

House Bill 455

By: Representatives Watson of the 70th, Maddox of the 72nd, Heard of the 89th, Harbin of the 113th, Turnquest of the 73rd and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to
2 provide comprehensive regulation of the dissemination of financial information; to provide
3 a short title; to provide a statement of the purpose of the provisions; to provide definitions;
4 to provide for privacy notices and opt-out notices; to provide for limits on disclosure of
5 information; to provide for exceptions; to provide for rules and regulations; to provide for
6 related matters; to provide an effective date; to repeal conflicting laws; and for other
7 purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 style="text-align:center">**SECTION 1.**

10 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by
11 striking in their entirety paragraphs (6) and (20) of Code Section 33-39-3, relating to
12 definitions, and inserting in lieu thereof new paragraphs (6) and (20) and inserting a new
13 paragraph (10.1) to read as follows:

14 "(6) 'Consumer report' means any written, oral, or other communication of information
15 bearing on a natural person's ~~credit worthiness, credit standing, credit capacity,~~ character,
16 general reputation, personal characteristics, or mode of living which is used or expected
17 to be used in connection with an insurance transaction."

18 "(10.1) 'Information' does not include nonpublic personal financial information as
19 defined in Code Section 33-39A-3."

20 "(20) 'Personal information' means any individually identifiable information gathered in
21 connection with an insurance transaction from which judgments can be made about an
22 individual's character, habits, avocations, ~~finances,~~ occupation, general reputation, ~~credit,~~
23 health, or any other personal characteristics. 'Personal information' does not include an
24 individual's name, address, and age when no other underwriting information is gathered
25 on that individual nor does it include any 'privileged information.'"

1 (2) 'Agent' means any agent, broker, subagent, counselor, adjuster, solicitor, or service
2 representative as defined in Code Sections 33-23-1 and 33-23-40.

3 (3) 'Clear and conspicuous' means that a notice is reasonably understandable and
4 designed to call attention to the nature and significance of the information in the notice.

5 (4) 'Collect' means to obtain information that the licensee organizes or can retrieve by
6 the name of an individual or by an identifying number, symbol, or other particular
7 assigned to the individual, irrespective of the source of the underlying information.

8 (5) 'Company' means any corporation, limited liability company, business trust, general
9 or limited partnership, association, sole proprietorship, or similar organization.

10 (6)(A) 'Consumer' means an individual, or that individual's legal representative, who
11 seeks to obtain, obtains, or has obtained an insurance product or service in this state
12 from a licensee that is to be used primarily for personal, family, or household purposes
13 and about whom the licensee has nonpublic personal financial information, including,
14 but not limited to:

15 (i) An individual who provides nonpublic personal financial information to a licensee
16 in connection with seeking to obtain or obtaining financial, insurance, investment, or
17 economic advisory services regardless of whether the licensee establishes an ongoing
18 relationship;

19 (ii) An applicant for insurance prior to the inception of insurance coverage; and

20 (iii) An individual who provides nonpublic personal financial information to a
21 licensee in order to obtain a determination about whether he or she may qualify for
22 a loan to be used primarily for personal, family, or household purposes, regardless of
23 whether the loan is extended.

24 (B) 'Consumer' does not necessarily include an individual who:

25 (i) Is a beneficiary of a trust for which the licensee is a trustee;

26 (ii) Is a third-party liability claimant;

27 (iii) Has designated the licensee as trustee for a trust;

28 (iv) Is a consumer of another financial institution to which the licensee acts as agent
29 for, or provides processing or other services;

30 (v) Is a participant or a beneficiary of an employee benefit plan that the licensee
31 administers or sponsors or for which the licensee acts as a trustee, insurer, or
32 fiduciary; or

33 (vi) Is covered under a group or blanket insurance policy or group annuity contract
34 issued by the licensee:

35 (I) Provided that the licensee provides the initial, annual and revised notices under
36 Code Sections 33-39-20, 33-39-21, and 33-39-22 of this chapter to the plan sponsor,
37 group or blanket insurance policyholder, or group annuity contract holder; and

1 (II) Provided that the licensee does not disclose to a non-affiliated third party
2 nonpublic personal financial information about such an individual other than as
3 permitted under Code Sections 33-39-60, 33-39-61, and 33-39-62 of this chapter.

4 In no event shall the individual, solely by virtue of the status described in divisions
5 (6)(B)(v) and (6)(B)(vi), be deemed to be a customer for purposes of this chapter.

6 (7) 'Consumer reporting agency' has the same meaning as in Section 603(f) of the federal
7 Fair Credit Reporting Act (15 U.S.C. 1681a(f)) and Code Section 10-1-392.

8 (8) 'Control' means:

9 (A) Ownership, control, or power to vote 25 percent or more of the outstanding shares
10 of any class of voting security of the company, directly or indirectly, or acting through
11 one or more other persons;

12 (B) Control in any manner over the election of a majority of the directors, trustees, or
13 general partners, or individuals exercising similar functions, of the company; or

14 (C) The power to exercise, directly or indirectly, a controlling influence over the
15 management or policies of the company, as the Commissioner of Insurance determines.

16 (9) 'Customer' means a consumer who has a customer relationship with a licensee. In no
17 event, however, shall a beneficiary or a claimant under a policy of insurance, solely by
18 virtue of their status as a beneficiary or claimant, be deemed to be a customer for the
19 purposes of this chapter.

20 (10) 'Customer relationship' means a continuing relationship between a consumer and
21 a licensee under which the licensee provides one or more financial products or services
22 to the consumer that are to be used primarily for personal, family, or household purposes.
23 For a 'customer relationship' to be established, a consumer must meet certain criteria,
24 including, but not limited to, the following:

25 (A) Be a current policyholder of an insurance product or other product issued by or
26 through a licensee; or

27 (B) Obtain financial, investment, or economic advisory services relating to an
28 insurance product or service from a licensee for a fee.

