

Chapter 10

California Insurance Codes

Extracted Sections §35, 380-381, 791-791.26, 1633 -1748, 1800-1823



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(Note: Headings For Identification Purposes Only)

§35. Transact, Defined

“Transact” as applied to insurance includes any of the following:

- (a) Solicitation.
- (b) Negotiations preliminary to execution.
- (c) Execution of a contract of insurance.
- (d) Transaction of matters subsequent to execution of the contract and arising out of it.

§380. Policy

The written instrument, in which a contract of insurance is set forth, is the policy.

§381. A policy shall specify:

1. The parties between whom the contract is made.
2. The property or life insured.
3. The interest of the insured in property insured, if he is not the absolute owner thereof.
4. The risks insured against.
5. The period during which the insurance is to continue.
6. Either:
 - a. A statement of the premium, or
 - b. If the insurance is of a character where the exact premium is only determinable upon the termination of the contract, a statement of the basis and rates upon which the final premium is to be determined and paid.

§791. Standards: Collection and Use of Information

The purpose of this article is 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.

§791.01. Obligations

(a) The obligations imposed by this article shall apply to those insurance institutions, agents or insurance-support organizations which, on or after October 1, 1981:

(1) In the case of life or disability insurance:

(A) Collect, receive or maintain information in connection with insurance transactions which pertains to natural persons who are residents of this state, or

(B) Engage in insurance transactions with applicants, individuals or policyholders who are residents of this state.

(2) In the case of property or casualty insurance:

(A) Collect, receive or maintain information in connection with insurance transactions involving policies, contracts or certificates of insurance delivered, issued for delivery or renewed in this state,

or

(B) Engage in insurance transactions involving policies, contracts or certificates of insurance delivered, issued for delivery or renewed in this state.

(b) The rights granted by this article shall extend to:

(1) In the case of life or disability insurance, the following persons who are residents of this state:

(A) Natural persons who are the subject of information collected, received or maintained in connection with insurance transactions.

(B) Applicants, individuals or policyholders who engage in or seek to engage in insurance transactions.

(2) In the case of property or casualty insurance, the following persons:

(A) Natural persons who are the subject of information collected, received or maintained in connection with insurance transactions involving policies, contracts or certificates of insurance delivered, issued for delivery or renewed in this state, and

(B) Applicants, individuals or policyholders who engage in or seek to engage in insurance transactions involving policies, contracts or certificates of insurance delivered, issued for delivery or renewed in this state.

(c) For purposes of this section, a person shall be considered a resident of this state if the person's last known mailing address, as shown in the records of the insurance institution, agent, or insurance-support organization, is located in this state.

(d) This article shall not apply to any person or entity engaged in the business of title insurance as defined in Section 12340.3.

(e) This article shall not apply to a person or entity engaged in the business of a home protection company, as defined in Section 12740, which does not obtain or maintain personal information, as defined in this article, of its policyholders and applicants.

(f) Insurance institutions, agents, insurance support organizations or any insurance transaction subject to this article shall be exempt from Part 2.6 (commencing with Section 56) of Division 1 of, and Sections 1785.20 and 1786.40 of, the Civil Code.

§791.02.

As used in this act:

(a) (1) "Adverse underwriting decision" means any of the following actions with respect to insurance transactions involving insurance coverage that is individually underwritten:

(A) A declination of insurance coverage.

(B) A termination of insurance coverage.

(C) Failure of an agent to apply for insurance coverage with a specific insurance institution that the agent represents and that is requested by an applicant.

(D) In the case of a property or casualty insurance coverage:

(i) Placement by an insurance institution or agent of a risk with a residual market mechanism, with an unauthorized insurer, or with an insurance institution that provides insurance to other than preferred or standard risks, if in fact the placement is at other than a preferred or standard rate. An adverse underwriting decision, in case of placement with an insurance institution that provides insurance to other than preferred or standard risks, shall not include placement if the applicant or insured did not specify or apply for placement as a preferred or standard risk or placement with a particular company insuring preferred or standard risks, or

(ii) The charging of a higher rate on the basis of information which differs from that which the applicant or policyholder furnished.

(E) In the case of a life, health, or disability insurance coverage, an offer to insure at higher than standard rates.

(2) Notwithstanding paragraph (1), any of the following actions shall not be considered adverse underwriting decisions but the insurance institution or agent responsible for their occurrence shall nevertheless provide the applicant or policyholder with the specific reason or reasons for their occurrence:

(A) The termination of an individual policy form on a class or statewide basis.

(B) A declination of insurance coverage solely because coverage is not available on a class or statewide basis.

(C) The rescission of a policy.

(b) "Affiliate" or "affiliated" means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with another person.

(c) "Agent" means any person licensed pursuant to Chapter 5 (commencing with Section 1621), Chapter 5A (commencing with Section 1759), Chapter 6 (commencing with Section 1760), Chapter 7 (commencing with Section 1800), or Chapter 8 (commencing with Section 1831).

(d) "Applicant" means any person who seeks to contract for insurance coverage other than a person seeking group insurance that is not individually underwritten.

(e) "Consumer report" means any written, oral, or other communication of information bearing on a natural person's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used in connection with an insurance

transaction.

(f) "Consumer reporting agency" means any person who:

(1) Regularly engages, in whole or in part, in the practice of assembling or preparing consumer reports for a monetary fee.

(2) Obtains information primarily from sources other than insurance institutions.

(3) Furnishes consumer reports to other persons.

(g) "Control," including the terms "controlled by" or "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

(h) "Declination of insurance coverage" means a denial, in whole or in part, by an insurance institution or agent of requested insurance coverage.

(i) "Individual" means any natural person who is any of the following:

(1) In the case of property or casualty insurance, is a past, present, or proposed named insured or certificate holder.

(2) In the case of life or disability insurance, is a past, present, or proposed principal insured or certificate holder.

(3) Is a past, present, or proposed policy owner.

(4) Is a past or present applicant.

(5) Is a past or present claimant.

(6) Derived, derives, or is proposed to derive insurance coverage under an insurance policy or certificate subject to this act.

(j) "Institutional source" means any person or governmental entity that provides information about an individual to an agent, insurance

institution, or insurance-support organization, other than any of the following:

(1) An agent.

(2) The individual who is the subject of the information.

(3) A natural person acting in a personal capacity rather than in a business or professional capacity.

(k) "Insurance institution" means any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, or other person engaged in the business of insurance. "Insurance institution" shall not include agents, insurance-support organizations, or health care service plans regulated pursuant to the Knox-Keene Health Care Service Plan Act, Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(l) "Insurance-support organization" means:

(1) Any person who regularly engages, in whole or in part, in the business of assembling or collecting information about natural persons for the primary purpose of providing the information to an insurance institution or agent for insurance transactions, including either of the following:

(A) The furnishing of consumer reports or investigative consumer reports to an insurance institution or agent for use in connection with an insurance transaction.

(B) The collection of personal information from insurance institutions, agents, or other insurance-support organizations for the purpose of detecting or preventing fraud, material misrepresentation or material nondisclosure in connection with insurance underwriting or insurance claim activity.

(2) Notwithstanding paragraph (1), the following persons shall not be considered "insurance-support organizations": agents, governmental institutions, insurance institutions, medical care institutions, medical professionals, and peer review committees.

(m) "Insurance transaction" means any transaction involving insurance primarily for personal, family, or household needs rather than business or professional needs that entails either of the following:

(1) The determination of an individual's eligibility for an insurance coverage, benefit, or payment.

(2) The servicing of an insurance application, policy, contract, or certificate.

(n) "Investigative consumer report" means a consumer report or portion thereof in which information about a natural person's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with the person's neighbors, friends, associates, acquaintances, or others who may have knowledge concerning those items of information.

(o) "Medical care institution" means any facility or institution that is licensed to provide health care services to natural persons, including but not limited to, hospitals, skilled nursing facilities, home health agencies, medical clinics, rehabilitation agencies, and public health agencies.

(p) "Medical professional" means any person licensed or certified to provide health care services to natural persons, including but not limited to, a physician, dentist, nurse, optometrist, physical or occupational therapist, psychiatric social worker, clinical dietitian, clinical psychologist, chiropractor, pharmacist, or speech therapist.

(q) "Medical record information" means personal information that is both of the following:

(1) Relates to an individual's physical or mental condition, medical history or medical treatment.

(2) Is obtained from a medical professional or medical care institution, from the individual, or from the individual's spouse, parent, or legal guardian.

(r) "Person" means any natural person, corporation, association, partnership, limited liability company, or other legal entity.

(s) "Personal information" means any individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health, or any other personal characteristics. "Personal information" includes an individual's name and address and "medical record information" but does not include "privileged information."

(t) "Policyholder" means any person who is any of the following:

(1) In the case of individual property or casualty insurance, is a present named insured.

(2) In the case of individual life or disability insurance, is a present policyowner.

(3) In the case of group insurance, which is individually underwritten, is a present group certificate holder.

(u) "Pretext interview" means an interview whereby a person, in an attempt to obtain information about a natural person, performs one or more of the following acts:

(1) Pretends to be someone he or she is not.

(2) Pretends to represent a person he or she is not in fact representing.

(3) Misrepresents the true purpose of the interview.

(4) Refuses to identify himself or herself upon request.

(v) "Privileged information" means any individually identifiable information that both:

(1) Relates to a claim for insurance benefits or a civil or criminal proceeding involving an individual.

(2) Is collected in connection with or in reasonable anticipation of a claim for insurance benefits or civil or criminal proceeding involving an individual. However, information otherwise meeting the requirements of this division shall nevertheless be considered "personal information" under this act if it is disclosed in violation of Section 791.13.

(w) "Residual market mechanism" means the California FAIR Plan Association, Chapter 10 (commencing with Section 10101) of Part 1 of Division 2, and the assigned risk plan, Chapter 1 (commencing with Section 11550) of Part 3 of Division 2.

(x) "Termination of insurance coverage" or "termination of an insurance policy" means either a cancellation or nonrenewal of an insurance policy, in whole or in part, for any reason other than the failure to pay a premium as required by the policy.

(y) "Unauthorized insurer" means an insurance institution that has not been granted a certificate of authority by the director to transact the business of insurance in this state.

(z) "Commissioner" means the Insurance Commissioner.

§791.03. Pretext to obtain information

No insurance institution, agent or insurance-support organization shall use or authorize the use of pretext interviews to obtain information in connection with an insurance transaction; provided, however, that a pretext interview may be undertaken to obtain information from a person or institution that does not have a generally or statutorily recognized privileged relationship with the person to whom the information relates for the purpose of investigating a claim where there is a reasonable basis for suspecting criminal activity, fraud, material misrepresentation or material nondisclosure in connection with a claim.

§791.04. Provide Notices

(a) An insurance institution or agent shall provide a notice of information practices to all applicants or policyholders in connection with insurance transactions as provided below:

(1) In the case of a written application for insurance, a notice shall be provided no later than:

(A) At the time of the delivery of the insurance policy or certificate when personal information is collected only from the applicant, an insured under the policy, or from public records; or

(B) At the time the collection of personal information is initiated when personal information is collected from a source other than the applicant, an insured under the policy, or public records.

(2) In the case of a policy renewal, a notice shall be provided no later than the policy renewal date or the date upon which policy renewal is confirmed, except that no notice shall be required in connection with a policy renewal if either of the following applies:

(A) Personal information is collected only from the policyholder, an insured under the policy, or from public records.

(B) A notice meeting the requirements of this section has been given within the previous 24 months.

(3) In the case of a policy reinstatement or change in insurance benefits, a notice shall be provided no later than the time a request for a policy reinstatement or change in insurance benefits is received by the insurance institution, except that no notice shall be required if personal information is collected only from the policyholder, an insured under the policy, or from public records or if a notice meeting the requirements of this section has been given within the previous 24 months.

(b) The notice required by subdivision (a) shall be in writing and shall state all of the following:

(1) Whether personal information may be collected from persons other than the individual or individuals proposed for coverage.

(2) 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.

(3) The types of disclosures identified in subdivisions (b), (c), (d), (e), (f), (i), (k), (l), and (n) of Section 791.13 and the circumstances under which the disclosures may be made without prior authorization, except that only those circumstances need be described which occur with such frequency as to indicate a general business practice.

(4) A description of the rights established under Sections 791.08 and 791.09 and the manner in which the rights may be exercised.

(5) That information obtained from a report prepared by an insurance-support organization may be retained by the insurance-support organization and disclosed to other persons.

(c) In lieu of the notice prescribed in subdivision (b), the insurance institution or agent may provide an abbreviated notice informing the applicant or policyholder of the following:

(1) Personal information may be collected from persons other than the individual or individuals proposed for coverage.

(2) Such information as well as other personal or privileged information subsequently collected by the insurance institution or agent may in certain circumstances be disclosed to third parties without authorization.

(3) A right of access and correction exists with respect to all personal information collected.

(4) The notice prescribed in subdivision (b) will be furnished to the applicant or policyholder upon request.

(d) The obligations imposed by this section upon an insurance institution or agent may be satisfied by another insurance institution or agent authorized to act on its behalf.

§791.05. Specific Questions

An insurance institution or agent shall clearly specify those questions designed to obtain information solely for marketing or research purposes from an individual in connection with an insurance transaction.

§791.06. Form

Notwithstanding any other provision of law, no insurance institution, agent or insurance-support organization may utilize as its disclosure authorization form in connection with insurance transactions a form or statement which authorizes the disclosure of personal or privileged information about an individual to the insurance institution, agent, or insurance-support organization unless the form or statement:

(a) Is written in plain language.

- (b) Is dated.
- (c) Specifies the types of persons authorized to disclose information about the individual.
- (d) Specifies the nature of the information authorized to be disclosed.
- (e) Names the insurance institution or agent and identifies by generic reference representatives of the insurance institution to whom the individual is authorizing information to be disclosed.
- (f) Specifies the purposes for which the information is collected.
- (g) Specifies the length of time the authorization shall remain valid, which shall be no longer than:
 - (1) In the case of authorizations signed for the purpose of collecting information in connection with an application for an insurance policy, a policy reinstatement or a request for change in policy benefits:
 - (A) Thirty months from the date the authorization is signed if the application or request involves life, health or disability insurance; or
 - (B) One year from the date the authorization is signed if the application or request involves property or casualty insurance.
 - (2) In the case of authorizations signed for the purpose of collecting information in connection with a claim for benefits under an insurance policy:
 - (A) The term of coverage of the policy if the claim is for a health insurance benefit; or
 - (B) The duration of the claim if the claim is not for a health insurance benefit; or
 - (C) The duration of all claims processing activity performed in connection with all claims for benefits made by any person entitled to benefits under a nonprofit hospital service contract.
- (h) Advises the individual or a person authorized to act on behalf of the individual that the individual or the individual's authorized representative is entitled to receive a copy of the authorization form.
- (i) This section shall not be construed to require any authorization for the receipt of personal or privileged information about an individual.

§791.07. Consumer report

- (a) No insurance institution, agent or insurance-support organization may prepare or request an investigative consumer report about an individual in connection with an insurance transaction involving an application for insurance, a policy renewal, a policy reinstatement or a change in insurance benefits unless the insurance institution or agent informs the individual of the following:
 - (1) That he or she may request to be interviewed in connection with the preparation of the investigative consumer report, and
 - (2) That upon a request pursuant to Section 791.08, he or she is entitled to receive a copy of the investigative consumer report.
- (b) If an investigative consumer report is to be prepared by an insurance institution or agent, the insurance institution or agent shall institute reasonable procedures to conduct a personal interview requested by an individual.
- (c) If an investigative consumer report is to be prepared by an insurance-support organization, the insurance institution or agent desiring such report shall inform the insurance-support organization whether a personal interview has been requested by the individual. The insurance-support organization shall institute reasonable procedures to conduct such interviews, if requested.

