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October 25, 2018

Ms. Sue Bell
Legal Secretary
Commissioner of Insurance
1818 East College Parkway, Suite 103
Carson City, Nevada 89706



Re: LCB File No. R125-18

Dear Ms. Bell,

A regulation adopted by the Commissioner of Insurance has been filed today with the Secretary of State pursuant to NRS 233B.067 or 233B.0675 as appropriate. As provided in NRS 233B.070, this regulation becomes effective upon filing, unless otherwise indicated.

Enclosed are two copies of the regulation bearing the stamp of the Secretary of State which indicates that it has been filed. One copy is for your records and the other is for delivery to the State Library and Archives Administrator pursuant to subsection 6 of NRS 233B.070.

Sincerely,

A handwritten signature in blue ink, appearing to read "Daniel Peinado".

Daniel Peinado
Senior Deputy Legislative Counsel

William L. Keane
Senior Principal Deputy Legislative Counsel

Brenda J. Erdoes
Legislative Counsel

DP/slj
Enclosure

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**Form For Filing
Administrative Regulations**

Agency

Dept. of Business and Industry

Division of Insurance

R125-18

FOR EMERGENCY
REGULATIONS ONLY

Effective date _____

Expiration date _____

Governor's signature

Classification: PROPOSED ADOPTED BY AGENCY EMERGENCY

Brief description of action Regulation concerning Safeguarding Customer Information.

Authority citation other than 233B NRS 679B.130, 686A.025.

Notice date 8/7/18

Date of Adoption by Agency 9/24/18

Hearing date 9/14/18

**APPROVED REGULATION OF
THE COMMISSIONER OF INSURANCE**

LCB File No. R125-18

Effective October 25, 2018

EXPLANATION – Matter in *italics* is new, matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-3, 11 and 12, NRS 679B.130 and 686A.025; §§4-10, NRS 679B.130, 679B.137 and 686A.025.

A REGULATION relating to insurance; requiring licensees to implement programs of security for customer information; exempting licensees from providing annual notices of privacy policies and practices to customers under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that disclosure of nonpublic personal information in a manner contrary to the provisions of 15 U.S.C. §§ 6801, et. seq., is an unfair act or practice in the business of insurance and authorizes the Commissioner of Insurance to adopt regulations pertaining thereto. (NRS 686A.025)

Section 8 of this regulation requires licensees, which are defined to include certain insurers, producers and other persons subject to licensure, authorization or registration pursuant to the insurance laws of this State, to implement a comprehensive written program for the security of customer information. **Section 9** of this regulation establishes standards for the design of such a program. **Section 10** of this regulation sets forth factors to be considered by the Commissioner in determining whether the program is satisfactory.

Existing regulations require a licensee to provide a notice to customers not less than annually, setting forth the privacy policies and practices of the licensee. (NAC 679B.844) **Section 12** of this regulation provides that a licensee is not required to provide such an annual notice if the licensee: (1) solely provides nonpublic personal information to nonaffiliated third parties under certain circumstances authorized by law; and (2) the licensee has not changed its policies and practices from those set forth in its most recent notice sent to customers. However, **section 12** requires such a licensee to provide its customers with a notice of its policies and practices upon a change to those policies and practices.

Section 1. Chapter 679B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 10, inclusive, of this regulation.

Sec. 2. *“Nonpublic personal health information” means health information:*

- 1. That identifies a person who is the subject of the information; or*
- 2. With respect to which there is a reasonable basis to believe that the information could be used to identify a person.*

Sec. 3. *“Nonpublic personal information” means:*

- 1. Nonpublic personal financial information; and*
- 2. Nonpublic personal health information.*

Sec. 4. *As used in sections 4 to 10, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 5, 6 and 7 of this regulation have the meanings ascribed to them in those sections.*

Sec. 5. *“Customer information” means nonpublic personal information about a customer, whether in paper, electronic or other form, that is maintained by or on behalf of the licensee.*

Sec. 6. *“Customer information system” means the electronic or physical methods used to access, collect, store, use, transmit, protect or dispose of customer information.*

Sec. 7. *“Service provider” means a person who maintains, processes or is otherwise allowed access to customer information through the person’s provision of services directly to the licensee.*

Sec. 8. Each licensee shall implement a comprehensive written program for the security of customer information. The program must include administrative, technical and physical safeguards for the protection of customer information. Such administrative, technical and physical safeguards must be appropriate for the size and complexity of the licensee and the nature and scope of the licensee's activities.