29 (11) 'Financial institution' means the same as that term is defined in Section 509(3) of
30 GLBA and is as follows:

31 (A) The term 'financial institution' means any institution the business of which is
32 engaging in financial activities as described in Section 4(k) of the federal Bank Holding
33 Company Act of 1956;

34 (B) Notwithstanding subparagraph (A), the term 'financial institution' does not include
35 any person or entity with respect to any financial activity that is subject to the
36 jurisdiction of the Commodity Futures Trading Commission under the federal
37 Commodity Exchange Act;

1 (C) Notwithstanding subparagraph (A), the term 'financial institution' does not include
 2 the Federal Agricultural Mortgage Corporation or any entity chartered and operating
 3 under the Farm Credit Act of 1971; and

4 (D) Notwithstanding subparagraph (A), the term 'financial institution' does not include
 5 institutions chartered by Congress specifically to engage in transactions described in
 6 Section 502(e)(1)(C) of the GLBA, so long as such institutions do not sell or transfer
 7 nonpublic personal financial information to a nonaffiliated third party.

8 (12) 'Financial product or service' means any product or service that is offered by a
 9 licensee pursuant to this title, including, but not limited to, a licensee's evaluation or
 10 brokerage of information that the licensee collects in connection with a request or an
 11 application from a consumer for a financial product or service.

12 (13) 'Licensee' means a person or other covered entity who is licensed or required to be
 13 licensed, authorized or required to be authorized, or registered or required to be registered
 14 pursuant to this title. A licensee that is a producer or independent insurance agent is
 15 subject to all the requirements of this chapter, except when the producer or agent is acting
 16 as agent for a licensee. A producer acting as agent for a licensee is exempt only from the
 17 notice requirements of this chapter, and only if such producer does not disclose consumer
 18 information other than as permitted by Code Sections 33-39-60, 33-39-61, and 33-39-62.

19 (A) 'Covered entities' shall include unauthorized insurers who place business through
 20 licensed surplus line brokers in this state but only in regard to the surplus line
 21 placements placed pursuant to Article 2 of Chapter 5 of this title.

22 (B) Licensed surplus line brokers placing business underwritten by covered entities and
 23 those covered entities shall be deemed to be in compliance with the notice and opt-out
 24 requirements for nonpublic personal financial information set forth in this chapter
 25 provided:

26 (i) Such licensed surplus line brokers and covered entities do not disclose nonpublic
 27 personal financial information of a consumer or a customer to nonaffiliated third
 28 parties for any purpose, including joint servicing or marketing under Code Section
 29 33-39-60, except as permitted by Code Section 33-39-61 or 33-39-62; and

30 (ii) At the time the customer relationship is established, a single notice is delivered
 31 to the consumer on behalf of all such licensed surplus line brokers and covered
 32 entities involved in the provision of a financial product or service to a consumer or
 33 customer on which the following is printed in 16 point type:

34 **'PRIVACY NOTICE**

35 **NEITHER THE U.S. BROKER(S) THAT HANDLED THIS INSURANCE NOR THE**
 36 **INSURER(S) THAT HAVE UNDERWRITTEN THIS INSURANCE WILL**
 37 **DISCLOSE NONPUBLIC PERSONAL FINANCIAL INFORMATION**

1 CONCERNING THE BUYER TO NONAFFILIATES OF SUCH BROKER(S) OR
2 SUCH INSURER(S) EXCEPT AS PERMITTED BY LAW.'

3 (14) 'Nonaffiliated third party' means any person, including, but not limited to, any
4 company that is an affiliate solely by virtue of the licensee's or its affiliate's direct or
5 indirect ownership or control of the company conducting:

6 (A) Merchant banking or investment banking activities of the type described in Section
7 4(k)(4)(H) of the federal Bank Holding Company Act; or

8 (B) Insurance company investment activities of the type described in Section 4(k)(4)(I)
9 of the federal Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H) and (I)), except:

10 (i) The licensee's affiliate; or

11 (ii) A person employed jointly by a licensee and any company that is not the
12 licensee's affiliate. Nonaffiliated third party includes the other company that jointly
13 employs the person.

14 (15) 'Nonpublic personal financial information' means:

15 (A) Personally identifiable financial information;

16 (B) Any list, description, or other grouping of consumers, and publicly available
17 information pertaining to them, that is derived using any personally identifiable
18 financial information that is not publicly available; and

19 (C) Any list of individuals' names and street addresses that is derived in whole or in
20 part using personally identifiable financial information that is not publicly available,
21 such as policy or contract numbers.

22 (D) Nonpublic personal financial information does not include:

23 (i) Health information;

24 (ii) Publicly available information, except as included on a list as described in
25 division (iv) of this subparagraph;

26 (iii) Any list, description, or other grouping of consumers, and publicly available
27 information pertaining to them, that is derived without using any personally
28 identifiable financial information that is not publicly available; or

29 (iv) Any list of individuals' names and addresses that contains only publicly available
30 information, is not derived in whole or in part using personally identifiable
31 information that is not publicly available, and is not disclosed in a manner that
32 indicates that any of the individuals on the list is a consumer of a financial institution.

33 (16) 'Opt out' means a direction by the consumer that a licensee not disclose nonpublic
34 personal financial information about that consumer to a nonaffiliated third party, other
35 than as permitted by Code Sections 33-39-60, 33-39-61, and 33-39-62.