§791.08.

- (a) If any individual, after proper identification, submits a written request to an insurance institution, agent or insurance-support organization for access to recorded personal information about the individual which is reasonably described by the individual and reasonably locatable and retrievable by the insurance institution, agent or insurance-support organization, the insurance institution, agent or insurance-support organization shall within 30 business days from the date such request is received:
 - (1) Inform the individual of the nature and substance of such recorded personal information in writing, by telephone or by other oral communication, whichever the insurance institution, agent or insurance-support organization prefers;
 - (2) Permit the individual to see and copy, in person, such recorded personal information pertaining to him or her or to obtain a copy of such recorded personal information by mail, whichever the individual prefers, unless such recorded personal information is in coded form, in which case an accurate translation in plain language shall be provided in writing;
 - (3) Disclose to the individual the identity, if recorded, of those persons to whom the insurance institution, agent or insurance-support organization has disclosed such personal information within two

years prior to such request, and if the identity is not recorded, the names of those insurance institutions, agents, insurance-support organizations or other persons to whom such information is normally disclosed; and

(4) Provide the individual with a summary of the procedures by which he or she may request correction, amendment or deletion of recorded personal information.

(b) Any personal information provided pursuant to subdivision (a) above shall identify the source of the information if such source is an institutional source.

(c) Medical record information supplied by a medical care institution or medical professional and requested under subdivision (a), together with the identity of the medical professional or medical care institution which provided such information, shall be supplied either directly to the individual or to a medical

professional designated by the individual and licensed to provide medical care with respect to the condition to which the information relates, whichever the individual prefers. Mental health record information shall be supplied directly to the individual, pursuant to this section, only with the approval of the qualified professional person with treatment responsibility for the condition to which the information relates. If it elects to disclose the information to a medical professional designated by the individual, the insurance institution, agent or insurance-support organization shall notify the individual, at the time of the disclosure, that it has provided the information to the medical professional.

(d) Except for personal information provided under Section 791.10, an insurance institution, agent or insurance-support organization may charge a reasonable fee to cover the costs incurred in providing a copy of recorded personal information to individuals.

(e) The obligations imposed by this section upon an insurance institution or agent may be satisfied by another insurance institution or agent authorized to act on its behalf. With respect to the copying and disclosure of recorded personal information pursuant to a request under subdivision (a), an insurance institution, agent or insurance-support organization may make arrangements with an insurance-support organization or a consumer reporting agency to copy and disclose recorded personal information on its behalf.

(f) The rights granted to individuals in this section shall extend to all natural persons to the extent information about them is collected and maintained by an insurance institution, agent or insurance-support organization in connection with an insurance transaction. The rights granted to all natural persons by this subdivision shall not extend to information about them that relates to and is collected in connection with or in reasonable anticipation of a claim or civil or criminal proceeding involving them.

(g) For purposes of this section, the term "insurance-support organization" does not include "consumer reporting agency".

§791.09.

(a) Within 30 business days from the date of receipt of a written request from an individual to correct, amend or delete any recorded personal information about the individual within its possession, an insurance institution, agent or insurance-support organization shall either:

(1) Correct, amend or delete the portion of the recorded personal information in dispute; or

(2) Notify the individual of:

(A) Its refusal to make such correction, amendment or deletion.

(B) The reasons for the refusal.

(C) The individual's right to file a statement as provided in subdivision (c).

(b) If the insurance institution, agent or insurance-support organization corrects, amends or deletes recorded personal information in accordance with paragraph (1) of subdivision (a), the insurance institution, agent or insurance-support organization shall so notify the individual in writing and furnish the correction, amendment or fact of deletion to:

(1) Any person specifically designated by the individual who may have, within the preceding two years, received such recorded personal information.

(2) Any insurance-support organization whose primary source of personal information is insurance institutions if the insurance-support organization has systematically received such recorded personal information from the insurance institution within the preceding seven years; provided, however, that the correction, amendment or fact of deletion need not be furnished if the insurance-support organization no longer maintains recorded personal information about the individual.

(3) Any insurance-support organization that furnished the personal information that has been corrected, amended or deleted.

(c) Whenever an individual disagrees with an insurance institution's, agent's or insurance-support organization's refusal to correct, amend or delete recorded personal information, the individual shall be permitted to file with the insurance institution, agent or insurance-support organization:

(1) A concise statement setting forth what the individual thinks is the correct, relevant or fair information.

(2) A concise statement of the reasons why the individual disagrees with the insurance institution's, agent's or insurance-support organization's refusal to correct, amend or delete recorded personal information.

(d) In the event an individual files either statement as described in subdivision (c), the insurance institution, agent or support organization shall:

(1) File the statement with the disputed personal information and provide a means by which anyone reviewing the disputed personal information will be made aware of the individual's statement and have access to it.

(2) In any subsequent disclosure by the insurance institution, agent or support organization of the recorded personal information that is the subject of disagreement, clearly identify the matter or matters in dispute and provide the individual's statement along with the recorded personal information being disclosed.

(3) Furnish the statement to the persons and in the manner specified in subdivision (b).

(e) The rights granted to individuals in this section shall extend to all natural persons to the extent information about them is collected and maintained by an insurance institution, agent or insurance-support organization in connection with an insurance transaction. The rights granted to all natural persons by this

subdivision shall not extend to information about them that relates to and is collected in connection with or in reasonable anticipation of a claim or civil or criminal proceeding involving them.

(f) For purposes of this section, the term "insurance-support organization" does not include "consumer reporting agency".

§791.10. Disclose Adverse underwriting

(a) In the event of an adverse underwriting decision the insurance institution or agent responsible for the decision shall:

(1) Either provide the applicant, policyholder, or individual proposed for coverage with the specific reason or reasons for the adverse underwriting decision in writing or, except as provided in subdivision (e), advise the person that upon written request he or she may receive the specific reason or reasons in writing.

(2) Provide the applicant, policyholder or individual proposed for coverage with a summary of the rights established under subdivision (b) and Sections 791.08 and 791.09.

(b) Upon receipt of a written request within 90 business days from the date of the mailing of notice or other communication of an adverse underwriting decision to an applicant, policyholder or individual proposed for coverage, the insurance institution or agent shall furnish to such person within 21 business days from the date of receipt of such written request:

(1) The specific reason or reasons for the adverse underwriting decision, in writing, if such information was not initially furnished in writing pursuant to paragraph (1) of subdivision (a).

(2) The specific items of personal and privileged information that support those reasons; provided, however:

(A) The insurance institution or agent shall not be required to furnish specific items of privileged information if it has a reasonable suspicion, based upon specific information available for review by the commissioner, that the applicant, policyholder or individual proposed for coverage has engaged in criminal activity, fraud, material misrepresentation or material nondisclosure.

(B) Specific items of medical record information supplied by a medical care institution or medical professional shall be disclosed either directly to the individual about whom the information relates or to a medical professional designated by the individual and licensed to provide medical care with respect to the condition to which the information relates, whichever the individual prefers. Mental health record information shall be supplied directly to the individual, pursuant to this subdivision, only with the

approval of the qualified professional person with treatment responsibility for the condition to which the information relates.

(3) The names and addresses of the institutional sources that supplied the specific items of information given pursuant to paragraph (2) of subdivision (b); provided, however, that the identity of any medical professional or medical care institution shall be disclosed either directly to the individual or to the designated medical professional, whichever the individual prefers.

(c) The obligations imposed by this section upon an insurance institution or agent may be satisfied by another insurance institution or agent authorized to act on its behalf.

(d) When an adverse underwriting decision results solely from an oral request or inquiry, the explanation of reasons and summary of rights required by subdivision (a) or (e) may be given orally to the extent that such information is available.

(e) Except as provided in subdivision (d), with respect to a declination, cancellation, or nonrenewal of a property insurance policy covered by Section 675 or an automobile insurance policy covered by Section 660, or an individual life, health, or disability insurance policy, the insurance institution or agent responsible for the decision shall provide the specific reason or reasons in writing at the time of the decision. The communication of medical record information for a life or health insurance policy shall be subject to the disclosure requirements of subparagraph (B) of paragraph (2) of subdivision (a). This subdivision shall become operative on July 1, 2006.

§791.11. Previous Adverse information

No insurance institution, agent or insurance-support organization may seek information in connection with an insurance transaction concerning:

(a) Any previous adverse underwriting decision experienced by an individual, or

(b) Any previous insurance coverage obtained by an individual through a residual market mechanism, unless such inquiry also requests the reasons for any previous adverse underwriting decision or the reasons why insurance coverage was previously obtained through a residual market mechanism.

§791.12.

No insurance institution or agent may base an adverse underwriting decision in whole or in part on the following:

(a) On the fact of a previous adverse underwriting decision or on the fact that an individual previously obtained insurance coverage through a residual market mechanism; provided, however, an insurance institution or agent may base an adverse underwriting decision on further information obtained from an insurance institution or agent responsible for a previous adverse underwriting decision. The further information, when requested, shall create a conclusive presumption that the information is necessary to perform the requesting insurer's function in connection with an insurance transaction involving the individual and, when reasonably available, shall be furnished the requesting insurer and the individual, if applicable.

(b) On personal information received from an insurance-support organization whose primary source of information is insurance institutions; provided, however, an insurance institution or agent may base an adverse underwriting decision on further personal information obtained as the result of information received from an insurance-support organization.

(c) On the fact that an individual has previously inquired and received information about the scope or nature of coverage under a residential fire or property insurance policy, if the information is received from an insurance-support organization whose primary source of information is insurance institutions and the inquiry did not result in the filing of a claim.

§791.13. Privacy/Disclosure

An insurance institution, agent, or insurance-support organization shall not disclose any personal or privileged information about an individual collected or received in connection with an insurance transaction unless the disclosure is:

(a) With the written authorization of the individual, and meets either of the conditions specified in paragraph (1) or (2):

(1) If such authorization is submitted by another insurance institution, agent, or insurance-support organization, the authorization meets the requirement of Section 791.06.

- (2) If such authorization is submitted by a person other than an insurance institution, agent, or insurance-support organization, the authorization is:
- (a) Dated;
 - (b) Signed by the individual.
 - (c) Obtained one year or less prior to the date a disclosure is sought pursuant to this section.
 - (b) To a person other than an insurance institution, agent, or insurance-support organization, provided such disclosure is reasonably necessary:
 - (1) To enable such person to perform a business, professional or insurance function for the disclosing insurance institution, agent, or insurance-support organization or insured and such person agrees not to disclose the information further without the individual's written authorization unless the further disclosure:
 - (a) Would otherwise be permitted by this section if made by an insurance institution, agent, or insurance-support organization; or
 - (b) Is reasonably necessary for such person to perform its function for the disclosing insurance institution, agent, or insurance-support organization.
 - (2) To enable such person to provide information to the disclosing insurance institution, agent or insurance-support organization for the purpose of:
 - (a) Determining an individual's eligibility for an insurance benefit or payment; or
 - (b) Detecting or preventing criminal activity, fraud, material misrepresentation or material nondisclosure in connection with an insurance transaction.
 - (c) To an insurance institution, agent, insurance-support organization or self-insurer, provided the information disclosed is limited to that which is reasonably necessary under either paragraph (1) or (2):
 - (1) To detect or prevent criminal activity, fraud, material misrepresentation or material nondisclosure in connection with insurance transactions; or
 - (2) For either the disclosing or receiving insurance institution, agent or insurance-support organization to perform its function in connection with an insurance transaction involving the individual.
 - (d) To a medical-care institution or medical professional for the purpose of any of the following:
 - (1) Verifying insurance coverage or benefits.
 - (2) Informing an individual of a medical problem of which the individual may not be aware.
 - (3) Conducting operations or services audit, provided only such information is disclosed as is reasonably necessary to accomplish the foregoing purposes.
 - (e) To an insurance regulatory authority; or
 - (f) To a law enforcement or other governmental authority pursuant to law.
 - (g) Otherwise permitted or required by law.
 - (h) In response to a facially valid administrative or judicial order, including a search warrant or subpoena.
 - (i) Made for the purpose of conducting actuarial or research studies, provided:
 - (1) No individual may be identified in any actuarial or research report.
 - (2) Materials allowing the individual to be identified are returned or destroyed as soon as they are no longer needed.
 - (3) The actuarial or research organization agrees not to disclose the information unless the disclosure would otherwise be permitted by this section if made by an insurance institution, agent or insurance-support organization.
 - (j) To a party or a representative of a party to a proposed or consummated sale, transfer, merger or consolidation of all or part of the business of the insurance institution, agent or insurance-support organization, provided:
 - (1) Prior to the consummation of the sale, transfer, merger, or consolidation only such information is disclosed as is reasonably necessary to enable the recipient to make business decisions about the purchase, transfer, merger, or consolidation.
 - (2) The recipient agrees not to disclose the information unless the disclosure would otherwise be permitted by this section if made by an insurance institution, agent or insurance-support organization.
 - (k) To a person whose only use of such information will be in connection with the marketing of a product or service, provided:

- (1) No medical-record information, privileged information, or personal information relating to an individual's character, personal habits, mode of living, or general reputation is disclosed, and no classification derived from such information is disclosed; or
- (2) The individual has been given an opportunity to indicate that he or she does not want personal information disclosed for marketing purposes and has given no indication that he or she does not want the information disclosed; and
- (3) The person receiving such information agrees not to use it except in connection with the marketing of a product or service.

(l) To an affiliate whose only use of the information will be in connection with an audit of the insurance institution or agent or the marketing of an insurance product or service, provided the affiliate agrees not to disclose the information for any other purpose or to unaffiliated persons.

(m) By a consumer reporting agency, provided the disclosure is to a person other than an insurance institution or agent.

(n) To a group policyholder for the purpose of reporting claims experience or conducting an audit of the insurance institutions or agent's operations or services, provided the information disclosed is reasonably necessary for the group policyholder to conduct the review or audit.

(o) To a professional peer review organization for the purpose of reviewing the service or conduct of a medical-care institution or medical professional.

(p) To a governmental authority for the purpose of determining the individual's eligibility for health benefits for which the governmental authority may be liable.

(q) To a certificate holder or policyholder for the purpose of providing information regarding the status of an insurance transaction.

(r) To a lienholder, mortgagee, assignee, lessor, or other person shown on the records of an insurance institution or agent as having a legal or beneficial interest in a policy of insurance. The information disclosed shall be limited to that which is reasonably necessary to permit the person to protect his or her interest in the policy and shall be consistent with Article 5.5 (commencing with Section 770).

(s) To an insured when the information disclosed is from an accident report, supplemental report, investigative report or the actual report from a government agency or is a copy of an accident report or other report which the insured is entitled to obtain under Section 20012 of the Vehicle Code or subdivision (f) of Section 6254 of the Government Code.

§791.14. Commissioner power

(a) The commissioner shall have power to examine and investigate into the affairs of every insurance institution or agent doing business in this state to determine whether the insurance institution or agent has been or is engaged in any conduct in violation of this article.

(b) The commissioner shall have the power to examine and investigate into the affairs of every insurance-support organization acting on behalf of an insurance institution or agent which either transacts business in this state or transacts business outside this state that has an effect on a person residing in this state in order to determine whether such insurance-support organization has been or is engaged in any conduct in violation of this article.

