
A bill to amend 1956 PA 218, entitled "The insurance code of 1956," by amending sections 503, 515, 527, and 543 (MCL 500.503, 500.515, 500.527, and 500.543), as added by 2001 PA 24, and by adding sections 504, 506, and 510; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 503. As used in this chapter:

(a) "Affiliate" means any company that controls, is controlled by, or is under common control with another company.

(b) "Annual notice" means the privacy notice required in section 513.

(c) "Clear and conspicuous" means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

(d) "Collect" means to obtain information that the licensee
organizes or can retrieve by the name of an individual or by
identifying number, symbol, or other identifying particular
assigned to the individual, irrespective of the source of the
underlying information.

(e) "Company" means any corporation, limited liability
company, business trust, general or limited partnership,
association, sole proprietorship, or similar organization.

(B) (f) "Consumer" means an individual, or the 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. As used in
this chapter:

(i) "Consumer" includes, but is not limited to, all of the
following:

(A) An individual who provides nonpublic personal 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. An individual is a consumer under
this subparagraph regardless of whether the licensee establishes an
ongoing advisory relationship.

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

(C) An individual that a licensee discloses nonpublic,
personal financial information about to a nonaffiliated third
party, other than as permitted under sections 535, 537, and 539, if
the individual is any of the following:

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

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

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

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

(ii) So long as the licensee provides the initial, annual and revised notices under this chapter to the plan sponsor, group or blanket insurance policyholders, and group annuity contract holder and does not disclose to a nonaffiliated third party nonpublic personal financial information, other than as permitted under sections 535, 537, and 539, "consumer" does not include an individual solely because he or she meets 1 of the following:

(A) Is 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.

(B) Is covered under a group or blanket insurance policy or group annuity contract issued by the licensee.

(iii) "Consumer" does not include an individual solely because he or she meets 1 of the following:

(A) Is a beneficiary of a trust for which the licensee is a trustee.

(B) Has designated the licensee as trustee for a trust.

(g) "Consumer reporting agency" has the same meaning as in section 603(f) of the federal fair credit reporting act, title VI of the consumer credit act, Public Law 90-321, 15 U.S.C. 1681a.
(C) (b) "Customer" means a consumer who has a customer relationship with a licensee. However, customer does not include an individual solely because he or she meets 1 of the following:

(i) Is 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.

(ii) Is covered under a group or blanket insurance policy or group annuity contract issued by the licensee.

(iii) Is a beneficiary or claimant under a policy of insurance.

(i) "Customer relationship" means a continuing relationship between a consumer and a licensee under which the licensee provides 1 or more insurance products or services to the consumer that are to be used primarily for personal, family, or household purposes.

(j) "Initial notice" means the privacy notice required in section 507.

(k) "Insurance product or service" means any product or service that is offered by a licensee pursuant to the insurance laws of this state or pursuant to a federal insurance program. 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.

(D) (i) "Licensee" means a licensed insurer or producer, and other persons licensed or required to be licensed, authorized or required to be authorized, registered or required to be registered, or holding or required to hold a certificate of authority under
this act. Licensee includes, except as otherwise provided, a
nonprofit health care corporation operating pursuant to the
nonprofit health care corporation reform act, 1980 PA 350, MCL
550.1101 to 550.1704, and a nonprofit dental care corporation
operating pursuant to 1963 PA 125, MCL 550.351 to 550.373.
Licensee includes an unauthorized insurer who places business
through a licensed surplus line agent or broker in this state, but
only for the surplus line placements placed under chapter 19.
Licensee does not include any of the following:

(i) A nonprofit health care corporation for member personal
data and information otherwise protected under section 406 of the
nonprofit health care corporation reform act, 1980 PA 350, MCL
550.1406.

(ii) The Michigan life and health INSURANCE guaranty
association CREATED UNDER SECTION 7706 and the property and
casualty guaranty association CREATED UNDER CHAPTER 79.

(iii) The Michigan automobile insurance placement
facility CREATED UNDER CHAPTER 33 AND the Michigan worker's
compensation placement facility, and the assigned claims facility
created under section 3171, CREATED UNDER CHAPTER 23. However,
servicing carriers for these facilities are licensees.

(E) "Nonaffiliated third party" means any person except a
licensee's affiliate or a person employed jointly by a licensee and
any company that is not the licensee's affiliate. Nonaffiliated
third party includes the other company that jointly employs a
person with a licensee. Nonaffiliated third party also includes any
company that is an affiliate solely by virtue of the direct or
indirect ownership or control of the company by the licensee or its
affiliate in conducting merchant banking or investment banking
activities of the type described in section 4(k)(4)(H) of the bank
1843—12 USC 1843(K)(4)(H) or insurance company investment
activities of the type described in section 4(k)(4)(I) of the bank
1843—12 USC 1843(K)(4)(I).

(F) "Nonpublic personal financial information" means
personally identifiable financial information and any list,
description, or other grouping of consumers and publicly available
information pertaining to them that is derived using any personally
identifiable financial information that is not publicly available.
Nonpublic personal financial information does not include any of
the following:

(i) Health and medical information otherwise protected by
state or federal law.

