lines transaction is not the insurer but is instead the surplus lines broker which must be licensed in the home state of the policyholder.

With this background of how surplus lines transactions are conducted in mind, Lloyd's suggests that unauthorized insurers should be removed from the definition of licensee. A surplus lines insurer that obtains a consumer's nonpublic personal information from a surplus lines broker as part of a surplus lines transaction would then be considered a third party service provider under Model #672. This is appropriate since surplus lines insurers only obtain consumer information through the surplus lines brokers that place business with them who are themselves licensees Model #672.

Although we do not believe that this is the intention, we are concerned that under the current draft of Model #672, Article V could be interpreted in a way that would inhibit surplus lines transactions, as surplus lines brokers and surplus lines insurers are typically nonaffiliated third parties. It therefore could be argued that surplus lines brokers should not be allowed to share nonpublic personal information with surplus lines insurers even though this information sharing is necessary for the completion of the surplus lines transaction.

Finally, we would like to note that Lloyd's certainly welcomes privacy regulation – it is a fundamental consumer protection and our market complies with GDPR in our home jurisdiction of the UK. However, if Model #672 is to be applied to the surplus lines market it must be done in a way that recognizes the differences in the way surplus lines business is placed and regulated as compared with the admitted market. Applying Model #672 to surplus lines insurers directly will create regulatory burden with no additional benefit, and may in fact serve to limit the placement of surplus lines risks as nonadmitted insurers may find it difficult or impossible to comply with the Article V requirements as currently drafted.

### **McDermott Will & Emery**

Represent 25 of the non-U.S. surplus lines insurers appearing on the NAIC's International Insurers Department Quarterly Listing of Alien Insurers, in addition to multiple U.S. surplus lines insurers; and the International Underwriting Association of London ("IUA"), a trade association with approximately 80 members who are international insurers trading in the London market.

While Article V does not specifically address surplus lines insurers, the notice obligations discussed in this section of the Model have a direct impact upon surplus lines insurers as currently drafted. Therefore, we wanted to take this opportunity to raise what we believe is an important point regarding how privacy obligations such as those contained in the Model should apply to surplus lines insurers.

Surplus lines insurers play an important role in providing coverage to U.S. insureds that is unavailable in the admitted market, usually due to the size or complexity of the risk. As a matter of law, surplus lines insurers write business only via properly licensed surplus lines brokers in the insured's home state who access the surplus lines market on their clients' behalf. Therefore, insurance consumers such as those who would be covered by the Model do not interact directly with surplus lines insurers. Often, and particularly for alien surplus lines insurers, there is a long placement chain of multiple brokers, some U.S. and some non-U.S., before a risk is placed with a surplus lines insurer.

However, the Model as currently drafted contemplates that surplus lines insurers would have to provide certain notices to consumers, and also potentially restricts the ability of surplus lines insurers to share non-public personal information regarding consumers with other parties, including possibly the very brokers through whom the insurer must provide insurance to the consumer. This is because the Model defines "licensee" to include "an unauthorized insurer that accepts business placed through a licensed excess lines broker in this state, but only in regard to the excess lines placement placed pursuant to [the state surplus lines laws]."

While the Model deems surplus lines insurers to be in compliance with the notice and opt out requirements if the broker or insurer do not disclose a consumer's nonpublic personal information to nonaffiliated third parties, and if a broker or insurer delivers a notice to the insured at the time the relationship is established, this exception does not appear to be sufficiently broad to encompass the way that surplus lines insurance is transacted. For example, the contemplated notice seems to assume it is only provided once the policy is issued, but by the time the insurer becomes aware of the consumer, there has already been transaction of insurance and exchange of information involving multiple brokers.

For this reason, we believe the better approach would be to follow the model that many states have already done in their consumer privacy laws, and in other laws applying to the way in which surplus lines insurance is transacted. That is, to recognize that the surplus lines broker, not the insurer, issues policy documentation to insureds. This can be accomplished by amending the definition of "licensee" so that it is consistent with state insurance law definitions of "licensee" – meaning authorized insurers (i.e. not surplus lines), and licensed insurance producers, including surplus lines brokers.

#### National Association of Mutual Insurance Companies (NAMIC)

As the Privacy Protection (H) Working Group's (PPWG or Working Group) review moves to Article V, which restricts sharing nonpublic personal information, it is increasingly difficult to comment. **Interested parties do not have a full context or understanding of what specifically is being restricted. Together both definitions and exceptions provide essential information about scope and therefore help inform both insurer review of the feasibility of accomplishing what the Working Group is setting forth in the draft and possible alternative suggestions for satisfying the PPWG's goals while still meeting business purposes.** Without seeing what changes are being envisioned in those sections and/or discussing the interconnection between the substantive requirements and what is encompassed in the requirements is challenging. For these reasons, NAMIC respectfully asks the PPWG to please share additional information going forward but also for the opportunity to be able to share input once information is fully available and open for comment.

As an overall administrative matter throughout, the May 16 Article V exposure draft appears to remove many **subtitles or headings**. While not necessarily a substantive problem (although it may introduce confusion and challenges in a few specific places (this should be resolved)), kindly consider retaining them throughout the model as they may aid readability as well as discussion of the topics.

Unlike previous comments, because of the challenge mentioned above, specific words and themes are more difficult to articulate, here we are simply indicating some challenges. Our hope is that this shares NAMIC member concerns while **facilitating dialog** on these topics. Please be understanding and accept apologies in advance for the format – while not necessarily easy to read hopefully it is useful for following the questions raised.



ARTICLE ~~VIII~~. LIMITS ON DISCLOSURES OF ~~NONPUBLIC PERSONAL FINANCIAL~~ INFORMATION

**FRAGMENTED APPROACHES**

Secs. 18, 20, 21, 21, and 22

A comment was made about this being more “fragmented” than necessary with respect to sharing with nonaffiliated third parties and categories of reasons for sharing. Additional information may be conveyed through the process. There may be ways to simplify that could be considered as the drafting process continues.

**Section ~~1862~~. Limits on Disclosure of Nonpublic Personal ~~Financial~~ Information to Nonaffiliated Third Parties**

- A. (1) ~~Conditions for disclosure.~~ Except as otherwise authorized in this ~~Act~~ regulation, a licensee may not, directly or through any affiliate, disclose any nonpublic personal ~~financial~~ information about a consumer to a nonaffiliated third party unless:

- (a) The licensee has provided to the consumer an initial notice as required under Section ~~95~~;
- (b) The licensee has provided to the consumer an opt out notice as required in Section ~~128~~ or an opt in notice as required in Sections 22 and 23 ;

**REFERENCED SECTION NUMBERS (EXCEPTIONS) – ADMINISTRATIVE** – Kindly review section numbers; with redrafting efforts numbers may be shifting and it does not appear that the numbers indicated above for the opt out notice now correspond to relevant section.

- (c) The licensee has given the consumer a reasonable opportunity, before it discloses the information to the nonaffiliated third party, to opt out of the disclosure; and
- (d) The consumer does not opt out or opt in depending upon the applicable requirement.

**CLARITY**

Sec. 18(A)(1)(d)

As a technical item, the “depending on the applicable requirement” wording may be confusing.

- (2) ~~Opt-out definition.~~ Opt out means a direction by the consumer that the licensee not disclose nonpublic personal ~~financial~~ information about that consumer to a nonaffiliated third party, other than as permitted by Sections ~~195, 2016~~ and ~~2117~~.

**OPT-OUT DEFINITION PLACEMENT – ADMINISTRATIVE ITEM**

Sec. 18(A)(2)

Understanding that the “opt-out” definition was housed in this article in Model 672 as initially drafted, because it also is referred to in the previous article

(relating to notice), consider whether it belongs in the overall Definitions Section (which was Section 4 in the August 5, 2024 draft).

#### **EXCEPTIONS REFERENCED**

Sec. 18(A)(2)

Looking back at this section under Section 12 of Model 672 as it exists today, sections 15, 16, and 17 are referenced. It makes sense for the exceptions to continue to be referenced in this provision. This is important as references to the sections listed above would be confusing and likely impracticable.

