

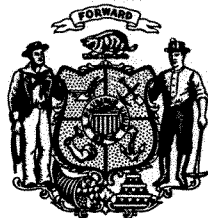
WISCONSIN LEGISLATIVE COUNCIL STAFF

JAN 31 2001
LCRC
FORM 2

RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-189

AN ORDER to create chapter Ins 25, relating to privacy of personal information.

Submitted by **OFFICE OF THE COMMISSIONER OF INSURANCE**

12-29-00 RECEIVED BY LEGISLATIVE COUNCIL.
01-30-01 REPORT SENT TO AGENCY.

RS:DD:jal;ksm

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached

YES

NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached

YES

NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached

YES

NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached

YES

NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached

YES

NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached

YES

NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached

YES

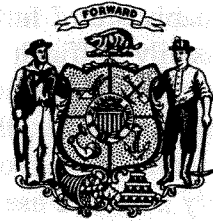
NO

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CLEARINGHOUSE RULE 00-189

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

a. The statutory provisions referenced in the analysis under "statutory authority" should be compared with the statutory provisions listed in s. Ins 25.01. Presumably, the references should be consistent. The reason for inclusion of some of the references is not self evident.

b. The last paragraph under the portion of the analysis discussing protection of nonpublic personal health information indicates that the health information provisions of the rule do not apply to licensees who are in compliance with health information privacy regulations promulgated pursuant to the Health Information Portability and Accountability Act. The analysis notes that these regulations will not be effective for two years. Section Ins 25.77 states if a licensee complies with all requirements of the federal regulations, "except for its effective date provision," the licensee is not subject to the provisions of subch. V of the proposed rule. It is not clear whether subch. V is intended to apply to such licensees before the federal rules become effective. If it is intended that certain licensees are exempt from the rule, based on assumptions as to what the federal rules will be (i.e., are exempt from subch. V immediately), delegation issues may be raised.

2. Form, Style and Placement in Administrative Code

a. It is conceded: (1) that uniformity among the states concerning compliance with federal privacy rules is desirable; and (2) that, given the subject matter of the rule, a degree of

complexity and resort to technical terms and terms of art is unavoidable. However, the choice to use the National Association of Insurance Commissioners (NAIC) model as the basis of the rule results in a rule that is a substantial departure from accepted drafting style in this state. While many differences in form and style arguably are of little consequence, some of the differences make the rule awkward and unnecessarily difficult to read: (1) including substance in definitions; (2) including in substance commentary that more properly should be placed in notes; and (3) assuming some titles are substance. Further, the overall organization and sequence of provisions of the rule are poor and a number of provisions are awkwardly drafted. Many deficiencies can be traced to the extremely awkward use of "examples."

Examples of less consequential departures from standard form and style include inconsistent use of subunit titles and use of parentheses.

Because it is assumed that the Office of the Commissioner of Insurance will continue to use the NAIC model as a basis of the rule, most of the style deficiencies observed in the rule relating to form and style will not be noted in these comments.

b. Given the length of the rule, the analysis is cursory. For example, there is no discussion of the kinds of information included in "nonpublic personal financial information." While the analysis, as far as it goes, does a good job of summarizing a complex rule, consideration should be given to expanding the analysis to include more substance.

c. The definition of "consumer" in s. Ins 25.04 (6) (a) is particularly awkward.

d. Section Ins 25.04 (6) (b) 4. a. creates subunits below the subparagraph level. This is to be avoided in rule drafting and, consequently, divisions (i) to (iv) should be collapsed into subpar. a.

e. In s. Ins 25.04 (11) (b) 3., the parentheses should be replaced by commas. [The entire rule should be reviewed for this problem.]

f. Section Ins 25.04 (18) should include "(18)" before reference to "(a)."

g. Reference to a "few" examples in s. Ins 25.15 (3) (b) 1., lacks specificity; can a more definite requirement be provided? See also, par. (c) 2.

h. Appendix A contains a number of "sample clauses." These should be referenced in notes to the corresponding provisions of the rule.

i. It is assumed that when the rule is sent to the Legislature for standing committee review, it will contain a final regulatory flexibility analysis. [See s. 1.02 (6), Manual.]

j. Section Ins 25.70 (2) refers to additional insurance functions that may be added with the approval of the commissioner. When these additional functions are known, they should be promulgated as part of ch. Ins 25.

