
HOUSE BILL No. 1695

DIGEST OF INTRODUCED BILL

Citations Affected: IC 27-4-1-4; IC 27-16.

Synopsis: Privacy of personal information. Defines "licensee" as a person who must be licensed, authorized, certified, or registered under the Indiana insurance law. Specifies the requirements for the initial and annual privacy notices that must be provided by a licensee to consumers and customers of the licensee regarding disclosure of the consumers' or customers' financial information. Specifies: (1) information that must be provided in a privacy notice and an opt out notice; (2) requirements for revisions to the privacy notice; (3) requirements for delivery of privacy notice and notice of the right to opt out; (4) nondiscrimination provisions; (5) limitations on disclosure and redisclosure of financial information; (6) limitations on disclosure of information for marketing purposes; and (7) exceptions to the notice and opt out requirements. Provides for privacy notice and disclosure requirements for disclosure of personal health information. Provides for violations of the notice and disclosure requirements. Makes a conforming amendment.

Effective: July 1, 2001.

Smith M

January 17, 2001, read first time and referred to Committee on Insurance, Corporations and Small Business.

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First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

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HOUSE BILL No. 1695



A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 27-4-1-4 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2001]: Sec. 4. The following are hereby defined
3 as unfair methods of competition and unfair and deceptive acts and
4 practices in the business of insurance:

5 (1) Making, issuing, circulating, or causing to be made, issued, or
6 circulated, any estimate, illustration, circular, or statement:

7 (A) misrepresenting the terms of any policy issued or to be
8 issued or the benefits or advantages promised thereby or the
9 dividends or share of the surplus to be received thereon;

10 (B) making any false or misleading statement as to the
11 dividends or share of surplus previously paid on similar
12 policies;

13 (C) making any misleading representation or any
14 misrepresentation as to the financial condition of any insurer,
15 or as to the legal reserve system upon which any life insurer
16 operates;

17 (D) using any name or title of any policy or class of policies



- 1 misrepresenting the true nature thereof; or
2 (E) making any misrepresentation to any policyholder insured
3 in any company for the purpose of inducing or tending to
4 induce such policyholder to lapse, forfeit, or surrender his
5 insurance.
- 6 (2) Making, publishing, disseminating, circulating, or placing
7 before the public, or causing, directly or indirectly, to be made,
8 published, disseminated, circulated, or placed before the public,
9 in a newspaper, magazine, or other publication, or in the form of
10 a notice, circular, pamphlet, letter, or poster, or over any radio or
11 television station, or in any other way, an advertisement,
12 announcement, or statement containing any assertion,
13 representation, or statement with respect to any person in the
14 conduct of his insurance business, which is untrue, deceptive, or
15 misleading.
- 16 (3) Making, publishing, disseminating, or circulating, directly or
17 indirectly, or aiding, abetting, or encouraging the making,
18 publishing, disseminating, or circulating of any oral or written
19 statement or any pamphlet, circular, article, or literature which is
20 false, or maliciously critical of or derogatory to the financial
21 condition of an insurer, and which is calculated to injure any
22 person engaged in the business of insurance.
- 23 (4) Entering into any agreement to commit, or individually or by
24 a concerted action committing any act of boycott, coercion, or
25 intimidation resulting or tending to result in unreasonable
26 restraint of, or a monopoly in, the business of insurance.
- 27 (5) Filing with any supervisory or other public official, or making,
28 publishing, disseminating, circulating, or delivering to any person,
29 or placing before the public, or causing directly or indirectly, to
30 be made, published, disseminated, circulated, delivered to any
31 person, or placed before the public, any false statement of
32 financial condition of an insurer with intent to deceive. Making
33 any false entry in any book, report, or statement of any insurer
34 with intent to deceive any agent or examiner lawfully appointed
35 to examine into its condition or into any of its affairs, or any
36 public official to which such insurer is required by law to report,
37 or which has authority by law to examine into its condition or into
38 any of its affairs, or, with like intent, willfully omitting to make a
39 true entry of any material fact pertaining to the business of such
40 insurer in any book, report, or statement of such insurer.
- 41 (6) Issuing or delivering or permitting agents, officers, or
42 employees to issue or deliver, agency company stock or other

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1 capital stock, or benefit certificates or shares in any common law
 2 corporation, or securities or any special or advisory board
 3 contracts or other contracts of any kind promising returns and
 4 profits as an inducement to insurance.

5 (7) Making or permitting any of the following:

6 (A) Unfair discrimination between individuals of the same
 7 class and equal expectation of life in the rates or assessments
 8 charged for any contract of life insurance or of life annuity or
 9 in the dividends or other benefits payable thereon, or in any
 10 other of the terms and conditions of such contract; however, in
 11 determining the class, consideration may be given to the
 12 nature of the risk, plan of insurance, the actual or expected
 13 expense of conducting the business, or any other relevant
 14 factor.

