

Date of Hearing: June 28, 2023

ASSEMBLY COMMITTEE ON INSURANCE
Lisa Calderon, Chair
SB 793 (Glazer) – As Amended April 17, 2023

SENATE VOTE: 39-0

SUBJECT: Insurance: privacy notices and personal information

SUMMARY: Allows an insurer to send privacy policy notices once initially and thereafter *only*, when a change has been made in the privacy policy to satisfy the privacy notice requirements of the Insurance Information and Privacy Protection Act (IIPPA). Specifically, **this bill:**

- 1) Requires an insurer to provide a clear and conspicuous notice to policyholders that accurately reflects its privacy policies and practices not less than annually, as that term is defined, during the continuation of the policyholder relationship.
- 2) States that the required notice must comply with applicable California regulations specifying the information to be included in privacy notices.
- 3) Deems that an insurance agent or broker has met the notification requirements if it meets all of the following conditions:
 - a) The insurer does not provide medical record, personal, or privileged information to a nonaffiliated third party, as specified;
 - b) The insurer provides, as part of an abbreviated notice, the internet website address for the insurer's privacy notice and informs the policyholder in a clear and conspicuous matter all of the following:
 - i) The policyholder's right to submit a written request to access, correct, amend, or delete their personal information and the manner in which the right may be exercised;
 - ii) The right to receive a response within 30 business days of the policyholder submitting a request to access, correct, amend, or delete their personal information;
 - iii) If the insurer refuses the policyholder's request, the right to file a statement regarding what the policyholder believes to be accurate and fair information and why the policyholder disagrees with the insurer's refusal; and,
 - c) The insurer's policies and practices about disclosing personal or privileged information have not changed from the previous notice provided.
- 4) Clarifies that an insurer or agent is not required to provide a notice to a former policyholder with whom it no longer has a continuing relationship.

EXISTING LAW:

- 1) Provides financial institutions, pursuant to the Gramm-Leach-Bliley Act (GLBA), a federal law to which insurers are subject that includes privacy provisions, with an exemption to the

requirement to deliver an annual privacy notice. A financial institution can use the annual notice exception if it does the following:

- a) The financial institution does not disclose nonpublic personal information of consumers to third parties, other than disclosures that are exempt; and
 - b) The financial institution has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers. (15 U.S.C. Section 6801 et seq.)
- 2) Establishes the IIPPA and provides various rights to individuals, applicants, policyholders, and insureds pursuant to the IIPPA. (Insurance (Ins.) Code, Section 791 et seq.)
- 3) Requires an insurer to provide a notice of information practices to all applicants or policyholders in connection with insurance transactions when personal information is collected only from the applicant; an insured under the policy; from public records; or from a source other than the applicant, as specified. The required notice shall generally be in writing and state all of the following, among other things:
- a) Whether personal information may be collected from persons other than the individual or individuals proposed for coverage;
 - b) The types of personal information that may be collected and the types of sources and investigative techniques that may be used to collect such information;
 - c) The types of disclosures of a person's personal information that may be made without prior authorization, as specified;
 - d) A description of the right to access and correct one's personal information, the right to know with whom one's personal information was shared, the right to know the source of the personal information, and the manner in which the rights may be exercised; and,
 - e) That information obtained from a report prepared by an insurance-support organization, as defined, may be retained by the insurance-support organization and disclosed to other persons. (Ins. Code, Section 791.04.)
- 4) Authorizes the Insurance Commissioner to examine and investigate the affairs of every insurer in this state, issue cease and desist orders after a noticed hearing, and impose penalties for violations of cease and desist orders as follows:
- a) A monetary fine of not more than \$10,000 for each violation.
 - b) A monetary fine of not more than \$50,000 if the Commissioner finds that violations have occurred with such frequency as to constitute a general business practice.
 - c) Suspension or revocation of an insurance institution or agent's license if the insurance institution or agent knew or reasonably should have known it was in violation of the IIPPA. (Ins. Code, Sections 791.14, 791.17, and 791.19.)

- 5) Authorizes an individual whose right to access, or right to collect, amend, or delete their personal information was violated to bring an action for appropriate equitable relief in any court of competent jurisdiction. (Ins. Code, Section 791.20.)

