

Study B-400

February 7, 2003

First Supplement to Memorandum 2003-1

**Financial Privacy: Overview
(Comments of Personal Insurance Federation of California)**

Attached to this supplemental memorandum are comments of the Personal Insurance Federation of California relating to the financial privacy overview, received by the Commission at its February 7, 2003, meeting.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary



Personal Insurance Federation of California

California's Personal Lines Trade Association

REPRESENTING THE LEADING AUTOMOBILE AND HOMEOWNERS INSURERS
Progressive • State Farm • Farmers • 21st Century Insurance Group • SAFECO

February 7, 2003

Nathaniel Sterling, Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, California
94353-4739

STAFF

Dan Dunmoyer
President

Diane Colborn
Vice President of Legislative
& Regulatory Affairs

Michael Gunning
Senior Legislative Advocate

Jerry Davies
Director of Communications

Re: Financial Privacy Study; Implementation of ACR 125 (Papan)

Dear Mr. Sterling:

Thank you for the opportunity to submit comments for consideration as the Law Revision Commission begins its study of personal information relating to financial transactions, as directed in ACR 125 (Papan). We understand that this is the first phase of the Commission's study of this issue. The Commission is off to a good start with the introductory memorandum and other background materials prepared by the Commission staff for the first public meeting on this project. Recognizing that this is just the beginning of further discussions, we would like to highlight several points for consideration during this initial phase. We will be pleased to provide further detail and additional input as the study progresses.

The Personal Insurance Federation of California is a trade association representing property and casualty insurers in the personal lines insurance market in California. Our members include companies writing close to 50% of the auto, homeowners, and earthquake insurance policies sold in California. PIFC's member companies have a strong interest in legislation regarding personal information sharing and financial transactions, because insurance companies are included in the definition of "financial institution" under both the federal law and proposed state laws such as SB 1 (Speier).

California State Insurance Privacy Law

The background summary prepared by Commission staff provides a good overview of some of the existing laws relating to financial privacy. However, missing from the memorandum is much if any discussion of insurance or any reference to the Insurance Information and Privacy Protection Act, an existing state law regarding insurance information practices that has been the law in California since 1980. The IIPPA is codified at Insurance Code Section 791 et seq and requires insurers to provide notice of their privacy practices to all applicants and policyholders, and prohibits insurers from disclosing any personal or privileged information about an individual, collected or received in connection with an insurance transaction without the written authorization of the individual, except for the specific purposes expressly allowed under the law. The Act also prohibits insurers from disclosing medical information about a consumer without the consumer's written permission.

The Department of Insurance under former Insurance Commissioner Harry Low, recently adopted new regulations that add additional requirements and serve to harmonize the provisions of the IIPPA and the GLBA. These regulations take effect in March of 2003 and, among other things, require insurers to revise their privacy notices and to implement new data security requirements (see attached regulations). PIFC urges the Commission to keep in mind that it will be important that any new proposed legislation regarding information sharing practices and notice requirements be integrated or somehow harmonized with these existing laws, in order to avoid inconsistent or duplicative requirements, and unnecessary costs or confusion for consumers (such as might result from multiple notice requirements). In addition to the IIPPA, and the specific California state privacy laws mentioned in the exhibit to the staff memorandum from the Office of Privacy Protection, a number of other measures related to personal information and privacy protection have been enacted in recent years in California. A list of those statutes is attached.

Uniformity and Consistency

PIFC agrees with Commission staff's recommendation that any state legislation if passed, should preempt any local regulations on financial privacy. We also agree with staff's observation that inconsistent state regulation may be problematic, and can be a compliance nightmare for entities seeking to engage in commerce on a national level. We agree for that reason that uniformity among the states is a desirable and beneficial goal. This goal is especially relevant with respect to the notice requirements, discussed further below.

Affiliates

The staff memorandum raises several important issues with regard to affiliates and joint marketing agreements. However, as a threshold issue, we would respectfully disagree with staff's assumption that the Legislature intended with the passage of ACR 125 to establish a Legislative policy decision that California consumers should have the opportunity to control affiliate sharing of personal information (see page 33 of staff memorandum). The Legislature's intent in passing ACR 125 was to authorize the commission to conduct a study and make recommendations. The language of the bill indicates that the intent of the Legislature was that the commission look at the issues regarding both non-affiliated third parties and affiliates, without prejudging what those recommendations should be. Much of the debate in the Legislature on the subject of financial privacy has been over whether state restrictions on information sharing should apply to affiliates or only to non-affiliated third parties. In fact, one of the main reasons why SB 773(Speier) failed passage last year was due to disagreement in the Legislature over whether the restrictions on information sharing in the bill should apply to affiliate sharing. SB 773 was amended on the Assembly floor in August of 2002 to delete all restrictions on affiliate sharing, but then failed passage as amended in the Senate on concurrence.

The commission staff suggests on page 34 that the commission may want to consider whether a different definition for "affiliate" than the definition used in GLBA may be appropriate for information sharing purposes, and suggests that the commission consider the option of allowing liberal sharing among wholly owned subsidiaries, and treat looser affiliations the same as nonaffiliated third parties. We agree with the staff's earlier recommendation that the federal definitions should be tracked to the extent possible for uniformity. It should be noted however that the purpose of the definition of affiliate under GLBA is to define an exemption. Where the definition is being used to define the entities to whom certain opt-out rules would apply, the context is different, and may therefore call for different standards.

The commission staff report suggests that an alternative way of looking at the affiliate issue

could be to make distinctions based on the percentage of common ownership and control. Other alternative ways of looking at the affiliate issue worth considering include making a distinction between financial affiliates and non-financial affiliates, between affiliates in the same versus different lines of business (i.e. insurance/banks/securities), offering functionally similar financial products, regulated by the same functional regulator, or operating under a common brand name or through a common distribution system, such as through an agent or brokerage.

The issue of affiliates is especially important to insurers because insurers are typically organized as groups of affiliated companies operating as part of a family group of companies, under common management and control, and frequently operating under a common brand name. Insurers are organized as groups of affiliated companies for reasons of solvency, consumer protection, and other legal and regulatory reasons. These affiliated structures pre-date GLBA and have been the common operating structure for insurers since at least the 1920s. For these reasons, insurers do not believe that opt-in or opt-out requirements should apply to affiliates within the same corporate family group. It is also important that insurers be able to communicate with their agents without the unnecessary hurdles of opt-in or opt-out requirements.

In the report, the staff also suggests that another way of looking at the issue may be to relate it to the use to which the information will be put. We agree with this concept, but would argue that the legislation should focus on the "use of information for marketing purposes," as opposed to legislative measures like SB 1, which prohibit all sharing unless expressly exempt. Focusing on use of the information for marketing more narrowly targets the law at the alleged practice, and avoids unintended consequences.

Notice

Insurers have several concerns regarding the issue of notice. First, if state legislation requires a stand alone, California only notice, then insurers will be required to send multiple notices, under both GLBA and state law. We recommend that companies be allowed the flexibility to consolidate the notices into a single notice, which will reduce costs and confusion for consumers. Second, we urge that consideration be given to allowing flexibility in the design of the notice, so that companies can alter the language of the notice to most closely reflect their own particular information practices, and therefore be more accurate. This can be accomplished by making any statutory notice a safe harbor rather than a mandatory notice, and requiring that the notice meet certain minimum standards for readability, type size, clarity, etc., and subject to review and oversight by the functional regulator. This is the approach taken by the California Department of Insurance regulations, which take effect in March 2003.