36 (17) 'Personally identifiable financial information' means financial information:

1 (A) A consumer provides to a licensee to obtain a financial product or service from the
2 licensee;

3 (B) About a consumer resulting from any transaction involving a financial product or
4 service between a licensee and a consumer; or

5 (C) A licensee otherwise obtains about a consumer in connection with providing a
6 financial product or service to that consumer.

7 (18) 'Publicly available information' means any information that the licensee has a
8 reasonable basis to believe is lawfully made available to the general public from:

9 (A) Federal, state, or local government records;

10 (B) Widely distributed media; or

11 (C) Disclosures to the general public that are required to be made by federal, state or
12 local law.

13 (19) 'Reasonable basis' means the licensee has a reasonable basis to believe that
14 information is lawfully made available to the general public because the licensee has
15 taken steps to determine:

16 (A) That the information is of the type that is available to the general public; and

17 (B) Whether an individual can direct that the information not be made available to the
18 general public and, if so, that a licensee's consumer has not done so.

19 33-39-4.

20 This chapter:

21 (1) Requires a licensee to provide notice to customers and, under certain circumstances,
22 to consumers about its privacy policies and practices;

23 (2) Describes the conditions under which a licensee may disclose nonpublic personal
24 financial information about consumers and customers to nonaffiliated third parties;

25 (3) Provides a method for consumers and customers to prevent a licensee from disclosing
26 that information unless otherwise exempted as routine business disclosures in Code
27 Section 33-39-60, 33-39-61, or 33-39-62;

28 (4) Establishes reasonable exceptions in Code Sections 33-39-60, 33-39-61, and
29 33-39-62 of this chapter to the notice requirements of licensees and the ability of
30 consumers and customers to opt out of or authorize certain disclosures; and

31 (5) Applies only to nonpublic personal financial information about individuals who
32 obtain financial products or services in this state from an insurer for personal, family, or
33 household purposes. This chapter does not apply to information about companies or
34 individuals who obtain financial products or services for business, commercial, or
35 agricultural purposes. In particular, this chapter does not apply to commercial insurance
36 policies issued by the licensee.

ARTICLE 2

1
2 33-39-20.

3 (a) A licensee must provide a clear and conspicuous notice that accurately reflects the
4 licensee's privacy policies and practices to:

5 (1) An individual who becomes a licensee's customer, not later than the time that the
6 licensee establishes a customer relationship, except as provided in subsection (e) of this
7 Code section; and

8 (2) A consumer, before a licensee discloses any nonpublic personal financial information
9 about the consumer to any nonaffiliated third party, if a licensee makes such a disclosure
10 other than as authorized by Code Sections 33-39-61 and 33-39-62.

11 (b) A licensee is not required to provide an initial notice to a consumer under subsection
12 (a) of this Code section if:

13 (1) The licensee does not disclose any nonpublic personal financial information about
14 the consumer to any nonaffiliated third party, other than as authorized by Code Sections
15 33-39-61 and 33-39-62;

16 (2) The licensee does not have a customer relationship with the consumer; or

17 (3) A notice has been provided by an affiliated licensee, so long as the notice clearly
18 identifies all licensees to whom the notice applies or states that it applies to all affiliates
19 of the named licensee, and is accurate with respect to the licensee and the other
20 institutions.

21 (c)(1) A licensee establishes a customer relationship at the time the licensee and the
22 consumer enter into a continuing relationship, where the consumer's status is other than
23 solely a beneficiary or claimant.

24 (2) A licensee establishes a customer relationship under circumstances including, but not
25 limited to, the following:

26 (A) When the consumer becomes a policyholder. This occurs when an insurance
27 policy or contract is delivered to the consumer; or

28 (B) When the consumer agrees to obtain financial, insurance, economic, or investment
29 advisory services from the licensee for a fee.

30 (d) When an existing customer obtains a new financial product or service from a licensee
31 that is to be used primarily for personal, family, or household purposes, a licensee satisfies
32 the initial notice requirements of subsection (a) of this Code section as follows:

33 (1) A licensee may provide a revised policy notice, under Code Section 33-39-25, that
34 covers the customer's new financial product or service; or

1 (2) If the initial, revised, or annual notice that a licensee most recently provided to that
2 customer was accurate with respect to the new financial product or service, a licensee
3 does not need to provide a new privacy notice under subsection (a) of this Code section.

4 (e) A licensee may provide the initial notice required by paragraph (1) of subsection (a)
5 of this Code section within a reasonable time after the licensee establishes a customer
6 relationship if:

7 (1) Establishing the customer relationship is not at the customer's election, including, but
8 not limited to, if the licensee acquires or is assigned the insurance policy or related
9 records from another financial institution or residual market mechanism and the customer
10 does not have a choice about such acquisition or assignment; or

11 (2) Providing notice not later than when the licensee establishes the customer
12 relationship would substantially delay the customer's transaction, including, but not
13 limited to, when the licensee and the individual agree over the telephone to enter into a
14 customer relationship involving prompt delivery of the financial product or service, and
15 the customer agrees to receive the notice at a later time.

16 (f) If two or more consumers jointly obtain a financial product or service from a licensee,
17 the licensee may satisfy the requirements of subsection (a) of this Code section by
18 providing one initial notice to those consumers jointly.

19 (g) When a licensee is required to deliver an initial privacy notice by this Code section, a
20 licensee must deliver it according to Code Section 33-39-26. If a licensee uses a short form
21 initial notice for noncustomers according to subsection (c) of Code Section 33-39-22, the
22 licensee may deliver its privacy notice according to paragraph (3) of subsection (c) of Code
23 Section 33-39-22.

24 33-39-21.

