

**REVISED PROPOSED REGULATION OF
THE COMMISSIONER OF INSURANCE**

LCB File No. R125-18

September 11, 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. ~~1A~~ ***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.

~~16.1~~ 7. A licensee shall deliver the annual privacy notice required pursuant to this section in the manner provided by NAC 679B.862.

~~17.1~~ 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.