

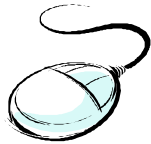
# California Code of Regulations

**Title 10.** Investment  
Chapter 5. Insurance Commissioner  
Subchapter 1. Production of Insurance

## **Article 2. Bail Transactions**

Article 4.5, Written Consent

Extracted Sections §2051 - 2104  
Extracted Sections §2175 – 2177.4  
Extracted Sections §2183 – 2183.4



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**Article 1. Standards for Approval and Disapproval of Names of Insurance Producers**

**§2050.1 Purpose**

California Insurance Code Section 1724.5 provides that the Commissioner may, in writing, disapprove the use of any true or fictitious name (other than the bona fide natural name of an individual) by any licensee on any of the following grounds:

- (a) Such name is an interference with or is too similar to a name already filed and in use by another licensee;
- (b) The use of the name may mislead the public in any respect;
- (c) The name states or implies that the licensee is an insurer, motor club, hospital service plan or entitled to engage in insurance activities not permitted under licenses held or applied for;
- (d) The name states or implies that the licensee is an underwriter. This subdivision shall not prevent a natural person who is a life licensee from describing himself as an "underwriter" or from using the designation "Chartered Life Underwriter" if entitled thereto nor shall it prevent a natural person who is a fire and casualty licensee from using the designation "Chartered Property and Casualty Underwriter" entitled hereto nor a producers trade association each member of which is also separately licensed from having a name containing the word underwriter; or
- (e) The licensee has already filed and not discontinued the use of more than two names including the true name. This subdivision shall not prevent a licensee who has lawfully purchased or succeeded to the business or businesses of other licensees from using for each such business not more than two additional names, true or fictitious, consisting of names used by his predecessors in the conduct of such businesses.

The purpose of these regulations is to promulgate the criteria whereby the Commissioner disapproves an application for name approval filed by or on behalf of an applicant or licensed producer and to set forth the Commissioner's interpretation of the terms and provisions appearing in subsections (a), (b), (c), (d), and (e) of Section 1724.5 of the Insurance Code, and to specify a list of words or phrases that shall serve as the grounds for disapproval if used (or in some cases if used improperly) in a producer's name. The list of such words and phrases appearing in these regulations is representative only and is intended to serve as a standard or guideline and shall not be construed as the only words or phrases which when used, or when used improperly, would be misleading or would have the capacity or tendency to mislead the public in any respect. Subsections (d) and (e) of Section 2052.4 of these regulations will be amended from time to time as conditions warrant the revision of the list of objectionable words or phrases.

**§2051. Definitions.**

For the purposes of this Article and Division 1, Part 2, Chapter 5, Article 12, of the Insurance Code, the following definitions shall apply;

- (a) The term "producer" means any person (including any partnership, association or corporation) licensed by the Commissioner in one or more of the following capacities: insurance agent, variable contract agent, life and disability agent, life only agent, disability only agent, insurance broker, surplus line broker, special lines surplus line broker, bail agent and bail permittee (The term "producer," for the purpose of these regulations, does not encompass or mean persons licenses as insurance solicitors or bail solicitors because an individual licensed as either an insurance solicitor or bail solicitor is authorized to do business solely under the said individual's true name or under the name(s) appearing on the license of the said individual's employer.);
- (b) The term "true name" means present legal name or true corporate name;
- (c) The term "bona fide natural name" means the name given an individual at birth or adoption during minority;
- (d) The term "fictitious name" means any name other than a true name or bona fide natural name;
- (e) The term "applicant" means a person applying for approval of a name, and
- (f) The term "other applicant or licensee" or "another applicant or licensee" shall include all persons except the applicant required by the Insurance Code:
  - (1) To hold a license from the Insurance Commissioner;
  - (2) To hold a certificate of authority from the Insurance Commissioner; or

(3) To have a name approved by the Insurance Commissioner although not otherwise required to be licensed.

**§2052. Interference with a Name Already in Use or Under Reservation.**

Except for the bona fide natural name of an individual, no name proposed by an applicant or licensed producer shall be approved if such name is an interference with a name already approved for use by another applicant or licensee of the Department of Insurance.

**§2052.1 Proposed Name Too Similar to Name Already in Use or Under Reservation.**

Except for the bona fide natural name of an individual, no name proposed by an applicant or licensed producer shall be approved if such name is too similar to a name already approved for use by another applicant or licensee of the Department of Insurance.

**§2052.2 Proposed Name States or Implies Insurance Capabilities Not Permitted Under Held or Applied for Licenses.**

No true or fictitious name proposed by an applicant or licensed producer shall be approved if such name states or implies, or would lead reasonable persons to infer, that the applicant or licensed producer is an insurer, motor club, hospital service plan, or other entity entitled to engage in insurance activities which in fact are not permitted under held or applied licenses. This rule is intended to apply to names which are objectionable in and of themselves and, therefore, this rule shall apply whether or not the name proposed for use by an applicant or licensed producer would interfere with, or would be too similar to, a name already approved for use by another applicant or licensee.

**§2052.3 Proposed Name States or Implies Ability to Act as an Insurer or Guarantor.**

No true or fictitious name proposed by an applicant or licensed producer shall be approved if such name states or implies, or would lead reasonable persons to infer, that the applicant or licensed producer is an underwriter (i.e., an insurer or guarantor). This section, however, does not prohibit any agent from indicating that such agent is an authorized representative of an admitted insurer if such agent is also clearly designated as an agent representing such insurer or a natural person otherwise entitled to do so from using the title "Chartered Life Underwriter" (CLU) or "Chartered Property and Casualty Underwriter" (CPCU), and no approval from the Commissioner is required for the use of such association, wherein each member of the association is also separate licensed, may use the word "underwriter" in the name under which the association is licensed.

**§2052.4 When Proposed Name is Misleading.**

No name proposed by an applicant or licensed producer (other than the bona fide natural name of an individual) shall be approved if it appears that use of the proposed name may mislead the public in any respect. When the true name of an organization is disapproved under these regulations, said organization may operate under an approved fictitious name provided that a commitment to use said approved fictitious name exclusively in the solicitations of insurance is made by the applicant or licensee to the Commissioner. A disapproval under this section may be based on one or more of the following criteria:

(a) The name is the same as, closely resembles, borrows on the name of, or implies affiliation with or sponsorship by, a federal, state, or local governmental authority or program.

(b) The name is the same as the name of a well-known company, or is so similar in spelling, pronunciation or appearance to the name, trade name, trademark or service mark, logo, or symbol of a well-known company as to borrow on the name of, or imply affiliation with, the said well-known company. This rule shall apply whether or not the company or business entity that would suffer the infringement is licensed by the Insurance Commissioner or regulated by the Department of Insurance, or is otherwise identified with the insurance industry.

(c) The name fails to state or clearly indicate that the applicant or licensed producer is or will be an insurance producer by any of the following:

(1) Failing to include in its name the word "insurance" followed by one of the following definitive words:

(A) "agency", "services", "marketing", "sales", "solutions", "center",

(B) “broker”, “brokers”, or “brokerage”, as long as the applicant or licensed producer holds broker authority and has a broker’s bond on file with the Commissioner; or

(C) “associates”, as long as the applicant or licensed producer is applying for a business entity license.

(2) An administrator or applicant for an administrator certificate that fails to include one of the following words in its name: “administrator”, “administrative”, or “administration”.

**(3) A bail applicant or bail licensee that fails to include the word “bail” in its name.**

(d) The name states or implies, or would lead reasonable persons to infer:

(1) That the applicant or licensee is primarily engaged in some line of business other than the insurance business, and the applicant cannot qualify for any of the exceptions set forth in paragraphs (2), (3), and (4) of this subsection.

(2) That the applicant or licensee has expertise in the area of investment, tax shelter, financial or estate planning or computer programming. An applicant may overcome this objection by showing that he qualifies under either of the two following exceptions:

(A) An exception to this rule may be made on a case by case basis where the applicant or licensee holds a certificate as a broker/dealer under California Corporations Code Section 25210 and/or where applicant holds a certificate as an investment advisor under the provisions of California Corporations Code Section 25230, and applicant has submitted evidence satisfactory to the Commissioner that in excess of 80% of applicant's net income from the said business entity for which name approval is being sought is derived from sources of business other than insurance. The foregoing exception is not available to an agent of a broker-dealer, as the word “agent” is defined in California Corporations Code Section 25003.

(B) An exception to this rule may be made on a case by case basis where a licensee is seeking approval for the use as a corporate name the same name, whether true or fictitious, in which he is licensed as an unincorporated producer, provided the said licensee is an officer owning 10% or more of the shares of the corporate applicant for license. The foregoing exception, however, shall not be available to an applicant or a licensee who purchases the unincorporated business or businesses of another licensed producer subsequent to the adoption of these regulations.

(3) That the applicant or licensee is a regulated finance or mortgage company. An exception to this rule may be made where the applicant presents evidence satisfactory to the Commissioner that applicant’s principal business is that a regulated finance or mortgage company and that 80% of applicant’s net income from said business entity is derived from sources of business other than insurance or where the applicant presents a verified statement to the effect that insurance coverage will be written only those persons who are customers of the finance or mortgage company generally identified with the name for which approval is sought. This exception to the rule shall apply whether the applicant is a regulated finance or mortgage company or is held or controlled by a regulated finance or mortgage company.

(4) That the applicant or licensee is engaged in any other business activity, including but not limited to retail sales or benefits consulting. An exception to this rule may be made where applicant presents evidence satisfactory to the Commissioner that applicant’s principal business is that of retail sales having nothing to do with insurance and that 80% of applicant’s net income from said business entity is derived from sources of business other than insurance or where the applicant presents a verified statement to the effect that insurance coverage will be written only on those persons who are customers of the retail business generally identified with the name for which approval is sought. This exception to the rule shall apply whether the applicant is the said retail business entity or is held or controlled by such business entity.