5. Clarity, Grammar, Punctuation and Use of Plain Language

- a. In the first narrative paragraph of the analysis, “achieve” should replace “achieving” in the last sentence.
- b. The first narrative paragraph of the analysis indicates that the objective of the NAIC in preparing the model legislation on which the rule is based is to achieve uniformity with the federal privacy rules for “financial” information. How, then, does the portion of the rule relating to protection of nonpublic personal health information relate to the NAIC model and the federal privacy rules?
- c. In the first paragraph of the analysis under “protection of nonpublic personal financial information,” the acronym “TPA” should be spelled out.
- d. In the last paragraph, first sentence, of the analysis under “protection of nonpublic personal financial information,” “apply” should replace “applies.”
- e. It is not clear where in the rule it is made clear that an insurer is responsible for ensuring that its agents are in compliance with s. 610.70, Stats., as asserted in the last sentence of the first paragraph of the analysis under “protection of nonpublic personal health information.” Section Ins 25.80 does not provide what the analysis indicates.
- f. Under “additional provisions,” the analysis indicates that the rule includes provisions prohibiting the sharing of account access information. Is the analysis referring to s. Ins 25.40? If so, under the rule, that provision is included in the limits on disclosures of financial information under subch. III. It is not clear why that provision is separated from that portion of the analysis discussing protection of nonpublic personal financial information.
- g. Section Ins 25.02 (1) (intro.) indicates that the chapter governs the treatment of specified information about individuals by “all” licensees. However, certain licensees are not governed as specified by the provisions of subch. V of the rule.
- h. The purpose and effect of s. Ins 25.02 (3) is unclear.
- i. In s. Ins 25.04 (2) (b) 3. (intro.), should “ensure” be “ensures”?
- j. In s. Ins 25.04 (6) (b) 5. (intro.), it appears that the word “a” should be inserted before the word “workers’.”
- k. In s. Ins 25.04 (8) (c), one element of the definition of “control” is the power to exercise a controlling influence over the management or policies of the company, “as the commissioner determines.” There is no standard provided for the commissioner to make that determination.
- l. In the examples included with the definition of “customer relationship” in s. Ins 25.04 (10) (b) 2., it appears that “consumer” and “individual” are inconsistently used. Based on

the introductory clause of subd. 2., it appears that "consumer" should be used throughout the examples.

m. In s. Ins 25.04 (16) (b), "an" should be substituted for "a" preceding "insurance."

n. In s. Ins 25.04 (20) (a), there is nothing in the definition of "personally identifiable financial information" that links the specified information to "financial" information; i.e., as drafted, any kind of information provided or obtained as specified in the definition could be considered "financial information."

o. In s. Ins 25.15 (3) (b) 1. (intro.), the phrase "These might" should be replaced by the phrase "Examples may." In sub. (3) (c), the phrase "using more detailed categories" is used. More detailed than what categories? Finally, this section contains two subsections that are numbered "(5)."

p. Section Ins 25.17 (1) (b) 1. (intro.) refers to "adequate notice" that the consumer can opt-out. There is reference in sub. (1) (a) (intro.) to a "clear and conspicuous notice" that "accurately explains the right to opt-out." However, there is no express requirement of an "adequate" notice.

q. Section Ins 25.17 (1) (b) 1. a. contains the cross-reference "as described in s. Ins 25.15 (1) (b) and (c)." The referenced provisions do not "describe" anything.

r. Section Ins 25.17 (4) (b) and (c) should be compared for consistency. Paragraph (b) allows either option; par. (c) seems to say that if the second option is chosen, then the first one applies as well.

s. Is s. Ins 25.17 (4) (d) intended to refer to an opt-out direction from a joint consumer only?

t. In s. Ins 25.20 (2) (a) (intro.), "any" is misspelled.

u. Section Ins 25.25 (2) (a) (intro.) fails to indicate what notice or notices are being referred to. Compare par. (b) (intro.), which refers to notice of "privacy policies and practices."

v. Section Ins 25.25 (3) (b) refers to a customer requesting a licensee to refrain from sending any information regarding the customer relationship. Should the rule address how and when this may occur?

w. In s. Ins 25.30 (1) (b), the referenced rules should be preceded by "ss."

x. In s. Ins 25.30 (2) (b), should reference be made to "other than as permitted in ss. Ins 25.50, 25.55 and 25.60"?

y. In s. Ins 25.35 (2) (b) 2., a space should be provided between the "n" and "s" in "ins." See also sub. (4) (intro.), s. Ins 25.25 (5) (a) and sample clauses A-5 and A-6 in this regard.

z. It appears that s. Ins 25.60 (1) (e) 2. does not grammatically follow the introductory clause.

aa. Section Ins 25.60 (3) is meaningless. It appears to be intended to follow an introductory clause but there is no introductory clause.

ab. The cross-reference in s. Ins 25.73 (2) should be clarified. Is reference to a disclosure authorization under s. 610.70, Stats., intended to be limited to the purposes specified under s. 610.70 (2) (b), Stats.?

**PROPOSED ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE CREATING A
RULE**

To create ch. INS 25, Wis. Adm. Code, relating to privacy of personal nonpublic information.

ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE

Statutory authority: ss. 600.01(2), 601.41(3), 601.42, 633.17 and 628.34(12), Stats.

Statutes interpreted: ss. 600.01, 610.70 and 628.34 (12), Stats.

Proposed rule governing privacy of Consumer Financial and Health Information

The proposed rule is based on the National Association of Insurance Commissioners ("NAIC") model Privacy of Consumer Financial and Health Information Regulation. That model was prepared by the NAIC to meet the requirements of Title V of the Gramm-Leach-Bliley Act ("GLB"). The objective of the NAIC in preparing that model was to achieving uniformity with the federal privacy rules for financial information.