FISCAL EFFECT: Unknown

COMMENTS:

Purpose: According to the Author,

Notices to consumers are only effective so long as they are meaningful. A phenomenon has been noted that the more frequent, numerous, lengthy notices are the less likely consumers are to read them. Given the importance of privacy notices, it is critical that notice for privacy rights be enacted and distributed in a manner most likely to inform consumers. In 2015 the federal government adopted an amendment to the Graham-Leech Bliley Act (GLBA), the federal privacy protection act that insurers are beholden to, which would allow insurers to send their annual GLBA notices only when there is a change to the privacy policy. The intent is to flag to consumers that there is a change and that the notice requires their attention. California is one of three states that has not adopted the amendment to the GLBA, frequently referred to as the FAST Act amendment. SB 793 would remedy this and integrate the amendment into California law, and require that an abbreviated privacy notice be sent to consumers to ensure there is continuous notice of how to access the full description of rights.

Existing state law requires that insurers send privacy notices to their customers annually but in 2015, the federal government adopted an amendment to the GLBA authorizing insurance companies to send their annual notices only when there is a change to their underlying privacy policy. The intent is to flag for consumers that there is a change and that the notice requires their attention. This bill proposes to make that conforming change by requiring that privacy notices be provided initially to new policyholders and then only sent when the privacy policy changes. California is one of the last states to not update statute to reflect federal law.

This bill would reduce the number of privacy notifications that insurers are required to send to their policyholders. Specifically, after providing new policyholders with a copy of their privacy policy once, an insurer would no longer have to send a copy of the privacy policy annually to its customers, if i) the privacy policy has not changed, ii) the insurer makes the information easily available on its website, and iii) the insurer does not provide medical, privileged or personal information to unaffiliated third parties. Given that this change conforms to federal law and that consumers often may not read lengthy annual privacy notices, this appears to be a sensible policy that will benefit both insurers and those they insure. Ideally, if this bill is enacted, customers will be aware that something has changed when they receive notices. Further, by requiring that detailed information be easily accessible on insurers' websites, this bill ensures that policyholders can still access privacy policies should the need arise.

Background: The IIPPA provides protections for consumers' personally identifiable information, which is generally provided to an agent, broker, or insurer when applying for insurance or submitting a claim. The IIPPA is enforced by the Insurance Commissioner (Commissioner) who has the authority to issue cease and desist orders for violations of the IIPPA. Any person who violates a cease and desist order may be subject to a fine of not more than \$10,000 for each

violation, or up to \$50,000 if the Commissioner finds that violations have occurred with such frequency as to constitute a general business practice.

Under the IIPPA, individuals have the right to access the personal information recorded about them by insurers. However, the IIPPA requires that the requested information be “reasonably locatable and retrievable” by the insurer. The IIPPA also gives individuals the right to delete, correct, and amend this personal information. However, insurers can refuse to comply with the request. Under the IIPPA, the insurer must notify a policyholder of the reason it is refusing to delete, correct, or amend the information in question. If an insurer refuses to do so, it must inform the individual that they can file a statement setting forth what information the individual thinks is correct, as well as the reasons why the individual disagrees with the insurer’s refusal to delete, correct, or amend. In any subsequent disclosure of the personal information, the insurer is required to disclose the statement as well. The IIPPA also lets individuals opt-out of the sharing of their personal information for marketing purposes.

IIPPA requires insurers to provide individuals with a “Privacy Notice” that describes the entities’ practices and policies regarding privacy, the kind of information collected in connection with an application for insurance, submission of a claim, or other insurance transaction; how and with whom personally identifiable information will be shared, and rights to restrict that sharing.

Previous Legislation: AB 2372 (Calderon) (2021-2022 Legislative Session) This bill would have required an insurance institution or agent (insurer) to 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, and exempts insurers who do not share personal information for marketing purposes from this requirement, as long as additional information about consumer rights is included in the insurer’s abbreviated annual notice. Died on Senate Inactive File.

Double-referral: This measure passed out of the Assembly Privacy and Consumer Protection Committee on June 13, 2023 on the consent calendar.

REGISTERED SUPPORT / OPPOSITION:

Support

Personal Insurance Federation of California

Opposition

None on file.

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