(e) The name makes use of one or more of the following words or phrases in its singular or plural form or a derivation of one or more of such words or phrases:

(1) “A”, singly or in a series of such capital letters as the initial part of a name;

(2) “Advisor”;

(3) “Analyst,” unless the licensee holds or is applying for a Life and Disability Analyst License;

(4) “Assigned Risk”;

(5) “Assurance Company” or “Assurance Corporation” or “Assurance, Inc.”;

(6) “Bureau”;

(7) “Cal-Med”;

(8) “Citius Altius Fortius”;

(9) “Compensation”;

(10) “Consultant”;

- (11) "Consumer";
- (12) "Counselor" or "Counselor";
- (13) "Credit unless the licensee is a Credit Union";
- (14) "Department";
- (15) "Deposit Insurance";
- (16) "Excess", unless the licensee holds or is applying for a Surplus Line Broker license;
- (17) "E&S", unless the licensee holds or is applying for a Surplus Line Broker license;
- (18) "Federal";
- (19) "Government";
- (20) "Indemnity";
- (21) "Institute";
- (22) "Insurance" when comprising the last word (e.g., Great Cliff Insurance) or preceding "Company" or "Corporation" or "Incorporated" or "Inc.", or "Limited" or Ltd", or "Limited Liability Company" or "LLC", or Limited Liability Partnership" or "LLP"
- (23) "Insurer";
- (24) "Insurer";
- (25) "Investment";
- (26) "Investor";
- (27) "Life" when comprising the last word (e.g., Acme United Life);
- (28) "Medi" when used as the first part or prefix of a word (e.g., Medical, Medi-Cal, Medifund, Mediplan, and similar combinations);
- (29) "Mortgage Guarantee" or "Mortgage Guaranty";
- (30) "National";
- (31) "Nationwide" (except when an agent representing an insurance company whose name contains the word "Nationwide" and the agent is authorized by said company to use the word to identify with such insurer);
- (32) "No Fault";
- (33) "Olympic";
- (34) "Olympiad";
- (35) "Plan";
- (36) "Reinsurance", unless the licensee holds or is applying for a Reinsurance Intermediary-Broker or Reinsurance Intermediary-Manager license;
- (37) "Reserve";
- (38) "Social Security";
- (39) "State";
- (40) "Statewide";
- (41) "Trust";
- (42) "Underwriter";
- (43) "United States", "U.S." or "U.S.A.";
- (44) "Veteran"

(f) The name improperly makes use of one or more of the following words or phrases in its singular or plural form or a derivation of one or more of such words or phrases:

- |                      |                        |                          |
|----------------------|------------------------|--------------------------|
| (1) "Administrator"; | (15) "Cost";           | (29) "Money";            |
| (2) "Advocate";      | (16) "County";         | (30) "Mature";           |
| (3) "Affordable";    | (17) "Discount";       | (31) "Price";            |
| (4) "Asset";         | (18) "Education";      | (32) "Protection";       |
| (5) "Associate";     | (19) "Elder";          | (33) "Provider";         |
| (6) "Broker";        | (20) "Enterprise";     | (34) "Retire";           |
| (7) "California";    | (21) "Entitlement";    | (35) "Safe";             |
| (8) "Care";          | (22) "Equity";         | (36) "Secure";           |
| (9) "Cash";          | (23) "Estate";         | (37) "Securities";       |
| (10) "Certified";    | (24) "Expert";         | (38) "Senior";           |
| (11) "Cheap";        | (25) "Franchise";      | (39) "Specialist";       |
| (12) "City";         | (26) "Group";          | (40) "Tax";              |
| (13) "Company";      | (27) "Legal";          | (41) "Transcontinental". |
| (14) "Consolidate";  | (28) "Long Term Care"; |                          |

**Article 2. Bail Transactions**

**§2053. Application; Construction.**

This article as amended is applicable to all applications for licenses filed after the effective date of such amendments, to all transactions or severable portions thereof occurring thereafter and to the keeping of all records pertaining to such transactions or severable portions thereof. All such applications filed prior thereto and all transactions or severable portions thereof occurring prior thereto and keeping records pertaining thereto shall be governed by the provisions of this article which were in effect prior to such date. Insofar as the provisions of this article are substantially the same as the provisions of this article as it read prior to said effective date, they shall be construed as restatements and continuations thereof and not as new provisions.

**§2053.1. Past Violations; Power of Commissioner.**

Insofar as the provisions of this article are new provisions, their promulgation shall not preclude the commissioner from taking such action as is permitted law for acts or omissions which occurred prior to the effective date of these amendments.

**§2054. Definitions; Application of Insurance Code.**

Insofar as they are applicable, the definitions contained in the General Provisions and in Chapter 7, Part 2, Division 1 of the Insurance Code are applicable to this article.

**§2054.1. "Bail License": "Bail Licensee": Terms Defined.**

As used in this article "bail license" includes all licenses specific in Section 1801 of the Insurance Code and "bail licensee" the holders thereof where on permanent or temporary basis and whether as individuals or as members of a partnership.

**§2054.2. "Bail Agent" or "Permitee" Includes Copartners.**

Whenever the term "bail agent or permittee" is used in this article, such term includes the members of a partnership of bad agents or permittees if applicable.

**§2054.3. "Bail"; Transaction of Bail"; Terms Defined.**

As used in this article "bad" or "transaction of bail" includes undertakings of bail and "bail bond" as that term is defined in Insurance Code 1800.4, including the activities in respect to execution or delivery of undertakings of bail of any person, whether designated "general agent" or otherwise, who conducts, or supervises the conduct of bail business pursuant to contract with a surety insurer.

**§2054.4. Payment of Commissions; Unlawful Rebates; Prohibited.**

No person may receive commission on bail or the transaction of bail as defined in Section 2054.3 unless he holds a bail license as defined in Section 2054.1. No bail licensee shall pay or allow in any manner, directly or indirectly, to any person who is not also a bail licensee any commission or other valuable consideration on or in connection with a bail transaction. This section shall not prohibit payments by a bail licensee to an unlicensed person of charges such person for services of the kind specified in Section 2081(c) and (d).

**§2054.5. "Arrestee" Defined.**

As used in this article "arrestee" means any person actually detained or subject to detention in custody whose release may lawfully be effected by bail.

**§2054.6. Notices; Time for Filing.**

Whenever any provision of this article requires that notice be given to or that filing be made with the commissioner a specified period of time before a matter may lawfully be used or an event lawfully occur, such period of time may be reduced by the commissioner at the request of the licensee if good cause is shown therefor.

**§2054.7. Notice of Noncompliance; Request and Hearing.**

Whenever pursuant to any provision of this article the commissioner gives notice to any person that such person may not establish a particular relationship or perform a particular act, such person shall upon written request therefor filed within 10 days of said notice be granted within 60 days following the date of such notice on the issues of noncompliance specified in such notice. Whenever pursuant to the provisions of this article the commissioner gives notice to any person to discontinue within a specified time a particular established relationship or the performance of a particular act, such person shall upon written request therefor filed within 10 days of said notice be granted a hearing on the issues of noncompliance specified in such notice which shall be held at least 10 days prior to the date specified in the notice as the date such person shall discontinue the relationship or the act.

**LICENSE REGULATIONS**

**§2055. Applications; Forms.**

All applications for original or renewal bail licenses shall be on forms furnished by the commissioner. All applicants for such licenses and all bail licensees shall furnish such supplementary information and supporting statements as the commissioner may require.

**§2056. License Qualifications.**

An original bail license shall not be issued to any person unless he:

- (a) Is a California resident and has been such for a period to two years immediately preceding issuance of the license.
- (b) Satisfies the commissioner that he is a person of good business reputation and of good general reputation in:
  - (1) The community in which he intends to principally engage in the transaction of bail, or
  - (2) The community or communities in which he formerly resided, if he has not been a resident of the community in which he intends to principally engage in the transaction of bail for a sufficient period of time to establish such reputation.
- (c) Is 18 or more years of age.

**§2057. Prohibited Associations.**

An original or renewal bail license shall not be issued to any person nor shall it be kept in force if he is:

- (a) Regularly or frequently employed by or associated with:
  - (1) A court of law in respect to its exercise of its criminal jurisdiction, if any.
  - (2) A public law enforcement agency possessing the power of arrest and detention of persons suspected of violating the law in the specific terms of the statutes establishing and governing the agency.
- (b) A private patrol operator.
- (c) An active member of the State Bar of California.
- (d) An associate of persons of bad general or bad business reputation, or criminals, except to the extent that such association is required in the transaction of bail with such persons.
- (e) In case the associations defined in (d) above are only with persons related to the licensee or applicant by blood or marriage, on good cause shown the commissioner may issue the license applied for or a restricted license, or may revoke an existing license and issued in lieu thereof a restricted license.

**§2058. License; Prior Prohibited Associations.**

An unrestricted original bail license shall not be issued to any person if within the two-year period immediately prior to his application a license would not have been issued to him for any of the reason

specified in Section 2057(a); but a restricted bail license may be issued to such person if he presents evidence satisfactory to the commissioner that his bail business will be conducted in a county other than any county wherein he was employed by or associated with a court of law or law enforcement agency; or that such business will be conducted only in a part of the same county so remote from the place of his prior employment that such employment will have not affect on his conduct of his bail business.

**§2059. Solicitor, Other Licenses Prohibited.**

A person licensed as a bail solicitor may not at the same time be licensed as:

- (a) A bail agent.
- (b) A bail permittee.
- (c) A bail solicitor for more than one employer unless all such employers are partners, in which event he shall be licensed as a solicitor for all partners.

**§2060. Natural Persons Only.** *(repealed/Corporations may be licensed)*

Only natural persons may be issued a bail license.

