

Date of Hearing: June 13, 2023

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Jesse Gabriel, Chair

SB 793 (Glazer) – As Amended April 17, 2023

PROPOSED CONSENT

**SENATE VOTE:** 39-0

**SUBJECT:** Insurance: privacy notices and personal information

**SYNOPSIS**

*In 2015, the federal government amended the privacy notice requirements in the Financial Modernization Act of 1999, more commonly known as the “Gramm-Leach-Bliley Act” (GLBA), to reduce the requirements imposed on financial institutions, including insurers. Prior to the amendment, GLBA required privacy notices to be sent to consumers annually. Unfortunately, it has been determined that the more frequent, numerous, and lengthy that notices are, the less likely consumers are to read them. In response, the GLBA was amended to require that after the initial notice is sent to consumers, follow up notices only need to be sent when there is a change to the privacy policy. The intent is to flag for consumers that something has changed and that the notice requires their attention.*

*However, California’s Insurance Information and Privacy Protection Act (IIPPA) continues to require insurers to send notices annually. According to the author, California is one of three remaining states that has not updated their requirements to conform to the GLBA amendment.*

*This bill, supported by the Personal Insurance Federation of California and other groups, updates the requirements in the IIPPA to conform to those in the GLBA. There is no opposition on file to this measure.*

*If passed by this Committee, this bill will next be heard by the Assembly Insurance Committee.*

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

- 1) Requires an insurer to provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than annually, as that term is defined, during the continuation of the customer relationship
- 2) States that the required notice must comply with applicable California regulations specifying the information to be included in insurance 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 consumer in a clear and conspicuous matter all of the following:
    - i) The consumer'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 consumer submitting a request to access, correct, amend, or delete their personal information.
    - iii) If the insurer refuses the consumer's request, the right to file a statement regarding what the consumer believes to be accurate and fair information and why the consumer disagrees with the insurance institution's refusal.
  - 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 customer 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. § 6801 et seq.)
- 2) Establishes the Insurance Information and Privacy Protection Act (IIPPA) and provides various rights to individuals, applicants, policyholders, and insureds pursuant to the IIPPA. (Ins. Code § 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.
  - 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 § 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's 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 §§ 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 § 791.20.)
- 6) Specifies by regulation the information to be included in privacy notices. (Cal. Code Regs., tit. 10, § 2689.7.)

**FISCAL EFFECT:** As currently in print this bill is keyed fiscal.

**COMMENTS:**

1) **Purpose of the bill.** Current state law requires that insurance companies send privacy notices to their customers annually. Unfortunately, the more frequently that lengthy notices are sent, the less likely they are to be read by consumers. Recognizing this, in 2015, the federal government adopted an amendment to the Gramm-Leech-Bliley Act (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. According to the author, California is one of three states that has not adopted that policy into its state laws. This bill proposes to make that conforming change by requiring that privacy notices be provided initially to new customers and then only sent when the privacy policy changes.

2) **Author's statement.** 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 Gramm-Leach 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 also 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.

3) **Background law.** California's Insurance Information and Privacy Protection Act (IIPPA), Insurance Code §§ 791-791.29, provides protections for consumers' personally identifiable information, which is generally provided to an agent, broker, or insurance company (insurer) when applying for insurance or submitting a claim. The IIPPA is enforced by the Insurance Commissioner, who has the authority to issue cease and desist orders for violations of the IIPPA. (Ins. Code § 791.17.) 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. (Ins. Code § 791.19.)

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. (Ins. Code § 791.08.) 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 consumer 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. (Ins. Code § 791.09.)

The IIPPA also lets individuals opt-out of the sharing of their personal information for marketing purposes. (Ins. Code § 791.13.)

Under the IIPPA, insurers must 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. (Ins. Code § 791.04.)

At the federal level, the Financial Modernization Act of 1999, more commonly known as the "Gramm-Leach-Bliley Act," was signed by President Clinton on November 12, 1999. The GLBA requires financial institutions (companies that offer consumers financial products or services like loans, financial or investment advice, or insurance) to explain their information-sharing practices to their customers and to safeguard sensitive data. When it was enacted, the GLBA, among other things, required that financial institutions provide their customers with initial and annual notices regarding their privacy practices, and allow their customers to opt out of sharing their information with certain nonaffiliated third parties.

On December 4, 2015, Congress amended the GLBA as part of the Fixing America's Surface Transportation (FAST) Act (Pub. L. No. 114-94). As noted previously, the FAST Act amendment eliminated the annual privacy notice requirement for financial institutions, including insurers, that satisfy two criteria:

- The financial institution does not share nonpublic personal information with nonaffiliated third parties except pursuant to certain GLBA exceptions permitting such disclosures; and
- The financial institution has also not changed its privacy policy and procedures since the most recent GLBA privacy notice sent to consumers.

4) **What this bill would do.** As noted previously, this bill would reduce the number of privacy notifications that insurers are required to send to their customers. Specifically, after providing new customers 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 insures that customers can still access privacy policies should the need arise.

5) **Related legislation.** AB 2372 (Calderon, 2022) was nearly identical to this bill, except that it required a more holistic description of a consumer's legal rights with regard to their information. The bill was not taken up for a vote on the Senate Floor and died on the Inactive File.

**ARGUMENTS IN SUPPORT.** In support, the Personal Insurance Federation of California writes:

Every year, California insurance companies send out millions of the required annual notices, including a summary of plan coverage and privacy notices. This results in unnecessary, confusing, and costly paper notices going out every year.

[ . . . ]

SB 793 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.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

American Council of Life Insurers  
 American Property Casualty Insurance Association  
 Association of California Life and Health Insurance Companies (ACLHIC)

Pacific Association of Domestic Insurance Companies  
Personal Insurance Federation of California

**Opposition**

None on file

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