(ii) Publicly available information.

(iii) Any list, description, or other grouping of consumers
and publicly available information pertaining to them that is
derived without using any personally identifiable financial
information that is not publicly available.

(G) "Opt out" means a direction by the consumer that the
licensee not disclose nonpublic personal financial information
about that consumer to a nonaffiliated third party, other than as
permitted by sections 535, 537, and 539.

(P) "Personally identifiable financial information" means
any of the following:

(i) Information a consumer provides to a licensee to obtain an insurance product or service from the licensee.

(ii) Information about a consumer resulting from any transaction involving an insurance product or service between a licensee and a consumer.

(iii) Information the licensee otherwise obtains about a consumer in connection with providing an insurance product or service to that consumer.

(H) "Producer" means a person required to be licensed under this act to sell, solicit, or negotiate insurance.

(I) "Publicly available information" means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from federal, state, or local government records by wide distribution by the media or by disclosures to the general public that are required to be made by federal, state, or local law. PUBLICLY AVAILABLE INFORMATION DOES NOT INCLUDE THE INFORMATION LISTED AS NONPUBLIC PERSONAL FINANCIAL INFORMATION. A licensee has a reasonable basis to believe that information is lawfully made available to the general public if both of the following apply:

(i) The licensee has taken steps to determine that the information is of the type that is available to the general public.

(ii) If an individual can direct that the information not be made available to the general public, that the licensee's consumer has not directed that the information not be made available to the general public.
Sec. 504. (1) A licensee shall use reasonable care to secure nonpublic personal financial information from unauthorized access. Except as is necessary or when required by law, a licensee shall not disclose nonpublic personal financial information to a person without the prior and specific informed consent of the consumer to whom the nonpublic personal financial information pertains. The consumer's consent must be in writing. Except when a disclosure is made to the director, a court, or another governmental entity, a licensee shall make a disclosure for which prior and specific informed consent is not required on the condition that the person to whom the disclosure is made protect and use the disclosed information only in the manner authorized by the licensee, under section 506. If a consumer has authorized the release of nonpublic personal financial information to a specific person, a licensee shall make a disclosure to that person on the condition that the person will not release the data to a third person unless the consumer executes in writing another prior and specific informed consent authorizing the additional release.

(2) This section does not preclude the release of information to an individual, pertaining to that individual, by telephone, if the identity of the individual is verified.

Sec. 506. A licensee shall establish and make public the policy of the licensee regarding the protection of privacy and the confidentiality of nonpublic personal financial information. The policy, at a minimum, must do all of the following:
(A) PROVIDE FOR THE LICENSEE'S IMPLEMENTATION OF PROVISIONS IN THIS CHAPTER AND OTHER APPLICABLE LAWS AND GUIDELINES RESPECTING COLLECTION, SECURITY, USE, AND RELEASE OF, AND ACCESS TO, NONPUBLIC PERSONAL FINANCIAL INFORMATION.

(B) IDENTIFY THE ROUTINE USES OF NONPUBLIC PERSONAL FINANCIAL INFORMATION BY THE LICENSEE; PRESCRIBE THE MEANS BY WHICH CONSUMERS WILL BE NOTIFIED REGARDING THOSE USES; AND PROVIDE FOR NOTIFICATION REGARDING THE ACTUAL RELEASE OF NONPUBLIC PERSONAL FINANCIAL INFORMATION THAT MAY BE IDENTIFIED WITH, OR THAT MAY CONCERN, A CONSUMER, ON SPECIFIC REQUEST BY THE CONSUMER. AS USED IN THIS SUBDIVISION, "ROUTINE USE" MEANS THE ORDINARY USE OR RELEASE OF NONPUBLIC PERSONAL FINANCIAL INFORMATION COMPATIBLE WITH THE PURPOSE FOR WHICH THE INFORMATION WAS COLLECTED.

(C) ASSURE THAT NO PERSON WILL HAVE ACCESS TO NONPUBLIC PERSONAL FINANCIAL INFORMATION EXCEPT AS REQUIRED BY LAW.

(D) ESTABLISH THE CONTRACTUAL OR OTHER CONDITIONS UNDER WHICH NONPUBLIC PERSONAL FINANCIAL INFORMATION WILL BE RELEASED.

(E) PROVIDE THAT ENROLLMENT APPLICATIONS AND CLAIM FORMS DEVELOPED BY THE LICENSEE MUST Contain A CONSUMER'S CONSENT TO THE RELEASE OF DATA AND INFORMATION THAT IS LIMITED TO THE DATA AND INFORMATION NECESSARY FOR THE PROPER REVIEW AND PAYMENT OF CLAIMS, AND REASONABLY NOTIFY CONSUMERS OF THEIR RIGHTS UNDER THE POLICY AND APPLICABLE LAW.

SEC. 510. THIS CHAPTER DOES NOT LIMIT ACCESS TO RECORDS OR ENLARGE OR DIMINISH THE INVESTIGATIVE AND EXAMINATION POWERS OF GOVERNMENTAL AGENCIES, AS PROVIDED FOR BY LAW.