**§2061. Transaction as Partners; Notices.**

Two or more bail agents or permittees desiring to transact bail as partners shall file with the commissioner the written statement required by Section 2061.2 at least 10 days prior to so transacting, except as provided by Section 2061.3.

**§2061.1. Partners; Individual Licensing.**

Each partner shall be licensed individually as a bail agent or permittee, or both, and every partner shall be licensed in the same capacity or capacities as the other members of the partnership so that all partners will be licensed in the same capacity or capacities; except the commissioner may permit the inclusion of an unlicensed partner if evidence is presented satisfactory to him that such unlicensed partner will have no functions, duties or responsibilities involving the action conduct, supervision or transaction of the bail business.

**§2061.2. Copartners; Filing Individual Statements.**

A written statement subscribed by each partner shall be filed with the commissioner setting forth:

- (a) The nature of all businesses conducted or intended to be conducted by the partnership.
- (b) The location of the principal place of conduct of the bail business of the partnership and of all other places for the conduct of such business.
- (c) The proportion of ownership of each member of the partnership.
- (d) An agreement to immediately notify the commissioner of any change in the membership of the partnership or of the matters set forth in (a) to (c) hereof.

**§2061.3. Change in Partnership; Notices.**

Upon any change in the membership of the partnership whether through death, dissolution, addition, deletion, or otherwise, or upon the revocation of the license of any partner, the survivors or successors to the bail business, if they are to act a partnership, shall file a new statement pursuant to Section 2061.2 and shall be subject to the requirements of Section 2061.1. If the change in membership arises through the death or revocation of the license of three or more persons whose partnership agreement provides for continuation of the partnership by the survivors, such survivors may continue to transact bail as a partnership until the expiration of such reasonable period of time as may be specified in any notice which may be sent by the commissioner pursuant to Section 2054.7.

**§2061.4. Co-partnership Suspension; Prohibitions.**

If the license of any partner is suspended such partner may not engage in the transaction of bail nor may he receive any commission on, or profit derived from, such transactions entered into by other persons during the period of suspension.

**§2061.5. Co-partnership; Disciplinary action for Act of One Partner.**

The licenses of each member of a partnership are subject to suspension or revocation for the failure of the partnership or of any member of the partnership to comply with all laws and rules governing or

regulating the conduct of the bail business or acts incidental thereto if such failure occurred with his express or implied knowledge, consent, ratification or collusion.

**§2062. Licensed Employees; Notice of Employment.**

A bail agent or permittee or partnership of bail agents or permittees desiring to employ another person licensed as a bail agent or permittee for the purpose of assisting him in his bail business shall file with the commissioner a written statement as required by Section 2062.2 at least 10 days prior to such employment. If prior to the expiration of such 10-day period the commissioner gives notice to the prospective employer specifying wherein such employment would be contrary to any provision of this article or any law relating to bail, such person shall not be employed. If after such 10-day period and after the establishment of the employer-employee relationship the commissioner gives notice to such wherein the continued employer-employee relationship would be contrary to any provision of this article or any law relating to bail, they shall discontinue such relationship within such reasonable time as the commissioner may prescribe.

**§2062.1 Employee; Licensed in Same Capacity as Employer.**

Each such employee (employed pursuant to Section 2062) shall be licensed in the same capacity or capacities as the employing bail licensee or bail licensees.

**§2062.2. Employment; Written Notices.**

A written statement subscribed by the employer and each such employee (employed pursuant to Section 2062) shall be filed with the commissioner setting forth:

- (a) The fact of employment.
- (b) The location of the place of business from which the employee will normally transact bail.
- (c) The basis of compensation of the employee and if such compensation is to be more than \$1,000 per month the amount thereof.
- (d) An agreement to immediately notify the commissioner in writing of any change in the matters set forth in (a) to (c) hereof.

**§2063. Licensed and Unlicensed Employees; Effect.**

Sections 2063.1 to 2063.2, inclusive, apply to each employee of a bail agent or permittee whether or not such employee is licensed as a bail agent, permittee or solicitor if such employee performs any duties connected with the transaction of bail by his employer.

**§2063.1. Employer Supervision; Disciplinary Action.**

An employing bail agent or permittee shall exercise a reasonable degree of supervision over his employees and make a reasonable effort to keep informed of their acts as his employees. Failure of the employer to exercise such supervision resulting in a violation of law or these regulations by the employee may result in disciplinary action against the employer.

**§2063.2. Branch Offices.**

A bail licensee (i.e., the owner, a partner or a licensed employee) shall be in charge, as his usual and customary place of business, of each branch office.

**§2063.3. Solicitor; Transactions and Conduct.**

A bail solicitor shall not conduct a bail business or transact bail under any name or at any address other than that of his employer, nor shall he use any forms or documents in connection with a bail transaction other than those of his employer.

**CONDUCT OF BAIL LICENSEES**

**§2064. Bail Licensees; Capacity and Conduct**

Every bail licensee shall conduct his business in such a manner that the public and those dealing with him shall be aware of the capacity in which he is acting, and if he transacts bail both as an employee and as an individual or in any other dual capacity, each such transaction shall be so conducted that the public and those dealing with him shall not be confused as to the capacity in which he acts.

**§2065. Business in Specified Capacities Only and Notices.**

Every bail agent or permittee shall conduct his bail business:

- (a) As an individual;
- (b) A member of partnership as provided in Section 2061;
- (c) As an employee of another bail agent or permittee as provided in Section 2062;
- (d) As the temporary associate of another bail agent or permittee in the joint transaction of bail if such temporary association is limited to a single transaction or to a series of related transactions;
- (e) As the temporary conductor of the bail business of another bail a period of his temporary absence; or
- (f) In any other lawful manner provided written notice is filed with the commissioner by the bail licensee at least 10 days prior to his so conducting his bail business setting forth full details of the manner in which the business will be conducted and the names of all persons, if any, to associated with him. If prior to the expiration of such 10-day period the commissioner gives notice to such bail licensee specifying wherein the intended conduct of the business would be contrary to any provision of this article or any law relating to bail, such bail licensee shall not so conduct his business. If after such 10 day period the commissioner gives notice to such bail licensee specifying wherein the continued conduct of his bail business would be contrary to any provision of this article or any law relating to bail, he shall discontinue to so conduct his business within such reasonable time as the commissioner may prescribe.

**§2066. Business in Own Name.**

Except as provided in Section 1724.5 of the Insurance Code and the commissioner's regulation promulgated thereunder (Sections 2050 and following of Title 10 of the California Administrative Code) and Sections 2066.2, 2066.3, 2066.4 hereof, every bail licensee shall do business in his own name.

**§2066.1. Using Employer's Name.**

Every bail agent and permittee employed by another bail agent or permittee pursuant to Section 2062 and acting as such and every bail solicitor shall do business only in the natural name or fictitious name, if any, of his employer.

**§2066.2. Using Predecessor's Name.**

The permission under Section 1724.5 of the Insurance Code to use a predecessor's name in case a bail agent or permittee purchases or succeeds to the bail business of another bail agent or permittee is applicable only where the business so purchased or succeeded to was a bona fide business which the predecessor or predecessors had actively conducted as a bail business for at least 5 consecutive years.

**§2066.3. Fictitious Names; Filing, Similar Names.**

Prior to its use, a fictitious name or style must be:

- (a) Filed with and approved by the commissioner in writing.
- (b) Filed with the county clerk of all counties in which user thereof maintains an office for the transaction of bail or in which contemplates the active solicitation of bail under such fictitious name or style.
- (c) Worded in compliance with the requirements of Section 1724.5 of the Insurance Code and the regulations of the commissioner promulgated under authority thereof (Sections 2050 and following of Title 10 of the California Administrative Code).

**§2066.4. Disapproval of Fictitious Name.**

If the commissioner gives notice to a bail agent or permittee specifying wherein the continued use of a fictitious name would be in violation of any of the provisions of the Insurance Code of this Article, such

bail agent or permittee shall discontinue the use of such fictitious name subject to such extension of time as the commissioner may prescribe pursuant to the provisions of Section 1724.5 of the Insurance Code.

**§2066.5. Advertising of Fictitious Names.**

All advertising or telephone listings in the yellow pages of telephone directories shall contain the true name of the licensee(s) who owns it with equal prominence with that of the fictitious name, so that there will be no indication that another separate business exists when in fact, the ownership is the same.

**§2067. Misrepresenting Capacity, Authority.**

No bail licensee shall directly or indirectly represent that he is a fidelity or surety insurer or that he has the authority or powers of a bail permittee, bail agent or bail solicitor unless he is licensed as such nor shall he misrepresent his authority or power to act on behalf of a surety insurer; nor shall he advertise his bail business in the yellow pages of the telephone directory under "Surety" or "Fidelity".

**§2068. Transaction by Unlicensed Persons; Prohibitions.**

No bail licensee shall directly or indirectly permit any person on his behalf to solicit or negotiate undertakings of bail or bail bonds or to effect undertakings of bail or to issue or deliver bail bonds unless such person is properly licensed by the commissioner to perform such acts, even though such person acts in a purely mechanical or ministerial manner or renders his services gratuitously. This section shall not prevent a bail agent or permittee from using the mail, or any messenger or delivery generally, to file executed undertakings of bail or deliver bail bonds, nor shall it prevent such filing or such delivery by the attorney or other agent of the arrestee. No person in the employment of the licensee shall act as an agent of the arrestee in the performance of any of the acts specified herein.

**§2069. Confidential Communications; Information.**

No bail licensee shall disclose or reveal any information coming into his possession or to his knowledge concerning an impending arrest or detention of a person by a law enforcing agency, except in accordance with the lawful inquiry of a law enforcement or judicial officer, unless such information is a matter of public record or knowledge.

