

SENATE BILL No. 1025

December 10, 2009, Introduced by Senators JACOBS, BRATER, ANDERSON, HUNTER, CLARKE, SCOTT, CLARK-COLEMAN, THOMAS, PRUSI, CHERRY, OLSHOVE and SWITALSKI and referred to the Committee on Economic Development and Regulatory Reform.

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 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~~

1 the individual is any of the following:

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

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

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

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

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

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

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

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

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

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

27 ~~— (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) ~~(h)~~—"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) ~~(l)~~—"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,

1 or holding or required to hold a certificate of authority under
2 this act. Licensee includes, except as otherwise provided, a
3 nonprofit health care corporation operating pursuant to the
4 nonprofit health care corporation reform act, 1980 PA 350, MCL
5 550.1101 to 550.1704, and a nonprofit dental care corporation
6 operating pursuant to 1963 PA 125, MCL 550.351 to 550.373. Licensee
7 includes an unauthorized insurer who places business through a
8 licensed surplus line agent or broker in this state, but only for
9 the surplus line placements placed under chapter 19. Licensee does
10 not include any of the following:

11 (i) A nonprofit health care corporation for member personal
12 data and information otherwise protected under section 406 of the
13 nonprofit health care corporation reform act, 1980 PA 350, MCL
14 550.1406.

15 (ii) The Michigan life and health guaranty association and the
16 property and casualty guaranty association.

17 (iii) The Michigan automobile insurance placement facility, the
18 Michigan worker's compensation placement facility, and the assigned
19 claims facility created under section 3171. However, servicing
20 carriers for these facilities are licensees.

21 (E) ~~(m)~~—"Nonaffiliated third party" means any person except a
22 licensee's affiliate or a person employed jointly by a licensee and
23 any company that is not the licensee's affiliate. Nonaffiliated
24 third party includes the other company that jointly employs a
25 person with a licensee. Nonaffiliated third party also includes any
26 company that is an affiliate solely by virtue of the direct or
27 indirect ownership or control of the company by the licensee or its

1 affiliate in conducting merchant banking or investment banking
 2 activities of the type described in ~~section 4(k)(4)(H) of the bank~~
 3 ~~holding company act of 1956, chapter 240, 70 Stat. 135, 12 U.S.C.~~
 4 ~~1843-12 USC 1843(K)(4)(H)~~, or insurance company investment
 5 activities of the type described in ~~section 4(k)(4)(I) of the bank~~
 6 ~~holding company act of 1956, chapter 240, 70 Stat. 135, 12 U.S.C.~~
 7 ~~1843-12 USC 1843(K)(4)(I)~~.

8 (F) ~~(n)~~ "Nonpublic personal financial information" means **AGE,**
 9 **SEX, RACE, OCCUPATION, LEVEL OF EDUCATION, ADDRESS, TYPE OF CAR**
 10 **DRIVEN, AVERAGE NUMBER OF MILES DRIVEN ANNUALLY, AND** personally
 11 identifiable financial information and any list, description, or
 12 other grouping of consumers and publicly available information
 13 pertaining to them that is derived using any personally
 14 identifiable financial information that is not publicly available.
 15 Nonpublic personal financial information does not include any of
 16 the following:

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

19 (ii) Publicly available information.

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

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

1 (G) ~~(p)~~—"Personally identifiable financial information" means
2 any of the following:

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

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

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

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

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

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

25 (ii) If an individual can direct that the information not be
26 made available to the general public, that the licensee's consumer
27 has not directed that the information not be made available to the

1 general public.

2 ~~—— (s) "Revised notice" means the privacy notice required in~~
3 ~~section 525.~~

4 SEC. 504. (1) A LICENSEE SHALL USE REASONABLE CARE TO SECURE
5 NONPUBLIC PERSONAL FINANCIAL INFORMATION FROM UNAUTHORIZED ACCESS.
6 EXCEPT AS IS NECESSARY OR WHEN REQUIRED BY LAW, A LICENSEE SHALL
7 NOT DISCLOSE NONPUBLIC PERSONAL FINANCIAL INFORMATION TO A PERSON
8 WITHOUT THE PRIOR AND SPECIFIC INFORMED CONSENT OF THE CONSUMER TO
9 WHOM THE NONPUBLIC PERSONAL FINANCIAL INFORMATION PERTAINS. THE
10 CONSUMER'S CONSENT SHALL BE IN WRITING. EXCEPT WHEN A DISCLOSURE IS
11 MADE TO THE COMMISSIONER OR ANOTHER GOVERNMENTAL AGENCY, A COURT,
12 OR ANY OTHER GOVERNMENTAL ENTITY, A LICENSEE SHALL MAKE A
13 DISCLOSURE FOR WHICH PRIOR AND SPECIFIC INFORMED CONSENT IS NOT
14 REQUIRED UPON THE CONDITION THAT THE PERSON TO WHOM THE DISCLOSURE
15 IS MADE PROTECT AND USE THE DISCLOSED INFORMATION ONLY IN THE
16 MANNER AUTHORIZED BY THE LICENSEE, PURSUANT TO SECTION 506. IF A
17 CONSUMER HAS AUTHORIZED THE RELEASE OF NONPUBLIC PERSONAL FINANCIAL
18 INFORMATION TO A SPECIFIC PERSON, A LICENSEE SHALL MAKE A
19 DISCLOSURE TO THAT PERSON UPON THE CONDITION THAT THE PERSON SHALL
20 NOT RELEASE THE DATA TO A THIRD PERSON UNLESS THE CONSUMER EXECUTES
21 IN WRITING ANOTHER PRIOR AND SPECIFIC INFORMED CONSENT AUTHORIZING
22 THE ADDITIONAL RELEASE.