§791.15.

(a) Whenever the commissioner has reason to believe that an insurance institution, agent or insurance-support organization has been or is engaged in conduct in this state which violates this article, or if the commissioner believes that an insurance-support organization has been or is engaged in conduct outside this state which has an effect on a person residing in this state and which violates this article, the commissioner shall issue and serve upon such insurance institution, agent or insurance-support organization a statement of charges and notice of hearing to be held at a time and place fixed in the notice. The date for such hearing shall be not less than 30 days after the date of service.

(b) At the time and place fixed for such hearing the insurance institution, agent or insurance-support organization charged shall have an opportunity to answer the charges against it and present evidence on its behalf. Upon good cause shown, the commissioner shall permit any adversely affected person to intervene, appear and be heard at such hearing by counsel or in person.

(c) At any hearing conducted pursuant to this section the commissioner may administer oaths, examine and cross-examine witnesses and receive oral and documentary evidence. The commissioner shall have the power to subpoena witnesses, compel their attendance and require the production of books, papers,

records, correspondence and other documents which are relevant to the hearing. A stenographic record of the hearing shall be made upon the request of any party or at the discretion of the commissioner. If no stenographic record is made and if judicial review is sought, the commissioner shall prepare a statement of the evidence for use on review. Hearings conducted under this section shall be governed by the same rules of evidence and procedure applicable to administrative proceedings conducted under the laws of this state.

(d) Statements of charges, notice, orders and other processes of the commissioner under this article may be served by anyone duly authorized to act on behalf of the commissioner. Service of process may be completed in the manner provided by law for service of process in civil actions or by registered mail or by a mailing service offered by a third party mailing service with tracking capability that is not more expensive than registered mail. A copy of the statement of charges, notice, order or other process shall be provided to the person or persons whose rights under this article have been allegedly violated. A verified return setting forth the manner of service, the return postcard receipt in the case of registered mail, or signed receipt documentation, shall be sufficient proof of service.

§791.16. Mailing

For the purpose of this article, an insurance-support organization transacting business outside this state that has an effect on a person residing in this state shall be deemed to have appointed the commissioner to accept service of process on its behalf, provided the commissioner causes a copy of the service to be mailed immediately by registered mail, or by a mailing service offered by a third party mailing service with tracking capability that is not more expensive than registered mail, to the insurance-support organization at its last known principal place of business. The return postcard receipt or signed receipt documentation for the mailing shall be sufficient proof that the same was properly mailed by the commissioner.

§791.17.

(a) If, after a hearing pursuant to Section 791.15, the commissioner determines that the insurance institution, agent or insurance-support organization charged has engaged in conduct or practices in violation of this article, the commissioner shall reduce his or her findings to writing and shall issue and cause to be served upon such insurance institution, agent or insurance-support organization a copy of such findings and an order requiring such insurance institution, agent or insurance-support organization to cease and desist from the conduct or practices constituting a violation of this article.

(b) If, after a hearing pursuant to Section 791.15, the commissioner determines that the insurance institution, agent or insurance-support organization charged has not engaged in conduct or practices in violation of this article, the commissioner shall prepare a written report which sets forth findings of fact and conclusions of law. Such report shall be served upon the insurance institution, agent or insurance-support organization charged and upon the person or persons, if any, whose rights under this article were allegedly violated.

(c) Until the expiration of the time allowed under Section 791.18 for filing a petition for review or until such petition is actually filed, whichever occurs first, the commissioner may modify or set aside any order or report issued under this section. After the expiration of the time allowed under Section 791.18 for filing a petition for review, if no such petition has been duly filed, the commissioner may, after notice and opportunity for hearing, alter, modify or set aside, in whole or in part, any order or report issued under this section whenever conditions of fact or law warrant such action or if the public interest so requires.

§791.18.

(a) Any person subject to an order of the commissioner under Section 779.17 or Section 791.20 or any person whose rights under this article were allegedly violated may obtain a review of any order or report of the commissioner by filing in a court of competent jurisdiction, within 30 days from the date of the service of such order or report, pursuant to Section 1094.5 of the Code of Civil Procedure. The court shall have jurisdiction to make and enter a decree modifying, affirming or reversing any order or report of the commissioner, in whole or in part.

(b) An order or report issued by the commissioner under Section 791.17 shall become final:

(1) Upon the expiration of the time allowed for the filing of a petition for review, if no such petition has been duly filed; except that the commissioner may modify or set aside an order or report to the extent provided in subdivision (c) of Section 791.17; or

(2) Upon a final decision of the court if the court directs that the order or report of the commissioner be affirmed or the petition for review dismissed.

(c) No order or report of the commissioner under this article or order of a court to enforce the same shall in any way relieve or absolve any person affected by such order or report from any liability under any law of this state.

§791.19. Penalties: Cease and Desist order from Commissioner

Any person who violates a cease and desist order of the commissioner under Section 791.17 may, after notice and hearing and upon order of the commissioner, be subject to one or more of the following penalties, at the discretion of the commissioner:

(a) A monetary fine of not more than ten thousand dollars (\$10,000) for each violation; or

(b) A monetary fine of not more than fifty thousand dollars (\$50,000) if the commissioner finds that violations have occurred with such frequency as to constitute a general business practice; or

(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 this article.

§791.20. Failure to Comply

(a) If any insurance institution, agent or insurance-support organization fails to comply with Section 791.08, 791.09 or 791.10 with respect to the rights granted under those sections, any person whose rights are violated may apply to any court of competent jurisdiction, for appropriate equitable relief.

(b) An insurance institution, agent or insurance-support organization which discloses information in violation of Section 791.13 shall be liable for damages sustained by the individual about whom the information relates. However no individual shall be entitled to a monetary award which exceeds the actual damages sustained by the individual as a result of a violation of Section 791.13.

(c) In any action brought pursuant to this section, the court may award the cost of the action and reasonable attorney's fees to the prevailing party.

(d) An action under this section shall be brought within two years from the date the alleged violation is or should have been discovered.

(e) Except as specifically provided in this section, there shall be no remedy or recovery available to individuals, in law or in equity, for occurrences constituting a violation of any provision of this act.

§791.21.

No cause of action in the nature of defamation, invasion of privacy or negligence shall arise against any person for disclosing personal or privileged information in accordance with this chapter, nor shall such a cause of action arise against any person for furnishing personal or privileged information to an insurance institution, agent or insurance-support organization; provided, however, this section shall provide no immunity for disclosing or furnishing false information with malice or willful intent to injure any person.

§791.22. Fine / false pretense

Any person who knowingly and willfully obtains information about an individual from an insurance institution, agent or insurance-support organization under false pretenses shall be fined not more than ten thousand dollars (\$10,000) or imprisoned for not more than one year, or both.

§791.23.

The rights granted under Sections 791.08, 791.09 and 791.13 shall take effect on October 1, 1981, regardless of the date of the collection or receipt of the information which is the subject of such sections. Nothing contained in subdivisions (k) and (l) of Section 791.13, or in any other provision of this article, shall in any way affect the provisions of Section 770.1.

§791.26.

Where an authorization from the individual was granted to a nonprofit hospital service plan prior to October 1, 1981, such authorization shall be deemed to be in compliance with this article.

§1633. Penalty; transacting without a valid license.

Any person who transacts insurance without a valid license so to act is guilty of a misdemeanor punishable by a fine not exceeding fifty thousand dollars (\$50,000) or by imprisonment in a county jail for a period not exceeding one year, or by both that fine and imprisonment.

§1666. Investigation By Commissioner; Filing Of Supplementary Documents; Issuance Of Certificate Of Convenience; Permanent License.

Upon the filing of an application for a license in accordance with Article 4 of this chapter, the commissioner may make such investigation and require the filing of such supplementary documents affidavits and statements as may be necessary to obtain a full disclosure of such information as will aid him in determining whether the prerequisites for the license have been met. If the applicant makes a showing satisfactory to the commissioner that he meets all such prerequisites, the commissioner, if the applicant be eligible therefore, may issue a certificate of convenience, and upon the applicant meeting applicable examination requirement may issue a permanent license.

§1666.5. Providing Federal Employer Identification Number, Or Social Security Number; Failure To Provide Notice; Penalty; Information Furnished; Recording Information Reported; Confidentially Legislative Intent; Tax Enforcement.

(a) Notwithstanding any other provision of law, the commissioner shall at the time of issuance or renewal of any license under this chapter or Chapter 6 (commencing with Section 1760), Chapter 7 (commencing with Section 1800), or Chapter 8 (commencing with Section 1831) require that any licensee provide its federal employer identification number if the licensee is a partnership or his or her social security number for all others.

(b) Any licensee failing to provide the federal identification number or social security number shall be reported by the commissioner to the Franchise Tax Board, and if failing to provide after notification pursuant to paragraph (1) of subdivision (b) of Section 19528 of the Revenue and Taxation Code, shall be subject to the penalty provided in paragraph (2) of subdivision (b) of Section 19528 of the Revenue and Taxation Code.

(c) The commissioner shall, upon request of the Franchise Tax Board, furnish to the board all of the following information with respect to every licensee:

- (1) Licensee's name
- (2) Address or addresses of record.
- (3) Federal employer identification number if the entity is a partnership or owner's name and social security number for all others.
- (4) Type of license.
- (5) Effective date of license or a renewal.
- (6) Expiration date of license.
- (7) Whether license is active or inactive, if known.
- (8) Whether license is new or renewal.

(d) For the purposes of this section:

- (1) "Licensee" means any entity, other than a corporation, authorized by a license, certificate, registration, or other means to engage in the insurance business regulated by this code.
- (2) "License" includes a certificate, registration or any other authorization needed to engage in the insurance business regulated by this code.

(e) The reports required under this section shall be filed on magnetic media or in other machine-readable form, according to standards furnished by the Franchise Tax Board.

(f) The commissioner shall begin providing the Franchise Tax Board the information required by this section as soon as economically feasible, but no later than July 1, 1987. The information shall be furnished at a time which the Franchise Tax Board may require.

- (g) Notwithstanding Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, the information furnished pursuant to this section shall not be deemed to be a public record and shall not be open to the public for inspection.
- (h) Any deputy, agent, clerk, officer, or employee of the commissioner, or any former officer or employee or other individual who in the course of his or her employment or duty has or has had access to the information required to be furnished under this section, shall not disclose or make known on any manner that information, except as provided in this section to the Franchise Tax Board.
- (i) It is the intent of the Legislature in enacting this section to utilize the social security account number or federal employer identification number for the purpose of establishing the identification of persona affected by state tax laws and, to that end, the information furnished pursuant to this section shall be used exclusively for tax enforcement purposes.

§1667. Hearing; Laws Governing.

Except as provided in Section 1669, a license shall not be denied without an opportunity to the applicant to be heard in support of his application. When a hearing is held, the proceeding shall be conducted in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code.

§1668. Denial Of Application After Hearing; Grounds.

The commissioner may deny an application for any license issued pursuant to this chapter if:

- (a) The applicant is not properly qualified to perform the duties of a person holding the license applied for;
- (b) The granting of the license will be against public interest;
- (c) The applicant does not intend to actively and in good faith to carry on as a business with the general public the transactions which would be permitted by the issuance of the license applied for;
- (d) The applicant is not of good business reputation;
- (e) The applicant is lacking in integrity;
- (f) The applicant has been refused a professional, occupational or vocational license or has such a license suspended or revoked by any licensing authority for reasons that should preclude the granting of the license applied for;
- (g) The applicant seeks the license for the purpose of avoiding or preventing the operation or enforcement of the insurance laws of this state;
- (h) The applicant has knowingly or willfully made a misstatement in an application to the commissioner for a license, or in a document filed in support of such an application, or has made a false statement in testimony given under oath before the commissioner or any other person acting in his stead.
- (i) The applicant has previously engaged in a fraudulent practice or act or has conducted any business in a dishonest manner.
- (j) The applicant has shown incompetency or untrustworthiness in the conduct of any business, or has by commission of a wrongful act or practice in the course of any business exposed the public or those dealing with him to the danger of loss;
- (k) The applicant has knowingly misrepresented the terms or effect of an insurance policy or contract;
- (l) The applicant has failed to perform a duty expressly enjoined upon him by a provision of this code or has committed an act expressly forbidden by such a provision;
- (m) The applicant has been convicted of:
 - (1) A felony
 - (2) A misdemeanor denounced by this code or other laws regulating insurance; or
 - (3) A public offense having as one of its necessary elements a fraudulent act or an act of dishonesty in acceptance, custody or payment of money or property;
- (n) The applicant has aided or abetted any person in an act or omission which would constitute grounds for the suspension, revocation or refusal of a license or certificate issued under this code to the person aided or abetted;
- (o) The applicant has permitted any person in his employ to violate any provision of this code; or
- (p) The applicant has violated any provision of law relating to conduct of business which could be done only under authority conferred by such license.
- (q) The applicant has submitted to the commissioner a false or fraudulent certificate pursuant to subdivision (d) of Section 1749.5.

A judgment, plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section.

§1668.1. Additional Grounds for Revocation of License

In addition to the grounds set forth in Section 1668, the following acts shall constitute cause to suspend or revoke any permanent license issued pursuant to this chapter:

(a) The licensee has induced a client, whether directly or indirectly, to cosign or make a loan, make an investment, make a gift, including a testamentary gift, or provide any future benefit through a right of survivorship to the licensee, or to any of the persons listed in subdivision (e).

(b) The licensee has induced a client, whether directly or indirectly, to make the licensee or any of the persons listed in subdivision (e) a beneficiary under the terms of any intervivos or testamentary trust or the owner or beneficiary of a life insurance policy or an annuity policy.

(c) The licensee has induced a client, whether directly or indirectly, to make the licensee, or a person who is registered as a domestic partner of the licensee, or is related to the licensee by birth, marriage, or adoption, a trustee under the terms of any intervivos or testamentary trust. However, if the licensee is also licensed as an attorney in any state, the licensee may be made a trustee under the terms of any intervivos or testamentary trust, provided that the licensee is not a seller of insurance to the trustor of the trust.

(d) The licensee, who has a power of attorney for a client has sold to the client or has used the power of attorney to purchase an insurance product on behalf of the client for which the licensee has received a commission.

(e) Subdivisions (a) and (b) shall also apply if the licensee induces the client to provide the benefits in those subdivisions to the following people:

(1) A person who is related to the licensee by birth, marriage, or adoption.

(2) A person who is a friend or business acquaintance of the licensee.

(3) A person who is registered as a domestic partner of the licensee.

(f) This section shall not apply to situations in which the client is:

(1) A person related to the licensee by birth, marriage, or adoption.

(2) A person who is registered as a domestic partner of the licensee.

§1668.5. Denial, Suspension, Revocation of License

(a) The commissioner may deny an application for any license issued pursuant to this chapter, and may suspend or revoke the permanent license of any organization licensed pursuant to this chapter as authorized by Section 1738, if the applicant or holder of the permanent license is an organization and a controlling person of the organization is any of the following:

(1) The controlling person has previously engaged in a fraudulent practice or act or has conducted any business in a dishonest manner.

(2) The controlling person has shown incompetency or untrustworthiness in the conduct of any business, or has by commission of a wrongful act or practice in the course of any business exposed the public or those dealing with him or her to the danger of loss.

(3) The controlling person has knowingly misrepresented the terms or effect of an insurance policy or contract.

(4) The controlling person has failed to perform a duty expressly enjoined upon him or her by a provision of this code or has committed an act expressly forbidden by a provision of this code.