**§2070. Agreements for Bail Before Arrest; Prohibited.**

No bail licensee shall enter into an agreement or arrangement with any person, which agreement or arrangement has for its purpose the guaranteeing or assuring such person or any other person in advance of the commission of any offense that bail will be furnished to such a person or any other person when and if such person or any other person is arrested, no shall any bail licensee perform any act which will encourage any person to violate the law.

**§2071. Suggesting or Recommending Attorney; Prohibited.**

No bail licensee shall in any manner, directly or indirectly, suggest the name of or recommend any attorney to any arrestee or person purporting to act for or represent the arrestee.

**§2072. Acting for Attorney; Prohibited.**

No bail licensee shall receive, accept or collect for, or transmit to, any attorney any money or other item of value for attorney's fee, costs or any other purpose on behalf of an arrestee or any other person with whom bail is negotiated. Any bail licensee who is lawfully holding any money or other item of value as collateral may, however, upon the release of such collateral, honor an assignment thereof to an attorney if the licensee took no part in the negotiation of such assignment. No bail licensee shall furnish forms for or otherwise aid in such assignment.

**§2073. Preparation of Writ of Habeas Corpus; Prohibited.**

No bail licensee or his employees shall prepare, make, or assist in any manner in preparing, making or filing of a petition for a writ of habeas corpus for or on behalf of an arrestee. Such licensee or his employees may, however, without charge and in accordance with specific directions of the attorney of

the arrestee, perform such mechanical ministerial acts as will assist such attorney in preparing or making such petition.

**§2074. Unlawful Solicitations; Place.**

Except as provided in Sections 2074 and 2079.5. no bail licensee shall solicit any person for bail in any prison, jail, or other place of detention of persons, courts or public institution connected with the administration of justice; or in the halls or corridors adjacent thereto; provided that a bail licensee may in such halls, corridors or in other rooms or areas where not prohibited by local rule or ordinance transact bail with persons specified in Section 2079 who have prior to transaction, requested his services.

**§2075. Regulations of Public Authority; compliance.**

Every bail licensee shall fully comply with every rule, regulation or ordinance issued by a proper public authority governing the conduct of persons in or about any prison, jail or other place of detention of persons, court or public institution connected with the administration of justice. This section shall not be construed to authorize any act constituting a violation of any other section of this article which is done pursuant to any rule, regulation or ordinance that is merely permissive in nature.

**§2076. Informing or Notifying of Arrests; Prohibitions.**

No bail licensee shall, for any purpose, directly or indirectly, enter into an arrangement of any kind or have any understanding with a law enforcement officer, newspaper employee, messenger service or any of its employees, a trusty in a jail, any other person incarcerated in a jail, or with any other persons, to inform or notify any licensee (except in direct answer to a question relating to public records concerning a specific person named by the licensees in the request for information, directly or indirectly, of:

- (a) The existence of a criminal complaint;
- (b) The fact of an arrest; or
- (c) The fact that an arrest of any person is impending or contemplated.
- (d) Any information pertaining to the matters set forth in (a) to (c) hereof or the persons involved therein.

**§2077. Fictitious Communications.**

No bail licensee shall, directly or indirectly, transmit or cause to be transmitted to himself or to any other person a communication authorizing said licensee or any other person to solicit or negotiate bail which is a fictitious communication or which is from a person other than a person from whom he may lawfully solicit bail pursuant to Section 2079 or with whom he may lawfully negotiate bail pursuant to Section 2080. No such communication shall, at any time or in any manner, be used directly or indirectly as an aid in securing information concerning a person confined in a jail, prison or other place of detention or for the purpose of visiting an arrestee therein, or for any other purpose.

**§2077.1. Identification Card.**

Every bail licensee shall keep in his possession an identification card issued to him by the commissioner and shall, upon request, show it to any person with whom he transacts bail. He shall not permit any person other than himself to use his identification card for any purpose. The identification card shall be returned to the commissioner immediately upon termination of all of the holder's bail licenses.

**§2078. Gifts Prohibited.**

No bail licensee shall give, directly or indirectly, any gift of any kind to any public official or employee of any governmental agency who has duties, functions or responsibilities in respect to the administration of justice or a place wherein detention or persons charged with crime may occur, or to a prisoner in any jail or place of detention. Items of nominal value which are distributed generally for the purpose of advertising shall not be considered gifts for the purpose of this article, except if given to prisoners or persons directly in charge of prisoners in their place of detention; nor shall this article prevent the customary giving of gifts to relatives by blood or marriage. But nothing in this Section shall be construed to justify any rebate or bribe.

**§2079. Soliciting of Bail; Persons.**

No bail licensee shall solicit bail except in accordance with Section 2079.5 and from:

- (a) An arrestee;
- (b) The arrestee's attorney;
- (c) An adult member of arrestee's immediate family; or
- (d) Such other person as the arrestee shall specifically designate in writing. Such designation shall be signed by the arrestee before the solicitation, unless prohibited by the rules, regulations or ordinances governing the place of imprisonment. If so prohibited, it may be signed after release of the arrested to ratify a previous oral designation made by him.

**§2079.1. Solicitation of Arrestee; Hours.**

Any solicitation of an arrestee himself pursuant to Section 2079 (a) shall be only after a bona fide request for bail services has been received from the arrestee or from a person specified in Section 2079 (b) or (c). Any solicitation of a person specified in Section 2079 (c) or (d) shall be only between the hours of 7 o'clock a.m., and 11 o'clock p.m., unless the bail licensee is directly and specifically authorized in writing by the arrestee or the arrestee's attorney to make such solicitation at some other specific time.

**§2080. Negotiation of Bail; Persons.**

No bail licensee shall negotiate concerning bail, except with:

- (a) A person specified in Section 2079;
- (b) Any other person who without previous solicitation on the part of the bail licensee has requested his services.

**§2081. Collection and Charges Permitted.**

No bail licensee shall, in any bail transaction or in connection therewith, directly or indirectly, charge or collect money or other valuable considerations from any person except for the following purposes:

- (a) To pay the premium at the rates established by the insurer and set forth on the undertaking of bail or to pay the charges for the bail bond filed in connection with such transactions at the rates filed in accordance with Section 2094.
- (b) To provide collateral.
- (c) To reimburse himself for actual, necessary and reasonable expenses incurred in connection with the individual bail transaction, including but not limited to:
  - (1) Guard fees after the first 12 hours following release of an arrestee on bail;
  - (2) Notary fees, recording fees, necessary long distance telephone expenses (i.e., telephone calls billed by the telephone company as "long distance," but not those for which "message unit" charges only are made), telegram charges, travel expenses and verification of collateral outside of the county where the bail was arranged; a reasonable posting fee charged by a licensee operating in a county other than that where the bail was arranged; providing that no charge shall be made for travel from the licensee's office to post bail in an area where the licensee advertises in the yellow pages of the telephone directory unless the advertisement specifically so states. Such travel charges, when permitted, shall not exceed the amount allowed to be taken as travel expense for income tax purposes under the federal Internal Revenue Code and Regulations thereunder, or the amount allowed by the State of California to be claimed for mileage by its employees, whichever the licensee chooses.
- (d) To reimburse himself for actual reasonable and necessary expenses incurred and caused by a breach by the arrestee of any of the terms of the written agreement under which and pursuant to which the undertaking of bail or the bail bond was written. Such reimbursement may not exceed the penal amount of such undertaking or bond and may include a reasonable charge for the services of the licensee, his employees, partners or other persons associated with him in the particular transaction of bail.

- (e) If a forfeiture of bail occurs and is not set aside, the expenses under (c) and (d) of this Section which are incurred within 180 days of such forfeiture may be charged in addition to the amount of such forfeiture .

**§2082. Prohibited Service Charges.**

Except to the extent permitted by Section 2081(c), (d), and (e), no bail licensee shall make any charge for his services in a bail transaction in addition to the premium on an undertaking of bail or the charge for a bail bond at the rates filed in accordance with Section 2094.

**§2083. Written Statements of Bail Transactions: Contents: Delivery.**

Every bail licensee shall, at the time of obtaining release of an arrestee on bail or immediately thereafter, deliver to such arrestee or, if the negotiations concerning the bail were not with the arrestee, to the principal person with whom such negotiations were had, a numbered document containing the following information:

- (a) If an undertaking of bail, the name of the surety insurer.
- (b) The name and address of the bail licensee.
- (c) The name of the arrestee.
- (d) The date of release of the arrestee.
- (e) The date, time and place of the arrestee's required appearance.
- (f) The amount of bail.
- (g) The offenses with which the arrestee is charged.
- (h) The premium if an undertaking of bail, or the charge of the bail bond.
- (i) An itemization of all-actual expenses described in Section 2081(c) and (d), supported by vouchers and receipts, or true copies thereof.
- (j) The total amount of all charges.
- (k) The amount received on account.
- (L) The unpaid balance, if any.
- (m) A description of and receipt for any collateral received and a statement of any conditions relating thereto including a copy of any written agreement executed in connection therewith.

**§2083.1. Same; Additional Statements.**

If, after the release of an arrestee, additional expenses are incurred or charges made, the bail licensee shall immediately deliver to the person specified in Section 2083 an additional numbered document containing the information, required by Section 2083 (h), (l), (j), (k) and (l).

**§2084. Guarantor Agreements; Delivery: Notices.**

All guarantor agreements shall be in writing or reduced to writing as soon as possible after consummation. If any person acts as a guarantor, a copy of the guarantor's agreement shall be delivered to him promptly upon his execution thereof. No bail licensee shall enforce any such agreement without disclosing to the guarantor all collateral held by such licensee indemnifying the bond to which the agreement relates, and the identity of all guarantors thereof, if any.

**§2086. Undertakings of Bail; Delivery: Compliance.**

No bail licensee shall deliver an undertaking of bail which does not comply with all the provisions of Section 381 of the Insurance Code.