Enforcement

Insurers typically do not sell personal information to third parties, and carefully guard their customer lists from competitors. However, insurers do share information to complete transactions, underwrite and rate policies, process claims, and contract with service providers, including contracting with service providers to assist in marketing the company's own products and services. Insurers also share information with agents to assist them in offering new products and services to their customers. Insurers are concerned about the unintended consequences of complex rules and restrictions on information sharing, and the increased exposure to liability that may be generated by overly complex or ambiguous requirements. Insurers and agents are particularly concerned about liability exposure in the context of Section 17200 lawsuits. We appreciate the stated reluctance of the staff to recommend use of the unfair competition statute to address financial privacy violations unless needed reforms are enacted. We also agree strongly that administrative enforcement could be more efficacious than private

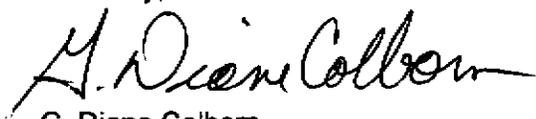
enforcement. To that end we would urge that enforcement authority be vested in the functional regulator, which in the case of insurers would be the insurance commissioner. We hope that this is an area that the commission will look at carefully in making its recommendations.

Opt-in

The commission staff memorandum solicits input from financial institutions regarding their concerns with an opt-in regime, and cites to the fact that some states and foreign countries have adopted opt-in systems. While it is true that some jurisdictions have adopted opt-in regimes, these systems in some cases have either not been fully implemented or have had other negative impacts. For example, companies operating in Vermont, which has adopted an opt-in system by regulation, have found the burdens of an opt-in system to be so unworkable that they have elected to treat the entire state as if all of the residents of the state had chosen to opt out. Consequently, commerce *has been* reduced in that state, although the law is being challenged. In Europe, it is our understanding that many countries are just now getting around to adopting implementing regulations. In addition, it is our understanding that the European law contains a safe harbor provision, which allows compliance with GLBA to be accepted as substantial compliance with the EU rule. The North Dakota law has been touted as a strong financial services privacy law, but does not apply to insurers. We urge the commission to conduct further research on these and other statutes, and to look carefully at the context in which they were adopted, and the reality of their implementation.

Thank you for the opportunity to comment on the commission's study. We look forward to further dialogue on this important issue.

Sincerely,



G. Diane Colborn

cc: Dan Dunmoyer, President

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street
San Francisco, California 94105
File No. RH01018269 October 2, 2002**

FINAL PROPOSED REGULATION TEXT¹

PRIVACY OF NONPUBLIC PERSONAL INFORMATION

Table of Contents

ARTICLE I.

GENERAL PROVISIONS

Section 2689.1. Authority and Purpose

Section 2689.2. Scope

Section 2689.3. Disclosure of Information

Section 2689.4. Definitions

ARTICLE II.

***PRIVACY NOTICES; OPT OUT NOTICES FOR
NONPUBLIC PERSONAL FINANCIAL INFORMATION***

Section 2689.5. Initial Privacy Notice

Section 2689.6. Annual Privacy Notice

Section 2689.7. Information to be Included in Privacy Notices

Section 2689.8. Form of Opt Out Notice and Opt Out Methods

Section 2689.9. Revised Privacy Notices

Section 2689.10. Delivery of Notices

ARTICLE III.

LIMITS ON DISCLOSURES OF MEDICAL RECORD INFORMATION

Section 2689.11. Disclosure of Medical Record Information

ARTICLE IV.

STANDARDS FOR SAFEGUARDING NONPUBLIC PERSONAL INFORMATION

Section 2689.12. General Provisions

Section 2689.13. Definitions

Section 2689.14. Information Security Program

Section 2689.15. Objectives of Information Security Program

Section 2689.16. Assess Risk

Section 2689.17. Manage and Control Risk

Section 2689.18. Service Providers

Section 2689.19. Adjust the Program

Section 2689.20. Enforcement

ARTICLE V.

ADDITIONAL PROVISIONS

Section 2689.21. Protection of Fair Credit Reporting Act

Section 2689.22. Nondiscrimination

Section 2689.23. Severability

Section 2689.24. Effective Date; Contracts with Nonaffiliated Third Parties

Appendix A -Sample Clauses

ARTICLE I.

GENERAL PROVISIONS

Section 2689.1 Authority and Purpose

The Commissioner promulgates these regulations pursuant to the implied authority granted by California Insurance Code Sections 791 et seq. and 15 U.S.C. Sections 6801(b) and 6805(b) to implement California Insurance Code and Gramm-Leach-Bliley privacy provisions consistent with providing individuals the maximum privacy protections permitted by those laws.

NOTE: Authority cited: Sections 791 - 791.27, Insurance Code, 15 U.S.C. Sections 6801, 6805, 6807.

Reference: Sections 791 - 791.27, Insurance Code.

Section 2689.2. Scope

These regulations govern the treatment of nonpublic personal information about individuals who obtain or are claimants or beneficiaries of products or services primarily for personal, family, or household purposes. These regulations shall apply to all licensees of the California Department of Insurance subject to California Insurance Code Sections 791 et seq., namely insurance institutions, agents, and insurance support organizations. Licensees not subject to California Insurance Code Sections 791 et seq., but subject to Gramm-Leach-Bliley (GLBA), 15 U.S.C. Sections 6801-6810, shall comply with GLBA privacy provisions and with Sections 2689.12 through 2689.20 of these regulations.

Licensees shall also comply with California Civil Code Section 1798.85 (SB 168, Statutes of 2001), Business and Professions Code Sections 17590 through 17595 (SB 771, Statutes of 2001), and all other applicable privacy and confidentiality provisions.

NOTE: Authority cited: Sections 791 - 791.27, Insurance Code, 15 U.S.C. Sections 6801, 6805, 6807.

Reference: Sections 791.01, 791.02, Insurance Code; Section 1798.85, Civil Code; Sections 17590, et seq., Business and Professions Code; 15 U.S.C. Section 6803.

Section 2689.3. Disclosure of Information

Nonpublic personal information shall not be disclosed in a manner not permitted by California law or these regulations.

NOTE: Authority cited: Sections 791 - 791.27, Insurance Code, 15 U.S.C. Sections 6801, 6805, 6807.

Reference: Sections 791.13, Insurance Code.

Section 2689.4. Definitions

As used in these regulations, unless the context requires otherwise:

(a) "Clear and conspicuous" means that a notice is "reasonably understandable" and "designed to call attention to the nature and significance of the information" in the notice. All notices must be clear and conspicuous and accurately reflect the licensee's privacy policies and practices.