15 (B) Unfair discrimination between individuals of the same
 16 class involving essentially the same hazards in the amount of
 17 premium, policy fees, assessments, or rates charged or made
 18 for any policy or contract of accident or health insurance or in
 19 the benefits payable thereunder, or in any of the terms or
 20 conditions of such contract, or in any other manner whatever;
 21 however, in determining the class, consideration may be given
 22 to the nature of the risk, the plan of insurance, the actual or
 23 expected expense of conducting the business, or any other
 24 relevant factor.

25 (C) Excessive or inadequate charges for premiums, policy
 26 fees, assessments, or rates, or making or permitting any unfair
 27 discrimination between persons of the same class involving
 28 essentially the same hazards, in the amount of premiums,
 29 policy fees, assessments, or rates charged or made for:

30 (i) policies or contracts of reinsurance or joint reinsurance,
 31 or abstract and title insurance;

32 (ii) policies or contracts of insurance against loss or damage
 33 to aircraft, or against liability arising out of the ownership,
 34 maintenance, or use of any aircraft, or of vessels or craft,
 35 their cargoes, marine builders' risks, marine protection and
 36 indemnity, or other risks commonly insured under marine,
 37 as distinguished from inland marine, insurance; or

38 (iii) policies or contracts of any other kind or kinds of
 39 insurance whatsoever.

40 However, nothing contained in clause (C) shall be construed to
 41 apply to any of the kinds of insurance referred to in clauses (A)
 42 and (B) nor to reinsurance in relation to such kinds of insurance.

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1 Nothing in clause (A), (B), or (C) shall be construed as making or
 2 permitting any excessive, inadequate, or unfairly discriminatory
 3 charge or rate or any charge or rate determined by the department
 4 or commissioner to meet the requirements of any other insurance
 5 rate regulatory law of this state.

6 (8) Except as otherwise expressly provided by law, knowingly
 7 permitting or offering to make or making any contract or policy
 8 of insurance of any kind or kinds whatsoever, including but not in
 9 limitation, life annuities, or agreement as to such contract or
 10 policy other than as plainly expressed in such contract or policy
 11 issued thereon, or paying or allowing, or giving or offering to pay,
 12 allow, or give, directly or indirectly, as inducement to such
 13 insurance, or annuity, any rebate of premiums payable on the
 14 contract, or any special favor or advantage in the dividends,
 15 savings, or other benefits thereon, or any valuable consideration
 16 or inducement whatever not specified in the contract or policy; or
 17 giving, or selling, or purchasing or offering to give, sell, or
 18 purchase as inducement to such insurance or annuity or in
 19 connection therewith, any stocks, bonds, or other securities of any
 20 insurance company or other corporation, association, limited
 21 liability company, or partnership, or any dividends, savings, or
 22 profits accrued thereon, or anything of value whatsoever not
 23 specified in the contract. Nothing in this subdivision and
 24 subdivision (7) shall be construed as including within the
 25 definition of discrimination or rebates any of the following
 26 practices:

27 (A) Paying bonuses to policyholders or otherwise abating their
 28 premiums in whole or in part out of surplus accumulated from
 29 nonparticipating insurance, so long as any such bonuses or
 30 abatement of premiums are fair and equitable to policyholders
 31 and for the best interests of the company and its policyholders.

32 (B) In the case of life insurance policies issued on the
 33 industrial debit plan, making allowance to policyholders who
 34 have continuously for a specified period made premium
 35 payments directly to an office of the insurer in an amount
 36 which fairly represents the saving in collection expense.

37 (C) Readjustment of the rate of premium for a group insurance
 38 policy based on the loss or expense experience thereunder, at
 39 the end of the first year or of any subsequent year of insurance
 40 thereunder, which may be made retroactive only for such
 41 policy year.

42 (D) Paying by an insurer or agent thereof duly licensed as such

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1 under the laws of this state of money, commission, or
 2 brokerage, or giving or allowing by an insurer or such licensed
 3 agent thereof anything of value, for or on account of the
 4 solicitation or negotiation of policies or other contracts of any
 5 kind or kinds, to a broker, agent, or solicitor duly licensed
 6 under the laws of this state, but such broker, agent, or solicitor
 7 receiving such consideration shall not pay, give, or allow
 8 credit for such consideration as received in whole or in part,
 9 directly or indirectly, to the insured by way of rebate.

