

# PROPOSED RULEMAKING

## DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CHS. 71 AND 171]

### School Buses

The Department of Transportation (Department), Bureau of Driver Licensing, under the authority contained in 75 Pa.C.S. §§ 1504, 1508, 1509, 4551—4553 and 6103, proposes to amend Chapters 71 and 171 (relating to school bus drivers; and school buses and school vehicles) to read as set forth in Annex A.

#### *Purpose*

The purpose of Chapter 71 is to set forth the course instruction and physical examination requirements for school bus drivers under 75 Pa.C.S. § 1509 (relating to qualifications for school bus driver endorsement). The purpose of Chapter 171 is to set forth equipment and safety requirements for school buses as provided for in 75 Pa.C.S. § 4552 (relating to general requirements for school buses) and for other vehicles transporting school children as provided for in 75 Pa.C.S. § 4553 (relating to general requirements for other vehicles transporting school children).

#### *Purpose of the Proposed Amendments*

The purpose of the proposed amendments to Chapter 71 is to establish criteria under which individuals with certain medical conditions may nevertheless qualify to be issued a school bus driver endorsement to their licenses. The purpose of the proposed amendments to Chapter 171 is to: 1) conform the regulations in this chapter to the provisions of 75 Pa.C.S. § 4552; 2) clarify existing provisions of the regulations; and 3) address concerns raised by the Pupil Transportation Advisory Committee (PTAC). The 27 members of the PTAC represent various groups and associations responsible for, or concerned with, pupil transportation.

The Department proposes to amend § 71.3 (relating to physical examination) by adding explicit criteria under which an individual diagnosed with a missing limb, diabetes, heart disease or a seizure disorder may nevertheless qualify for a waiver and receive the school bus driver endorsement. The proposed amendment clarifies that these medical conditions need not be an absolute bar to qualification to drive a school bus and sets forth in considerable detail the conditions under which an individual with these medical conditions may be granted the school bus driver endorsement.

The Department proposes changes to nine sections within Chapter 171.

Section 171.21(i) (relating to exhaust system) has been amended to specify that school bus exhaust systems shall discharge at the outside edge of the school bus body. This proposed amendment is appropriate to guard against the possibility of exhaust fumes discharging under the bus body and entering the school bus.

Section 171.47 (relating to color) has been amended by adding language that will permit the school bus roof to be painted white to reflect the sun, reducing heat and providing more comfortable transportation for the occupants. Limitation of the use of white to the roof area preserves the overall standard yellow color of the bus and

raises no safety concerns. In addition, the proposed amendment creates additional options when using reflective tape. In the current regulation, the use of reflective tape is optional. However, if it is used in any of the listed locations on the bus, the regulation requires that it be used in all of the locations. The cost of applying and maintaining reflective tape in all the listed locations on the bus has dissuaded many from using any reflective tape. It is believed that with deletion of the mandate that tape be used in all locations, more school districts and contractors will use reflective tape in some of the listed locations.

Section 171.50(a)(9) (relating to doors and emergency exits) has been eliminated. The language regarding supplemental security locks on service doors is unnecessary. The same language was added to mandate the use of an audiovisual alarm on the emergency exits in § 171.50(b)(1)(xii). An audiovisual alarm must be installed on the supplemental security locks on the emergency exits. The alarm must be in the driver's compartment.

Sections 171.52(b), 171.123(b) and 171.133(b) (relating to first aid) have been amended to adjust the amount and types of materials the kits must contain. The size of the kits have been adjusted to be consistent with the National Standards for School Transportation (National standards). The inclusion of latex surgical gloves and adhesive tape has been eliminated because some children have violent allergic reactions to latex materials. Additionally §§ 171.52(d), 171.123(d) and 171.133(d) have been added to allow the surgical gloves and mouth barrier to be placed in either the first aid or body fluid clean-up kit. Some school transportation directors have had difficulty fitting these items into the first aid kit.

Section 171.55 (relating to identification) has been amended to permit yellow identification numbers to be used on the black bumpers of school buses with rounded fronts, to increase the lettering height, and to clarify the meaning of "below the window line" for school district or contractor identification, as well as to comply with 49 CFR 390.21 (relating to marking of CMVs), concerning interstate travel for PUC-regulated commercial vehicles. It is difficult for school buses with rounded fronts to display the required identification numbers. By allowing them to display a yellow number on their black bumpers, the identification number will be easier to place and see. The proposed amendment to § 171.55(c) clarifies how far "below the window line" the school district or contractor identification may be placed. The new language states the identification should be as close as practical to the bottom ledge of the bottom window sash. Additionally, some school districts and contractors requested the allowance of larger identification lettering. The permitted height of the letters will be increased from 6 to 8 inches. Section 171.55(c) is amended to require that school buses must display any other markings required of a commercial vehicle. This will allow them to conform to 49 CFR 390.21.

Section 171.59(b)(2)(x) (relating to lamps and signals) has been amended for clarification. This section will now read clearly that an audio alarm must be activated when the device installed to prevent the automatic extension of the stop arm when the bus is not being used for pupil transportation is engaged.

Section 171.74a (relating to crossing control arm) has been added to regulate the type and use of crossing control arms which were mandated in the act of December 21, 1998 (P.L. 1126, No. 151). This device, which extends approximately 6 feet from the front of the school bus, will force children to walk at least 6 feet in front of the front bumper where the school bus driver is able to see the children and know when they are safely across the street. Over the past 20 years, 243 children have died after being hit by their own school bus. This device greatly enhances the safety of school children entering and exiting the school bus.

Section 171.104(1) (relating to the special service entrance doors) has been amended to conform to the language used in the National standards. This language, allowing either a single or double door, simplifies the current language without changing the meaning.

*Persons and Entities Affected*

The proposed amendments affect persons and entities responsible for the transportation of school children. This includes all 501 school districts and any organization they may contract to provide pupil transportation. In addition, the State Police will be affected when conducting school bus vehicle inspections.

*Fiscal Impact*

The proposed amendments will not impose any increased costs on private persons, State or local governments. The proposed amendments will not occasion the development of any additional reports or other paperwork requirements.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 5, 2002, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Transportation Committees. In addition to submitting the proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Department by May 16, 2002. The notification shall specify the regulatory review criteria that have not been met by the portion of the proposed rulemaking to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of objections raised.

*Sunset Date*

The Department is not establishing a sunset date for these proposed amendments since these regulations are needed to administer provisions required under the 75 Pa.C.S. (relating to Vehicle Code). The Department will, however, continue to closely monitor these regulations for their effectiveness.

*Public Comments*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to Rebecca L. Bickley, Director, Bureau of Driver Licensing, Riverfront Office Center, 1101 South

Front Street, 4th Floor, Harrisburg, PA 17104, within 30 days of publication of this notice in the *Pennsylvania Bulletin*.

*Contact Person*

The contact person for technical questions related to the proposed amendments is Chris Ann Miller, Manager, Special Driver Programs, Department of Transportation, Bureau of Driver Licensing, Riverfront Office Center, 1101 South Front Street, 3rd Floor, Harrisburg, PA 17104, (717) 772-2117.

BRADLEY L. MALLORY,  
*Secretary*

**Fiscal Note:** 18-372. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 67. TRANSPORTATION**

**PART I. DEPARTMENT OF TRANSPORTATION**

**Subpart A. VEHICLE CODE PROVISIONS**

**ARTICLE IV. LICENSING**

**CHAPTER 71. SCHOOL BUS DRIVERS**

**§ 71.1. Scope and application.**

This chapter applies to the course of instruction and physical examination for school bus drivers required by 75 Pa.C.S. § 1509 (relating to qualifications for [ **class 4 license** ] **school bus driver endorsement**).

