

**STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
45 Fremont Street  
San Francisco, California 94105**

**File No. REG-2010-00015**

**September 22, 2010**

**STATEMENT SUPPORTING  
CHANGE WITHOUT REGULATORY EFFECT**

**PRIVACY OF NONPUBLIC PERSONAL INFORMATION**

**ARTICLE 2.**

**PRIVACY NOTICES; OPT OUT NOTICES FOR  
NONPUBLIC PERSONAL FINANCIAL INFORMATION**

**Section 2689.8. Form of Opt Out Notice and Opt Out Methods**

Pursuant to the provisions of Title 1, California Code of Regulations, Section 100, the California Department of Insurance (“Department”) submits this written statement explaining why the changes proposed in this rulemaking file do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

1. The Department proposes to add the following language to Title 10, California Code of Regulations, Section 2689.8(c):

For purposes of these regulations, “agent” is defined in California Insurance Code Section 791.02(c) to include any person licensed pursuant to Chapters 5, 5A, 6, 7, or 8 and thus includes an insurance broker.

Title 10, California Code of Regulations, Section 2689.2, entitled “Scope,” provides that “[T]hese regulations shall apply to all licensees of the California Department of Insurance subject to California Insurance Code Sections 791 et seq., namely insurance institutions, agents, and insurance support organizations<sup>1</sup>.” “Agent” is defined in California Insurance Code Section 791.02(c) to include most producer licensees of the Department. However, given the passage of time since these regulations were adopted, some insurance producers believe that various provisions of the regulations apply to insurance agents but not to insurance brokers. Consequently, the Department proposes adding language to the regulations to include the cross-reference to the definition of “agent” in California

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<sup>1</sup> This language is taken from California Insurance Code Section 791.

Insurance Code Section 791.02(c) and specifically to make it clear that reference to an insurance agent includes an insurance broker.

This language was included in this section, and not in the Definitions section (Section 2689.4), because producers look to Section 2689.8 to determine their compliance requirements and they are more likely to be aware of this provision if this language is included in the section regarding Privacy Notices. The language proposed for deletion in this section (discussed below) relates to producer requirements in connection with Privacy Notices. Therefore, producers have looked to this section in the past to determine their compliance requirements, and the Department believes that producers are more likely to be aware of this clarification if the language is included in this section.

2. The Department proposes to delete Title 10, California Code of Regulations, Section 2689.8(c)(3). That section provided:

(3) A licensee not otherwise subject to the notice and opt out requirements for nonpublic personal financial information, pursuant to sections 2689.8(c)(1) and (2), is subject to the notice and opt out requirements, pursuant to California Insurance Code Section 791.13(k), if the licensee, prior to issuance of a renewal policy or at any other time, shares nonpublic personal financial information with any person other than the insurer which issued the existing policy. A licensee shares nonpublic personal financial information with a person other than the insurer which issued the existing policy if the licensee shares nonpublic personal financial information with another insurer in an effort to obtain a renewal policy on more favorable terms than the existing policy.

The provisions of subsequently-enacted California Financial Code Section 4056.5(b) supersede Section 2689.8(c)(3). Section 4056.5(b) provides:

The restrictions on disclosure and use of nonpublic personal information, and the requirement for notification and disclosure provided in this division, shall not limit the ability of insurance producers and brokers to respond to written or electronic, including telephone, requests from consumers seeking price quotes on insurance products and services or to obtain competitive quotes to renew an existing insurance contract, provided that any nonpublic personal information disclosed pursuant to this subdivision shall not be used or disclosed except in the ordinary course of business in order to obtain those quotes.

Because the Department's regulation has been superseded by California Financial Code Section 4056.5(b), the Department cannot enforce the language of Section 2689.8(c)(3) and therefore proposes to delete that section.

3. The Department is relying on California Financial Code Section 4056.5(b) in deleting the provisions of Title 10, California Code of Regulations, Section 2689.8(c)(3), and therefore proposes to add that section to the "Reference" note following the regulation text.