10 (9) Requiring, as a condition precedent to loaning money upon the
 11 security of a mortgage upon real property, that the owner of the
 12 property to whom the money is to be loaned negotiate any policy
 13 of insurance covering such real property through a particular
 14 insurance agent or broker or brokers. However, this subdivision
 15 shall not prevent the exercise by any lender of its or his right to
 16 approve or disapprove of the insurance company selected by the
 17 borrower to underwrite the insurance.

18 (10) Entering into any contract, combination in the form of a trust
 19 or otherwise, or conspiracy in restraint of commerce in the
 20 business of insurance.

21 (11) Monopolizing or attempting to monopolize or combining or
 22 conspiring with any other person or persons to monopolize any
 23 part of commerce in the business of insurance. However,
 24 participation as a member, director, or officer in the activities of
 25 any nonprofit organization of agents or other workers in the
 26 insurance business shall not be interpreted, in itself, to constitute
 27 a combination in restraint of trade or as combining to create a
 28 monopoly as provided in this subdivision and subdivision (10).
 29 The enumeration in this chapter of specific unfair methods of
 30 competition and unfair or deceptive acts and practices in the
 31 business of insurance is not exclusive or restrictive or intended to
 32 limit the powers of the commissioner or department or of any
 33 court of review under section 8 of this chapter.

34 (12) Requiring as a condition precedent to the sale of real or
 35 personal property under any contract of sale, conditional sales
 36 contract, or other similar instrument or upon the security of a
 37 chattel mortgage, that the buyer of such property negotiate any
 38 policy of insurance covering such property through a particular
 39 insurance company, agent, or broker or brokers. However, this
 40 subdivision shall not prevent the exercise by any seller of such
 41 property or the one making a loan thereon, of his, her, or its right
 42 to approve or disapprove of the insurance company selected by

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1 the buyer to underwrite the insurance.

2 (13) Issuing, offering, or participating in a plan to issue or offer,
3 any policy or certificate of insurance of any kind or character as
4 an inducement to the purchase of any property, real, personal, or
5 mixed, or services of any kind, where a charge to the insured is
6 not made for and on account of such policy or certificate of
7 insurance. However, this subdivision shall not apply to any of the
8 following:

9 (A) Insurance issued to credit unions or members of credit
10 unions in connection with the purchase of shares in such credit
11 unions.

12 (B) Insurance employed as a means of guaranteeing the
13 performance of goods and designed to benefit the purchasers
14 or users of such goods.

15 (C) Title insurance.

16 (D) Insurance written in connection with an indebtedness and
17 intended as a means of repaying such indebtedness in the
18 event of the death or disability of the insured.

19 (E) Insurance provided by or through motorists service clubs
20 or associations.

21 (F) Insurance that is provided to the purchaser or holder of an
22 air transportation ticket and that:

23 (i) insures against death or nonfatal injury that occurs during
24 the flight to which the ticket relates;

25 (ii) insures against personal injury or property damage that
26 occurs during travel to or from the airport in a common
27 carrier immediately before or after the flight;

28 (iii) insures against baggage loss during the flight to which
29 the ticket relates; or

30 (iv) insures against a flight cancellation to which the ticket
31 relates.

32 (14) Refusing, because of the for-profit status of a hospital or
33 medical facility, to make payments otherwise required to be made
34 under a contract or policy of insurance for charges incurred by an
35 insured in such a for-profit hospital or other for-profit medical
36 facility licensed by the state department of health.

37 (15) Refusing to insure an individual, refusing to continue to issue
38 insurance to an individual, limiting the amount, extent, or kind of
39 coverage available to an individual, or charging an individual a
40 different rate for the same coverage, solely because of that
41 individual's blindness or partial blindness, except where the
42 refusal, limitation, or rate differential is based on sound actuarial

