

SUBCHAPTER A. INSURANCE CONSUMER FINANCIAL INFORMATION PRIVACY

28 TAC §22.9

INTRODUCTION. The Texas Department of Insurance proposes amendments to 28 TAC §22.9, concerning annual privacy notices. These amendments are necessary to reduce privacy notice confusion by eliminating the requirement for covered entities to send out redundant privacy notices and aligning the rule with recent changes to federal requirements regarding disclosures of privacy policies found in 15 U.S.C. §6803 (part of the Gramm-Leach-Bliley Act (GLBA)), consistent with Insurance Code Chapter 601.

EXPLANATION. Insurance Code Chapter 601 requires individuals and entities that receive an authorization from TDI to comply with 15 U.S.C. §6803, relating to disclosures of privacy policies. It directs the commissioner to adopt rules to implement Chapter 601 and in doing so attempt to keep state privacy requirements consistent with federal law. In 2001, TDI adopted rules in 28 TAC Chapter 22 substantially similar to the NAIC Model Privacy of Consumer Financial and Health Information Regulation. The rules were updated in 2014.

In December of 2015, the president signed the Fixing America's Surface Transportation (FAST) Act, which included an amendment to the privacy notice requirements in 15 U.S.C. §6803. FAST Act Title LXXV, "Eliminate Privacy Notice Confusion," added an exception to the general requirement that privacy notices must be sent to consumers annually when a financial institution has not changed its privacy policies and procedures since privacy notices were last sent and the financial institution discloses nonpublic personal information only in accordance with certain provisions of GLBA and related regulations.

Proposed amendments to §22.9 are necessary to reduce privacy notice confusion by eliminating the requirement for covered entities to send out redundant privacy notices and aligning the rule with GLBA as amended, consistent with Insurance Code Chapter 601. The proposed amendment to §22.9(a) references the proposed new exception to the annual privacy notice requirement in subsection (d). New §22.9(d) provides that a covered entity excepted from providing an annual privacy notice under 15 U.S.C. §6803(f), or one that would be excepted if it were a financial institution, is not required to provide an annual privacy notice under the section. New §22.9(d) also provides that the covered entity must provide the notice in

accordance with §22.9(a) whenever either of the criteria for the exception under 15 U.S.C. §6803(f) is not met. When a covered entity has not sent out a privacy notice within the previous period of 12 consecutive months because of the exception in §22.9(d) and the exception ceases to apply to the covered entity, the covered entity must promptly provide a privacy notice to customers under §22.9(a). The covered entity may also be subject to the requirements of §22.12, relating to revised privacy notices, depending on the nature of the change that made the exception cease to apply. TDI also proposes nonsubstantive grammar and style changes throughout the section.

FISCAL NOTE AND LOCAL EMPLOYMENTS IMPACT STATEMENT. Stan Strickland, Deputy Commissioner, Legal Division, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the amended rule. There will not be any measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Strickland has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the proposed sections will be reducing confusion associated with annual privacy notices. There will be no economic cost to comply with the amendments. In fact, industry indicates that there will be substantial savings in mailing costs as a result of eliminating the requirement to send redundant privacy notices.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. As required by Government Code §2006.002(c), TDI has determined that the proposal will not have an adverse economic effect on small or micro businesses because the proposed rule does not impose new costs on any regulated entities regardless of size. Therefore, in accordance with Government Code §2006.002(c), TDI has determined that a regulatory flexibility analysis is not required.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI invites the public and affected persons to comment on this proposal. Submit your written comments on the proposal no later than 5 p.m., Central time, on January 2, 2017. Send written comments by mail to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104; or by email to chiefclerk@tdi.texas.gov. You must simultaneously submit an additional copy of the comment by mail to Carole Cearley, Attorney, Office of Policy Development Counsel, Mail Code 110-1C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104; or by email to carole.cearley@tdi.texas.gov. You must submit any request for a public hearing separately to the Office of Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, before the close of the public comment period. If a hearing is held, written comments and public testimony presented at the hearing will be considered.

STATUTORY AUTHORITY. The amendments are proposed under Insurance Code §§601.002, 601.051, and 36.001.

Section 601.002 requires individuals and entities that receive an authorization from TDI to comply with 15 U.S.C. §6803, concerning privacy policy disclosures to consumers.

Section 601.051 directs the commissioner to adopt rules to implement the chapter and in doing so to attempt to keep state privacy requirements consistent with federal law.

Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. Section 22.9 implements Insurance Code Chapter 601 and §36.001.

TEXT.

§22.9. Annual Privacy Notice.

(a) A covered entity must [~~shall~~] 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, except as provided in subsection (d) of this section. "Annually" means at least once in any period of 12 consecutive months during which that relationship exists. A covered entity may define the 12-consecutive-month period, but the covered entity must [~~shall~~] apply it to the customer on a consistent basis. A covered entity provides a notice annually if it defines the 12-consecutive-month period as a calendar year and provides the annual notice to the customer once in each calendar year following the calendar year in which the covered entity provided the initial notice. For example, if a customer opens an account on any day of year 1, the covered entity must [~~shall~~] provide an annual notice to that customer by December 31 of year 2.

(b) A covered entity is not required to provide an annual notice to a former customer. A former customer is an individual with whom a covered entity no longer has a continuing relationship.

(1) A covered entity no longer has a continuing relationship with an individual if the individual no longer is a current policyholder of an insurance product or no longer obtains insurance services with or through the covered entity.

(2) A covered entity no longer has a continuing relationship with an individual if the individual's policy is lapsed, expired, or otherwise not in force, and the covered entity 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, communication at the direction of a state or federal authority, or promotional materials.

(3) For the purposes of this subchapter, a covered entity no longer has a continuing relationship with an individual if:

(A) the covered entity sends mail to the individual's last known address, according to the covered entity's records, and the postal authorities return that mail as undeliverable, and

(B) subsequent attempts by the covered entity to obtain a current valid address for the individual are unsuccessful.

(4) A covered entity no longer has a continuing relationship with a customer, in the case of providing real estate settlement services, at the later of the following events:

(A) the customer completes execution of all documents related to the real estate closing;

(B) payment for those services has been received; or

(C) the covered entity has completed all of its responsibilities with respect to the settlement, including filing documents in the public record.

(c) A covered entity must [~~shall~~] deliver any annual privacy notices required by this section according to §22.13 of this title (relating to Delivery).

(d) A covered entity that is excepted from annual privacy notice requirements under 15 U.S.C. §6803(f), or one that would be excepted if it were a financial institution, is not required to provide an annual privacy notice under this section. At any time the covered entity fails to meet both of the criteria for the exception under §6803(f), the covered entity is subject to the annual notice requirement in this section.

CERTIFICATION. This agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's legal authority to adopt.

Issued at Austin, Texas, on November 4, 2016.



Norma Garcia
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Texas Department of Insurance