

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 461*
Insurance and Consumer Protection Committee Substitute Adopted 4/24/01
House Committee Substitute Favorable 7/18/01

Short Title: Insurance Information Privacy-AB.

(Public)

Sponsors:

Referred to:

March 15, 2001

A BILL TO BE ENTITLED

1
2 AN ACT TO MAKE THE NORTH CAROLINA INSURANCE INFORMATION AND
3 PRIVACY PROTECTION ACT COMPLY WITH THE CONSUMER
4 INFORMATION PRIVACY REQUIREMENTS IN THE FEDERAL GRAMM-
5 LEACH-BLILEY ACT, PUBLIC LAW 106-102.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 58-39-10 reads as rewritten:

8 "**§ 58-39-10. Scope.**

9 (a) The obligations imposed by this Article shall apply to those insurance
10 institutions, agents, or insurance-support organizations ~~that, on or after July 1, 1982:~~
11 that:

12 (1) In the case of ~~life or accident and health~~ life, health, or disability
13 insurance:

14 a. Collect, receive, or maintain information in connection with
15 insurance transactions that pertains to natural persons who are
16 residents of this State; or

17 b. Engage in insurance transactions with applicants, individuals, or
18 policyholders who are residents of this State; and

19 (2) In the case of property or casualty insurance:

20 a. Collect, receive, or maintain information in connection with
21 insurance transactions involving policies, contracts, or
22 certificates of insurance delivered, issued for delivery, or
23 renewed in this State; ~~or~~

24 b. Engage in insurance transactions involving policies, contracts,
25 or certificates of insurance delivered, issued for delivery, or
26 renewed in this ~~State.~~ State; or

27 c. Engage in transactions involving mortgage guaranty insurance
28 where the mortgage guaranty policies, contracts, or certificates

1 of insurance are delivered, issued for delivery, or renewed in
2 this State.

3 (b) The rights granted by this Article shall extend to:

4 (1) In the case of ~~life or accident and health~~ life, health, or disability
5 insurance, the following persons who are residents of this State:

6 a. Natural persons who are the subject of information collected,
7 received, or maintained in connection with insurance
8 transactions; and

9 b. Applicants, individuals, or policyholders who engage in or seek
10 to engage in insurance transactions;

11 (2) In the case of property or casualty insurance, the following persons:

12 a. Natural persons who are the subject of information collected,
13 received, or maintained in connection with insurance
14 transactions involving policies, contracts, or certificates of
15 insurance delivered, issued for delivery, or renewed in this
16 State; and

17 b. Applicants, individuals, or policyholders who engage in or seek
18 to engage in (i) insurance transactions involving policies,
19 contracts, or certificates of insurance delivered, issued for
20 delivery, or renewed in this State. ~~State;~~ or (ii) mortgage
21 guaranty insurance transactions involving policies, contracts, or
22 certificates of insurance delivered, issued for delivery, or
23 renewed in this State.

24 (c) For purposes of this section, a person shall be considered a resident of this
25 State if the person's last known mailing address, as shown in the records of the
26 insurance institution, agent, or insurance-support organization, is located in this State.

27 (d) Notwithstanding subsections (a) and (b) of this section, this Article shall not
28 apply to information collected from the public records of a governmental authority and
29 maintained by an insurance institution or its representatives for the purpose of insuring
30 the title to real property located in this State.

31 (e) This Article applies to credit insurance that is subject to Article 57 of this
32 Chapter."

33 **SECTION 2.** G.S. 58-39-15(1) reads as rewritten:

34 "(1) "Adverse underwriting decision" means:

35 a. Any of the following actions with respect to insurance
36 transactions involving insurance coverage that is individually
37 underwritten:

38 1. A declination of insurance coverage;

39 2. A termination of insurance coverage;

40 3. Failure of an agent to apply for insurance coverage with
41 a specific insurance institution that an agent represents
42 and that is requested by an applicant;

- 1 4. In the case of a property or casualty insurance coverage:
 2 I. Placement by an insurance institution or agent of
 3 a risk with a residual market ~~mechanism~~ or
 4 mechanism, an unauthorized insurer, or an
 5 insurance institution that specializes in
 6 substandard risks; or
 7 II. The charging of a higher rate on the basis of
 8 information that differs from that which the
 9 applicant or policyholder furnished; or
 10 5. In the case of a ~~life or accident and health~~ life, health, or
 11 disability insurance coverage, an offer to insure at higher
 12 than standard rates.
 13 b. Notwithstanding subdivision ~~(1)a~~ (1)a. of this section, the
 14 following actions shall not be considered adverse underwriting
 15 decisions, but the insurance institution or agent responsible for
 16 their occurrence shall nevertheless provide the applicant or
 17 policyholder with the specific reason or reasons for their
 18 occurrence:
 19 1. The termination of an individual policy form on a class
 20 or statewide basis;
 21 2. A declination of insurance coverage solely because such
 22 coverage is not available on a class or statewide basis; or
 23 3. The rescission of a policy."