1. Protection of Nonpublic Personal Financial Information:

The financial information portion of the proposed rule tracks the GLB privacy regulations which were promulgated by the federal banking agencies in May, 2000. Licensees (all individuals or entities required to obtain a license under the Wisconsin insurance code, including agents, brokers, TPAs and insurers) must provide notices describing their privacy policies to their consumers and customers, and provide consumers and customers with the opportunity to prohibit the sharing of nonpublic personal information with nonaffiliated third parties ("opt out"). Agents may rely on compliance by the insurers they represent. Disclosure among affiliated entities is not restricted.

In addition, the proposed rule will have a July 1, 2001 effective date and will make it clear that the GLB provisions are not in effect in this state until that date.

The proposed rule includes certain exceptions to the general prohibition on sharing information with non-affiliates without going through the privacy notice and opt out procedures. These exceptions are intended to allow sharing for normal business

cf INS 25.01

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Handwritten note: "like what" with an arrow pointing to the word "restricted" in the text above.

reasons.^{1/} The proposed rule permits sharing nonpublic personal financial information with nonaffiliated third parties if the licensee gives initial notice of its privacy policies to the consumer and the information is shared under an agreement for the third party to provide services or under a joint marketing agreement. The proposed rule also permits sharing nonpublic personal financial information, without giving the privacy notices, to accomplish the purpose of processing and servicing a consumer transaction and for certain enumerated purposes including purposes authorized by law, to protect against fraud or breach of confidentiality, to provide information to rate advisory, accreditation, and rating organizations, to attorneys and accountants, to regulators, in connection with a merger or sale of a business, and to respond to a subpoena or court ordered disclosure.

The restrictions on sharing information with non-affiliates ~~applies~~^{y ✓} to information obtained from individuals who are not customers of the licensee but who provide information to obtain a benefit under a policy or as claimant. However licensees are not required to provide privacy notices to those consumers or follow the opt out procedure unless they share the information other than as permitted under the rule. Licensees are required to give those customers an initial privacy notice if the information is shared under a joint service or marketing service contract. In addition a licensee is only required to provide annual privacy notices to commercial lines customers, such as group plan sponsors and employer/worker compensation policyholders, but not to the employees or dependents claiming under those policies, unless the licensee shares information other than as permitted by the rule. XV

2. Protection of Nonpublic Personal Health Information:

NGJ { The proposed rule includes separate provisions governing health information. These provisions apply to those licensees who are not already subject to the restrictions applicable to an insurer under s. 610.70, Stats. The provisions are in addition to restrictions that may be applicable under s. 146.82, Stats., to patient health care records. The rule makes it clear that an insurer is responsible for ensuring that its agents are in compliance with s. 610.70, Stats. how do I opt out in health ins?
 } where?
 INS 25.82
 doesn't say
 this

Those licensees not governed by s. 610.70, Stats., primarily brokers and third party administrators, are subject to provisions of the proposed rule that prohibit the licensee from sharing health information with any person, affiliated or non-affiliated, unless

they obtain the affirmative consent to the sharing of health information with any person. The proposed rule includes exceptions to this restriction intended to allow the licensee to disclose the health care information consistent with the purpose for which it was obtained. Some of these include claims administration; claims adjustment and management; detection, investigation or reporting of actual or potential fraud, misrepresentation or criminal activity; underwriting; policy placement or issuance; loss control; rate-making and guaranty fund functions; reinsurance and excess loss insurance; risk management; case management; disease management; quality assurance; quality improvement; performance evaluation; provider credentialing verification; utilization review; peer review activities; and actuarial, scientific, medical or public policy research. Additional insurance functions may be added with the approval of the commissioner to the extent they are necessary for appropriate performance of insurance functions and are fair and reasonable to the interest of consumers.

} add to rule

The health information provisions of the proposed rule do not apply to licensees who are in compliance with the health information privacy regulations promulgated by the U.S. Department of Health and Human Services ("HHS") pursuant to the Health Information Portability and Accountability Act (HIPAA). The HHS regulations will not be effective for two years.

→ so what does that mean in the meantime? ✓
ct. 25.77

3. Additional Provisions

where ✓

The proposed rule includes provisions that prohibit the sharing of account access information and that prohibit unfair discrimination based on a refusal to give consent to the sharing of information.

The Commissioner particularly requests comment on the effect of inclusion of third party claimants and commercial polices within the scope of the rule as well as comment that describes any additional exceptions that should be permitted for the sharing of protected information.

SECTION 1. Chapter Ins 25 is created to read:

CHAPTER 25

PRIVACY OF CONSUMER FINANCIAL AND HEALTH INFORMATION

Subchapter V. Rules For Health Information

- Ins 25.70 When authorization required for disclosure of nonpublic personal health information
- Ins 25.73 Authorizations
- Ins 25.75 Authorization request delivery
- Ins 25.77 Relationship to federal rules
- Ins 25.80 Insurer and agents compliance with s. 610.70, Stats.