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- 1 principles or is related to actual or reasonably anticipated
 2 experience.
- 3 (16) Committing or performing, with such frequency as to
 4 indicate a general practice, unfair claim settlement practices (as
 5 defined in section 4.5 of this chapter).
- 6 (17) Between policy renewal dates, unilaterally canceling an
 7 individual's coverage under an individual or group health
 8 insurance policy solely because of the individual's medical or
 9 physical condition.
- 10 (18) Using a policy form or rider that would permit a cancellation
 11 of coverage as described in subdivision (17).
- 12 (19) Violating IC 27-1-22-25 or IC 27-1-22-26 concerning motor
 13 vehicle insurance rates.
- 14 (20) Violating IC 27-8-21-2 concerning advertisements referring
 15 to interest rate guarantees.
- 16 (21) Violating IC 27-8-24.3 concerning insurance and health plan
 17 coverage for victims of abuse.
- 18 (22) Violating IC 27-1-15.5-3(h).
- 19 (23) Violating IC 27-8-26 concerning genetic screening or testing.
- 20 **(24) Violating IC 27-16 concerning privacy of personal**
 21 **information.**
- 22 SECTION 2. IC 27-16 IS ADDED TO THE INDIANA CODE AS
 23 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
 24 2001]:
- 25 **ARTICLE 16. PRIVACY OF PERSONAL INFORMATION**
- 26 **Chapter 1. Definitions**
- 27 **Sec. 1. The definitions in this chapter apply throughout this**
 28 **article.**
- 29 **Sec. 2. "Affiliate" means a company that:**
- 30 **(1) controls;**
 31 **(2) is controlled by; or**
 32 **(3) is under common control with;**
 33 **another company.**
- 34 **Sec. 3. "Agent" means an individual or entity that is licensed**
 35 **under IC 27-1-15.5.**
- 36 **Sec. 4. "Clear and conspicuous" means that a notice is**
 37 **reasonably understandable and designed to call attention to the**
 38 **nature and significance of the information in the notice.**
- 39 **Sec. 5. "Collect" means to obtain information that a licensee**
 40 **organizes or retrieves by means of:**
- 41 **(1) the name of;**
 42 **(2) a number assigned to;**

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- 1 (3) a symbol assigned to; or
 2 (4) another identifier assigned to;
 3 an individual.

4 **Sec. 6. "Company" means a corporation, limited liability**
 5 **company, business trust, general partnership, limited partnership,**
 6 **association, sole proprietorship, or similar organization.**

7 **Sec. 7. (a) "Consumer" means an individual, or an individual's**
 8 **legal representative, who seeks to obtain, obtains, or has obtained**
 9 **an insurance product or service in Indiana from a licensee for**
 10 **personal, family, or household purposes, and about whom the**
 11 **licensee has nonpublic personal information. The term includes the**
 12 **following:**

- 13 (1) An individual who provides nonpublic personal
 14 information to a licensee in connection with financial,
 15 insurance, investment, or economic advisory services.
 16 (2) An applicant for insurance coverage.
 17 (3) An individual who provides nonpublic personal
 18 information to a licensee to obtain a determination about
 19 whether the individual may qualify for a loan to be used
 20 primarily for personal, family, or household purposes.

21 **(b) "Consumer" does not include the following individuals:**

- 22 (1) A beneficiary of a trust for which a licensee is the trustee.
 23 (2) A third party liability claimant.
 24 (3) An individual who designates a licensee as trustee for a
 25 trust.
 26 (4) A consumer of another financial institution to which a
 27 licensee acts as agent for, or provides processing or other
 28 services.
 29 (5) A participant or a beneficiary of an employee benefit plan
 30 that a licensee administers or sponsors or for which a licensee
 31 acts as a trustee, insurer, or fiduciary.
 32 (6) An individual who is covered under a group or blanket
 33 insurance policy or group annuity contract issued by a
 34 licensee, if the licensee:
 35 (A) provides the initial, annual, and revised notices under
 36 IC 27-16-2, IC 27-16-3, and IC 27-16-4 to the plan sponsor,
 37 group or blanket insurance policyholder, group annuity
 38 contract holder, or worker's compensation plan
 39 participant; and
 40 (B) does not disclose to a nonaffiliated third party
 41 nonpublic personal financial information about the
 42 individual other than as permitted under IC 27-16-12,

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1 IC 27-16-13, or IC 27-16-14.

2 Sec. 8. "Consumer reporting agency" has the meaning set forth
3 in Section 603(f) of the federal Fair Credit Reporting Act (15
4 U.S.C. 1681a(f)).

5 Sec. 9. "Control" means the following:

6 (1) Ownership, control, or power to vote at least twenty-five
7 percent (25%) of the outstanding shares of any class of voting
8 security of a company:

9 (A) directly;

10 (B) indirectly; or

11 (C) by acting through at least one (1) other person.

12 (2) Control in any manner over the election of a majority of
13 the directors, trustees, or general partners of a company.

14 (3) Power to exercise, directly or indirectly, a controlling
15 influence over the management or policies of a company, as
16 determined by the commissioner.

17 Sec. 10. "Customer" means a consumer who has a customer
18 relationship with a licensee. The term does not include a
19 beneficiary or claimant under a policy of insurance solely because
20 of the individual's status as a beneficiary or claimant.