A notice is "reasonably understandable" if it:

(i) Presents information in clear, concise sentences, paragraphs, and sections;

- (ii) Uses short explanatory sentences (an average of 15 - 20 words) or bullet lists whenever possible;*
- (iii) Uses definite, concrete, everyday words and active voice whenever possible;*
- (iv) Avoids multiple negatives;*
- (v) Avoids legal and highly technical business terminology whenever possible;*
- (vi) Avoids explanations that are imprecise and readily subject to different interpretations; and*
- (vii) Achieves a minimum Flesch Reading Ease Score of 50.*

A notice is "designed to call attention to the nature and significance of the information" in it if it:

- (i) Uses a plain-language heading to call attention to the notice;*
- (ii) Uses an easy-to-read typeface and type size (at least 10 point);*
- (iii) Provides wide margins and ample line spacing;*
- (iv) Uses boldface or italics for key words;*
- (v) In a form that combines the licensee's notice with other information, uses distinctive type size, style, and graphic devices, such as shading or sidebars; and*
- (vi) If on the back or inside of a multi-page form, is accompanied by a prominent notice on the front of the form directing the reader's attention to the privacy notice and where it may be found.*

A notice on a web site is "designed to call attention to the nature and significance of the information" in it if it is rendered as a page using Hypertext Markup Language (html) in addition to any other webpage formats used, is at least the equivalent point size and type as the standard text on the licensee's web site, and, uses text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensures that other elements on the web site (such as text, graphics, hyperlinks or sound) do not distract attention from the notice, and the notice is either:

- (i) Placed on a screen that consumers frequently access, such as a page on which transactions are conducted; or*
- (ii) Accessed from a screen that consumers frequently access through a link that connects directly to the notice and is labeled appropriately to convey the importance, nature and relevance of the notice.*

(b) "Collect" means to obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol or other identifying particular assigned to the individual, regardless of the source of the underlying information.

(c) "Consumer" means an individual who seeks to obtain, obtains or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, and about whom the licensee has nonpublic personal information. "Consumer" includes that individual's legal representative. Examples include, but are not limited to, the following:

- (i) An individual who provides nonpublic personal information to a licensee in connection with obtaining or seeking to obtain financial, investment or economic advisory services relating to an insurance product or service, is a consumer regardless of whether the licensee establishes an ongoing relationship.*

- (ii) An applicant for insurance prior to the inception of insurance coverage is a consumer.*
- (iii) An individual who is a consumer of another financial institution is not a licensee's consumer solely because the licensee is acting as agent for, or provides processing or other services to, that financial institution.*
- (iv) An individual is a licensee's consumer if the individual is a beneficiary of a life insurance policy underwritten by the licensee, a claimant under an insurance policy issued by the licensee, an insured or an annuitant under an insurance policy or an annuity issued by the licensee, a certificate holder under an employee or other group policy, a bodily injury claimant against a commercial liability policy, a worker's compensation claimant, or a mortgagor of a mortgage covered under a mortgage insurance policy; and the licensee discloses nonpublic personal information about the individual to a nonaffiliated third party other than as permitted by California Insurance Code Section 791.13.*
- (v) If the licensee provides initial, annual and revised notices to the plan sponsor, group or blanket insurance policyholder, group annuity contractholder, or workers' compensation plan participant, and does not disclose to a nonaffiliated third party nonpublic personal information about such an individual other than as permitted under California Insurance Code Section 791.13, an individual is not the consumer of the licensee solely because of that relationship. If the licensee does not meet all the conditions of this paragraph, the described individuals are consumers of a licensee.*
- (vi) An individual is not a licensee's consumer solely because he or she is a beneficiary of a trust for which the licensee is a trustee or because he or she has designated the licensee as trustee for a trust.*

(d) "Customer" means a consumer who has a continuing relationship with a licensee under which the licensee provides one or more insurance products or services to the consumer that are to be used primarily for personal, family or household purposes.

A consumer has a continuing relationship with a licensee if the consumer is a current policyholder of an insurance product issued by or through the licensee; or the consumer obtains financial, investment or economic advisory services relating to an insurance product or service from the licensee for a fee.

A consumer does not have a continuing relationship with a licensee, and therefore is not a customer, if, for example:

- (i) The consumer applies for insurance but does not purchase the insurance;*
- (ii) The licensee sells the consumer travel insurance in an isolated transaction;*
- (iii) The consumer is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee;*
- (iv) The consumer is a beneficiary or claimant under a policy and has submitted a claim under a policy choosing a settlement option involving an ongoing relationship with the licensee;*
- (v) The consumer is a beneficiary or a claimant under a policy and has submitted a claim under that policy choosing a lump sum settlement option;*
- (vi) The customer's policy is lapsed, expired, or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve (12) consecutive months, other than annual privacy notices, material required by law or regulation, communication at the direction of a state or federal authority, or promotional materials;*
- (vii) The consumer is an insured or an annuitant under an insurance policy or annuity but is not the policyholder or owner of the insurance policy or annuity; or*
- (viii) The consumer's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent good faith attempts by the licensee to*

obtain a current valid address for the individual have been unsuccessful. If so, and if the consumer has not opted out, the licensee shall, at least annually, remove the consumer's name from any list for marketing purposes for disclosure to a nonaffiliated third party.

(e) "Financial institution" means any institution engaged in activities that are financial in nature or incidental to such financial activities as described in Section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

Financial institution does not include:

- (i) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);*
- (ii) The Federal Agricultural Mortgage Corporation or any entity charged and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.); or*
- (iii) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions related to a transaction of a consumer, as long as the institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.*

(f) "Financial product or service" means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under Section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)). Financial service includes a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

(g) "Nonaffiliated third party" means any person or entity that is not an affiliate of, or related by common ownership or affiliated by corporate control with, a licensee. Nonaffiliated third party includes any company that is an affiliate solely by virtue of the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities of the type described in Section 4(k)(4)(H) or insurance company investment activities of the type described in Section 4(k)(4)(I) of the federal Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H) and (I)).

(h) "Nonpublic personal financial information" means personally identifiable financial information a consumer provides to a licensee to obtain an insurance product or service from the licensee, information about a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer, or information the licensee obtains about a consumer in connection with providing an insurance product or service to that consumer. "Nonpublic personal financial information" includes any list, description or other grouping of consumers that is derived using any personally identifiable financial information that is not publicly available. "Nonpublic personal financial information" does not include medical record information.

(i) "Nonpublic personal information" means "personal information" as defined in California Insurance Code Section 791.02(s). "Nonpublic personal information" includes "nonpublic personal financial information" and "medical record information" (as defined in California Insurance Code Section 791.02(q)).

"Nonpublic personal information" includes any list, description or other grouping of consumers that is derived using any personally identifiable information that is not publicly available. "Nonpublic personal information" also includes any information about the licensee's consumer if it is disclosed in a manner that indicates that the individual is or has been the licensee's consumer; any information the licensee collects through an Internet cookie (an information-collecting device from a web survey); and information from a

consumer report.

If information about individuals associated with a business entity is collected or accessed in connection with a consumer transaction, or is used for marketing products or services intended for personal, family, or household purposes, it is nonpublic personal information for purposes of these regulations. Insurance transactions relating to products obtained by a policyholder for business, commercial, or agricultural purposes, but which actually provide insurance primarily for personal, family, or household purposes, involve nonpublic personal information for purposes of these regulations.

A dual purpose policy providing only incidental or supplemental commercial coverages is still a policy primarily for personal, family or household purposes for purposes of these regulations.

(j) "Opt-In" means that a licensee must obtain a consumer's permission before sharing certain nonpublic personal information with others.

(k) "Opt-Out" means that a licensee must allow a consumer the opportunity to prevent the sharing of certain nonpublic personal financial information with others.

