

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, 17th Floor
Sacramento, California 95814**

RH05047633

December 11, 2006

SUMMARY AND RESPONSE TO PUBLIC COMMENTS

PROPOSED

**REPEAL OF CCR TITLE 10, CHAPTER 5, SUBCHAPTER 7,
ARTICLES 8 AND 9**

**ADDITION OF CCR TITLE 10, CHAPTER 5, SUBCHAPTER 7,
ARTICLE 5.7, SECTIONS 2183, 2183.1, 2183.2, 2183.4**

1. Commentor: Stephen L. Young, Insurance Agents and Brokers of the West

Date of Comment: November 9, 2006

Type of Comment: Oral and written

a. Summary of Comment: Mr. Young opposes the proposed regulations in their entirety based on his position that the Commissioner lacks the statutory authority to promulgate the proposed regulations.

Response to Comment: The Department disagrees with this comment. The Department has set forth the basis for the Commissioner's authority to promulgate these regulations in the Notice of Proposed Action and Notice of Public Hearing in this matter.

b. Summary of Comment: Mr. Young opposes the proposed regulations based on his position that the proposed regulations are in addition to, expand, or are inconsistent with, the criteria set forth in existing statutory law of California Insurance Code sections 1668, 1668.1, 1668.5, and 1669. The comment interprets existing Insurance Code section 1668 (m) (2) and (m) (3) to allow the Commissioner to revoke or deny a license from persons convicted only of misdemeanors specified in those sections. Based upon that reasoning, Mr. Young comments that the proposed regulations are inconsistent with, and beyond the scope of, existing law.

Response to Comment: The Department disagrees with this interpretation of Insurance Code section 1668 (m) (2) and (m) (3), and, therefore, disagrees with this comment. While Insurance Code section 1668 (m)(2) and (m)(3) set forth specific types of misdemeanors that may be cause for license discipline, those misdemeanors contemplated in 1668(m)(2) and (m)(3) do not preclude the Commissioner from considering other types of misdemeanors when considering license discipline pursuant to

the statutory guidelines of section 1668. For example, section 1668(b) permits the Commissioner to initiate disciplinary action based upon conduct by a licensee or applicant for a license based upon said conduct being against the public interest. Additionally, pursuant to section 1668(e), the Commissioner may initiate a disciplinary action if the licensee/ applicant is lacking in integrity. Further, section 1668(i) permits the Commissioner to impose license discipline when the licensee/applicant has previously engaged in a fraudulent practice or act. Clearly, the broad provisions of sections 1668(b), 1668(e), and 1668(i) could apply to many types of misdemeanors, independent of those misdemeanors specifically described in 1668(m) (2) and (m) (3). Sections 1668(m) (2) and (m) (3) cannot be interpreted to the exclusion of the other provisions of section 1668. The proposed regulations, specifically CCR section 2183.2, do not amend, enlarge, or act inconsistently with the scope of existing statute. The proposed regulations merely make specific and otherwise give effect to the statutory language found in Insurance Code section 1668.

c. Summary of Comment: Mr. Young opposes the proposed regulations based on his position that the proposed regulations are unnecessary.

Response to Comment: The Department disagrees with this comment. The Department believes the proposed regulations to be necessary in order to provide clarity regarding the grounds for license discipline that the existing broad statutory guidelines may lack.

d. Summary of Comment: Mr. Young opposes the proposed regulations based on his position that the proposed regulations could result in disruption of insurance agency or brokerage operations, thereby resulting in a potential for harm to consumers.

Response to Comment: The Department disagrees with this comment. The Department's goal is to protect insurance consumers. In furtherance of this goal, the Department must have the tools necessary to prevent undesirable insurance producers from transacting with insurance consumers. The proposed regulations will enable the Department to better protect the public. The belief that the proposed regulations will result in disruption of insurance agency or brokerage operations such that consumers could be harmed is speculation that is unsupported by facts in this comment whereas the risk of harm to consumers by licensing undesirable agents and brokers is certain.

2. Commentor: Shari McHugh, National Association of Insurance and Financial Advisors of California (NAIFA)

Date of Comment: November 9, 2006

Type of Comment: Written

a. Summary of Comment: Ms. McHugh opposes the proposed regulations in their entirety based on her position that the Commissioner lacks the statutory authority to promulgate the proposed regulations.

Response to Comment: The Department disagrees with this comment. The Department has set forth the basis for the Commissioner’s authority to promulgate these regulations in the Notice of Proposed Action and Notice of Public Hearing in this matter.

b. Summary of Comment: Ms. McHugh opposes the proposed regulations based on her position that the proposed regulations exceed the scope of the enabling statute, specifically Insurance Code sections 1668(m)(2) with regard to identifying a “misdemeanor denounced by this code or other laws regulating insurance.”

Response to Comment: The Department disagrees with this comment. As mentioned herein above in Response to Comment 1(b), the proposed regulations, specifically CCR section 2183.2, do not amend, enlarge, or exceed the scope of existing statute. The proposed regulations merely make specific and otherwise give effect to the statutory language found in Insurance Code section 1668.

c. Summary of Comment: Ms. McHugh opposes the proposed regulations based on her position that the proposed regulations are duplicative of provisions found within “Article 6” of the Insurance Code which “outlines the grounds for denial of a license application.”