Sec. 9. A program implemented pursuant to section 8 of this regulation for the security of customer information must be designed to:

- 1. Ensure the security and confidentiality of customer information;**
- 2. Protect against any anticipated threat or hazard to the security and integrity of the customer information; and**
- 3. Protect against unauthorized access to, or use of, the customer information that could result in substantial harm or inconvenience to a customer.**

Sec. 10. To determine whether a program implemented pursuant to section 8 of this regulation is satisfactory, the Commissioner will consider:

- 1. The manner in which, in order to assess risk, the licensee:**
 - (a) Identifies reasonably foreseeable internal and external threats or hazards which could result in the unauthorized disclosure, misuse, alteration or destruction of customer information or customer information systems;**
 - (b) Assesses the likelihood and potential damage of the threats or hazards, taking into consideration the sensitivity of the customer information; and**
 - (c) Assesses the sufficiency of policies, procedures, safeguards and customer information systems to manage and control risks.**

2. Whether, in order to manage and control risk, the licensee:

(a) Designs such a program to control the identified risks, commensurate with the sensitivity of the customer information and the complexity and scope of the licensee's activities;

(b) Trains staff, as appropriate, to implement the program; and

(c) Regularly tests or monitors the key controls, systems and procedures of the program.

The frequency and nature of such tests or monitoring practices must be determined by the risk assessment performed by the licensee.

3. Whether, in order to oversee arrangements with service providers, the licensee:

(a) Exercises due diligence in selecting service providers;

(b) Requires service providers to implement appropriate measures designed to meet the objectives of this section; and

(c) Takes appropriate steps to confirm that service providers have satisfied the requirements imposed pursuant to paragraph (b).

4. Whether the licensee monitors, evaluates and adjusts, as appropriate, such a program considering:

(a) Relevant changes in technology;

(b) Changes in customer information systems;

(c) The sensitivity of customer information;

(d) Internal and external threats or hazards to the customer information; and

(e) Changes in the business arrangements of the licensee, including, without limitation, mergers, acquisitions, alliances, joint ventures and outsourcing arrangements.

5. Any other information which the Commissioner deems relevant to the determination.

Sec. 11. NAC 679B.800 is hereby amended to read as follows:

679B.800 As used in NAC 679B.800 to 679B.878, inclusive, **and sections 2 to 10, inclusive of this regulation**, unless the context otherwise requires, the words and terms defined in NAC 679B.802 to 679B.832, inclusive, **and sections 2 and 3 of this regulation** have the meanings ascribed to them in those sections.

Sec. 12. NAC 679B.844 is hereby amended to read as follows:

679B.844 1. ~~[A]~~ **Except as otherwise provided in subsection 3, a** licensee shall provide a clear and conspicuous notice to customers that accurately reflects privacy policies and practices of the licensee not less than annually during the continuation of the customer relationship. A licensee may define the beginning of the period of 12 consecutive months, but the licensee must apply the period to customers on a consistent basis.

2. A licensee provides a notice annually if the licensee:

(a) Defines the period of 12 consecutive months as a calendar year; and

(b) Provides the annual notice to the customer once in each calendar year following the calendar year in which the licensee provided the initial notice.

3. **A licensee is not required to provide a notice pursuant to subsection 1 if the licensee:**

(a) Solely provides nonpublic personal information to nonaffiliated third parties pursuant to NAC 679B.870, 679B.872 or 679B.874; and

(b) Has not changed its policies and practices relating to the disclosure of nonpublic personal information from those policies and practices that were set forth in the most recent notice sent to customers pursuant to the provisions of this section or NAC 679B.842.