(l) "Ownership of voting securities," as used in California Insurance Code Section 791.02(g), means ownership or power to vote twenty-five percent (25%) or more of the outstanding shares of any class of voting security of the person or entity, directly or indirectly, or acting through one or more other persons, and includes power in any manner over the election of a majority of the directors, trustees or general partners (or individuals exercising similar functions) of the person or entity.

(m) "Publicly available information" means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from federal, state or local government records; widely distributed media; or disclosures to the general public that are required to be made by federal, state or local law.

A licensee has a reasonable basis to believe that information is lawfully made available to the general public if the licensee has taken steps to determine that the information is of the type that is available to the general public; and when an individual can direct that the information not be made available to the general public, the individual has not done so.

NOTE: Authority cited: Sections 791 - 791.27, Insurance Code, 15 U.S.C. Sections 6801, 6805, 6807. Reference: Sections 791.04, Insurance Code; 15 U.S.C. Sections 6801, 6802, 6803, 6809.

ARTICLE II.

PRIVACY NOTICES; OPT OUT NOTICES FOR

NONPUBLIC PERSONAL FINANCIAL INFORMATION

Section 2689.5. Initial Privacy Notice

(a) In addition to any notice of information practices required by California Insurance Code Section 791.04, licensees shall provide notice as required by this section. Licensees may provide the notices required by California Insurance Code Section 791.04 and this section in a single combined notice or in separate notices, so long as all the requirements of California Insurance Code Section 791.04 and these regulations are satisfied. If a licensee uses a California notice and another separate notice, the California notice shall clearly state that any rights a consumer, claimant, or beneficiary may have as described in the California notice are not limited by the standard privacy notice that the licensee also uses.

A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to:

- (1) A customer, not later than when the licensee establishes a customer relationship, except as provided in subsection (c) of this section; and
- (2) A consumer, claimant, or beneficiary before the licensee discloses any nonpublic personal information about the consumer, claimant, or beneficiary to any nonaffiliated third party, if the licensee makes a disclosure other than as authorized by California Insurance Code Section 791.13(a) through (j) or (l) through (r), unless the licensee has a customer relationship with the consumer, claimant, or beneficiary, or a notice has been provided by an affiliated licensee, the notice clearly identifies all licensees to whom the notice applies, and is accurate with respect to the licensee and the other institutions.

- (b) When an existing customer obtains a new insurance product or service, intended primarily for personal, family, or household purposes, the licensee need not provide a new initial notice if the notice most recently provided by the licensee or an affiliate is accurate with respect to the licensee and the affiliate.
- (c) A licensee may provide the initial notice required by subsection (a)(1) within a reasonable time after the licensee establishes a customer relationship if:

- (1) Establishing the customer relationship is not at the customer's election; for example, if a licensee acquires or is assigned a customer's policy from another licensee or residual market mechanism and the customer does not have a choice about the licensee's acquisition or assignment.
- (2) Providing notice not later than when the licensee establishes a customer relationship would substantially delay the customer's transaction; for example, when the licensee and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the insurance product or service. In that case, the customer shall be provided with oral notice of the licensee's privacy policies, provided that the privacy notice is mailed or provided in electronic form within fourteen (14) business days after the sale, and documentation is maintained showing that oral disclosure was provided to the customer. For licensees who do not disclose personal information other than as permitted by California Insurance Code Section 791.13, an oral disclosure is not required.

The customer's transaction is not substantially delayed when the relationship is initiated in person at the licensee's office or through other means by which the customer may view the notice, such as on a web site.

NOTE: Authority cited: Sections 791 - 791.27, Insurance Code, 15 U.S.C. Sections 6801, 6805, 6807.

Reference: Sections 791.04, Insurance Code; 15 U.S.C. Section 6803.

Section 2689.6. Annual Privacy Notice

In addition to any notice of information practices required by California Insurance Code Section 791.04, licensees shall provide notice as required by this section. Licensees may provide the notices required by California Insurance Code Section 791.04 and this section in a single combined notice or in separate notices, so long as all the requirements of California Insurance Code Section 791.04 and these regulations are satisfied. If a licensee uses a California notice and another separate notice, the California notice shall clearly state that any rights a consumer, claimant, or beneficiary may have as described in the California notice are not limited by the standard privacy notice that the licensee also uses.

A licensee shall provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than annually during the continuation of the customer relationship. Annually means at least once in any period of twelve (12) consecutive months during which that relationship exists.

A licensee may define the twelve-consecutive-month period, but the licensee shall apply it to the customer on a consistent basis. A licensee is not required to provide an annual notice to a former customer with

whom it no longer has a continuing relationship.

NOTE: Authority cited: Sections 791 - 791.27, Insurance Code, 15 U.S.C. Sections 6801, 6805, 6807.

Reference: Section 791.04, Insurance Code; 15 U.S.C. Section 6803.

Section 2689.7. Information to be Included in Privacy Notices

(a) The initial, annual and revised privacy notices that a licensee provides under Sections 2689.5, 2689.6, and 2689.9 shall, at a minimum, include each of the following that applies to the licensee and to the consumers to whom the licensee sends its privacy notice:

- (1) The categories of nonpublic personal information that the licensee collects;*
- (2) The categories of nonpublic personal information that the licensee discloses;*
- (3) The categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal information, and the general types of businesses in which the third parties engage if the information is disclosed pursuant to California Insurance Code Section 791.13(k);*
- (4) The categories of nonpublic personal information about the licensee's former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal information about the licensee's former customers, if the information is disclosed pursuant to California Insurance Code Section 791.13(k);*
- (5) If a licensee wishes to disclose or reserve the right to disclose nonpublic personal financial information to an affiliate for marketing purposes without affirmative authorization or the right to opt out of that disclosure, a statement explaining that the licensee may disclose nonpublic personal financial information to affiliates for marketing purposes without obtaining prior authorization and the law does not allow customers to restrict that disclosure .*
- (6) An explanation of the consumer's right to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the methods by which the consumer may exercise that right at that time;*
- (7) Any disclosures that the licensee makes under Section 603(d)(2)(A)(iii) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) regarding the ability to opt out of disclosures of information among affiliates;*
- (8) The licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information, including a general description as to who is authorized to have access to the information;*
- (9) If applicable, a statement that the consumer has the right to access and request correction of recorded nonpublic personal information and a brief description of the manner in which those rights may be exercised; and*
- (10) The categories of disclosures that the licensee makes under California Insurance Code Section 791.13.*
- (11) If applicable, the statement required by California Insurance Code Section 791.04(b)(5).*
- (12) A licensee does not adequately categorize the information that it discloses if the licensee uses only general terms, such as transaction information about the consumer.*

(b) If prior authorization is not required and a licensee reserves the right to disclose all of the nonpublic personal information about consumers that it collects, the licensee may simply state that fact without describing the categories or examples of nonpublic personal information that the licensee discloses.

(c) An abbreviated notice, as provided for in California Insurance Code Section 791.04(c), shall comply with California Insurance Code Section 791.04(c) and:

- (1) *Be clear and conspicuous;*
- (2) *Describe a reasonable means by which the consumer may obtain the notice prescribed by California Insurance Code Section 791.04(b), such as calling a toll-free telephone number to request the notice. If the consumer is provided the abbreviated notice in person at the licensee's office, the abbreviated notice may state that the licensee maintains copies of the notice on hand which will be provided to the consumer immediately upon request; and*
- (3) *If applicable, contain an opt-out notice complying with these regulations.*

This section does not prohibit the use of multiple links on a website to different categories or levels of information, as long as they are designed to facilitate rather than impede access.

