

SENATE BILL No. 1329

May 15, 2002, Introduced by Senators PETERS, BYRUM, DE BEAUSSAERT, YOUNG,
KOIVISTO, MILLER and SMITH and referred to the Committee on Financial Services.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending sections 503 and 543 (MCL 500.503 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:

1 Sec. 503. As used in this chapter:

2 ~~(a) "Affiliate" means any company that controls, is con-~~
3 ~~trolled by, or is under common control with another company.~~

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

6 ~~(c) "Clear and conspicuous" means that a notice is reason-~~
7 ~~ably understandable and designed to call attention to the nature~~
8 ~~and significance of the information in the notice.~~

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

6 ~~(e) "Company" means any corporation, limited liability com-~~
7 ~~pany, business trust, general or limited partnership, associa-~~
8 ~~tion, sole proprietorship, or similar organization.~~

9 ~~(f) "Consumer" means an individual, or the individual's~~
10 ~~legal representative, who seeks to obtain, obtains, or has~~
11 ~~obtained an insurance product or service from a licensee that is~~
12 ~~to be used primarily for personal, family, or household~~
13 ~~purposes. As used in this chapter:~~

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

16 ~~(A) An individual who provides nonpublic personal informa-~~
17 ~~tion to a licensee in connection with obtaining or seeking to~~
18 ~~obtain financial, investment, or economic advisory services~~
19 ~~relating to an insurance product or service. An individual is a~~
20 ~~consumer under this subparagraph regardless of whether the~~
21 ~~licensee establishes an ongoing advisory relationship.~~

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

24 ~~(C) An individual that a licensee discloses nonpublic, per-~~
25 ~~sonal financial information about to a nonaffiliated third party~~
26 ~~other than as permitted under sections 535, 537, and 539, if the~~
27 ~~individual is any of the following:~~

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

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

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

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

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

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

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

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

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

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

1 ~~(g) "Consumer reporting agency" has the same meaning as in~~
2 ~~section 603(f) of the federal fair credit reporting act, title VI~~
3 ~~of the consumer credit act, public law 90-321, 15 U.S.C. 1681a.~~

4 ~~(h) "Customer" means a consumer who has a customer relation-~~
5 ~~ship with a licensee. However, customer does not include an~~
6 ~~individual solely because he or she meets 1 of the following:~~

7 ~~(i) Is a participant or a beneficiary of an employee benefit~~
8 ~~plan that the licensee administers or sponsors or for which the~~
9 ~~licensee acts as a trustee, insurer, or fiduciary.~~

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

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

14 ~~(i) "Customer relationship" means a continuing relationship~~
15 ~~between a consumer and a licensee under which the licensee pro-~~
16 ~~vides 1 or more insurance products or services to the consumer~~
17 ~~that are to be used primarily for personal, family, or household~~
18 ~~purposes.~~

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

21 ~~(k) "Insurance product or service" means any product or~~
22 ~~service that is offered by a licensee pursuant to the insurance~~
23 ~~laws of this state or pursuant to a federal insurance program.~~
24 ~~Insurance service includes a licensee's evaluation, brokerage, or~~
25 ~~distribution of information that the licensee collects in connec-~~
26 ~~tion with a request or an application from a consumer for an~~
27 ~~insurance product or service.~~

1 (A) ~~(t)~~ "Licensee" means a licensed insurer or producer,
2 and other persons licensed or required to be licensed, authorized
3 or required to be authorized, registered or required to be regis-
4 tered, or holding or required to hold a certificate of authority
5 under this act. Licensee includes, except as otherwise provided,
6 a nonprofit health care corporation operating pursuant to the
7 nonprofit health care corporation reform act, 1980 PA 350,
8 MCL 550.1101 to 550.1704, and a nonprofit dental care corporation
9 operating pursuant to 1963 PA 125, MCL 550.351 to 550.373.

10 Licensee includes an unauthorized insurer who places business
11 through a licensed surplus line agent or broker in this state,
12 but only for the surplus line placements placed under chapter
13 19. Licensee does not include any of the following:

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

18 (ii) The Michigan life and health guaranty association and
19 the property and casualty guaranty association.

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

24 ~~(m) "Nonaffiliated third party" means any person except a
25 licensee's affiliate or a person employed jointly by a licensee
26 and any company that is not the licensee's affiliate.~~

27 ~~Nonaffiliated third party includes the other company that jointly~~

~~1 employs a person with a licensee. Nonaffiliated third party also
2 includes any company that is an affiliate solely by virtue of the
3 direct or indirect ownership or control of the company by the
4 licensee or its affiliate in conducting merchant banking or
5 investment banking activities of the type described in section
6 4(k)(4)(H) of the bank holding company act of 1956, chapter 240,
7 70 Stat. 135, 12 U.S.C. 1843, or insurance company investment
8 activities of the type described in section 4(k)(4)(I) of the
9 bank holding company act of 1956, chapter 240, 70 Stat. 135, 12
10 U.S.C. 1843.~~

11 (B) ~~(n)~~ "Nonpublic personal financial information" means
12 personally identifiable financial information and any list,
13 description, or other grouping of consumers and publicly avail-
14 able information pertaining to them that is derived using any
15 personally identifiable financial information that is not pub-
16 licly available. Nonpublic personal financial information does
17 not include any of the following:

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

20 (ii) Publicly available information.

