

**Senate Committee on Agriculture, Financial Institutions
and Insurance**

Room 18 South State Capitol, PO Box 7882, Madison WI 53707-7882
(608) 266-0703

Senator Dale W. Schultz, Chairman

Tuesday, November 18th, 2003

Senator Dale Schultz, Member
Room # 18 South
State Capitol
Madison, WI 53707-7882

The following clearinghouse rule was referred to the Senate Committee on Agriculture Financial Institutions and Insurance. The thirty-day review period began on November 13th, 2003.

**Clearinghouse Rule 03-083;
To amend s. Ins 25.50 (1) and (1)(a), Wis. Adm. Code, relating to
exception to limits on disclosure of nonpublic personal financial
information for brand name licensees.**

A hard copy of the rule is attached.

The text of **CR 03-083** was not available in electronic form online in the FOLIO Clearinghouse Rules infobase at the time of this notice.

The last business day for action on this rule is **Friday, December 12th, 2003.**

If you have concerns or questions related to this rule, please contact John in my office (6-0703) with any questions, or to request the committee hold a hearing on this rule.

Thank you.

Senator Dale Schultz
Chairman



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Jim Doyle, Governor
Jorge Gomez, Commissioner

Wisconsin.gov

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November 10, 2003

HONORABLE ALAN LASEE
PRESIDENT OF THE SENATE
SOUTH STATE CAPITOL RM 219
MADISON WI 53702

Re: Section Ins 25.13 and 25.50, Wis. Adm. Code, relating to an exception to the annual notice and limits on disclosure of nonpublic personal financial information for brand name licensees

Clearinghouse Rule No. 03-083

Dear Senator Lasee:

In accordance with s. 227.19 (2), Wis. Stat., I am enclosing a copy of this proposed rule in final draft form. The report required under s. 227.19 (3), Wis. Stat., is also enclosed.

Sincerely,

Jorge Gomez
Commissioner

JG:JW

Attachments: 3 copies of the rule
and the legislative report



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

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 03-083

AN ORDER to amend Ins 25.50 (1), relating to exception to limits on disclosure of nonpublic personal financial information for brand name licensees.

Submitted by **INSURANCE COMMISSIONER**

09-10-2003 RECEIVED BY LEGISLATIVE COUNCIL.

10-03-2003 REPORT SENT TO AGENCY.

RS:JLK

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 03-083

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 October 2002.]

2. Form, Style and Placement in Administrative Code

a. The rule indicates that it is amending s. Ins 25.50 (1). However, part of existing s. Ins 25.50 is not shown in the rule, namely what is currently s. Ins 25.50 (1) (b). Either all of the material should be shown, or the treatment clause in SECTION 1 should be rephrased to refer only to s. Ins 25.50 (1) (a).

b. Because s. Ins 25.50 (1) (b) already exists, it is inappropriate to number another provision as s. Ins 25.50 (1) (b). The newly created paragraph could instead be numbered s. Ins 25.50 (1) (am). Also, the newly created paragraph should have a title inasmuch as the other paragraphs in s. Ins 25.50 (1) have titles. [See s. 1.05 (1), Manual.]

c. In s. Ins 25.50 (1) (b) (as created in the rule), the reference to "subch. 5 ATCP 127" should be changed to "subch. V of ch. ATCP 127." [See s. 1.07 (2), Manual.]

3. Conflict With or Duplication of Existing Rules

Section Ins 25.95 (3) includes a cross-reference to s. Ins 25.50 (1) (a) 2. which is being renumbered in the rule to s. 25.50 (1) (a) 1. b. The cross-reference should be changed. As an alternative, consideration could be given to repealing s. Ins 25.95 (3) since it appears to have been effective only until July 1, 2002.

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

a. In the second sentence of the second paragraph of the analysis, it appears that “under the licensee’s brand name” should be changed to “under the licensee’s brand name or the brand name of an affiliate of the licensee.” Also, “personal” should be inserted after “nonpublic.”

b. In the last sentence of the analysis, “licensee” should be changed to “licensee’s.”

c. In s. Ins 25.50 (1) (a) 2. (intro.), “To a” should be changed to “A.”

d. Section Ins 25.50 (1) (a) 2. includes references to “licensee or its affiliate” and references to “licensee or affiliate.” It appears that it would be more appropriate to have all of the references be to “licensee or its affiliate.”

e. Section Ins 25.50 (1) (a) 1. b. and 2. d. refer to “enters into a contractual agreement with the third party.” To avoid ambiguity, it would be useful if the phrase “with the third party” were also added to the phrase “enters into a contractual agreement” in s. Ins 25.50 (1) (a) 2. b.