**§2087. Waiver of Rights of Guarantor, Prohibited.**

No bail licensee shall require the waiver by a depositor of collateral or by a guarantor of any right he might have or thereafter acquire in connection with any bail transaction. No bail licensee shall require or accept in connection with any bail transaction any waiver of defense, confession of judgment, or other agreement impairing the right of the person with whom the bail is negotiated or any depositor of collateral or guarantor to a determination of his rights in a civil court.

**§2088. Collateral; Fiduciary Capacity.**

Any bail licensee who receives collateral in connection with a bail transaction shall receive such collateral in a fiduciary capacity, and prior to any forfeiture of bail shall keep it separate and apart from any other funds or assets of such licensee.

**§2088.1. Collateral; Custody.**

If pursuant to his agreement or contract of agency employment or partnership any bail licensee is or may be required, or in fact does, transfer collateral to another bail licensee, general agent, or surety insurer, such recipient of said collateral shall hold it in the same fiduciary capacity as the bail licensee, return it, and otherwise handle it in conformity with Sections 2088 through 2089, both inclusive, hereof. Such collateral shall only be transferred to another bail licensee or to a surety insurer holding a certificate of authority in California and said collateral shall not be removed from this state.

**§2088.2. Return of Collateral.**

Any collateral received shall be returned to the person who deposited it with the bail licensee or to any assignee of such person, other than the bail licensee or his representative, as soon as he is advised that the obligation, the satisfaction of which was secured by the collateral, is discharged. It is the duty of the bail licensee or surety insurer to determine promptly whether such obligation has been discharged upon request for return of the collateral by the person depositing it or by his assignee. If the collateral was deposited to secure the obligation of a bond, it shall be returned immediately upon the entry of any order by an authorized official by virtue of which liability under the bond is terminated. If any licensee or surety insurer which has custody of the collateral fails to take promptly any action necessary to secure the termination of such liability, he shall return such collateral immediately upon the accrual of any right to secure an order of termination of liability. If such collateral was deposited as security of unpaid premium or charges and if such premium or charges remained unpaid at the time of exoneration and after demand therefor has thereafter been made by the licensee or surety insurer which has custody of the collateral, the collateral other than cash may be levied upon in the manner provided by law and the proceeds of such collateral may be applied to the amount of such unpaid premium or charges.

**§2088.3. Real Property as Collateral.**

If a bail licensee receives as collateral in a bail transaction, whether in his own or on another's behalf, any document which conveys title to real property, such document shall state on its face that it is executed as part of a security transaction. If such document is recorded, a reconveyance of such property executed in such a manner that it may be recorded shall be delivered by the responsible bail licensee or surety insurer to the person executing the original conveyance or to his heirs, legal representative or successor in interest immediately upon such responsible party learning of the satisfaction of the obligation secured; and it is the duty of such responsible party to determine promptly whether such obligation has been discharged upon request for return of the collateral by the person entitled thereto.

**§2089. Return of Excess Collateral on Forfeiture.**

If collateral received is in excess of the bail forfeited, such excess shall be returned to the depositor immediately upon the application of the collateral to the forfeiture; subject, however, to any claim for unpaid premium or charges as provided in Section 2081.

**§2090. Surrender of Arrestee to Custody; Return of Premiums.**

No bail licensee shall surrender an arrestee to custody prior to the time specified in the undertaking of bail or the bail bond for the appearance of the arrestee, or prior to any other occasion when the

presence of the arrestee in court is lawfully required, without returning all premium paid for such undertaking or bond; except that when as the result of judicial action, information concealed or misrepresented by the arrestee or other reasonable cause, any one of which was material to the hazard assumed, and the licensee can show that the hazard was substantially increased, then the bail licensee may retain incurred out of pocket expenses permitted to be charged by Section 2081 (c) and (d). The surrender of an arrestee who is again in custody for an offense for which a penalty greater than that for the original offense may not be imposed, or his surrender at the request of the guarantor shall never, in and of themselves, be considered to be reasonable cause for surrender, and in case of any surrender under such circumstances, and no actual and substantial increase in hazard can be shown by the licensee, all premiums received and incurred expenses shall be returned. Compliance with an Order of the Court made pursuant to Section 1300(b) of the Penal Code shall be in compliance with this Section; and a licensee at the time of any surrender of an arrestee prior to the time specified in the undertaking of bail shall inform such arrestee of his rights under said Section 1300(b) to petition the Court for a ruling as to return of premium.

**§2091. Forfeitures; Misrepresentations.**

No bail licensee shall make any misleading or untrue representation to a court or to a public official for the purpose of avoiding or preventing a forfeiture of bail or of having set aside a forfeiture which has occurred, or for the release of an arrestee on his own recognizance after bail has once been placed by the licensee. A copy of all written representations made by or on behalf of a bail licensee for such purpose shall be kept as provided in section 2098, unless such representations are filed by an official as a public record.

**§2092. Interrogations; Licensee Must Answer.**

Every bail licensee must truthfully answer any questions asked him by the commissioner or his representative about his bail transactions or matters relating to the conduct of his bail business, subject only to his lawful constitutional rights against self-incrimination.

**FILINGS AND RECORDS**

**§2094. Filing Schedule of Charges.**

Every bail permittee shall file with the commissioner a schedule of charges to be made for bail. He shall also file with the commissioner any change in such charges at least five days prior to the effective date thereof. Such charges and changes so filed are public record.

**§2094.1. Rates Chargeable.**

No bail permittee shall issue or deliver a bail bond except at the rates most recently filed with the commissioner in accordance with Section 2094.

**§2094.2. Filing of Charges; Differences in Rates.**

If a person is licensed as both a bail agent and a bail permittee or licensed in either capacity but conducting his bail business under an agreement with a person licensed in the other capacity, any filing made pursuant to Section 2094 shall state all differences between the premiums charged for undertakings of bail and the charges made for bail bonds and the reasons therefor. If there is any such difference and if for his own convenience a bail licensee shall substitute or cause to be substituted one type of obligation for the other, he shall do so without additional premium charge. Such substitution without additional premium or charge may not be used as a device or means of avoiding compliance with Section 2094 or with chapter 9, Part 2, Division 1 of the Insurance Code.

**§2095. Filings; Necessary Notices.**

Every bail licensee shall promptly file with the commissioner the following:

- (a) If conducting business as a partnership pursuant to Section 2061, the written statement required by Section 2061.2 and any modification thereof.
- (b) If the relationship of a bail agent or permittee employed by another bail agent or permittee or partnership of bail agents or permittees exists as set forth in Section 2062;
  - (1) The written statement to the commissioner required by Section 2062.2;

- (2) The written notice of any change as required by Section 2062.2(d);
- (c) The written notice required by Section 3065(f) if applicable to such licensee.
- (d) The written notice required by Section 2066.4(a) of any fictitious name or style used pursuant to Section 2066.4.
- (e) A written notice of any changes made in any of the licensee's business addresses.
- (f) A complete list of all persons employed by the licensee who aid him in any way in the conduct of his bail business setting forth for each employee the full name, duties and basis of compensation, and if such compensation is to be over \$1,000 per month the amount thereof.
- (g) A notice containing the same information as that required by (f) above for each new employee.
- (h) A notice of termination of the employment of any employee and, if the reason therefor was any act or conduct by the employee which would in the opinion of the employer indicate an unfitness to transact bail, a full statement of such reason.
- (i) A notice within 10 days after service upon him of the filing of:
  - (1) Any criminal suit;
  - (2) Any action at law against him or any judgment against him which arises out of his transaction of the bail business or transaction of bail.
- (j) A written notice within five days after making any arrangement of any kind to obtain money, securities or other assets to use directly or indirectly in the bail business, giving the name of the person with whom such arrangements have been made, the amount of money or value of other assets involved, the date of the transaction and the details of the arrangement.
- (k) A copy, or a reference to copies already filed and which he will use, of all forms or documents which the licensee intends to use regularly or frequently in connection with his bail transactions, including:
  - (1) The document to be delivered to the arrestee or other person containing the information required by Section 2083;
  - (2) The form of any receipt for or agreement relating to collateral used pursuant to Section 2083(m);
  - (3) The document to be delivered to the arrestee or other person containing the information required by Section 2083.5;
  - (4) The form of guarantor's agreement referred to in Section 2084;
  - (5) The form of original communication referred to in Section 2097(a);
  - (6) The form or original application referred to in Section 2097(b); and
  - (7) Any other form or document.

**§2096. Improper Forms; Notice.**

If the commissioner finds that any form or document, the filing of which is required by Section 2095(k), is misleading or contrary to any provision of this article or any law relating to bail, he shall notify the bail licensee specifying wherein such form or document is misleading or contrary to any provision of this article or any law relating to bail. Thereafter such bail licensee may not use such form or document. If such notification is not given to such licensee within 30 days after the filing of such form or document, the commissioner shall prescribe reasonable time after which such form or document may not be used.

**§2097. Documents; Retention of Originals or Duplicates by Licensee.**

Every bail licensee shall retain in his records the original or duplicate original of the following;

- (a) Any written requires received by him from an arrestee or person acting on his behalf which resulted in the posting of bail by such licensee.
- (b) The application for bail signed by the arrestee or person negotiating bail on his behalf.

**§2098. Documents, Retention of Copies by Licensee.**

If a bail licensee has arranged for the posting of bail, he shall in each case retain in his records a copy of the following documents;

- (a) The document or documents furnishing the arrestee or person negotiating bail on his behalf with the information required by Section 2083.
- (b) The collateral receipt or any form of agreement relating thereto described in Section 2083(m).
- (c) The document listing additional charges required by Section 2083.5.

- (d) Any written representation made to a court or a public official with respect to the matters dealt with in Section 2091.
- (e) An guarantor's agreement.
- (f) All documents signed by the arrestee or any person with whom bail is negotiated, the originals of which are not retained by the licensee.
- (g) All documents delivered to the arrestee or any person with who bail is negotiated.