(5) The controlling person has been convicted of any of the following:

a. A felony.

b. A misdemeanor denounced by this code or other laws regulating insurance.

c. A public offense having as one of its necessary elements a fraudulent act or an act of dishonesty in acceptance, custody, or payment of money or property. A judgment, plea, or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section.

(6) The controlling person has aided or abetted any person in an act or omission that would constitute grounds for the suspension, revocation, or refusal of a license or certificate issued under this code to the person aided or abetted.

(7) The controlling person has permitted any person in his or her employ to violate any provision of this code.

- (8) The controlling person has violated any provision of law relating to conduct of business that could lawfully be done only under authority conferred by a license under this chapter.
- (b) As used in this section, "controlling person" means a person who possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the organization, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, including, but not limited to, power that is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, more than 10 percent of the voting securities of the organization. This presumption may be rebutted by a showing that control does not exist in fact. The commissioner may, after furnishing all persons in interest notice and opportunity to be heard, determine that control exists in fact, notwithstanding the absence of a presumption to that effect.

§1669. Denial Of Application Without Hearing.

The commissioner may, without hearing, deny any application if the applicant has:

1. Committed a felony as shown by a plea of guilty or nolo contendere, or by a final judgment of conviction thereof;
2. Committed a misdemeanor denounced by this code or by other laws regulating insurance as shown by a plea of guilty or nolo contendere, or by a final judgment of conviction thereof;
3. Had a previous application for a professional, occupational, or vocational license denied for cause by any licensing authority, within five years of the date of the filing of the application be acted upon, on grounds that should preclude the granting of a license by the commissioner under this chapter; or
4. Had a previously issued professional, occupational, or vocational license suspended or revoked for cause by any licensing authority, within five years of the date of filing the application to be acted upon, on grounds that should preclude the granting of a license by the commissioner under this chapter.

In the event the commissioner issues an order based on a plea that does not at any time result in a judgment of conviction, the commissioner shall vacate the order upon petition by the applicant.

§1670. Automatic Denial Without Prejudice.

If an applicant for any license under this chapter, within one year from the date of the receipt by the commissioner of the application, whether or not the filing is complete, or within one year from the date of the issuance to him of a certificate of convenience, if any, whichever is the later date, neither fully qualifies for and receives such license on a permanent basis, nor is denied its issue, such application is automatically denied without prejudice to the filing of new application for such license unless in a proceeding under a statement of issues the commissioner for good cause determines such denial should be set aside or stayed. Nothing in the section shall nullify Section 1695 to extend the expiration date of a certificate of convenience.

§1672. Examination: Organization, Natural Persons

The commissioner may deny an application filed by an organization, unless both the organization and all natural persons named thereon meet the qualifications for a license for which such application is filed, but the qualifying examination shall be administered only to natural persons. In case the application is for more than one natural person to be named thereon and at least one, but not all, of such persons satisfy the examination requirement, the commissioner may issue such license omitting therefrom the names of the person or persons who fail to satisfy the examination requirement.

§1677. Scope of Examination

Every qualifying examination for a license under this chapter shall be in writing and shall be of sufficient scope to satisfy the commissioner that the applicant has sufficient knowledge of and is reasonably familiar with the insurance laws of this State and with the provisions, terms and conditions of the insurance which may be transacted pursuant to the license sought, and has a general and fair understanding of the obligations and duties of the holder of such license.

§1678. Commissioner; examination frequency

The commissioner shall, at least once each month, give in each of the cities in which he has an office qualifying examinations under this chapter. He may give such examinations at more frequent intervals or in other places throughout the State.

§1679. License; nonresident applicant

(a) A nonresident applicant for a license shall be subject to the same qualifying examination as is required of a resident applicant. The examination may be administered to an eligible nonresident applicant through the insurance authority of the state, territory of the United States, or province of Canada of his or her residence; provided, however, that the commissioner may, in his or her discretion, enter into a reciprocal arrangement with the officer having supervision of the insurance business in any other state, territory of the United States, or province of Canada whose qualification standards for the applicant to be examined are substantially the same as or in excess of those of this state, to accept, in lieu of the examination of applicant residing therein, a certificate of the officer to the effect that the applicant is licensed in that state, territory of the United States, or province of Canada in a capacity similar to that for which a license is sought in this state and has complied with its qualification standards in respect to the following:

- (1) Experience or training,
- (2) Reasonable familiarity with the broad principles of insurance licensing and regulatory laws and with the provisions, terms and conditions of the insurance which the applicant proposes to transact, and
- (3) A fair and general understanding of the obligations and duties of a holder of the license sought.

(b) The provisions of this section shall not apply to a nonresident applicant who maintains a license in a jurisdiction that grants reciprocity to California residents in accordance with Section 1638.5.

(c) A nonresident applicant for an organizational license must name at least one person from their home state who may exercise the power and perform the duties under their license. Additional persons endorsed to that license may be residents of another state, but may not be residents of California.

§1680. Nonresident licensee seeks license as resident

If a nonresident secures a license without examination through the filing of a certificate described in Section 1679 and thereafter seeks a license as resident, he must take and pass the qualifying examination for the license sought.

§1681.5 Cheating; examination

(a) No person shall cheat on, subvert, or attempt to subvert, any licensing examination given by the department, including, but not limited to, engaging in, soliciting, or procuring any of the following:

- (1) Any communication between one or more examinees and any other person, other than the proctor or examination official, while the examination is in progress.
- (2) The taking of all or part of the examination by a person other than the applicant.
- (3) Possession or use at any time during the examination or while the examinee is on the examination premises of any device, material, or document that is not expressly authorized for use by examinees during the examination, including, but not limited to, notes, crib sheets, textbooks, and electronic devices.
- (4) Failure to follow any examination instruction or rule related to examination security.
- (5) The provision of false, fraudulent, or materially misleading information concerning education, experience, or other qualifications as part of, or in support of, any application for admission to any examination.

(b) Any person who willfully violates this section is guilty of a misdemeanor punishable by a fine not exceeding ten thousand dollars (\$10,000) or by imprisonment in a county jail not exceeding one year.

(c) The commissioner shall bar any candidate caught willfully cheating under this section from taking any license examination and from holding an active license under any provision of this code for a period of five years.

§1682. Commissioner sets rules – twice failed exam

The commissioner may, in accordance with the procedure set forth in Chapter 4 of Part I of Division 3 of Title 2 of the Government Code, promulgate rules setting reasonable time limits within which a person who has twice failed an examination or failed to fulfill examination requirements may not take further examinations.

§1683. Notice; examination

At a reasonable time before an applicant is required to appear for a qualifying examination, the commissioner shall send him written notice thereof. Such notice shall set forth the time and place of such examination. The commissioner shall not send such notice to applicant until he has paid the fee required for filing application to take or retake such examination. If an applicant fails to appear at the time and place set for the examination, he shall be deemed to have failed the examination. If the applicant fails the qualifying examination, the commissioner shall give him written notice thereof.

§1684. Reference; Natural person; capacity under organization

Except as otherwise provided in this article, whenever reference is made in this article to an applicant for a license, such reference includes each natural person who applies to be named on the license of an organization, and wherever reference is made to a person who has been licensed in a specified capacity, such reference shall also apply to a person named to act in such capacity under the license of an organization.

§1702. Issuance To Holder.

All licenses issued pursuant to this chapter shall be issued to the holder thereof.

§1703. Disclosure Of Financial Records, Authority.

Every applicant for an original license to act as a fire and casualty broker-agent, life agent, life analyst, surplus line broker, special lines surplus line broker, motor club agent, or bail agent or bail solicitor or bail permittee shall, as part of the application, endorse an authorization for disclosure to the commissioner of financial records of any fiduciary funds as defined in Section 1733, pursuant to Section 7473 of the Government Code. The authorization shall continue in force and effect for so long as the licensee continues to be licensed by the department.

§1708. License Surrender to Commissioner

A licensee may at any time surrender for cancellation any license under which he is permitted to act in any of the capacities specified in this chapter. If the license is in the possession of the licensee, surrender may be accomplished by the delivery of the document itself to the commissioner. If the license is in the possession of the insurer or the licensee's employer, the licensee may nevertheless make such surrender by written notice thereof delivered to the commissioner.

§1710. All licenses issued to natural persons terminate upon the death of such person.

§1711. Organization Ceases / Eligibility To Hold License

For the purposes of this chapter and except as provided in this article, an organization ceases to exist as an entity eligible to hold a license:

- (a) Upon dissolution of a co-partnership or upon any change in membership of a co-partnership.
- (b) Upon the termination of an association.
- (c) Upon dissolution of a corporation.

Provided, however, should a change occur in the membership of a co-partnership licensed under this chapter, the surviving or continuing co-partnership may continue to transact insurance under the license issued to the predecessor co-partnership until action is taken by the commissioner on the application herein prescribed if the following requirements are met:

- (1) The surviving or continuing co-partnership within 30 days files an application on a form prescribed by the commissioner for registration of the change in membership, and pays the lawful fee therefore and, if acting as an insurance broker, furnishes the bond required under Article 5 (commencing with Section 1662).

- (2) At least one person who exercised the agency or brokership powers of the predecessor co-partnership continues to exercise the agency or brokership powers of the surviving or continuing co-partnership.
- (3) That application for registration be signed by a general partner.

§1712 Termination of the Existence of the License Entity

The termination of the existence of the license entity as provided in Section 1711, automatically terminates the right of that entity to transact insurance thereunder; except that a natural person, copartnership, association, or corporation licensed under this article, may continue to transact insurance under an existing license in either a different capacity or as a different organization or entity if a natural person is named to exercise the agency or brokerage powers of the license entity, and that natural person remains eligible to be so named, and if no substantial change in ownership and no change in control of the licensed insurance business has taken place; provided, that within 30 days following the change the person or the successor copartnership, association or corporation files a properly completed and executed application in the form prescribed by the commissioner for an appropriate license and pays the lawful fees therefor.

Nothing herein shall be construed to nullify any provision of Section 1718 except that any fee paid as required by subdivisions (a) or (b) of Section 1718 for a license not issued may be applied towards the fee for filing an application under this section.

§1718 License Renewal Responsibility

(a) Not less than 60 days before a permanent license will expire, the commissioner may use an electronic delivery method, including e-mail or other similar electronic method of delivery, to deliver, or may mail, to the latest e-mail or mailing address appearing on his or her records, an application to the licensee to renew the license for the appropriate succeeding license term. It is the licensee's responsibility to renew whether or not a renewal notice is received. The commissioner may accept a late renewal, provided the licensee's failure to comply is to clerical error or inadvertence on the part of the department.

(b) Application for renewal of a license may be filed on or before the expiration date. When filed under this subdivision, the fee for filing shall be specified in Section 1750.

(c) The application for renewal of an expired license may be filed after the expiration date and until that same month and day of the next succeeding year. The fee for a renewal application under this subdivision shall be the fee specified in subdivision (b) and a delinquent fee in the amount specified for a one-year period in Section 1750 for the filing. Each licensee shall be subject to payment of delinquent fees under this section.

§1719 File Application for Renewal

The commissioner shall not issue any permanent license within 30 days prior to the expiration date on record for a previously licensed entity unless the person shall have also file an application for renewal of the license for that license year or term directly following the expiration date to which the application for renewal relates and shall have paid the fee for filing specified in Section 1750. As to the filing of the renewal application, the provisions of Section 1718 shall not be applicable.

§1720 Continue Operating 60 Days After License Expiration

(a) A license who has applied to renew a license under this chapter shall be entitled to continue operating under the existing license for 60 days after its specified expiration date, or until notified by the department that the renewal application is deficient, whichever comes first, if the applicant has satisfied all license renewal requirements, including, but not limited to, the following:

(1) The submission of the application renewal application and fee on or before the expiration date of the license.

(2) The satisfaction of all required continuing education or training requirements.

(b) This section shall not apply to any license that is suspended or revoked.

§1722 License Renewal – Military Service

If a natural person while licensed pursuant to the provisions of this chapter of Chapters 6 (commencing with Section 1760), **Chapter 7 (commencing with Section 1800)**, or 8 (commencing with Section 1831) of this part, or Part 5 (commencing with Section 12140) of Division 2 enters the Military Service of the

United States and is in such at a time prescribed for the filing of a renewal application, the filing of such application is waived, and the license held by such licensee at the time of his entry into military service shall remain in force during the period of such military service and until the end of the license year in which he is released from such service but not for less than six months after such release. During such period such person may secure a license of the type held by him on his entry into military service upon the filing of an application and paying the fee therefore without the necessity of taking any examination or paying any penalty.

§1723 Applicant Conviction of Felony

(a) At the time any original or renewal license application that is submitted to the commissioner shows a conviction of the applicant of a felony involving dishonesty or breach of trust, or of a violation of Section 033 of Title 18 of the United States Code, the commissioner shall either commence a proceeding pursuant to Section 1668 or 1669, or Section 1738 in the case of a renewal application, or give written consent to the application or licensee pursuant to paragraph (2) of subsection (e) of Section 1033 of Title 18 of the United States Code.

(b) This section shall apply to all licenses and registrations issued by the commissioner pursuant to this code, whether included in this chapter or in any other chapter of this code, and without regard to whether another chapter incorporates the requirements of this section by reference.

§1724 Commission or Other Compensation – Active Member of State Bar of Calif.

An agent, broker, or solicitor who is not an active member of the State Bar of California may not share a commission or other compensation with an active member of the State Bar of California. For purposes of this section, “commission or other compensation” means pecuniary or nonpecuniary compensation of any kind relating to the sale or renewal of an insurance policy or certificate or an annuity, including, but not limited to, a bonus, gift, prize, award, or finder’s fee.

§1724.5. Fictitious Names.

Every individual and organization licensee and every applicant for such a license shall file with the commissioner in writing the true name of the individual or organization and also all fictitious names under which he conducts or intends to conduct his business and after licensing shall file with the commissioner any change in or discontinuance of such names. The commissioner may in writing disapprove the use of any true or fictitious name (other than the bona fide natural name of an individual) by any licensee or on any of the following grounds:

- (a) Such name is an interference with or is too similar to a name already filed in use by another licensee;
- (b) The use of the name may mislead the public in any respect;
- (c) The name states, infers or implies that the licensee is an insurer, motor club, hospital service plan or entitled to engage in insurance activities not permitted under licenses held of applied for;
- (d) The name states or implies that the licensee is an underwriter. This subdivision shall not prevent a natural person who is a life licensee from describing himself as an “underwriter” or from using the designation “Chartered Life Underwriter” if entitled thereto nor shall it prevent a natural person who is a fire and casualty licensee from using the designation “Chartered Property and Casualty Underwriter” if entitled thereto nor a producers trade association each member of which is also separately licensed from having a name containing the word underwriter; or
- (e) The licensee has already filed and not discontinued the use of more than two names including the true name. This subdivision shall not prevent a licensee who has lawfully purchased or succeeded to the business or businesses of other licensees from using for each such business not more than two additional names, true or fictitious, consisting of names used by his predecessors in the conduct of such businesses.

A licensee may not use a true or fictitious name after being notified by the commissioner in writing that such use is contrary to this section. If the commissioner determines that there are facts in mitigation in connection with the continued use of such name he may permit its use for a specified reasonable period

of time if in connection therewith he imposes such conditions as will protect the public and achieve the purposes of this section. Any such permission and any such conditions shall be written.