NOTE: Authority cited: Sections 791 - 791.27, Insurance Code, 15 U.S.C. Sections 6801, 6805, 6807. Reference: Sections 791.04, 791.05, 791.06, 791.13, Insurance Code.

Section 2689.8. Form of Opt Out Notice and Opt Out Methods

(a) If a licensee is required to provide an opportunity to opt-out before it shares any nonpublic personal financial information with a nonaffiliated third party, it shall provide a clear and conspicuous notice to the consumer, that clearly states in 16-point boldface type "IMPORTANT PRIVACY CHOICES", or similarly highlights the purpose of the notice, so that the consumer may make a decision and provide direction to the licensee regarding the sharing of his or her nonpublic personal financial information.

If a licensee provides the opt out notice later than the initial notice, the licensee shall also include, with the opt-out notice, a copy of the initial notice in writing or, if the consumer agrees, electronically.

The notice shall state that the licensee discloses or reserves the right to disclose nonpublic personal financial information about its consumers to nonaffiliated third parties, that the consumer has the right to opt out of that disclosure, and set forth reasonable means by which the consumer may exercise the opt out right.

A licensee provides adequate notice that the consumer can prevent the disclosure of nonpublic personal financial information to a nonaffiliated third party if the licensee (1) identifies all of the categories of nonpublic personal financial information which it discloses or reserves the right to disclose, (2) all of the categories of nonaffiliated third parties to which it discloses the information, (3) states that the consumer can prevent the disclosure of that information, and identifies the insurance products or services that the consumer obtains from the licensee to which the opt out direction would apply.

A licensee provides a reasonable means to exercise an opt out right if it designates check-off boxes in a prominent position on the relevant forms with the opt out notice; includes a reply form together with the opt-out notice; provides an electronic means to opt out, such as a form that can be sent via electronic mail or a process at the licensee's web site, if the consumer agrees to the electronic delivery of information. Unless the consumer agrees to an electronic opt-out method, the licensee shall provide a self-addressed postage prepaid return envelope or a toll-free telephone number that consumers may use to opt out.

A licensee does not provide a reasonable means of opting out if, for example, the only means of opting out is for the consumer to write his or her own letter to exercise that opt out right, or the only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that the licensee provided with the initial notice but did not include with the subsequent notice.

(b) If a licensee mails the opt-out notice with information that is not a bill or renewal offer, the opt-out notice shall be the first page of the mailing.

(c) A licensee is not subject to the notice and opt out requirements for nonpublic personal financial information if the licensee is an employee or agent of another licensee ("the principal") and:

- (1) The principal otherwise complies with, and provides the required notices; and*
- (2) The licensee does not disclose any nonpublic personal financial information to any person other than the principal or its affiliates in a manner permitted by California Insurance Code Sections 791 - 791.27 or these regulations.*

(3) A licensee not otherwise subject to the notice and opt out requirements for nonpublic personal financial information, pursuant to sections 2689.8(c)(1) and (2), is subject to the notice and opt out requirements, pursuant to California Insurance Code Section 791.13(k), if the licensee, prior to issuance of a renewal policy or at any other time, shares nonpublic personal financial information with any person other than the insurer which issued the existing policy. A licensee shares nonpublic personal financial information with a person other than the insurer which issued the existing policy if the licensee shares nonpublic personal financial information with another insurer in an effort to obtain a renewal policy on more favorable terms than the existing policy.

(d) When a consumer has declined to exercise the right to opt out in accordance with this section, the nonpublic personal financial information disclosed:

- (1) May not exceed the scope of disclosure stated in the licensee's opt-out notice;
- (2) May not include account number, or policy number information; and
- (3) Shall comply with California Insurance Code Section 791.13(k)(1).

(e) If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may provide a single opt out notice, as long as the licensee gives clear and conspicuous notice that the notice is being provided on a joint basis and the consumers have given the licensee a single address of record or the licensee has other reasonable basis to believe that the notice will be adequately communicated to each individual entitled to receive notice.

The licensee's opt out notice shall explain how the licensee will treat an opt out direction by a joint consumer. Any of the joint consumers may exercise the right to opt out. The licensee may either treat an opt out direction by a joint consumer as applying to all of the associated joint consumers or permit each joint consumer to opt out separately. If a licensee permits each joint consumer to opt out separately, the licensee shall permit one of the joint consumers to opt out on behalf of all of the joint consumers. A licensee may not require all joint consumers to opt out before it implements any opt out direction. If one joint policyholder opts out and the other does not, the licensee may only disclose nonpublic personal financial information about the policyholder who did not opt out and may not disclose information relating to the policyholders jointly.

(f) A consumer may exercise the right to opt out at any time. A licensee may share marketing information with nonaffiliated third parties if a consumer does not respond within 30 days. A licensee shall not share information for marketing purposes before the conclusion of the 30-day time period. If a consumer provides an opt-out direction after the licensee has begun sharing nonpublic personal financial information, the licensee shall comply with the opt-out direction no later than 30 days after the licensee receives the opt out direction.

(g) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or electronically, at the consumer's choice.

When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal financial information that the licensee collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the licensee, the opt out direction that applied to the former relationship does not apply to the new relationship.

(h) Any authorized representative may opt out on behalf of the consumer. A licensee receiving notice that a consumer has opted out shall not require proof of authorization unless it has a reasonable basis for believing that the person submitting the opt-out direction was acting contrary to the wishes of the consumer.

NOTE: Authority cited: Sections 791 - 791.27, Insurance Code, 15 U.S.C. Sections 6801, 6805, 6807.

Reference: Sections 791.13, Insurance Code; 15 U.S.C. Section 6802.

Section 2689.9. Revised Privacy Notices

Except as otherwise authorized, a licensee shall not, directly or through an affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party other than as described in the notice provided to that consumer unless:

- (1) The licensee has provided to the consumer a clear and conspicuous revised notice that accurately describes its policies and practices;*
- (2) The licensee has provided to the consumer a new opt out notice which complies with section 2689.8 and;*
- (3) The consumer does not opt out in accordance with section 2689.8.*

NOTE: Authority cited: Sections 791 - 791.27, Insurance Code, 15 U.S.C. 6801, 6805, 6807. Reference: Sections 791.13, Insurance Code; 15 U.S.C. Section 6802.

Section 2689.10. Delivery of Notices

(a) A licensee shall provide any required notices, including notices provided at the consumer's request, so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically. Notices must be made available in a form capable of retention by the consumer. A licensee may reasonably expect that a consumer will receive actual notice if the licensee, for example:

- (1) Hand-delivers a printed copy of the notice to the consumer;*
- (2) Mails a printed copy of the notice to the last known address of the consumer separately, or in a policy, billing or other written communication;*
- (3) For a consumer who conducts transactions electronically, posts the notice on the electronic site in accordance with section 2689.4(a) and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service;*
- (4) For an isolated transaction with a consumer, such as the licensee providing an insurance quote or selling the consumer travel insurance, posts the notice in a conspicuous location and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular insurance product or service.*

A licensee may not reasonably expect that a consumer will receive actual notice if it:

- (1) Only posts a sign in its office or generally publishes advertisements of its privacy policies and practices; or*
- (2) Sends the notice via electronic mail to a consumer who does not obtain an insurance product or service from the licensee electronically.*

(b) A licensee may not provide any notice required by these regulations solely by orally explaining the notice, either in person or over the telephone.