**§2099. Documents; Tender to Arrestee or Representative.**

Every bail licensee shall tender a copy of any document which is executed by any person with who bail is negotiated to such person at the time of the execution thereof.

**§2100. Necessary Record; Open to Inspection.**

Every bail agent or permittee shall keep complete records of all business done under authority of his license or under the authority of the license of any bail solicitor, bail agent or bail permittee employed by him. All records kept by such agent or permittee, including all documents and copies thereof shall be open to inspection or examination by the commissioner or his representatives at all reasonable times, at the principal place of business of the licensee as designated in his license. Such records shall include at least the following information as to each bail transaction shown either in one of the forms required by the provisions of these rules or in a separate book, ledger, or card record:

- (a) The full name and address of the arrestee.
- (b) The date of arrest, the offense with which the arrestee was charged, the penal amount of the bail, the premium for the undertaking of bail or the amount charged for the bail bond, the date bail was filed or delivered, and the court or public official before whom the arrestee must appear.
- (c) The full name and address of the person furnishing information leading to the solicitation or negotiation of the bail, the date and time such information was received, the manner in which it was received, the connection or relationship to the arrestee of the person other than the arrestee furnishing such information and the name of the person receiving such information.
- (d) If the bail was negotiated with any person other than the arrestee, the full name, address and connection or relationship to the arrestee of such person, and the name of the person who carried out the negotiations on behalf of the licensee.
- (e) If the bail was negotiated directly with the arrestee, a full statement of the manner in which the arrestee communicated with the licensee and the name of the person receiving such communication.
- (f) The full name and address of each and every person directly or indirectly paying, promising to pay, or guaranteeing the payment of, the whole or any part of the premium, guard fees, charges for extraordinary services, or collateral made or deposited in connection with a bail transaction.
- (g) The name of any bail licensee from whom the business was accepted or to whom commission was promised or paid in connection therewith, and the amount of commission promised or paid.
- (h) The name of any person who received or was promised any portion of a premium, guard fee, charge or commission or was compensated in any manner directly or indirectly on account of any bail transaction.
- (i) If any valuable consideration other than money was received in connection with a bail transaction, a full statement in explanation of such consideration and the circumstances attendant thereto.
- (j) Where a writ bond was issued, the name of the attorney appearing herein.
- (k) A separate book record which shall show the date of receipt of any collateral as guarantee in a bail transaction, the name of the person from whom it was received, the name of the person receiving it, a complete description of the collateral, the amount of bail guaranteed, the amount of premium guaranteed and the disposition of the collateral. If the collateral was returned, the date of its return and the name of the person to whom it was returned.

**§2101. Co-partnership Records; Filings.**

During the period when two or more bail licensees are conducting their business as a partnership pursuant to Section 2061, such licensees may combine their books and records and make a joint filing with the commissioner of all forms used by them as a partnership, provided, however, that such books and records shall identify the member of the partnership who actually transacted each individual bail transaction or portion thereof.

**§2101.1. Records; Licensed Employees.**

Every employing bail agent or permittee shall keep at this office all books and records concerning the bail transactions of himself and his employees while acting as such, and such employees may use all forms filed, directly or by reference, with the commissioner by such employer, provided, however, that such books and records shall identify the particular person who actually transacted each individual bail transaction or portion thereof. But the employed bail agent or permittee is responsible for the maintenance of such records, and the proper use of such forms for the transactions in which he participates.

**§2101.2. Records, Temporary Associations.**

If two or more bail agents or permittees are temporarily associated for the purposes of a single or series of bail transactions, each shall be responsible for keeping sufficient records to identify the transaction and to meet the requirements of this article with respect to the portion of the transaction conducted by him.

**§2101.3. Records, Temporarily Conducting Business.**

During the time a bail agent or permittee is temporarily conducting the business of another bail agent or permittee as provided in Section 2065(e), such bail agent or permittee shall be responsible for the proper entries in and the retention of the books and records of such other bail agent or permittee but he may use the forms and documents usually used by the permanent owner of the bail business. Following such temporary conduct of his business the permanent owner of such business is responsible for the retention of such books and records.

**§2102. Use of Filed Documents and Forms.**

Except as provided in Section 2101.1 to 2101.3, inclusive, every bail agent and permittee shall use the forms and documents filed, directly or by reference, by him with the commissioner as an individual and shall be individually responsible for the proper entries in and the retention of all books and records.

**§2103. Information; Not Required: Severability.**

Any bail licensee secure from any person with whom he engaged in a bail transaction information in addition to that required by these rules or his signature to documents other than those required by these rules. If such information is secured as a part of the same document which contains any of the information required by these rules, it shall be clearly severable and the licensee, in using such document, may, at his discretion, omit the use of the portion of it which is not required by these rules.

**§2104. Destruction of Records.**

Five years after the final completion of all parts of a bail transaction, a bail licensee may destroy his records pertaining to such transactions.

California Code of Regulations, TITLE 10, Chapter 5, Subchapter 1

**Article 4.5 Procedures Governing Persons Subject to  
Title 18 United States Code Section 1033  
Excerpts: Section 2175.1 to 2177.14**

**§2175.1. Purpose.**

The purpose of these regulations is to implement the provisions of Title 18 United States Code sections 1033 "the Act", as well as California Insurance Code 1723 and 1742.2.

**§2175.2. Definitions.**

For the purpose of these regulations, the following definitions shall apply:

- (a) "Application" shall mean any filing made with the California Department of Insurance (Department) for written consent to engage in the business of insurance.
- (b) "Applicant" shall mean any person subject to the provisions of Title 18 United States Code §1033, who files an applicant for written consent to engage in the business of insurance.
- (c) "Breach of Trust" refers to certain crimes or offenses, including but not limited to, any offense constituting or involving misuse, misapplication or misappropriation of (1) anything of value held as a fiduciary (including but not limited to, a trustee, administrator, executor, conservator, receiver, guardian, agent, employee, partner, officer, director or public servant) or (2) anything of value of any public, private, or charitable entity.
- (d) "Burden of Proof" means the necessity or duty of proving a fact that is in dispute on an issue raised at a hearing on a Request for Written Consent.
- (e) "Business of Insurance" means: (1) the writing of insurance, or (2) the reinsuring of risks, by an insurer, including all acts necessary or incidental to such writing or reinsurance and the activities of persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons.
- (f) "Conviction" means a finding of guilty or a plea of guilty, nolo contendere or no contest in a criminal court of the United States of America or in any state, commonwealth or possession. Completion of deferred adjudication and conditional discharges are not convictions.
- (g) "Dishonesty" refers to a crime or offense which includes, but is not limited to, any offense constituting or involving perjury, bribery, forgery, counterfeiting, false or misleading oral or written statements, deception, fraud, schemes or artifices to deceive or defraud, material misrepresentations and the failure to disclose material facts.
- (h) "Felony" means;
- (1) Any Federal crime for which the maximum authorized punishment exceeds one year of imprisonment;
  - (2) Any crime for which the maximum authorized punishment exceeds one year incarceration; or
  - (3) Any crime in any other state, commonwealth, territory or possession that is identified as a felony in that state, commonwealth, territory or possession, or if not identified as a felony in said other jurisdiction, any offense for which the maximum authorized punishment exceeds one year incarceration.
  - (4) Any conviction of a felony crime of dishonesty, breach of trust or violation of 18 U.S.C. § 1033 which has been set aside pursuant to California Penal Code section 1203.4.
- (i) "Insurer" means any entity that transacts the business of insurance or that reinsures risks, and includes any person who acts as, is, an officer, director, agent or employee of that business.
- (j) "Interstate Commerce," means the following:
- (1) Commerce within the District of Columbia, or any territory, or possession of the United States
  - (2) All commerce between any point in the State, territory, possession, or the District of Columbia and any point outside thereof;
  - (3) All commerce between points within the same State through any place outside such State via the Internet or any other means to receive commerce; or
  - (4) All other commerce over which the United States has Jurisdiction.
- (k) "License" means any license, registration, certificate of authority or other permit or approval issued or granted by the Commissioner of Insurance;
- (l) "Licensee" means any person or entity holding a license
- (m) "Prohibited Person" means any person who has been convicted of felony crimes of dishonesty, breach of trust in a state or federal jurisdiction or who has been convicted of any violation of 18 U.S.C. §1033 (the "Act"), who wishes to engage in or transact the business of insurance in this State, or who wishes to engage in or transact the business of insurance for insurers, and/or reinsurers and/or their agents and employees who are domiciled in this State. A "Prohibited Person" may be an officer, director or employee of an insurance agency or an insurance company, an agent, solicitor, broker, consultant, third-party administrator, managing general agent, or subcontractor representing an insurance agency or insurance company who engages in or transacts the business of insurance.
- (n) "Request for Consent" means a completed application, submitted by a Prohibited Person that requests the Commissioner's express, written consent to allow that Prohibited Person to engage in or transact, or to continue to engage in or transact, the business of Insurance.
- (o) "State" for the purposes of this regulation, includes any State in the United States the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa and the Trust Territory of the Pacific Islands.

### **§2175.3. Who Must Comply.**

Any and all Prohibited Persons who are currently transacting, or engaging in, the business of insurance, or who intend to transact, or engage in, the business of insurance, must submit a completed Request for Consent to the California Department of Insurance (Department).

### **§2175.4. Prohibited Persons Currently Engaged in or Transacting the Business of Insurance.**

a) There are no provisions in the Act or these regulations that exempt or except any Prohibited Person, who is currently engaging in, or transacting, the business of insurance from compliance with the Act and these regulations. The Act and these regulations expressly apply to all persons currently licensed who have been convicted of any criminal felony involving dishonesty, breach of trust or any violation of the Act.

