

California Department of Insurance

Eight-Hour Mandatory Long-Term Care Course

Attachment III

Applicable Laws & Penalties

LONG-TERM CARE		
INSURANCE CODE	APPLICABLE LAW	PENALTY
<p><u>Long-Term Care Insurance</u></p> <p>Sections 10230-10237.6</p>	<p>§10233.3; §10234.85; §10234.86; §10234.87; §10234.97 Various requirements for the replacement of LTC policies.</p> <p>§10234.95 All sales of LTC insurance shall meet the “suitability” standards.</p>	<p><i>All violations of Chapter 2.6 subject to the following penalties in addition to court penalties, attorney’s fees and costs per §10234.2.:</i></p> <ul style="list-style-type: none"> • §10234.3(a): Penalty of not less than \$250 for each 1st violation; not less than \$1,000 and not more than \$25,000 for each subsequent or knowing violation; for inappropriate replacement of LTC coverage, penalty not more than \$5,000 for each violation. • §10234.4(a): Suspend or revoke license. • §10234.4(c): Ordered to cease marketing LTC insurance in California.

GENERAL PROVISIONS		
<p><u>Misrepresentation of Policies</u></p> <p>Section 780</p> <p><u>Twisting</u></p> <p>Section 781</p> <p><u>Unfair Practices</u></p> <p>Sections 790-790.15</p>	<p>§780 Prohibited statements re: terms, benefits, privileges or future dividends of policy.</p> <p>§781(a) Twisting: prohibited statement known to be a misrepresentation to induce person to take out a policy, refuse a policy and take out another, let lapse, forfeit of surrender policy.</p> <p>§781(b) Prohibited misleading statement or comparison of insurers or policies to induce person to let insurance lapse, forfeit, change or surrender policy.</p> <p>§790.01 Applies to insurers, agents, etc. and “all other persons engaged in the business of insurance”.</p> <p>§790.02 Prohibits use of unfair trade practices or unfair method of competition or deceptive act or practice in the business of insurance.</p> <p>§790.03 Lists in detail prohibited acts such as: misrepresentations about the terms of any policy issued or the benefits or advantages promised; prohibits making, disseminating, causing to be made or disseminated in any manner any known or reasonably should be known,</p>	<p>Section 782: Any person who violates section 780 or 781 is punishable by fine not to exceed \$25,000, or if victim loss exceeds \$10,000, the fine not to exceed 3 times the loss suffered by the victim, by imprisonment not to exceed 1 year or by both a fine and imprisonment. Restitution to victim pursuant to Section 1202.4 of the Penal Code shall be satisfied before any fine imposed by this section is collected.</p> <p>Section 783: Any insurance agent, broker or solicitor who knowingly violates section 780 or 781 may have their license suspended for up to three years after a hearing.</p> <p><i>All violations of Article 6.5 subject to penalties as follows:</i></p> <ul style="list-style-type: none"> • §790.035(a): Civil penalty of NTE \$5,000.00 for each act. If act or practice is willful, civil penalty NTE \$10,000.00 for each act. • §790.05: Cease and Desist Order; subsequent violations license may be suspended/revoked for up to one year. • §790.06: Prosecution of acts not defined in §790.03-Cease and Desist Order. • §790.07: Violation of Cease and Desist

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untrue, deceptive, misleading statement.
§790.037 Unfair practice selling health care products; cold lead advertising; appointments; Medicare products restrictions on sales discussions.

Order; penalty NTE \$5,000; if willful, penalty NTE \$55,000 plus penalty under §790.05.
 • **§790.08:** Provides that the penalties in this Article are in addition to any other powers of the Commissioner to enforce the laws.

OTHER RELEVANT INSURANCE CODE SECTIONS		
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Insurance Information & Privacy Protection Act

**Sections
791-791.28**

§791.03 Prohibits the use of “pretext interviews” to obtain information in connection with an insurance transaction (i.e. “free lunch” seminars).

All violations of Article 6.6 subject to penalties as follows:

- **§791.17:** Cease and desist order issued.
- **§791.19:** Violation of Cease & Desist order: Penalty of not more than \$10,000 for each violation; or not more than \$50,000 if frequent violations constitute general business practice.
Suspension & revocation of license for knowing violation.

Medicare Supplement Insurance

**Sections
10192.1-10192.24**

§10192.18 Application forms require certain questions to determine if applicant already has a policy or certificate; must be signed by applicant and agent.
§10192.21(b) Prohibits sale of a Medicare supplement policy or certificate if individual already has one.
§10192.23 States time periods for replacement of policies.

All violations of Article 6 subject to the following penalties:

- **§10192.165(a) & (c):** Court penalties including damages & restitution.
- **§10192.165(b)(1):** Penalty of no less than \$250 for first violation by agent, broker, other person/entity engaged in business of insurance.
- **§10192.165(b)(2):** Penalty of no less than \$1,000 and no more than \$25,000 for each second, subsequent or knowing violation.
- **§10192.165(d):** Order to cease marketing any Medicare supplement policy or certificate.
- **§10192.165(e):** Any person who knowingly or intentionally violates this Article is punishable by imprisonment in county jail NTE one year, or by imprisonment per Penal Code §1170 or a fine NTE \$10,000 or both.

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OTHER RELEVANT INSURANCE CODE SECTIONS

Welfare & Institutions Code §15610.27

"Elder" means any person residing in this state, 65 years of age or older.