Subchapter VI- Additional Provisions

- Ins 25.90 Nondiscrimination
- Ins 25.95 Effective date

Subchapter I- General Provisions

Ins 25.01 Authority. This chapter is promulgated pursuant to the authority granted by ss. 601.41 (3), 610.70, 628.34 (12) and 633.17, Stats. *- cf. analysis ✓*

Ins 25.02 Purpose and scope. (1) Purpose. *caps* This chapter governs the treatment of nonpublic personal health information and nonpublic personal financial information about individuals by all licensees of the office of the commissioner of insurance. This chapter: *cf. health info*

- Place in Note?*
- (a) Requires a licensee to provide notice to individuals about its privacy policies and practices;
 - (b) Describes the conditions under which a licensee may disclose nonpublic personal health information and nonpublic personal financial information about individuals to affiliates and nonaffiliated third parties; and

Table of Contents

Subchapter I- General Provisions

- Ins 25.01 Authority
- Ins 25.02 Purpose and scope
- Ins 25.03 Rule of construction
- Ins 25.04 Definitions

Subchapter II- Privacy and opt out notices for financial information

- Ins 25.10 Initial privacy notice to consumers required
- Ins 25.13 Annual privacy notice to customers required
- Ins 25.15 Information to be included in privacy notices
- Ins 25.17 Form of opt out notice to consumers and opt out methods
- Ins 25.20 Revised privacy notices
- Ins 25.25 Delivery

Subchapter III. Limits on disclosures of financial information

- Ins 25.30 Limitation on disclosure of nonpublic personal financial information to nonaffiliated third parties
- Ins 25.35 Limits on re-disclosure and reuse of nonpublic personal financial information
- Ins 25.40 Limits on sharing account number information for marketing purposes

Subchapter IV- Exceptions to limits on disclosures of financial information

- Ins 25.50 Exception to opt out requirements for disclosure of nonpublic personal financial information for service providers and joint marketing
- Ins 24.55. Exceptions to notice and opt out requirements for disclosure of nonpublic personal financial information for processing and servicing transactions
- Ins 25.60. Other exceptions to notice and opt out requirements for disclosure of nonpublic personal financial information

(c) Provides methods for individuals to prevent a licensee from disclosing that information.

note title

(2) Compliance. This chapter applies to: *all of the following*

(a) Nonpublic personal financial information about individuals who obtain or are beneficiaries of products or services primarily for personal, family or household purposes from licensees, about individuals who are beneficiaries under group health plans and workers' compensation policies, and about individuals who are third-party claimants against products or services obtained for business, commercial or agricultural purposes. This chapter does not apply to information about companies or about individuals who obtain products or services for business, commercial or agricultural purposes; and

(b) All nonpublic personal health information about individuals who obtain or are beneficiaries of products or services primarily for personal, family or household purposes from licensees, about individuals who are beneficiaries under group health plans and workers' compensation policies, and about individuals who are third-party claimants against products or services obtained for business, commercial or agricultural purposes.

see A.19 format use / sub.

No title

(3) A licensee domiciled in this state that is in compliance with this chapter in a state that has not enacted laws or regulations that meet the requirements of Title V of the Gramm-Leach-Bliley Act (PL 102-106) may nonetheless be deemed to be in compliance with Title V of the Gramm-Leach-Bliley Act in such other state.

Ins 25.03 Rule of construction. The examples in this chapter and the sample clauses in Appendix A of this chapter are not exclusive. Compliance with an example or use of a sample clause, to the extent applicable, constitutes compliance with this chapter.

Note

Ins 25.04 Definitions. As used ^g in this chapter, unless the context requires otherwise:

(1) "Affiliate" means any company that controls, is controlled by or is under common control with another company.

(2) (a) "Clear and conspicuous" ^{notice} means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

(b) Examples.

1. Reasonably understandable. A licensee makes its notice reasonably understandable if it does all of the following:

- a. Presents the information in the notice in clear, concise sentences, paragraphs, and sections.
- b. Uses short explanatory sentences or bullet lists whenever possible.
- c. Uses definite, concrete, everyday words and active voice whenever possible.
- d. Avoids multiple negatives.
- e. Avoids legal and highly technical business terminology whenever possible.
- f. Avoids explanations that are imprecise and readily subject to different interpretations.

2. Designed to call attention. A licensee designs its notice to call attention to the nature and significance of the information in it if the licensee does all of the following:

The model bill should be so drafted.

- a. Uses a plain-language heading to call attention to the notice.
- b. Uses a typeface and type size that are easy to read.
- c. Provides wide margins and ample line spacing.
- d. Uses boldface or italics for key words.
- e. 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.

3. Notices on web sites. If a licensee provides a notice on a web page, the licensee designs its notice to call attention to the nature and significance of the information in it if the licensee uses text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure⁵ that other elements on the web site, such as text, graphics, hyperlinks or sound, do not distract attention from the notice, and the licensee does any of the following:

- a. Places the notice on a screen that consumers frequently access, such as a page on which transactions are conducted.
- b. Places a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature and relevance of the notice.