**§ 71.3. Physical examination.**

\* \* \* \* \*

(b) *Requirements of physical examination.* A person is physically qualified to drive a school bus if the person:

\* \* \* \* \*

(2) Has no loss of a foot, a leg, a hand, or an arm; **or has been granted a waiver by the Department after competency has been demonstrated through a driving examination.**

\* \* \* \* \*

(4) Has no established medical history or clinical diagnosis of diabetes mellitus currently requiring use of insulin or other hypoglycemic medication.

**(i) A waiver may be granted to an individual requiring the use of oral hypoglycemic medication provided:**

**(A) The individual's physician verifies in writing that there has been no incident of hypoglycemic reaction for the preceding 2 years.**

**(B) The individual submits to a diabetic examination every 6 months and submits the results of the examination on a form provided by the Department.**

**(ii) A waiver may be granted to a person requiring the use of insulin provided:**

**(A) The person's physician verifies in writing to the Department that there has been no incident of hypoglycemic or hyperglycemic reaction and the person has been free from insulin reaction (including loss of consciousness, attention or awareness) or the requirement of assistance from another person, for the preceding 2 years.**

**(B) The person submits to a diabetic examination every 6 months, including a Hemoglobin A1C, and**

to a review of the prior 6-month history of blood glucose monitoring. The physician conducting the diabetic examination shall be familiar with the person's past diabetic history for 24 months or have access to that history.

(C) The person, upon hire by a school district to drive a school bus, shall demonstrate his willingness to manage his diabetes by complying with the following requirements:

(I) Self-monitoring blood glucose 1 hour before driving, and at least every 4 hours while driving or while otherwise on duty, by using a portable blood glucose monitoring device with a computerized memory. If blood glucose is below 80 or above 350 the person may not drive until he takes appropriate measures and retests within this acceptable range.

(II) Monthly submitting the results of blood glucose self-monitoring for review by a physician, certified nurse practitioner, physician's assistant, registered nurse or other health care provider selected by the school district. The results also shall be submitted to the physician conducting the 6-month diabetic examination required by subclause (B).

(III) Maintaining a manual blood glucose monitoring log and submitting it, together with the glucose monitoring device's computerized log, every 6 months to the physician conducting the person's 6-month diabetic examination.

(IV) Having in his possession a source of rapidly absorbable glucose at all times while driving a school bus.

(iii) A reviewing physician finding that a person previously qualified for a waiver is not complying with the requirements listed in subparagraph (ii)(C) or is otherwise no longer qualified for the waiver shall report these findings to the Department and the waiver will be rescinded.

(iv) If a person requiring the use of oral hypoglycemic medication or a person requiring the use of insulin does not qualify for a waiver, that person may request an independent review of his medical records. The review will be conducted by a member of the Medical Advisory Board or by another physician designated by the Department.

(v) Submissions to the Department by physicians or other health care providers, including physician verifications and the results of diabetic examinations, shall be made on forms provided by the Department.

(5) Has no established medical history or clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency[ , ] or pacemaker insertion.

(i) Waivers may be granted to those individuals with a history of coronary artery disease, previous myocardial infarction, congenital heart defects, cardiomyopathy, pericarditis, myocarditis, chronic atrial flutter/fibrillation or valvular heart disease, and individuals who have undergone corrective surgery for congenital heart defects, coronary angioplasty, valve repair/replacement, coronary artery bypass graft surgery, or ablative surgery for paroxysmal supraventricular arrhythmias, if the individual annually meets the following criteria:

(A) The individual is asymptomatic from the disorder or is receiving medication used to treat the disorder and is asymptomatic on medication.

(B) The individual completes 7 METS on a treadmill stress EKG test preferably following the Bruce or Balke Protocols and achieves 85% of the predicted maximal heart rate without symptoms or EKG changes. If the resting EKG is abnormal, or the individual is on digoxin, then a stress thallium test should be performed.

(C) An echo, gated blood pool scan or left ventriculogram performed on the individual measures a left ventricular ejection fraction of 40% or greater.

(ii) In the case of a permanent pacemaker insertion, the individual shall be 2 months post insertion, asymptomatic and demonstrate that he is undergoing regular pacemaker follow up.

(iii) In the case of chronic atrial flutter/fibrillation, the individual shall be on anticoagulant therapy with aspirin or Coumadin and demonstrate adequate rate control when exercising on a treadmill as listed in subparagraph (i)(B).

(iv) No waivers may be granted to individuals:

(A) Diagnosed with symptomatic coronary artery disease (angina), cardiomyopathy, pericarditis, myocarditis, congenital or valvular heart disease.

(B) Within 2 months of a myocardial infarction, open heart surgery or pacemaker insertion.

(C) Implanted with an automatic cardioverter/defibrillators or antitachycardic device.

(D) With any history of ventricular tachycardia (excluding couplets and triplets), ventricular fibrillation or sudden cardiac death with successful resuscitation.

(E) With any history of paroxysmal supraventricular tachycardia.

(F) With any history of carotid sinus hypersensitivity, sick sinus syndrome, second degree heart block or third degree heart block unless a pacemaker has been inserted.

\* \* \* \* \*

(10) Has no established medical history or clinical diagnosis of seizure disorders or another condition likely to cause loss or impairment of consciousness or loss of ability to drive a school bus safely.

(i) A waiver may be granted to persons described in this paragraph provided:

(A) There has been no more than a single, nonrecurring episode of altered consciousness or loss of bodily control, occurring at least 2 years preceding application, which did not require treatment.

(B) A seizure disorder has been diagnosed, but the person has been episode-free for at least 5 years preceding application and has not required treatment for at least 5 years preceding application.

\* \* \* \* \*

ARTICLE VII. VEHICLE CHARACTERISTICS
CHAPTER 171. SCHOOL BUS AND SCHOOL VEHICLES

Subchapter B. SCHOOL BUS CHASSIS STANDARDS

§ 171.21. Exhaust system.

\* \* \* \* \*

(i) Exhaust system and discharge location. Exhaust systems are not permitted to discharge to the atmosphere at a location immediately below the fuel tank or the fuel tank filler pipe. Exhaust systems shall also extend and discharge completely to the outside edge of the vehicle body.

Subchapter C. SCHOOL BUS BODY STANDARDS

§ 171.47. Color.

The requirements for the color of school bus bodies are as follows:

\* \* \* \* \*

(2) The roof of the school bus may be painted white.

(3) The body exterior trim may be painted black. The bumper and exterior mirrors shall be painted black.

[ (3) ] (4) If a school bus is equipped with reflective material, other than that required under §§ 171.50 and 171.59 (relating to doors and emergency exits; and lamps and signals), the reflective material shall be of automotive engineering grade or better. If additional reflective materials and markings are used, they [ shall ] may be applied as follows:

\* \* \* \* \*

§ 171.50. Doors and emergency exits.

(a) Service doors. The requirements for service doors are as follows:

\* \* \* \* \*

[ (9) Supplemental security locks installed on service doors shall be equipped with an ignition interlock system or an audiovisual alarm located in the driver's compartment. ]

(b) Emergency exits. Each school bus shall comply with FMVSS No. 217. See Appendix A. The area of square centimeters of the unobstructed openings for emergency exits shall collectively amount to at least 432 times the number of designated seating positions in the bus. The area of an opening equipped with a wheel chair lift is counted toward meeting additional emergency exit area requirements only if the lift is designed to be folded or stored so that the area is available for use by persons not needing the lift.