Response to Comment: This comment is non-specific as to which provisions of the proposed regulations, or of the sections within Article 6 of the Insurance Code, are duplicative, therefore, the Department is unable to respond in a meaningful way to this comment.

3. Commentor: Robert H. Hogeboom, Esq., on behalf of the Alliance of Insurance Agents and Brokers

Date of Comment: November 7, 2006

Type of Comment: Written

a. Summary of Comment: Mr. Hogeboom opposes the proposed regulations based on his position that the Commissioner lacks the statutory authority to promulgate the proposed regulations, and, therefore, the proposed regulations unlawfully expand the Commissioner’s authority to deny or revoke a license.

Response to Comment: The Department disagrees with this comment. The Department has set forth the basis for the Commissioner’s authority to promulgate these regulations in the Notice of Proposed Action and Notice of Public Hearing in this matter. Therefore, the proposed regulations, promulgated pursuant to the authority described in the Notice of Proposed Action, do not constitute an unlawful expansion of the Commissioner’s authority to initiate license discipline.

b. Summary of Comment: Mr. Hogeboom opposes the proposed regulations based on his position that the proposed regulations expand, as a basis for license discipline, misdemeanor convictions to those that are not “denounced by this code or other laws

regulating insurance.” Mr. Hogeboom’s view is that CCR section 2183.2 inappropriately expands the grounds for discipline found in Insurance Code section 1668(m)(2) to include non-insurance related misdemeanors, thereby violating authority and consistency standards set forth in the Government Code.

Response to Comment: The Department disagrees with this comment. As mentioned herein above in Response to Comments 1(b) and 2(b), the proposed regulations, specifically CCR section 2183.2, do not amend, enlarge, or exceed the scope of existing statute. The proposed regulations merely make specific and otherwise give greater clarity and effect to the statutory language found in Insurance Code section 1668.

4. Commentor: Michael A. Paiva, Personal Insurance Federation of California

Date of Comment: November 6, 2006

Type of Comment: Written

a. Summary of Comment: Mr. Paiva opposes the proposed regulations based on his position that the Commissioner lacks the statutory authority to promulgate the proposed regulations

Response to Comment: The Department disagrees with this comment. The Department has set forth the basis for the Commissioner’s authority to promulgate these regulations in the Notice of Proposed Action and Notice of Public Hearing in this matter. Therefore, the proposed regulations, promulgated pursuant to the authority described in the Notice of Proposed Action, do not constitute an unlawful expansion of the Commissioner’s authority to initiate license discipline.

b. Summary of Comment: Mr. Paiva opposes the proposed regulations based on his position that the proposed regulations are inconsistent with existing law, however, the comment does not include the existing law that is suggested to be in conflict with the proposed regulations.

Response to comment: This comment is non-specific as to the existing law that the commentor believes to be in conflict with the proposed regulations, therefore, the Department is unable to respond in a meaningful way to this comment.

c. Summary of Comment: Mr. Paiva opposes the proposed regulations based on his position that the proposed regulations lack clarity and that, under the proposed regulations, a licensee or applicant could be disqualified for “virtually any criminal offense, regardless of the severity, age of the offense, or relation to the business of insurance.” Mr. Paiva writes that the proposed regulations could have “a devastating effect on a carriers’ efforts to hire and license call center representatives or maintain a licensed agent force.”

Response to comment: The Department disagrees with this comment. The Department believes the proposed regulations to be necessary in order to provide clarity regarding the grounds for license discipline that the existing broad statutory guidelines may lack. The

proposed regulations provide licensees and applicants with far greater clarity regarding grounds for license discipline than do existing statutory provisions of the Insurance Code such as section 1668 (b) which provides a basis for discipline in the event that granting a license is “against the public interest.” The proposed regulations set forth clearly enumerated guidelines for administering license discipline.

The Department also disagrees with the perception that the proposed regulations would disqualify an individual for “virtually any criminal offense, regardless of the severity, age of the offense, or relation to the business of insurance.” To the contrary, proposed regulation CCR sections 2183.3 and 2183.4 provide guidelines for determining the weight accorded to acts found to be substantially related misconduct as well as criteria for evaluating rehabilitation when considering license discipline. As such, consideration of the severity and age of the offense as well as the relation of the misconduct to the business of insurance are addressed by the proposed regulations.

The Department disagrees with the commentor’s concern that the proposed regulations will impair an employer’s ability to hire and maintain a licensed agent force. Presumably, employers are screening prospective employees currently in the absence of the proposed regulations. Insurance industry employers may have their own independent, company-specific standards for hiring personnel which may be more or less stringent than the Department’s guidelines. The Department does not contemplate that the proposed regulations would impose any additional burden on employers to conduct some type of pre-hiring screening of prospective employees since employers are likely already engaged in such activity.

d. Summary of Comment: Mr. Paiva opposes the proposed regulations based on his position that the proposed regulations are unnecessary.

Response to Comment: The Department disagrees with this comment. The Department’s goal is to protect insurance consumers. In furtherance of this goal, the Department must have the tools necessary to prevent undesirable insurance producers from transacting with insurance consumers. The proposed regulations will enable the Department to better protect the public. Further, the Department believes the proposed regulations to be necessary in order to provide additional clarity regarding the grounds for license discipline that the existing broad statutory guidelines may lack.