25 (a) A licensee must provide a clear and conspicuous notice to a customer that accurately
26 reflects the licensee's privacy policies and practices not less than annually during the
27 continuation of the customer relationship. Annually means at least once in any period of
28 12 consecutive months during which that relationship exists. A licensee may define the 12
29 consecutive month period, but the licensee must apply it to the customer on a consistent
30 basis.

31 (b) A licensee is not required to provide an annual notice to a former customer. A former
32 customer is an individual with whom a licensee no longer has a customer relationship. A
33 licensee no longer has a customer relationship with an individual:

34 (1) If the individual no longer is a current policyholder of an insurance product or no
35 longer obtains insurance services with or through the licensee;

1 (2) If the individual's policy is lapsed, expired, or otherwise inactive or dormant under
2 the licensee's business practices and the licensee has not communicated with the
3 customer about the relationship for a period of 12 consecutive months other than to
4 provide annual privacy notices, materials required by law or regulation, or promotional
5 materials;

6 (3) If the individual's last known address according to the licensee's records is deemed
7 to be invalid. An address of record is deemed invalid if mail sent to that address by the
8 licensee has been returned by the postal authorities as undeliverable and if subsequent
9 attempts by the licensee to obtain a current valid address for the individual have been
10 unsuccessful; or

11 (4) In the case of providing real estate settlement services, at the time the customer
12 completes execution of all documents related to the real estate closing, payment for those
13 services has been received or once the licensee has completed all of its responsibilities
14 with respect to the settlement including filing documents on the public record, whichever
15 is later.

16 (c) When the licensee is required to deliver an annual privacy notice by this Code section,
17 the licensee must deliver it according to Code Section 33-39-25.

18 (d) Such annual notice may be provided by an affiliated licensee, so long as the notice
19 clearly identifies all licensees to which the notice applies or states that it applies to all
20 affiliates of the named licensee, and is accurate with respect to the licensee and other
21 institutions.

22 33-39-22

23 (a) The initial, annual, and revised privacy notices that a licensee provides under Code
24 Sections 33-39-20, 33-39-21, and 33-39-24 must include each of the following items of
25 information that applies to the licensee or to the consumers to whom the licensee sends its
26 privacy notice, in addition to any other information the licensee wishes to provide:

27 (1) The categories of nonpublic personal financial information that the licensee collects;

28 (2) The categories of nonpublic personal financial information that the licensee discloses;

29 (3) The categories of affiliates and nonaffiliated third parties to whom the licensee
30 discloses nonpublic personal financial information, other than those parties to whom the
31 licensee discloses information under Code Sections 33-39-61 and 33-39-62;

32 (4) The categories of nonpublic personal financial information about the licensee's
33 former customers that it discloses and the categories of affiliates and nonaffiliated third
34 parties to whom the licensee discloses nonpublic personal financial information about its
35 former customers, other than those parties to whom it discloses information under Code
36 Sections 33-39-61 and 33-39-62;

1 (5) If a licensee discloses nonpublic personal financial information to a nonaffiliated
 2 third party under Code Section 33-39-60 and no other exception applies to that disclosure,
 3 a separate statement of the categories of information the licensee discloses and the
 4 categories of third parties with whom the licensee has contracted;

5 (6) An explanation of the right under Code Section 33-39-40 to opt out of the disclosure
 6 of nonpublic personal financial information to nonaffiliated third parties, including the
 7 methods by which the consumer may exercise those rights at that time;

8 (7) Any disclosures that the licensee makes under Section 603(d)(2)(A)(iii) of the federal
 9 Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)), that is, notices regarding the
 10 ability to opt out of disclosures of information among affiliates;

11 (8) The licensee's policies and practices with respect to protecting the confidentiality and
 12 security of nonpublic personal financial information; and

13 (9) A statement to the effect that the licensee makes disclosures under subsection (b) of
 14 this Code section, if such disclosures are made.

15 (b) If a licensee discloses nonpublic personal financial information about a consumer to
 16 third parties only as authorized under Code Sections 33-39-61 and 33-39-62, the licensee
 17 is not required to list those exceptions in the initial or annual privacy notices required by
 18 this chapter. When describing the categories with respect to those parties, a licensee is only
 19 required to state that it makes disclosures to other nonaffiliated third parties as permitted
 20 by law.

21 (c)(1) The licensee may satisfy the initial notice requirements of this chapter for a
 22 consumer who is not a customer by providing a short form initial notice at the same time
 23 as the licensee delivers an opt-out notice as required in Code Section 33-39-25.

24 (2) A short form initial notice must:

25 (A) Be clear and conspicuous;

26 (B) State that a licensee's privacy notice is available upon request; and

27 (C) Explain a reasonable means by which the consumer may obtain that notice,
 28 including, but not limited to, providing a toll-free telephone number the consumer may
 29 call to request the notice or, for a consumer who conducts business in person in the
 30 licensee's office, providing notice to the consumer immediately upon request.

31 (3) The licensee must deliver its short form notice according to Code Section 33-39-25.
 32 A licensee is not required to deliver its privacy notice with its short form initial notice.
 33 A licensee may instead simply provide the consumer with a reasonable means to obtain
 34 the licensee's privacy notice. If a consumer who receives the licensee's short form notice
 35 requests the licensee's privacy notice, the licensee must deliver its privacy notice
 36 according to Code Section 33-39-25.

37 (d) A licensee's notice may include:

1 (1) Categories of nonpublic personal financial information that the licensee reserves the
2 right to disclose in the future but does not currently disclose; and

3 (2) Categories of affiliates or nonaffiliated third parties to whom the licensee reserves
4 the right in the future to disclose, but to whom it does not currently disclose, nonpublic
5 personal financial information.

6 33-39-23.

