

ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE

AMENDING A RULE

To repeal s. Ins 25.95 (3), to amend Ins 25.50 (1)(a), and to create Ins 25.13 (4), and 25.50 (1)(am), Wis. Adm. Code, relating to an exception to privacy notice requirements and limits on disclosure of nonpublic personal financial information for brand name licensees.

ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE

Statutory authority: ss. 601.41(3), Stats.

Statutes interpreted: ss. 628.34 (12), Stats.

Under ch. Ins 25, Wis. Adm. Code, a licensee of the Office of the Commissioner of Insurance, including a warranty plan, may not disclose nonpublic personal financial information to an unaffiliated third party unless the customer is given the opportunity to object to the disclosure (referred to as “opt out notice”). Nothing in this section is intended to permit telephone solicitation which would otherwise be prohibited under s. 100.52, Stats., or subch. V of ch. ATCP 127.

The current rule allows licensees to disclose nonpublic personal financial information to affiliates without an opt-out notice. This rule will also allow a warranty plan licensee or an affiliate to disclose nonpublic personal financial information without an opt-out notice to a non-affiliate selling products or services under the licensee’s brand name or the brand name of an affiliate of the licensee. The warranty plan licensee or affiliate may disclose only if the recipient agrees to use the information solely for sale of the branded product or service, to keep the information confidential, and to adhere to the licensee’s or affiliate’s quality standards for the branded products or services.

Finally the rule creates an exception to the annual notice provisions in s. Ins 25.13, Wis. Adm. Code, for licensees that meet the requirements of s. Ins 25.50 (1)(a), Wis. Adm. Code.

SECTION 1. Ins 25.13 (4) is created to read:

(4) EXCEPTION. The annual privacy notice requirement in this section does not apply when a licensee provides nonpublic personal financial information to any person described by s. Ins 25.50(1)(a)2.

SECTION 2. Ins 25.50 (1)(a) is amended to read:

Ins 25.50 **(1) SERVICES. (a) General rule.** The opt out requirements in ss. Ins 25.17 and 25.30 do not apply when a licensee provides nonpublic personal financial information ~~to a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf, if the licensee complies with all of the following~~ to either of the following:

1. A nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf, if the licensee complies with all of the following:

1a. It provides the initial notice in accordance with s. Ins 25.10.

2b. It enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in s. Ins 25.55 or 25.60 in the ordinary course of business to carry out those purposes.

2. A nonaffiliated third party for the purpose of marketing goods or services under the brand name of a licensee under ch. Ins 15, or an affiliate of such a licensee, if the licensee complies with all of the following:

a. It provides the initial notice in accordance with s. Ins 25.10.

b. The licensee or its affiliate enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee or its affiliate disclosed the information, including use under an exception in s. Ins 25.55 or 25.60 in the ordinary course of business to carry out those purposes.

c. The licensee or its affiliate contractually requires the third party to comply with the licensee's or its affiliate's standards that are reasonably designed to ensure the quality of the goods or services, and customer services.

d. The licensee or affiliate enters into a contractual agreement with the third party that requires the third party to implement reasonable safeguards to protect the security and confidentiality of its nonpublic personal financial information and take action that is necessary to enforce those safeguards.

SECTION 3. Ins 25.50 (1)(am) is created to read:

(am) Solicitations. Nothing in this section shall be construed or otherwise permit telephone solicitation which would otherwise be prohibited under s. 100.52, Stats., or subch. V of ch. ATCP 127.

SECTION 4. Ins 25.95 (3) is repealed.

SECTION 5. These changes first apply to policies issued or renewed on the effective date of this rule.

SECTION 6. These changes will take effect on the first day of the month after publication, as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin, this ____ day of _____, 2004.

Jorge Gomez
Commissioner of Insurance

FISCAL ESTIMATE WORKSHEET — 2001 Session

Detailed Estimate of Annual Fiscal Effect

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB Number	Amendment No. if Applicable
Bill Number	Administrative Rule Number INS 25.50(1)

)Subject
An Exception to Disclosure of Financial Information

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
None

Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations - Salaries and Fringes	\$ 0	\$ -0
(FTE Position Changes)	(0 FTE)	(-0 FTE)
State Operations - Other Costs	0	-0
Local Assistance	0	-0
Aids to Individuals or Organizations	0	-0
TOTAL State Costs by Category	\$ 0	\$ -0
B. State Costs by Source of Funds		
GPR	\$ 0	\$ -0
FED	0	-0
PRO/PRS	0	-0
SEG/SEG-S	0	-0
C. State Revenues <small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small>		
GPR Taxes	\$ 0	\$ -0
GPR Earned	0	-0
FED	0	-0
PRO/PRS	0	-0
SEG/SEG-S	0	-0
TOTAL State Revenues	\$ 0 None	\$ -0 None

NET ANNUALIZED FISCAL IMPACT

NET CHANGE IN COSTS	\$ <u>STATE</u> None 0	\$ <u>LOCAL</u> None 0
NET CHANGE IN REVENUES	\$ <u>STATE</u> None 0	\$ <u>LOCAL</u> None 0

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FISCAL ESTIMATE — 2001 Session

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB Number	Amendment No. if Applicable
Bill Number	Administrative Rule Number INS 25.50(1)

Subject
 An Exception to Disclosure of Financial Information

Fiscal Effect
 State: No State Fiscal Effect
 Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

<input type="checkbox"/> Increase Existing Appropriation	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Decrease Existing Appropriation	<input type="checkbox"/> Decrease Existing Revenues	
<input type="checkbox"/> Create New Appropriation		

Decrease Costs

Local: No local government costs

1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
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Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	Affected Chapter 20 Appropriations
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Assumptions Used in Arriving at Fiscal Estimate

The proposed amendment makes a narrow notification exception for qualified warranty plans to share nonpublic financial information with a non-affiliate only for the sale of the branded product or service with requirements to keep the information confidential, and to adhere to the licensee or affiliate's quality standards for the branded products or services. Nothing in the section permits telephone solicitations otherwise prohibited. Ultimately there could be cost reductions for certain plans and less consumer confusion.

Long-Range Fiscal Implications

None

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