(1) The requirements for emergency exit doors are as follows:

\* \* \* \* \*

(xii) Supplemental security locks installed on emergency doors shall be equipped with an audiovisual alarm located in the driver's compartment.

\* \* \* \* \*

§ 171.52. First aid.

(a) First aid kit. Every school bus shall have a removable moisture and [ dustproof ] dust proof first aid kit, mounted in an accessible place within the driver's com-

partment. The first aid kit shall be mounted as directed by the manufacturer. The first aid kit shall be labeled and visible to the driver or its location shall be marked.

(b) Content. The first aid kit shall contain, at a minimum, the following items:

(1) Two 1 inch x 2-1/2-yards rolls of nonlatex adhesive tape [ rolls ].

\* \* \* \* \*

(4) [ Twelve ] Eight 2-inch bandage compresses.

(5) [ Twelve ] Ten 3-inch bandage compresses.

\* \* \* \* \*

[ (11) One pair latex gloves.

(12) One mouth barrier. ]

\* \* \* \* \*

(d) Surgical gloves and mouth barriers. Either the first aid kit or the body fluid cleanup kit shall contain:

(1) One pair of nonlatex surgical gloves.

(2) One mouth barrier.

§ 171.55. Identification.

\* \* \* \* \*

(b) Identification number. Every school bus shall display an identification number consisting of no more than 4 black numbers, letters or a combination of numbers and letters. The numbers or letters shall be a minimum 5 inches in height and shall be displayed in a prominent location on the front, rear and on both sides of the bus. On a school bus with a rounded front, the identification number displayed on the front of the bus may be displayed on the front bumper in yellow numbers, letters, or a combination of numbers and letters, in lieu of black numbers, letters, or a combination of numbers and letters on the front of the bus body.

(c) Additional markings. School buses shall have the name of the school district, private or parochial school, or school bus contractor clearly visible, lettered on each side of the school bus body[, below the window line] in the upper body belt band area as close as practical to the bottom ledge of the bottom window sash in letters of not less than 4 inches, and not more than [ 6 ] 8 inches in height. Lettering shall be in black or National School Bus Yellow, depending on the contrasting background color. See Appendix B. Other signs or lettering are not permitted, except the bus contractor may have his name or the name of the company in letters no larger than 3 inches in height, or the dealer identification insignia may be displayed in an area not to exceed 6 inches in height by 12 inches in width to the rear of the front entrance at the lowest possible point. Pennsylvania Public Utility Commission and Interstate Commerce Commission certification numbers, and any other required commercial vehicle markings may be displayed.

\* \* \* \* \*

§ 171.59. Lamps and signals.

\* \* \* \* \*

(b) Flashing signal lamps and stop signal arm devices. The requirements for flashing signal lamps and stop signal arm devices are as follows:

\* \* \* \* \*

(2) *Stop signal arm devices.* Stop signal arm devices on school buses shall comply with FMVSS No. 131—See Appendix A—and the following requirements:

\* \* \* \* \*

(x) The stop signal arm shall be automatically extended so that it complies with subparagraph (viii), at a minimum, whenever the red signal lamps required by FMVSS No. 108, S 5.1.4—See Appendix A—are activated; except that a device may be installed that prevents the automatic extension of a stop signal arm. The mechanism for activating the device shall be within the reach of the driver. While the device **preventing automatic extension** is activated, a continuous or intermittent signal audible to the driver shall sound. The audible signal may be equipped with a timing device **[ requiring ] but shall require** the signal to sound for at least 60 seconds. If a timing device is used, it shall automatically recycle each time the service entry door is opened while the engine is running and the manual override is engaged.

\* \* \* \* \*

§ 171.74a. Crossing control arm.

School buses shall be equipped with a crossing control arm.

(1) The crossing control arm shall meet or exceed SAE Standard J1133.

(2) The crossing control arm shall be mounted on the right side of the front bumper and may not open more than 90°.

(3) The crossing control arm shall extend approximately 72 inches from the front bumper when in the extended position.

(4) The crossing control arm shall extend simultaneously with the stop arm by means of the stop arm controls.

(5) The crossing control arm shall incorporate system connectors (electrical, vacuum or air) at the gate and shall be easily removable to allow for towing of the school bus.

(6) All components of the crossing control arm and all connections shall be waterproofed.

(7) If the crossing control arm is not constructed of noncorrosive or nonferrous material, it shall be zinc-coated or aluminum-coated or treated by equivalent process.

(8) There may not be sharp edges or projections on the crossing control arm that could cause hazard or injury to students.

Subchapter D. SPECIALLY EQUIPPED SCHOOL BUS STANDARDS

§ 171.104. Special service entrance doors.

The requirements for special service entrance doors are as follows:

(1) [ A single door may be used if the width of the door opening does not exceed 40 inches.

(2) Two doors shall be used if a single door opening exceeds 40 inches. ] Either a single door or double doors may be used for the special service entrance.

[ (3) ] (2) \* \* \*

[ (4) ] (3) \* \* \*

[ (5) ] (4) \* \* \*

[ (6) ] (5) \* \* \*

[ (7) ] (6) \* \* \*

[ (8) ] (7) \* \* \*

[ (9) ] (8) \* \* \*

[ (10) ] (9) \* \* \*

[ (11) ] (10) \* \* \*

[ (12) ] (11) \* \* \*

Subchapter E. SCHOOL VEHICLE STANDARDS

§ 171.123. First aid.

(a) *Required.* Every vehicle shall have a removable moisture and **[ dustproof ] dust proof** first aid kit mounted in an accessible place within the driver's compartment. The first aid kit shall be mounted as directed by the manufacturer. The first aid kit shall be labeled and securely placed or mounted in an easily accessible location.

(b) *Content.* The first aid kit shall contain, at a minimum, the following items:

(1) [ Two ] One 1 inch × 2-1/2 yards rolls of non-latex adhesive tape [ rolls ].

(2) [ Twenty-four ] One package sterile gauze pads, 3 inches × 3 inches.

(3) [ One hundred ] One package 3/4-inch × 3 inches adhesive bandages.

(4) [ Twelve ] One package 2 inch bandage compresses.

(5) [ Twelve ] One package 3 inch bandage compresses.

(6) [ Two ] One 2 inch × 6 yards sterile gauze roller [ bandages ] bandage.

(7) [ Two ] One nonsterile triangular bandage approximately 40 inches × 36 inches × 54 inches with [ 2 ] two safety pins.

(8) [ Three ] One package sterile gauze pads, 36 inches × 36 inches (U.S.P. 2423 count).

(9) [ Three ] One sterile eye [ pads ] pad.

\* \* \* \* \*

[ (11) One pair latex gloves.

(12) One mouth barrier. ]

\* \* \* \* \*

(d) *Surgical gloves and mouth barriers.* Either the first aid kit or the body fluid cleanup kit shall contain:

(1) One pair of nonlatex surgical gloves.

(2) One mouth barrier.

**Subchapter F. MASS TRANSIT PUPIL TRANSPORTATION BUS STANDARDS**

**§ 171.133. First aid.**

(a) *First aid kit.* Every mass transit pupil transportation bus shall have a removable moisture and **[dustproof] dust proof** first aid kit mounted in an accessible place within the driver's compartment. The first aid kit shall be mounted as directed by the manufacturer. The first aid kit shall be labeled and visible to the driver or its location shall be marked.

(b) *Content.* The first aid kit shall contain, at a minimum, the following items:

(1) Two 1 inch x 2-1/2 yards **rolls of nonlatex adhesive tape [rolls]**.