NOTE: Authority cited: Sections 791 - 179.27, Insurance Code, 15 U.S.C. Sections 6801, 6805, 6807. Reference: Section 791.04, Insurance Code; 15 U.S.C. Sections 6802, 6803.

ARTICLE III.**LIMITS ON DISCLOSURES OF MEDICAL RECORD INFORMATION****Section 2689.11. Disclosure of Medical Record Information**

(a) A licensee shall not disclose nonpublic personal medical record information about a consumer to affiliated or nonaffiliated third parties without the consumer's prior written authorization.

(b) This section does not prohibit or restrict the disclosure of nonpublic personal medical record information as permitted by California Insurance Code Section 791.13 or require an authorization for disclosure of nonpublic personal medical record information other than as required by California Insurance Code Section 791.13.

NOTE: Authority cited: Sections 791 - 791-27, Insurance Code, 15 U.S.C. Sections 6801, 6805, 6807.

Reference: Section 791.13, Insurance Code.

ARTICLE IV.**STANDARDS FOR SAFEGUARDING NONPUBLIC PERSONAL INFORMATION****Section 2689.12. General Provisions**

(a) This article establishes standards for developing and implementing administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of nonpublic personal information, pursuant to California Insurance Code Section 791 and sections 501, 505(b), and 507, codified at 15 U.S.C. 6801, 6805(b) and 6807, of GLBA.

(b) The actions and procedures described in sections 2689.16, 2689.17, 2689.18, and 2689.19 are examples of methods of implementation of the requirements of sections 2689.14 and 2689.15. These examples are non-exclusive illustrations of actions and procedures that licensees may follow to implement sections 2689.14 and 2689.15 of these regulations.

NOTE: Authority cited: Sections 791-791.27, Insurance Code, 15 U.S.C. Sections 6801, 6805, 6807, 6824.

Reference: Section 791, Insurance Code; 15 U.S.C. Sections 6801, 6805, 6807.

Section 2689.13. Definitions

For purposes of this article, the following definitions apply:

(a) "Customer information systems" means the electronic or physical methods used to access, collect, store, use, transmit, protect, or dispose of nonpublic personal information, whether that information is maintained in paper, electronic, or other form.

(b) "Service provider" means any person or entity that maintains, processes, or otherwise is permitted access to customer information through its provision of services directly to the licensee.

NOTE: Authority cited: Sections 791 - 791.27, Insurance Code, 15 U.S.C. Sections 6801, 6805, 6807,

6824. Reference: Section 791, Insurance Code; 15 U.S.C. Section 6827.

Section 2689.14. Information Security Program.

Each licensee shall implement a comprehensive written information security program that includes administrative, technical and physical safeguards for the protection of customer information. The administrative, technical, and physical safeguards included in the information security program shall be appropriate to the size and complexity of the licensee and the nature and scope of its activities.

NOTE: Authority cited: Sections 791-- 791.27, Insurance Code, 15 U.S.C. Sections 6801, 6805, 6807, 6824. Reference: Section 791, Insurance Code; 15 U.S.C. Section 6825.

Section 2689.15. Objectives of Information Security Program.

A licensee's information security program shall be designed to:

(a) Ensure the security and confidentiality of customer information;

(b) Protect against any anticipated threats or hazards to the security or integrity of such

information; and

(c) Protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer.

NOTE: Authority cited: Sections 791 - 791.27, Insurance Code, 15 U.S.C. 6801, 6805, 6807, 6824. Reference: Section 791, Insurance Code; 15 U.S.C. Section 6825.

Section 2689.16. Assess Risk.

The licensee:

(a) Identifies reasonably foreseeable internal and external threats that could result in unauthorized disclosure, misuse, alteration, or destruction of customer information or customer information systems;

(b) Assesses the likelihood and potential damage of these threats, taking into consideration the sensitivity of customer information; and

(c) Assesses the sufficiency of policies, procedures, customer information systems, and other safeguards in place to control risks.

NOTE: Authority cited: Sections 791 - 791.27, Insurance Code, 15 U.S.C. Sections 6801, 6805, 6807, 6824. Reference: Section 791, Insurance Code; 15 U.S.C. Section 6825.

Section 2689.17. Manage and Control Risk.

The licensee:

(a) Designs its information security program to control the identified risks, commensurate with the sensitivity of the information as well as the complexity and scope of the licensee's activities.

(b) Trains staff, as appropriate, to implement the licensee's information security program; and

(c) Regularly tests or otherwise regularly monitors the key controls, systems and procedures of the information security program. The frequency and nature of these tests are determined by the licensee's risk assessment.

NOTE: Authority cited: Sections 791 - 791.27, Insurance Code, 15 U.S.C. Sections 6801, 6805, 6807, 6824. Reference: Section 791, Insurance Code; 15 U.S.C. Section 6825.

Section 2689.18. Service Providers

The licensee:

(a) Exercises appropriate due diligence in selecting its service providers; and

(b) Requires its service providers, by contract, to implement appropriate measures designed to meet the objectives of this article, and, where indicated by the licensee's risk assessment, takes appropriate steps to confirm that its service providers have satisfied such obligations.

NOTE: Authority cited: Sections 791 - 791.27, Insurance Code, 15 U.S.C. Sections 6801, 6805, 6807, 6824. Reference: Section 791, Insurance Code; 15 U.S.C. Section 6825.

Section 2689.19. Adjust the Program

A licensee monitors, evaluates, and adjusts, as appropriate, the information security program in light of any relevant changes in technology, the sensitivity of its customer information, internal or external threats to information, and the licensee's own changing business arrangements, such as mergers and acquisitions, outsourcing arrangements, and changes to customer information systems.

NOTE: Authority cited: Sections 791 - 791.27, Insurance Code, 15 U.S.C. Sections 6801, 6805, 6807, 6824. Reference: Section 791, Insurance Code; 15 U.S.C. Section 6825.

Section 2689.20. Enforcement

The Commissioner shall audit a licensee's compliance with this article in a manner and with such frequency as the Commissioner deems necessary. Violations of this article are subject to California Insurance Code Section 791.15, et seq. and any other enforcement provisions available to the Commissioner.

NOTE: Authority cited: Sections 791 - 791.27, Insurance Code, 15 U.S.C. Sections 6801, 6805, 6807, 6824. Reference: Section 791.15, Insurance Code.

ARTICLE V.**ADDITIONAL PROVISIONS****Section 2689.21. Protection of Fair Credit Reporting Act**

Nothing in these regulations shall be construed to modify, limit or supersede the operation of the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), and no inference shall be drawn on the basis of the provisions of these regulations regarding whether information is transaction or experience information under Section 603 of that Act.

NOTE: Authority cited: Sections 791 - 791.27, Insurance Code, 15 U.S.C. Sections 6801, 6805, 6807. Reference: 15 U.S. C. Section 6806.

Section 2689.22. Nondiscrimination

A licensee shall not unfairly discriminate against any consumer or customer because that consumer or customer has opted out from the disclosure of his or her nonpublic personal information pursuant to the provisions of these regulations.

A licensee shall not unfairly discriminate against a consumer or customer because that consumer or customer has not granted authorization for the disclosure of his or her nonpublic personal medical record information pursuant to the provisions of these regulations.