7 (a) If a licensee is required to provide an opt-out notice under Code Section 33-39-40, the
8 licensee must provide a clear and conspicuous notice to each of its consumers that
9 accurately explains the right to opt out under that section. The notice must state:

10 (1) That the licensee discloses or reserves the right to disclose nonpublic personal
11 financial information about its consumer to a nonaffiliated third party;

12 (2) That the consumer has the right to opt out of that disclosure; and

13 (3) A reasonable means by which the consumer may exercise the opt out-right, provided
14 that the licensee may require that the consumer opt out through a specified procedure, so
15 long as the procedure is reasonable for that consumer. A licensee provides reasonable
16 procedures to exercise an opt-out right if it:

17 (A) Designates check off boxes in a prominent position on the relevant forms with the
18 opt-out notice;

19 (B) Includes a reply form together with the opt-out notice;

20 (C) Provides an electronic means to opt out, such as a form that can be sent via
21 electronic mail or a process at the licensee's website, if the consumer agrees to the
22 electronic delivery of information;

23 (D) Provides a toll-free telephone number that consumers may call to opt out; or

24 (E) Provides the opt-out notice together with or on the same written or electronic form
25 as the initial notice the licensee provides in accordance with Code Section 33-39-20.

26 (b) If a licensee provides the opt-out notice later than required for the initial notice in
27 accordance with subsection (e) of Code Section 33-39-20, the licensee must also include
28 a copy of the initial notice in writing or, if the consumer agrees, electronically.

29 (c)(1) If two or more consumers jointly obtain a financial product or service from a
30 licensee, the licensee may provide a single opt-out notice. The licensee's opt-out notice
31 must explain how the licensee will treat an opt-out direction by a joint consumer as
32 provided in paragraph (2) of this subsection.

33 (2) Any of the joint consumers may exercise the right to opt out. The licensee may
34 either:

35 (A) Treat an opt-out direction by a joint consumer as applying to all of the associated
36 joint consumers; or

- 1 (B) Permit each joint consumer to opt out separately.
- 2 (3) If the licensee permits each joint consumer to opt out separately, the licensee must
3 permit one of the joint consumers to opt out on behalf of all of the joint consumers.
- 4 (4) A licensee may not require all joint consumers to opt out before the licensee
5 implements any opt-out direction.
- 6 (d) A licensee must comply with a consumer's opt-out direction as soon as reasonably
7 practicable after the licensee receives it.
- 8 (e) A consumer may exercise the right to opt out at any time.
- 9 (f)(1) A consumer's direction to opt out under this Code section is effective until the
10 consumer revokes it in writing or, if the consumer agrees, electronically.
- 11 (2) When a customer relationship terminates, the customer's opt-out direction continues
12 to apply to the nonpublic personal financial information the licensee collected during or
13 related to that relationship. If the individual subsequently establishes a new customer
14 relationship with the licensee, the opt-out direction that applied to the former relationship
15 does not apply to the new relationship.
- 16 (g) When a licensee is required to deliver an opt-out notice by this Code section, the
17 licensee must deliver it in accordance with Code Section 33-39-25.
- 18 33-39-24.
- 19 (a) Except as otherwise authorized in this chapter, a licensee shall not, directly or through
20 any affiliate, disclose any nonpublic personal financial information about a consumer to
21 a nonaffiliated third party other than as described in the initial notice that the licensee
22 provided to that consumer under Code Section 33-39-20, unless:
- 23 (1) The licensee has provided to the consumer a revised notice that accurately describes
24 the licensee's policies and practices;
- 25 (2) The licensee has provided to the consumer a new opt-out notice and, if appropriate,
26 an authorization as required in Code Section 33-39-60;
- 27 (3) The licensee has given the consumer a reasonable opportunity, before the licensee
28 discloses the information to the nonaffiliated third party, to opt out of or, if appropriate,
29 authorize the disclosure; and
- 30 (4) The consumer does not opt out or, if appropriate, the consumer authorizes the
31 disclosure.
- 32 (b) When the licensee is required to deliver a revised privacy notice by this Code section,
33 the licensee must deliver it in accordance with Code Section 33-39-25.

1 33-39-25.

2 (a) A licensee must provide all privacy and opt-out notices, including short form initial
3 notices, that this chapter requires so that each consumer can reasonably be expected to
4 receive actual notice in writing or, if the consumer agrees, electronically.

5 (1) The licensee may reasonably expect that a consumer will receive actual notice if the
6 licensee:

7 (A) Hand delivers a printed copy of the notice to the consumer;

8 (B) Mails a printed copy of the notice to the last known address of the consumer,
9 separately or in a policy, billing, or other written communication;

10 (C) Electronically, clearly, and conspicuously posts the notice on the electronic site for
11 the consumer who regularly accesses the licensee's website to conduct transactions; or

12 (D) For an isolated transaction with the consumer, such as the licensee providing an
13 insurance quote or selling the consumer travel insurance, posts the notice and requires
14 the consumer to acknowledge receipt of the notice as a necessary step to obtaining the
15 particular financial product or service.

16 (2) A licensee may not reasonably expect that a consumer will receive actual notice of
17 the licensee's privacy policies and practices if the licensee:

18 (A) Only posts a sign in its branch or office or generally publishes advertisements of
19 its privacy policies and practices; or

20 (B) Sends the notice via electronic mail to a consumer who does not obtain a financial
21 product or service electronically.

22 (b) A licensee may reasonably expect that a customer will receive actual notice of the
23 licensee's annual privacy notice if:

24 (1) The customer agrees to receive notices at the website, and the licensee posts its
25 current privacy notice continuously in a clear and conspicuous manner on the website;
26 or

27 (2) The customer has requested that the licensee refrain from sending any information
28 regarding the customer relationship, and the licensee's current privacy notice remains
29 available to the customer upon request.