\* \* \* \* \*

(4) **[Twelve] Eight** 2 inch bandage compresses.

(5) **[Twelve] Ten** 3 inch bandage compresses.

\* \* \* \* \*

**[(11) One pair latex gloves.**

**(12) One mouth barrier.]**

\* \* \* \* \*

**(d) *Surgical gloves and mouth barriers.* Either the first aid kit or the body fluid cleanup kit shall contain:**

**(1) One pair of nonlatex surgical gloves.**

**(2) One mouth barrier.**

[Pa.B. Doc. No. 02-419. Filed for public inspection March 15, 2002, 9:00 a.m.]

**GAME COMMISSION**

**[58 PA.CODE CH. 139]**

**Seasons and Bag Limits**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its January 15, 2002, meeting, proposed the following amendments:

Amend § 139.4 (relating to seasons and bag limits for the license year) to provide dates for the 2002-2003 hunting license year.

This amendment will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the proposal is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

This proposal was made public at the January 15, 2002, meeting of the Commission, and comments on this proposal can be sent to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until March 29, 2002.

**1. Introduction**

The Commission is proposing amendments to § 139.4 to provide for seasons and bag limits for the 2002-2003 license year. These seasons and bag limits were proposed

under sections 322(c)(1) and 2102(b)(1) of the code (relating to powers and duties of commission; and regulations). Major changes for the 2002-2003 year include a new ringneck pheasant season for eligible junior hunters only; eligible junior hunters only will be able to take an antlerless deer with their general license tag in any antlerless deer season; an antler size restriction on antlered deer; and a separate additional bear season for the counties of Carbon, Monroe and Pike.

**2. Purpose and Authority**

The Commission is required to set hunting and furtaking seasons and bag limits on an annual basis. Section 322(c) of the code specifically empowers the Commission to "... fix seasons ... and daily season and possession limits for any species of game or wildlife." Section 2102(b) of the code mandates that the Commission promulgate regulations relating to seasons and bag limits.

Major changes that have been proposed for the 2002-2003 season are primarily intended to increase the hunting opportunities for eligible junior hunters, decrease the harvest of antlered deer while encouraging the harvest of antlerless deer and decrease the amount of damage caused by bears in the counties of Carbon, Monroe and Pike. Major changes are as follows:

1. A concurrent antlered and antlerless deer season will continue to encourage the harvesting of antlerless deer while a size limitation on the antlers of antlered deer that can be legally harvested should discourage the harvesting of antlered deer. There will be an early muzzleloader season which may allow the use of any muzzleloading long gun if follow-up amendments are adopted.

2. Junior hunters will be given increased opportunities by way of a separate ringneck pheasant hunting season and the ability to harvest an antlerless deer with their general hunting tag during any antlerless deer season.

3. There will be an additional separate 6 day bear season in Carbon, Monroe and Pike Counties to try to reduce the population and, as a result, the damage caused by bears.

4. A week has been added to the fall turkey season in Turkey Management Area #7-A.

**3. Regulatory Requirements**

These proposed seasons and bag limits would establish when and where it is lawful to hunt and trap various game species and place limits on the numbers that can be legally taken.

**4. Persons Affected**

Persons wishing to hunt and trap in this Commonwealth would be affected by these seasons and bag limits.

**5. Cost and Paperwork Requirements**

The proposed new seasons and bag limits would not result in any additional cost either to the Commission or to hunters and furtakers.

**6. Effective Dates**

The effective dates are July 1, 2002, to June 30, 2003.

7. *Contact Person*

For further information regarding these changes, contact David E. Overcash, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,  
*Executive Director*

**Fiscal Note:** 48-138. No fiscal impact; (8) recommends adoption.

*(Editor's Note:* The Commission is proposing to delete the current version of § 139.4 as it appears at *Pennsylvania Code* pages 139-3 to 139-11 (serial pages (280063) to (280071)) and replace it with the version that follows.)

## Annex A

## TITLE 58. RECREATION

## PART III. GAME COMMISSION

## CHAPTER 139. SEASONS AND BAG LIMITS

## § 139.4. Seasons and bag limits for the license year.

2002-2003 OPEN HUNTING AND FURTAKING SEASONS, DAILY LIMIT,  
FIELD POSSESSION LIMIT AND SEASON LIMIT

## OPEN SEASON INCLUDES FIRST AND LAST DATES LISTED

<i>Species</i>	<i>Limit</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Field Possession Limit After First Day</i>
Squirrels—(Combined species) Eligible Junior Hunters only, with or without the required license, when properly accompanied as required by law		Oct. 12	Oct. 14	6	12
Squirrels—(Combined species)		Oct. 19 and Dec. 16 and Dec. 26	Nov. 30 and Dec. 24 and Feb. 8, 2003	6	12
Ruffed Grouse—(Statewide)		Oct. 19 and Dec. 16 and Dec. 26	Nov. 30 and Dec. 24 and Jan. 11, 2003	2	4
Ruffed Grouse—There is no open season for taking ruffed grouse in that portion of State Game Lands No. 176 in Centre County which is posted "RESEARCH AREA—NO GROUSE HUNTING"					
Rabbits, Cottontail		Nov. 2 and Dec. 16 and Dec. 26	Nov. 30 and Dec. 24 and Feb. 8, 2003	4	8
Ringneck Pheasant—Eligible Junior Hunters only, with or without the required license, when properly accompanied as required by law		Oct. 12	Oct. 14	2	2
Ringneck Pheasant—Male only		Nov. 2	Nov. 30	2	4
Ringneck Pheasant—Male or female combined when hunting in designated hen shooting area		Nov. 2 and Dec. 16 and Dec. 26	Nov. 30 and Dec. 24 and Feb. 8, 2003	2	4

<i>Species</i>	<i>Limit</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Field Possession Limit After First Day</i>
Bobwhite Quail—The hunting and taking of bobwhite quail is permitted in all counties except Adams, Chester, Cumberland, Dauphin, Delaware, Franklin, Fulton, Juniata, Lancaster, Lebanon, Perry, Snyder and York where the season is closed.		Nov. 2	Nov. 30	4	8
Hares (Snowshoe Rabbits) or Varying Hares		Dec. 26	Jan. 1, 2003	1	2
Woodchucks (Groundhog)		No closed season except during the antlered and antlerless deer season and until 12 noon daily during the spring gobbler turkey season		Unlimited	

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Limit</i>
Turkey—Male or Female			1	1
Management Areas #1-A, 2, 3, 4, 5, 6, 7-A & 8	Nov. 2	Nov. 23		
Management Area #1-B	Nov. 2	Nov. 16		
Management Area #7-B	Nov. 4	Nov. 9		
Management Area #9-A	Closed to fall turkey hunting			
Management Area #9-B	Nov. 2	Nov. 9		
Turkey (Spring Gobbler) Statewide Bearded Bird only	April 26, 2003	May 24, 2003	1	1

**MIGRATORY GAME BIRDS**

Except as further restricted by this chapter, the seasons, bag limits, hunting hours and hunting regulations for migratory game birds shall conform to regulations adopted by the United States Secretary of the Interior under authority of the Migratory Bird Treaty Act (16 U.S.C.A. §§ 703—711) as published in the *Federal Register* on or about August 27 and September 28 of each year. Exceptions:

- (a) Hunting hours in § 141.4 (relating to hunting hours).
- (b) Nontoxic shot as approved by the Director of the United States Fish and Wildlife Service is required for use Statewide in hunting and taking of migratory waterfowl.
- (c) Subject to approval by the United States Fish and Wildlife Service, an early and late season for Canada geese will be held as defined in § 141.25.