f. In s. Ins 25.50 (1) (a) 2. c., the phrase “reasonably designed ensure the quality of goods or services, and customer services” is not grammatically correct. It appears that it should be changed to “reasonably designed to ensure the quality of goods or services and of customer services.” Also, “quality” is a neutral term; the nature of the quality may range from poor to excellent. Was a qualifier intended?

g. In s. Ins 25.50 (1) (a) 2. d. in the phrase “take action that is necessary to enforce those standards,” is the reference to “standards” meant to refer to the standards in s. Ins 25.50 (1) (a) 2. c. or to the safeguards in s. Ins 25.50 (1) (a) 2. d.? If the former, the phrase seems duplicative of s. Ins 25.50 (1) (a) 2. c.; if the latter, the word “standards” should be changed to “safeguards.”

h. In s. Ins 25.50 (1) (b), the phrase “or otherwise” should be replaced by the word “to.”

i. In s. Ins 25.50 (1) (b), it appears that the reference to “and” should be changed to “or” so that solicitations prohibited in either the statutes or administrative rules are not permitted.

PROPOSED ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE

AMENDING A RULE

To repeal s. Ins 25.95 (3), to amend Ins 25.50 (1)(a), and to create Ins 25.13 (4), and 25.50 (1)(am), Wis. Adm. Code, relating to an exception to privacy notice requirements and limits on disclosure of nonpublic personal financial information for brand name licensees.

ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE

Statutory authority: ss. 601.41(3), Stats.

Statutes interpreted: ss. 628.34 (12), Stats.

Under ch. Ins 25, Wis. Adm. Code, a licensee of the Office of the Commissioner of Insurance, including a warranty plan, may not disclose nonpublic personal financial information to an unaffiliated third party unless the customer is given the opportunity to object to the disclosure (referred to as "opt out notice"). Nothing in this section is intended to permit telephone solicitation which would otherwise be prohibited under s. 100.52, Stats., or subch. V of ch. ATCP 127.

The current rule allows licensees to disclose nonpublic personal financial information to affiliates without an opt-out notice. This rule will also allow a warranty plan licensee or an affiliate to disclose nonpublic personal financial information without an opt-out notice to a non-affiliate selling products or services under the licensee's brand name or the brand name of an affiliate of the licensee. The warranty plan licensee or affiliate may disclose only if the recipient agrees to use the information solely for sale of the branded product or service, to keep the information confidential, and to adhere to the licensee's or affiliate's quality standards for the branded products or services.

Finally the rule creates an exception to the annual notice provisions in s. Ins 25.13, Wis. Adm. Code, for licensees that meet the requirements of s. Ins 25.50 (1)(a), Wis. Adm. Code.

SECTION 1. Ins 25.13 (4) is created to read:

(4) EXCEPTION. The annual privacy notice requirement in this section does not apply when a licensee provides nonpublic personal financial information to any person described by s. Ins 25.50(1)(a).

SECTION 2. Ins 25.50 (1)(a) is amended to read:

Ins 25.50 (1) SERVICES. (a) *General rule.* The opt out requirements in ss. Ins 25.17 and 25.30 do not apply when a licensee provides nonpublic personal financial information ~~to a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf, if the licensee complies with all of the following to~~ either of the following:

1. A nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf, if the licensee complies with all of the following:

1a. It provides the initial notice in accordance with s. Ins 25.10.

2b. It enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in s. Ins 25.55 or 25.60 in the ordinary course of business to carry out those purposes.

2. A nonaffiliated third party for the purpose of marketing goods or services under the brand name of a licensee under ch. Ins 15, or an affiliate of such a licensee, if the licensee complies with all of the following:

a. It provides the initial notice in accordance with s. Ins 25.10.

b. The licensee or its affiliate enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee or its affiliate disclosed the information, including use under an exception in s. Ins 25.55 or 25.60 in the ordinary course of business to carry out those purposes.

c. The licensee or its affiliate contractually requires the third party to comply with the licensee's or its affiliate's standards that are reasonably designed to ensure the quality of the goods or services, and customer services.

d. The licensee or affiliate enters into a contractual agreement with the third party that requires the third party to implement reasonable safeguards to protect the security and confidentiality of its nonpublic personal financial information and take action that is necessary to enforce those safeguards.

SECTION 3. Ins 25.50 (1)(am) is created to read:

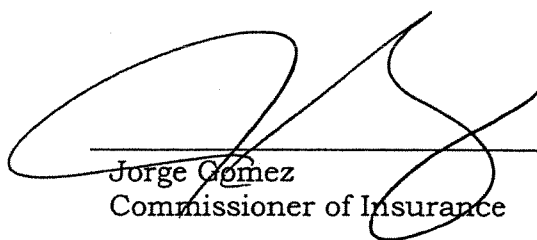
(am) Solicitations. Nothing in this section shall be construed or otherwise permit telephone solicitation which would otherwise be prohibited under s. 100.52, Stats., or subch. V of ch. ATCP 127.