As used in this section, "unfairly discriminate" includes denying a consumer or customer a product or service because he or she has not provided the consent required to authorize the financial institution to disclose or share his or her nonpublic personal information as provided in California Insurance Code Section 791.13(k).

NOTE: Authority cited: Sections 791 - 791.13, Insurance Code, 15 U.S.C. Sections 6801, 6805, 6807. Reference: Section 791.13, Insurance Code.

Section 2689.23. Severability

If any section or portion of a section of these regulations or its applicability to any person or circumstance is held invalid by a court, the remainder of the regulation or the applicability of the provision to other persons or circumstances shall not be affected.

NOTE: Authority cited: Sections 791 - 791.27, Insurance Code, 15 U.S.C. Sections 6801, 6805, 6807. Reference: Section 791, Insurance Code.

Section 2689.24. Effective Date; Contracts with Nonaffiliated Third Parties

These regulations are effective one hundred and twenty (120) days after they are filed with the Secretary of State. If that day falls on a Saturday, Sunday, or any holiday set forth in California Government Code Section 6700, the regulations shall become effective on the next business day.

Within 90 days of the effective date of these regulations, all contracts that a licensee enters into or has entered into with a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf shall include or be amended to include a written requirement that the third party maintain

the confidentiality of nonpublic personal information where the nonaffiliated third party obtains confidential nonpublic personal information in connection with the contract.

NOTE: Authority cited: Sections 791 - 791.27 , Insurance Code, 15 U.S.C. Sections 6801, 6805, 6807.

Reference: Section 791, Insurance Code.

APPENDIX A - SAMPLE CLAUSES

If applicable, a licensee may use the following sample clauses in its notices. A group of financial holding company affiliates using a common privacy notice may use these clauses if accurate for each company. These clauses are not exclusive. (Note that disclosure of certain information, such as assets, income and information from a consumer reporting agency, may result in obligations under the federal Fair Credit Reporting Act.)

Categories of information collected

The following language may be used to describe the categories of personal information collected.

We collect personal information about you from:

- Applications or other forms you complete;*
- Your business dealings with us and other companies; and*
- Consumer reporting agencies.*

Categories of information disclosed

The following language may be used to describe the categories of personal information disclosed.

Alternative 1:

We may disclose the following personal information about you:

- Information from your application or other forms, such as your name, address, social security number, assets, income, and beneficiaries;*
- Information about your transactions with us, our affiliates or others, such as your policy coverage, premiums, and payment history; and*
- Information from consumer reporting agencies, such as your credit history.*

Alternative 2:

We may disclose all the information that we collect about you.

To whom information is disclosed

The following language may be used to describe the persons to whom the licensee discloses information.

Alternative 1:

We do not disclose any personal information about you to anyone unless allowed by law. The law allows us to share your financial information with our affiliates to market products or services to you. You cannot prevent those disclosures.

Alternative 2:

We may disclose personal information about you to:

- Financial companies, such as life insurers, automobile insurers, mortgage bankers, securities broker-dealers, and insurance agents;*
- Companies, such as retailers, direct marketers, airlines, and publishers; and*
- Others, such as non-profit organizations.*

Alternative 3:

We may also disclose personal information about you as allowed by law. The law allows us to share your financial information with our affiliates to market products or services to you. You cannot prevent those disclosures.

Explanation of opt out right

The following language may be used to explain the consumer's right to opt out of the disclosure of personal financial information to nonaffiliated third parties and how the consumer may exercise that right, when the licensee discloses personal information as permitted by California Insurance Code Section 791.13(k)(2).

If you don't want us to disclose personal information about you to nonaffiliated companies, you may tell us so. This is known as "opting out". If you wish to opt out, call us at 1-800-____-____ or complete and return the enclosed form. We may share information about you if we do not hear from you within 30 days. However, you may opt-out at any time. Just call or write us. Even if you opt-out, we may still disclose information as allowed by law. This includes disclosing information to our affiliates to market other products or services to you.

Confidentiality and security

The following language may be used to describe how a licensee protects the confidentiality and security of personal information.

We protect your nonpublic personal information. The only employees who have access to that information are those who must have it to provide products or services to you.

¹ 1. All italicized text is proposed for adoption as new regulation text.

Top of Page

Last Revised - October 09, 2002
Copyright © California Department of Insurance
Disclaimer

THE 40 CALIFORNIA PRIVACY LAWS ENACTED SINCE 1999

FINANCIAL SERVICES INFORMATION

AB 2869 (Machado) – Chapter 977, Statutes of 2000

In the written notice that credit card issuers must provide to customers if the issuer intends to disclose marketing information, imposes new requirement that the notice include a preprinted form and a toll-free telephone number for customers to request their information not be disclosed (opt-out).

SB 1607 (Figueroa) – Chapter 978, Statutes of 2000

Expands what credit reporting agencies are required to disclose to consumers upon request, and requires anyone using credit scoring in connection with home equity loans to provide credit scoring information to consumers. Also requires credit reporting agencies to better manage information in credit reports.

ACR 125 (Papan) – Chapter 167, Statutes of 2002

Authorizes the California Law Revision Commission to study, report on, and prepare recommended legislation concerning the protection of personal information relating to or arising out of financial transactions. Directs that the recommended legislation address specified objectives.

DIRECT MARKETING

SB 926 (Speier) – Chapter 586, Statutes of 1999

Enacts the Supermarket Club Card Disclosure Act of 1999 which prohibits requiring an applicant for a supermarket club card to provide a driver's license or Social Security account number as a condition of obtaining the card. Also prohibits a club card issuer from selling or sharing personal identification information regarding cardholders, with some exceptions.

AB 655 (Wright) – Chapter 354, Statutes of 2001

Permits consumers to request their names be removed from the lists that a consumer credit reporting agency furnishes for credit card solicitations. Also requires credit agencies to block certain information when a consumer provides a valid investigative report indicating that another person is unlawfully using the consumer's personal information. Requires those who use credit reports and learn that an address on a report is different from the consumer requesting or being offered credit, to verify the consumer's information and confirm the request is not for identity theft.

AB 870 (Wesson) – Chapter 696, Statutes of 2001

Prohibits "phantom calling," *i.e.*, using automatic calling equipment to make telephone calls when no person or prerecorded message is available for the person called.

SB771 (Figueroa) – Chapter 695, Statutes of 2001

Requires the California Department of Consumer Affairs to maintain a "do not call" list of telephone subscribers who wish to not be solicited by those seeking to sell goods or services. Provides limited exemptions.

AB 1769 (Leslie) – Chapter 699, Statutes of 2002

Prohibits transmitting an unsolicited text message advertisement to a cellular phone or pager.

AB 2944 (Kehoe) – Chapter 318, Statutes 2002

Prohibits unsolicited fax advertisements. Allows California to enforce federal ban on unsolicited faxes.

SB 1560 (Figueroa) – Chapter 698, Statutes of 2002

Allows small business to pay reduced rates to subscribe to the State's "do not call" list and ensures that the Attorney General will be able to implement the program on time.

**IDENTITY
THEFT**

AB 1862 (Torlakson) – Chapter 631, Statutes of 2000

Allows victims of identity theft to submit a court order along with fingerprints to the Department of Justice (DOJ) to verify against DMV records. Also requires DOJ to maintain a database concerning victims of identity theft accessible by the victim and law enforcement agencies.

