

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS
INFORMATIONAL STATEMENT AS REQUIRED BY NRS 233B.066**

LCB FILE NO. R125-18

The following statement is submitted by the State of Nevada, Department of Business and Industry, Division of Insurance (“Division”) for adopted amendments to Nevada Administrative Code (“NAC”) Chapter(s) 679B.

1. A clear and concise explanation of the need for the adopted regulation.

The proposed regulation is necessary in furtherance of the obligation of licensees (as defined in NAC 679B.824) to protect consumer privacy, with respect to security and confidentiality of nonpublic personal information maintained by the licensees.

2. A description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

- (a) A description of how public comment was solicited:

Public comment was solicited by e-mailing the proposed regulation, notice of workshop, notice of intent to act upon the regulation, and small business impact statement to persons on the Division’s mailing list requesting notification of proposed regulations. The documents were also made available on the website of the Division, <http://doi.nv.gov/>, mailed to the main library for each county in Nevada, and posted at the following locations:

*Nevada Division of Insurance
1818 East College Parkway, Suite 103
Carson City, Nevada 89706*

*Nevada Division of Insurance
3300 West Sahara Avenue, Suite 275
Las Vegas, Nevada 89102*

*Legislative Building
401 South Carson Street
Carson City, Nevada 89701*

*Nevada State Business Center
3300 West Sahara Avenue
Las Vegas, Nevada 89102*

*Blasdel Building
209 East Musser Street
Carson City, Nevada 89701*

*Grant Sawyer Building
555 East Washington Avenue
Las Vegas, Nevada 89101*

*Capitol Building
101 North Carson Street
Carson City, Nevada 89701*

*Nevada Department of Employment,
Training and Rehabilitation
2800 E. Saint Louis Avenue
Las Vegas, Nevada 89104*

Public comment was also solicited at the workshop held on September 5, 2018, and at the hearing held on September 14, 2018. The public workshop and hearing took place at the office of the Division, 1818 East College Parkway, Carson City, Nevada 89706, with simultaneous videoconferencing to the Nevada State Business Center, 3300 West Sahara Avenue, Las Vegas, Nevada 89102.

(b) A summary of the public response:

On August 29, 2018, the Division received two written responses to the notices. Both respondents supported the general thrust of the proposed regulation R125-18, but both recommended changes. The Division considered these suggested changes in advance of the workshop; the Division agreed to incorporate five new definitions and to restore the original intent of a sentence that had been edited in a way that changed its meaning. A one-page handout was made available at the workshop with the intended changes. This led to a revised proposed draft of R125-18, issued by the LCB on September 11, 2018. Some of the suggested changes in the responses were not made, with causes indicated in Division testimony at the workshop and hearing.

An attorney representing one of the respondents provided testimony at the workshop. He indicated appreciation for the Division's detailed attention to his client's response, and that he would get back to the Division with any further feedback.

(c) An explanation of how other interested persons may obtain a copy of the summary:

The summary in part 2(b) above reflects the public comments and testimony that transpired with regard to regulation R125-18. A copy of said summary may be obtained by contacting Peter Rao, Assistant Chief, at (775) 687-0757 or prao@doi.nv.gov. This summary will also be made available by e-mail request to insinfo@doi.nv.gov.

3. The number of persons who:

- (a) Attended the hearing: *No members of the public.*
- (b) Testified at the hearing: *No members of the public; one representing the Division.*
- (c) Submitted to the agency written statements: *Two, prior to the workshop.*

4. A list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented, for each person identified above in #3 (b) and (c), as provided to the agency:

Testified at the hearing:

Name	Entity/Organization	Business Address	Telephone No./	E-Mail Address
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	Represented		Business Telephone No.	
<i>Peter Rao, Assistant Chief Insurance Examiner</i>	<i>State of Nevada, Dept. of Business and Industry, Division of Insurance</i>	<i>1818 E. College Parkway, Suite 103 Carson City, NV 89706</i>	<i>775-687-0757</i>	<i>prao@doi.nv.gov</i>

Submitted to the agency written statements:

Name	Entity/Organization Represented	Business Address	Telephone No./ Business Telephone No.	E-Mail Address
<i>Jeremy Merz, Vice President – Western Region</i>	<i>American Insurance Association</i>	<i>1201 K Street, Suite 1850 Sacramento, CA 95814</i>	<i>916-442-7617</i>	
<i>John Mangan, Regional Vice President</i>	<i>American Council of Life Insurers</i>		<i>503-701-7503</i>	<i>JohnMangan@acli.com</i>

5. A description of how comments were solicited from affected businesses, a summary of their responses, and an explanation of how other interested persons may obtain a copy of the summary.

