

**STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
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Sacramento, California 95814**

**RH05047633**

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**INITIAL STATEMENT OF REASONS  
REGARDING PRODUCER LICENSING BACKGROUND REVIEW GUIDELINES**

INTRODUCTION

California Insurance Code section 12921(a) establishes the Insurance Commissioner as the chief regulator of the business of insurance. Specifically, Insurance Code section 12921(a) provides the following:

“The commissioner shall perform all duties imposed upon him or her by the provisions of this code and other laws regulating the business of insurance in this state, and shall enforce the execution of those provisions and laws.”

Case law supports a broad interpretation of the Commissioner’s authority as a regulator in *20<sup>th</sup> Century Insurance Company v. John Garamendi*, (1994) 8 Cal.4<sup>th</sup> 216, citing *Calfarm Insurance Company v. Deukmejian*, by finding that the Commissioner “has broad discretion to adopt rules and regulations as necessary to promote the public welfare.”

In order to fulfill the Commissioner’s regulatory duties, the Department of Insurance has promulgated regulations related to various aspects of the business of insurance, including producer licensing. Currently, the Department has regulations related to producer license background review for use in cases involving insurance adjusters only. CCR Title 10, Chapter 5, Subchapter 7, Article 8, §2691.18, sets forth criteria for determining a substantial relationship between a crime or act and the duties of an insurance adjuster. CCR Title 10, Chapter 5, Subchapter 7, Article 8, §2691.19, provides criteria for the evaluation of rehabilitation when considering discipline of the license of an insurance adjuster.

The Department has no such background review guidelines for use in cases involving other types of insurance producers. To effectively and consistently regulate the activities of all insurance producers, the Commissioner must promulgate rules and regulations related to producer background review that will encompass all license types. The proposed licensing background review regulations are necessary in order to provide a clear and predictable scheme for use by Department staff, Administrative Law Judges, and insurance producers in evaluating license discipline.

## STATEMENT OF SPECIFIC PURPOSE AND NECESSITY

The specific purpose of these regulations, and the rationale for the Commissioner's determination that these regulations are reasonably necessary to carry out the purpose for which they are proposed is set forth below:

Currently the Department has regulations related to producer license background review for use in cases involving insurance adjusters only. The Department has determined that in order to add the proposed regulations, it is necessary to repeal CCR Title 10, Chapter 5, Subchapter 7, Article 8, Section 2691.18 and CCR Title 10, Chapter 5, Subchapter 7, Article 9, Section 2691.19 which relate to insurance adjusters only. The proposed regulations will include all producer licensing types.

### **Section 2183**

Section 2183 sets forth the purpose and authority for the licensing background review guideline regulations.

### **Section 2183.1**

Section 2183.1 specifies that Sections 2183, 2183.1, 2183.2, 2183.3 and 2183.4 shall apply to all persons who possess, or are have applied for, any insurance producer license governed by the Insurance Code, including, but not limited to agent, broker, solicitor, bail agent, bail solicitor, adjuster, or any other producer license.

### **Section 2183.2**

Section 2183.2 identifies a crime or act, in addition to those already specifically mentioned by statute, which may be considered substantially related to the qualifications, functions or duties of an insurance licensee for the purpose of denial, suspension, revocation, and/or restriction of a license or license application. Those crimes and/or acts include, but are not limited to, those described in subsections 2183.2 (a), (b) and (c).

Section 2183.2(a) sets forth the term "any felony."

Section 2183.2(b) sets forth the term "misdemeanor" which evidences present or potential unfitness to perform the functions authorized by the license in the manner consistent with the public health, safety and welfare, including but not limited to soliciting, attempting, or committing crimes involving: (1) dishonesty or fraud; (2) any conviction arising out of acts performed in the business of insurance or any other licensed business or profession; (3) theft; (4) sexually related conduct; (5) resisting, delaying or obstructing a public officer; (6) any act or offense wherein the person willfully causes injury to the person or property of another; (7) violation of a relation of trust or confidence, or a breach of fiduciary duty; and (8) conduct which demonstrates a pattern of repeated and willful disregard of law.

Section 2138.2(c) sets forth any act which demonstrates a willful attempt to derive a personal financial benefit through the nonpayment or underpayment of taxes, assessments, or levies imposed upon a licensee or applicant by federal, state or local government; or failure to comply with a court order.

**Section 2183.3**

Section 2183.3 sets forth the weight to be accorded to a substantially related crime or act in considering discipline of a license or license application described in Section 2183.2(a), (b), or (c); and provides for the application of specific guidelines that include, but are not limited to, those set forth in Section 2183.3(a), (b), (c), (d), and (e).

Section 2183.3(a) sets forth a guideline related to the extent to which a particular act or omission has adversely affected other person(s) or victim(s), and the probability such adverse effects will continue.

Section 2183.3(b) sets forth a guideline associated with the recency or remoteness in time of the acts, misconduct, or omissions.

Section 2183.3(c) sets forth a guideline in reference to the type of license applied for or held by the licensee or applicant involved.

Section 2183.3(d) sets forth a guideline related to the extenuating or aggravating circumstances surrounding the acts, misconduct or omissions.

Section 2183.3(e) sets forth a guideline associated with the history of prior license discipline, particularly where the prior discipline is for the same or similar type of conduct.

**Section 2183.4**

Section 2183.4 sets forth the criteria for evaluating evidence of rehabilitation when considering an application for an insurance license, or suspension, revocation, and/or restriction of an insurance license, on the grounds of conviction of a crime or commission of some other wrongful act. The criteria include, but are not limited to, the criteria provided in Sections 2183.4(a), (b), (c), (d), (e), and (f).

Section 2183.4(a) sets forth the criteria related to the nature and severity of the acts, misconduct or omissions.

Section 2183.4(b) sets forth the criteria associated with the totality of the criminal record.

Section 2183.4(c) sets forth the criteria related to the passage of time since the commission of the acts, misconduct or omissions and emphasizes that the mere passage of time is not alone sufficient to establish rehabilitation.

Section 2183.4(d) sets forth the criteria related to the licensee's or applicant's compliance with any terms of parole, probation, restitution or other sanctions lawfully imposed against the licensee or applicant; and emphasizes that the termination of probation or parole or obtaining a Penal Code Section 1203.4 expungement of the conviction, or other comparable orders of a court, are not alone sufficient evidence of rehabilitation.

Section 2183.4(e) sets forth the criteria associated with the licensee or applicant making restitution or performing other actions to make up for the wrongdoing caused by the acts, misconduct, or omissions.

Section 2183.4(f) sets forth the criteria related to the licensee's or applicant's involvement with community or other privately sponsored programs designed to provide social benefits or to ameliorate social problems.

#### IDENTIFICATION OF STUDIES

There are no specific studies relied upon in the proposed regulations of Title 10, Chapter 5, Subchapter 1, Article 5.7, Sections 2183, 2183.1, 2183.2, 2183.3, and 2183.4.

#### SPECIFIC ACTIONS, PROCEDURES, TECHNOLOGIES OR EQUIPMENT

Adoption of the proposed regulations would not mandate the use of specific technologies or equipment.

#### REASONABLE ALTERNATIVES

The Commissioner invites public comments on the proposed regulations which would be equally effective in carrying out the statutory mandate. At present, no alternatives to the proposed regulations were considered by the Commissioner.

#### ECONOMIC IMPACT ON BUSINESS

The Commissioner has initially determined that the proposed regulations will not have a significant adverse economic impact on businesses. The Commissioner invites interested parties to comment on whether the proposed regulations will have a significant adverse economic impact on business.