Sec. 515. (1) The initial, annual, and revised notices shall...
NOTICE REQUIRED UNDER SECTION 513 MUST include each of the following items of information, in addition to any other information the licensee wishes to provide, that apply to the licensee and to the consumers to whom the licensee sends its privacy notice:

(a) The categories of nonpublic personal financial information that the licensee collects.

(b) The categories of nonpublic personal financial information that the licensee discloses.

(c) The categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information, other than those parties to whom the licensee discloses information under sections 537 and 539.

(d) The categories of nonpublic personal financial information about the licensee's former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information about the licensee's former customers, other than those parties to whom the licensee discloses information under sections 537 and 539.

___ (e) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under section 535 and no other exception in section 537 or 539 applies to that disclosure, a separate description of the categories of information the licensee discloses and the categories of third parties with whom the licensee has contracted.

___ (f) An explanation of the consumer's right under section 529
to opt out of the disclosure of nonpublic personal financial
information to nonaffiliated third parties, including the method by
which the consumer may exercise that right at that time.

(E) (g) Any disclosures that the licensee makes under section
603(d)(2)(A)(iii) of the fair credit reporting act, title VI of the
1681a.

(F) (h) The licensee's policies and practices with respect to
protecting the confidentiality and security of nonpublic personal
financial information.

(i) Any disclosure that the licensee makes under subsection

(2) If a licensee discloses nonpublic personal financial
information as authorized under sections 537 and 539, the licensee
is not required to list those exceptions in the initial or annual
notices. When describing the categories of parties to whom
disclosure is made, the licensee is required to state only that it
makes disclosures to other affiliated or nonaffiliated third
parties, as applicable, as permitted by law.

(2) (3) Instead of providing the information required under
subsection (1) and if a licensee does not disclose and does not
want to reserve the right to disclose nonpublic personal financial
information about customers or former customers to affiliates or
nonaffiliated third parties, except as authorized under sections
537 and 539, the licensee may state that fact as part of a
simplified notice so long as IF the licensee provides the
information required under subsections SUBSECTION (1)(a), (h), and
(i) and (2) AND (F).

(4) The licensee's initial notice may include categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future but does not currently disclose, and categories of affiliates or nonaffiliated third parties to whom the licensee reserves the right in the future to disclose but to whom the licensee does not currently disclose, nonpublic personal financial information.

Sec. 527. (1) A licensee shall provide any notice required under this chapter so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically. A licensee may reasonably expect that a consumer will receive actual notice if the licensee does any of the following:

(a) Hand delivers a printed copy of the notice to the consumer.

(b) Mails a printed copy of the notice to the last known address of the consumer separately, or in a policy, billing, or other written communication.

(c) For a consumer who conducts transactions electronically, posts the notice on the electronic site and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service.

(d) For an isolated transaction with a consumer, such as the licensee providing an insurance quote or selling the consumer travel insurance, posts the notice and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining...
the particular insurance product or service.

(2) The following do not provide a reasonable expectation that a consumer will receive actual notice of a licensee's privacy policies and practices under subsection (1):

(a) The licensee only posts a sign in its office or generally publishes advertisements of its privacy policies and practices.

(b) The licensee sends the notice via electronic mail to a consumer who does not obtain an insurance product or service from the licensee electronically.

(3) A licensee may reasonably expect that a customer will receive actual notice of the licensee's annual notice in either of the following cases:

(a) The customer uses the licensee's website to access insurance products and services electronically and agrees to receive notices at the website and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the website.

(b) The customer has requested that the licensee refrain from sending any information regarding the customer relationship, and the licensee's current privacy notice remains available to the customer upon request.

(4) A licensee shall not provide any notice required by this chapter solely by orally explaining the notice, either in person or over the telephone.

(5) For customers only, a licensee shall provide the initial and revised notices in a manner so that the customer can retain them.
them IT later in writing or, if the customer agrees, electronically. A licensee provides an initial, annual, or revised notice to the customer so that the customer can retain it or obtain it later if the licensee does any of the following:

(a) Hand delivers a printed copy of the notice to the customer.

(b) Mails a printed copy of the notice to the last known address of the customer.

(c) Makes the current initial, annual, or revised notice available on a website or a link to another website for the customer who obtains an insurance product or service electronically and agrees to receive the notice at the website.

(6) A licensee may provide a joint notice from the licensee and 1 or more of its affiliates or other financial institutions, as identified in the notice, if the notice is accurate with respect to the licensee and the other institutions. A licensee may also provide a notice on behalf of another financial institution, as identified in the notice, if the notice is accurate with respect to the licensee and the other institution.

(7) If 2 or more consumers jointly obtain an insurance product or service from a licensee, the licensee may satisfy the initial, annual, and revised notice requirements UNDER THIS CHAPTER by providing 1 notice to those consumers jointly.

Sec. 543. A licensee shall not unfairly discriminate against any consumer because that consumer has opted out or intends to opt out from the disclosure of his or her nonpublic personal financial

Enacting section 2. This amendatory act does not take effect unless Senate Bill No. ___ or House Bill No. ___ (request no. 01844'17 a) of the 99th Legislature is enacted into law.