



To: Honorable Lisa Calderon, Chair
Assembly Insurance Committee
Members, Assembly Insurance Committee
RE: SB 354 (Limon) --Opposition

Dear Senator Limon:

We are writing on behalf the trade associations listed above to express our concerns relative to the above-mentioned bill. These professional trade associations represent thousands of insurance agents and brokers who provide both accident & health and property & casualty insurance products through numerous insurers. Our members have offices in virtually every community throughout the state.

As you are aware, SB 354 seeks to repeal the current Insurance Information and Privacy Protection Act (IIPPA) in its entirety and replace that law with a new, highly complicated and expansive set of regulatory prohibitions and obligations. An undertaking of this magnitude has been an enormous challenge to review, analyze, and prepare for comment. As such, we apologize in advance for the fact that the concerns expressed in this letter-come after SB 354 has passed the Senate and is in the Assembly for consideration.

California is one of the few states that has a comprehensive insurance industry-specific data privacy law in place (i.e., Article 6.6 of the Insurance Code). Although that law is old, it addresses nearly all of the key data privacy issues including: (1) requiring meaningful notice of information practices, (2) restricting the sharing of information and requiring opt-in in certain cases, (3) providing consumers with the ability to correct, amend, and delete their information, and (4) enabling consumers to address adverse underwriting decisions. While some of the provisions of the existing privacy statute undoubtedly need to be tweaked and modernized, we believe it would make more sense to revise Article 6.6 and not replace it altogether with an entirely new framework.

Regarding specific our concerns, most of our members are small businesses that are exempt from the California Consumer Privacy Act which is applicable to those businesses with gross revenues over \$25 million; possess the personal information of at least 100,000 residents or households; or who derive 50% of their annual revenue from selling or sharing California residents personal information. This exemption is grounded in the recognition that small businesses of almost every type: (1) do not traffic in consumer information and (2) do not begin to have the resources or sophistication required to understand or comply with the requirements contemplated by legislation of this magnitude.

Almost 90% of independent insurance agencies report an annual income of less than \$2.5 million dollars, according to the 2024 Agency Univs Study prepared by Independent Insurance Agents Association. That number does not include captive insurance agencies like those that work exclusively with State Farm, Farmers, and Allstate, or health and disability agents that own their own agencies, both of whom are likely to have even less in annual revenues.

California insurance law has long contained an express exemption for insurance agencies and brokerages of all sizes. California Department of Insurance privacy regulations—in

Cal. Code Regs, Title 10, § 2689.8 (c)-- provides:

(c) A licensee is not subject to the notice and opt out requirements for nonpublic personal financial information if the licensee is an employee or agent of another licensee (“the principal”) and:

- (1) The principal otherwise complies with, and provides the required notices; and
- (2) The licensee does not disclose any nonpublic personal financial information to any person other than the principal or its affiliates in a manner permitted by California Insurance Code Sections 791-791.27 or these regulations.

SB 354 does not include a similar exemption. The proposed new statute would impose expansive requirements on licensees that we are concerned would not only add extremely costly and burdensome requirements to most independent agents and brokers, but would also be well beyond the ability of our small business members to implement.

For example, Section 792.115 would impose numerous requirements on all licensees of the department relative to third party service providers. The typical insurance agency is in no position to force contractual demands of this nature upon larger and more sophisticated vendors. It is not uncommon for critically important service providers to present contracts to small businesses on a take-it-or-leave-it basis, without meaningful opportunity for negotiation. A “Mom and Pop” insurance agency has no ability to police agency management software vendors, or internet search engines.

Independent agencies represent numerous insurance companies subject to an agency appointment. And insurance brokers, not beholden to any insurer, are able to shop the entire insurance marketplace to satisfy the insurance needs of their clients. In order to find and secure the appropriate insurance coverage requested by their clients, agents often submit applications to multiple insurers. Additionally, agents and brokers often suggest additional coverage to fill potential gaps in their clients' insurance coverage or bring products new to the market to the attention of their insureds that might better fit their insureds' needs. Customers of our members rely on their agent or broker to perform this function and depend on their expertise to make sure they are adequately protected.

These daily activities and functions of independent insurance agents bring into question the application of the consent and notice provision of SB 354 and how our members can market the needs of their clients while providing them with meaningful information about what information is collected, how it is used, to whom it is disclosed and the consumer's right to control the use of their information. We respectfully question whether these obligations are exclusively the responsibility of our members; as drafted, this legislation appears to require consumers to potentially get multiple privacy policies from insurance entities—all related to the same potential policy or set of policies? Must insurance agents obtain a specific consent or the ability to opt out of marketing their risk with each insurer to which the agents intend to submit an application for insurance? Is the client's consent required for the agents to suggest a new, different, or improved insurance product or service?

Independent insurance agents do not sell their customer information or solicit their clients for purposes unrelated to the insurance products and services appropriate to meet their client's insurance needs and protections. There are numerous provisions of Section 792.130 that potentially present challenges for compliance by insurance agents and brokers and other provisions of SB 354 that raise questions about how local insurance agents and brokers can comply.

Independent agents and brokers respect the privacy rights of their clients and support laws and regulations to protect their client's personal information. However, the goal is to achieve a balance that ensures the consumers' personal information is protected and allows independent agents to service their client's insurance needs pursuant to a statute they can readily implement.

We look forward to the opportunity to discuss the issues identified above in SB 354 and others affecting independent agents and brokers and their clients with you and the Department of Insurance. Again, we regret that these comments come somewhat late, however, given the qualified exemption for insurance agents and brokers under current law, it's has been a challenge to identify how the vastly more comprehensive provisions of SB 354 will apply to our members.

Sincerely,

John Norwood, Managing Partner, Norwood Associates on behalf of Independent Insurance Agents and Brokers of California

Shari McHugh, Partner, McHugh Koepke Padron on behalf of National Association of Insurance & Financial Advisors of California

Mike D'Arelli with American Agents Alliance

Faith Borges, Legislative Advocate, Public Policy Partnership on behalf of California Agents and Health Insurance Professionals

CC:

Samantha Omana, Legislative Director, Office of Senator Limon

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