30 (c) A licensee may not provide any notice required by this chapter solely by oral
31 explanation of the notice, either in person or over the telephone.

32 (d) For customers only, a licensee must provide the initial notice, the annual notice, and
33 the revised notice required by this chapter, so that the customer can retain them or obtain
34 them later in writing or, if the customer agrees, electronically, including, but not limited
35 to, hand delivering a printed copy of the notice to the customer, mailing a printed copy of
36 the notice to the last known address of the customer upon the request of the customer, or

1 making the licensee's current privacy notice available on a website for the customer who
2 agrees to receive the notice at a website.

3 (e) A licensee may provide a joint notice from the licensee and one or more of the
4 licensee's affiliates, other licensees, or other financial institutions or on behalf of another
5 financial institution, so long as the notice is accurate with respect to the licensee and the
6 other institutions.

7 (f) If two or more consumers jointly obtain a financial product or service from a licensee,
8 the licensee may satisfy the initial, annual, and revised notice requirements of this chapter
9 by providing one notice to those consumers jointly.

10 33-39-26.

11 (a) No licensee shall unfairly discriminate against any customer or consumer on the basis
12 of the customer's or consumer's exercise of his or her right to opt out of the sharing of his
13 or her nonpublic personal financial information in the manner provided in this chapter.
14 Nothing in this Code section shall prohibit licensees from engaging in their usual,
15 appropriate, or acceptable method for insurance underwriting.

16 (b) Nothing in this chapter requires a licensee to provide a benefit or commence or
17 continue payment of a claim in the absence of nonpublic personal financial information
18 to support or deny the claim.

19 ARTICLE 3

20 33-39-40.

21 (a) Except as otherwise authorized in this chapter, a licensee may not, directly or through
22 any affiliate, disclose any nonpublic personal financial information about a consumer to
23 a nonaffiliated third party unless:

24 (1) The licensee has provided to the consumer an initial notice as required under Code
25 Section 33-39-20;

26 (2) The licensee has provided to the consumer an opt-out notice as required in Code
27 Section 33-39-24;

28 (3) The licensee has given the consumer a reasonable opportunity, before the licensee
29 discloses the information to the nonaffiliated third party, to opt out of the disclosure.

30 Methods of complying with this provision include, but are not limited to:

31 (A) The licensee mailing the notice required in paragraph (1) of this subsection to the
32 consumer and allowing the consumer to opt out by mailing a form, calling a toll-free
33 telephone number, or any other reasonable means within 30 days from the date the
34 licensee mailed the notice;

1 (B) A customer opening an on-line account with the licensee and agreeing to receive
2 the notice required in paragraph (1) of this subsection electronically, and the licensee
3 making the notice available to the customer on its website and allowing the customer
4 to opt out by any reasonable means within 30 days after the date that the customer
5 acknowledges receipt of the notice in conjunction with opening the account; or

6 (C) For an isolated transaction, such as providing the consumer with an insurance
7 quote, a licensee providing a reasonable opportunity to opt out if the licensee provides
8 the consumer the notice required in paragraph (1) of this subsection at the time of the
9 transaction and requests that the consumer decide, as a necessary act of the transaction,
10 whether to opt out before completing the transaction; and

11 (4) The consumer declining the opt-out right.

12 (b)(1) A licensee must comply with this Code section, regardless of whether the licensee
13 and the consumer have established a customer relationship.

14 (2) Unless a licensee complies with this Code section, the licensee may not, directly or
15 through any affiliate, disclose any nonpublic personal financial information about a
16 consumer that it has collected, regardless of whether the licensee collected it before or
17 after receiving the direction to opt out from the consumer.

18 33-39-41.

19 (a) If the licensee receives nonpublic personal financial information from a nonaffiliated
20 financial institution under an exception in this chapter, the licensee's disclosure and use of
21 that information is limited as follows:

22 (1) The licensee may disclose the information to the affiliates of the financial institution
23 from which the licensee received the information;

24 (2) The licensee may disclose the information to its affiliates and agents, but the affiliates
25 and agents may, in turn, disclose and use the information only to the extent that the
26 licensee may disclose and use the information; and

27 (3) The licensee may disclose and use the information pursuant to an exception in Code
28 Section 33-39-61 or 33-39-62 in the ordinary course of business to carry out the activity
29 covered by the exception under which the licensee received the information.

30 (b) If a licensee receives nonpublic personal financial information from a nonaffiliated
31 financial institution other than under an exception in this chapter, the licensee may disclose
32 the information only:

33 (1) To the affiliates of the financial institution from which the licensee received the
34 information;

1 (2) To the licensee's affiliates and agents, but the licensee's affiliates and agents may,
2 in turn, disclose the information only to the extent that the licensee can disclose the
3 information; and

4 (3) To any other person, if the disclosure would be lawful if made directly to that person
5 by the financial institution from which the licensee received the information.

6 (c) If the licensee discloses nonpublic personal financial information to a nonaffiliated
7 third party under an exception in Code Section 33-39-61 or 33-39-62, the third party may
8 disclose and use that information only as follows:

9 (1) The third party may disclose the information to the licensee's affiliates;

10 (2) The third party may disclose the information to its affiliates, but its affiliates may, in
11 turn, disclose and use the information only to the extent that the third party may disclose
12 and use the information; and

13 (3) The third party may disclose and use the information pursuant to an exception in
14 Code Section 33-39-61 or 33-39-62 in the ordinary course of business to carry out the
15 activity covered by the exception under which it received the information.

