

Attachment #22

Martiesian & Associates, 3/26/19 letters and related material

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March 26, 2019

The Honorable Evan Shanley, Chairman
Data Transparency and Privacy Protection Commission
State House
Providence, RI 02903

Re: Proposed Privacy and Data Security Legislation in Rhode Island

Dear Chairman and Members of the Commission

America's Health Insurance Plans (AHIP) is the national association whose members provide insurance coverage for health care and related services. Through these offerings, we improve and protect the health and financial security of consumers, families, businesses, communities and the nation. We are committed to market-based solutions and public-private partnerships that improve affordability, value, access and well-being for consumers.

AHIP's members write the vast majority of major medical and other health related insurance coverage in the United States. As you begin to consider efforts in Rhode Island to address concerns with consumer privacy and data security, we would ask that you consider the following existing Rhode Island laws.

- **Rhode Island Gen. Laws 27-58-4 and 27-58-10 (Confidential Customer Information)** which prohibit the use of a customer's nonpublic personal information in a manner inconsistent with federal law. This bill is intended to enforce the requirements of the federal Gramm-Leach-Bliley Act.
- **Rhode Island Code 230-RICR-20-60-7.1 (Privacy of Consumer Information)** which implements the requirements of 27-58-4 and 27-58-10, above. Its provisions apply to all insurance licensees. <http://www.dbr.ri.gov/documents/rules/insurance/230-RICR-20-60-7.pdf>

In addition to these state requirements, there are also presently significant federal laws which impact and dominate the treatment of consumer information across the country and this includes the following.

- The **Gramm-Leach-Bliley Act (GLBA)** requires financial institutions (defined in the act to include insurers) to notify customers of the entity's privacy practices, including the types of

information collected, allowable and prohibited disclosures, the handling of information concerning former customers, the entity's policies and practices to protect and maintain the confidentiality and security of customers' information, as well as disclosures required by the Fair Credit Reporting Act.

- For health insurers, the most significant federal law is the **Health Information Portability and Accountability Act (HIPAA)** and its Privacy, Security, and Breach Rules. These Rules are sweeping and comprehensive, and govern the practices across the country of insurers, as well as virtually all health plans – Medicare, Medicaid, group insurance, individual insurance, etc. - and health care providers – doctors, hospitals, pharmacists, etc. The Rules provide detailed requirements for consumer information privacy, security, and breach notification. They are more extensive and robust than the NAIC Insurance Data Security Model Law (the Cyber Model) and, for example, set out extensive consumer breach notification requirements, and unlike the Cyber Model, explicitly give regulators enforcement authority over third-party service providers who might not be Insurance Department licensees.

We hope this information is helpful, and that you'll bear these existing laws in mind before considering adding yet more layers of and potentially conflicting expensive regulations on Rhode Island insurers and their customers. Please let us know if you'd like more information or would like to discuss these matters further.

America's Health Insurance Plans



By: _____

Terrance S. Martiesian

TITLE 27

Insurance

CHAPTER 27-58

The Banking And Insurance Consumer Protection Act

SECTION 27-58-4

§ 27-58-4. Authorization for implementing regulations.

The commissioner may promulgate administrative regulations to effectuate the purposes of this chapter and to ensure the safety and soundness of the banking and insurance businesses.

History of Section.

(P.L. 1996, ch. 325, § 1.)

§ 27-58-5. Licensure requirement.

Any insurance transaction conducted by a financial institution shall be conducted only by a Rhode Island licensed insurance producer representing a Rhode Island authorized insurer or representing a Rhode Island eligible surplus lines insurer.

History of Section.

(P.L. 1996, ch. 325, § 1.)

§ 27-58-6. Anti-tying provisions.

(a) No financial institution may offer a banking product or service, or fix or vary the conditions of this offer, on a condition or requirement that the customer obtains insurance from the financial institution, or any particular insurance producer.

(b) No person shall require or imply that the purchase of an insurance product from a financial institution by a customer or prospective customer of the institution is required as a condition of, or is in any way related to, the lending of money or extension of credit, the establishment or maintenance of a trust account, the establishment or maintenance of a checking or savings account or other deposit account, or the provision of services related to any of these activities.

History of Section.
(P.L. 1996, ch. 325, § 1.)

§ 27-58-7. Disclosures.

(a) A financial institution shall prominently disclose in writing, in clear and concise language, to the institution's customers, including in any advertisement or promotional material, pursuant to regulations prescribed by the commissioner, that insurance offered, recommended, sponsored, or sold by the financial institution:

- (1) Is not a deposit;
- (2) Is not insured by the Federal Deposit Insurance Corporation; and
- (3) Is not guaranteed by the financial institution or an affiliated insured depository institution; and
- (4) Where appropriate, involves investment risk, including potential loss of principal.