(3) "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, irrespective of the source of the underlying information.

check
↓
where?
used

↓ see, e.g. 25.04(2)(b), (16)(b)

(4) "Commissioner" means the commissioner of insurance.

W
(5) "Company" means a corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship or similar organization.

AWK
(6) (a) "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, or who is a beneficiary of a workers' compensation policy, is insured under a group health plan, or is a third-party claimant under a product or service obtained for business, commercial or agricultural purposes, and about whom the licensee has nonpublic personal information, or that individual's legal representative. *X*

(b) Examples.

W
1. 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 advisory relationship.

2. An applicant for insurance prior to the inception of insurance coverage is a licensee's consumer.

3. 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.

4. An individual is a licensee's consumer if all of the following conditions exist:

a. Any of the following relationships:

- (i) the individual is a beneficiary of a life insurance policy underwritten by the licensee. *or*
- (ii) the individual is a claimant under an insurance policy issued by the licensee. *or*
- (iii) the individual is a named insured or an annuitant under an insurance policy or an annuity, respectively, issued by the licensee. *or*
- (iv) the individual is a mortgagor of a mortgage covered under a mortgage insurance policy. *and*

b. The licensee discloses nonpublic personal financial information about the individual to a nonaffiliated third party other than as permitted under ss. Ins 25.50, 25.55 and 25.60.

ask
Assessment

5. *If* Provided that the licensee provides the initial, annual and revised notices under ss. Ins 25.10, 25.13 and 25.20 to the plan sponsor, group or blanket insurance policyholder or group annuity contract-holder, *a* workers' compensation plan participant, and further provided that the licensee does not disclose to a nonaffiliated third party nonpublic personal financial information about such an individual other than as permitted under ss. Ins 25.50, 25.55 and 25.60, an individual is not the consumer of the licensee solely because he or she is any of the following:

a. A participant or a beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer or fiduciary.

- b. Covered under a group or blanket insurance policy or group annuity contract issued by the licensee.
 - c. A beneficiary in a workers' compensation plan.
6. a. The individuals described in subd. 5 a. to c. are consumers of a licensee if the licensee does not meet all the conditions of subd. 5.
- b. In no event shall the individuals, solely by virtue of the status described in subd. 5 a. to c., be deemed to be customers for purposes of this chapter.
7. 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.
8. An individual is not a licensee's consumer solely because he or she has designated the licensee as trustee for a trust.
- (7) "Consumer reporting agency" has the same meaning as in Section 603(f) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(f)).
- (8) "Control" means any of the following:
- (a) Ownership, control or power to vote 25 % or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons.
 - (b) Control in any manner over the election of a majority of the directors, trustees or general partners, or individuals exercising similar functions, of the company.

(c) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the commissioner determines. *how? standard? ✓*

(9) "Customer" means a consumer who has a customer relationship with a licensee.

(10) (a) "Customer relationship" means a continuing relationship between a consumer and 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.

(b) Examples:

1. A consumer has a continuing relationship with a licensee if any of the following conditions exist:

- a. The consumer is a current policyholder of an insurance product issued by or through the licensee.
- b. The consumer obtains financial, investment or economic advisory services relating to an insurance product or service from the licensee for a fee.

2. A consumer does not have a continuing relationship with a licensee under the following conditions:

- a. The consumer applies for insurance but does not purchase the insurance.
- b. The licensee sells the consumer airline travel insurance in an isolated transaction.
- c. The individual is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee.

✓
see, also

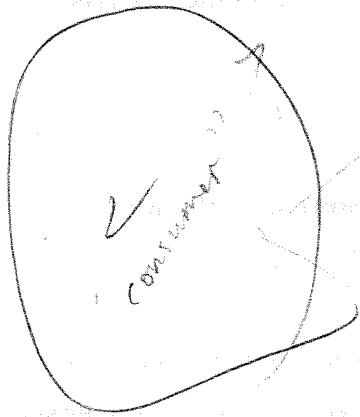
d. The consumer is a beneficiary or claimant under a policy and has submitted a claim under a policy choosing a settlement option involving an ongoing relationship with the licensee.

e. 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.

f. 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 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.

g. The individual is an insured or an annuitant under an insurance policy or annuity, respectively, but is not the policyholder or owner of the insurance policy or annuity.

h. The individual'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 attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.



(11) (a) "Financial institution" means any institution the business of which is engaging 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)).

how many

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(b) Financial institution does not include any of the following:

1. 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.*).
2. 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.*).
3. 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.

(12) (a) “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)).

(b) 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.

(13) “Health care” means any of the following:

(a) Preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, services, procedures, tests or counseling that involves any of the following:

mixing of
singular/plural

1. It relates to the physical, mental or behavioral condition of an individual.
2. It affects the structure or function of the human body or any part of the human body, including the banking of blood, sperm, organs or any other tissue.

awz (b) Prescribing, dispensing or furnishing to an individual drugs or biologicals, or medical devices or health care equipment and supplies.

(14) "Health care provider" means a physician or other health care practitioner licensed, accredited or certified to perform specified health services consistent with state law, or a health care facility.