24 **SECTION 3.** G.S. 58-39-15(9) reads as rewritten:

25 "(9) "Individual" means any natural person who:

- 26 a. In the case of property or casualty insurance, is a past, present,
 27 or proposed named insured or certificate holder;
 28 b. In the case of life or accident and health insurance, is a past,
 29 present, or proposed principal insured or certificate holder;
 30 c. Is a past, present or proposed policy owner;
 31 d. Is a past or present applicant;
 32 e. Is a past or present claimant; ~~or~~
 33 f. Derived, derives, or is proposed to derive insurance coverage
 34 under an insurance policy or certificate subject to this
 35 ~~Article~~ Article; or
 36 g. Is the subject of personal information collected or maintained
 37 by an insurance institution, agent, or insurance-support
 38 organization in connection with mortgage guaranty insurance."

39 **SECTION 4.** Article 39 of Chapter 58 of the General Statutes is amended by
 40 adding a new section to read:

41 "**§ 58-39-26. Federal privacy disclosure notice requirements.**"

1 (a) Disclosure Required. – In addition to the notice requirements of G.S.
2 58-39-25, an insurance institution or agent shall provide, to all applicants and
3 policyholders no later than (i) before the initial disclosure of personal information under
4 G.S. 58-39-75(11) or (ii) the time of the delivery of the insurance policy or certificate, a
5 clear and conspicuous notice, in written or electronic form, of the insurance institution
6 or agent's policies and practices with respect to:

7 (1) Disclosing nonpublic personal information to affiliates and
8 nonaffiliated third parties, consistent with section 502 of Public Law
9 106-102, including the categories of information that may be
10 disclosed.

11 (2) Disclosing nonpublic personal information of persons who have
12 ceased to be customers of the financial institution.

13 (3) Protecting the nonpublic personal information of consumers.

14 These disclosures shall be made in accordance with the regulations prescribed under
15 section 504 of Public Law 106-102.

16 (b) Information to Be Included. – The disclosure required by subsection (a) of
17 this section shall include:

18 (1) The policies and practices of the insurance institution or agent with
19 respect to disclosing nonpublic personal information to nonaffiliated
20 third parties, other than agents of the insurance institution or agent,
21 consistent with section 502 of Public Law 106-102, and including:

22 a. The categories of persons to whom the information is or may be
23 disclosed, other than the persons to whom the information may
24 be provided under section 502(e) of Public Law 106-102.

25 b. The policies and practices of the insurance institution or agent
26 with respect to disclosing of nonpublic personal information of
27 persons who have ceased to be customers of the insurance
28 institution or agent.

29 (2) The categories of nonpublic personal information that are collected by
30 the insurance institution or agent.

31 (3) The policies that the insurance institution or agent maintains to protect
32 the confidentiality and security of nonpublic personal information in
33 accordance with section 501 of Public Law 106-102.

34 (4) The disclosures required, if any, under section 603(d)(2)(A)(iii) of the
35 Fair Credit Reporting Act.

36 (c) In the case of a policyholder, the notice required by this section shall be
37 provided not less than annually during the continuation of the policy. As used in this
38 subsection, 'annually' means at least once in any period of 12 consecutive months during
39 which the policy is in effect."

40 **SECTION 5.** Article 39 of Chapter 58 of the General Statutes is amended by
41 adding a new section to read:

42 **"§ 58-39-27. Privacy notice and disclosure requirement exceptions.**

1 (a) Under G.S. 58-39-25 and G.S. 58-39-26, an insurance institution or agent
2 may provide a joint notice from the insurance institution or agent and one or more of its
3 affiliates or other financial institutions, as defined in the notice, as long as the notice is
4 accurate with respect to the insurance institution or agent and the other institutions.

5 (b) An insurance institution or agent may satisfy the notice requirements of G.S.
6 58-39-25 and G.S. 58-39-26 by providing a single notice if two or more applicants or
7 policyholders jointly obtain or apply for an insurance product.

8 (c) An insurance institution or agent may satisfy the notice requirements of G.S.
9 58-39-25 and G.S. 58-39-26 through the use of separate or combined notices.

10 (d) An insurance institution or agent is not required to provide the notices
11 required by G.S. 58-39-25 and G.S. 58-39-26 to:

12 (1) Any applicant or policyholder whose last known address, according to
13 the insurance institution's or agent's records is deemed invalid. The
14 applicant's or policyholder's last known address shall be deemed
15 invalid if mail sent to that address has been returned by the postal
16 authorities as undeliverable and if subsequent reasonable attempts to
17 obtain a current valid address for the applicant or policyholder have
18 been unsuccessful; or

19 (2) Any policyholder whose policy is lapsed, expired, or otherwise
20 inactive or dormant under the insurance institution's business practices,
21 and the insurance institution has not communicated with the
22 policyholder about the relationship for a period of 12 consecutive
23 months, other than annual privacy notices, material required by law or
24 regulation, or promotional materials.