#### **(3) Opt in means a knowing and intelligent agreement by the consumer to allow disclosure of information described in Sections 22 and 23.**

##### **OPT-IN DEFINITION WORDING & STANDARD**

Sec. 18A(3) [version 5.16.25]

The wording used in this draft – “knowing and intelligent agreement” – is subjective and seems to be novel. If the PPWG decides to include an opt-in approach, the requirements should be revised and made internally consistent with the kind of wording elsewhere in the model, focusing on being “clear” or “clear and conspicuous.” This could reference what is contained in a new Section 22 of the May 16, 2025, draft Article V or to the relevant notice provisions on notice content (such as under Article II (in particular Section 5) of existing Model 672. [If despite the comments here the PPWG is moving forward it may be that some wording along the lines of “affirmative agreement” may be workable. Additional review with members may be necessary.]

##### **DEFINITION PLACEMENT**

Sec. 18(A)(3)

See note above.

##### **OPT-IN & IMPORTANT DECISION**

Sec. 18 and elsewhere

Opt-ins are contrary to most state laws that indicate an opt-out for this activity. Because of the operational concerns the opt-in, it is essential to get the definitions right to avoid harsh unintended consequences. In previous comments and discussions NAMIC has underscored concerns with an opt-in approach. We ask for an opportunity to please continue this discussion as creating a new parallel structure may pose difficulties.

#### **(34) Examples of reasonable opportunity to opt out. A licensee provides a consumer with a reasonable opportunity to opt out if:**

##### **EXAMPLES –**

Sec 18(A)(4)

While it appears that the PPWG may be looking to remove subheadings [kindly see preference for retaining], additional consideration should be given where the word “examples” is removed, as here. Model 672 was designed to allow for examples in a very deliberate way. (While there has not been discussion yet of Section 3 relating to Rule of Construction, we have serious concerns with removing examples and with states having their own (potentially differing) wording in privacy related notice content, delivery,

option execution, etc.). If removing the subheading, please incorporate example-related wording into the provision itself.

- (a) By mail. The licensee mails the notices required in Paragraph (1) of this subsection to the consumer and allows the consumer to opt out by mailing a form, calling a toll-free telephone number or any other reasonable means within thirty (30) days from the date the licensee mailed the notices.
- (b) By electronic means. A ~~consumer~~customer ~~opens an on-line account with a licensee and~~ agrees to receive the notices required in Paragraph (1) of this subsection electronically ~~in accordance with [insert state version of UETA], and the licensee allows the consumer~~customer to opt out by any reasonable means ~~at any time, within thirty (30) days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.~~

#### **TIMING OF REASONABLE OPPORTUNITY:**

Sec. 18(A)(4)(b)

The removal of the long-standing thirty days for “at any time” may be problematic as this may not be instantaneous (even if electronic). Consider retaining the 30 days as a reasonable time. (Also note that the targeted advertising wording in Section 21 refers to 15 days.)

#### **UETA & PRIVACY OPT OUT: VENN DIAGRAM**

Sec. 18(A)(4)(b)

Inclusion of UETA may need to be more fully explored; they do not necessarily fully intersect.

#### **AT ANY TIME**

Sec. 18(A)(4)(b) and elsewhere

Additional review may be needed on how “at any time” works.

- (c) Isolated transaction with consumer. For an isolated transaction such as providing the consumer with an insurance quote, a licensee provides the

consumer with a reasonable opportunity to opt out if the licensee provides the notices required in Paragraph (1) of this subsection at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction, ~~whether to opt out before completing the transaction.~~

#### **TIMING**

Sec. 18(A)(4)(c) and elsewhere

Additional review may be needed on the impact of this change.

(5) A licensee provides a consumer with a reasonable opportunity to opt in if:

- (a) By mail. The licensee mails the notices required in Paragraph (1) of this subsection to the consumer and allows the consumer to opt in by mailing a form, calling a toll-free telephone number or any other reasonable means within thirty (30) days from the date the licensee mailed the notices.

#### OPT-IN DECISION TIMING

Sec. 18(A)(5)(a)

There does not seem to be a reason to limit a licensee from allowing consumers to choose to opt-in at additional points in time.

- (b) By electronic means. A consumer agrees to receive the notices required in Paragraph (1) of this subsection electronically in accordance with [insert state version of UETA], and the licensee allows the consumer to opt in by any reasonable means. The licensee must allow the consumer to withdraw the opt in at any time.

#### UETA & PRIVACY OPT OUT: VENN DIAGRAM

Sec. 18(A)(5)(b)

Inclusion of UETA may need to be more fully explored; they do not necessarily fully intersect.

#### PROCESSING TIME

Sec. 18(A)(5)(b)

With use of the “at any time” wording there may be confusion as to allowing time for the option to be implemented.

- (c) Isolated transaction with consumer. For an isolated transaction such as providing the consumer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt in if the licensee provides the notices required in Paragraph (1) of this subsection at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction.

B. ~~Application of opt out to all consumers and all nonpublic personal financial information.~~

- ~~(1) — A licensee shall comply with this section, regardless of whether the licensee and the consumer have established a customer relationship.~~

#### CONFUSION

Sec. 18(B)(1)

It is unclear why this would be removed.

(2) Unless a licensee complies with this section, the licensee may not, directly or through any affiliate, disclose any nonpublic personal ~~financial~~ information about a consumer that the licensee has collected, regardless of whether the licensee collected it before or after receiving the direction to opt out, or the election to opt in with regard to the information described in Sections 22 or 23, from the consumer.

- C. ~~Partial opt out.~~ A licensee may allow a consumer to select certain nonpublic personal ~~financial~~ information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out or opt in with regard to the information described in Sections 22 or 23.

**Section 1973. Limits on Redislosure and Reuse of Nonpublic Personal ~~Financial~~ Information**

- A. (1) ~~Information the licensee receives under an exception.~~ If a licensee receives nonpublic personal ~~financial~~ information from a nonaffiliated third party service provider ~~financial institution~~ under an exception in Sections ~~2016~~ or ~~2117~~ of this

Act~~regulation~~, the licensee's disclosure and use of that information is limited as follows:

**CONNECTION TO GLBA & NONAFFILIATED FINANCIAL INSTITUTION**

Sections 19(A)(1); 19(A)(1)(a); 19(A)(2); 19(B)(1); 19(B)(1)(a); 19(B)(1)(c); 19(B)(2); 19(B)(2)(b)

Under GLBA and Model 672 there were special careful approaches meant for nonaffiliated financial institutions. Did the PPWG intend to replace "financial institution" with "third party service provider" in these provisions? This seems puzzling; it should be reviewed. Also, there should be considerations of possible unintended consequences. [For example, how will a licensee know who is an affiliate of every third party service provider?]

**REFERENCED SECTION NUMBERS (EXCEPTIONS) – ADMINISTRATIVE –**

Kindly review section numbers; with redrafting efforts numbers may be shifting and it does not appear that the numbers indicated above now correspond to exception-related sections.

- (a) The licensee may disclose the information to the affiliates of the ~~financial institution~~ third party service provider from which the licensee received the information;

**GLBA CONNECTION & NONAFFILIATED FINANCIAL INSTITUTION**

Sec. 19(A)(1)(a)

Please see the note above on this issue for this subsection.

- (b) The licensee may disclose the information to its affiliates, but the licensee's affiliates may, in turn, disclose and use the information only to the extent that the licensee may disclose and use the information; and
- (c) The licensee may disclose and use the information pursuant to an exception in Sections 2016 or 2117 of this ~~Act~~regulation, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.

**REFERENCED SECTION NUMBERS (EXCEPTIONS) – ADMINISTRATIVE** – Kindly review section numbers; with redrafting efforts numbers may be shifting and it does not appear that the numbers indicated above now correspond to exception-related sections.

- (2) Example. If a licensee receives information from a nonaffiliated third party service provider ~~financial institution~~ for claims settlement purposes, the licensee may disclose the information for fraud prevention, or in response to a properly authorized subpoena. The licensee may not disclose that information to a third party for marketing purposes or use that information for its own marketing purposes.

**GLBA CONNECTION & NONAFFILIATED FINANCIAL INSTITUTION**

Sec. 19(A)(2)

lease see the note above on this issue for this subsection.

- B. (1) ~~Information a licensee receives outside of an exception.~~ If a licensee receives nonpublic personal ~~financial~~ information from a nonaffiliated ~~financial institution~~third party service provider other than under an exception in Sections 2016 or 2117 of this ~~regulation~~Act, the licensee may disclose the information only:

- (a) To the affiliates of the third party service provider ~~financial institution~~ from which the licensee received the information;
- (b) To its affiliates, but its affiliates may, in turn, disclose the information only to the extent that the licensee may disclose the information; and
- (c) To any other person, if the disclosure would be lawful if made directly to that person by the ~~financial institution~~third party service provider from which the licensee received the information.