(15) "Health information" means any information or data except age or gender, whether oral or recorded in any form or medium, created by or derived from a health care provider or the consumer that relates to any of the following:

- (a) The past, present or future physical, mental or behavioral health or condition of an individual.
- (b) The provision of health care to an individual.
- (c) Payment for the provision of health care to an individual.

(16) (a) "Insurance product or service" means any product or service that is offered by a licensee pursuant to the insurance laws of this state.

? (b) Insurance service includes a licensee's evaluation, brokerage or distribution of information that the licensee ^{collects} in connection with a request or an application from a consumer for an insurance product or service. *an*

(17) (a) "Licensee" means all insurers, intermediaries, third party administrators and other persons licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered under chs. 600 to 655, Stats.

(b) A licensee is not subject to the notice and opt out requirements for nonpublic personal financial information set forth in subchs. I to IV if the licensee is an employee, agent or other representative of another licensee ("the principal") and all of the following conditions exist:

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1. The principal otherwise complies with, and provides the notices required by, the provisions of this chapter.

2. The licensee does not disclose any nonpublic personal information to any person other than the principal or its affiliates in a manner permitted by this chapter.

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(c) 1. Subject to subd. 2, "licensee" also includes an unauthorized insurer that accepts business placed through a licensed surplus lines broker or agent in this state, but only in regard to placements placed pursuant to s. 618.41, Stats..

→ surplus lines insurance

2. A surplus lines broker or agent or surplus lines insurer shall be deemed to be in compliance with the notice and opt out requirements for nonpublic personal financial information set forth in ~~subchs. I to IV~~ provided all of the following occur:

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this chapter

a. The broker, agent or insurer does not disclose nonpublic personal information of a consumer or a customer to nonaffiliated third parties for any purpose, including joint servicing or marketing under s. Ins 25.40, except as permitted by s. Ins 25.55 or 25.60.

- b. The broker, agent or insurer delivers a notice to the consumer at the time a customer relationship is established on which the following is printed in 16-point type:

PRIVACY NOTICE

“NEITHER THE U.S. BROKERS THAT HANDLED THIS INSURANCE NOR THE INSURERS THAT HAVE UNDERWRITTEN THIS INSURANCE WILL DISCLOSE NONPUBLIC PERSONAL INFORMATION CONCERNING THE BUYER TO NONAFFILIATES OF THE BROKERS OR INSURERS EXCEPT AS PERMITTED BY LAW.

X ✓ (18) (a) “Nonaffiliated third party” means any person except any of the following:

1. A licensee’s affiliate.
2. A person employed jointly by a licensee and any company that is not the licensee’s affiliate. Under these circumstances “nonaffiliated third party” does include the other company that jointly employs the person.

(b) 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)).

(19) "Nonpublic personal information" means nonpublic personal financial information and nonpublic personal health information. *see p. 6*

(20) (a) "Nonpublic personal financial information" means all of the following:

1. Personally identifiable financial information.
2. Any list, description or other grouping of consumers ~~and~~ publicly available information pertaining to them that is derived using any personally identifiable financial information that is not publicly available.

(b) Nonpublic personal financial information does not include any of the following:

1. Health information.
2. Publicly available information, except as included on a list described in par. (a) 2.
3. Any list, description or other grouping of consumers, and publicly available information pertaining to them, that is derived without using any personally identifiable financial information that is not publicly available.

(c) Examples of lists:

1. Nonpublic personal financial information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as account numbers.
2. Nonpublic personal financial information does not include any list of individuals' names and addresses that contains

Handwritten initials/signature

only publicly available information, is not derived in whole or in part using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

(21) "Nonpublic personal health information" means any of the following health information:

- (a) Health information that identifies an individual who is the subject of the information.
- (b) Health information with respect to which there is a reasonable basis to believe that the information could be used to identify an individual.

(22) (a) "Personally identifiable financial information" means any of the following information:

- 1. Information a consumer provides to a licensee to obtain an insurance product or service from the licensee.
- 2. Information about a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer.
- 3. Information the licensee otherwise obtains about a consumer in connection with providing an insurance product or service to that consumer.

(b) Examples.

- 1. Information included. Personally identifiable financial information includes any of the following:

** Not limited to financial information*

part of
rule

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- a. Information a consumer provides to a licensee on an application to obtain an insurance product or service.
- b. Account balance information and payment history.
- c. The fact that an individual is or has been one of the licensee's customers or has obtained an insurance product or service from the licensee.
- d. 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.
- e. Any information that a consumer provides to a licensee or that the licensee or its agent otherwise obtains in connection with collecting on a loan or servicing a loan.
- f. Any information the licensee collects through an internet information-collecting device from a web server.
- g. Information from a consumer report.

2. Information ^{not} included. Personally identifiable financial information does not include any of the following:

- a. Health information.
- b. A list of names and addresses of customers of an entity that is not a financial institution. *defined*
- c. Information that does not identify a consumer, such as aggregate information or blind data that does not

contain personal identifiers such as account numbers, names or addresses.