25 (e) If an agent does not share information with any person other than the agent's
26 principal or an affiliate of the principal, and if the principal provides all notices required
27 by G.S. 58-39-25 and G.S. 58-39-26, the agent is not required to provide the notices
28 required by G.S. 58-39-25 and G.S. 58-39-26. G.S. 58-39-75 applies to the sharing of
29 information with an affiliate under this subsection.

30 (f) When an agent discloses a policyholder's personal information, other than
31 medical information, to an insurance institution solely for the purposes of renewal,
32 transfer, replacement, reinstatement, or modification of an existing policy, the agent is
33 not required to provide the notices required by G.S. 58-39-25 and G.S. 58-39-26.

34 (g) For the purposes of G.S. 58-39-26 only, the terms 'applicant' or 'policyholder'
35 include respectively a person who applies for, or a certificate holder who obtains,
36 insurance coverage under a group or blanket insurance contract, employee benefit plan,
37 or group annuity contract, regardless of whether the coverage is individually
38 underwritten. An insurance institution or agent that does not disclose personal
39 information about an applicant or policyholder under a group or blanket insurance
40 contract, employee benefit plan, or group annuity contract, except as permitted under
41 G.S. 58-39-75(1) through (10) and G.S. 58-39-75(12) through (21), may satisfy any
42 notice requirement that otherwise exists under G.S. 58-39-26 with respect to that

1 applicant or policyholder by providing a notice of information practices to the holder of
2 the group or blanket insurance or annuity contract or the employee benefit plan sponsor.
3 If an insurance institution or agent discloses personal information about an applicant or
4 policyholder as permitted by G.S. 58-39-75(11), it shall provide the notice required by
5 G.S. 58-39-26 to the applicant or policyholder not less than 30 days before the
6 information is disclosed, and it may satisfy any other notice requirement that otherwise
7 exists under this section with respect to that applicant or policyholder by providing a
8 notice of information practices to the holder of the group or blanket insurance or annuity
9 contract or employee benefit plan sponsor."

10 **SECTION 6.** Article 39 of Chapter 58 of the General Statutes is amended by
11 adding a new section to read:

12 **"§ 58-39-28. Exception for title and mortgage guaranty insurance.**

13 (a) A title insurance company shall give notice of its insurance information
14 practices under G.S. 58-39-25 and G.S. 58-39-26 only at the time the final policy of title
15 insurance is issued and is not subject to any annual notice requirement thereafter.

16 (b) In the case of mortgage guaranty insurance, the notice required by G.S.
17 58-39-25 and G.S. 58-39-26 shall be provided at the time a master policy is issued and
18 thereafter only if there is a material change in the insurer's policies and practices
19 regarding the use or disclosure of personal information."

20 **SECTION 7.** G.S. 58-39-75(1) reads as rewritten:

21 "(1) With the written authorization of the individual, provided:

- 22 a. If such authorization is submitted by another insurance
23 institution, agent, or insurance-support organization, the
24 authorization meets the requirements of G.S. 58-39-35; or
25 b. If such authorization is submitted by a person other than an
26 insurance institution, agent, or insurance-support organization,
27 the authorization meets the requirements of G.S. 58-39-35 and
28 is:
29 1. Dated;
30 2. Signed by the individual; and
31 3. Obtained one year or less ~~prior to~~ before the date a
32 disclosure is sought pursuant to this paragraph; or".

33 **SECTION 8.** G.S. 58-39-75(18) reads as rewritten:

34 "(18) To a lienholder, mortgagee, assignee, lessor, or other person shown on
35 the records of an insurance institution or agent as having a legal or
36 beneficial interest in a policy of ~~insurance; provided that insurance~~
37 only if:

- 38 a. No medical record information is disclosed unless the
39 disclosure would otherwise be permitted by this section; and
40 b. ~~the~~ The information disclosed is limited to that which is
41 reasonably necessary to permit such person to protect its
42 interest in such policy; or".

1 **SECTION 9.** Article 39 of Chapter 58 of the General Statutes is amended by
2 adding a new section to read:

3 **"§ 58-39-76. Limits on sharing account number information for marketing**
4 **purposes.**

5 (a) General Prohibition on Disclosure of Account Numbers. – An insurance
6 institution, insurance agent, or insurance-support organization shall not disclose, other
7 than to a consumer reporting agency, an account number or similar form of access
8 number or access code for a credit card account, deposit account, or transaction account
9 of a consumer to any nonaffiliated third party for use in telemarketing, direct mail
10 marketing, or other marketing through electronic mail to the consumer.