21 Sec. 11. "Customer relationship" means a continuing
22 relationship between a consumer and a licensee under which the
23 licensee provides at least one (1) financial product or service to the
24 consumer that is to be used primarily for personal, family, or
25 household purposes, including a relationship in which the
26 consumer:

27 (1) is a current policyholder of an insurance product or other
28 product obtained from or through the licensee;

29 (2) holds an investment product obtained through the
30 licensee; or

31 (3) obtains financial, insurance, investment, or economic
32 advisory services from the licensee for a fee.

33 Sec. 12. "Financial institution" has the meaning set forth in
34 section 509(3) of the federal Gramm, Leach, Bliley Financial
35 Services Modernization Act of 1999 (P.L.106-102). The term
36 includes an institution engaged in the business of financial activities
37 as described in Section 4(k) of the federal Bank Holding Company
38 Act of 1956 (12 U.S.C. 1841 et seq.). However, the term does not
39 include the following:

40 (1) A person or entity with respect to any financial activity
41 that is subject to the jurisdiction of the federal commodity
42 futures trading commission under the federal Commodity

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1 Exchange Act (7 U.S.C. 1 et seq.).

2 (2) The Federal Agricultural Mortgage Corporation or an
3 entity chartered and operating under the federal Farm Credit
4 Act of 1971 (12 U.S.C. 2001 et seq.).

5 (3) An institution chartered by the United States Congress to
6 engage in transactions described in Section 502(e)(1)(C) of the
7 federal Gramm, Leach, Bliley Financial Services
8 Modernization Act of 1999 (P.L.106-102), if the institution
9 does not sell or transfer nonpublic personal information to a
10 nonaffiliated third party.

11 Sec. 13. "Financial product or service" means a product or
12 service that is offered by a licensee under IC 27, including a
13 licensee's evaluation or brokerage of information that the licensee
14 collects in connection with a request or an application from a
15 consumer for a financial product or service.

16 Sec. 14. "Health information" means information or data, other
17 than age or gender information, either oral or recorded in any
18 form or medium, created by or derived from a health care
19 provider or a consumer or customer, that relates to:

- 20 (1) the past, present, or future physical, mental, or behavioral
21 health or condition of a consumer or a member of the
22 consumer's family;
23 (2) the provision of health care services to a consumer; or
24 (3) payment for the provision of health care services to a
25 consumer.

26 Sec. 15. "Licensee" means an individual or entity that must be
27 licensed, authorized, certified, or registered under IC 27. The term
28 includes an unauthorized insurer that places surplus lines
29 insurance in Indiana through a surplus lines agent who is licensed
30 under IC 27-1-15.5.

31 Sec. 16. (a) "Nonaffiliated third party" means a company that
32 is an affiliate solely because a licensee or the licensee's affiliate has
33 direct or indirect ownership or control of the company, including
34 a company that is conducting:

- 35 (1) merchant banking or investment banking activities; or
36 (2) insurance company investment activities;

37 as described in Section 4(k)(4)(H) of the federal Bank Holding
38 Company Act of 1956 (12 U.S.C. 1841 et seq.).

39 (b) "Nonaffiliated third party":

40 (1) does not include a:

41 (A) licensee's affiliate; or

42 (B) person employed jointly by a licensee and a company

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that is not the licensee's affiliate; and

(2) does include the other company that jointly, with a licensee, employs the person referred to in subdivision (1)(B).

Sec. 17. (a) "Nonpublic personal financial information" includes:

- (1) personally identifiable financial information;
- (2) a list or description of consumers that is derived using personally identifiable financial information that is not publicly available; and
- (3) a list of individual names and addresses that is derived using personally identifiable financial information that is not publicly available, including policy or contract numbers.

(b) "Nonpublic personal financial information" does not include:

- (1) health information;
- (2) publicly available information, except as included on a list under subdivision (4);
- (3) a list or description of consumers that is derived without using personally identifiable financial information that is not publicly available; or
- (4) a list of individual names and addresses that:
 - (A) contains only publicly available information;
 - (B) is not derived using personally identifiable information that is not publicly available; and
 - (C) is not disclosed in a manner that indicates that an individual on the list is a consumer of a financial institution.

Sec. 18. "Nonpublic personal health information" means health information:

- (1) that identifies an individual who is the subject of the information; or
- (2) with respect to which there is a reasonable basis to believe that the information could be used to identify an individual.

Sec. 19. "Nonpublic personal information" means:

- (1) nonpublic personal financial information; and
- (2) nonpublic personal health information.

Sec. 20. "Opt out" means a direction by a consumer that a licensee may not disclose nonpublic personal financial information about the consumer to a nonaffiliated third party except as permitted under IC 27-16-12, IC 27-16-13, and IC 27-16-14.