(23) (a) "Publicly available information" means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from any of the following:

1. Federal, state or local government records.
2. Widely distributed media.
3. Disclosures to the general public that are required to be made by federal, state or local law.

(b) Reasonable basis. 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 all of the following:

1. That the information is of the type that is available to the general public.
2. Whether an individual can direct that the information not be made available to the general public and, if so, that the licensee's consumer has not done so.

(c) Examples.

1. Government records. Publicly available information in government records includes information in government real estate records and security interest filings.
2. Widely distributed media. Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper or a web site that is available to the general public on an unrestricted basis. A web site is not restricted merely

because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.

3. Reasonable basis.

a. A licensee has a reasonable basis to believe that mortgage information is lawfully made available to the general public if the licensee has determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

b. A licensee has a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if the licensee has located the telephone number in the telephone book or the consumer has informed the licensee that the telephone number is not unlisted.

Subchapter II-Privacy and opt out notices for financial information

Ins 25.10 Initial privacy notice to consumers required. (1) Initial notice requirement. A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to all of the following:

- (a) Customer. An individual who becomes the licensee's customer, not later than when the licensee establishes a customer relationship, except as provided in sub. (5). *See sub (3)*
- (b) Consumer. A consumer, before the licensee discloses any nonpublic personal financial information about the consumer to any nonaffiliated third party, if the licensee makes a disclosure other than as authorized by ss. Ins 25.55 and 25.60.

- (2) When initial notice to a consumer is not required. A licensee is not required to provide an initial notice to a consumer under sub (1) (b) if any of the following conditions apply:
- (a) The licensee does not disclose any nonpublic personal financial information about the consumer to any nonaffiliated third party, other than as authorized by ss. Ins 25.55 and 25.60, and the licensee does not have a customer relationship with the consumer.
 - (b) A notice has been provided by an affiliated licensee, as long as the notice clearly identifies all licensees to whom the notice applies and is accurate with respect to the licensee and the other institutions.
- (3) When the licensee establishes a customer relationship.
- (a) General rule. A licensee establishes a customer relationship at the time the licensee and the consumer enter into a continuing relationship. *already defined*
 - (b) Examples of establishing customer relationship. A licensee establishes a customer relationship when the consumer does any of the following:
 - 1. Becomes a policyholder of a licensee that is an insurer when the insurer delivers an insurance policy or contract to the consumer, or in the case of a licensee that is an intermediary who is not acting as agent for an insurer licensee, obtains insurance through that licensee.
 - 2. Agrees to obtain financial, economic or investment advisory services relating to insurance products or services for a fee from the licensee.
- (4) Existing customers. When an existing customer obtains a new insurance product or service from a licensee that is to be used primarily for personal,

family or household purposes, the licensee satisfies the initial notice requirements of sub. (1) if any of the following conditions are met:

- (a) The licensee may provide a revised policy notice, under s. Ins 25.20, that covers the customer's new insurance product or service.
 - (b) If the initial, revised or annual notice that the licensee most recently provided to that customer was accurate with respect to the new insurance product or service, the licensee does not need to provide a new privacy notice under sub. (1).
- (5) Exceptions to allow subsequent delivery of notice.
- (a) A licensee may provide the initial notice required by sub. (1) (a) within a reasonable time after the licensee establishes a customer relationship if any of the following conditions exist:
 - 1. Establishing the customer relationship is not at the customer's election.
 - 2. Providing notice not later than when the licensee establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.
 - (b) Examples of exceptions.
 - 1. Not at customer's election. Establishing a customer relationship is not at the customer's election if a licensee acquires or is assigned a customer's policy from another financial institution or residual market mechanism and the customer does not have a choice about the licensee's acquisition or assignment.

2. Substantial delay of customer's transaction. Providing notice not later than when a licensee establishes a customer relationship would substantially delay the customer's transaction 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.

3. No substantial delay of customer's transaction. Providing notice not later than when a licensee establishes a customer relationship would not substantially delay the customer's transaction 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.

- (6) Delivery. When a licensee is required to deliver an initial privacy notice by this section, the licensee shall deliver it according to s. Ins 25.25. If the licensee uses a short-form initial notice for non-customers according to s. Ins 25.15 (4), the licensee may deliver its privacy notice according to s. Ins 25.15 (4) (c).

Ins 25.13. Annual privacy notice to customers required. (1)(a) General rule. 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 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.

(b) Example. A licensee provides a notice annually if it defines the twelve consecutive-month period as a calendar year and provides the annual notice to the customer once in each calendar year following the calendar year in which the licensee provided the initial notice. For example, if a customer opens an account on any

day of year 1, the licensee shall provide an annual notice to that customer by December 31 of year 2.

(2) (a) Termination of customer relationship. A licensee is not required to provide an annual notice to a former customer. A former customer is an individual with whom a licensee no longer has a continuing relationship. *, including*

(b) Examples.

1. A licensee no longer has a continuing relationship with an individual if the individual no longer is a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee.

2. A licensee no longer has a continuing relationship with an individual if the individual'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 consecutive months, other than to provide annual privacy notices, material required by law or regulation, or promotional materials.