AB 1897 (Davis) – Chapter 956, Statutes of 2000

Provides various protections for identity theft victims including allowing victims to initiate a law enforcement investigation if they learn or suspect someone else is using their identity.

AB 245 (Wyland) – Chapter 478, Statutes of 2001

Changes identity theft from a misdemeanor to a felony, and removes the previous requirement that the information used unlawfully was acquired without consent.

SB 125 (Alpert) – Chapter 493, Statutes of 2001

Entitles individuals who discover an unauthorized individual has applied for a loan, credit card, or bank account in his or her name, to receive a copy of the application and any information related to the application.

SB 168 (Bowen) – Chapter 720, Statutes of 2001

Requires credit reporting bureaus to accept security alerts from consumers via a toll-free telephone number. Allows consumers to impose a renewable security freeze on their credit file. Prohibits using an individual's Social Security number in certain ways, including posting it publicly or requiring it for access to products or services.

AB 488 (Kehoe) – Chapter 236, Statutes of 2001

Requires credit bureaus to provide consumers with list of those requesting copies of their credit record, including contact information for those making the requests.

AB 1155 (Dutra) – Chapter 907, Statutes of 2002

Courts may impose fine of \$25,000 on an individual convicted of a felony for conspiring to commit identity theft. Also makes it a misdemeanor for a person to obtain or assist others in obtaining a driver's license, identification card, vehicle registration certificate or other official DMV document to which they are not entitled.

AB 1219 (Simitian) – Chapter 851, Statutes of 2002

Allows identity theft victim or the court to move for an expedited judicial determination of factual innocence where the perpetrator is arrested for or convicted of a crime under the victim's identity. Also increases the source upon which a determination of factual innocence can be determined and authorizes the court to seal, delete or label the records to show that the data does not reflect the defendant's identity.

AB 1773 (Wayne) – Chapter 908, Statutes of 2002

Provides that the jurisdiction for a criminal action for identity theft is the county where the theft occurred or where the information was illegally used. Also provides that if multiple identity theft offenses occur in multiple jurisdictions, any one of those jurisdictions is the proper jurisdiction for all the offenses.

AB 2456 (Jackson) – Chapter 196, Statutes of 2002

Provides further limitations on access to personal information by prison and county jail inmates. Applies the same prohibitions to offenders performing community service in lieu of a fine or custody.

SB 1239 (Figueroa) – Chapter 196, Statutes of 2002

Provides a victim of identity theft the right to block fraudulent information and to receive a free copy of his or her credit report once a month for up to 12 consecutive months.

SB 1254 (Alpert) – Chapter 860, Statutes of 2002

Expands the definition of "personal identifying information" that applies under the identity theft statutes and provides that every person who, with the intent to defraud, acquires, transfers, or retains possession of another person's information is guilty of a crime punishable by imprisonment and fine. Requires entities to provide free copies of applications and forms used to open fraudulent accounts to identity theft victims and to law enforcement.

SB 1259 (Ackerman) – Chapter 861, Statutes of 2002

Provides that the knowing and willful possession or use, with the intent to defraud, of a device designed to scan or re-encode information from or to the magnetic strip of a payment card would be punishable as a misdemeanor. Also provides for the seizure and destruction of such equipment.

SB 1386 (Peace) – Chapter 915, Statutes of 2002

Requires a business or State agency that maintains computerized data that includes personal information, as defined, to disclose any breach of the security of that data to any California resident whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

SB 1617 (Karnette) – Chapter 862, Statutes of 2002

Establishes an activation process for substitute credit cards where consumers are required to contact the card issuer to activate the credit card before it can be used.

**STATE
GOVERNMENT
PROTECTIONS**

SB 129 (Peace) – Chapter 984, Statutes of 2000

Creates an Office of Privacy Protection in the Department of Consumer Affairs, which will protect the privacy of individuals' personal information by identifying consumer problems and facilitating development of fair information practices.

AB 1740 (Ducheny) [2000-01 Budget Bill] – Chapter 52, Statutes of 2000

Includes provisions requiring that privacy policies be adopted by each state department and agency stating the purposes of collecting personal information, the means by which it is protected against unauthorized access, modification, or disclosure, and the assignment of someone in each department or agency responsible for its privacy policy.

**BUSINESS
RECORDS**

AB 2246 (Wayne) – Chapter 1039, Statutes of 2000

Protects consumers' privacy by requiring businesses to dispose of records so as to make a customer's personal information unreadable or undecipherable.

**PUBLIC
RECORDS**

AB 771 (Briggs) – Chapter 498, Statutes of 1999

Prohibits the California Department of Motor Vehicles from distributing or selling the photograph or information pertaining to the physical characteristics of an applicant for a driver's license or California identification card without consent.

AB 1965 (Leach) – Chapter 962, Statutes of 2000

Prohibits the State Board of Equalization from releasing the names and addresses of its licensees and registrants to third parties.

AB 2550 (Nation) – Chapter 857, Statutes of 2002

Requires Department of Health Services to implement an electronic death registration system (EDRS) to expedite the State's ability to curtail the fraudulent use of both the birth and death record through timely application of birth/death cross-matching.

SB 247 (Speier) – Chapter 914, Statutes of 2002

Establishes authorization requirements for applicants to obtain certified copies of birth and death certificates. Requires State and local registrars issuing copies to non-authorized applicants to imprint the words, "informational, not a valid document to establish identity."

SB 1614 (Speier) – Chapter 712, Statutes of 2002

Requires comprehensive index of births, deaths, fetal deaths and marriages and local birth and death record indices to be kept confidential. Prohibits a government agency from selling or releasing the indices or posting the indices on the internet.

**MEDICAL
RECORDS**

AB 416 (Machado) – Chapter 427, Statutes of 1999

Prohibits releases of outpatient psychotherapy information without specified formal request.

SB 19 (Figueroa) – Chapter 526, Statutes of 1999

Limits disclosure of medical information by providers and prohibits health plans from conditioning services on waiver of confidentiality. Also prohibits health plans from using medical information for commercial purposes.

AB 2797 (Papan) – Chapter 278, Statutes of 2000

Prohibits the use of medical information for the granting of credit, limits the sharing of medical information by a life or disability insurer to third parties and affiliates.

SB 1903 (Speier) – Chapter 1066, Statutes of 2000

Extends provisions in existing law regarding sharing, selling, or using medical information for purposes other than provision of health care services applicable to corporations and their subsidiaries and affiliates.

AB 2191 (Migden) – Chapter 853, Statutes of 2002

Adds pharmaceutical companies to the list of health care providers, health insurance carriers and contractors that are prohibited from disclosing a patient's medical information with first obtaining authorization. Prohibits a pharmaceutical company from requiring a patient to authorize disclosure to receive medication.

**ELECTRONIC
MONITORING**

SB 1090 (Bowen) – Chapter 731, Statutes of 2001

Extends to satellite television companies current law prohibiting cable operators from using electronic devices to observe, listen to, record, or monitor events or conversations inside a subscriber's residence or workplace without the subscriber's written consent.

**VICTIMS OF
DOMESTIC
VIOLENCE**

AB 205 (Leach) – Chapter 33, Statutes of 2000

Provides greater protections to victims of domestic violence by allowing victims who seek a name change to maintain the confidentiality of the new name to avoid future violence.