

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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SENATE BILL 461*
Insurance and Consumer Protection Committee Substitute Adopted 4/24/01

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

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

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

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

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

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

26 c. Engage in transactions involving mortgage guaranty insurance
27 where the mortgage guaranty policies, contracts, or certificates
28 of insurance are delivered, issued for delivery, or renewed in
29 this State.

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

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

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

7 b. Applicants, individuals, or policyholders who engage in or seek
8 to engage in insurance transactions;

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

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

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

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

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

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

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

31 a. Any of the following actions with respect to insurance
32 transactions involving insurance coverage that is individually
33 underwritten:

34 1. A declination of insurance coverage;

35 2. A termination of insurance coverage;

36 3. Failure of an agent to apply for insurance coverage with
37 a specific insurance institution that an agent represents
38 and that is requested by an applicant;

39 4. In the case of a property or casualty insurance coverage:

40 I. Placement by an insurance institution or agent of
41 a risk with a residual market ~~mechanism~~ or
42 mechanism, an unauthorized insurer, or an

insurance institution that specializes in
substandard risks; or

II. The charging of a higher rate on the basis of information that differs from that which the applicant or policyholder furnished; or

5. In the case of a ~~life or accident and health-life, health, or disability~~ insurance coverage, an offer to insure at higher than standard rates.

b. Notwithstanding subdivision (1)a of this section, the following actions shall not be considered adverse underwriting decisions, but the insurance institution or agent responsible for their occurrence shall nevertheless provide the applicant or policyholder with the specific reason or reasons for their occurrence:

1. The termination of an individual policy form on a class or statewide basis;

2. A declination of insurance coverage solely because such coverage is not available on a class or statewide basis; or

3. The rescission of a policy."

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

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

a. In the case of property or casualty insurance, is a past, present, or proposed named insured or certificate holder;

b. In the case of life or accident and health insurance, is a past, present, or proposed principal insured or certificate holder;

c. Is a past, present or proposed policy owner;

d. Is a past or present applicant;

e. Is a past or present claimant; or

f. Derived, derives, or is proposed to derive insurance coverage under an insurance policy or certificate subject to this ~~Article.~~Article; or

g. Is the subject of personal information collected or maintained by an insurance institution, agent, or insurance-support organization in connection with mortgage guaranty insurance."

SECTION 4. G.S. 58-39-25 reads as rewritten:

"§ 58-39-25. Notice of insurance information practices.

(a) An insurance institution or agent shall provide a notice of information practices to all applicants or policyholders in connection with insurance transactions as provided in this section:

(1) In the case of an application for insurance a notice shall be provided no later than:

- 1 a. At the time of the delivery of the insurance policy or certificate
2 when personal information is collected only from the applicant
3 or from public records; ~~or~~
- 4 b. At the time the collection of personal information is initiated
5 when personal information is collected from a source other than
6 the applicant or public records; or
- 7 c. Before the initial disclosure of personal information under G.S.
8 58-39-75(11).
- 9 (2) In the case of a policy ~~renewal, that has been issued,~~ a notice shall be
10 provided ~~no later than the policy renewal date, except that no notice~~
11 ~~shall be required in connection with a policy renewal if:~~
- 12 a. ~~Personal information is collected only from the policyholder or~~
13 ~~from public records; or~~
- 14 b. ~~A notice meeting the requirements of this section has been~~
15 ~~given within the previous 24 months; not less than annually~~
16 ~~while the policy is in force; or~~
- 17 (3) In the case of a policy reinstatement or change in insurance benefits, a
18 notice shall be provided no later than the time a request for a policy
19 reinstatement or change in insurance benefits is received by the
20 insurance ~~institution, except that no notice shall be required if personal~~
21 ~~information is collected only from the policyholder or from public~~
22 ~~records. institution.~~
- 23 (b) The notice required by sub-subdivision (a)(1)a. and (a)(1)b. and subdivision
24 (a)(3) of this section shall be in writing and shall state:
- 25 (1) Whether personal information may be collected from persons other
26 than the individual or individuals proposed for ~~coverage; coverage.~~
- 27 (2) The types of personal information that may be collected and the types
28 of sources and investigative techniques that may be used to collect
29 such ~~information; information.~~
- 30 (3) The types of disclosures identified in subsections (2), (3), (4), (5), (6),
31 (9), (11), (12), and (14) of G.S. 58-39-75 and the circumstances under
32 which such disclosures may be made without prior authorization:
33 Provided, however, only those circumstances need be described that
34 occur with such frequency as to indicate a general business
35 ~~practice; practice.~~
- 36 (4) A description of the rights established under G.S. 58-39-45 and
37 58-39-50 and the manner in which such rights may be ~~exercised; and~~
38 ~~exercised.~~
- 39 (5) That information obtained from a report prepared by an
40 insurance-support organization may be retained by the
41 insurance-support organization and disclosed to other persons.

1 (6) The notice required by sub-subdivisions (a)(1)a and (a)(1)c and
2 subdivision (a)(2) of this section shall include information relating to
3 the policies and practices of the insurance institution or agent with
4 respect to disclosing nonpublic personal information to nonaffiliated
5 third parties, other than agents of the insurance institution or agent,
6 consistent with Title V of P.L. 106-102, and including:

7 a. The categories of persons to whom the information is or may be
8 disclosed, other than the persons to whom the information may
9 be provided pursuant to Title V of P.L. 106-102.