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Field Possession Limit After First Day</i>
Crows (Hunting permitted on Friday, Saturday and Sunday only)	July 5 and Dec. 27	Dec. 1 April 6, 2003		Unlimited
Starlings and English Sparrows	No closed season except during the antlered and antlerless deer seasons and until 12 noon daily during the spring gobbler turkey season			Unlimited

**FALCONRY**

Squirrels—(Combined species)	Sept. 1	Mar. 31, 2003	6	12
Quail	Sept. 1	Mar. 31, 2003	4	8



<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Field Possession Limit After First Day</i>
Ruffed Grouse	Sept. 1	Mar. 31, 2003	2	4
Cottontail Rabbits	Sept. 1	Mar. 31, 2003	4	8
Snowshoe or Varying Hare	Sept. 1	Mar. 31, 2003	1	2
Ringneck Pheasant—Male and Female— (Combined)	Sept. 1	Mar. 31, 2003	2	4

Migratory Game Birds—Seasons and bag limits shall be in accordance with Federal regulations.

#### DEER

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Season Limit</i>	<i>Field Possession Limit</i>
Deer, Antlered—(Statewide) <sup>1</sup> (Archery—Bows and Arrows Only)	Oct. 5 and Dec. 26	Nov. 16 and Jan. 11, 2003	1	One antlered.
Species	First Day	Last Day	Season Limit	Field Possession Limit
Deer, Antlerless—(Statewide) (Archery—Bows and Arrows Only)	Oct. 5 and Dec. 26	Nov. 16 and Jan. 11, 2003		An antlerless deer <sup>4</sup> with each required and antlerless license.
Deer, Regular Antlered—(Statewide) <sup>1</sup>	Dec. 2	Dec. 14	1	One antlered.
Deer, Antlerless only—(Statewide) Only Junior and Senior License Holders, <sup>2</sup> Disabled Person Permit (to use a vehicle) Holders and Residents serving on active duty in the U.S. Armed Forces, or in the U.S. Coast Guard, with required antlerless license	Oct. 24	Oct. 26		An antlerless deer <sup>4</sup> with each required antlerless license
Deer, Regular Antlerless—(Statewide)	Dec. 2	Dec. 14		An antlerless deer <sup>4</sup> with each required antlerless license.
Deer, Antlerless only—(Statewide) (Any muzzleloading long gun) <sup>6</sup>	Oct. 19	Oct. 26		An antlerless deer with each required antlerless license.
Deer, Antlered or Antlerless—(Statewide) <sup>1</sup> (Flintlock Muzzleloading firearms only)	Dec. 26	Jan. 11, 2003		One antlered, or one antlerless—plus an additional antlerless deer with each required antlerless license.
Deer, Antlerless (Letterkenny Army Depot, Franklin County and New Cumberland Army Depot, York County and Fort Detrick, Raven Rock Site, Adams County)		Hunting is permitted on days established by the United States Department of the Army.		An antlerless deer <sup>4</sup> with each required antlerless license.

#### SPECIAL REGULATIONS AREAS SOUTHEASTERN PENNSYLVANIA AND ALLEGHENY COUNTY

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Season Limit</i>	<i>Field Possession Limit</i>
Deer, Antlered <sup>1</sup> (Archery—Bows and Arrows Only)	Oct. 5 and Dec. 26	Nov. 16 and Jan. 11, 2003	1	One antlered.
Deer, Antlerless (Archery—Bows and Arrows Only)	Oct. 5 and Dec. 26	Nov. 16 and Jan. 11, 2003		An antlerless deer <sup>4</sup> with each required antlerless license.

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Season Limit</i>	<i>Field Possession Limit</i>
Deer, Regular Antlered <sup>1</sup>	Dec. 2	Dec. 14	1	One antlered.
Deer, Regular Antlerless	Dec. 2 and Dec. 26	Dec. 14 Jan. 11, 2003	An antlerless deer <sup>4</sup> with each required antlerless license.	

**BEAR**

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Possession Limit</i>
Bear, any age—(Statewide) <sup>5</sup>	Nov. 25	Nov. 27	1	1
Bear, any age <sup>5</sup> (Carbon, Monroe and Pike Counties)	Dec. 2	Dec. 7	1	1

**ELK**

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Possession Limit</i>
Elk, Antlered	Nov. 18	Nov. 23	1	1
Elk, Antlerless Species	Nov. 18 First Day	Nov. 23 Last Day	1 Daily Limit	1 Season Possession Limit

**FUR TAKING—TRAPPING**

Minks and Muskrats—(Statewide)	Nov. 23	Jan. 11, 2003	Unlimited	
Beaver—(Statewide)	Dec. 26	Mar. 31, 2003		
Zones 1 & 2 (except McKean, Potter and Tioga Counties)			20	20
Zone 2 McKean, Potter and Tioga Counties			20	40
Zone 3			20	40
Zones 4 & 5			10	10
Zone 6			6	6
Coyotes, Foxes, Opossums, Raccoons, Skunks, Weasels—(Statewide)	Oct. 20	Feb. 22, 2003	Unlimited	
Bobcat (Zones 2 & 3) <sup>3</sup>	Oct. 20	Feb. 22, 2003	1	1

**FUR TAKING—HUNTING**

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Limit</i>
Coyotes—(Statewide)	No closed season. Coyotes may be taken from the first day to the last day inclusive of any deer or bear season only by persons lawfully engaged in hunting deer or bear and have a valid tag, or during the spring gobbler turkey season by persons who have a valid spring turkey tag and meet fluorescent orange and shot size requirements.		Unlimited	

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Limit</i>
Opossums, Skunks, Weasels—(Statewide)	No closed season. These species may not be hunted prior to 12 noon during the spring gobbler turkey season.			
Raccoons and Foxes—(Statewide)	Oct. 19	Feb. 22, 2003	Unlimited	
Bobcat (Zones 2 & 3) <sup>3</sup>	Oct. 19	Feb. 22, 2003	1	1

No open seasons on other wild birds or wild mammals.

<sup>1</sup> Only one antlered deer (buck) may be taken during the hunting license year.

<sup>2</sup> Includes persons who have reached or will reach their 65th birthday in the year of the application for the license and hold a valid adult license or qualify for license and fee exemptions under section 2706 of the act (relating to resident license and fee exemptions).

<sup>3</sup> Bobcat may only be taken by furtakers in possession of a Bobcat Hunting-Trapping Permit.

<sup>4</sup> Properly licensed junior hunters may use their general license tag as an antlerless tag Statewide.

<sup>5</sup> Only one bear may be taken during the hunting license year.

<sup>6</sup> Subject to the provisions of § 141.43 (relating to deer).

[Pa.B. Doc. No. 02-420. Filed for public inspection March 15, 2002, 9:00 a.m.]

## INSURANCE DEPARTMENT

[31 PA. CODE CH. 146b]

### Privacy of Consumer Health Information

The Insurance Department (Department) proposes to adopt Chapter 146b (relating to privacy of consumer health information) to read as set forth in Annex A. The proposed rulemaking is made under the general rulemaking authority of sections 205, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412) and under the guidance of section 648 of the Insurance Department Act of 1921 (40 P. S. § 288) (Act 40). Likewise, the proposed rulemaking is made under the Department's rulemaking authority under the Unfair Insurance Practices Act (act) (40 P. S. §§ 1171.1—1171.14) (the authority is further explained in *PALU v. Insurance Department*, 371 A.2d 564 (Pa. Cmwlth. 1977)), because the Insurance Commissioner has determined that the improper disclosure or marketing, or both, of nonpublic personal health information by members of the insurance industry constitutes an unfair method of competition and an unfair or deceptive act or practice.