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

25 ~~(o) "Opt out" means a direction by the consumer that the
26 licensee not disclose nonpublic personal financial information~~

1 ~~about that consumer to a nonaffiliated third party, other than as~~
2 ~~permitted by sections 535, 537, and 539.~~

3 (C) ~~(p)~~ "Personally identifiable financial information"
4 means any of the following:

5 (i) Information ~~a consumer~~ AN INDIVIDUAL provides to a
6 licensee to obtain an insurance product or service from the
7 licensee.

8 (ii) Information about ~~a consumer~~ AN INDIVIDUAL resulting
9 from any transaction involving an insurance product or service
10 between a licensee and ~~a consumer~~ AN INDIVIDUAL.

11 (iii) Information the licensee otherwise obtains about ~~a~~
12 ~~consumer~~ AN INDIVIDUAL in connection with providing an insurance
13 product or service to that ~~consumer~~ INDIVIDUAL.

14 (D) ~~(q)~~ "Producer" means a person required to be licensed
15 under this act to sell, solicit, or negotiate insurance.

16 (E) ~~(r)~~ "Publicly available information" means any infor-
17 mation that a licensee has a reasonable basis to believe is law-
18 fully made available to the general public from federal, state,
19 or local government records by wide distribution by the media or
20 by disclosures to the general public that are required to be made
21 by federal, state, or local law. A licensee has a reasonable
22 basis to believe that information is lawfully made available to
23 the general public if both of the following apply:

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

1 (ii) If an individual can direct that the information not be
2 made available to the general public, that the licensee's
3 consumer has not directed that the information not be made avail-
4 able to the general public.

5 ~~(s) "Revised notice" means the privacy notice required in~~
6 ~~section 525.~~

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

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

4 SEC. 506. THE LICENSEE SHALL ESTABLISH AND MAKE PUBLIC THE
5 POLICY OF THE LICENSEE REGARDING THE PROTECTION OF PRIVACY AND
6 THE CONFIDENTIALITY OF NONPUBLIC PERSONAL FINANCIAL INFORMATION.
7 THE POLICY, AT A MINIMUM, SHALL DO ALL OF THE FOLLOWING:

8 (A) PROVIDE FOR THE LICENSEE'S IMPLEMENTATION OF PROVISIONS
9 IN THIS CHAPTER AND OTHER APPLICABLE LAWS AND GUIDELINES RESPECT-
10 ING COLLECTION, SECURITY, USE, RELEASE OF, AND ACCESS TO NONPUB-
11 LIC PERSONAL FINANCIAL INFORMATION.

12 (B) IDENTIFY THE ROUTINE USES OF NONPUBLIC PERSONAL FINAN-
13 CIAL INFORMATION BY THE LICENSEE; PRESCRIBE THE MEANS BY WHICH
14 INDIVIDUALS WILL BE NOTIFIED REGARDING THOSE USES; AND PROVIDE
15 FOR NOTIFICATION REGARDING THE ACTUAL RELEASE OF NONPUBLIC PER-
16 SONAL FINANCIAL INFORMATION THAT MAY BE IDENTIFIED WITH, OR THAT
17 MAY CONCERN, AN INDIVIDUAL, UPON SPECIFIC REQUEST BY THAT
18 INDIVIDUAL. AS USED IN THIS SUBDIVISION, "ROUTINE USE" MEANS THE
19 ORDINARY USE OR RELEASE OF NONPUBLIC PERSONAL FINANCIAL INFORMA-
20 TION COMPATIBLE WITH THE PURPOSE FOR WHICH THE INFORMATION WAS
21 COLLECTED.

22 (C) ASSURE THAT NO PERSON SHALL HAVE ACCESS TO NONPUBLIC
23 PERSONAL FINANCIAL INFORMATION EXCEPT ON THE BASIS OF A NEED TO
24 KNOW.

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

1 (E) PROVIDE THAT ENROLLMENT APPLICATIONS AND CLAIM FORMS
2 DEVELOPED BY THE LICENSEE SHALL CONTAIN AN INDIVIDUAL'S CONSENT
3 TO THE RELEASE OF DATA AND INFORMATION THAT IS LIMITED TO THE
4 DATA AND INFORMATION NECESSARY FOR THE PROPER REVIEW AND PAYMENT
5 OF CLAIMS, AND SHALL REASONABLY NOTIFY INDIVIDUALS OF THEIR
6 RIGHTS PURSUANT TO THE LICENSEE'S POLICY AND APPLICABLE LAW.

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

10 Sec. 543. A licensee shall not unfairly discriminate
11 against any consumer because that consumer has ~~opted out or~~
12 ~~intends to opt out from~~ NOT GIVEN PRIOR AND SPECIFIC INFORMED
13 CONSENT TO the disclosure of his or her nonpublic personal finan-
14 cial information pursuant to the provisions of this chapter.

15 Enacting section 1. Sections 505, 507, 509, 511, 513, 515,
16 517, 519, 521, 523, 527, 529, 531, 533, 535, 537, 539, 540, and
17 545 of the insurance code of 1956, 1956 PA 218, MCL 500.505,
18 500.507, 500.509, 500.511, 500.513, 500.515, 500.517, 500.519,
19 500.521, 500.523, 500.527, 500.529, 500.531, 500.533, 500.535,
20 500.537, 500.539, 500.540, and 500.545, are repealed.