10 b. The policies and practices of the insurance institution or agent
11 with respect to disclosing of nonpublic personal information of
12 persons who have ceased to be customers of the insurance
13 institution or agent.

14 (7) The policies that the insurance institution or agent maintains to protect
15 the confidentiality and security of nonpublic personal information in
16 accordance with Title V of P.L. 106-102.

17 (8) The disclosures required, if any, under section 603(d)(2)(A)(iii) of the
18 Fair Credit Reporting Act.

19 (c) In lieu of the notice prescribed in ~~subsection (b)~~ subdivisions (b)(1) through
20 (b)(5) of this section, the insurance institution or agent may provide an abbreviated
21 notice informing the applicant or policyholder that:

22 (1) Personal information may be collected from persons other than the
23 individual or individuals proposed for coverage;

24 (2) Such information, as well as other personal or privileged information
25 subsequently collected by the insurance institution or agent, in certain
26 circumstances, may be disclosed to third parties without authorization;

27 (3) A right of access and correction exists with respect to all personal
28 information collected; and

29 (4) The notice prescribed in subsection (b) of this section will be furnished
30 to the applicant or policyholder upon request.

31 For the purposes of this section only, the terms 'applicant' or 'policyholder' include
32 respectively a person who applies for or obtains coverage under a group insurance
33 contract, regardless of whether that person's coverage is individually underwritten. An
34 insurance institution or agent that does not disclose personal information about an
35 applicant or policyholder under a group insurance contract, as permitted by G.S. 58-39-
36 75(11), may satisfy any notice requirement that otherwise exists under this section with
37 respect to the applicant or policyholder by providing a notice of information practices to
38 the holder of the group insurance contract.

39 (d) The obligations imposed by this section upon an insurance institution or agent
40 may be satisfied by another insurance institution or agent authorized to act on its behalf.

41 (e) An insurance institution may provide a joint notice from the insurance
42 institution and one or more of its affiliates or other financial institutions, as defined in

1 the notice, as long as the notice is accurate with respect to the insurance institution and
2 the other institutions.

3 (f) The notice requirements of this section may be satisfied by providing a single
4 notice if two or more applicants or policyholders jointly obtain or apply for an insurance
5 product.

6 (g) An insurance institution or agent may satisfy the notice requirements of this
7 section and Title V of P.L. 106-102 through the use of separate or combined notices.

8 (h) An insurance institution or agent is not required to provide the notices
9 required by this section to:

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

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

23 (i) If an insurance agent does not share information with any person other than
24 the agent's principal, and if the principal provides all notices required by this section,
25 the insurance agent is not required to provide the notices required by this section."

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

28 "**§ 58-39-26. Exception for title and mortgage guaranty insurance.**

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

32 (b) In the case of mortgage guaranty insurance, a notice shall be provided at the
33 time a master policy is issued and thereafter only if there is a material change in the
34 insurer's policies and practices regarding the use or disclosure of personal information."

35 **SECTION 6.** G.S. 58-39-75(1) reads as rewritten:

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

- 37 a. If such authorization is submitted by another insurance
38 institution, agent, or insurance-support organization, the
39 authorization meets the requirements of G.S. 58-39-35; or
40 b. If such authorization is submitted by a person other than an
41 insurance institution, agent, or insurance-support organization,

1 the authorization meets the requirements of G.S. 58-39-35 and
2 is:

- 3 1. Dated;
- 4 2. Signed by the individual; and
- 5 3. Obtained one year or less ~~prior to~~ before the date a
6 disclosure is sought pursuant to this paragraph; or".

7 **SECTION 7.** G.S. 58-39-75(18) reads as rewritten:

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

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

17 **SECTION 8.** Article 39 of Chapter 58 of the General Statutes is amended by
18 adding a new section to read:

19 "**§ 58-39-76. Limits on sharing account number information for marketing**
20 **purposes.**

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

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

28 (1) 'Account number' means an account number, or similar form of access
29 number or access code, does not include a number or code in an
30 encrypted form, as long as the insurance institution, insurance agent, or
31 insurance-support organization does not provide the recipient with a
32 means to decode the number or code.

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

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

39 (1) To the insurance institution's, insurance agent's, or insurance-support
40 organization's agent or service provider solely in order to perform
41 marketing for the insurance institution's, insurance agent's, or
42 insurance-support organization's own products or services, as long as

1 the agent or service provider is not authorized to directly initiate
2 charges to the account; or

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

6 **SECTION 9.** G.S. 58-39-75(12) reads as rewritten:

7 "(12) To an affiliate whose only use of the information will be in connection
8 with an audit of the insurance institution or agent or the marketing of
9 an insurance product or service, provided the affiliate agrees not to
10 disclose the information for any other purpose or to unaffiliated
11 ~~persons; or~~ persons, provided that no medical record information may
12 be disclosed to the affiliate; or"

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

17 **SECTION 11.** This act becomes effective January 1, 2002.