3. For the purposes of this chapter, a licensee no longer has a continuing relationship with an individual if the individual'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 attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

4. A licensee no longer has a continuing relationship with a customer in the case of providing real estate settlement services, at the time the customer completes execution of

all documents related to the real estate closing, payment for those services has been received, or the licensee has completed all of its responsibilities with respect to the settlement, including filing documents on the public record, whichever is later.

- (4) Delivery. When a licensee is required by this section to deliver an annual privacy notice, the licensee shall deliver it according to s. Ins 25.25.

Ins 25.15 Information to be included in privacy notices. (1) General rule. The initial, annual and revised privacy notices that a licensee provides under s. Ins 25.10, 25.13 and 25.20 shall include all of the following items of information, in addition to any other information the licensee wishes to provide, that applies to the licensee and to the consumers to whom the licensee sends its privacy notice:

- (a) The categories of nonpublic personal financial information that the licensee collects. *- see (3)(a)*
- (b) The categories of nonpublic personal financial information that the licensee discloses. *- see (3)(b)*
- (c) The categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information, other than those parties to whom the licensee discloses information under s. Ins 25.55 and 25.60. *- see (3)(c)*
- (d) The categories of nonpublic personal financial 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 financial information about the licensee's former customers, other than those parties to whom the licensee discloses information under s. Ins 25.55 and 25.60.
- (e) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under s. Ins 25.50 (and no other exception in s. Ins 25.55 and 25.60 applies to that disclosure), a

separate description of the categories of information the licensee discloses and the categories of third parties with whom the licensee has contracted.

(f) An explanation of the consumer's right under s. Ins 25.30 (1) 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.

(g) 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)) (that is, notices regarding the ability to opt out of disclosures of information among affiliates).

(h) The licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

(i) Any disclosure that the licensee makes under sub. (2).

(2) Description of parties subject to exceptions. If a licensee discloses nonpublic personal financial information as authorized under s. Ins 25.55 and 25.60, the licensee is not required to list those exceptions in the initial or annual privacy notices required by s. Ins 25.10 and 25.13. When describing the categories of parties to whom disclosure is made, the licensee is required to state only that it makes disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.

(3) Examples.

(a) Categories of nonpublic personal financial information that the licensee collects. A licensee satisfies the requirement to categorize the nonpublic personal financial information it collects if the licensee categorizes it according to all of the following sources of the information:

1. Information from the consumer.

2. Information about the consumer's transactions with the licensee or its affiliates.
3. Information about the consumer's transactions with nonaffiliated third parties.
4. Information from a consumer reporting agency.

(b) Categories of nonpublic personal financial information a licensee discloses.

1. A licensee satisfies the requirement to categorize nonpublic personal financial information it discloses if the licensee categorizes the information according to source, as described in par. (a), as applicable, and provides a few examples to illustrate the types of information in each category. These might include any of the following:

- a. Information from the consumer, including application information, such as assets and income and identifying information, such as name, address and social security number.
- b. Transaction information, such as information about balances, payment history and parties to the transaction.
- c. Information from consumer reports, such as a consumer's creditworthiness and credit history.

2. 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.

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Examples ✓

3. If a licensee reserves the right to disclose all of the nonpublic personal financial 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) Categories of affiliates and nonaffiliated third parties to whom the licensee discloses.

1. A licensee satisfies the requirement to categorize the affiliates and nonaffiliated third parties to which the licensee discloses nonpublic personal financial information about consumers if the licensee identifies the types of businesses in which they engage.

2. Types of businesses may be described by general terms only if the licensee uses a few illustrative examples of significant lines of business. For example, a licensee may use the term financial products or services if it includes appropriate examples of significant lines of businesses, such as life insurer, automobile insurer, consumer banking or securities brokerage.

3. A licensee also may categorize the affiliates and nonaffiliated third parties to which it discloses nonpublic personal financial information about consumers using more detailed categories. *→ than what?*

(d) Disclosures under exception for service providers and joint marketers. If a licensee discloses nonpublic personal financial information under the exception in s. Ins 25.50 to a nonaffiliated third party to market products or services that it offers alone or jointly with another financial institution, the licensee satisfies the disclosure requirement of sub (1) (e) if it does all of the following:

1. Lists the categories of nonpublic personal financial information it discloses, using the same categories and examples the licensee used to meet the requirements of sub (1) (b) , as applicable.

2. States whether the third party is any of the following:

a. A service provider that performs marketing services on the licensee's behalf or on behalf of the licensee and another financial institution.

b. A financial institution with whom the licensee has a joint marketing agreement.

(e) Simplified notices. If a licensee does not disclose, and does not wish to reserve the right to disclose, nonpublic personal financial information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under s. Ins 25.55 and 25.60, the licensee may simply state that fact, in addition to the information it shall provide under sub. (1) (a), (h), and (i) and (2).

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required

(f) Confidentiality and security. A licensee describes its policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information if it does all of the following:

1. Describes in general terms who is authorized to have access to the information.

2. States whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance with the licensee's policy. The licensee is not required to describe technical information about the safeguards it uses.