↪ A licensee who changes its policies and practices relating to the disclosure of nonpublic personal information and has not provided a notice to its customers within the immediately preceding 12 consecutive months as allowed by this subsection shall provide its customers with a notice reflecting those policies and practices.

4. A licensee is not required to provide an annual notice to a former customer.

~~4.~~ 5. A licensee no longer has a continuing relationship with a natural person if:

(a) The natural person no longer is a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee.

(b) The policy of a natural person has lapsed, expired or is otherwise inactive or dormant pursuant to the business practices of the licensee, and the licensee has not communicated with the customer about the relationship for a period of 12 consecutive months, other than to provide annual privacy notices, material required by law or regulation, or promotional materials.

(c) The last known address of a natural person according to the records of the licensee is invalid.

~~5.~~ 6. A licensee no longer has a “continuing relationship” with a customer in the case of providing real estate settlement services if, at the time the customer completes execution of all documents related to the real estate closing:

(a) Payment for those services has been received; or

(b) The licensee has completed all of his or her responsibilities with respect to the settlement, including, without limitation, filing documents on the public record,

↪ whichever occurs later.

~~{6.}~~ 7. A licensee shall deliver the annual privacy notice required pursuant to this section in the manner provided by NAC 679B.862.

~~{7.}~~ 8. For purposes of this section:

(a) "A former customer" is a natural person with whom a licensee no longer has a continuing relationship.

(b) "Annually" means at least once in any period of 12 consecutive months during which the customer relationship exists.

(c) An address of record shall be deemed "invalid" if:

(1) Mail sent to that address by the licensee has been returned as undeliverable; and

(2) Subsequent attempts by the licensee to obtain a current valid address for the natural person have been unsuccessful.

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS
INFORMATIONAL STATEMENT AS REQUIRED BY NRS 233B.066**

LCB FILE NO. R125-18

The following statement is submitted by the State of Nevada, Department of Business and Industry, Division of Insurance (“Division”) for adopted amendments to Nevada Administrative Code (“NAC”) Chapter(s) 679B.

1. A clear and concise explanation of the need for the adopted regulation.

The proposed regulation is necessary in furtherance of the obligation of licensees (as defined in NAC 679B.824) to protect consumer privacy, with respect to security and confidentiality of nonpublic personal information maintained by the licensees.

2. A description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

- (a) A description of how public comment was solicited:

Public comment was solicited by e-mailing the proposed regulation, notice of workshop, notice of intent to act upon the regulation, and small business impact statement to persons on the Division’s mailing list requesting notification of proposed regulations. The documents were also made available on the website of the Division, <http://doi.nv.gov/>, mailed to the main library for each county in Nevada, and posted at the following locations:

*Nevada Division of Insurance
1818 East College Parkway, Suite 103
Carson City, Nevada 89706*

*Nevada Division of Insurance
3300 West Sahara Avenue, Suite 275
Las Vegas, Nevada 89102*

*Legislative Building
401 South Carson Street
Carson City, Nevada 89701*

*Nevada State Business Center
3300 West Sahara Avenue
Las Vegas, Nevada 89102*

*Blasdel Building
209 East Musser Street
Carson City, Nevada 89701*

*Grant Sawyer Building
555 East Washington Avenue
Las Vegas, Nevada 89101*

*Capitol Building
101 North Carson Street
Carson City, Nevada 89701*

*Nevada Department of Employment,
Training and Rehabilitation
2800 E. Saint Louis Avenue
Las Vegas, Nevada 89104*

Public comment was also solicited at the workshop held on September 5, 2018, and at the hearing held on September 14, 2018. The public workshop and hearing took place at the office of the Division, 1818 East College Parkway, Carson City, Nevada 89706, with simultaneous videoconferencing to the Nevada State Business Center, 3300 West Sahara Avenue, Las Vegas, Nevada 89102.