16 (d) If a licensee discloses nonpublic personal financial information to a nonaffiliated third
17 party other than under an exception in Code Section 33-39-61 or 33-39-62, the third party
18 may disclose the information only:

19 (1) To the licensee's affiliates;

20 (2) To the third party's affiliates, but the third party's affiliates, in turn, may disclose the
21 information only to the extent the third party can disclose the information; and

22 (3) To any other person, if the disclosure would be lawful if the licensee made it directly
23 to that person.

24 33-39-42.

25 (a) A licensee must not, directly or through an affiliate, disclose, other than to a consumer
26 reporting agency, a policy or contract number or similar form of access number or access
27 code for a consumer's credit card account, deposit account, or transaction account to any
28 nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing
29 through electronic mail to the consumer.

30 (b) Subsection (a) of this Code section does not apply if the licensee discloses a policy or
31 contract number or similar form of access number or access code:

32 (1) To the licensee's agent or service provider solely in order to perform marketing for
33 the licensee's products or services, so long as the agent or service provider is not
34 authorized to directly initiate charges to the account;

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

4 (3) To a licensee who is a producer solely in order to perform marketing for the
5 licensee's own products or services.

6 ARTICLE 4

7 33-39-60

8 (a) The opt-out requirements of this chapter do not apply when a licensee provides
9 nonpublic personal financial information to a nonaffiliated third party to perform services
10 for or functions on behalf of the licensee, if the licensee:

11 (1) Provides the initial notice in accordance with this chapter; and

12 (2) Enters into a contractual agreement with the third party that prohibits the third party
13 from disclosing or using the information other than to carry out the purposes for which
14 the licensee disclosed the information, including use under an exception in Code Section
15 33-39-61 or 33-39-62, in the ordinary course of business to carry out those purposes.

16 (b) A licensee may use and disclose personally identifiable financial information to a
17 person acting on behalf of or at the direction of the licensee to perform the licensee's
18 insurance functions, including, but not limited to, claims administration; claims adjustment
19 and management; fraud investigation; underwriting; loss control; rate making functions;
20 reinsurance; risk management; case management; disease management; quality assessment;
21 quality improvement; provider credentialing verification; utilization review; peer review
22 activities; grievance procedures; internal administration of compliance, managerial, and
23 information systems; policyholder service functions; account administration; processing
24 premium payments; processing insurance claims; administering insurance benefits,
25 including utilization review activities; participating in research projects; and as otherwise
26 required or specifically permitted by federal or state law.

27 (c) The services performed for a licensee by a nonaffiliated third party under subsection
28 (a) this Code section may include marketing of the licensee's own products or services or
29 marketing of financial products or services offered pursuant to joint agreements between
30 the licensee and one or more financial institutions.

31 (d) For purposes of this Code section, 'joint agreement' means a written contract pursuant
32 to which a licensee and one or more financial institutions jointly offer, endorse, or sponsor
33 a financial product or service.

1 33-39-61.

2 (a) The requirements for initial notice to consumers in paragraph (2) of subsection (a) of
3 Code Section 33-39-20, providing the opt-out opportunity to consumers and customers, and
4 the application of this chapter to service providers and joint marketing do not apply if a
5 licensee discloses nonpublic personal financial information as necessary to effect,
6 administer, or enforce a transaction requested or authorized by the consumer, or in
7 connection with:

8 (1) Servicing or processing a financial product or service requested or authorized by the
9 consumer, including such products or services under consideration by a consumer;

10 (2) Maintaining or servicing the consumer's account with the licensee or with another
11 entity;

12 (3) Transactions involving a person acting as agent of the licensee, provided such agent
13 agrees not to disclose said nonpublic personal financial information to additional third
14 parties; or

15 (4) A proposed or actual securitization; secondary market sale, including sales of
16 servicing rights; or similar transaction related to a transaction of the consumer.

17 (b) The requirements of this chapter do not apply if a licensee discloses nonpublic personal
18 financial information for any purpose related to effecting, administering, or replacing a
19 group benefit plan, a group health plan, or a group welfare plan.

20 (c) 'Necessary to effect, administer, or enforce a transaction' means, in this Code section,
21 that the disclosure is:

22 (1) Required, or is one of the lawful or appropriate methods, to enforce the licensee's
23 rights or the rights of other persons engaged in carrying out the financial transaction or
24 providing the product or service; or

25 (2) Required, or is a usual, appropriate, or acceptable method:

26 (A) To carry out the transaction or the product or service business of which the
27 transaction is a part, and record, service, or maintain the consumer's account in the
28 ordinary course of providing the financial service or financial product;

29 (B) To administer, adjudicate, or service benefits or claims relating to the transaction
30 or the product or service business of which it is a part;

31 (C) To provide a confirmation, statement, or other record of the transaction or
32 information on the status or value of the financial service or financial product to the
33 consumer or the consumer's agent or broker;

34 (D) To accrue or recognize incentives or bonuses associated with the transaction that
35 are provided by the licensee or any other party;

36 (E) To underwrite insurance at the consumer's request or for reinsurance purposes or
37 for any of the following purposes as they relate to a consumer's insurance: account

1 administration; reporting; investigating; preventing fraud or material misrepresentation;
2 processing premium payments; processing insurance claims; administering insurance
3 benefits, including utilization review activities; participating in research projects; or as
4 otherwise required or specifically permitted by federal or state law; or

5 (F) In connection with:

6 (i) The authorization, settlement, billing, processing, clearing, transferring,
7 reconciling, or collection of amounts charged, debited, or otherwise paid using a
8 debit, credit, or other payment card, check, or policy or contract number, or by other
9 payment means;

10 (ii) The transfer of receivables, accounts, or interests therein; or

11 (iii) The audit of debit, credit, or other payment information.

12
13 33-39-62.