23 (2) THIS SECTION DOES NOT PRECLUDE THE RELEASE OF INFORMATION
24 TO AN INDIVIDUAL, PERTAINING TO THAT INDIVIDUAL, BY TELEPHONE, IF
25 THE IDENTITY OF THE INDIVIDUAL IS VERIFIED.

26 SEC. 506. THE LICENSEE SHALL ESTABLISH AND MAKE PUBLIC THE
27 POLICY OF THE LICENSEE REGARDING THE PROTECTION OF PRIVACY AND THE

1 CONFIDENTIALITY OF NONPUBLIC PERSONAL FINANCIAL INFORMATION. THE
2 POLICY, AT A MINIMUM, SHALL DO ALL OF THE FOLLOWING:

3 (A) PROVIDE FOR THE LICENSEE'S IMPLEMENTATION OF PROVISIONS IN
4 THIS CHAPTER AND OTHER APPLICABLE LAWS AND GUIDELINES RESPECTING
5 COLLECTION, SECURITY, USE, RELEASE OF, AND ACCESS TO NONPUBLIC
6 PERSONAL FINANCIAL INFORMATION.

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

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

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

20 (E) PROVIDE THAT ENROLLMENT APPLICATIONS AND CLAIM FORMS
21 DEVELOPED BY THE LICENSEE SHALL CONTAIN A CONSUMER'S CONSENT TO THE
22 RELEASE OF DATA AND INFORMATION THAT IS LIMITED TO THE DATA AND
23 INFORMATION NECESSARY FOR THE PROPER REVIEW AND PAYMENT OF CLAIMS,
24 AND SHALL REASONABLY NOTIFY CONSUMERS OF THEIR RIGHTS PURSUANT TO
25 THE LICENSEE'S POLICY AND APPLICABLE LAW.

26 SEC. 510. THIS CHAPTER DOES NOT LIMIT ACCESS TO RECORDS OR
27 ENLARGE OR DIMINISH THE INVESTIGATIVE AND EXAMINATION POWERS OF

1 **GOVERNMENTAL AGENCIES, AS PROVIDED FOR BY LAW.**

2 Sec. 515. (1) The ~~initial, annual, and revised notices~~ **NOTICE**
3 shall include each of the following items of information, in
4 addition to any other information the licensee wishes to provide,
5 that apply to the licensee and to the consumers to whom the
6 licensee sends its privacy notice:

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

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

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

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

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

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

5 (E) ~~(g)~~ Any disclosures that the licensee makes under section
6 603(d)(2)(A)(iii) of the fair credit reporting act, title VI of the
7 consumer credit protection act, Public Law 90-321, 15 U.S.C. ~~USC~~
8 1681a.

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

12 ~~—— (i) Any disclosure that the licensee makes under subsection~~
13 ~~(2).~~

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

21 (2) ~~(3)~~ Instead of providing the information required under
22 subsection (1) and if a licensee does not disclose and does not
23 want to reserve the right to disclose nonpublic personal financial
24 information about customers or former customers to affiliates or
25 nonaffiliated third parties, ~~except as authorized under sections~~
26 ~~537 and 539,~~ the licensee may state that fact as part of a
27 simplified notice so long as the licensee provides the information

1 required under ~~subsections~~ **SUBSECTION** (1) (a) , ~~(h)~~ , and ~~(i)~~ and (2)
2 **AND (F)** .

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

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

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

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

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

25 (d) For an isolated transaction with a consumer, such as the
26 licensee providing an insurance quote or selling the consumer
27 travel insurance, posts the notice and requires the consumer to

1 acknowledge receipt of the notice as a necessary step to obtaining
2 the particular insurance product or service.

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

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

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

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

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

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

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

26 (5) For customers only, a licensee shall provide the ~~initial~~
27 annual ~~and revised~~ notices so that the customer can retain them or

1 obtain them later in writing or, if the customer agrees,
2 electronically. A licensee provides an ~~initial, annual, or revised~~
3 notice to the customer so that the customer can retain it or obtain
4 it later if the licensee does any of the following:

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

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

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

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

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

24 Sec. 543. A licensee shall not unfairly discriminate against
25 any consumer because that consumer has ~~opted out or intends to opt~~
26 ~~out from~~ **NOT GIVEN PRIOR AND SPECIFIC INFORMED CONSENT TO** the
27 disclosure of his or her nonpublic personal financial information

1 pursuant to the provisions of this chapter.

2 Enacting section 1. Sections 505, 507, 509, 511, 517, 519,
3 521, 523, 525, 529, 531, 533, 535, 537, 539, 540, and 545 of the
4 insurance code of 1956, 1956 PA 218, MCL 500.505, 500.507, 500.509,
5 500.511, 500.517, 500.519, 500.521, 500.523, 500.525, 500.529,
6 500.531, 500.533, 500.535, 500.537, 500.539, 500.540, and 500.545,
7 are repealed.