(a) A description of how comments were solicited from affected businesses:

Comments were solicited from affected businesses in the same manner as they were solicited from the public. Please see the description provided above in response to #2(a).

(b) A summary of the responses from affected businesses:

Mr. Merz appreciated the Division’s proposed information security regulation for its consistency with similar regulations passed in at least 35 other states. He also supported the proposed amendment to NAC 679B.844, allowing for a privacy notice exemption under certain conditions. However, Mr. Merz noted eight particular areas of deviation from model language that did not provide a clear path to compliance, and suggested changes.

First, Mr. Merz suggested that proposed regulation R125-18, LCB draft dated July 5, 2018 (“R125-18P”), section 1, subsection 1 language “comprehensive program satisfactory to the Commissioner for the security of written information” be changed to “comprehensive written information security program.” Second, he suggested that R125-18P, section 1, subsection 3 language “To determine whether a program implemented pursuant to subsection 1 is satisfactory, the Commissioner will consider:” be replaced with language identifying subsequent paragraphs as illustrative examples. Third, he suggested that R125-18P, section 1, subsection 3, paragraph (e) language “Any information which

the Commissioner deems relevant to the determination” be deleted. Fourth, Mr. Merz suggested the inclusion of five model definitions in R125-18P; these definitions were for the terms “customer,” “customer information,” “customer information systems,” “licensee,” and “service provider.” Fifth, he suggested, for R125-18P, section 1, subsection 3, paragraph (c), the insertion of “Where indicated by the licensee’s risk assessment,” before the existing language; his concern was that ancillary providers, such as those for lawn maintenance or vending machines, would require scrutiny under this law. Sixth, Mr. Merz suggested excision of the term “hazards” from R125-18P as used in “threats and hazards” twice in R125-18P. Seventh, he suggested tying the “Changes in the business arrangements” language of R125-18P, section 1, subsection 3, paragraph (d), subparagraph (5) with “customer information systems;” the concern was a potential broadening of scope. Eighth, Mr. Merz suggested, for R125-18P, section 2, subsection 3, deletion of the language “A licensee who changes its policies and practices relating to the disclosure of nonpublic personal financial information and has not provided a notice to its customers within the immediately preceding 12 consecutive months as allowed by this subsection shall provide its customers with a notice reflecting these policies and practices.”

Mr. Mangan appreciated the Division’s proposed information security regulation for its consistency with similar regulations passed in 39 other states. However, he noted three particular areas of deviation from model language, and suggested changes.

First, Mr. Mangan suggested the inclusion of the same five model definitions into R125-18P as previously identified. Second, he suggests the phrase “the security of written information” as used in R125-18P, section 1, subsection 1, is ambiguous, in that it may not even cover electronic information (which it should). Third, he suggests the phrase “satisfactory to the Commissioner” in R125-18P, section 1, subsection 1 be deleted.

The Division appreciates the thoughtful responses provided by Mr. Merz and Mr. Mangan.

The first sentence of R125-18P, section 1, subsection 1 reads, “Each licensee shall implement a comprehensive program satisfactory to the Commissioner for the security of written information.” Upon further review, the Division concurred that the intent was changed from its original submission to the LCB, which read, “Each licensee shall implement a comprehensive written information security program that....” The Division, therefore, prepared a worksheet handout that listed corrections to be submitted to the LCB with respect to R125-18P.

The first item on the worksheet handout was to change the first sentence of R125-18P, section 1, subsection 1, to “Each licensee shall implement a comprehensive written information security program.” The Division believed this would satisfactorily address the first suggested change from Mr. Merz and the second and third suggested changes from Mr. Mangan.

The Division realized that some of the desired model definitions cited definitions in a second model, and that an older version of the second model had already been codified into NAC 679B. The definitions of “customer” and “licensee” already exist in NAC 679B, the chapter to which R125-18 is intended to be codified, and that the extant definitions are substantially similar to the ones intended to be added. The Division, therefore, added model definitions for “customer information,” “customer information systems,” and “service provider” to the workshop handout. In adding the term “customer information,” the Division realized it referenced “nonpublic personal information” from the second model, and that this term was not defined yet in NAC 679B. The Division further noted that this definition in turn referenced the term “nonpublic personal health information” which was defined in the second model but not as yet in NAC 679B. The Division, therefore, added definitions for “nonpublic personal information” and “nonpublic personal health information” from the second model to the workshop handout.