SECTION 4. Ins 25.95 (3) is repealed.

SECTION 5. These changes first apply to policies issued or renewed January 1, 2004.

SECTION 6. These changes will take effect on the first day of the month after publication, as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin, this 10 day of November, 2003.



Jorge Gomez
Commissioner of Insurance

FISCAL ESTIMATE WORKSHEET — 2001 Session

Detailed Estimate of Annual Fiscal Effect

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB Number	Amendment No. if Applicable
Bill Number	Administrative Rule Number INS 25.50(1)

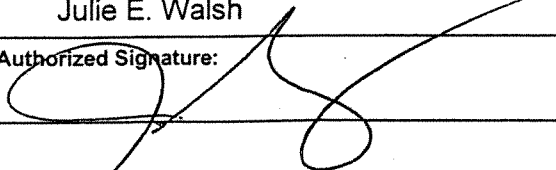
Subject: An Exception to Disclosure of Financial Information

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
None

Annualized Costs:		Annualized Fiscal impact on State funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations - Salaries and Fringes		\$ 0	\$ -0
(FTE Position Changes)		(0 FTE)	(-0 FTE)
State Operations - Other Costs		0	-0
Local Assistance		0	-0
Aids to Individuals or Organizations		0	-0
TOTAL State Costs by Category		\$ 0	\$ -0
B. State Costs by Source of Funds			
GPR		\$ 0	\$ -0
FED		0	-0
PRO/PRS		0	-0
SEG/SEG-S		0	-0
C. State Revenues Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		Increased Rev.	Decreased Rev.
GPR Taxes		\$ 0	\$ -0
GPR Earned		0	-0
FED		0	-0
PRO/PRS		0	-0
SEG/SEG-S		0	-0
TOTAL State Revenues		\$ 0 None	\$ -0 None

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>		<u>LOCAL</u>
NET CHANGE IN COSTS	\$ <u>None 0</u>	\$	<u>None 0</u>
NET CHANGE IN REVENUES	\$ <u>None 0</u>	\$	<u>None 0</u>

Prepared by: Julie E. Walsh	Telephone No. (608) 264-8101	Agency Insurance
Authorized Signature: 	Telephone No. (608) 267-1233	Date (mm/dd/ccyy)

FISCAL ESTIMATE — 2001 Session

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB Number	Amendment No. if Applicable
Bill Number	Administrative Rule Number INS 25.50(1)

Subject
 An Exception to Disclosure of Financial Information

Fiscal Effect
 State: No State Fiscal Effect
 Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

<input type="checkbox"/> Increase Existing Appropriation	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Decrease Existing Appropriation	<input type="checkbox"/> Decrease Existing Revenues	
<input type="checkbox"/> Create New Appropriation	<input type="checkbox"/> Decrease Costs	

Local: No local government costs

1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	

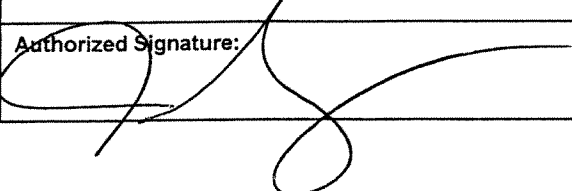
Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	Affected Chapter 20 Appropriations
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Assumptions Used in Arriving at Fiscal Estimate

The proposed amendment makes a narrow notification exception for qualified warranty plans to share nonpublic financial information with a non-affiliate only for the sale of the branded product or service with requirements to keep the information confidential, and to adhere to the licensee or affiliate's quality standards for the branded products or services. Nothing in the section permits telephone solicitations otherwise prohibited. Ultimately there could be cost reductions for certain plans and less consumer confusion.

Long-Range Fiscal Implications

None

Prepared by: Julie E. Walsh	Telephone No. (608) 264-8101	Agency Insurance
Authorized Signature: 	Telephone No. (608) 267-1233	Date (mm/dd/ccyy) 11/10/03



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Jim Doyle, Governor
Jorge Gomez, Commissioner

Wisconsin.gov

November 5, 2003

Legal Unit
125 South Webster Street
Madison, Wisconsin 53702
P.O. Box 7873
Madison, Wisconsin 53707-7873
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REPORT ON Section Ins 25.13 and 25.50, Wis. Adm. Code,
relating to an exception to the annual notice and limits on
disclosure of nonpublic personal financial information for
brand name licensees

Clearinghouse Rule No 03-083
Submitted Under s. 227.19 (3), Stats.
The proposed rule-making order is attached.

