

HOUSE BILL No. 5274

November 28, 2017, Introduced by Reps. Gay-Dagnogo, Moss, Rabhi, Faris, Sowerby, Chang, Hoadley, Lasinski, Cochran, Greig, Chirkun, Zemke, Wittenberg and Pagan and referred to the Committee on Insurance.

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:

1 Sec. 503. As used in this chapter:

2 (a) "Affiliate" means any company that controls, is controlled
3 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 reasonably~~
7 ~~understandable and designed to call attention to the nature and~~
8 ~~significance of the information in the notice.~~

9 ~~— (d) "Collect" means to obtain information that the licensee~~

1 ~~organizes or can retrieve by the name of an individual or by~~
2 ~~identifying number, symbol, or other identifying particular~~
3 ~~assigned to the individual, irrespective of the source of the~~
4 ~~underlying information.~~

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

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

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

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

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

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

27 (I) A beneficiary of a life insurance policy underwritten by

1 the licensee.

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

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

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

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

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

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

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

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

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

25 ~~(g) "Consumer reporting agency" has the same meaning as in~~
26 ~~section 603(f) of the federal fair credit reporting act, title VI~~
27 ~~of the consumer credit act, Public Law 90-321, 15 U.S.C. 1681a.~~

1 (C) ~~(h)~~ "Customer" means a consumer who has a customer
2 relationship with a licensee. However, customer does not include an
3 individual solely because he or she meets 1 of the following:

4 (i) Is a participant or a beneficiary of an employee benefit
5 plan that the licensee administers or sponsors or for which the
6 licensee acts as a trustee, insurer, or fiduciary.

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

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

11 ~~—— (i) "Customer relationship" means a continuing relationship~~
12 ~~between a consumer and a licensee under which the licensee provides~~
13 ~~1 or more insurance products or services to the consumer that are~~
14 ~~to be used primarily for personal, family, or household purposes.~~

15 ~~—— (j) "Initial notice" means the privacy notice required in~~
16 ~~section 507.~~

17 ~~—— (k) "Insurance product or service" means any product or~~
18 ~~service that is offered by a licensee pursuant to the insurance~~
19 ~~laws of this state or pursuant to a federal insurance program.~~
20 ~~Insurance service includes a licensee's evaluation, brokerage, or~~
21 ~~distribution of information that the licensee collects in~~
22 ~~connection with a request or an application from a consumer for an~~
23 ~~insurance product or service.~~

24 (D) ~~(l)~~ "Licensee" means a licensed insurer or producer, and
25 other persons licensed or required to be licensed, authorized or
26 required to be authorized, registered or required to be registered,
27 or holding or required to hold a certificate of authority under

1 this act. Licensee includes, except as otherwise provided, a
 2 ~~nonprofit health care corporation operating pursuant to the~~
 3 ~~nonprofit health care corporation reform act, 1980 PA 350, MCL~~
 4 ~~550.1101 to 550.1704,~~ and a nonprofit dental care corporation
 5 operating ~~pursuant to~~ **UNDER** 1963 PA 125, MCL 550.351 to 550.373.

6 Licensee includes an unauthorized insurer who places business
 7 through a licensed surplus line agent or broker in this state, but
 8 only for the surplus line placements placed under chapter 19.

9 Licensee does not include any of the following:

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

14 ~~(ii)~~ **(i)** ~~(ii)~~—The Michigan life and health **INSURANCE** guaranty
 15 association **CREATED UNDER SECTION 7706** and the property and
 16 casualty guaranty association **CREATED UNDER CHAPTER 79**.

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

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

1 indirect ownership or control of the company by the licensee or its
 2 affiliate in conducting merchant banking or investment banking
 3 activities of the type described in ~~section 4(k)(4)(H) of the bank~~
 4 ~~holding company act of 1956, chapter 240, 70 Stat. 135, 12 U.S.C.~~
 5 ~~1843, 12 USC 1843 (K) (4) (H)~~ or insurance company investment
 6 activities of the type described in ~~section 4(k)(4)(I) of the bank~~
 7 ~~holding company act of 1956, chapter 240, 70 Stat. 135, 12 U.S.C.~~
 8 ~~1843, 12 USC 1843 (K) (4) (I)~~ .

9 **(F)** ~~(n)~~—"Nonpublic personal financial information" means
 10 personally identifiable financial information and any list,
 11 description, or other grouping of consumers and publicly available
 12 information pertaining to them that is derived using any personally
 13 identifiable financial information that is not publicly available.
 14 Nonpublic personal financial information does not include any of
 15 the following:

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

18 (ii) Publicly available information.

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

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

27 **(G)** ~~(p)~~—"Personally identifiable financial information" means

1 any of the following:

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

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

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

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

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

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

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

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

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

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

24 SEC. 506. A LICENSEE SHALL ESTABLISH AND MAKE PUBLIC THE
25 POLICY OF THE LICENSEE REGARDING THE PROTECTION OF PRIVACY AND THE
26 CONFIDENTIALITY OF NONPUBLIC PERSONAL FINANCIAL INFORMATION. THE
27 POLICY, AT A MINIMUM, MUST DO ALL OF THE FOLLOWING:

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

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

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

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

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

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

27 Sec. 515. (1) The ~~initial, annual, and revised notices shall~~

1 **NOTICE REQUIRED UNDER SECTION 513 MUST** include each of the
2 following items of information, in addition to any other
3 information the licensee wishes to provide, that apply to the
4 licensee and to the consumers to whom the licensee sends its
5 privacy notice:

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

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

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

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

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

27 ~~(f) An explanation of the consumer's right under section 529~~

1 ~~to opt out of the disclosure of nonpublic personal financial~~
 2 ~~information to nonaffiliated third parties, including the method by~~
 3 ~~which the consumer may exercise that right at that time.~~

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

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

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

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

20 (2) ~~(3)~~ Instead of providing the information required under
 21 subsection (1) and if a licensee does not disclose and does not
 22 want to reserve the right to disclose nonpublic personal financial
 23 information about customers or former customers to affiliates or
 24 nonaffiliated third parties, ~~except as authorized under sections~~
 25 ~~537 and 539,~~ the licensee may state that fact as part of a
 26 simplified notice ~~so long as~~ **IF** the licensee provides the
 27 information required under subsections **SUBSECTION** (1) (a) ~~,~~ ~~(h)~~ ~~,~~ and

1 ~~(i) and (2)~~ **AND (F)** .

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

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

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

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

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

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

1 the particular insurance product or service.

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

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

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

10 (3) A licensee may reasonably expect that a customer will
11 receive actual notice of the licensee's annual notice in either of
12 the following ~~eases~~: **CIRCUMSTANCES**:

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

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

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

25 (5) For customers only, a licensee shall provide ~~the initial~~
26 **AN annual and revised notices** **NOTICE REQUIRED UNDER SECTION 513 IN**
27 **A MANNER** so that the customer can retain ~~them~~ **THE NOTICE** or obtain

1 ~~them~~ **IT** 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 **UNDER THIS CHAPTER** by
23 providing 1 notice to those consumers jointly.

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

1 information ~~pursuant to the provisions of~~ **UNDER** 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.

8 Enacting section 2. This amendatory act does not take effect
9 unless Senate Bill No. ____ or House Bill No. ____ (request no.
10 01844'17 a) of the 99th Legislature is enacted into law.