Sec. 21. "Personally identifiable financial information" means financial information:

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- (1) that a consumer provides to a licensee to obtain a financial product or service from the licensee;
- (2) about a consumer resulting from a transaction involving a financial product or service between a licensee and the consumer; or
- (3) that a licensee otherwise obtains about a consumer in connection with the provision of a financial product or service to the consumer.

Sec. 22. "Personally identifiable health information" means health information:

- (1) that a consumer provides to a licensee to obtain a financial product or service from the licensee;
- (2) about a consumer resulting from a transaction involving a financial product or service between a licensee and the consumer;
- (3) that a licensee otherwise obtains about a consumer in connection with the provision of a financial product or service to the consumer; and
- (4) that identifies a consumer who is the subject of the information;

or with respect to which there is a reasonable basis to believe that the information could be used to identify a consumer. The term does not include personally identifiable nonmedical information such as name, address, Social Security number, age, or gender if the information is legally obtained by the licensee from a source other than the consumer's medical record, regardless of whether the information is also part of the consumer's medical record.

Sec. 23. "Publicly available information" means information that a licensee has a reasonable basis to believe is lawfully available to the general public from:

- (1) federal, state, or local government records;
- (2) widely distributed media; or
- (3) disclosure to the general public that is required under federal, state, or local law.

Sec. 24. "Reasonable basis" means a basis for which a licensee reasonably believes that information is lawfully available to the general public. The basis is gained by activities taken by the licensee to determine that:

- (1) the information is available to the general public; and
- (2) an individual can direct that the information not be made available to the general public, but the individual concerned has not done so.

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Chapter 2. Initial Privacy Notice

Sec. 1. Subject to section 2 of this chapter, a licensee shall provide a clear and conspicuous initial notice that accurately reflects the licensee's privacy policy and practice to the following:

(1) A customer of the licensee, not later than the time at which the licensee establishes a customer relationship, except as provided under section 5 of this chapter.

(2) A consumer, before the licensee discloses any nonpublic personal financial information about the consumer to any nonaffiliated third party, if the licensee makes the disclosure other than as authorized under IC 27-16-13, IC 27-16-14, and IC 27-16-15.

Sec. 2. A licensee is not required to provide an initial notice to a consumer under section 1 of this chapter if:

(1) the licensee does not disclose any nonpublic personal financial information about the consumer to any nonaffiliated third party other than as authorized under IC 27-16-13, IC 27-16-14, and IC 27-16-15;

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

(3) a notice:

(A) that:

(i) clearly identifies all licensees to whom the notice applies; or

(ii) states that the notice applies to all affiliates of the named licensee; and

(B) that is accurate with respect to the licensee and the affiliates of the licensee; has been provided by an affiliated licensee.

Sec. 3. A licensee establishes a customer relationship at the time that the licensee and the consumer enter into a continuing relationship, other than solely as a beneficiary or claimant, including when the consumer:

(1) becomes a policyholder at the time that an insurance policy or contract is delivered to the consumer; or

(2) agrees to obtain financial, insurance, economic, or investment advisory services from the licensee for a fee.

Sec. 4. When an existing customer obtains from a licensee a new financial product or service that is to be used primarily for personal, family, or household purposes, the licensee may satisfy the initial notice requirements under section 1 of this chapter if one (1) of the following applies:

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(1) The licensee provides a revised privacy notice under IC 27-16-6 that covers the customer's new financial product or service.

(2) The initial, revised, or annual notice that the licensee most recently provided to the customer was accurate with respect to the new financial product or service.

Sec. 5. A licensee may provide the initial notice required under section 1 of this chapter within a reasonable time after the licensee establishes a customer relationship, instead of before the customer relationship is established, if:

(1) the customer relationship is not established at the customer's election, such as in the case of:

(A) an acquisition by; or

(B) an assignment to;

the licensee of an insurance policy or related records from another financial institution or residual market mechanism when the customer does not have a choice about the acquisition or assignment; or

(2) providing notice not later than the time at which the licensee establishes the customer relationship would substantially delay the customer's transaction, such as in the case of a telephone agreement between the licensee and the individual to enter into a customer relationship involving prompt delivery of the financial product or service under which the customer agrees to receive the notice at a later time.

Sec. 6. If two (2) or more consumers jointly obtain a financial product or service from a licensee, the licensee may satisfy the requirements of section 1 of this chapter by providing one (1) initial notice to the consumers jointly.

Sec. 7. If a licensee is required to deliver an initial privacy notice under this chapter, the licensee shall deliver the notice as provided in IC 27-16-7. If a licensee uses a short form initial notice for noncustomers under IC 27-16-4-3, the licensee may deliver the privacy notice as provided in IC 27-16-4-3(b)(3).