(b) A financial institution, for any loan for which insurance is required shall disclose in writing to the institution's customers, in clear and concise language prior to the signing of a loan or mortgage application, that by law the purchase of insurance from that financial institution cannot be required as a condition of loan or mortgage approval.

History of Section.
(P.L. 1996, ch. 325, § 1.)

§ 27-58-8. Sales force.

Solicitation for the purchase or sale of insurance by a financial institution shall be conducted only by persons whose responsibilities do not include loan transactions or other transactions involving the extension of credit, or the taking of deposits. For the purposes of this section solicitation does not include signage on the premises.

History of Section.
(P.L. 1996, ch. 325, § 1.)

§ 27-58-9. No discrimination against non-affiliated agents.

No financial institution may:

- (1) Require as a condition of providing any product or service to any customer, or any renewal of any contract for providing the product or service, that the customer acquire, finance, or negotiate any policy or contract of insurance through a particular insurer, or insurance producer;
- (2) In connection with a loan or extension of credit that requires a borrower to obtain insurance, reject an insurance policy because that policy has been issued or underwritten by any person who is not associated with that institution;
- (3) Impose any requirement on any insurance producer who is not associated with the financial institution that is not imposed on any insurance producer who is associated with that institution;
or
- (4) Unless otherwise authorized by any applicable federal or state law, require any debtor, insurer, or producer to pay a separate charge in connection with the handling of insurance that is required under a contract.

History of Section.

(P.L. 1996, ch. 325, § 1.)

§ 27-58-10. Confidential customer information.

(a) As used in this section, unless the context requires otherwise:

- (1) "Customer" means a person with an investment, security, deposit, trust, or credit relationship with a financial institution; and
- (2) "Nonpublic customer information" means information regarding a person that has been derived from a record of a financial institution, including information concerning the terms and conditions of insurance coverage, insurance expirations, insurance claims, or insurance history of an individual. Nonpublic customer information does not include customer names, addresses or telephone numbers.

(b) No financial institution shall use any nonpublic customer information for the purpose of selling or soliciting the purchase of insurance or provide the nonpublic customer information to a third party for the purpose of another's sale or solicitation of the purchase of insurance.

History of Section.

(P.L. 1996, ch. 325, § 1.)

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March 26, 2019

The Honorable Evan Shanley, Chairman
Data Transparency and Privacy Protection Commission
State House
Providence RI 02906

Dear Chairman and Members of the Commission:

As requested, we submit these comments concerning three potential legislative avenues on behalf of our clients that are members of the business community. We represent organizations that include retailers, service entities, contractors, and financial institutions, just to name a few.

Rhode Island businesses face great challenges in today's economic climate – an economy that experts are predicting will remain flat in the near future. They are struggling to comply with recent costly and time consuming state mandates such as employee paid leave. Wages have been increased. This year, more proposed mandates and taxes are being pushed by various parties. This is important to note, because while the Data Transparency and Privacy Protection Commission is focused on one issue alone, the business community cannot look at the issue the same way. For that reason, we would respectfully request that the Commission go beyond looking at policies from different states and look at what the corresponding costs would be with each initiative in Rhode Island.

Data brokers do collect and sell on-line data. Data can be used for malicious purposes, but aggregated data can also be used for very worthwhile endeavors. Information gathered by data brokers can be used to verify individuals' identities to detect fraud, to market new business products to consumers, to determine where to advertise and to perform traffic studies, etc. As the FTC said in its 2014 Data Brokers Report, "Marketing products benefit consumers by allowing them to more easily find and enjoy the goods and services they need and prefer. In addition, consumers benefit from increased and innovative product offerings fueled by increased competition from small businesses that are able to connect with consumers they may not have otherwise been able to reach."

It is difficult to fully understand whether the Vermont legislation would result in a positive or negative result to Rhode Island businesses and consumers without understanding how such legislation would affect the actions of data brokers and consumers. Will brokers cease to do business in Rhode Island? If not, would the aggregated data be less reliable, therefore causing businesses who rely on that data to spend marketing and product development dollars needlessly? Will it cost more or less to aggregate the remaining data once compliance costs are included in the calculation; and how will that translate to those businesses that use the final information product? Will those consumers who wish to remain in the data collection process see any changes in information received should such legislation pass? These are questions that should be fully vetted prior to the passage of any legislation.

As for the student target advertising bill, we have received no input – positive or negative; therefore, we have no comment on this proposed legislation.

H.7111 SubA, while less harmful to the business community than the original version, continues to cause concern to the business community. Many of the concerns are identical to the data broker discussion outlined above. The business community appreciates the desire to allow individuals to keep their data private; however, we still do not fully understand the potential for unintended consequences and would urge the commission to further investigate the direct and indirect costs as well as the value of the resulting data should any proposal pass.

Thank you for your consideration of this testimony.

Respectfully,

Lenette C. Forry

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