(b) A summary of the public response:

On August 29, 2018, the Division received two written responses to the notices. Both respondents supported the general thrust of the proposed regulation R125-18, but both recommended changes. The Division considered these suggested changes in advance of the workshop; the Division agreed to incorporate five new definitions and to restore the original intent of a sentence that had been edited in a way that changed its meaning. A one-page handout was made available at the workshop with the intended changes. This led to a revised proposed draft of R125-18, issued by the LCB on September 11, 2018. Some of the suggested changes in the responses were not made, with causes indicated in Division testimony at the workshop and hearing.

An attorney representing one of the respondents provided testimony at the workshop. He indicated appreciation for the Division's detailed attention to his client's response, and that he would get back to the Division with any further feedback.

(c) An explanation of how other interested persons may obtain a copy of the summary:

The summary in part 2(b) above reflects the public comments and testimony that transpired with regard to regulation R125-18. A copy of said summary may be obtained by contacting Peter Rao, Assistant Chief, at (775) 687-0757 or prao@doi.nv.gov. This summary will also be made available by e-mail request to insinfo@doi.nv.gov.

3. The number of persons who:

- (a) Attended the hearing: *No members of the public.*
- (b) Testified at the hearing: *No members of the public; one representing the Division.*
- (c) Submitted to the agency written statements: *Two, prior to the workshop.*

4. A list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented, for each person identified above in #3 (b) and (c), as provided to the agency:

Testified at the hearing:

| Name | Entity/Organization Represented | Business Address | Telephone No./ Business Telephone No. | E-Mail Address |
|--|---|--|---------------------------------------|-----------------|
| Peter Rao, Assistant Chief Insurance Examiner | State of Nevada, Dept. of Business and Industry, Division of Insurance | 1818 E. College Parkway, Suite 103 Carson City, NV 89706 | 775-687-0757 | prao@doi.nv.gov |

Submitted to the agency written statements:

| Name | Entity/Organization Represented | Business Address | Telephone No./ Business Telephone No. | E-Mail Address |
|--|--------------------------------------|---|---------------------------------------|---------------------|
| Jeremy Merz, Vice President – Western Region | American Insurance Association | 1201 K Street, Suite 1850 Sacramento, CA 95814 | 916-442-7617 | |
| John Mangan, Regional Vice President | American Council of Life Insurers | | 503-701-7503 | JohnMangan@acli.com |

5. A description of how comments were solicited from affected businesses, a summary of their responses, and an explanation of how other interested persons may obtain a copy of the summary.

(a) A description of how comments were solicited from affected businesses:

Comments were solicited from affected businesses in the same manner as they were solicited from the public. Please see the description provided above in response to #2(a).

(b) A summary of the responses from affected businesses:

Mr. Merz appreciated the Division's proposed information security regulation for its consistency with similar regulations passed in at least 35 other states. He also supported the proposed amendment to NAC 679B.844, allowing for a privacy notice exemption under certain conditions. However, Mr. Merz noted eight particular areas of deviation from model language that did not provide a clear path to compliance, and suggested changes.

First, Mr. Merz suggested that proposed regulation R125-18, LCB draft dated July 5, 2018 ("R125-18P"), section 1, subsection 1 language "comprehensive program satisfactory to the Commissioner for the security of written information" be changed to "comprehensive written information security program." Second, he suggested that R125-18P, section 1, subsection 3 language "To determine whether a program implemented pursuant to subsection 1 is satisfactory, the Commissioner will consider:" be replaced with language identifying subsequent paragraphs as illustrative examples.

