

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, 17th Floor
Sacramento, California 95814**

RH05047633

September 7, 2006

**NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING
REGARDING PRODUCER LICENSING BACKGROUND REVIEW GUIDELINES**

SUBJECT OF PROPOSED RULEMAKING

The Insurance Commissioner proposes to promulgate regulations described below after considering comments from the public. The Commissioner proposes to establish factors for licensing background review guidelines in the California Code of Regulations, Title 10, Chapter 5, Subchapter 1, Article 5.7 §§ 2183, 2183.1, 2183.2, 2183.3, and 2183.4 that would relate to all producer licensing types and repeals CCR Title 10, Chapter 5, Subchapter 7, Article 8, §2691.18, and Article 9, §2691.19 that relate only to insurance adjusters.

AUTHORITY AND REFERENCE

The purpose of these regulations is to implement, interpret, and make specific the provisions of California Insurance Code §12921(a). California Insurance Code §12921(a) establishes the Insurance Commissioner as the chief regulator of the business of insurance. Specifically, Insurance Code section 12921(a) provides the following:

“The commissioner shall perform all duties imposed upon him or her by the provisions of this code and other laws regulating the business of insurance in this state, and shall enforce the execution of those provisions and laws.”

Case law supports a broad interpretation of the Commissioner’s authority as a regulator in 20th *Century Insurance Company v. John Garamendi*, (1994) 8 Cal.4th 216, citing *Calfarm Insurance Company v. Deukmejian*, by finding that the Commissioner “has broad discretion to adopt rules and regulations as necessary to promote the public welfare.”

In order to fulfill the Commissioner’s regulatory duties, the Department of Insurance has promulgated regulations related to various aspects of the business of insurance, including producer licensing. Currently, the Department has regulations related to producer license background review for use in cases involving insurance adjusters only. CCR Title 10, Chapter 5, Subchapter 7, Article 8, §2691.18, sets forth criteria for determining a substantial relationship between a crime or act and the duties of an insurance adjuster. CCR Title 10, Chapter 5, Subchapter 7, Article 8, §2691.19, provides criteria for the evaluation of rehabilitation when considering discipline of the license of an insurance adjuster.

The Department has no such background review guidelines for use in cases involving other types of insurance producers. To effectively and consistently regulate the activities of all insurance producers, the Commissioner must promulgate rules and regulations related to producer background review that will encompass all license types. The proposed licensing background review regulations, promulgated pursuant to the authority provided in Insurance Code §12921(a), are necessary in order to provide a clear and predictable scheme for use by Department staff, Administrative Law Judges, and insurance producers in evaluating license discipline.

PUBLIC HEARING

The Commissioner will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to this regulation, as follows:

Date and time: November 9, 2006, at 9:00 a.m. to 12:00 p.m.
Location:
Department of Social Services
Office Building 9
744 P Street
Sacramento, CA 95814

The hearing will continue on the date noted above until all testimony has been submitted or 12:00 p.m., whichever is earlier.

PRESENTATION OF WRITTEN COMMENTS; CONTACT PERSONS

All persons are invited to submit written comments on the proposed regulations during the public comment period. The public comment period will end at 5:00 p.m. on November 9, 2006. Please direct all written comments to the following contact person:

Denise Yuponce, Staff Counsel
California Department of Insurance
300 Capitol Mall, 17th Floor
Sacramento CA 95814
Telephone: (916) 492-3171
yuponced@insurance.ca.gov

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. If she is unavailable, inquiries may be addressed to the following backup contact person:

Darrel Secrest, Staff Counsel
California Department of Insurance
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
Telephone: (916) 492-3567
secrestd@insurance.ca.gov

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Insurance Commissioner, addressed to one of the contact persons at his respective address listed above, no later than 5:00 p.m. on November 9, 2006. Any written materials received after that time will not be considered.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: yuponced@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of Denise Yuponce and sent to the following facsimile number: (916) 324-1883. **Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.**