Welfare & Institutions Code §15610.30

(a) "Financial abuse" of an elder or dependent adult occurs when a person or entity does any of the following:

- (1) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.
- (2) Assists in doing the above activities.
- (3) Does or assists in the above activities by undue influence, as defined in Section 1575 of the Civil Code.
- (b) A person or entity shall be deemed to have committed the above acts for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult.
- (c) For purposes of this section, a person or entity takes, secretes, appropriates, obtains, or retains real or personal property when an elder or dependent adult is deprived of any property right, including by means of an agreement, donative transfer, or testamentary bequest, regardless of whether the property is held directly or by a representative of an elder or dependent adult.
- (d) For purposes of this section, "representative" means a person or entity that is either of the following:
 - (1) A conservator, trustee, or other representative of the estate of an elder or dependent adult.
 - (2) An attorney-in-fact of an elder or dependent adult who acts within the authority of the power of attorney.

California Penal Code §182 – Conspiracy

(a) If two or more persons conspire:

- (1) To commit any crime.
- (2) Falsely and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime.
- (3) Falsely to move or maintain any suit, action, or proceeding.
- (4) To cheat and defraud any person of any property, by any means which are in themselves criminal, or to obtain money or property by false pretenses or by false promises with fraudulent intent not to perform those promises.
- (5) To commit any act injurious to the public health, to public morals, or to pervert or obstruct justice, or the due administration of the laws.
- (6) To commit any crime against the person of the President or Vice President of the United States, the Governor of any state or territory, any United States justice or judge, or the secretary of any of the executive departments of the United States.

California Penal Code §368(d) – Financial Elder Abuse

Any person who is not a caretaker who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information of an elder or a dependent adult, and who knows or reasonably should know that the victim is an elder or a dependent adult is punishable as follows:

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- (1) By a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding nine hundred fifty dollars (\$950).
- (2) By a fine not exceeding one thousand dollars (\$1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding nine hundred fifty dollars (\$950).

California Penal Code §459 - Burglary

Every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, as defined in Section 21 of the Harbors and Navigation Code, floating home, as defined in subdivision (d) of Section 18075.55 of the Health and Safety Code, railroad car, locked or sealed cargo container, whether or not mounted on a vehicle, trailer coach, as defined in Section 635 of the Vehicle Code, any house car, as defined in Section 362 of the Vehicle Code, inhabited camper, as defined in Section 243 of the Vehicle Code, vehicle as defined by the Vehicle Code, when the doors are locked, aircraft as defined by Section 21012 of the Public Utilities Code, or mine or any underground portion thereof, with intent to commit grand or petit larceny or any felony is guilty of burglary. As used in this chapter, "inhabited" means currently being used for dwelling purposes, whether occupied or not. A house, trailer, vessel designed for habitation, or portion of a building is currently being used for dwelling purposes if, at the time of the burglary, it was not occupied solely because a natural or other disaster caused the occupants to leave the premises.

California Penal Code §470 – Forgery

Every person who, with the intent to defraud, knowing that he or she has no authority to do so, signs the name of another person or of a fictitious person to any of the items listed in subdivision (d) is guilty of forgery.

California Penal Code §487 – Grand Theft

When the money, labor, or real or personal property taken is of a value exceeding nine hundred fifty dollars (\$950)

California Penal Code §502(c) – Computer Access Fraud

(c) any person who commits any of the following acts is guilty of a public offense:

- (1) Knowingly accesses and without permission alters, damages, deletes, destroys, or otherwise uses any data, computer, computer system, or computer network in order to either (A) devise or execute any scheme or artifice to defraud, deceive, or extort, or (B) wrongfully control or obtain money, property, or data.
- (2) Knowingly accesses and without permission takes, copies, or makes use of any data from a computer, computer system, or computer network, or takes or copies any supporting documentation, whether existing or residing internal or external to a computer, computer system, or computer network.

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- (3) Knowingly and without permission uses or causes to be used computer services.
- (4) Knowingly accesses and without permission adds, alters, damages, deletes, or destroys any data, computer software, or computer programs which reside or exist internal or external to a computer, computer system, or computer network.
- (5) Knowingly and without permission disrupts or causes the disruption of computer services or denies or causes the denial of computer services to an authorized user of a computer, computer system, or computer network.
- (6) Knowingly and without permission provides or assists in providing a means of accessing a computer, computer system, or computer network in violation of this section.
- (7) Knowingly and without permission accesses or causes to be accessed any computer, computer system, or computer network.
- (8) Knowingly introduces any computer contaminant into any computer, computer system, or computer network.
- (9) Knowingly and without permission uses the Internet domain name of another individual, corporation, or entity in connection with the sending of one or more electronic mail messages, and thereby damages or causes damage to a computer, computer system, or computer network.

California Penal Code §530 – Identity Theft

Every person who falsely personates another, in either his private or official capacity, and in such assumed character receives any money or property, knowing that it is intended to be delivered to the individual so personated, with intent to convert the same to his own use, or to that of another person, or to deprive the true owner thereof, is punishable in the same manner and to the same extent as for larceny of the money or property so received.

California Penal Code §532 – Theft by False Pretenses

Every person who knowingly and designedly, by any false or fraudulent representation or pretense, defrauds any other person of money, labor, or property, whether real or personal, or who causes or procures others to report falsely of his or her wealth or mercantile character, and by thus imposing upon any person obtains credit, and thereby fraudulently gets possession of money or property, or obtains the labor or service of another, is punishable in the same manner and to the same extent as for larceny of the money or property so obtained.