The grounds specified in subdivisions (a), (c), and (d) shall not be applicable to the true name of any organization licensee which on October 1, 1961, holds under such name any type of license issued under this chapter (commencing with Section 1621) or Chapter 8 (commencing with Section 1831) of this part nor to any fictitious name in use on October 1, 1961, by any individual or organization holding any type of license issued under this chapter or Chapter 8 of this part on such date, provided such fictitious name is filed with the commissioner on or before January 2, 1962.

The grounds specified in subdivisions (b) and (e) shall not be applicable to any licensee who, or which, on October 1, 1961, holds a license issued under this chapter or Chapter 8 of this part on and after January 2, 1964.

§1725.5 Bail License Numbers In Advertisements.

(a) For the purposes of Sections 32.5, 1625, 1626, 1724.5, 1758.1, 1765, 1800, 14020, 14021, and 15006, every licensee shall prominently affix, type, or cause to be printed on business cards, written price quotations for insurance products, and print advertisements distributed exclusively in this state for insurance products its license number in type the same size as any indicated telephone number, address, or fax number. If the licensee maintains more than one organization license, one of the organization license numbers is sufficient for compliance with this section.

(b) Effective January 1, 2005, for purposes of Sections 32.5, 1625, 1626, 1724.5, 1758.1, 1800, 14020, 14021, and 15006, every licensee shall prominently affix, type, or cause to be printed on business cards, written price quotations for insurance products, and print advertisements, distributed in this state for insurance products, the word "Insurance" in type size no smaller than the largest indicated telephone number.

(c) In the case of transactors, or agent and broker licensees, who are classified for licensing purposes as solicitors, working as an exclusive employee of a motor club, organizational licensee numbers shall be used.

(d) Any person in violation of this section shall be subject to a fine levied by the commissioner in the amount of two hundred dollars (\$200) for the first offense, five hundred dollars (\$500) for the second offense, and one thousand dollars (\$1,000) for the third and subsequent offenses. The penalty shall not exceed one thousand dollars (\$1,000) for any one offense. These fines shall be deposited into the Insurance Fund.

(e) A separate penalty shall not be imposed upon each piece of printed material that fails to conform to the requirements of this section.

(f) If the commissioner finds that the failure of a licensee to comply with the provisions of subdivision (a) is due to reasonable cause or circumstance beyond the licensee's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, the licensee may be relieved of the penalty in subdivision (d).

(g) A licensee seeking to be relieved of the penalty in subdivision (d) shall file with the department a statement with supporting documents setting forth the facts upon which the licensee bases its claims of relief.

(h) This section does not apply to any person or entity that is not currently required to be licensed by the department or that is exempted from licensure.

(i) This section does not apply to general advertisements of motor clubs that merely list insurance products as one of several services offered by the motor club, and do not provide any details of the insurance products.

(j) This section does not apply to life insurance policy illustrations required by Chapter 5.5 (commencing with Section 10509.950 of Part 2 of Division 2 or to life insurance cost indexes required by Chapter 5.6 (commencing with Section 20509.970) of Part 2 of Division 2.

(k) This section shall become operative January 1, 1997.

§1726. Internet.

(a) A person who is licensed in this state as an insurance agent or broker, advertises insurance on the Internet, and transacts insurance in this state, shall identify all the following information on the Internet, regardless of whether the insurance agent or broker maintains his or her Internet presence or if the presence is maintained on his or her behalf:

1. His or her name as it appears on his or her insurance license, and any fictitious name approved by the commissioner.
2. The state of his or her domicile and principle place of business.
3. His or her license number.

(b) A person shall be deemed to be transacting insurance in this state when the person advertises on the Internet, regardless of whether the insurance agent or broker maintains his or her Internet presence or if it is maintained on his or her behalf, and does any of the following:

1. Provides an insurance premium quote to a California resident.
2. Accepts an application for coverage from a California resident.
3. Communicates with a California resident regarding one or more terms of an agreement to provide insurance or an insurance policy.

§1727 Insurance Records Inspection and Maintenance

(a) The commissioner shall, after notice and hearing, promulgate reasonable rules and regulations specifying the manner and type of records to be maintained by those licensees acting as insurance agents and brokers and the location where the records shall be kept. Those records shall be open to inspection or examination by the commissioner at all times, and the commissioner may at any time require the licensee to furnish any information maintained or required to be maintained in those records.

(b) Every license acting as an insurance agent and broker shall keep the records as required by the regulations promulgated pursuant to subdivision (a).

(c) Every licensee acting as an insurance agent and broker employing a licensee in the capacity of an insurance solicitor shall keep the records required by the regulations promulgated pursuant to subdivision (a) for any insurance transacted by the insurance solicitor in the capacity of the employee of the employing licensee.

§1729. Notice Of Change Of Address.

Every licensee and every applicant for a license shall immediately notify the commissioner using an electronic service approved by the commissioner of any change in his or her e-mail, residence, principal business, or mailing address as given to the commissioner to Sections 1658 and 1728.

§1729.2 Notice of Change of Background Information.

(a) An applicant or licensee shall notify the commissioner when any of the background information set forth in this section changes after the application has been submitted or the license has been issued. If the licensee is listed as an endorsee on any business entity license, the licensee shall also provide this notice to any officer, director, or partner listed on that business entity license.

(b) A business entity licensee, upon learning of a change in background information pertaining to any unlicensed person listed on its business entity license or application therefor, shall notify the commissioner of that change. The changes subject to this requirement include changes pertaining to any unlicensed officer, director, partner, member, or controlling person, or any other natural person named under the business entity license or in an application therefore.

(c) The following definitions apply for the purposes of this section:

(1) "License" includes all types of licenses issued by the commissioner pursuant to Chapter 5 (commencing with Section 1621), Chapter 5A (commencing with Section 1759), Chapter 6 (commencing with Section 1760), Chapter 6.5 (commencing with Section 1781.1), Chapter 7 (commencing with Section 1800), and Chapter 8 (commencing with Section 1831) of Part 2 of Division 1, Chapter 4 (commencing with Section 12280) of Part 5 of Division 2, and Chapter 1 (commencing with Section 14000) and Chapter 2 (commencing with Section 15000) of Division 5.

(2) "Background information" means any of the following: a misdemeanor or felony conviction; a filing of felony criminal charges in state or federal court; an administrative action regarding a professional or occupational license; any licensee's discharge or attempt to discharge, in a personal or organizational bankruptcy proceeding, an obligation regarding any insurance premiums or fiduciary funds owed to any

company, including a premium finance company, or managing general agent' and any admission, or judicial finding or determination, of fraud, misappropriation or conversion of funds, misrepresentation, or breach of fiduciary duty.

(3) "Applicant" and "licensee" include individual and organization applicants and licensees, and officers, directors, partners, members and controlling persons (as defined in subdivision (b) of Section 1668.5) of an organization.

(d) Notification to commissioner shall be in writing and shall be sent within 30 days of the date the applicant or licensee learns of the change in background information.

(e) The commission may adopt regulations necessary or desirable to implement this section.

§1730. Misrepresentation.

A licensee shall not misrepresent the type of license under which he is transacting insurance, nor shall he engage in transactions not authorized by the licenses held by him.

§1733. Fiduciaries; Theft Of Funds

All funds received by any person acting as an insurance agent, broker or solicitor, life agent, life analyst, surplus line broker, special lines surplus line broker, motor club agent, bail agent, permittee, administrator as defined in Section 1759, or solicitor, as premium or return premium on or under any policy of insurance or undertaking of bail, are received and held by such person in his fiduciary capacity. Any such person who diverts or appropriates such fiduciary funds to his own use is guilty of theft and punishable for theft as provided by law. Any premium which a premium financier agrees to advance pursuant to the terms of a premium finance agreement shall constitute fiduciary funds as defined in this section only if actually received by a person licensed in one or more of the capacities herein specified.

§1734. Deposit; Remittance Of Fiduciary Funds

This section applies to any person licensed, whether under a permanent license, restricted license, temporary license, or certificate of convenience, to act in any of the capacities specified in Section 1733. If fiduciary funds, as defined in Section 1733, are received by such person he shall:

(a) Remit premiums, less commissions, and return premiums received or held by him to the insurer or the person entitled thereto, or

(b) Maintain such fiduciary funds on California business at all times in a trustee bank account or depository in California, separate from any other account or depository, in an amount at least equal to the premiums and return premiums, net of commissions, received by him and unpaid to the persons entitled thereto or, at their direction or pursuant to written contract, for the account of such persons. As used in this section, "trustee bank account or depository" includes but is not limited to a checking account, demand account, or savings account, each of which shall be designated as a trust account. However, such person may commingle with such fiduciary funds in such account or depository such additional funds as he may deem prudent for the purpose of advancing premiums, establishing reserves for the paying of return commissions or for such contingencies as may arise in his business of receiving and transmitting premium or return premiums funds or

(c) Maintain such fiduciary funds pursuant to Section 1734.5.

§1734.5. Maintenance Of Fiduciary Funds

(a)(1) If fiduciary funds, as defined in Section 1733., are received by any person licensed, whether under a permanent license, restricted license, temporary license, or certificate of convenience, to act in any of the capacities specified in Section 1733., and the funds are not remitted or maintained pursuant to the subdivisions (a) and (b) of Section 1734., the funds shall be maintained as follows:

(A) United States government bonds and treasury certificates or other obligations for which the full faith and credit of the United States are pledged for payment of principal and interest;

(B) Certificates of deposit of banks or savings and loan associations licensed by any state government within the United States, or the United States government: or

(C) Repurchase agreements collateralized by securities issued by the United States government; or

(D) Either of the following:

(i) Bonds and other obligations of this state or any local agency or district of the State of California having the power, without limit as to rate or amount, to levy taxes or assessments upon all

property within its boundaries subject to taxation or assessment by the local agency or district to pay the principal and interest of the obligations.

(ii) Revenue bonds and other obligations payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by this state, or a local agency or district or by a department, board, agency or authority thereof.

(2) The bonds and obligations described in subparagraphs (D) of paragraph (1) shall either have maturities of not more than one year or afford the holder of the obligation the obligation the unilateral right to redeem the obligation from its issuer within one year from date of purchase at the amount equal to or greater than its par value, and the bonds and obligations shall be required to be rated at least Aal, MIG-1/VMIG-1 or Prime-1 by Moody's Investor Service, Inc., or AA, SP-1 or A-1 by Standard and Poor's Corporation.

(3) For the fiduciary funds maintained as provided in paragraph (1), the bonds, certificates, obligations, certificates of deposit, and repurchase agreements shall be valued on the basis of their acquisition cost.

(b) As a condition to maintaining the fiduciary funds pursuant to this section, a written agreement shall be obtained from each and every insurer or person entitled thereto authorizing the maintenance and the retention of any earnings accruing on the funds.

(c) Evidence of the funds shall be maintained on California business by a bank as defined in Section 102 of the Financial Code, or by a savings association as defined in Section 143 or 5102 of the Financial Code, in a custodian or trust account in California, separate from any other funds, in an amount at least equal to the premiums and return premiums, net of commissions received by him or her and unpaid to the persons entitled thereto, or, at their discretion or pursuant to a written contract, for the account of these persons. However, the persons may commingle with the fiduciary funds any additional funds as he or she may deem prudent for the purpose of advancing premiums, establishing reserves for the paying of return premiums, or for any contingencies that may arise in his or her business of receiving and transmitting premium or return premium funds.

(d) The commissioner shall not have jurisdiction over any disputes arising between parties concerning the maintenance of fiduciary funds pursuant to this section. However, this subdivision shall not otherwise affect the authority granted to the commissioner over fiduciary funds by other provisions of this code, or regulations adopted pursuant thereto. As used in this subdivision, the term "parties" shall not include the commissioner.

(e) Investment losses to the principal of fiduciary funds maintained pursuant to this section are the responsibility of the person licensed, whether under a permanent license, restricted license, temporary license, or certificate of convenience, to act in any of the capacities specified in Section 1733, and any obligation to insurers or other persons entitled to the fiduciary funds shall in no way be diminished due to any loss in the value of the principal of the fiduciary funds held pursuant to this section.

§1735. Managing General Agent

(a) As used in this section, a managing general agent is a licensed fire and casualty broker-agent or a life agent to whom all of the following apply:

(1) Has a written management contract and an appointment on file with the commissioner in accordance with Section 1704, which appointment is then in force, with one or more admitted insurers covering business transacted by the insurer in a substantial portion of the State of California.

(2) Under the contract specified in paragraph (1), manages the transaction of either all or one or more of the classes of insurance written by those insurers in that territory or the transactions therein by those insurers under a specified fictitious underwriter's name.

(3) Has the power to appoint, supervise, and terminate the appointment of local agents in that territory.

(4) Has the power to accept or decline risks.

(5) Collects premium moneys from producing broker-agents and remits those moneys to those insurers pursuant to the account current system.

(b) The managing general agent shall, with respect to any principals for whom fiduciary funds are held, comply with Section 1734.

§1736. Conduct.

If any acts are forbidden or conduct prescribed by any provisions of this code, such acts shall not be performed and such conduct shall be followed by both the organization and by any person named to exercise the power and perform the duties under any license issued to such organization.

§1736.5 Commission Inquiry – Prompt Reply

(a) Every licensee and applicant shall promptly reply in writing to an inquiry from the commissioner relative to an application for, or the retention or renewal of, a license, or an investigation relating to a consumer complaint or a matter relating to a producer licensing background change reporting requirement under Section 1729.2. The commissioner may revoke, suspend, or refuse to issue or renew a license if the licensee or applicant does not promptly reply in writing to an inquiry from the commissioner.

(b) For purposes of this section, “promptly reply” means to provide a written response to the inquiry that is received by the commissioner not later than 21 days after the date the inquiry was mailed or otherwise communicated to the applicant or licensee.

(c) For purposes of this section, the term “licensee” and “applicant” have the same definitions as those contained in paragraph (3) of subdivision (c) of Section 1729.2, and licenses covered in this section are the same as those covered by paragraph (1) of subdivision (c) of Section 1729.2.

§1737. Purpose of this Chapter.

The purpose of this chapter is to protect the public by requiring and maintaining professional standards of conduct on the part of all persons licensed hereunder.

§1738. Grounds to Suspend or Revoke License.

The commissioner may suspend or revoke any permanent license issued pursuant to this chapter on any grounds set forth in Article 6 hereof on which he may deny an application. Whenever in such grounds the word “applicant” is used, such word shall for the application of this section be the words “the holder of a permanent license.” A suspension or revocation based upon a ground set forth in Section 1669 may be without notice or hearing. Suspension or revocation of any permanent license, except a restricted license, on a ground other than that set forth in Section 1669 shall be after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code, and the commissioner has all of the powers granted therein.

§1739. License Held by both Organization & Natural Person/Grounds for Suspension/Revocation.

Where a permanent license is held by an organization both the organization itself and any natural persons named thereon shall, for the purposes of this article, be deemed to be the holders thereof. If that natural person commits any act or fails to perform any duty which is a ground for suspension or revocation of the license held by the organization, that action may be taken against the organization. If any natural person named under an organization license commits any act or fails to perform any duty which is a ground for the suspension or revocation of any license held by the organization, the commissioner may suspend or revoke the license of the organization or the license of the natural person, or may take all of those steps.

§1740. Prima Facie Evidence.

The certificate of the commissioner certifying any facts found after a hearing held under this chapter shall be prima facie evidence of the facts set forth therein.