(b) Any and all currently licensed individuals who are subject to the Act and who were granted a license by the Department following full and complete disclosure of their criminal history shall be deemed to have the Insurance Commissioner's temporary consent to engage in or transact the business of insurance within the scope of their license authority only if the currently licensed individual submits an application for written consent within ninety (90) days from the effective date of these regulations. Any current licensee who is a Prohibited Person and who fails to submit an application for Written Consent within the ninety (90) day period will be barred from transacting the business of insurance as set forth in Title 18 USC section 1033.

(c) Any and all Prohibited Persons engaging in, or transacting, the business of insurance, without the express Written Consent of the Commissioner, are in violation of the Act and risk federal criminal sanctions.

### **§2175.5. Responsibility of Insurers and Other Employers to Identify Prohibited Persons.**

(a) It is the responsibility of insurers and of any other employer engaging in, or transacting the business of insurance to make a diligent effort to identify Prohibited Persons and to ensure that Prohibited Persons are not engaging in, or transacting, the business of insurance in violation of the Act and of these regulations. Insurers and other employers must actively seek to determine whether or not Prohibited Persons are in their employ and are engaging in or transacting the business of insurance.

(b) The existence of a valid license for a Prohibited Person does not waive, excuse, except or exempt an insurer or other employer from its responsibility under subdivision (a) nor the insurer's or other employer's ultimate responsibility for compliance with the provisions of the Act and these regulations.

(c) An insurer or employer must notify the Department of Insurance, in writing, of any Prohibited Person who is engaged in the business of insurance without Written Consent.

### **§2175.6. Applications for Written Consent.**

The Prohibited Person must file an Application for Written Consent with the Department as set forth herein.

(a) Prohibited Persons must submit to the Department an Application for Written Consent (National Association of Insurance Commissioners' (NAIC) Short Form Application for Written Consent to Engage in the Business of Insurance Pursuant to 18 U.S.C. §1033 and 1034 (dated 1998), which is

incorporated herein by this reference). Prohibited Persons are those defined in section 2175.2(m), herein.

(b) It is the responsibility of the applicant to read the Application in its entirety. Every question must be answered completely and truthfully. The NAIC Short Form Application is available at the Department's website at [www.insurance.ca.gov](http://www.insurance.ca.gov) and at the Department of Insurance Licensing Background Bureau.

(c) Failure to submit a complete Application may result in delay or denial of the Commissioner's Written Consent. The purpose of the Application is to provide the Prohibited Person with an opportunity to demonstrate that, notwithstanding the provisions of the Act, the Prohibited Person is fit to transact, or to engage in, the business of insurance without risk to consumers or insurers.

(d) The burden is upon the Prohibited Person to establish that the Commissioner's Written Consent should be granted.

(e) All Applications submitted to the Department must be typewritten. Any application that is not typewritten will be returned to the Applicant.

(f) All Applications submitted must be complete. Certified copies of all court documents setting forth the initial conviction and any subsequent disposition, together with any other relevant documents or information that the Prohibited Person would like to have considered must be submitted within thirty (30) days of the Department's receipt of the application.

(g) Fingerprint impressions on FBI Form #FD-258 (Rev. 12-29-1982, which is incorporated herein by this reference) should be submitted directly to "Sylvan/Identix Fingerprinting Centers", along with a check in the amount of \$74.00 made payable to "Sylvan/Identix Fingerprinting Centers." Fingerprint card completion instructions are available on the Department's website at [www.insurance.ca.gov](http://www.insurance.ca.gov).

An application is incomplete without the following:

(1) An application processing fee in the amount of \$124.00, payable to the California Department of Insurance.

(2) Two 2" by 2" recent passport photographs attached to the upper right hand corner of the first page of the application for written consent.

(3) Any amendment to the application must be filed immediately upon the occurrence of any event that would change any answer on the application. Failure to file a timely amendment may result in denial of the Request for Written Consent or the immediate withdrawal of previously granted consent.

#### **§2175.7. Consideration of Applications for Written Consent**

(a) The Insurance Commissioner shall have the sole discretion to grant or deny any Application for Written Consent to engage in or transact the business of insurance.

(b) Factors to be considered in granting or denying an Application for Written Consent will include, but are not limited to:

(1) The nature and severity of the crime.

(2) The length of time since the conviction.

(3) The injury and/or loss caused by the Prohibited Person. Whether the conviction is related to the business of insurance.

(4) Whether the Prohibited Person received a pardon from the sovereign that convicted him.

(5) Whether the Prohibited Person completed parole or probation.

(6) Whether a breach of trust, dishonesty or a violation of the Act was involved.

(7) The nature and strength of character reference letters.

(8) The person's business and personal record before and after the conviction.

(9) Whether and to what extent the person has made material false statements in an application, renewal or in other documents filed with the Commissioner.

- (10) Whether and to what extent the person has made material false statements in applications or other documents filed with other State or federal agencies.
- (11) Whether the Prohibited Person's conviction was expunged.
- (12) Whether the conviction was received in a foreign country.

#### **§2175.8. Written Consent as a Prerequisite for Obtaining or Retaining a License.**

- a) Prohibited Persons are required to obtain the express, written consent of the Commissioner before any license application shall be considered.
- (b) Licensees, who are prohibited persons, must have the Commissioner's express Written Consent pursuant to the Act and these regulations prior to engaging in, or transacting, the business of insurance. Licensees who have complied with the provisions of section 2175.4 herein and who are within the ninety (90) day period specified in section 2175.4 are not subject to this provision.
- (c) No Prohibited Person shall be granted a license, shall be permitted to retain a license or shall engage in, or transact, the business of insurance if their Request for Written Consent has been denied.

#### **§2175.9. Standard Form of Application for Requesting Written Consent**

(a) Prohibited Persons seeking the Commissioner's Written Consent will use the NAIC Short Form Application For Written Consent to Engage in the Business of Insurance Pursuant to 18 U.S.C. §1033 and 1034 for the use of Prohibited Persons (dated 1998), which is incorporated herein by this reference. The Prohibited Person seeking Written Consent must sign the Application.

(b) The Commissioner may request additional information at any time from an Applicant to support a pending Application for Written Consent. The Applicant is required to support a pending Application by promptly providing any requested information. Failure to provide such information may result in the Commissioner's denial of the Application.

(c) If consent is denied, the Applicant and the employer identified in the application will be notified in writing of the basis for that denial. The Notice of Denial will provide the Applicant with a denial statement as well as a time line and instruction for any appeal of the denial.

(d) Upon approval, the Commissioner will provide documentation of Written Consent containing the terms and conditions upon which the consent has been granted. Failure to comply with all terms and conditions of consent will result in the immediate termination of consent and summary revocation of license to transact the business of insurance. Terms and conditions of consent may include, but are not limited, to the following:

- Any subsequent misdemeanor or felony charge involving dishonesty, breach of trust or violation of 18 U.S.C. §1033 against a Prohibited Person;
- Failure to notify the Department of any misdemeanor or felony charge involving dishonesty, breach of trust or violation of 18 U.S.C. §1033 against a Prohibited Person;
- The filing of an Administrative sanction against a Prohibited Person;
- Failure to comply with any provision of these regulations;
- Failure to notify the Department upon the filing of any action against a Prohibited Person by a regulator;
- Failure to amend an application for Written Consent upon a change in job duties;
- Failure to notify employer of status as a Prohibited Person.

#### **§2175.10. Requirements for Character References**

Character references may be submitted to the Department for the Commissioner's consideration. Character references shall state how long and in what capacity the person making the reference has known the applicant. References shall also expressly state that the person providing the reference is aware that the reference is being provided in connection with a Request for Written Consent to engage in or transact the business of insurance despite the existence of a relevant felony criminal conviction.

## **SECTION 2176 DENIAL, EXPIRATION OR TERMINATION OF WRITTEN CONSENT**

### **§ 2176.1. Effect of False or Misleading Statements**

(a) Any Written Consent granted by the Commissioner shall be conditioned upon the truth and veracity of the documents and information submitted by or on behalf of the Prohibited Person making the Request for Written Consent. In the event that the Department determines that the Prohibited Person receiving the Written Consent, or their representative, has made materially false or misleading statements, or has failed to disclose material information, the Written Consent shall be void ab initio.

(b) If the Department determines that a Prohibited Person has violated the terms of a Written Consent in any way, the consent shall terminate immediately.

(c) Providing false information to the Department for any purpose constitutes a violation of the Act and is grounds for immediate, summary revocation of any license issued by the Department.

### **§ 2176.2 Written Consent Effective for Specified Positions and Responsibilities Only**

(a) Any Written Consent issued by the Commissioner shall be for the Prohibited Person remaining in the same or similar job position with the same responsibilities as attested to in the initial Request for Written Consent. A change in job responsibilities requires the Prohibited Person to file an amended Request for Written Consent.

(b) If the Prohibited Person receiving the Written Consent has been given significantly increased job responsibilities and has not so informed the Department the initial Written Consent shall terminate immediately.

### **§ 2176.3 Temporary Written Consent**

(a) The Commissioner has the discretion to grant a temporary Written Consent that will expire at a time certain.

(b) Upon the expiration of a temporary Written Consent, the Prohibited Person is in violation of the Act if the Prohibited Person is engaging in or transacting the business of insurance without first receiving a new, express, Written Consent from the Commissioner.

### **§ 2176.4 Subsequent Convictions of Prohibited Persons Previously Granted Written Consent**

Any Prohibited Person given a Written Consent to participate in the business of insurance shall immediately notify the Department if the Prohibited Person is subsequently convicted of an offense under 18 U.S.C. §1033, or any felony offense involving dishonesty or breach of trust making them once again subject to the provisions of 18 U.S.C. §1033 and these regulations. The consent previously issued is terminated automatically upon conviction for the subsequent offense. The Prohibited Person shall be informed in writing, via certified mail, return receipt requested, that the consent previously issued has been withdrawn and that engaging in the business of insurance again violates the Act.