Chapter 3. Annual Privacy Notice

Sec. 1. A licensee shall provide a clear and conspicuous annual notice to a customer that accurately reflects the licensee's privacy policy and practice at least one (1) time in any period of twelve (12) consecutive months during the course of the customer relationship.

Sec. 2. A licensee is not required to provide an annual notice described in section 1 of this chapter to a former customer when:

(1) the former customer is not a current policyholder of an

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insurance product or no longer obtains insurance services through the licensee;

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

(3) according to the licensee's records, the former customer has a last known address that is determined to be invalid because:

(A) mail sent to the address by the licensee is returned by postal authorities as undeliverable; and

(B) subsequent attempts by the licensee to obtain a current valid address have been unsuccessful; or

(4) with respect to the provision of real estate settlement services provided by the licensee:

(A) the former customer has paid for real estate settlement services provided by the licensee connected with a real estate closing;

(B) the former customer has completed execution of all documents related to a real estate closing; or

(C) the licensee has completed the licensee's responsibilities with respect to the real estate settlement, including filing documents on the public record;

whichever is later.

Sec. 3. If a licensee is required to deliver an annual privacy notice under this chapter, the licensee shall deliver the notice as provided in IC 27-16-7.

Sec. 4. An annual notice required under this chapter may be provided by an affiliated licensee if the notice:

(1) clearly identifies all licensees to which the notice applies or states that the notice applies to all affiliates of the named licensee; and

(2) is accurate with respect to the licensee and other institutions.

Chapter 4. Information in Privacy Notices

Sec. 1. The initial, annual, and revised privacy notices that a licensee provides under IC 27-16-2, IC 27-16-3, and IC 27-16-6 must set forth each of the following items of information that applies to the licensee or to the consumers to whom the licensee

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sends a privacy notice:

- (1) Categories of nonpublic personal financial information that the licensee collects.
- (2) Categories of nonpublic personal financial information that the licensee discloses.
- (3) Categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information, other than those parties to whom the licensee discloses information under IC 27-16-13 and IC 27-16-14.
- (4) Categories of nonpublic personal financial information about the licensee's former customers that the licensee discloses, and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information about the licensee's former customers other than those parties to whom the licensee discloses information under IC 27-16-13 and IC 27-16-14.
- (5) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under IC 27-16-12 and no other exception applies to the disclosure, a separate statement of the categories of information the licensee discloses and the categories of nonaffiliated third parties with whom the licensee has contracted.
- (6) An explanation of the right under IC 27-16-9 to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties and the right under IC 27-16-15 to authorize the disclosure of personally identifiable health information for marketing purposes, including an explanation of the methods by which the consumer may exercise the rights.
- (7) Any disclosures that the licensee makes under 603(d)(2)(A)(iii) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)).
- (8) The licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.
- (9) A statement that the licensee makes disclosures under section 2 of this chapter, if such disclosures are made.

Sec. 2. (a) If a licensee discloses nonpublic personal financial information about a consumer to nonaffiliated third parties only as authorized under IC 27-16-13 and IC 27-16-14, the licensee is not required to list the exceptions provided for under IC 27-16-13 and IC 27-16-14 in the initial or annual privacy notice required

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under IC 27-16-2 and IC 27-16-3.

(b) When setting forth items of information in a privacy notice under section 1 of this chapter with respect to nonaffiliated third parties, a licensee is required only to state that it makes disclosures to other nonaffiliated third parties as permitted by law.

Sec. 3. (a) A licensee may satisfy the initial notice requirements under IC 27-16-2 for a consumer who is not a customer by providing a short form initial notice at the time that the licensee delivers an opt out notice under IC 27-16-7 and, if appropriate, an authorization under IC 27-16-15.

(b) A short form initial notice must:

- (1) be clear and conspicuous;
- (2) state that a licensee's privacy notice is available upon request;
- (3) describe a reasonable means by which the consumer may obtain the licensee's privacy notice, including:
 - (A) a toll free telephone number that the consumer may call to request the notice; or
 - (B) for a consumer who conducts business in person in the licensee's office, providing notice to the consumer immediately upon request; and
- (4) be delivered as provided under IC 27-16-7.

(c) A licensee is not required to deliver the licensee's privacy notice with the licensee's short form initial notice.

(d) If a consumer who receives the licensee's short form initial notice requests the licensee's privacy notice, the licensee shall deliver the privacy notice as provided under IC 27-16-7.

Sec. 4. A licensee's privacy notice may include:

- (1) categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future, but does not currently disclose; and
- (2) categories of affiliates or nonaffiliated third parties to whom the licensee reserves the right in the future to disclose, but to whom the licensee does not currently disclose, nonpublic personal financial information.