§1741. After Hearing-Prove Qualifications

If the commissioner finds, after a hearing, that there be grounds for the denial of an application for a license to act in any capacity set forth in Article 1 of this chapter or if he finds, and after a hearing, that any licensee has violated the provisions of this code and that such violation would justify the suspension or revocation of any license held by such person, the commissioner may order him to prove his qualifications by taking and passing the qualifying examination for any such license held or applied for. The commissioner shall set the time for taking of such examination. Failure thereof by any licensee shall result in the termination of all licenses of such licensee to which the examination is applicable. An order

to take such examination may be in lieu of any other action in respect to the application or the license, or, except in the case of revocation, may be in addition to any other action.

§1742. Restricted License

Where a person who is or has been licensed under this chapter has been found by the commissioner to have violated any provision of this code which would justify the suspension or revocation of a license held, or where a person is applying for a license under this chapter and there exists grounds for the denial by the commissioner of his application, the commissioner may, after hearing, revoke the license held or deny the application for an unrestricted license, and in lieu thereof issue to such a person a restricted license. The commissioner may impose any reasonable conditions upon the acquisition of such restricted license or the conduct of the holder thereof. The holder of the restricted license has no property right therein and the commissioner may, with or without either hearing or cause, suspend or revoke a restricted license. If a hearing is held under this section, it shall be conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code. The holder of a restricted license is subject to all the provisions of this code and such license shall be kept in force and renewed in the same manner, at the same time, and subject to the same conditions and fees as are applicable to an unrestricted license to act in the same capacity.

§1742.2 Comply with Title 18 of the US Code

The department shall promulgate regulations necessary to comply with the requirements of Section 1033 of the Title 18 of the United States Code no later than January 1, 2001.

§1742.3 Reconsideration

(a) The commissioner may, without hearing, issue an order denying an application by a business entity for an unrestricted license and granting instead a restricted license. The commissioner may do so when a controlling person of the business entity, as defined in subdivision (b) of Section 1668.5, holds a restricted license. The commissioner may impose any reasonable restriction on the business entity's authority to transact insurance that is similar or related to the restriction imposed upon the controlling person. A description of the nature and scope of the restriction imposed upon the business entity shall be included in the commissioner's order. The business entity shall have no property right in the restricted license and the commissioner may, with or without hearing or cause, suspend or revoke the restricted license. The restricted license shall be issued in the normal course of business following the issuance of the order and shall remain in effect pending the outcome of any request for reconsideration and any decision following a hearing pursuant to that request.

(b) The business entity may request reconsideration of the commissioner's decision to deny an unrestricted license within 30 days from the date that the decision is mailed to the entity. If the business entity requests a hearing on the request for reconsideration, the hearing shall be conducted pursuant to Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, and the business entity shall bear the burden of proving by clear and convincing evidence that an unrestricted license should have been granted instead of a restricted license. If the commissioner determines, after a hearing, that the business entity should have been granted an unrestricted license, the entity shall be granted that unrestricted license retroactive to the date of the granting of the restricted license.

§1743. Lapse or Suspension of any license

The lapse or suspension of any license by operation of law, by failure to renew or by its voluntary surrender shall not deprive the commissioner of jurisdiction or right to institute or proceed with any disciplinary proceeding against such license, to render a decision suspending or revoking such license or to establish and make a record of the facts of any violation of law for any lawful purpose. No such disciplinary proceeding shall be instituted against any license after the expiration of five years from the termination of such license.

§1746. Minor Offenses; Order Reprimanding Licensee; Hearings; Penalties

(a) For purposes of this section, the following definitions shall apply:

(1) "License" includes any type of license issued by the commissioner pursuant to this chapter, Chapter 5A (commencing with Section 1759), Chapter 6 (commencing with Section 1760), Chapter 6.5 (commencing with Section 1781.1), Chapter 7 (commencing with Section 1800), and Chapter 8 (commencing with Section 1831) of Part 2 of Division 1, Chapter 4 (commencing with Section 12280) of Part 5 of Division 2, and Chapter 1 (commencing with Section 14000) and Chapter 2 (commencing with Section 15000) of Division 5.

(2) "Licensee" includes applicants for, and holders of, individual and organization licenses. With respect to organization licenses, the term also includes the organization's officers, directors, partners, members, and controlling persons, as defined in subdivision

(b) of Section 1668.5.

(3) "Minor misstatement" means an incorrect statement on one of the insurance license application background questions that does not affect the licensee's ability to satisfy his or her duties under the license or his or her suitability for licensure.

(4) "Notify" means mailing a notice to the licensee at the address the licensee most recently filed with the commissioner.

(b) If the commissioner determines that a licensee has violated any section listed in subdivision (g), other than subparagraph (B) of paragraph (1) of subdivision (g), and elects to proceed on the violation, the commissioner shall notify the licensee of the violation. Within 21 calendar days, which may be extended to 45 calendar days if the licensee is temporarily incapacitated due to illness or injury, or is on vacation, the licensee must establish to the commissioner's satisfaction that the violation has been corrected. If, after the licensee responds, or after 45 calendar days have passed, the licensee fails to establish to the commissioner's satisfaction that the violation has been corrected, the commissioner shall, in lieu of proceeding pursuant to Section 1668 or Section 1738, issue a citation and order to the licensee and notify the licensee that a citation and order have been issued.

(c) If the commissioner determines that a licensee has made a minor misstatement in an application for a new license or an application to renew a license, or in a document filed in support of an application, and elects to proceed on the violation, the commissioner shall notify the licensee requesting a justification for the misstatement. Within 21 calendar days, which may be extended to 45 calendar days if the licensee is temporarily incapacitated due to illness or injury or is on vacation, the licensee shall provide the justification in writing. If, after the licensee responds, or 45 calendar days have passed, the licensee fails to justify the misstatement to the commissioner's satisfaction, the commissioner

shall, in lieu of proceeding pursuant to subdivision (h) of Section 1668 or Section 1738, issue a citation and order to the licensee and notify the licensee that the citation and order have been issued.

(d) Notwithstanding subdivisions (b) and (c), the commissioner may proceed against a licensee pursuant to Section 1668 or 1738 for violations of offenses listed in subdivision (g) or when the commissioner determines that the licensee has made a minor misstatement in an application for a new license or an application to renew a license, or in a document filed in support of an application, under any of the following circumstances:

(1) The department has issued two or more prior notices pursuant to subdivision (b) or (c) to the licensee within the preceding 36 months.

(2) The department files an action against the licensee under Section 1668 or 1738 containing allegations that are in addition to an allegation of a violation of an offense listed in subdivision (g) or a minor misstatement.

(3) The department, within the preceding 36 months, has disciplined a licensee under Section 1668 or 1738.

(4) The licensee has violated Section 1727 in a manner that gives the commissioner good cause to proceed under Section 1738 or Section 1747.

(e) A notice issued pursuant to either subdivision (b) or (c) shall specify all of the following:

(1) The section violated.

(2) The time or period of the violation.

(3) The facts supporting the determination of the violation.

(4) The amount of the penalty for the violation if it is not corrected, or for the misstatement if it is not justified.

- (5) A telephone number and address for the unit in the department issuing the notice. The unit listed shall respond in a timely manner to any communication from the licensee regarding the notice.
- (f) (1) A citation and order issued pursuant to this section shall specify all of the following:
- (A) The section violated.
 - (B) The time or period of the violation.
 - (C) The facts supporting the determination of the violation.
 - (D) The amount of the penalty for the violation.
 - (E) The date payment of the penalty is required, which shall not be less than 21 calendar days from the date of the notice.
 - (F) Instructions for paying the penalty.
 - (G) The licensee's right to contest, and the procedure for contesting, the citation and order.
 - (H) A telephone number and address for the unit in the department issuing the notice or citation. The unit listed shall respond in a timely manner to any communication from the licensee regarding the notice or citation and order. The department shall assign personnel sufficient to carry out these responsibilities.
- (2) A citation and order shall become final 21 calendar days after the date of the notice, unless the licensee requests a hearing. All of the following shall apply to these hearings:
- (A) The hearing shall be held within 60 calendar days following receipt of the request for the hearing. The licensee may request one continuance, not to exceed 21 calendar days.
 - (B) The licensee shall have the choice of a hearing by mail, telephone, or in person. An in-person hearing shall be conducted in whichever of the following offices of the Department of Insurance is closest to the business or residence address of the licensee, at the election of the licensee: Fresno, Los Angeles, Sacramento, San Diego, or San Francisco. If the licensee requests a hearing in Fresno or San Diego, the commissioner may defer the hearing for up to an additional 60 calendar days if necessary in order to schedule at least five hearings in a single day.
 - (C) The hearing shall be conducted in accordance with written procedures established by the commissioner. The written procedures shall comply with Sections 11445.40 to 11445.60, inclusive, of the Government Code.
 - (D) The hearing shall provide an independent, objective, fair, and impartial review of the citation and order. The hearing officer shall be trained and qualified to conduct the hearing in an objective, fair, and impartial manner. The hearing officer shall not be, or be managed or controlled by, a person whose primary duties are investigating violations, issuing citations, collecting citation penalties, or otherwise processing citations. The hearing officer's continued employment, performance evaluation, compensation, or benefits, shall not, directly or indirectly, be linked to the amount of citations and orders affirmed by the hearing officer.
 - (E) The employee who issued the citation and order may, but shall not be required to, participate in the hearing. The citation and order shall be prima facie evidence of the violation, and the department shall not be required to produce any evidence other than the citation and order.
 - (F) Within 14 calendar days following the conclusion of the hearing, the hearing officer shall notify the licensee and the appropriate person within the department of the decision.
- (3) The hearing officer's decision, if adopted by the commissioner, shall constitute a final order of the commissioner, from which judicial review may be obtained pursuant to subdivision (a) of Section 1094.5 of the Code of Civil Procedure.
- (g) (1) For the first penalty imposed upon a licensee for a single offense, if the licensee has not provided evidence to the commissioner showing that the offense was corrected within 45 days, or if the last penalty for the same single offense was imposed three years or more prior to the imposition of the current penalty, the commissioner shall levy penalties in accordance with the following schedule:
- (A) For a violation of Section 1647.5, five hundred dollars (\$500).
 - (B) For the commission of a minor misstatement, three hundred dollars (\$300).
 - (C) For a violation of Section 1724.5, five hundred dollars (\$500).
 - (D) For a violation of Section 1725, two hundred dollars (\$200).
 - (E) For a violation of Section 1727, five hundred dollars (\$500).
 - (F) For a violation of Section 1729, two hundred dollars (\$200).
 - (G) For a violation of Section 1729.2, five hundred dollars (\$500).
 - (H) For a violation of Section 1729.5, two hundred dollars (\$200).

(2) The commissioner may double the fine listed above for a single offense if the offense was committed within three years of the commission of the same single offense for which the licensee was previously notified of a violation.

(3) Any money collected as a result of the imposition of a penalty shall be deposited into the General Fund, after reimbursement to the commissioner of costs incurred in investigating and prosecuting the violation.

(h) Any citation and order issued pursuant to this section, and any proceeding to impose a penalty conducted by the department pursuant to Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, are exempt from the requirements of Section 1738, Section 12968, and paragraph (1) of subdivision (b) of Section 12921, and shall not be reported to the National Association of Insurance Commissioner's Regulatory Information Retrieval System (RIRS) database or similar databases. However, the citation and order shall become part of the licensee's licensing file. The issuance of a notice, citation, or order under this section shall not constitute a disciplinary action against the licensee, and shall not be construed as an administrative action for purposes of Section 1729.2.

(i) If a licensee has exhausted the administrative remedies provided in this section and failed to pay a penalty imposed by a citation and order, the commissioner may, without providing an additional hearing, suspend, refuse to issue, or refuse to renew, a license. Before acting pursuant to this subdivision, the commissioner shall send a delinquency notice advising the licensee that his or her license may be suspended, not issued, or not renewed, if the penalty is not paid within 21 calendar days. If, after the 21st calendar day, the penalty remains unpaid, the commissioner may suspend, refuse to issue, or refuse to renew the licensee's license until the licensee pays the delinquent penalty. A suspension, refusal to issue, or refusal to renew pursuant to this subdivision shall be reported to the National Association of Insurance Commissioner's Regulatory Information Retrieval System (RIRS) database or similar databases.

§1748. Penalty; In Lieu Of License Suspension Or Other Permitted Action.

The commissioner, in any proceeding under the provisions of this article, may, by an alternative order, permit a licensee to elect in writing to pay a specified money penalty, within a specified time in lieu of a license suspension or other permitted action. If the licensee so elects, the sum of money specified shall be paid to the commissioner for the use of the State of California. The sum specified shall not exceed:

- (a) Four thousand dollars (\$4,000) for each offense .
- (b) Twenty thousand dollars (\$20,000) in the aggregate for all offenses involved in any one proceeding.
- (c) Thirty percent of the gross commissions on insurance transacted by such licensee in the preceding calendar year.
- (d) Any amount proven, or admitted, in such proceeding to have been received and retained by such licensee as a rebate or otherwise, in violation of a provision of this code.

The commissioner shall determine the monetary penalty to be paid in any given case and in doing so shall not be limited to the selection of that penalty specified in any one of the above subdivisions, as compared with that in any of the other three subdivisions, that will result in the payment by the licensee of the least amount.

The amount of reimbursement the commissioner orders shall be the amount that fully reimburses the commissioner for the commissioner's costs, or any lesser amount that the commissioner determines is the most the subject of the order can pay in the event the subject is financially unable to full reimburse the commissioner.

If the licensee fails to pay a monetary penalty or reimbursement within the time specified in the order, the commissioner, unless the order is lawfully stayed, may deny a pending application for a license, or may revoke or suspend the license of the subject of the order for a period of time as determined by the commissioner. If, for any reason, an application is denied, or a license is revoked or suspended, before the subject of the order has paid the full amount of the ordered monetary penalty or reimbursement, the balance owed shall be paid before a license may be reinstated or an application for a new license may be granted.

§1748.5 Misconduct with Respect to the Business of Insurance

(a) For the purposes of this section, the following definitions are applicable:

(1) "Production agency" means any person or organization licensed under Chapter 5 (commencing with Section 1621), Chapter 5A (commencing with Section 1759), Chapter 6 (commencing with Section 1760), Chapter 7 (commencing with Section 1800), or Chapter 8 (commencing with Section 1831).

(2) "Subject person" means any person who has participated or may participate in any manner in the business of a production agency, or any person licensed as a producer.

(3) "Insurer" means any domestic insurer, and any insurer that is admitted to transact insurance in this state, provided that if a subject person of an insurer is not a resident of California, or operating out of a place of business within California, then the subject person shall be engaged in direct management, direction, or conduct of the business of insurance in California in order to come within the provisions of this section.

(b) If, after notice and a hearing, the commissioner finds all of the following, the commissioner may issue an order removing a subject person from his or her office or employment with the production agency and prohibiting the subject person from participating in any manner in the conduct of the business of an insurer or production agency, except with the prior consent of the commissioner:

(1) (A) The subject person has engaged in misconduct with respect to the business of insurance that has caused financial or other injury to any person, or

(B) The subject person has engaged in fraud, or willful acts or omissions involving dishonesty that exposed a person to financial or other injury; and

(2) The subject person's conduct or practice demonstrates unfitness to continue as a subject person.

(c) (1) If the commissioner gives written notice pursuant to subdivision (b) to a subject person, the commissioner shall immediately issue an order prohibiting the subject person from participating in any manner in the business of insurance, except with the prior consent of the commissioner, if the commissioner:

(A) finds that failure to immediately issue the order threatens the financial solvency of an insurer or may reasonably be expected to cause irreparable injury to any person;

(B) serves that subject person and the production agency with written notice of the suspension order; and

(C) finds that all of the necessary factors are present which would permit the commissioner, after notice and a hearing, to issue an order pursuant to subdivision (b) removing a subject person from his or her office or employment with the production agency and prohibiting the subject person from participating in any manner in the business of an insurer or production agency.