## **SECTION 2177 HEARING PROCEDURE**

### **§ 2177.1 Time Limit in Which to Request a Hearing**

Applicants who have received a Notice of Denial of Consent may request a hearing, in writing, within sixty (60) calendar days after the issue date of the Notice.

### **§ 2177.2 Form of Request for Hearing and Information Required**

A Request for Hearing shall be in writing and must include:

- (a) The name, address, telephone number, and fax number of the Prohibited Person;

- (b) The name, address, telephone number, and fax number of the Prohibited Person's representative, if any;
- (c) A statement explaining why the Prohibited Person should not be denied the Commissioner's Written Consent;
- (d) A copy of the Commissioner's Denial of Consent;
- (e) Copies of any additional documents that were not included in the Prohibited Person's initial Application, which support the Prohibited Person's explanatory statement and upon which the Prohibited Person intends to rely at the hearing.

### **§ 2177.3 Filing and Service Requirements**

(a) An original and one copy of the Request for Hearing and all documents provided must be sent to the California Department of Insurance, Administrative Hearing Bureau, 45 Fremont Street, San Francisco, California 94105.

(b) All required documents and copies must be delivered to the Administrative Hearing Bureau either by personal delivery or U.S. Postal Service Return Receipt Requested delivery.

### **§ 2177.4 Time of Hearing**

The Chief Administrative Law Judge of the Administrative Hearing Bureau shall assign the case to an Administrative Law Judge for hearing. An administrative law judge shall hold a hearing within sixty (60) days of the Administrative Hearing Bureau's receipt of the Department's response to the Request for Hearing. The hearing may be held on a later date upon agreement of both parties. The Administrative Law Judge shall give the parties not less than 10 days written notice of the date on which a hearing is scheduled.

### **§ 2177.5 Continuances; Good Cause**

(a) A continuance for any act occurring under this article may be granted by the Chief Administrative Law Judge or the Administrative Law Judge for good cause shown.

(b) When seeking a continuance, a party shall apply for the continuance within five (5) business days following the time the party discovered or reasonably should have discovered the event or occurrence which establishes the good cause for the continuance. A continuance may be granted for good cause after the five (5) business days have lapsed, if the party seeking the continuance is not responsible for, or has made a good faith effort to prevent, the condition or event establishing the good cause.

### **§ 2177.6 Role of Department of Insurance**

The Department of Insurance is a party in the hearing, representing the Commissioner. The Administrative Hearing Bureau shall notify the Department within 20 days of its receipt of any complete and appropriately filed, Request for Hearing. The Department shall file an original and one copy of its response to the underlying issues raised by the Prohibited Person in the Request as well as an original and one copy of any documents upon which it plans to rely at the hearing. Copies of the Department's response and any documents filed with the Administrative Hearing Bureau shall also be served on the Prohibited Person and/or their representative, if any.

### **§ 2177.7 Representation of Prohibited Person at the Hearing**

A Prohibited Person may be represented in the proceedings before the Administrative Hearing Bureau. A representative is not required and the representative need not be an attorney.

### **§ 2177.8 Administrative Law Judge's Authority**

(a) Article 12 of Chapter 4.5 of the Administrative Procedure Act (commencing with Government Code section 11455.10), is adopted, and is applicable to these proceedings. The Administrative Law Judge may exercise all the authority granted pursuant to Chapter 4.5 of the Administrative Procedure Act.

(b) The Administrative Law Judge may take any other action necessary or appropriate to the discharge of his or her duties, consistent with the statutory or other authority under which the Commissioner

functions. The Administrative Law Judge may issue such orders compelling the compliance of the parties and other persons subject to the jurisdiction of the Commissioner as necessary to the discharge of his or her official duties and the efficient use of the Department's judicial time and resources.

(c) The Chief Administrative Law Judge shall exercise all authority set forth in this section until a proceeding is assigned to an Administrative Law Judge.

#### **§ 2177.9. Burden of Proof**

The burden of proof at a hearing on a Request for Written Consent is on the Prohibited Person seeking the Commissioner's Written Consent to engage in or transact the business of insurance in this State.

#### **§ 2177.10 Evidence**

(a) The hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided. Any relevant evidence shall be admitted if it is evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of evidence over objection in civil actions.

(b) The rules of privilege shall be effective to the extent that they are otherwise required by law to be recognized at the hearing.

(c) The Administrative Law Judge has the sole discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.

(d) No documentary evidence will be admitted into evidence at the hearing that was not previously exchanged between the parties without good cause shown why the evidence was not available to the parties for exchange prior to the hearing.

#### **§ 2177.11. Additional Evidence or Briefing**

(a) The Administrative Law Judge may require the production of further evidence or briefing on any issue. If the administrative law judge determines that specific evidence or briefing is necessary as a part of the record, he or she shall set a deadline for the parties to file the requested evidence or briefing.

(b) Unless ordered by the Administrative Law Judge, or upon written motion for good cause shown, no additional evidence shall be introduced after the close of the evidentiary hearing.

#### **§ 2177.12 Official Notice**

In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact that may be judicially noticed by the courts of this state. All parties shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to therein, or appended thereto. Pursuant to a written request, all parties shall be given a reasonable opportunity to refute the officially noticed matters, either by evidence or by written or oral presentation to the Administrative Law Judge.

#### **§ 2177.13 Hearing Reporter**

The proceedings at the hearing shall be reported by a hearing reporter. However, upon the consent and agreement of all parties, the proceedings may be reported electronically. Parties must make their own arrangements for payment with the hearing reporter if they wish to obtain a copy of the reporter's transcript.

#### **§ 2177.14 Costs**

All parties shall bear their own costs.

#### **§2182. Re-examination**

An applicant who has twice failed a license qualification examination must wait 30 days from the date of the second failed examination. Further, if an applicant takes the examination after the 30-day waiting period and, again, fails the license qualification examination for a fourth time, the applicant must wait an additional 60 days to take the examination for a fifth time.

## **ARTICLE 5.7. PRODUCER LICENSING BACKGROUND REVIEW GUIDELINES**

### **§ 2183. Authority and Purpose.**

These regulations are promulgated pursuant to the authority granted the Commissioner under the provisions of Section 12921(a) of the Insurance Code. The purpose of these regulations is to set forth licensing background review guidelines for use in determining the denial, suspension, revocation, and/or restriction of an insurance producer license or license application.

### **§ 2183.1. Applicability.**

The producer licensing background review guidelines described in Sections 2183, 2183.1, 2183.2, 2183.3, and 2183.4 shall apply to all persons who possess, or who have applied for, any insurance producer license governed by the Insurance Code, including, but not limited to agent, broker, solicitor, bail agent, bail solicitor, or adjuster.

### **§ 2183.2. Substantial Relationship Criteria for Crimes or Wrongful Acts.**

For purposes of denial, suspension, revocation, and/or restriction of a license or license application, statutes within the Insurance Code list specific grounds and also allow for action based upon findings that include, but are not limited to, the licensee or applicant lacking integrity, having a poor business reputation, or that permitting the licensee or applicant to hold an insurance license is against the public interest. The following is a partial list of crimes or acts that are substantially related to the qualifications, functions or duties of an insurance licensee:

- (a) Any felony conviction;
- (b) A misdemeanor conviction 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 the following:
  - (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 affecting a person who is an observer or non-consenting participant in the conduct or convictions, or which requires registration pursuant to the provisions of Section 290 of the Penal Code;
  - (5) Resisting, delaying, or obstructing a public officer in violation of Penal Code Section 148;
  - (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;
  - (8) Multiple convictions which demonstrate a pattern of repeated and willful disregard for the law.
- (c) Any act which demonstrates a willful attempt to derive a personal financial benefit through the nonpayment or underpayment of taxes, assessments, or levies duly imposed upon the licensee or applicant by federal, state or local government or a willful failure to comply with a court order.

### **§ 2183.3. Weight of Substantially Related Acts.**

In considering discipline of a license or license application, the weight to be accorded to a substantially related crime or act described in Section 2183.2 (a), (b), or (c) may be determined by the application of guidelines including, but not limited to, the following:

- (a) The extent to which the particular act or omission has adversely affected other person(s) or victim(s), including but not limited to, insurers, clients, employers or other persons, and the probability such adverse effects will continue;
- (b) The recency or remoteness in time of the act, misconduct, or omission;
- (c) The type of license applied for or held by the licensee or applicant involved;
- (d) The extenuating or aggravating circumstances surrounding the act, misconduct, or omission;
- (e) Whether the licensee or applicant has a history of prior license discipline, particularly where the prior discipline is for the same or similar type of conduct.

#### **§ 2183.4. Criteria for Evaluating Rehabilitation.**

The Commissioner may consider all of the evidence presented, including evidence offered by the licensee or applicant, to determine whether the licensee or applicant has sufficiently rehabilitated from the prior act, misconduct, or omission such that the licensee or applicant is fit to hold an insurance license. When evaluating the rehabilitation of an applicant for an insurance license, or when considering the suspension, revocation, and/or restriction of an insurance license, on the grounds of conviction of a crime or the commission of some other wrongful act, the Commissioner may consider criteria, including, but not limited to, the following:

- (a) Nature and severity of the act, misconduct, or omission;
- (b) Total criminal record;
- (c) The time that has elapsed since commission of the act, misconduct, or omission; however, the mere passage of time without unlawful or wrongful activity is not alone sufficient to establish rehabilitation;
- (d) Whether the licensee or applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee or applicant; however, termination of probation or parole or obtaining a Penal Code Section 1203.4 expungement of the conviction, or other comparable orders of a court, including federal courts, are not alone sufficient evidence of rehabilitation;
- (e) Whether the licensee or applicant has made any restitution or done anything to recompense the injured party or to alleviate the wrong or damage caused by the act, misconduct, or omission;
- (f) Significant and/or conscientious involvement in community or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.