(a) Statement of need for the proposed rule

The current rule allows licensees to disclose nonpublic personal financial information to affiliates without an opt-out notice. The proposed rule will also allow a warranty plan licensee or its affiliate to disclose nonpublic financial information without an opt-out notice to a non-affiliate selling products or services under the licensee's brand name. Also the current rule does not sufficiently recognize the nature of business contact certain licensees have with customers. The proposed rule creates a limited exception for plans, including warranty plans, which meet the requirement of s. Ins 25.50, Wis. Adm. Code, as amended from the annual notice requirements contained in s. Ins 25.13, Wis. Adm. Code.

(b) Modifications made in proposed rule based on testimony at public hearing:

The initial draft erroneously omitted the exception to annual notice requirements under s. Ins 25.13, Wis. Adm. Code. Testimony specifically requested the creation of an exception which the Commissioner believes accurately reflects the marketplace.

(c) Persons who appeared or registered regarding the proposed rule:

Appearances For:

Doug Johnson, Wisconsin Merchants Federation
John Dickson, Service Contract Industry Counsel

Appearances Against:

None

Appearances For Information:

None

Registrations For:

None

Registrations Against:

None

Registrations Neither for nor against:

Jordan Lamb, Wisconsin Insurance Agents Coalition.

Letters received:

Ex. E. Doug Johnson, Wisconsin Merchants Federation.

(d) Response to Legislative Council staff recommendations

All comments were complied with and corrected except the following:
Section 5 comment h. The wording in the rule addresses a specific concern raised during the rule-making process.

(e) Regulatory flexibility analysis

1. No issues were raised by small businesses during the hearing on the proposed rule.
2. The proposed rule does not impose any additional reporting requirements on small businesses.
3. The proposed rule does not require any additional measures or investments by small businesses.
4. No methods specified under s. 227.114 (2), Stats., are included in the proposed rule.

(f) Fiscal Effect

See fiscal estimate attached to proposed rule.

Enclosure: Legislative Council Staff Recommendations

25501 Rule Legislative Report 1.Doc



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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PROCESSING INSTRUCTIONS TO AGENCY HEADS

[ENCLOSED ARE THE SENATE AND ASSEMBLY RULE JACKETS CONTAINING THE LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT. AN ADDITIONAL COPY OF THE CLEARINGHOUSE REPORT IS ENCLOSED FOR YOUR FILES.]

PLEASE NOTE: Your agency must complete the following steps in the legislative process of administrative rule review:

1. On the appropriate line on the face of both clearinghouse rule jackets, enter, in column 1, the appropriate date and, in column 2, "Report Received by Agency."
2. On the appropriate line or lines on the face of both clearinghouse rule jackets, enter, in column 1, the appropriate date or dates and, in column 2, "Public Hearing Held" OR "Public Hearing Not Required."
3. Enclose in both clearinghouse rule jackets, in triplicate, the notice and report required by s. 227.19 (2) and (3), Stats. [The report includes the rule in final draft form.]
4. Notify the presiding officer of the Senate and Assembly that the rule is in final draft form by hand delivering the Senate clearinghouse rule jacket to the Senate Chief Clerk and the Assembly clearinghouse rule jacket to the Assembly Chief Clerk. At the time of this submission, on the appropriate line on the face of the clearinghouse rule jacket, each Chief Clerk will enter, in column 1, the appropriate date and, in column 2, "Report Received from Agency." Each clearinghouse rule jacket will be promptly delivered to each presiding officer for referral of the notice and report to a standing committee in each house.
5. If the agency does not proceed with the rule-making process on this rule, on the appropriate line on the face of both clearinghouse rule jackets, enter, in column 1, the appropriate date and, in column 2, "Rule Draft Withdrawn by Agency" and hand deliver the Senate clearinghouse rule jacket to the Senate Chief Clerk and the Assembly clearinghouse rule jacket to the Assembly Chief Clerk.

FOR YOUR INFORMATION: A record of all actions taken on administrative rules is contained in the Bulletin of Proceedings of the Wisconsin Legislature. The clearinghouse rule jackets will be retained by the Legislature as a permanent record.

[See reverse side for jacket sample.]

WLCS
TCA:jal;kja
03/01



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Submitted by **INSURANCE COMMISSIONER**

09-10-2003 RECEIVED BY LEGISLATIVE COUNCIL.

10-03-2003 REPORT SENT TO AGENCY.

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CLEARINGHOUSE RULE 03-083

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b. Because s. Ins 25.50 (1) (b) already exists, it is inappropriate to number another provision as s. Ins 25.50 (1) (b). The newly created paragraph could instead be numbered s. Ins 25.50 (1) (am). Also, the newly created paragraph should have a title inasmuch as the other paragraphs in s. Ins 25.50 (1) have titles. [See s. 1.05 (1), Manual.]

c. In s. Ins 25.50 (1) (b) (as created in the rule), the reference to “subch. 5 ATCP 127” should be changed to “subch. V of ch. ATCP 127.” [See s. 1.07 (2), Manual.]

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