**GLBA CONNECTION & NONAFFILIATED FINANCIAL INSTITUTION**

Sec. 19(B)(1)

Please see the note above on this issue for all of this subsection.

**REFERENCED SECTION NUMBERS (EXCEPTIONS) – ADMINISTRATIVE:**

Sec. 19(B)(1)

Kindly review section numbers; with redrafting efforts numbers may be shifting and it does not appear that the numbers indicated above now correspond to exception-related sections.

- (2) Example. If a licensee obtains a customer list from a nonaffiliated third party service provider ~~financial institution~~ outside of the exceptions in Sections ~~2016~~ or ~~2117~~:

- (a) The licensee may use that list for its own purposes; and
- (b) The licensee may disclose that list to another nonaffiliated third party only if the third party service provider ~~financial institution~~ from which the licensee purchased the list could have lawfully disclosed the list to that

third party. That is, the licensee may disclose the list in accordance with the privacy policy of the ~~financial institution~~ third party service provider from which the licensee received the list, as limited by the opt out direction of each consumer whose nonpublic personal ~~financial~~ information the licensee intends to disclose, or the election to opt in for information in Sections 22 and 23, and the licensee may disclose the list in accordance with an exception in Sections ~~2016~~ or ~~2117~~, such as to the licensee's attorneys or accountants.

#### **GLBA CONNECTION & NONAFFILIATED FINANCIAL INSTITUTION**

Sec 19(B)(2)

Please see the note above on this issue for all of this subsection.

#### **REFERENCED SECTION NUMBERS (EXCEPTIONS) – ADMINISTRATIVE:**

Sec. 19(B)(2) and (B)(2)(b)

Kindly review section numbers; with redrafting efforts numbers may be shifting and it does not appear that the numbers indicated above now correspond to exception-related sections.

- C. ~~Information a licensee discloses under an exception.~~ If a licensee discloses nonpublic personal ~~financial~~ information to a nonaffiliated third party under an exception in Sections ~~2016~~ or ~~2117~~ of this ~~Act~~ regulation, the third party may disclose and use that information only as follows:

- (1) The third party may disclose the information to the licensee's affiliates;
- (2) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and
- (3) The third party may disclose and use the information pursuant to an exception in Sections ~~2016~~ or ~~2017~~ in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

**REFERENCED SECTION NUMBERS (EXCEPTIONS) – ADMINISTRATIVE:**

Sec. 19(C) and (C)(3)

Kindly review section numbers; with redrafting efforts numbers may be shifting and it does not appear that the numbers indicated above now correspond to exception-related sections.

**TPSP**

Sec. 19(C)-(D)

Note that it appears that (C) and (D) are intended to address nonaffiliated third parties overall.

- D. ~~Information a licensee discloses outside of an exception.~~ If a licensee discloses nonpublic personal ~~financial~~ information to a nonaffiliated third party other than under an exception in Sections ~~2016~~ or ~~2117~~ of this ~~Act~~ regulation, the third party may disclose the information only:

- (1) To the licensee's affiliates;
- (2) To the third party's affiliates, but the third party's affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and
- (3) To any other person, if the disclosure would be lawful if the licensee made it directly to that person.

**TPSP**

Sec. 19(C)-(D)

Note that it appears that (C) and (D) are intended to address nonaffiliated third parties overall.

**REFERENCED SECTION NUMBERS (EXCEPTIONS) – ADMINISTRATIVE:**

Sec. 19(D)

Kindly review section numbers; with redrafting efforts numbers may be shifting and it does not appear that the numbers indicated above now correspond to exception-related sections.

**Section ~~2018~~4. Limits on Sharing Account Number Information for Marketing Purposes**

- A. ~~General prohibition on disclosure of account numbers.~~ A licensee shall not, directly or through an affiliate, disclose, other than to a consumer reporting agency, a policy number or similar form of access number or access code for a consumer's policy or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing or other marketing through electronic mail to the consumer.
- B. Exceptions. Subsection A of this section does not apply if a licensee discloses a policy number or similar form of access number or access code:

**"ACCESS CODE" QUESTION**

Sec. 20(B)



Although this language does not appear to be revised, it may be beneficial to consider a definition of “access code” to clarify the scope of its meaning here.

- (1) To the licensee’s service provider solely in order to perform marketing for the licensee’s own products or services, as long as the service provider is not authorized to directly initiate charges to the account;

**“CHARGES TO THE ACCOUNT”**

Sec. 20(B)(1)

Although this language does not appear to be revised, a question was asked about what it means in the insurance content.

- (2) To a licensee who is a producer solely in order to perform marketing for the licensee’s own products or services; or

- (3) To a participant in an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

**“AFFINITY”**

Sec. 20(B)(3)

Although this language does not appear to be revised, a question was asked about the definition of “affinity.”

C. Examples.

- (1) ~~Policy number.~~ A policy number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as the licensee does not provide the recipient with a means to decode the number or code.
- (2) ~~Policy or transaction account.~~ For the purposes of this section, a policy or transaction account is an account other than a deposit account or a credit card account. A policy or transaction account does not include an account to which third parties cannot initiate charges.

**Section 21. Limits on Disclosure of Nonpublic Personal Information in Targeted Marketing**

**CONSISTENT WORDING – ADMINISTRATIVE:**

Throughout

It appears that the title to current Section 21 refers to “targeted marketing” while the other provisions refer to “targeted advertising.”

**SCOPE OF ACTIVITY/LIMITATION:**

Overall for Section 21

To understand what falls within this Section and its workability, the definition of “targeted advertising” (perhaps in Section 4) is linked to the substantive provisions relating to this subject. In particular, it is important to consider what is and is not included. Interested parties have not seen an intended definition. One example of how to structure that definition is sketched below:

“Targeted advertising” means displaying online advertisements to a consumer where the advertisement is selected based upon data that is linked or reasonably linkable to an identified

or identifiable natural person obtained from that consumer's activities across nonaffiliated websites or online applications over time to predict such consumer's preferences or interests.

"Targeted advertising" does not include:

- (a) Online advertisements based on activities within a Licensee's own websites or online applications;
- (b) Online advertisements based on the context of a consumer's current search query, visit to a website, or online application;
- (c) Online advertisements directed to a consumer in response to the consumer's request for information or feedback; or
- (d) Processing personal data solely for measuring or reporting advertising performance, reach, or frequency.

A. Except as otherwise authorized in this Act, a licensee may not directly or through any affiliate, disclose for the purpose of targeted advertising any nonpublic personal information about a consumer to a nonaffiliated third party unless the consumer has the right to opt out of targeted advertising.

#### **COMPLIANCE & POTENTIAL CONFUSION**

Sec. 21(A)

There may need to be additional review of this provision, to better understand its scope and how it would work in practice.

B. A consumer may opt out of targeted advertising by submitting an opt-out request to the licensee. The licensee shall provide clear and conspicuous instructions on how to opt out.

C. A licensee shall act on the request within 15 days of receipt.

D. Exceptions. The following exceptions shall apply to this Section:

(1) A licensee shall not be obligated to act on any request where the nonpublic personal information in the opt-out request does not match the licensee's records;

(2) A licensee is under no obligation to obtain additional data to execute the opt-out request;

(3) A licensee may not solicit the consumer to change their opt-out selection for twelve months.

#### **CHANGING OPT-OUT SELECTION FOR TARGETED ADVERTISING**

Sec 21(D)(3)

Consider whether this is really an exception as drafted.

E. A licensee may comply with the targeted advertising opt-out requirement by:

- (1) Providing either a cookie banner or a link on the footer of their website homepage allowing a consumer to opt out of targeted advertising; or
- (2) Using another method, if such approach can effectively identify a person and remove them from targeted advertising.

#### **OPT-OUT METHOD FOR TARGETED ADVERTISING**

Sec. 21(E)

A question has been asked about aligning with a CCPA enforcement action against Honda and not identifying/verifying. Overall, this subsection dealing with ways to comply with targeted advertising opt-out requirements may benefit from additional review.

#### **PLACEMENT OF NEW OPT OUT NOTICE & OPT OUT METHODS – ADMINISTRATIVE:**

Section 21(E)

Existing Model 672 Section 8 contains information about form/method for how to satisfy opt out requirements. Understanding that those section numbers may have changed, consider whether this content may belong there (or otherwise cross referencing this section there).

