

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  
Fourth Edition Engrossed 7/24/01

Short Title: Insurance Information Privacy-AB.

(Public)

Sponsors:

Referred to:

March 15, 2001

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"§ 58-39-10. **Scope.**

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

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

- a. Collect, receive, or maintain information in connection with  
insurance transactions that pertains to natural persons who are  
residents of this State; or
- b. Engage in insurance transactions with applicants, individuals, or  
policyholders who are residents of this State; and

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

- a. Collect, receive, or maintain information in connection with  
insurance transactions involving policies, contracts, or  
certificates of insurance delivered, issued for delivery, or  
renewed in this State; ~~or~~
- b. Engage in insurance transactions involving policies, contracts,  
or certificates of insurance delivered, issued for delivery, or  
renewed in this ~~State.~~ State; or

- 1           c.     Engage in transactions involving mortgage guaranty insurance  
2                     where the mortgage guaranty policies, contracts, or certificates  
3                     of insurance are delivered, issued for delivery, or renewed in  
4                     this State.
- 5       (b)     The rights granted by this Article shall extend to:
- 6           (1)     In the case of ~~life or accident and health~~-life, health, or disability  
7                     insurance, the following persons who are residents of this State:
- 8                     a.     Natural persons who are the subject of information collected,  
9                             received, or maintained in connection with insurance  
10                            transactions; and
- 11                    b.     Applicants, individuals, or policyholders who engage in or seek  
12                            to engage in insurance transactions;
- 13           (2)     In the case of property or casualty insurance, the following persons:
- 14                     a.     Natural persons who are the subject of information collected,  
15                             received, or maintained in connection with insurance  
16                            transactions involving policies, contracts, or certificates of  
17                            insurance delivered, issued for delivery, or renewed in this  
18                            State; and
- 19                     b.     Applicants, individuals, or policyholders who engage in or seek  
20                            to engage in (i) insurance transactions involving policies,  
21                            contracts, or certificates of insurance delivered, issued for  
22                            delivery, or renewed in this ~~State.~~ State; or (ii) mortgage  
23                            guaranty insurance transactions involving policies, contracts, or  
24                            certificates of insurance delivered, issued for delivery, or  
25                            renewed in this State.
- 26       (c)     For purposes of this section, a person shall be considered a resident of this  
27       State if the person's last known mailing address, as shown in the records of the  
28       insurance institution, agent, or insurance-support organization, is located in this State.
- 29       (d)     Notwithstanding subsections (a) and (b) of this section, this Article shall not  
30       apply to information collected from the public records of a governmental authority and  
31       maintained by an insurance institution or its representatives for the purpose of insuring  
32       the title to real property located in this State.
- 33       (e)     This Article applies to credit insurance that is subject to Article 57 of this  
34       Chapter."

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

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

- 37           a.     Any of the following actions with respect to insurance  
38                     transactions involving insurance coverage that is individually  
39                     underwritten:
- 40                     1.     A declination of insurance coverage;
  - 41                     2.     A termination of insurance coverage;

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

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

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

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

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

3 **"§ 58-39-26. Federal privacy disclosure notice requirements.**

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

10           (1) Disclosing nonpublic personal information to affiliates and  
11 nonaffiliated third parties, consistent with section 502 of Public Law  
12 106-102, including the categories of information that may be  
13 disclosed.

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

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

17 These disclosures shall be made in accordance with the regulations prescribed under  
18 section 505 of Public Law 106-102.

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

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

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

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

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

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

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

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

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

3 **"§ 58-39-27. Privacy notice and disclosure requirement exceptions.**

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

8           (b) An insurance institution or agent may satisfy the notice requirements of G.S.  
9 58-39-25 and G.S. 58-39-26 by providing a single notice if two or more applicants or  
10 policyholders jointly obtain or apply for an insurance product.

11           (c) An insurance institution or agent may satisfy the notice requirements of G.S.  
12 58-39-25 and G.S. 58-39-26 through the use of separate or combined notices.

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

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

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

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

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

37           (g) For the purposes of G.S. 58-39-26 only, the terms 'applicant' or 'policyholder'  
38 include respectively a person who applies for, or a certificate holder who obtains,  
39 insurance coverage under a group or blanket insurance contract, employee benefit plan,  
40 or group annuity contract, regardless of whether the coverage is individually  
41 underwritten. An insurance institution or agent that does not disclose personal  
42 information about an applicant or policyholder under a group or blanket insurance

1 contract, employee benefit plan, or group annuity contract, except as permitted under  
2 G.S. 58-39-75(1) through (10) and G.S. 58-39-75(12) through (21), may satisfy any  
3 notice requirement that otherwise exists under G.S. 58-39-26 with respect to that  
4 applicant or policyholder by providing a notice of information practices to the holder of  
5 the group or blanket insurance or annuity contract or the employee benefit plan sponsor.  
6 If an insurance institution or agent discloses personal information about an applicant or  
7 policyholder as permitted by G.S. 58-39-75(11), it shall provide the notice required by  
8 G.S. 58-39-26 to the applicant or policyholder not less than 30 days before the  
9 information is disclosed, and it may satisfy any other notice requirement that otherwise  
10 exists under this section with respect to that applicant or policyholder by providing a  
11 notice of information practices to the holder of the group or blanket insurance or annuity  
12 contract or employee benefit plan sponsor."

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

15 **"§ 58-39-28. Exception for title and mortgage guaranty insurance.**

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

19 (b) In the case of mortgage guaranty insurance, the notice required by G.S.  
20 58-39-25 and G.S. 58-39-26 shall be provided at the time a master policy is issued and  
21 thereafter only if there is a material change in the insurer's policies and practices  
22 regarding the use or disclosure of personal information."

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

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

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

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

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

- 41 a. No medical record information is disclosed unless the  
42 disclosure would otherwise be permitted by this section; and



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

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

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

- 14           1. Would otherwise be permitted by this section if made by  
15 an insurance institution, agent, or insurance-support  
16 organization; or
- 17           2. Is reasonably necessary for ~~such~~ that person to perform  
18 its function for the disclosing insurance institution,  
19 agent, or insurance-support organization; or

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

- 23           1. Determining an individual's eligibility for an insurance  
24 benefit or payment; or
- 25           2. Detecting or preventing criminal activity, fraud, material  
26 misrepresentation, or material nondisclosure in  
27 connection with an insurance transaction; or".

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

29 read:

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

38           a. 'Financial institution' means any institution the business of  
39 which is engaging in activities that are financial in nature or  
40 incidental to such financial activities as described in section  
41 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C.  
42 § 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.