INFORMATIVE DIGEST

Summary of Existing Law and Policy Statement Overview

Insurance producer license discipline, in general, falls under the provisions of the California Insurance Code, primarily §§ 1668 and 1669. The Department does not have regulatory guidelines that supplement these general producer license disciplinary statutes. The Department, however, does currently have regulations related to producer license background review for use in cases involving insurance adjusters only. CCR Title 10, Chapter 5, Subchapter 7, Article 8, §2691.18, sets forth criteria for determining a substantial relationship between a crime or act and the duties of an insurance adjuster. CCR Title 10, Chapter 5, Subchapter 7, Article 8, §2691.19, provides criteria for the evaluation of rehabilitation when considering discipline of the license of an insurance adjuster.

In order to effectively and consistently regulate the activities of all insurance producers, the Commissioner must promulgate rules and regulations related to producer background review that will encompass all license types. Specifically, regulations that apply to all producer license types are needed to clearly establish whether a crime or act is substantially related to the qualifications, functions, or duties of an insurance producer and to set forth criteria to be used in evaluating the rehabilitation of an applicant or licensee. As a result of the promulgation of the proposed regulations, it is necessary to repeal the existing regulations related to producer license background review that apply to insurance adjusters only.

Effect of Proposed Action

The Commissioner believes it is necessary to revise the California Code of Regulations, through the addition of the proposed regulations and repeal of the existing regulations, so that there exists a set of license background review guidelines that apply to all insurance producer license types. The proposed licensing background review regulations will provide a clear and predictable scheme for use by Department staff, Administrative Law Judges, and insurance producers in evaluating license discipline, and, as a result, provide the public with greater transparency of government.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposed regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO STATE/LOCAL AGENCY OR SCHOOL DISTRICT OR IN FEDERAL FUNDING

The Commissioner has determined that the proposed regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Commissioner has made an initial determination that the proposed regulations may not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This proposal will have no effect on the creation or elimination of jobs in California, the creation of new businesses, the elimination of existing businesses in California, or the expansion of businesses in California.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR ENTITIES/BUSINESSES

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

FINDING OF NECESSITY

The Commissioner finds that it is necessary for the welfare of the people of the state that these regulations be adopted.

EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of existing businesses, and the expansion of businesses currently operating in the state. The Commissioner estimates that the proposed regulations will not have any impact on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of existing businesses, and the expansion of businesses currently operating in the state. Interested parties are invited to comment on this issue.

IMPACT ON HOUSING COSTS

The matters proposed herein will have no significant effect on housing costs.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the

Commissioner would be more effective in carrying out the purposes for which the regulations are imposed or would be as effective as and less burdensome to affected private persons than the proposed regulations. The Commissioner invites public comment on alternatives to the regulations.

IMPACT ON SMALL BUSINESS

The Commissioner has determined that the proposed regulations may not affect small business as defined in Government Code section 11342.610, subdivision (b), paragraph (2).

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS

The Department has prepared an initial statement of reasons that sets forth the reasons for the proposed regulations. Upon request, the initial statement of reasons will be made available for inspection and copying. Requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above. Upon request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Requests for the final statement of reasons should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available for inspection and copying at 300 Capitol Mall, 17th Floor, Sacramento, California 95814, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

AUTOMATIC MAILING

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

WEBSITE POSTINGS

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Find, near the top of the leftmost column, the pull down menu under the heading "Quick Links." Select the "Legal Information" link. On the "Legal Information" page, click on the "Proposed Regulations" link. When the "Search or Browse for Documents for Proposed Regulations" screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To search, enter "**RH05047633**" (the Department's regulation file number for these regulations) in the search field. Alternatively, search using as your search term the California Insurance Code section number of the code section that the regulations implement ("2183"), or search by keyword ("Producer License Background Guidelines" for example). Then, click on the "Submit" button to display links to the various filing documents.

To browse, click on the "Browse All Regulations" button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the "Producer Licensing Background Review Guidelines" link, and click it. Links to the documents associated with these regulations will then be displayed.

MODIFIED LANGUAGE

If the regulations adopted by the Department differ from those which have originally been made available but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.