### **Section 22. Limits on Sale of Nonpublic Personal Information**

#### **SCOPE OF ACTIVITY/LIMITATION:**

Sec. 22 Overall

To understand what falls within this Section and its workability, the definition of “sale” (perhaps in Section 4) is linked to the substantive provisions relating to this subject. In particular, it is important to consider what is and is not included (and specifically exchange of information or services should not be included). Interested parties have not seen an intended definition. Without necessarily endorsing this wording, as it is important to continue to review its possible implications, a draft for possible brainstorming and discussion follows:

“Sell” or “selling” means the exchange of personal information to a third party for monetary or other valuable consideration. A licensee does not sell personal information when:

- (1) The disclosure is to a third party for the purpose of or in support of providing a 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 business to (i) disclose personal information; or (ii) interact with one or more third parties including but not limited to referrals to other licensees.

Again, NAMIC encourages a holistic approach to reviewing of aspects of the draft model revisions, taking the substantive provisions together with the applicable definitions and exceptions to understand and assess the scope and the full operational implications of the working drafts.

## EXCEPTIONS & ALIGNMENT

### Sec. 22 Overall

Review of the state comprehensive privacy laws may help inform additional wording and exceptions to ensure that important and reasonable functions are not impacted.

#### A. Before a licensee may sell nonpublic personal information:

##### **OPT-IN & IMPORTANT DECISION**

Sec. 22 and elsewhere

Opt-ins are contrary to most state laws that indicate an opt-out for this activity. Because of the operational concerns the opt-in, it is essential to get the definitions right to avoid harsh unintended consequences. In previous comments and discussions NAMIC has underscored concerns with an opt-in approach. We ask for an opportunity to please continue this discussion as creating a new parallel structure may pose difficulties.

#### (1) The consumer must affirmatively opt in to the sale; and

##### **WORD CHOICE**

Sec. 22(A)(1)

Consider whether referring to “the” sale seems specific and should be stricken.

#### (2) Prior to opting in, the consumer must receive clear and conspicuous notice, including:

##### (a) A description of the categories of nonpublic personal information that the licensee intends to sell;

##### (b) The purpose for which the nonpublic personal information will be sold; and

##### **PURPOSE & LEVEL OF DETAIL**

Sec. 22(B)(2)

A point was conveyed that “purposes” in notice should remain high-level.

##### (c) The consumer’s right to refuse to opt in to the sale of nonpublic personal information.

## Section 23. Limits on Disclosure of Sensitive Personal Information

### **SCOPE OF ACTIVITY/LIMITATION**

Overall for Section 23

To understand what falls within this section, and its workability, optimally the definition of personal information and the relevant exceptions would be reviewed concurrently.

- A. A Licensee may disclose a consumer's sensitive personal information only as expressly permitted or required by Article VI or other provisions of this Act, unless the consumer has affirmatively opted in, as stated in subsection B(3) below, to disclosure of their sensitive personal information after receiving clear and conspicuous notice as provided by this Section.

**"EXPRESSLY PERMITTED OR REQUIRED" – EXCEPTIONS & PRACTICAL ITEMS**

Sec. 23(A)

There is reference to Article VI, but the evolving wording for that article is not part of the exposure. It is difficult to assess the impact of this section without knowing what may be "expressly permitted or required by Article VI" means/allows.

**DRAFTING**

Sec, 23(A)

Please carefully review the phrasing and placement of Article VI in the provision. Additional consideration for rephrasing this provision may be necessary.

- B. Before a licensee may disclose a consumer's sensitive personal information for purposes other than those specified in subsection A of this Section, a licensee shall provide notice to the consumer, including:

- (1) A description of the categories of sensitive personal information that the licensee intends to disclose;
- (2) The purpose for which the sensitive personal information will be disclosed; and

**PURPOSE & LEVEL OF DETAIL**

Sec. 23(B)(2)

A point was conveyed that "purposes" in notice should remain high-level.

- (3) Notice that the consumer must opt in to provide affirmative consent before the consumer's sensitive personal information may be disclosed.

**MECHANICS OF AFFIRMATIVE CONSENT OPT-IN PROCESS**

Sec. 23(B)(3)

A questions was asked about the form or process for satisfying the opt-in. Is it correct that this appears in Sec. 18(A)(5)? As the process continues, kindly review the placement of various provisions and the cross referencing of them.

ARTICLE ~~VIII~~. LIMITS ON DISCLOSURES OF ~~NONPUBLIC PERSONAL FINANCIAL~~ INFORMATION

Section ~~1862~~. Limits on Disclosure of Nonpublic Personal ~~Financial~~ Information to Nonaffiliated Third Parties

A. (1) ~~Conditions for disclosure.~~ Except as otherwise authorized in this ~~Act~~ regulation, a licensee may not, directly or through any affiliate, disclose any nonpublic personal ~~financial~~ information about a consumer to a nonaffiliated third party unless:

- (a) The licensee has provided to the consumer an initial notice as required under Section ~~95~~;
- (b) The licensee has provided to the consumer an opt out notice as required in Section ~~128~~ or an opt in notice as required in Sections 22 and 23;
- (c) The licensee has given the consumer a reasonable opportunity, before it discloses the information to the nonaffiliated third party, to opt out of the disclosure; and
- (d) The consumer does not opt out or opt in depending upon the applicable requirement.

(2) ~~Opt out definition. Opt out means a direction by the consumer that the licensee not disclose nonpublic personal financial information about that consumer to a nonaffiliated third party, other than as permitted by Sections 195, 2016 and 2117.~~

(2) Opt out definition. Opt out means a direction by the consumer that the licensee not disclose nonpublic personal financial information about that consumer to a nonaffiliated third party, other than as permitted by Sections 195, 2016 and 2117. For purposes of this section, 'direction by the consumer' includes directions submitted by authorized agents acting on behalf of the consumer with written authorization. Written authorization includes electronically-signed authorizations that comply with [insert state version of UETA] or the federal E-SIGN Act.

(3) Opt in means a knowing and intelligent agreement by the consumer to allow disclosure of information described in Sections 22 and 23.

(34) Examples of reasonable opportunity to opt out. A licensee provides a consumer with a reasonable opportunity to opt out if:

- (a) By mail. The licensee mails the notices required in Paragraph (1) of this subsection to the consumer and allows the consumer to opt out by mailing a form, calling a toll-free telephone number or any other reasonable means within thirty (30) days from the date the licensee

**Commented [MM13]:** P4C Proposed Comments: "Direction by the consumer" must include directions submitted by authorized agents acting on behalf of the consumer with written authorization, which includes electronically-signed authorizations.

Proposed Revised Language for P4C's Redline:

(2) Opt out definition. Opt out means a direction by the consumer that the licensee not disclose nonpublic personal financial information about that consumer to a nonaffiliated third party, other than as permitted by Sections 195, 2016 and 2117. For purposes of this section, 'direction by the consumer' includes directions submitted by authorized agents acting on behalf of the consumer with written authorization. Written authorization includes electronically-signed authorizations that comply with [insert state version of UETA] or the federal E-SIGN Act.

mailed the notices.

- (b) By electronic means. A ~~consumer~~customer opens an on-line account with a licensee and agrees to receive the notices required in Paragraph (1) of this subsection electronically in accordance with [insert state version of UETA], and the licensee allows the ~~consumer~~customer to opt out by any reasonable means at any time. ~~within thirty (30) days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.~~
- (c) Isolated transaction with consumer. For an isolated transaction such as providing the consumer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt out if the licensee provides the notices required in Paragraph (1) of this subsection at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction, ~~whether to opt out before completing the transaction.~~

(5) A licensee provides a consumer with a reasonable opportunity to opt in if:

- (a) By mail. The licensee mails the notices required in Paragraph (1) of this subsection to the consumer and allows the consumer to opt in by mailing a form, calling a toll-free telephone number or any other reasonable means within thirty (30) days from the date the licensee mailed the notices.
- (b) By electronic means. A consumer agrees to receive the notices required in Paragraph (1) of this subsection electronically in accordance with [insert state version of UETA], and the licensee allows the consumer to opt in by any reasonable means. The licensee must allow the consumer to withdraw the opt in at any time.
- (c) Isolated transaction with consumer. For an isolated transaction such as providing the consumer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt in if the licensee provides the notices required in Paragraph (1) of this subsection at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction.