(2) Any suspension order issued pursuant to paragraph (1) of this subdivision shall be effective until the date the commissioner dismisses the charges contained in the notice served under subdivision (b) or paragraph (1) of this subdivision, the effective date of an order issued by the commissioner pursuant to subdivision (b), or a court issues a stay of the order pursuant to subdivision (d).

(d) Within 10 days after a subject person has been served with an order of suspension pursuant to subdivision (c), the person may apply to the superior court of the county in which the principal office of the production agency is located for a stay of the order pending completion of the proceedings pursuant to subdivision (b), and the court shall have jurisdiction to issue an order staying the suspension. Nothing in this subdivision shall be deemed to authorize the court to issue a stay order on an ex parte basis.

(e) (1) If the commissioner finds both of the following, he or she shall immediately issue an order suspending a subject person from his or her office or employment with a production agency and prohibiting the subject person from participating in any manner in the conduct of the business of an insurer or production agency, except with the prior consent of the commissioner:

(A) the subject person has been charged in an indictment issued by a grand jury, or in an information, complaint, or similar pleading issued by a United States Attorney, district attorney, or other governmental official or agency authorized to prosecute crimes, with a crime punishable by imprisonment for a term exceeding one year and which involves as one of its necessary elements a fraudulent act or an act of dishonesty in the acceptance, custody, or payment of money or property; and

(B) that a failure to immediately issue the order threatens the financial solvency of an insurer or may cause financial or other injury to any person.

In the event the criminal proceedings are terminated other than by judgment of conviction, an order issued pursuant to paragraph (1) of this subdivision shall be deemed rescinded as if it had not been issued.

(2) If the commissioner finds both of the following, he or she may immediately issue an order removing a subject person from his or her office or employment with a production agency and prohibiting the subject person from participating in any manner in the business of an insurer or production agency, except with the prior consent of the commissioner: (A) the person has during the preceding five years been

convicted of a crime that is punishable by imprisonment for a term exceeding one year and has as one of its necessary elements a fraudulent act or an act of dishonesty in the accepting, custody, or payment of money or property; and (B) that a failure to immediately issue the order threatens the financial solvency of an insurer or may cause financial or other injury to any person.

(3) The fact that any subject person charged with a crime involving as one of its necessary elements a fraudulent act or any act of dishonesty in the acceptance, custody, or payment of money or property is not convicted of that crime shall not preclude the commissioner from issuing an order regarding the subject person pursuant to other provisions of this code.

(f) (1) Within 30 days after an order is issued pursuant to subdivision (c) or (e), the subject person to whom the order is issued may choose to do either of the following: (A) file with the commissioner an application for a hearing on the order. The commissioner shall, upon the written request of the subject person, extend the 30-day period by an additional 30 days provided the request is filed with the commissioner within 30 days after the order is issued. If the commissioner fails to commence the hearing within 15 business days after the application is filed, or within a longer period of time to which the subject person consents, the order shall be deemed rescinded as if it had not been issued. Within 30 days after the hearing, the commissioner shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded as if it had not been issued, or (B) petition for judicial review of the order pursuant to Section 1085 of the Code of Civil Procedure, where the court shall exercise its independent judgment on the evidence.

(2) The right of any subject person to whom an order is issued pursuant to subdivision (c) or (e) to petition for judicial review of the order shall not be affected by the failure of that subject person to apply to the commissioner for a hearing on the order as provided by this subdivision.

(g) (1) Any person to whom an order is issued pursuant to subdivision (b), (c), or (e) may apply to the commissioner to modify or rescind the order. The commissioner shall not grant the application unless he or she finds that it is reasonable to believe that the person will, if and when he or she becomes a subject person, comply with all of the applicable provisions of this code and of any regulation or order issued thereunder.

(2) The right of any subject person to whom an order is issued pursuant to subdivision (b), (c), or (e) to petition for judicial review of the order shall not be affected by the failure of that subject person to apply to the commissioner pursuant to paragraph (1).

(h) (1) It is unlawful for any subject person or former subject person to whom an order is issued pursuant to subdivision (b), (c), or (e) to do any of the following as long as the order is in effect, except with the prior consent of the commissioner: (A) to serve or act as a subject person for any insurer or production agency; or (B) to directly or indirectly vote any shares or other securities of an insurer or production agency.

(2) If, after notice and a hearing, the commissioner finds that any subject person has violated paragraph (1) of this subdivision, the commissioner may order that subject person to pay to the commissioner a civil penalty, which may be recovered in a civil action, in an amount the commissioner may specify; provided however, that the amount of the civil penalty shall not exceed one thousand dollars (\$1,000) for each day for which the violation continues.

In determining the amount of civil penalty to be paid to the commissioner under this paragraph, the commissioner shall consider the financial resources and good faith of the subject person charged, the gravity of the violation, the history of previous violations by the person, and other factors as in the opinion of the commissioner may be relevant.

(3) If, after notice and a hearing, the commissioner finds that any production agency has knowingly aided and abetted a subject person in a violation of paragraph (1) of this subdivision, or subdivision (h) of Section 728, the commissioner may order that production agency to pay to the commissioner a civil penalty in an amount the commissioner may specify; provided however, that the amount of the civil penalty shall not exceed one thousand dollars (\$1,000) for each violation or in the case of a continuing violation, one thousand dollars (\$1,000) for each day for which the violation continues, up to a maximum

of fifty thousand dollars (\$50,000). Continuation of the subject person's salary or other employee benefits pending final disposition shall not be considered aiding and abetting a subject person.

In determining the amount of civil penalty to be paid to the commissioner under this paragraph, the commissioner shall consider the financial resources and good faith of the subject person charged, the gravity of the violation, the history of previous violations by the person, and other factors as in the opinion of the commissioner may be relevant.

(i) Except as otherwise provided by this section, any hearing required by this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, subject to the following:

(1) At the option of the subject person, all hearings shall be a closed session and private, and the records of the hearings shall not be made public unless the hearing results in a final order adverse to the subject person.

(2) Where judicial review is sought by the subject person pursuant to Section 1085 of the Code of Civil Procedure, the court shall exercise its independent judgment upon the evidence.

(3) When a subject person to whom an order has been issued pursuant to subdivision (c) or (e) applies to the commissioner for a hearing pursuant to subparagraph (A) of paragraph (1) of subdivision (f), the Office of Administrative Hearings shall schedule the hearing on a priority basis at the earliest possible time and once the hearing is commenced, it shall not be continued for more than three business days without the consent of the subject person.

(4) If the Office of Administrative Hearings cannot schedule the commencement of a hearing within 15 business days as provided by paragraph (1) of subdivision (f), and the subject person does not waive his or her right to a hearing commencing within 15 days, the hearings may be conducted by administrative law judges appointed by the commissioner; the hearing shall be completed within 45 days of commencement, unless additional time is requested by the subject person. If the hearing is not completed within the 45 days, the order shall be deemed rescinded as if it had not been issued. The scheduling of other hearings before the administrative law judge shall not be considered good cause for purposes of this paragraph.

(j) Nothing in this section is intended to or shall be construed to create a private cause of action against an offending subject person or insurer or production agency that aids and abets a subject person, based on the standards established by this section or the commissioner's findings or orders pursuant to this section.

BAIL LICENSES

Qualification and Licensing

§1800. License Requirement.

- (a) An insurer shall not execute an undertaking of bail except by and through a person holding a bail license issued as provided in this chapter. A person shall not in this state solicit or negotiate in respect to execution or delivery of an undertaking of bail or bail bond by an insurer, or execute or deliver such an undertaking of bail or bail bond unless licensed as provided in this chapter, but if so licensed, such person may so solicit, negotiate, and effect such undertakings or bail bonds without holding or being named in any license specified in Chapter 5 of this part.
- (b) For purposes of this section, "solicit" shall include any written or printed presentation or advertising made by mail or other publication, or any oral presentation or advertising by means of telephone, radio or television which implies that an individual is licensed under this chapter, and any activity in arranging for bail which results in remuneration to the individual conducting that activity.

§1800.4. Bail Bond Defined.

As used in this chapter, the term "bail bond" includes any contract not executed by a surety insurer for or method of release of person arrested or confined on account of any actual or alleged violation of the provisions of any law of this or any other State or of any municipality in the State of California, including any release by means of cash or other property deposited in lieu of bail under the provisions of Sections 1295 and 1298 of the Penal Code whereby the attendance in court when required by law and obedience to orders and judgment of any court by the person released is guaranteed.

§1800.5. Exempt Transactions.

This chapter shall not affect the negotiation through a licensed broker or agent for, nor the execution or delivery of an undertaking of bail, executed by an insurer for its insured under a policy of automobile insurance or of liability insurance upon the automobile of the insured, nor shall this chapter effect the negotiation for, or the execution or delivery of bail or bail bond which is authorized by Part 5, Division 2 of this code.

§1800.6. Local Regulations.

This chapter shall not limit the power of any city or county to enact other and further regulations concerning, and not in conflict with, provisions of this chapter.

§1800.7. Execution Of Bail Bonds By Individuals.

Any individual person may execute or furnish a bail bond if no consideration is paid or allowed, directly or indirectly, by any person for the execution or furnishing thereof, provided such person does not in connection with such execution or furnishing violate Section 1800.75.

§1800.75. Unauthorized Advertising.

No person shall advertise or hold himself out as engaging in the business of executing, delivering, or furnishing bail bonds or undertakings of bail whether or not for consideration without holding at the time thereof all proper licenses required by this chapter.

§1800.8. Permits.

The permits required by this chapter are in addition to any and all other permits or licenses required by law.

§1801. Bail Licenses.

Bail licenses are:

- (a) Bail agents' licenses;
- (b) Bail permittees' licenses;
- (c) Bail solicitors' licenses.

§1802. Bail Agent's License; Bond.

A bail agent's license by its terms permits the licensee to solicit, negotiate, and effect undertakings of bail on behalf of any surety insurer while there is in effect an unrevoked notice of appointment of such insurer filed pursuant to Section 1802.1. Such license shall not be issued unless and until there is filed with the commissioner a bond having an admitted surety insurer as surety thereon in the penal sum of one thousand dollars (\$1,000.00), conditioned upon the proper application and disposal of all moneys collected or received by the bail agent, his solicitors licensed pursuant to his appointment, and his employees, in favor of the people of the State of California.

§1802.1. Notice Of Appointment; Filing; Contents; Duration.

Every applicant for a license to act as bail agent must file with the commissioner a notice of appointment executed by a surety insurer or its authorized representative authorizing such applicant to execute undertakings of bail and to solicit and negotiate such undertakings on its behalf. Additional notices of appointment may be filed by other surety insurers, upon the payment for each additional notice of the fees specified in subdivision (a) of Section 1811 before such license is issued and thereafter, as long as such license remains in force. Each appointment shall, by its terms, continue in force until:

- (a) Termination of the bail agent's license;
- (b) The end of the license year, if the fee provided in subdivision (d) of Section 1811 for filing an annual notice of intention to keep the license in force or a renewal application is not paid; or
- (c) The filing of a notice of termination by the insurer, its representative, or by such bail agent.

§1802.2. Use Of Predecessor's Business Name.

Any bail licensee who has purchased or succeeded to the bona fide business of another bail licensee shall be entitled to use a true or fictitious name used by his predecessor if the predecessor has conducted the business for a period of two consecutive years or more.

§1802.5. Bail Permittee's License.

A bail permittee's license, by its terms, permits the licensee to solicit, negotiate, issue, and deliver bail bonds. The license shall not be issued unless and until there is filed with the commissioner a bond having an admitted surety insurer as surety thereon in the penal sum of five thousand dollars (\$5,000), conditioned upon the proper application and disposal of all moneys collected or received by the bail permittee, his or her solicitors licensed pursuant to his or her appointment, and his or her employees, in favor of the people of the State of California.

§1802.6. Additional License.

The holder of a bail permittee's license may, upon filing of proper documents specified in Section 1802.1, receive a bail agent's license without procuring the additional bond specified in Section 1802.

§1802.7. Deposit Of Securities In Lieu Of Bond

Any applicant may deposit with the commissioner, in lieu of a bond required by this chapter, securities of the kind and character set forth in sections 1170 to 1175, and 1179 to 1240, in a sum not less than the required amount of the penal sum of said bond. Such securities shall be held in trust by the commissioner for the fulfillment of the same terms and conditions as in the case of a bond required by section 1802.5.

§1802.71. Substitution Of Bond For Securities; Conditions.

The holder, or former holder of a bail license, who has deposited with the commissioner securities in lieu of a bond as provided by Section 1802.7, may at any time substitute therefor a bond complying with requirements of Section 1802, 1802.5, or 1803, as the case may be. Such a bond must embrace all liability theretofore existing or which may thereafter be incurred for the fulfillment of which the securities have been held, whether reported or unreported.

The substitution of such a bond for securities shall be conditioned upon approval of the commissioner. Upon receiving such approval and the filing of the bond, the applicant shall be permitted to withdraw the securities theretofore deposited on his behalf.

§1802.72. Application For Recovery Of Securities.

The former holder of any bail license, who has surrendered any and all licenses to the commissioner, and who has on deposit with the commissioner securities in lieu of bond as provided by Section 1802.7, may, not sooner than three years after the surrender of his last bail license apply to the commissioner for the return of the securities.

§1802.73. Form And Contents Of Application.

The application shall be in writing, verified, and shall state:

- (a) The nature of all bail licenses held by the applicant and the period during which the applicant was authorized to transact bail business under each;
- (b) All of the counties in which the applicant transacted bail under the authority of each license;
- (c) That all bail transacted by applicant, and his solicitors and employees, if any, has been exonerated by order of court, and that his liability as surety on all bail transactions has been discharged;
- (d) The date upon which the last liability of the applicant on a bail transaction was fully exonerated and discharged;
- (e) That all moneys collected or received by the applicant, and his solicitors and employees, if any, have been paid to the person or persons entitled thereto and have in all respects been fully and properly accounted for.

§1802.74. Notice Of Application; Publication; Payment Of Expenses

The commissioner shall publish daily for one week in a newspaper of general circulation in each county in which the applicant transacted bail under any license, a notice of the application to withdraw the securities deposited with the commissioner in lieu of bond. The expense of the publication shall be borne by the applicant and the commissioner may require the applicant to pay it in advance.

§1802.75. Examinations.

The Commissioner shall make an examination of the books and records of the applicant. The costs and expenses of the examination shall be paid by the commissioner out of funds appropriated for support of the Department of Insurance.

§1802.76. Recovery Of Publication Expense.

Upon failure of the applicant to pay the expense of publication of notice within 30 days after the presentation of the bill therefor, the commissioner shall collect the costs out of the deposited securities.

§1802.77. Delivery Of Securities To Applicant.

If the commissioner is satisfied from the application and the examination of the books and records of the applicant that the applicant has, in fact, complied with the representations made in his application, the commissioner shall deliver to the applicant the securities deposited; provided, however, the commissioner shall not deliver the securities to the applicant prior to the expiration of three years after the latest date on which a bond was issued or written by the applicant.

§1803. Bail Solicitor’s License.