11 (b) Definitions. – As used in this section:

12 (1) 'Account number' means an account number, or similar form of access
13 number or access code, but does not include a number or code in an
14 encrypted form, as long as the insurance institution, insurance agent, or
15 insurance-support organization does not provide the recipient with a
16 means to decode the number or code.

17 (2) 'Transaction account' means an account other than a deposit account or
18 credit card account. A transaction account does not include an account
19 to which third parties cannot initiate charges.

20 (c) Exceptions. – Subsection (a) of this section does not apply if an insurance
21 institution, insurance agent, or insurance-support organization discloses an account
22 number or similar form of access number or access code:

23 (1) To the insurance institution's, insurance agent's, or insurance-support
24 organization's agent or service provider solely in order to perform
25 marketing for the insurance institution's, insurance agent's, or
26 insurance-support organization's own products or services, as long as
27 the agent or service provider is not authorized to directly initiate
28 charges to the account; or

29 (2) To a participant in a private label credit card program or an affinity or
30 similar program where the participants in the program are identified to
31 the customer when the customer enters into the program."

32 **SECTION 10.** G.S. 58-39-75(12) reads as rewritten:

33 "(12) To an affiliate whose only use of the information will be in connection
34 with an audit of the insurance institution or agent or the marketing of
35 an insurance product or service, provided the affiliate agrees not to
36 disclose the information for any other purpose or to unaffiliated
37 persons; ~~or~~ persons; and further provided that no medical record
38 information may be disclosed to the affiliate for the marketing of an
39 insurance product or service; or "

40 **SECTION 11.** G.S. 58-39-75(2) reads as rewritten:

1 "(2) To a person other than an insurance institution, agent, or
2 insurance-support organization, provided such disclosure is reasonably
3 necessary:

4 a. To enable ~~such~~ that person to perform a business, professional,
5 or insurance function for the disclosing insurance institution,
6 agent, or insurance-support organization, including, but not
7 limited to, performing marketing functions and other functions
8 regarding the provision of information concerning the
9 disclosing institution's own products, services, and programs,
10 and ~~such~~ that person agrees not to disclose the information
11 further without the individual's written authorization unless the
12 further disclosure:

13 1. Would otherwise be permitted by this section if made by
14 an insurance institution, agent, or insurance-support
15 organization; or

16 2. Is reasonably necessary for ~~such~~ that person to perform
17 its function for the disclosing insurance institution,
18 agent, or insurance-support organization; or

19 b. To enable ~~such~~ that person to provide information to the
20 disclosing insurance institution, agent, or insurance-support
21 organization for the purpose of:

22 1. Determining an individual's eligibility for an insurance
23 benefit or payment; or

24 2. Detecting or preventing criminal activity, fraud, material
25 misrepresentation, or material nondisclosure in
26 connection with an insurance transaction; or".

27 **SECTION 12.** G.S. 58-39-75 is amended by adding a new subdivision to

28 read:

29 "(21) To a person whose only use of an applicant's or policyholder's personal
30 information, but not including medical record information, will be in
31 connection with the marketing of a financial product or service
32 intended to be provided by participants in a marketing program where
33 the program participants and the types of information to be shared are
34 identified to the applicant or policyholder when the applicant or
35 policyholder is first offered the financial product or service. As used in
36 this subdivision:

37 a. 'Financial institution' means any institution the business of
38 which is engaging in activities that are financial in nature or
39 incidental to such financial activities as described in section
40 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C.
41 § 1843(k)).

- 1 b. 'Financial product or service' means any product or service that
2 a financial holding company could offer by engaging in an
3 activity that is financial in nature or incidental to such financial
4 activity under section 4(k) of the Bank Holding Company Act
5 of 1956 (12 U.S.C. § 1843(k)).
6 c. 'Marketing program' includes only those programs established
7 by written agreement by the insurance institution and one or
8 more financial institutions under which they jointly offer,
9 endorse, or sponsor a financial product or service."

10 **SECTION 13.** If any section or provision of this act is declared
11 unconstitutional, preempted, or otherwise invalid by the courts, it does not affect the
12 validity of the act as a whole or any part other than the part so declared to be
13 unconstitutional, preempted, or otherwise invalid.

14 **SECTION 14.** This act becomes effective January 1, 2002, and applies to
15 policies and contracts newly issued or renewed on and after that date. For the purposes
16 of the application of this act to policies or contracts renewed on and after January 1,
17 2002, the renewal of a policy or contract is presumed to occur on each anniversary of
18 the date on which coverage was first effective on the person or persons covered by the
19 policy or contract.