#### *Purpose*

The purpose of this proposed rulemaking is to adopt Chapter 146b to implement the privacy requirements for nonpublic health information in the National Association of Insurance Commissioners Model Privacy of Consumer Financial and Health Information Regulation (NAIC Model). The privacy requirements for nonpublic financial information in the NAIC Model were promulgated in final-form at 31 Pa.B. 4426 (August 11, 2001) to comply with the requirements in Title V of the act of November 12, 1999 (Pub. L. No. 106-102, 113 Stat. 1338) known as the Gramm-Leach-Bliley Act (GLBA) (15 U.S.C.A. §§ 6801—6827).

#### *Background*

This proposed rulemaking is modeled from the health information privacy sections of the NAIC Model. For purposes of this proposed rulemaking, the Department will make available a copy of the NAIC Model to the Standing Committees of the Senate and the House and to

the Independent Regulatory Review Commission (IRRC). Otherwise, this material is copyrighted and is available from the NAIC upon request. For further information, see the NAIC website at <http://www.naic.org>. In general, the NAIC Model requires that insurance entities obtain the authorization of a consumer before disclosing nonpublic personal health information relating to that consumer. The Department has chosen to implement the NAIC Model to achieve a level of uniformity among the states because a majority of the states have committed to implementing the NAIC Model, including its health information privacy provisions.

For these reasons, the Department has attempted to implement the health information privacy provisions of the NAIC Model as closely as possible. However, because the Department is promulgating the health information privacy provisions in the NAIC Model separately from the financial privacy requirements and because the Department believed that additional consumer protections were necessary, this proposed rulemaking includes several variations from the NAIC Model. For example, in § 146b.2 (relating to definitions), the Department has modified the definition of "consumer" to include persons that meet the definition of either a "consumer" or a "customer" in the NAIC Model. The NAIC Model distinguishes between these two types of person because each is treated differently with respect to the privacy of their nonpublic personal financial information. However, because there is no distinction between a "consumer" and a "customer" in the NAIC Model's health privacy provisions, and because the Department is promulgating the NAIC Model's health privacy provisions separately from the financial privacy provisions, the distinction is no longer necessary.

The Department has also made two substantive additions to the NAIC Model's health privacy provisions to provide additional protection to consumers' nonpublic personal health information. For example, the Department has limited the disclosure of nonpublic personal health information for the purpose of carrying out one of the "insurance function exceptions" in § 146b.11(b) (relating to authorization required for disclosure of nonpublic personal health information) only "to the extent that the disclosure of nonpublic personal health information is

necessary for the performance” of the insurance function. This language is not found in the NAIC Model. Finally, the Department also included in § 146b.11(c) a requirement that licensees enter into an agreement with a third party to whom the licensee discloses nonpublic personal health information for the purpose of performing one of the insurance function exceptions to preserve the confidentiality of the information.

In addition, this proposed rulemaking is being promulgated to address several segments of the insurance industry that are not subject to the Federal Health Insurance Portability and Accountability Act (Pub. L. No. 104-191, 110 Stat. 1936) privacy regulation (Federal HIPAA privacy regulation) as promulgated by the United States Department of Health and Human Services (HHS) at 45 CFR Parts 160–164. Although certain licensees such as health insurers will be subject to the Federal HIPAA privacy regulation, other licensees such as life insurers and automobile insurance carriers will not be subject to those regulations. Therefore, this proposed rulemaking is needed to provide privacy protections to all insurance consumers of this Commonwealth. Also, this proposed rulemaking is not intended to constitute duplicative regulation of health information privacy for those licensees that are subject to the Federal HIPAA privacy regulation, as evidenced in the “self-preemption” provision in § 146b.21(a) (relating to relationship with other laws). This subsection provides an exemption from the purview of this proposed rulemaking for any licensee that otherwise is compliant with the entire Federal HIPAA privacy regulation.

#### *Preproposal Comments*

On August 28, 2001, the Department held an outreach meeting with various trade groups and members of this Commonwealth’s insurance industry that could be affected by this proposed rulemaking. The purpose of the meeting was to discuss an initial draft of the Department’s health information privacy regulation, which included the deviations from the NAIC Model. In conjunction with that meeting, the Department also permitted the meeting attendees to submit written comments relating to the Department’s initial draft of the health information privacy regulation. Written comments were submitted by the following entities and, where applicable, were considered during the design of this proposed rulemaking: the Insurance Federation of Pennsylvania, the Pennsylvania Association of Mutual Insurers, American Family Life Assurance Company of Columbus, Keystone Health Plan Central, Capital Blue Cross, Lucas & McClain, LLP, the Managed Care Association of Pennsylvania, the American Insurance Association, Independence Blue Cross, Highmark, Inc., Pennsylvania Association of Health Underwriters and Alliance of American Insurers. Also, a joint comment was submitted by the Independent Insurance Agents of Pennsylvania and the Pennsylvania Association of Insurance and Financial Advisors.

Copies of the written preproposal comments submitted by these groups are available upon request. The Department has taken these preproposal comments into consideration and, where applicable, the Department made several revisions to its initial draft of the proposed rulemaking based upon those comments for the purpose of this proposed rulemaking.

#### *Explanation of Regulatory Changes*

##### *Subchapter A. General provisions.*

Section 146b.1 (relating to purpose) contains the purpose and compliance requirements needed to govern the

treatment of nonpublic personal health information about individuals in this Commonwealth by all licensees of the Department.

Section 146b.2 contains the definitions of terms that are used in this chapter.

##### *Subchapter B. Rules for disclosure of nonpublic personal health information.*

Section 146b.11 contains the requirement that an authorization from the consumer is required before a licensee may disclose a consumer’s nonpublic personal health information.

Section 146b.12 (relating to authorizations) contains the general requirements for the contents of the authorizations that are required in § 146a.11.

Section 146b.13 (relating to authorization request delivery) describes the appropriate methods for delivery of a request for authorization by a licensee to a consumer

##### *Subchapter C. Additional provisions.*

Section 146b.21 describes the interaction of this proposed rulemaking with other laws of the Commonwealth and the Federal government.

Section 146b.22 (relating to nondiscrimination) provides that a licensee may not unfairly discriminate against a consumer because that consumer has not granted an authorization for the disclosure of nonpublic personal health information.

Section 146b.23 (relating to violation) provides that a contravention of this proposed rulemaking shall be deemed to be an unfair or deceptive act and practice in the conduct of the business of insurance and shall be deemed a violation of the act.

Section 146b.24 (relating to compliance dates) provides that this proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*, and the compliance dates mirror those in the Federal HIPAA privacy regulation.

##### *Fiscal Impact*

There will be a fiscal impact as a result of the proposed rulemaking. However, this proposed rulemaking merely fills in any gaps in the insurance industry that are not covered by the Federal HIPAA privacy regulation. Therefore, the adoption of this proposed rulemaking should not have a significant cost impact over what is currently being required by the Federal HIPAA privacy regulation.

##### *Paperwork*

Unless specifically executed under the definition of “licensee” in § 146b.2, the proposed rulemaking will affect all licensees doing the business of insurance in this Commonwealth by imposing additional paperwork requirements pertaining to the delivery and treating of opt out notices.

##### *Effectiveness/Sunset Date*

The proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*, and the compliance dates mirror those in the Federal HIPAA privacy regulation.