Third, he suggested that R125-18P, section 1, subsection 3, paragraph (e) language "Any information which the Commissioner deems relevant to the determination" be deleted. Fourth, Mr. Merz suggested the inclusion of five model definitions in R125-18P; these definitions were for the terms "customer," "customer information," "customer information systems," "licensee," and "service provider." Fifth, he suggested, for R125-18P, section 1, subsection 3, paragraph (c), the insertion of "Where indicated by the licensee's risk assessment," before the existing language; his concern was that ancillary providers, such as those for lawn maintenance or vending machines, would require scrutiny under this law. Sixth, Mr. Merz suggested excision of the term "hazards" from R125-18P as used in "threats and hazards" twice in R125-18P. Seventh, he suggested tying the "Changes in the business arrangements" language of R125-18P, section 1, subsection 3, paragraph (d), subparagraph (5) with "customer information systems;" the concern was a potential broadening of scope. Eighth, Mr. Merz suggested, for R125-18P, section 2, subsection 3, deletion of the language "A licensee who changes its policies and practices relating to the disclosure of nonpublic personal financial information and has not provided a notice to its customers within the immediately preceding 12 consecutive months as allowed by this subsection shall provide its customers with a notice reflecting these policies and practices."

Mr. Mangan appreciated the Division's proposed information security regulation for its consistency with similar regulations passed in 39 other states. However, he noted three particular areas of deviation from model language, and suggested changes.

First, Mr. Mangan suggested the inclusion of the same five model definitions into R125-18P as previously identified. Second, he suggests the phrase "the security of written information" as used in R125-18P, section 1, subsection 1, is ambiguous, in that it may not even cover electronic information (which it should). Third, he suggests the phrase "satisfactory to the Commissioner" in R125-18P, section 1, subsection 1 be deleted.

The Division appreciates the thoughtful responses provided by Mr. Merz and Mr. Mangan.

The first sentence of R125-18P, section 1, subsection 1 reads, "Each licensee shall implement a comprehensive program satisfactory to the Commissioner for the security of written information." Upon further review, the Division concurred that the intent was changed from its original submission to the LCB, which read, "Each licensee shall implement a comprehensive written information security program that...." The Division, therefore, prepared a worksheet handout that listed corrections to be submitted to the LCB with respect to R125-18P.

The first item on the worksheet handout was to change the first sentence of R125-18P, section 1, subsection 1, to "Each licensee shall implement a comprehensive written information security program." The Division believed this would satisfactorily address the first suggested change from Mr. Merz and the second and third suggested changes

from Mr. Mangan.

The Division realized that some of the desired model definitions cited definitions in a second model, and that an older version of the second model had already been codified into NAC 679B. The definitions of "customer" and "licensee" already exist in NAC 679B, the chapter to which R125-18 is intended to be codified, and that the extant definitions are substantially similar to the ones intended to be added. The Division, therefore, added model definitions for "customer information," "customer information systems," and "service provider" to the workshop handout. In adding the term "customer information," the Division realized it referenced "nonpublic personal information" from the second model, and that this term was not defined yet in NAC 679B. The Division further noted that this definition in turn referenced the term "nonpublic personal health information" which was defined in the second model but not as yet in NAC 679B. The Division, therefore, added definitions for "nonpublic personal information" and "nonpublic personal health information" from the second model to the workshop handout.

The workshop handout was not amended at the workshop. The LCB accepted the workshop handout, along with verbal Division representation of responses received, as sufficient to initiate changes in R125-18. This resulted in revised proposed regulation R125-18, LCB draft dated September 11, 2018. This draft was referred to as "Version 7" during the hearing. While Version 7 introduced numerous organizational, resultant referential and editorial changes from R125-18P and the workshop handout, the Division believed that none of the changes were materially substantive. The Division considered some of the editorial changes in Version 7 to be improvements, as they either incorporated the new definitions or reverted to text provided in the Division's original submission.

Version 7 of R125-18 was made available at the hearing. The changes from R125-18P to Version 7 were discussed at length in Division testimony during the hearing. The new definitions, and instructions for their applicability and placement, occupy sections 1 to 7, inclusive, and section 11 of Version 7. What was section 1 in R125-18P became sections 8 to 10 in Version 7, and what was section 2 in R125-18P became section 12 in Version 7. The text that needed to change because of the altered intent as noted above became the first sentence of section 8, which reads, "Each licensee shall implement a comprehensive written program for the security of customer information."