B. ~~Application of opt out to all consumers and all nonpublic personal financial information.~~

- ~~(1) A licensee shall comply with this section, regardless of whether the licensee and the consumer have established a customer relationship.~~
- ~~(2)~~ Unless a licensee complies with this section, the licensee may not, directly or through any affiliate, disclose any nonpublic personal ~~financial~~ information about a consumer that the licensee has collected, regardless of whether the licensee collected it before or after receiving the direction to opt out, or the election to opt in with regard to the information

described in Sections 22 or 23, from the consumer.

- C. ~~Partial opt out.~~ A licensee may allow a consumer to select certain nonpublic personal ~~financial~~ information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out or opt in with regard to the information described in Sections 22 or 23.

**Section 1973. Limits on Redisclosure and Reuse of Nonpublic Personal ~~Financial~~ Information**

- A. (1) ~~Information the licensee receives under an exception.~~ If a licensee receives nonpublic personal ~~financial~~ information from a nonaffiliated third party service provider~~financial institution~~ under an exception in Sections 2016 or 2117 of this ~~Act~~regulation, the licensee's disclosure and use of that information is limited as follows:
- (a) The licensee may disclose the information to the affiliates of the ~~financial institution~~third party service provider from which the licensee received the information;
  - (b) The licensee may disclose the information to its affiliates, but the licensee's affiliates may, in turn, disclose and use the information only to the extent that the licensee may disclose and use the information; and
  - (c) The licensee may disclose and use the information pursuant to an exception in Sections 2016 or 2117 of this ~~Act~~regulation, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.
- (2) Example. If a licensee receives information from a nonaffiliated third party service provider~~financial institution~~ for claims settlement purposes, the licensee may disclose the information for fraud prevention, or in response to a properly authorized subpoena. The licensee may not disclose that information to a third party for marketing purposes or use that information for its own marketing purposes.
- B. (1) ~~Information a licensee receives outside of an exception.~~ If a licensee receives nonpublic personal ~~financial~~ information from a nonaffiliated ~~financial institution~~third party service provider other than under an exception in Sections 2016 or 2117 of this ~~regulation~~Act, the licensee may disclose the information only:
- (a) To the affiliates of the third party service provider~~financial institution~~ from which the licensee received the information;
  - (b) To its affiliates, but its affiliates may, in turn, disclose the information only to the extent that the licensee may disclose the information; and
  - (c) To any other person, if the disclosure would be lawful if made directly to



that person by the ~~financial institution~~third party service provider from which the licensee received the information.

- (2) Example. If a licensee obtains a customer list from a nonaffiliated third party service provider ~~financial institution~~ outside of the exceptions in Sections ~~2016~~ or ~~2117~~:

- (a) The licensee may use that list for its own purposes; and
- (b) The licensee may disclose that list to another nonaffiliated third party only if the third party service provider~~financial institution~~ from which the licensee purchased the list could have lawfully disclosed the list to that third party. That is, the licensee may disclose the list in accordance with the privacy policy of the ~~financial institution~~third party service provider from which the licensee received the list, as limited by the opt out direction of each consumer whose nonpublic personal ~~financial~~ information the licensee intends to disclose, or the election to opt in for information in Sections 22 and 23, and the licensee may disclose the list in accordance with an exception in Sections ~~2016~~ or ~~2117~~, such as to the licensee's attorneys or accountants.

~~C. Information a licensee discloses under an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under an exception in Sections 2016 or 2117 of this Act/regulation, the third party may disclose and use that information only as follows:~~

- ~~(1) The third party may disclose the information to the licensee's affiliates;~~
- ~~(2) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and~~
- ~~(3) The third party may disclose and use the information pursuant to an exception in Sections 2016 or 2017 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.~~

(c) The licensee may disclose and use the information pursuant to an exception in Sections 2016 or 2117 of this Act/regulation, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information. For purposes of this subsection, 'the ordinary course of business to carry out the activity covered by the exception' is limited to activities directly related to the original excepted purpose. The subsequent sale or transfer of physical devices or media such as the vehicle itself or its parts containing unencrypted nonpublic personal financial information does not fall within the ordinary course of business for any exception. For example, if an auto insurer receives vehicle data under a claims processing exception, the subsequent sale of the physical vehicle or its parts containing unencrypted personal data in infotainment systems, navigation units, or other electronic components extends beyond the claims processing activity and is not permitted under this subsection.

~~D. Information a licensee discloses outside of an exception. If a licensee discloses nonpublic~~

**Commented [MM14]:** P4C Proposed Comments: Even if auto insurers initially receive vehicle data under a claims processing exception, selling the physical vehicle containing unencrypted personal data extends far beyond "the ordinary course of business to carry out the activity covered by the exception." The exception covers claims processing, not the subsequent commercial sale of data-laden vehicles to third parties.

Proposed Revised Language for P4C's Redline:  
(c) The licensee may disclose and use the information pursuant to an exception in Sections 2016 or 2117 of this Act/regulation, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information. For purposes of this subsection, 'the ordinary course of business to carry out the activity covered by the exception' is limited to activities directly related to the original excepted purpose. The subsequent sale or transfer of physical devices or media such as the vehicle itself or its parts containing unencrypted nonpublic personal financial information does not fall within the ordinary course of business for any exception. For example, if an auto insurer receives vehicle data under a claims processing exception, the subsequent sale of the physical vehicle or its parts containing unencrypted personal data in infotainment systems, navigation units, or other electronic components extends beyond the claims processing activity and is not permitted under this subsection.

personal ~~financial~~ information to a nonaffiliated third party other than under an exception in Sections ~~2016~~ or ~~2117~~ of this ~~Act~~ regulation, the third party may disclose the information only:

- (1) To the licensee's affiliates;
- (2) To the third party's affiliates, but the third party's affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and
- (3) To any other person, if the disclosure would be lawful if the licensee made it directly to that person.

E. Responsibility for preventing downstream disclosures through physical asset transfers.

(1) A licensee that transfers, sells, or otherwise disposes of physical property, devices, or vehicles that contain or may reasonably contain unencrypted nonpublic personal financial information remains responsible for any subsequent disclosures of that information by recipients of such property.

(2) Before any such transfer, the licensee must permanently delete or destroy all nonpublic personal financial information contained in the property, such as in the infotainment system of the vehicle, in line with the National Institute of Standards and Technology's media sanitization guidelines (NIST 800-88 rev1 and following)

(3) This obligation applies with particular force to auto insurers processing total loss vehicles, as the transfer of personal data-laden vehicles to salvage yards and parts resellers creates an uncontrolled chain of potential disclosures of nonpublic personal data to parties with no relationship to the original consumer and no obligations under this regulation.

(4) A licensee cannot avoid its obligations under this regulation by characterizing the transfer of data-containing property as merely a sale of physical goods when such transfer necessarily includes or may reasonably include the disclosure of nonpublic personal financial information.

F. Processing Opt-Out Requests from Authorized Agents

(1) Licensees must accept opt-out requests from authorized agents acting on behalf of consumers

(2) Reasonable proof of authorization includes any of the following:

(a) Power of attorney

(b) Written authorization signed by the consumer (including electronic signatures)

(c) Court orders establishing guardianship or conservatorship

(d) Valid authorization under state consumer protection laws

(3) Licensees cannot impose additional verification requirements that create barriers to exercising opt-out rights through agents

**Section ~~20184~~. Limits on Sharing Account Number Information for Marketing Purposes**

- A. ~~General prohibition on disclosure of account numbers.~~—A licensee shall not, directly or through an affiliate, disclose, other than to a consumer reporting agency, a policy number or similar form of access number or access code for a consumer's policy or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing or other marketing through electronic mail to the consumer.

**Commented [MM15]:** P4C Proposed Comments: This provision is particularly relevant to auto insurers who receive personal data as part of claims processing for total loss vehicles. When insurers subsequently sell these vehicles without data deletion, they enable unauthorized redisclosure of personal information by salvage yards and parts resellers who have no relationship with the original consumer. This creates a chain of unauthorized disclosures that violates the spirit and letter of these privacy protections.

Proposed Revised Language for P4C's Redline — Add a New Section:

E. Responsibility for preventing downstream disclosures through physical asset transfers.

(1) A licensee that transfers, sells, or otherwise disposes of physical property, devices, or vehicles that contain or may reasonably contain unencrypted nonpublic personal financial information remains responsible for any subsequent disclosures of that information by recipients of such property.