##### *Contact Person*

Questions or comments regarding this proposed rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, within 30 days following the publication of this notice in

the *Pennsylvania Bulletin*. Questions and comments may also be e-mailed to psalvatore@state.pa.us or faxed to (717) 772-1969.

#### Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 4, 2002, the Department submitted a copy of this proposed rulemaking to IRRC and the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee. In addition to submitting the proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria that have not been met by the portion of the proposed rulemaking to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of objections raised.

M. DIANE KOKEN,  
Insurance Commissioner

**Fiscal Note:** 11-209. No fiscal impact; (8) recommends adoption.

### Annex A

## TITLE 31. INSURANCE

### PART VIII. MISCELLANEOUS PROVISIONS

#### CHAPTER 146b. PRIVACY OF CONSUMER HEALTH INFORMATION

##### Subch.

- A. GENERAL PROVISIONS
- B. RULES FOR DISCLOSURE OF NONPUBLIC PERSONAL HEALTH INFORMATION
- C. ADDITIONAL PROVISIONS

#### Subchapter A. GENERAL PROVISIONS

##### Sec.

- 146b.1. Purpose.
- 146b.2. Definitions.

#### § 146b.1. Purpose.

- (a) *Purpose.* This chapter:
- (1) Governs the treatment of all nonpublic personal health information about individuals by various licensees of the Department.
  - (2) Describes the conditions under which a licensee may disclose nonpublic personal health information about consumers to a third party.
  - (3) Requires licensees to obtain the affirmative consent of consumers prior to disclosing nonpublic personal health information.
- (b) *Compliance.* A licensee domiciled in this Commonwealth that is in compliance with this chapter and Chapter 146a (relating to privacy of consumer financial information) in a state that has not enacted laws or regulations that meet the requirements of Title V of the act of November 12, 1999 (Pub. L. No. 106-102, 113 Stat. 1338) known as the Gramm-Leach-Bliley Act (Financial Services Modernization Act of 1999) (15 U.S.C.A.

§§ 6801—827) may nonetheless be deemed to be in compliance with Title V of the Gramm-Leach-Bliley Act in the other state.

(c) *Examples.* The examples provided in this chapter are for illustrative purposes only and do not otherwise limit or restrict the scope of this chapter.

#### § 146b.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context requires otherwise:

*Act*—The Insurance Department Act of 1921 (40 P.S. §§ 1—321).

*Commissioner*—The Insurance Commissioner of the Commonwealth.

*Company*—A corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship or similar organization.

*Consumer*—

(i) An individual, or that individual's legal representative, who seeks to obtain, obtains or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, and about whom the licensee has nonpublic personal health information. Examples include:

(A) An individual who provides nonpublic personal health information to a licensee in connection with obtaining or seeking to obtain financial, investment or economic advisory services relating to an insurance product or service, regardless of whether the licensee establishes an ongoing advisory relationship.

(B) An applicant for insurance prior to the inception of insurance coverage.

(C) A beneficiary of a life insurance policy underwritten by the licensee.

(D) A claimant under an insurance policy issued by the licensee.

(E) An insured under an insurance policy or an annuitant under an annuity issued by the licensee.

(F) A mortgagor of a mortgage covered under a mortgage insurance policy.

(G) A participant or a beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer or fiduciary.

(H) An individual covered under a group or blanket insurance policy or group annuity contract issued by the licensee.

(I) A claimant in a workers' compensation plan.

(ii) Examples of persons who are not consumers are as follows:

(A) An individual is not a consumer solely because the individual is a beneficiary of a trust for which the licensee is a trustee.

(B) An individual is not a consumer solely because the individual has designated the licensee as trustee for a trust.

(C) An individual who is a consumer of another financial institution is not a licensee's consumer solely because the licensee is acting as agent for, or provides processing or other services to, that financial institution.

*Department*—The Insurance Department of the Commonwealth.

*Federal regulation*—The Federal Health Insurance Portability and Accountability Act (HIPAA) privacy regulation as promulgated by the United States Department of Health and Human Services at 45 CFR Parts 160—164.

*Financial institution*—

(i) An institution the business of which is engaging in activities that are financial in nature or incidental to the financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C.A. § 1843(k)).

(ii) The term does not include the following:

(A) A person or entity with respect to a financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C.A. §§ 1—25).

(B) The Federal Agricultural Mortgage Corporation or an entity charged and operating under the Farm Credit Act of 1971 (12 U.S.C.A. §§ 2001—2279cc).

(C) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions related to a transaction of a consumer, as long as the institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

*Health care*—

(i) Preventative, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, services, procedures, tests or counseling that either:

(A) Relates to the physical, mental or behavioral condition of an individual.

(B) Affects the structure or function of the human body or a part of the human body, including the banking of blood, sperm, organs or other tissue.

(ii) Prescribing, dispensing or furnishing to an individual drugs or biologicals, or medical devices or health care equipment and supplies.

*Health care provider*—A physician or other health care practitioner licensed, accredited or certified to perform specified health services consistent with the laws of the Commonwealth, or a health care facility.

*Health information*—Information or data except age, gender or nonpublic personal financial information, whether oral or recorded in a form or medium, created by or derived from a health care provider or the consumer that relates to one or more of the following:

(i) The past, present or future physical, mental or behavioral health or condition of an individual.

(ii) The provision of health care to an individual.

(iii) Payment for the provision of health care to an individual.

*Insurance product or service*—A product or service that is offered by a licensee under the insurance laws of the Commonwealth. Insurance service includes a licensee's evaluation, brokerage or distribution of information that the licensee collects in connection with a request or an application from a consumer for an insurance product or service.

*Licensee*—

(i) A licensed insurer, as defined in section 201-A of the act (40 P. S. § 65.1-A), a producer and other persons or entities licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered under the act or The Insurance Company Law of 1921 (40 P. S. §§ 361—991.2361), including health maintenance organizations holding a certificate of authority under section 201 of the Health Care Facilities Act (35 P. S. § 448.201).

(ii) The term does not include:

(A) Bail bondsmen as defined in 42 Pa.C.S. § 5741 (relating to definitions).

(B) Motor vehicle physical damage appraisers as defined in section 2 of the Motor Vehicle Physical Damage Appraiser Act (63 P. S. § 852) and § 62.1 (relating to definitions).

(iii) Subject to subparagraph (iv), the term does not include governmental health insurance programs such as the following:

(A) The Children's Health Insurance Program as provided for in the Children's Health Care Act (40 P. S. §§ 991.2301—991.2361).

(B) The Medicaid program as provided for in sections 441.1—453 of the Public Welfare Code (62 P. S. §§ 441.1—453).

(C) The Medicare+Choice program as provided for in the Balanced Budget Act of 1997, sections 1851—1859, Medicare Part C under Title XVIII of the Social Security Act (42 U.S.C.A. §§ 1395w-21—1395w-29).

(D) The Adult Basic Care program as provided for in Act 77 of 2001 (June 26, 2001). See section 1303 of the Tobacco Settlement Act (35 P. S. § 5701.1303).

(iv) The term includes a licensee that enrolls, insures or otherwise provides an insurance related service to participants that procure health insurance through a governmental health insurance program exempted under subparagraph (iii).

(v) Subject to subparagraph (ii), the term "licensee" shall also include a nonadmitted insurer that accepts business placed through a surplus lines licensee (as defined in section 1602 of The Insurance Company Law of 1921 (40 P. S. § 991.1602) (relating to definition of surplus lines licensee)) in this Commonwealth, but only in regard to the surplus lines placements placed under Article XVI of The Insurance Company Law (40 P. S. §§ 991.1601—991.1625).