(c) An explanation of how other interested persons may obtain a copy of the summary:

The summary in part 5(b) above reflects the comments and testimony that transpired with regard to regulation R125-18. A copy of said summary may be obtained by contacting Peter Rao, Assistant Chief, at (775) 687-0757 or prao@doi.nv.gov. This summary will also be made available by e-mail request to insinfo@doi.nv.gov.

6. If after consideration of public comment the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The Division did make changes to R125-18 based upon written responses received, in areas where both respondents agreed as delineated in part 5(b) above. However, there were a number of changes suggested by Mr. Merz alone that were not pursued by the Division.

Mr. Merz' second suggestion, i.e. replacing language at the beginning of R125-18P section 1, subsection 3, to indicate subsequent illustrative examples as opposed to considerations guiding the Commissioner as to whether an implementation is satisfactory, was not adopted by the Division. Implementations resulting from this regulation need to be satisfactory to the Commissioner, and the subsequent text does provide good guidelines for such consideration.

Mr. Merz' third suggestion, i.e. to delete the catch-all language of R125-18P, section 1, subsection 3, paragraph (e), was not adopted by the Division. Had this suggestion been adopted, the Commissioner would be limited to the delineated text of previous paragraphs for consideration as to whether implementations are satisfactory; including this text allows the Commissioner to treat the previous paragraphs as illustrative examples.

Mr. Merz' fifth suggestion, i.e. to relax the language of R125-18P section 1, subsection 3, paragraph (c), so as to tie the oversight of service providers to the licensee's assessment of risk in subsection 1, was not adopted by the Division. The definition of "service provider" that was adopted by the Division is believed to resolve the problem of excluding providers of ancillary services, such as for lawn maintenance or vending machines, from the scrutiny otherwise required by this regulation.

Mr. Merz' sixth suggestion, i.e. excising the word "hazards" from R125-18P as used in the phrase "threats or hazards," was not adopted by the Division. The concern was that the term has too broad a meaning and was not used in the model language. The Division found the phrase "threats or hazards" used once in the model language.

Mr. Merz' seventh suggestion was to link "changes in business arrangements" as used in R125-18P, section 1, subsection 3, paragraph (d), subparagraph (5), with "changes in information systems;" this was not adopted by the Division. Despite the potential broadening of scope, which was the concern, it is clear this pertains to matters of information security.

Mr. Merz' eighth suggestion, i.e. to delete a sentence added after the new privacy notice exemption in R125-18P section 2, subsection 3, that indicates there is no exemption if one of the conditions delineated in the exemption language is not met, was not adopted by the Division. While the Division admits this language is superfluous, it does not interfere with the established exemption.

The Division acknowledges and once again appreciates Mr. Merz for the diligence evident in his response.

7. (a) The estimated economic effect of the adopted regulation on the business which it is to regulate:

(1) Both adverse and beneficial effects: *Adverse – Additional time and resources may be needed to protect consumer data. Beneficial – Fosters a level playing field for insurers. Consumers and businesses will transact insurance with available information, knowing the data is required to be protected.*

(2) Both immediate and long-term effects: *Same as part 7(a)(1) above.*

(b) The estimated economic effect of the adopted regulation on the public:

(1) Both adverse and beneficial effects: *No adverse impact is noted. Beneficial – Personal information will be protected when transacting insurance.*

(2) Both immediate and long-term effects: *Same as part 7(b)(1) above.*

8. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to enforce this regulation, as existing staff would respond to complaints and respond appropriately.

9. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates, and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There is no overlapping or duplication of other state regulations, and federal law does require state agencies to implement these standards.

10. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of those provisions.

This regulation meets the standards identified in federal regulation.

11. If the regulation establishes a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

There is no new fee or existing fee change proposed with this regulation.