The workshop handout was not amended at the workshop. The LCB accepted the workshop handout, along with verbal Division representation of responses received, as sufficient to initiate changes in R125-18. This resulted in revised proposed regulation R125-18, LCB draft dated September 11, 2018. This draft was referred to as “Version 7” during the hearing. While Version 7 introduced numerous organizational, resultant referential and editorial changes from R125-18P and the workshop handout, the Division believed that none of the changes were materially substantive. The Division considered some of the editorial changes in Version 7 to be improvements, as they either incorporated the new definitions or reverted to text provided in the Division’s original submission.

Version 7 of R125-18 was made available at the hearing. The changes from R125-18P to Version 7 were discussed at length in Division testimony during the hearing. The new definitions, and instructions for their applicability and placement, occupy sections 1 to 7, inclusive, and section 11 of Version 7. What was section 1 in R125-18P became sections 8 to 10 in Version 7, and what was section 2 in R125-18P became section 12 in Version 7. The text that needed to change because of the altered intent as noted above became the first sentence of section 8, which reads, “Each licensee shall implement a comprehensive written program for the security of customer information.”

(c) An explanation of how other interested persons may obtain a copy of the summary:

The summary in part 5(b) above reflects the comments and testimony that transpired with regard to regulation R125-18. A copy of said summary may be obtained by contacting Peter Rao, Assistant Chief, at (775) 687-0757 or prao@doi.nv.gov. This summary will also be made available by e-mail request to insinfo@doi.nv.gov.

6. If after consideration of public comment the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The Division did make changes to R125-18 based upon written responses received, in areas

where both respondents agreed as delineated in part 5(b) above. However, there were a number of changes suggested by Mr. Merz alone that were not pursued by the Division.

Mr. Merz' second suggestion, i.e. replacing language at the beginning of R125-18P section 1, subsection 3, to indicate subsequent illustrative examples as opposed to considerations guiding the Commissioner as to whether an implementation is satisfactory, was not adopted by the Division. Implementations resulting from this regulation need to be satisfactory to the Commissioner, and the subsequent text does provide good guidelines for such consideration.

Mr. Merz' third suggestion, i.e. to delete the catch-all language of R125-18P, section 1, subsection 3, paragraph (e), was not adopted by the Division. Had this suggestion been adopted, the Commissioner would be limited to the delineated text of previous paragraphs for consideration as to whether implementations are satisfactory; including this text allows the Commissioner to treat the previous paragraphs as illustrative examples.

Mr. Merz' fifth suggestion, i.e. to relax the language of R125-18P section 1, subsection 3, paragraph (c), so as to tie the oversight of service providers to the licensee's assessment of risk in subsection 1, was not adopted by the Division. The definition of "service provider" that was adopted by the Division is believed to resolve the problem of excluding providers of ancillary services, such as for lawn maintenance or vending machines, from the scrutiny otherwise required by this regulation.

Mr. Merz' sixth suggestion, i.e. excising the word "hazards" from R125-18P as used in the phrase "threats or hazards," was not adopted by the Division. The concern was that the term has too broad a meaning and was not used in the model language. The Division found the phrase "threats or hazards" used once in the model language.

Mr. Merz' seventh suggestion was to link "changes in business arrangements" as used in R125-18P, section 1, subsection 3, paragraph (d), subparagraph (5), with "changes in information systems;" this was not adopted by the Division. Despite the potential broadening of scope, which was the concern, it is clear this pertains to matters of information security.

Mr. Merz' eighth suggestion, i.e. to delete a sentence added after the new privacy notice exemption in R125-18P section 2, subsection 3, that indicates there is no exemption if one of the conditions delineated in the exemption language is not met, was not adopted by the Division. While the Division admits this language is superfluous, it does not interfere with the established exemption.

The Division acknowledges and once again appreciates Mr. Merz for the diligence evident in his response.

7. (a) The estimated economic effect of the adopted regulation on the business which it is to regulate:

(1) Both adverse and beneficial effects: *Adverse – Additional time and*

resources may be needed to protect consumer data. Beneficial – Fosters a level playing field for insurers. Consumers and businesses will transact insurance with available information, knowing the data is required to be protected.

(2) Both immediate and long-term effects: *Same as part 7(a)(1) above.*

(b) The estimated economic effect of the adopted regulation on the public:

(1) Both adverse and beneficial effects: *No adverse impact is noted. Beneficial – Personal information will be protected when transacting insurance.*

(2) Both immediate and long-term effects: *Same as part 7(b)(1) above.*

8. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to enforce this regulation, as existing staff would respond to complaints and respond appropriately.

9. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates, and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There is no overlapping or duplication of other state regulations, and federal law does require state agencies to implement these standards.

10. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of those provisions.

This regulation meets the standards identified in federal regulation.

11. If the regulation establishes a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

There is no new fee or existing fee change proposed with this regulation.