

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 2372 (Calderon)
Version: April 7, 2022
Hearing Date: June 28, 2022
Fiscal: Yes
Urgency: No
CK

SUBJECT

Insurance: privacy notices

DIGEST

This bill codifies an existing regulation requiring insurers to provide annual privacy notices to customers. However, it eliminates this requirement for insurers meeting certain conditions.

EXECUTIVE SUMMARY

The Insurance Information and Privacy Protection Act (IIPPA) establishes standards for the collection, use and disclosure of information gathered in connection with insurance transactions and seeks to maintain a balance between the need for information by those conducting the business of insurance and the public's need for fairness in insurance information practices. To this end, the IIPPA requires certain consumer protections be afforded in connection with information exchanged between insurance companies and their policyholders.

Insurers are required to provide timely notices regarding information practices and annual privacy notices to consumers. IIPPA regulations lay out the guidelines for when these notices are required and what is required to be included in them.

This bill seeks to codify, to a certain extent, the regulatory requirement that insurers provide annual notices to customers. However, it eliminates the right of consumers to receive these annual notices under certain conditions.

This bill is sponsored by the Personal Insurance Federation of California. It is supported by various other insurance company associations. It is opposed by the Consumer Federation of California, which argues that the changes in the bill undermine existing consumer protections. This bill passed out of the Senate Insurance Committee on an 11 to 0 vote.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Insurance Information and Privacy Protection Act (IIPPA), to establish standards for the collection, use, and disclosure of information gathered in connection with insurance transactions and to maintain a balance between the need for information by those conducting the business of insurance and the public's need for fairness in insurance information practices. (Ins. Code § 791.)
- 2) Requires an insurance institution or agent to provide a notice of information practices to all applicants or policyholders in connection with insurance transactions at the time of delivery or initial data collection and at the point of renewal, reinstatement, and change in benefits, as provided. (Ins. Code § 791.04.)
- 3) Authorizes an insurer to disclose personal or privileged information about an individual, which is collected or received in connection with an insurance transaction, as provided. This includes the authority to share personal or privileged information about an individual with an unaffiliated third party whose only use of the information will be in connection with the marketing of a product or service, as long as the individual is given an opportunity to opt out of this information-sharing. (Ins. Code § 791.13.)
- 4) Requires, pursuant to IIPPA regulations, that insurers provide a notice that accurately reflects its privacy policies and practices at the initiation of the customer relationship, annually thereafter, and when certain revisions are necessary. (10 C.C.R. §§ 2689.5, 2689.6, 2689.9.) The notices must include certain minimum information. (10 C.C.R. § 2689.7.)

This bill:

- 1) Codifies the annual notice requirement laid out in 10 C.C.R. § 2689.6.
- 2) Provides that an insurance institution or agent shall be deemed to comply with this requirement if all of the following conditions are met:
 - a) the insurance institution or agent does not provide medical-record, personal, or privileged information to a nonaffiliated third party whose only use of the information will be in connection with the marketing of a product or service, pursuant to Section 791.13(k);
 - b) the insurance institution or agent additionally provides, as part of any abbreviated notice provided pursuant to Section 791.04, a description of the rights established under Sections 791.08 and 791.09 to access and correct personal information and the manner in which the rights may be exercised, as well as the internet address to the insurance institution's or

- agent's complete privacy notice that complies with the underlying regulation; and
- c) the insurance institution's or agent's policies and practices about disclosing personal or privileged information have not changed from the previous annual notice.

COMMENTS

1. Privacy notices under the IIPPA and its regulations

The IIPPA was established with several central purposes:

- to establish standards for the collection, use, and disclosure of information gathered in connection with insurance transactions by insurance institutions, agents or insurance-support organizations;
- to maintain a balance between the need for information by those conducting the business of insurance and the public's need for fairness in insurance information practices, including the need to minimize intrusiveness;
- to establish a regulatory mechanism to enable natural persons to ascertain what information is being or has been collected about them in connection with insurance transactions and to have access to such information for the purpose of verifying or disputing its accuracy;
- to limit the disclosure of information collected in connection with insurance transactions; and
- to enable insurance applicants and policyholders to obtain the reasons for any adverse underwriting decision.

The IIPPA and its attendant regulations carefully outline requirements for insurance companies and agents to provide consumers privacy notices at various points during the customer relationship.

One regulation requires an initial privacy notice. A licensee must "provide a clear and conspicuous notice that accurately reflects its privacy policies and practices" to a customer at the point when a customer relationship is established, except as provided.¹ This must happen before any nonpublic personal information is disclosed to a nonaffiliated third party.

Beyond that initial contact point, regulations require insurers 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.²

¹ 10 C.C.R. § 2689.5.

² 10 C.C.R. § 2689.6.