A bail solicitor’s license, by its terms, permits the licensee to transact bail on behalf of and as the employee of the holder of the bail licenses therein designated while there is in effect and on file with the commissioner an unrevoked appointment of the solicitor by such license holder. In all matters respecting the transaction of bail, it shall be conclusively presumed that such solicitor acted on behalf of and pursuant to the instructions of the appointing license holder. A bail solicitor’s license shall not be issued until there is filed with the commissioner an appointment of such solicitor, effective upon issue of the license executed by the holder of a bail agent’s license or bail permittee’s license, or both such licenses. Such appointment shall state that the license holder appoints the solicitor and will employ him in the transaction of bail, until notice is filed with the commissioner revoking the appointment. Such appointment and license shall permit the bail solicitor to transact only the undertakings of bail or bail bonds which the license or licenses of the appointing license holder permits such license holder to transact.

Before the issuance of a bail solicitor’s license, the applicant shall file a bond in the penal sum of one thousand dollars (\$1,000) conditioned upon the proper application and disposal of all moneys collected or received by the solicitor, in favor of the people of the State of California.

§1804. Application For License

An applicant for bail license shall file with the commissioner an application in such form and having such supporting documents as the commissioner prescribes, except that the application shall be verified in the manner provided for verification of complaints in civil cases. The commissioner shall investigate the licensees in such manner and in respect to such matters as he deems advisable.

§1805. Requirements For Issuance Of License.

The commissioner may decline to issue a bail license until he is satisfied that:

- (a) The applicant is of good business reputation and of good general reputation.
- (b) That the applicant has never been refused a license or had a license revoked by any public authority for reasons which indicated lack of honesty or integrity, or which show improper business practice on the part of the applicant.
- (c) That the applicant has an understanding of the obligations and duties of bail.
- (d) That the applicant has not participated in or been connected with any business transaction which, in the opinion of the commissioner tends to show unfitness to act in a fiduciary capacity or to maintain the standards of fairness and honesty required of a trustee or other fiduciary.
- (e) That the applicant has not willfully misstated any material fact in his application or procured a misstatement in the supporting documents thereof.
- (f) That there is no outstanding judgment against the applicant of conviction of a misdemeanor or felony denounced by this code, or one of the elements of which involves a misappropriation of money or property.
- (g) That the applicant has not committed an act forbidden by this code.
- (h) That the applicant is a fit and proper person to hold the license applied for.
- (i) The applicant has been a continuous resident of the State of California for at least two years.

§1806. Suspension, Revocation And Refusal Of License; Grounds.

The commissioner may suspend, revoke or refuse to issue any license under this chapter whenever it is made to appear to him that the holder of such permit is not a fit or proper person to be permitted to continue to hold or receive such license.

§1807. Suspension Or Revocation Of License.

The commissioner may suspend or revoke any bail license for any cause for which he could deny such license.

§1807.5. Suspension Or Revocation Of License; Hearing.

Except as provided in Sections 1669 and 1738, the commissioner shall not suspend or revoke any license, issued under this article, without first granting a hearing, upon reasonable notice to the applicant,

except that he may temporarily suspend any such license for a period not exceeding 15 days pending such hearing. Where a hearing is held under this section the proceedings shall be conducted in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner shall have all the powers granted therein.

§1807.7. License Period.

Commencing on January 1, 2011, all licenses issued pursuant to this article shall be for a license term of two years.

§1807.8. License Term.

“License term” as used in this chapter means all of that two-year period beginning as described in subdivision (a) or (b) of Section 1807.9, as applicable, and ending the day two years after the last calendar day of the month in which the initial license was issued. Licenses issued prior to January 1, 2011, shall expire on June 30 of each odd-numbered year.

§1807.9 License Year.

“License year” as used in this chapter shall be determined for each individual and entity as follows:

- (a) Upon initial licensing, the license year starts on the date the license is issued.
- (b) Subsequently, each license year starts the first day of the month following the month in which the initial license was issued.
- (c) A license year ends the following calendar year on the last calendar day of the month in which the initial license was issued.
- (d) A license year for licenses issued prior to January 1, 2011, starts on July 1 and ends on June 30.

§1808. Renewal Of License.

- (a) Applications for renewal of licenses may be filed on or before the expiration date upon payment of the fees for filing specified in Section 1811.
- (b) Upon failure to file the application as provided in subdivision (a), the license shall expire on the first day of the next month, but the holder may file an application for a new license. Until that same month and day of the next succeeding year the fee shall be twice that specified in Section 1811 for the filing.
- (c) No application shall be deemed filed within the meaning of this section unless the document itself has been actually delivered to, and the proper fee for its filing has been paid at, the office of the commissioner during office hours, or unless both the document and the fee have been filed and remitted to Sections 11002 and 11003 of the Government Code.

§1809. Unlawful Rebate Laws Inapplicable.

The provisions of law relating to unlawful rebates shall not apply to commissions or other consideration paid or exchanged between licensees under this chapter, except that in such case the licensee who executes the undertaking or executes or delivers the bail bond shall, in all matters in respect thereto, be deemed the principal and all licensees otherwise connected with the transaction shall be deemed his agents in respect thereto.

§1810. Who May Be Licensed.

- (a) Natural persons can be licensed under this chapter.
- (b) A license may be held by a corporation, in which case all of the following requirements shall be met:
 - (1) The application shall set forth the names of all officers and employees of the licensee who will be authorized to exercise the powers of the licensee under this chapter. Each of those persons shall be required to meet the requirements for licensure under this chapter, and disciplinary action may be taken against any of those persons, and the licensee, if any of those persons does any act that would be grounds for disciplinary action against a licensee.
 - (2) The corporation may solicit or negotiate the execution or delivery of bail on behalf of surety insurers only through natural persons who hold individual licenses as bail agents.
 - (3) One hundred percent of the shares of the corporation shall be held by licensed bail agents.

- (4) All shareholders, officers and directors of the corporation shall be licensed bail agents, and shall be disclosed to the department.
- (5) Any sale or transfer of stock or other interest in the corporation shall require the prior approval of the department. The department shall approve or disapprove a request for approval within 60 days of receiving the completed request.

§1810.5. Examinations. *Note: Effective 11/13/2012 California residents applying for any insurance license in which an exam is required, must first pass the qualifying examination before submitting their license application.*

The commissioner shall not issue a bail license to any person unless and until the applicant takes and passes an examination given by the commissioner as provided in this chapter. This prohibition shall not apply with respect to persons who were licensed under this chapter during any part of the annual period terminating on July 1st preceding the time to be covered by the license applied for.

§1810.6. Conduct Of Examination.

The commissioner shall conduct or arrange for written examination to be given at least twice a year upon questions proposed by the commissioner as to the qualifications of applicants to hold a bail license. The examination shall be of sufficient scope to satisfy the commissioner that the applicants have knowledge of, and are reasonably familiar with, the laws of this State relating to the giving of bail and the execution and delivery of undertakings of bail, and have a general and fair understanding of the obligations and duties of the holder of a bail license in respect to the conduct of business under each type of bail license.

§1810.7. Education Requirements For Applicants And Licensees; Approval Of Licensing Course Providers; Fees.

(a) In order to be eligible to take the examination required to be licensed under this chapter, the applicant shall have completed a minimum of 20 hours of classroom education in subjects pertinent to the duties and responsibilities of a bail licensee, including, but not limited to, all related laws and regulations, rights of the accused, ethics, and apprehension of bail fugitives. Additionally, a licensee shall complete in each two-year license term not less than 12 hours of continuing education in these subjects prior to renewal of his or her license.

(b) The commissioner shall approve or disapprove an applicant to provide education for licensure as required by this section within 90 days of receipt of the applicant's full and complete application. However, this 90-day period shall be tolled during the pendency of any investigation of the applicant by the commissioner for an alleged violation that would, if proven, result in the suspension, revocation, or denial of the provider's approval to provide continuing education to bail agents as prescribed in Section 1813.

Failure to disapprove an applicant within this period shall result in the automatic approval of the application. Approval shall be valid for two years. The commissioner may, at any time, disapprove any provider who is not qualified or whose course outlines are not approved, who is not of good business reputation, or who is lacking in integrity, honesty, or competency. A provider shall not provide education for licensure following the expiration of the two-year approval period unless the commissioner has renewed the provider's approval. The commissioner shall, at the time of renewal, approve or disapprove the course outlines and schedule of classes to be provided.

(c) Providers responsible for providing education for licensure under this chapter shall consult with the California State Sheriffs' Association, the California District Attorneys Association, and the County Counsels Association of California prior to submission of the course outlines for approval by the commissioner, and these entities may respond within 30 days of receipt of a request for consultation from a provider. Providers shall maintain records of their requests for consultation and any responses from these entities, and make these records available to the department for review as requested.

The bail license fee shall be increased, the amount of which shall be determined by the commissioner, which shall be deposited in the Insurance Fund for the purposes of recovering the administrative costs for meeting the conditions and purposes of this section.

Providers of education or continuing education shall offer courses to all applicants at the same course fees.

(d) Any person who falsely represents to the commissioner that compliance with this section has been met shall be subject, after notice and hearing, to the penalties and fines set out in Section 1814.

(e) A licensee shall not be required to comply with the continuing education requirements of this section if the licensee submits proof satisfactory to the commissioner that he or she has been a licensee in good standing for 30 continuous years in this state and is 70 years of age or older.

(f) The commissioner may make reasonable rules and regulations necessary, advisable, and convenient for the administration and enforcement of this chapter. The rules and regulations may include a schedule establishing fees to be paid by an applicant seeking approval to act as a provider and to deliver courses under this section. Those fees shall be in an amount no greater than fees paid by applicants providing similar courses to other insurance agents licensed by the department, as specified in Section 1751.1.

(g) Nothing in this chapter shall preclude completion of the bail agent continuing education requirements of this section through a course of instruction offered via the Internet or correspondence. However, this subdivision shall not be construed to allow completion of the preclicensing education requirements of this section through a course of instruction.

(h) Successful completion of the continuing education requirements by means of an Internet or correspondence course shall require obtaining a passing grade of at least 70 percent on a written final examination. The final examination shall be open book and shall be graded by the approved provider. The provider shall issue certificates of completion only to those students who have passed the final examination.

§1810.8. Temporary License For Executor Or Administrator Of Licensee's Estate.

The commissioner may issue a temporary license to the executor or administrator of the estate of a deceased holder of a bail agent's license or bail permittee's license, permitting such party to act as such representative to exercise the rights and privileges of such a license holder for the purpose of conducting the business of the estate for a period of one year from and after the date of the death, pending, but not after, the disposal of the business.

§1810.9. License Renewal.

A renewal license shall be issued by the commissioner to a licensee upon proof of current licensure, payment of a renewal fee, and completion of the continuing education requirements as required by subdivision (a) of Section 1810.7.

§1811. Fees. (**Note: although the code reads as follows, fees in italics are effective 2011*)

For his services in connection with the filing of any application or request for any license under this chapter, the commissioner shall charge and collect the following fees:

(a) For filing an application or request for bail agent's license, one hundred eighteen dollars (\$118). (*new fee: \$426.*)[*for two year license*]

(b) For filing an application or request for bail solicitor's license, one hundred eighteen dollars (\$118). (*new fee: \$426.*)[*for two year license*]

(c) For filing an application or request for bail permittee's license, two hundred thirty-six (\$236). (*new fee: \$850.*)[*for two year license*]

(d) For filing an application for examination, or reexamination twenty-four dollars (\$24). (*new fee: \$42.*)[*add \$30.00 convenience fee when taking exam at a PSI exam site*]

(e) For filing each annual notice of intention to keep a bail agent's license in force or a renewal application, a fee of thirty-five dollars (\$35.). (*new fee: \$128.*) In the case of a bail agent with more than one valid notice of appointment on file, the fee to be charged pursuant to this subsection shall be the fee provided herein multiplied by the number of insurers whose valid appointments are on file at the date such document is filed unless such bail agent in such document advises the commissioner of his intent to terminate the appointment of one or more such insurers, in which event the fee shall be based upon the number for insurers remaining.

(f) For filing each renewal notice of intention to keep a bail solicitor's license in force or a renewal application, a fee of thirty-five dollars (\$35). (*new fee: \$128.*)

(g) For filing each renewal notice of intention to keep a bail permittee's license in force or a renewal application, a fee of one hundred forty-eight dollars (\$148). (*new fee: \$536.*)

(h) At the time of filing an application for a license, if a qualifying examination is required for issue or in connection with such license, the fee for filing the first application to take the qualifying examination shall be paid at the time of filing application for the license.

(i) For filing application or request for approval of a true or fictitious name pursuant to Section 1724.5, twelve dollars (\$12) (*new fee: \$43.*), except that there shall be no fee when such name is contained in an original application.

(j) For filing a bond required by this chapter, except when such bond constitutes part of an original application, ten dollars (\$20).

(k) For filing a first amendment to an application, six dollars (\$6). (*new fee: \$11.*)

(l) For filing a second and each subsequent amendment to an application, twelve dollars (\$12). (*new fee \$22.*)

§1812. Rule Making Power.

The commissioner may make reasonable rules necessary, advisable, or convenient for the administration and enforcement of the provisions of this chapter.

§1813. Suspension, Revocation And Denial Of License.

The commissioner, after notice and hearing, in accordance with the procedure provided in Article 13 (commencing with Section 1737) of Chapter 5 may suspend, revoke, or deny any license or certificate of authority issued pursuant to any provision of this code whenever he or she finds that the holder thereof has violated any provisions of this chapter.

§1814. Violations; Fine And Imprisonment.

The violation of any foregoing provision of this chapter, or of any rule of the commissioner made pursuant thereto, is a public offense, punishable by fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in the state prison, or in the county jail not exceeding one year, or by both such fine and imprisonment.

§1815. Lists Of Licensees.

The commissioner shall publish and maintain a list of the names of holders of bail agents' and bail permittees' licenses and their solicitors on the department's public Web site, together with their license numbers and any other information in respect to the persons as he or she considers advisable. He or she shall promptly upon termination, for any cause, of any license, update the department's public Web site.

§1819. Commissioner's Certificate As Prima Facie Evidence.

The certificate of the commissioner certifying any facts found after hearing held under this chapter shall be prima facie evidence of the facts set forth therein.

§1820. Display Of License.

Every bail license shall be prominently displayed in the office of the licensee.

§1821. Refusal Of License.

A license shall not be refused by the commissioner without proceedings in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, being initiated within 60 days from the date of filing the completed application.

Sections 1724.5, 1733, 1734, 1735 and Articles 6 (commencing with Section 1666) and 13 (commencing with Section 1737) of Chapter 5 apply to persons licensed under this chapter, and "insurance agent" or "licensee", as used in those provisions, include persons licensed under this chapter.

§1822. Change Of Address.

A licensee or applicant for a license under this chapter shall notify the commissioner, in writing, of any change in the address from which he intends to conduct his business.

§1823. Moneys To Be Kept In Trust Accounts.

All surety companies which execute undertakings of bail shall keep any moneys collected from agents licensed pursuant to this code as buildup or reserve funds in segregated trust accounts within the state. These accounts shall be maintained as any of the following:

- (a) A Federal Deposit Insurance Corporation (FDIC) insured account.
- (b) United States government bonds and treasury certificates or other obligations for which the faith of the United States is pledged for the payment of principal and interest.
- (c) Repurchase agreements collateralized by securities issued by the United States government.
- (d) A money market fund that limits its portfolio to those securities listed in subdivisions (a) and (b).

The accounts described in this section shall not be hypothecated or offered as collateral.

The accounts described in this section shall be used to satisfy the unfulfilled obligations of the undertakings of bail written by the agents from whom the moneys have been collected and to otherwise satisfy the unfulfilled obligations which may be owing to the surety by those agents.