(2) Before any such transfer, the licensee must permanently delete or destroy all nonpublic personal financial information contained in the property, such as in the infotainment system of the vehicle, in line with the National Institute of Standards and Technology's media sanitization guidelines (NIST 800-88 rev1 and following)

(3) This obligation applies with particular force to auto insurers processing total loss vehicles, as the transfer of personal data-laden vehicles to salvage yards and parts resellers creates an uncontrolled chain of potential disclosures of nonpublic personal data to parties with no relationship to the original consumer and no obligations under this regulation.

(4) A licensee cannot avoid its obligations under this regulation by characterizing the transfer of data-containing property as merely a sale of physical goods when such transfer necessarily includes or may reasonably include the disclosure of nonpublic personal financial information.

Proposed Revised Language for P4C's Redline — Add a New Section:

F. Processing Opt-Out Requests from Authorized Agents

(1) Licensees must accept opt-out requests from authorized agents acting on behalf of consumers

(2) Reasonable proof of authorization includes any of the following:

(a) Power of attorney

(b) Written authorization signed by the consumer (including electronic signatures)

(c) Court orders establishing guardianship or conservatorship

(d) Valid authorization under state consumer protection laws

(3) Licensees cannot impose additional verification requirements that create barriers to exercising opt-out rights through agents

B. Exceptions. Subsection A of this section does not apply if a licensee discloses a policy number or similar form of access number or access code:

- (1) To the licensee's service provider solely in order to perform marketing for the licensee's own products or services, as long as the service provider is not authorized to directly initiate charges to the account;
- (2) To a licensee who is a producer solely in order to perform marketing for the licensee's own products or services; or
- (3) To a participant in an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

C. Examples.

- (1) ~~Policy number.~~ A policy number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as the licensee does not provide the recipient with a means to decode the number or code.
- (2) ~~Policy or transaction account.~~ For the purposes of this section, a policy or transaction account is an account other than a deposit account or a credit card account. A policy or transaction account does not include an account to which third parties cannot initiate charges.

## **Section 21. Limits on Disclosure of Nonpublic Personal Information in Targeted Marketing**

A. Except as otherwise authorized in this Act, a licensee may not directly or through any affiliate, disclose for the purpose of targeted advertising any nonpublic personal information about a consumer to a nonaffiliated third party unless the consumer has the right to opt out of targeted advertising.

B. A consumer may opt out of targeted advertising by submitting an opt-out request to the licensee. The licensee shall provide clear and conspicuous instructions on how to opt out.

Opt-out mechanisms must:

- Accept requests from authorized agents with reasonable proof of authorization
- Not require more personal information than necessary to process the opt-out
- Accept electronic signatures and digital authorizations
- Provide confirmation of opt-out receipt within 15 days of receipt
- Not require account creation or login to submit opt-out requests

C. A licensee shall act on the request within 15 days of receipt.

The 15-day deadline begins when the licensee receives a complete opt-out request, including from an authorized agent. Licensees cannot extend this deadline by:

- Requiring unnecessary documentation for agent authorization
- Demanding wet signatures when electronic signatures are legally valid

**Commented [MM16]:** Proposed Revised Language for P4C's Redline:

Opt-out mechanisms must:

- Accept requests from authorized agents with reasonable proof of authorization
- Not require more personal information than necessary to process the opt-out
- Accept electronic signatures and digital authorizations
- Provide confirmation of opt-out receipt within 15 days of receipt
- Not require account creation or login to submit opt-out requests

**Commented [MM17]:** Proposed Revised Language for P4C's Redline:

The 15-day deadline begins when the licensee receives a complete opt-out request, including from an authorized agent. Licensees cannot extend this deadline by:

- Requiring unnecessary documentation for agent authorization
- Demanding wet signatures when electronic signatures are legally valid
- Requesting information already in the licensee's possession
- Creating multi-step verification processes that delay processing

If additional verification is needed for authorized agents, licensees must process the opt-out provisionally while verification occurs.

- Requesting information already in the licensee's possession
- Creating multi-step verification processes that delay processing

If additional verification is needed for authorized agents, licensees must process the opt-out provisionally while verification occurs.

D. Exceptions. The following exceptions shall apply to this Section:

~~(1) A licensee shall not be obligated to act on any request where the nonpublic personal information in the opt-out request does not match the licensee's records;~~

(1) A licensee shall not be obligated to act on any request where the nonpublic personal information in the opt-out request does not match the licensee's records; provided, however, that this exception shall not apply to requests submitted by authorized agents acting on behalf of consumers.

For authorized agent requests, licensees must maintain procedures to match the request to consumer records using:

- (a) The consumer's name and address;
- (c) Other reasonable identifiers included in the written authorization or opt-out request;
- (d) Any combination of data points that would reasonably identify the consumer.

A licensee may not reject an opt-out request from an authorized agent solely because the agent does not provide specific types of information (such as a company-generated unique identifier) when alternative identifiers of the customer or of the insured asset (such as a VIN number or plate number in the case of a vehicle) match the records for the customer. The licensee cannot reject consumer requests or agent requests based solely on the absence of particular information types when other sufficient identifying information is available.

(2) A licensee is under no obligation to obtain additional data to execute the opt-out request;

(3) A licensee may not solicit the consumer to change their opt-out selection for twelve months.

E. A licensee may comply with the targeted advertising opt-out requirement by:

(1) Providing either a cookie banner or a link on the footer of their website homepage allowing a consumer to opt out of targeted advertising; or

(2) Using another method, if such approach can effectively identify a person and remove them from targeted advertising.

Any "other method" must:

- Accept authorized agent submissions
- Honor electronic signatures and digital authorizations
- Not discriminate against consumers who use agents or electronic means
- Provide equal access regardless of whether the consumer or their agent uses paper or electronic methods

**Commented [MM18]:** P4C Proposed Comments: This exception cannot be used to reject opt-out requests from authorized agents simply because the agent's information doesn't match the consumer's records or does not include information that is not strictly required to identify a customer. Licensees must maintain procedures to match authorized agent requests to consumer records using:

- Consumer's name and address
- Any other reasonable identifier provided in the authorization. Licensees cannot reject consumer requests or agent requests solely due not providing specific types of information (e.g. a company-generated unique identifier) when alternative identifiers of the customer or of the insured asset (e.g. a VIN number or a plate number in the case of a vehicle) matches the records for the customer.

Proposed Revised Language for P4C's Redline:

(1) A licensee shall not be obligated to act on any request where the nonpublic personal information in the opt-out request does not match the licensee's records; provided, however, that this exception shall not apply to requests submitted by authorized agents acting on behalf of consumers.

For authorized agent requests, licensees must maintain procedures to match the request to consumer records using:

- (a) The consumer's name and address;
- (c) Other reasonable identifiers included in the written authorization or opt-out request;
- (d) Any combination of data points that would reasonably identify the consumer.

A licensee may not reject an opt-out request from an authorized agent solely because the agent does not provide specific types of information (such as a company-generated unique identifier) when alternative identifiers of the customer or of the insured asset (such as a VIN number or plate number in the case of a vehicle) match the records for the customer. The licensee cannot reject consumer requests or agent requests based solely on the absence of particular information types when other sufficient identifying information is available.

**Commented [MM19]:** Proposed Revised Language for P4C's Redline:

Any "other method" must:

- Accept authorized agent submissions
- Honor electronic signatures and digital authorizations
- Not discriminate against consumers who use agents or electronic means
- Provide equal access regardless of whether the consumer or their agent uses paper or electronic methods

## **Section 22. Limits on Sale of Nonpublic Personal Information**

### **A. Before a licensee may sell nonpublic personal information:**

- (1) The consumer must affirmatively opt in to the sale; and
- (2) Prior to opting in, the consumer must receive clear and conspicuous notice, including:
  - (a) A description of the categories of nonpublic personal information that the licensee intends to sell;
  - (b) The purpose for which the nonpublic personal information will be sold; and
  - (c) The consumer's right to refuse to opt in to the sale of nonpublic personal information.

(3) Transfer of physical property containing nonpublic personal information. The sale or transfer of physical devices, vehicles, vehicle components, or other tangible property containing unencrypted nonpublic personal information constitutes a sale of that information requiring opt-in consent under this section. This includes but is not limited to:

(a) Vehicles containing or that may reasonably contain personal data in infotainment systems, including:

(i) Contact lists and call logs;

(ii) Text messages and emails;

(iii) Navigation history and saved locations;

(iv) Connected application data, including home automation codes, garage door codes, and home addresses;

(v) Voice recordings and biometric profiles;

(vi) Paired device information and wireless network credentials;

(b) Other devices or property containing stored personal information in electronic form.