14 (a) The requirements for initial notice to consumers in paragraph (2) of subsection (a) of
15 Code Section 33-39-20, the opportunity to opt out, and the provisions applicable to service
16 providers and joint marketing in this chapter do not apply when a licensee discloses
17 nonpublic personal financial information:

18 (1) With the consent or at the direction of the consumer, provided that the consumer has
19 not revoked the consent or direction;

20 (2) To protect the confidentiality or security of a licensee's records pertaining to the
21 consumer, service, product, or transaction;

22 (3) To protect against or prevent actual or potential fraud, unauthorized transactions,
23 claims, or other liability;

24 (4) For required institutional risk control or for resolving consumer disputes or inquiries;

25 (5) To persons holding a legal or beneficial interest relating to the consumer;

26 (6) To persons acting in a fiduciary or representative capacity on behalf of the consumer;

27 (7) To provide information to insurance rate advisory organizations, guaranty funds or
28 agencies, agencies that are rating the licensee, persons that are assessing the licensee's
29 compliance with industry standards, and the licensee's attorneys, accountants, and
30 auditors;

31 (8) To the extent specifically permitted or required under other provisions of law and in
32 accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401, et seq.), to
33 law enforcement agencies, including a federal functional regulator, the secretary of the
34 treasury of the United States, with respect to 31 U.S.C. Chapter 53,
35 Subchapter II — Records and Reports on Monetary Instruments and Transactions, and
36 12 U.S.C. Chapter 21 — Financial Recordkeeping; a state insurance authority, with
37 respect to any person domiciled in that insurance authority's state that is engaged in

- 1 providing insurance; the Federal Trade Commission; self-regulatory organizations; or for
2 an investigation on a matter related to public safety;
- 3 (9) To a consumer reporting agency in accordance with the federal Fair Credit Reporting
4 Act (15 U.S.C. 1681, et seq.) and the fair credit laws of this state;
- 5 (10) From a consumer report reported by a consumer reporting agency;
- 6 (11) In connection with a proposed or actual sale, merger, transfer, or exchange of all or
7 a portion of a business or operating unit if the disclosure of nonpublic personal financial
8 information concerns solely consumers of such business or unit;
- 9 (12) To comply with federal, state, or local laws, rules, and other applicable legal
10 requirements;
- 11 (13) To comply with a properly authorized civil, criminal, or regulatory investigation or
12 subpoena or summons by federal, state, or local authorities;
- 13 (14) To respond to judicial process or government regulatory authorities having
14 jurisdiction over a licensee for examination, compliance, or other purposes as authorized
15 by law;
- 16 (15) Necessary to provide ongoing health care treatment;
- 17 (16) In connection with quality assessment evaluations or investigations;
- 18 (17) To reveal a consumer's general health condition and presence in a facility owned
19 by the licensee;
- 20 (18) To a reinsure, stop-loss, or excess loss carrier for the purpose of underwriting,
21 claims adjudication, and conducting claim file audits;
- 22 (19) Needed for one of the following purposes:
- 23 (A) To identify a deceased individual;
- 24 (B) To determine the cause and manner of death by a chief medical examiner or the
25 medical examiner's designee; or
- 26 (C) To provide necessary protected health information about a deceased individual
27 who is a donor of an anatomical gift;
- 28 (20) To a state department of insurance that is performing an examination, investigation,
29 or audit of the licensee; or
- 30 (21) Pursuant to a court order issued after the court's determination that the public
31 interest in disclosure outweighs the consumer's privacy interest and that the information
32 is not reasonably available by other means.
- 33 (b) Nothing in this chapter shall be construed as applicable to information disclosures by
34 licensees in connection with the purchase of insurance coverage by the licensee or the
35 arrangement of insurance coverage by the licensee for its employees.

ARTICLE 5

33-39-80.

(a) Nothing in this chapter shall be construed to modify, limit, or supersede the operation of the federal Fair Credit Reporting Act (15 U.S.C. 1681, et seq.), and no inference shall be drawn on the basis of the provisions of this chapter regarding whether information is transaction or experience information under Section 603 of that act.

(b) Nothing in this chapter shall be construed to modify, limit, or supersede the operation of the fair credit law of this state.

(c) Nothing in this chapter shall preempt or supercede existing state law related to medical records, health, or insurance information privacy.

33-39-81.

(a) No licensee shall knowingly or willfully violate the provisions of this chapter.

(b) The Commissioner of Insurance is authorized to investigate any alleged violations of this chapter and to impose fines and other sanctions as lawfully determined to be appropriate in accordance with the applicable insurance laws of this state.

33-39-82.

The Commissioner of Insurance may promulgate such rules and regulations necessary to implement and enforce the provisions of this chapter.

33-39-83.

Any violation of the provisions of this chapter shall constitute an unfair trade practice under Article 1 of Chapter 6 of this title and is subject to all such sanctions, orders, and penalties contained therein.

33-39-84.

(a) This chapter shall become effective on July 1, 2001. In order to provide sufficient time for insurers and other licensees to establish policies and systems to comply with the requirements of this chapter, time for compliance with this chapter is extended until January 1, 2002.

(b) By January 1, 2002, the licensee shall have provided an initial notice, as required by Code Section 33-39-20, to consumers who are the licensee's customers on January 1, 2002.

(c) Until January 1, 2003, a contract that the licensee has entered into with a nonaffiliated third party to perform services for the licensee or functions on its behalf does not need to satisfy the provisions of Code Section 33-39-60, which provides that the third party

1 maintain the confidentiality of nonpublic personal financial information, so long as the
2 licensee entered into the agreement before July 1, 2001."

3 **SECTION 3.**

4 This Act shall become effective on July 1, 2001.

5 **SECTION 4.**

6 All laws and parts of laws in conflict with this Act are repealed.