The regulations also provide for revised notices when certain disclosures of personal information about a consumer are planned.³

The regulations dictate the minimum information that needs to go into these initial, annual, and revised notices. Some of the required components are:

- the categories of nonpublic personal information that the licensee collects;
- the categories of nonpublic personal information that the licensee discloses;
- the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal information, and the general types of businesses in which the third parties engage, as provided;
- if a licensee wishes to disclose or reserve the right to disclose nonpublic personal financial information to an affiliate for marketing purposes without affirmative authorization or the right to opt out of that disclosure, a statement explaining that the licensee may disclose nonpublic personal financial information to affiliates for marketing purposes without obtaining prior authorization and the law does not allow customers to restrict that disclosure;
- an explanation of the consumer's right to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the methods by which the consumer may exercise that right at that time;
- the licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information, including a general description as to who is authorized to have access to the information; and
- if applicable, a statement that the consumer has the right to access and request correction of recorded nonpublic personal information and a brief description of the manner in which those rights may be exercised.⁴

These notice regulations all make clear that they are in addition to any notices required by Section 791.04 of the Insurance Code. However, they provide for both notices to be provided in a single combined notice meeting both sets of requirements. Section 791.04 requires an insurance institution or agent to provide a notice of information practices to all applicants or policyholders in connection with insurance transactions. This must happen at the time of delivery of the policy or certificate when personal information is collected from the applicant, an insured, or from public records. Otherwise, it must be provided at the point of collection from other sources.

Section 791.04 also requires provision of the notice of information practices upon renewal, reinstatement, or change in benefits unless personal information is only collected from the policyholder, insured, or public records or notice has already been given in the preceding 24 months.

³ 10 C.C.R. § 2689.9.

⁴ 10 C.C.R. § 2689.7.

The Section 791.04 notice must be in writing and state specified information, including whether personal information may be collected from persons other than the individual, the types of personal information that may be collected and disclosed, and a description of the individual's rights. However, in lieu of this detailed notice, insurers are authorized to provide an abbreviated notice informing the applicant or policyholder that personal information may be collected from other sources and disclosed without authorization, and that the applicant or policyholder has the right to access and correct all personal information collected and to request a detailed notice of information practices.

2. Codifying and carving out IIPPA regulations

This bill codifies the regulation regarding annual notices to customers. However, subdivision (c) in the bill exempts insurance institutions and agents from the requirement if the following conditions are met:

- the insurance institution or agent does not provide medical-record, personal, or privileged information to a nonaffiliated third party;
- the insurance institution or agent additionally provides, as part of the abbreviated notice (discussed above), a description of the rights to access and correct personal information retained by the insurer and the manner in which the rights may be exercised, and the internet address to the insurance institution's or agent's complete privacy notice that meets the requirements of an annual notice; and
- the insurance institution's or agent's policies and practices about disclosing personal or privileged information have not changed from the previous annual notice.

According to the author:

AB 2372 allows for California insurers, who do not share personal policyholder information to nonaffiliated third parties for marketing purposes, to send out their privacy policies only if they have changed from the previous year. Currently, insurers are required to send privacy policies to policyholders annually, they must be posted online, and be made available at the request of the policyholder – therefore, this bill removes a redundancy. In addition, AB 2372 enhances the annual disclosures policyholders receive regarding their personal information, by requiring that insurers include a description of the rights policyholders have to request any personal information the insurer may have on file about them.

This change in the law is based loosely on changes made to the Graham-Leach-Bliley Act (GLBA) at the federal level, which eliminated the requirement for insurers to send annual GLBA privacy notices in most instances.

Writing in support, the Personal Insurance Federation of California points to those changes in justifying the carve outs in California law:

Ensuring consumers receive the additional privacy notices only when there is a change in the existing privacy policy will not only reduce paper mail waste but will help reduce consumer confusion by focusing their attention on notices that actually include important changes to their privacy policy.

AB 2372 will update California law to conform with the 2015 GLBA amendments and allow insurers to send notices on the privacy policy only when a change has been made to the privacy policy. The change touches only the paper notices and does not affect requirements ensuring that the notice is available online and at the request of the consumer, or the requirement to provide other annual notices.

Writing in opposition, the Consumer Federation of California asserts:

These notices are important because they help ensure that consumers are fully informed about how their private data is being used. As private personal data is more and more being sold for profit or used for targeted ads and data mining across multiple industries, consumers should be kept fully informed about the privacy policies that companies employ.

While AB 2372 attempts to codify the regulations around privacy notices to customers, the bill also exempts insurance institutions and agents from these requirements under many circumstances. An insurance agent would not have to provide these notices if they claim to not provide privileged information to third parties. They would also be exempt from this requirement if their privacy policies had not changed since the last notice, which could potentially mean years without the notice being given to the consumer.

CFC believes that these exemptions help to chip away at the fundamental protections that insurance customers benefit from and serve little other purpose than allowing the insurance industry to obscure their privacy practices.

It should be noted that while the bill takes away an existing consumer protection, an important condition of the exemption is that the insurer must include, in any

abbreviated notice they provide, a detailed description of the consumer's rights to access and correct information including the manner in which those rights can be exercised.

SUPPORT

Personal Insurance Federation of California (sponsor)
American Council of Life Insurers
American Property Casualty Insurance Association
Association of California Life and Health Insurance Companies
Pacific Association of Domestic Insurance Companies
Western Insurance Agents Association

OPPOSITION

Consumer Federation of California

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: AB 1184 (Chiu, Ch. 190, Stats. 2021) enhanced protections relating to health care service plans and health insurers accommodating requests from subscribers, enrollees, and insureds for the confidential communication of certain medical information. The bill required health plans/insurers to direct all communications regarding a protected individual's receipt of sensitive health care services directly to the protected individual, and prohibited the disclosure of that information to the policyholder without the authorization of the protected individual.

PRIOR VOTES:

Senate Insurance Committee (Ayes 11, Noes 0)
Assembly Floor (Ayes 70, Noes 0)
Assembly Appropriations Committee (Ayes 16, Noes 0)
Assembly Insurance Committee (Ayes 13, Noes 0)