Because obtaining specific opt-in consent for each data element stored in such property is impractical and unlikely to result in informed consent, licensees must permanently delete all nonpublic personal information before selling or transferring such property to third parties. Auto insurers must use commercially-available in-vehicle personal data deletion solutions before selling or transferring total loss vehicles or its parts. These solutions, which are readily available at auto auctions and salvage facilities, meet NIST SP 800-88 rev 1 Guidelines for Media Sanitization. They provide an objective, efficient, and measurable deletion process and generate Certificates of Deletion (both paper and electronic) as proof of data sanitization.

## **Section 23. Limits on Disclosure of Sensitive Personal Information**

- A. A licensee may disclose a consumer's sensitive personal information only as expressly permitted or required by Article VI or other provisions of this Act, unless the consumer has affirmatively opted in, as stated in subsection B(3) below, to disclosure of their sensitive personal information after receiving clear and conspicuous notice as provided by this Section.

**Commented [MM20]:** P4C Proposed Comment: Auto insurers that sell total loss vehicles without deleting personal data stored in the vehicle's infotainment systems are effectively selling nonpublic personal information without obtaining the required opt-in consent. Vehicle data includes:  
- Contact lists and call logs - Text messages and emails - Navigation history and saved locations - Connected app data (garage door codes, home addresses) - Voice recordings and biometric data Since obtaining opt-in consent for each data element stored in a vehicle is impractical, insurers must delete all personal data before selling or scrapping total loss vehicles. Commercial data deletion solutions are readily available at auto auctions and salvage facilities.

Proposed Revised Language for P4C's Redline — Add a New Section:

(3) Transfer of physical property containing nonpublic personal information. The sale or transfer of physical devices, vehicles, vehicle components, or other tangible property containing unencrypted nonpublic personal information constitutes a sale of that information requiring opt-in consent under this section. This includes but is not limited to:

(a) Vehicles containing or that may reasonably contain personal data in infotainment systems, including:

(i) Contact lists and call logs;

(ii) Text messages and emails;

(iii) Navigation history and saved locations;

(iv) Connected application data, including home automation codes, garage door codes, and home addresses;

(v) Voice recordings and biometric profiles;

**Commented [MM21]:** P4C Proposed Comment: Total loss vehicles contain sensitive personal information including:

- Biometric data (voice profiles, driver settings)

- Geolocation data revealing patterns of life

- Health information from connected apps

- Children's information from entertainment profiles

When auto insurers sell or transfer total loss vehicles without data deletion, they are disclosing this sensitive personal information to unauthorized third parties (salvage buyers, parts resellers, etc.) without obtaining the required affirmative opt-in consent. The only compliant approach is mandatory data deletion before vehicle disposition.

Proposed Revised Language for P4C's Redline — Add a New Section:

(4) Transfer of physical property containing sensitive personal information or nonpublic personal financial information. The sale or transfer of vehicles, vehicle components, devices, or other physical property containing unencrypted sensitive personal information constitutes a disclosure of that information requiring affirmative opt-in consent under this section. Modern vehicles routinely store sensitive personal information including, but not limited to:

(a) Biometric data such as:

(i) Voice profiles and voice recognition data;

(ii) Driver-specific settings linked to physical characteristics

B. Before a licensee may disclose a consumer's sensitive personal information for purposes other than those specified in subsection A of this Section, a licensee shall provide notice to the consumer, including:

- (1) A description of the categories of sensitive personal information that the licensee intends to disclose;
- (2) The purpose for which the sensitive personal information will be disclosed; and
- (3) Notice that the consumer must opt in to provide affirmative consent before the consumer's sensitive personal information may be disclosed.

(4) Transfer of physical property containing sensitive personal information or nonpublic personal financial information. The sale or transfer of vehicles, vehicle components, devices, or other physical property containing unencrypted sensitive personal information constitutes a disclosure of that information requiring affirmative opt-in consent under this section. Modern vehicles routinely store sensitive personal information including, but not limited to:

(a) Biometric data such as:

- (i) Voice profiles and voice recognition data;
- (ii) Driver-specific settings linked to physical characteristics;
- (iii) Facial recognition data from driver monitoring systems;

(b) Precise geolocation data that reveals:

- (i) Patterns of life and daily routines;
- (ii) Frequently visited locations including home, work, and medical facilities;
- (iii) Real-time and historical movement patterns;

(c) Health information from connected applications, including:

- (i) Medical appointment destinations;
- (ii) Health and fitness app data;
- (iii) Emergency medical information;

(d) Children's information such as:

- (i) Entertainment profile data and preferences;
- (ii) School and daycare locations;
- (iii) Content viewing histories.

**Consumer Comments:**

**ARTICLE V. LIMITS ON DISCLOSURES OF NONPUBLIC PERSONAL INFORMATION**

**Section 18. Limits on Disclosure of Nonpublic Personal Information to Nonaffiliated Third Parties**

- A. (1) Except as otherwise authorized in this Act, a licensee may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party unless:
- (a) The licensee has provided to the consumer an initial notice as required under Section 9;
  - (b) The licensee has provided to the consumer an **opt-out** notice as required in Section 12 or an **opt-in** notice as required in Sections 22 and 23 ;
  - (c) The licensee has given the consumer a reasonable opportunity, before it discloses the information to the nonaffiliated third party, to opt out of the disclosure; and
  - (d) The consumer does not opt out or opt in depending upon the applicable requirement.
- (2) Opt out means a direction by the consumer that the licensee not disclose nonpublic personal information about that consumer to a nonaffiliated third party, other than as permitted by Sections 19, 20 and 21.
- (3) Opt in means a **knowing and intelligent agreement by the consumer to allow disclosure of** verifiable direction by the consumer, obtained using the same processes the licensee uses for an opt out, that the licensee may disclose information described in Sections 22 and 23.
- (4) . A licensee provides a consumer with a reasonable opportunity to opt out if:
- (a) By mail. The licensee mails the notices required in Paragraph (1) of this subsection to the consumer and allows the consumer to opt out by mailing a form, calling a toll-free telephone number or any other reasonable means **within thirty (30) days from the date the licensee mailed the notices. Licensee shall not disclose any consumer NPI prior to receiving a response regarding the consumer's desire to opt out or thirty (30) days, whichever comes first.**
  - (b) By electronic means. A consumer agrees to receive the notices required in Paragraph (1) of this subsection electronically in accordance with [insert state version of UETA], and the licensee allows the consumer to opt out by **reasonable means at any time** mailing a form, calling a toll-free telephone number or any other reasonable means **within thirty (30) days from the date the licensee notice was received. Licensee shall not**

**Commented [CR22]:** Hyphenate opt-in and opt-out, when used as an adjective

disclose any consumer NPI prior to receiving a response regarding the consumer's desire to opt out or thirty (30) days, whichever comes first.

- (c) Isolated transaction with consumer. For an isolated transaction such as providing the consumer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt out if the licensee provides the notices required in Paragraph (1) of this subsection at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction.
- (5) A licensee provides a consumer with a reasonable opportunity to opt in if:
  - (a) By mail. The licensee mails the notices required in Paragraph (1) of this subsection to the consumer and allows the consumer to opt in by mailing a form, calling a toll-free telephone number or any other reasonable means within thirty (30) days from the date the licensee mailed the notices.
  - (b) By electronic means. A consumer agrees to receive the notices required in Paragraph (1) of this subsection electronically in accordance with [insert state version of UETA], and the licensee allows the consumer to opt in by any reasonable means. The licensee must allow the consumer to withdraw the opt in at any time.
  - (c) Isolated transaction with consumer. For an isolated transaction such as providing the consumer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt in if the licensee provides the notices required in Paragraph (1) of this subsection at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction.
- B. Unless a licensee complies with this section, the licensee may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer that the licensee has collected, regardless of whether the licensee collected it before or after receiving the direction to opt out, or the election to opt in with regard to the information described in Sections 22 or 23, from the consumer.
- C. **Selective opt out or opt in.** A licensee may allow a consumer to select certain nonpublic personal information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out or opt in with regard to the information described in Sections 22 or 23.