*Nonpublic personal financial information*—As defined in § 146a.2 (relating to definitions).

*Nonpublic personal health information*—

(i) The term means health information that either:

(A) Identifies an individual who is the subject of the information.

(B) There is a reasonable basis to believe could be used to identify an individual.

(ii) The term does not include nonpublic personal financial information.

*Producer*—An insurance agent or broker licensed or required to be licensed by the Department under the act.

**Subchapter B. RULES FOR DISCLOSURE OF  
NONPUBLIC PERSONAL HEALTH INFORMATION**

Sec.

146b.11. Authorization required for disclosure of nonpublic personal health information.

146b.12. Authorizations.

146b.13. Authorization request delivery.

**§ 146b.11. Authorization required for disclosure of nonpublic personal health information.**

(a) *Authorization required.* A licensee may not disclose nonpublic personal health information about a consumer unless an authorization is obtained from the consumer whose nonpublic personal health information is sought to be disclosed.

(b) *Insurance function exception.* Nothing in this section prohibits, restricts or requires an authorization for the disclosure of nonpublic personal health information by a licensee to the extent that the disclosure of nonpublic personal health information is necessary for the performance of one or more of the following insurance functions by or on behalf of the licensee:

(1) Claims administration, including coordination of benefits and subrogation.

(2) Claims adjustment and management.

(3) Detection, prevention, investigation or reporting of actual or potential fraud, misrepresentation or criminal activity.

(4) Underwriting.

(5) Policy placement or issuance.

(6) Loss control.

(7) Ratemaking and guaranty fund functions.

(8) Reinsurance and excess loss insurance.

(9) Risk management.

(10) Case management.

(11) Disease management.

(12) Quality assurance.

(13) Quality improvement.

(14) Performance evaluation.

(15) Provider credentialing verification.

(16) Utilization review.

(17) Peer review activities.

(18) Actuarial, scientific, medical or public policy research.

(19) Grievance and complaint procedures.

(20) Internal administration of compliance, managerial and information systems.

(21) Policyholder service functions.

(22) Auditing.

(23) Reporting.

(24) Database security.

(25) Administration of consumer disputes and inquiries.

(26) External accreditation standards.

(27) The replacement of a group benefit plan or workers compensation policy or program.

(28) Activities in connection with a sale, merger, transfer or exchange of all or part of a business or operating unit.

(29) An activity that permits disclosure without authorization under the Federal regulation.

(30) Disclosure that is required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out a transaction or providing a product or service that a consumer requests or authorizes.

(31) An activity otherwise permitted by law, required under governmental regulatory or reporting authority, or to comply with a court ordered warrant, a subpoena or summons issued by a judicial officer, administrative judge, referee, hearing officer or a grand jury subpoena.

(32) Compliance with qualified medical child support Orders.

(33) Preventive service reminders that do not require disclosure of nonpublic personal health information that a consumer has not previously disclosed directly to the recipient of the information.

(c) *Insurance functions performed by third parties on behalf of the licensee.* A licensee may disclose nonpublic personal health information to a third party not licensed by the Department provided that the licensee enters into an agreement with the third party that prohibits the third party from disclosing or using the nonpublic personal health information for a purpose other than to carry out one or more of the insurance functions identified in subsection (b).

(d) *Additional insurance functions.* Additional insurance functions may be added with the approval of the Commissioner to the extent they are necessary for appropriate performance of insurance functions and are fair and reasonable to the interest of consumers. The addition of insurance functions may be done by publication of a notice identifying the additional insurance functions in the *Pennsylvania Bulletin*.

**§ 146b.12. Authorizations.**

(a) *Valid authorization contents.* A valid authorization to disclose nonpublic personal health information under § 146b.11(a) (relating to authorization required for disclosure of the nonpublic personal health information) shall be in written or electronic form and shall contain all of the following:

(1) The identity of the consumer who is the subject of the nonpublic personal health information.

(2) A general description of the types of nonpublic personal health information to be disclosed.

(3) General descriptions of the parties to whom the licensee discloses nonpublic personal health information, the purpose of the disclosure and how the information will be used.

(4) The signature of the consumer who is the subject of the nonpublic personal health information or the individual who is legally empowered to grant authority and the date signed.

(5) Notice of the length of time for which the authorization is valid and that the consumer may revoke the authorization at any time and the procedure for making a revocation.

(b) *Duration of authorization.* An authorization for the purposes of § 146b.11(a) shall specify a length of time for which the authorization shall remain valid, which may not be for more than 24 months.

(c) *Revocation of authorization.* A consumer who is the subject of nonpublic personal health information may

revoke an authorization provided under this subchapter at any time, subject to the rights of an individual or licensee who acted in reliance on the authorization prior to notice of the revocation.

(d) *Record of authorization.* A licensee shall retain the authorization and a revocation of the authorization, or copies thereof, for 6 years in the record of the individual who is the subject of nonpublic personal health information.

**§ 146b.13. Authorization request delivery.**

A request for authorization and an authorization form may be delivered to a consumer as part of a privacy notice delivered under Chapter 146a (relating to privacy of consumer financial information), provided that the request and the authorization form are clear and conspicuous. An authorization form is not required to be delivered to the consumer or included in other notices unless the licensee intends to disclose nonpublic personal health information under § 146b.11(a) (relating to authorization required for disclosure of nonpublic personal health information).

**Subchapter C. ADDITIONAL PROVISIONS**

- Sec.
- 146b.21. Relationship with other laws.
- 146b.22. Nondiscrimination.
- 146b.23. Violation.
- 146b.24. Compliance dates.

**§ 146b.21. Relationship with other laws.**

(a) *Relationship with the Federal regulation.* Irrespective of whether a licensee is subject to the Federal regulation, if a licensee complies with the requirements of the Federal regulation, the licensee will not be subject to this chapter.

(b) *Relationship with other state law or regulation.* Nothing in this chapter preempts or supersedes existing laws or regulations of the Commonwealth that relate to medical records, health or insurance information privacy.

(c) *Relationship with the Fair Credit Reporting Act.* This chapter will not be construed to modify, limit or supersede the operation of the Federal Fair Credit Reporting Act (15 U.S.C.A. §§ 1681—1681u), and no inference may be drawn on the basis of the provisions of this chapter regarding whether information is transaction or experience information under section 603 of that act (15 U.S.C.A. § 1681a).

(d) *Relationship with section 648 of the act (40 P. S. § 288) (relating to customer privacy).* This chapter will not be construed to modify, limit or supersede the operation of section 648 of the act (40 P. S. § 288) (relating to customer privacy).

**§ 146b.22. Nondiscrimination.**

A licensee may not unfairly discriminate against a consumer because that consumer has not granted authorization for the disclosure of nonpublic personal health information under this chapter.

**§ 146b.23. Violation.**

Violations of this chapter are deemed and defined by the Commissioner to be an unfair method of competition and an unfair or deceptive act or practice and shall be subject to applicable penalties or remedies contained in the Unfair Insurance Practices Act (40 P. S. §§ 1171.1—1171.15).

**§ 146b.24. Compliance dates.**

(a) Licensees with \$5 million or more in annual receipts shall comply with the applicable requirements of this chapter by April 14, 2003.

(b) Licensees with \$5 million or less in annual receipts shall comply with the applicable requirements of this chapter by April 14, 2004.

[Pa.B. Doc. No. 02-421. Filed for public inspection March 15, 2002, 9:00 a.m.]