**Section 19. Limits on Redisclosure and Reuse of Nonpublic Personal Information**

- A. (1) If a licensee receives nonpublic personal information from a nonaffiliated third party service provider under an exception in Sections 20 or 21 of this Act, the licensee's disclosure and use of that information is limited as follows:



- (a) The licensee **may not** disclose the information to the affiliates of the third party service provider from which the licensee received the information;
    - (b) The licensee may disclose the information to its affiliates, but the licensee's affiliates may, in turn, disclose and use the information only to the extent that the licensee may disclose and use the information; and
    - (c) The licensee may disclose and use the information pursuant to an exception in Sections 20 or 21 of this Act, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.
  - (2) Example. If a licensee receives information from a nonaffiliated third party service provider for claims settlement purposes, the licensee may disclose the information for fraud prevention, or in response to a properly authorized subpoena. The licensee may not disclose that information to a third party for marketing purposes or use that information for its own marketing purposes.
- B.
- (1) If a licensee receives nonpublic personal information from a nonaffiliated third party service provider other than under an exception in Sections 20 or 21 of this Act, the licensee **may disclose the information only:**
    - (a) **May not disclose the NPI to** the affiliates of the third party service provider from which the licensee received the information;
    - (b) **May disclose the NPI to** its affiliates, but its affiliates may, in turn, disclose the information only to the extent that the licensee may disclose the information; and
    - (c) **May disclose to** any other person, if the disclosure would be lawful if made directly to that person by the third party service provider from which the licensee received the information.
  - (2) **Example.** If a licensee obtains a customer list from a nonaffiliated third party service provider outside of the exceptions in Sections 20 or 21:
    - (a) The licensee may use that list for its own purposes; and
    - (b) The licensee may disclose that list to another nonaffiliated third party only if the third party service provider from which the licensee purchased the list could have lawfully disclosed the list to that third party. That is, the licensee may disclose the list in accordance with the privacy policy of the third party service provider from which the licensee received the list, as limited by the **opt-out** direction of each consumer whose nonpublic personal information the licensee intends to disclose, or the election to opt in for information in Sections 22 and 23, and the licensee may disclose the list in accordance with an exception in Sections 20 or 21, such as to the licensee's attorneys or accountants.

**Commented [CR23]:** Licensee should not have the right to disclose a consumer's NPI that was received from a nonaffiliated third party service provider to another entity, just because that entity is an affiliate of that third party service provider. A licensee would not know whether disclosure of the NPI might violate possible obligations of the third party service provider to limit distribution of the NPI. Those obligations could have been the result of receipt of the NPI from a licensee regulated under this Act.

Furthermore, licensee disclosure of consumer NPI should be governed by the licensee's privacy policies as laid out by its Notice of Privacy Practices and the opt out or opt in choices of the consumer.

**Commented [CR24]:** Our comments on Section 19.A(1)(a) also apply to Section 19.B(1)(a).

**Commented [CR25]:** Counter example to Section 19.B(2) illustrating our reasoning for changes to Section 19(A) and (B):  
Acme Homeowners Insurance Company obtains information about John Doe's from General Motors' Chevrolet Division. The data includes information on John's driving habits. Using ACME's opt out form, John has opted out of disclosing a category of information that includes that data. Then ACME should not share John's driving information with GM's National Insurance Company, even though it is a GM affiliate.

- C. If a licensee discloses nonpublic personal information to a nonaffiliated third party under an exception in Sections 20 or 21 of this Act, the third party may disclose and use that information only as follows:
- (1) The third party may disclose the information to the licensee's affiliates;
  - (2) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and
  - (3) The third party may disclose and use the information pursuant to an exception in Sections 20 or 20 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.
- D. If a licensee discloses nonpublic personal information to a nonaffiliated third party other than under an exception in Sections 20 or 21 of this Act, the third party may disclose the information only:
- (1) To the licensee's affiliates;
  - (2) To the third party's affiliates, but the third party's affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and
  - (3) To any other person, if the disclosure would be lawful if the licensee made it directly to that person.

**Section 20. Limits on Sharing Account Number Information for Marketing Purposes**

- A. A licensee shall not, directly or through an affiliate, disclose, other than to a consumer reporting agency, a policy number or similar form of access number or access code for a consumer's policy or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing or other marketing through electronic mail to the consumer.
- B. Exceptions. Subsection A of this section does not apply if a licensee discloses a policy number or similar form of access number or access code:
- (1) To the licensee's service provider solely in order to perform marketing for the licensee's own products or services, as long as the service provider is not authorized to directly initiate charges to the account;
  - (2) To a licensee who is a producer solely in order to perform marketing for the licensee's own products or services; or
  - (3) To a participant in an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

C. Examples.

- (1) A policy number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as the licensee does not provide the recipient with a means to decode the number or code.
- (2) For the purposes of this section, a policy or transaction account is an account other than a deposit account or a credit card account. A policy or transaction account does not include an account to which third parties cannot initiate charges.

**Section 21. Limits on Disclosure of Nonpublic Personal Information in Targeted Marketing**

- A. Except as otherwise authorized in this Act, a licensee may not directly or through any affiliate, disclose for the purpose of targeted advertising any nonpublic personal information about a consumer to a nonaffiliated third party unless the consumer has the right to opt out of targeted advertising.
- B. A consumer may opt out of targeted advertising by submitting an opt-out request to the licensee. The licensee shall provide clear and conspicuous instructions on how to opt out.
- C. A licensee shall act on the request within 15 days of receipt.
- D. Exceptions. The following exceptions shall apply to this Section:
- (1) A licensee shall not be obligated to act on any request where the nonpublic personal information in the opt-out request does not match the licensee's records;
  - (2) A licensee is under no obligation to obtain additional data to execute the opt-out request;
  - (3) A licensee may not solicit the consumer to change their opt-out selection for twelve months.
- E. A licensee may comply with the targeted advertising opt-out requirement by:
- (1) Providing either a cookie banner or a link on the footer of their website homepage allowing a consumer to opt out of targeted advertising; or
  - (2) Using another method, if such approach can effectively identify a person and remove them from targeted advertising.

**Section 22. Limits on Sale of Nonpublic Personal Information**

- A. Before a licensee may sell nonpublic personal information:
- (1) The consumer must affirmatively opt in to the sale; and

**Commented [CR26]:** In addition to the definition of "clear and conspicuous" in the current version of the Chair Draft, we suggest adding some of the following language from California bill SB. 354, the Insurance Consumer Privacy Act of 2025:

*"Notices and communications to consumers shall be easy to read, understandable to consumers, and avoid technical or legal jargon."*

*(1) Notices required pursuant to this article shall meet all of the following criteria:*

*(A) Use a format that makes the notices readable, including on smaller screens, if applicable.*

*(B) Be available in the languages in which the licensee in its ordinary course of business provides contracts, disclaimers, sale announcements, and other information to consumers.*

*(C) Be accessible to consumers with disabilities. For notices provided online, the licensee shall follow current generally recognized industry standards, such as the Web Content Accessibility Guidelines, version 2.1, from the World Wide Web Consortium, or the most recent version. Licensees shall take reasonable steps to ensure that consumers with disabilities may access the notices in an alternative format.*

*(2) For digital applications, licensees shall include their notices in a clear and conspicuous manner on the digital application's platform page or download page. The notices may also be accessible through a link within the application, such as through the application's settings menu."*

- (2) Prior to opting in, the consumer must receive clear and conspicuous notice, including:
  - (a) A description of the categories of nonpublic personal information that the licensee intends to sell;
  - (b) The purpose for which the nonpublic personal information will be sold; and
  - (c) The consumer's right to refuse to opt in to the sale of nonpublic personal information.

**Section 23. Limits on Disclosure of Sensitive Personal Information**

- A. A Licensee may disclose a consumer's sensitive personal information only as expressly permitted or required by Article VI or other provisions of this Act, unless the consumer has affirmatively opted in, as stated in subsection B(3) below, to disclosure of their sensitive personal information after receiving clear and conspicuous notice as provided by this Section.
- B. Before a licensee may disclose a consumer's sensitive personal information for purposes other than those specified in subsection A of this Section, a licensee shall provide notice to the consumer, including:
  - (1) A description of the categories of sensitive personal information that the licensee intends to disclose;
  - (2) The purpose for which the sensitive personal information will be disclosed; and
  - (3) Notice that the consumer must opt in to provide affirmative consent before the consumer's sensitive personal information may be disclosed.