Chapter 5. Form and Methods of Opt Out Notice to Consumers

Sec. 1. (a) If a licensee is required to provide an opt out notice under IC 27-16-9, the licensee must provide a clear and conspicuous notice to each of the licensee's consumers that accurately explains the right to opt out. The notice must state:

- (1) that the licensee discloses or reserves the right to disclose nonpublic personal financial information about the licensee's

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- 1 consumer to a nonaffiliated third party;
- 2 (2) that the consumer has the right to opt out of the
- 3 disclosure; and
- 4 (3) a reasonable means by which the consumer may exercise
- 5 the opt out right.

6 **If the licensee requires a consumer to opt out by a specific means,**
 7 **the means must be reasonable for the consumer.**

8 (b) A licensee provides a reasonable means to exercise the right
 9 to opt out under subsection (a) if the licensee:

- 10 (1) designates check off boxes in a prominent position on the
- 11 relevant forms with the opt out notice;
- 12 (2) includes a reply form with the opt out notice;
- 13 (3) provides an electronic means to opt out, including:
- 14 (A) a form that can be sent via electronic mail; or
- 15 (B) a process on the licensee's web site;
- 16 if the consumer agrees to electronic delivery of information;
- 17 (4) provides a toll free telephone number that a consumer
- 18 may call to opt out; or
- 19 (5) provides the opt out notice with or on the same written or
- 20 electronic form as the initial notice that the licensee provides
- 21 under IC 27-16-2.

22 **Sec. 2. If a licensee provides the opt out notice required under**
 23 **this chapter after the time within which the initial notice must be**
 24 **provided under IC 27-16-2-5, the licensee shall include with the opt**
 25 **out notice a copy of the initial notice in writing or, if the consumer**
 26 **agrees, electronically.**

27 **Sec. 3. (a) If two (2) or more consumers jointly obtain a**
 28 **financial product or service from a licensee, the licensee may**
 29 **provide a single opt out notice. The licensee's opt out notice must**
 30 **explain how the licensee will treat an opt out direction by a joint**
 31 **consumer as described in subsection (b).**

- 32 (b) A licensee may either:
- 33 (1) treat an opt out direction by one (1) joint consumer as
- 34 applying to all of the associated joint consumers; or
- 35 (2) permit each joint consumer to opt out separately.

36 (c) If a licensee permits each joint consumer to opt out
 37 separately, the licensee shall also permit one (1) of the joint
 38 consumers to opt out on behalf of all the joint consumers.

39 (d) A licensee may not require all joint consumers to opt out
 40 before the licensee implements any opt out direction.

41 **Sec. 4. A licensee shall comply with a consumer's opt out**
 42 **direction as soon as reasonably practicable after the licensee**

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receives the opt out direction.

Sec. 5. A consumer may exercise the right to opt out at any time.

Sec. 6. (a) A consumer's direction to opt out under this chapter is effective until the consumer revokes the direction in writing or, if the consumer agrees, electronically.

(b) When a customer relationship terminates, the customer's opt out direction continues to apply to the customer's nonpublic personal financial information collected by the licensee during or related to that relationship. If the individual subsequently establishes a new customer relationship with the licensee, the opt out direction that applied to the former relationship does not apply to the new customer relationship.

Sec. 7. If a licensee is required to deliver an opt out notice under this chapter, the licensee shall deliver the opt out notice as provided under IC 27-16-7.

Chapter 6. Revised Privacy Notice

Sec. 1. Except as otherwise authorized in this article, a licensee shall not, directly or through any affiliate, disclose nonpublic personal financial information about a consumer to a nonaffiliated third party other than as described in the initial notice that the licensee provided to the consumer under IC 27-16-2 unless:

- (1) the licensee has provided to the consumer a revised notice that accurately describes the licensee's policies and practices;
- (2) the licensee has provided to the consumer a new opt out notice;
- (3) the licensee has given the consumer a reasonable opportunity, before the licensee discloses the information to the nonaffiliated third party, to:
 - (A) opt out of; or
 - (B) if appropriate, authorize; the disclosure; and
- (4) the consumer:
 - (A) does not opt out of; or
 - (B) if appropriate, authorizes; the disclosure.

Sec. 2. If a licensee is required to deliver a revised privacy notice under this chapter, the licensee shall deliver it as provided under IC 27-16-7.

Chapter 7. Delivery of Privacy Notice and Opt Out Notice

Sec. 1. (a) A licensee shall provide a privacy notice and opt out notice, including short form initial notices required under this article, so that each consumer may reasonably be expected to

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1 receive actual notice in writing or, if the consumer agrees,
2 electronically.

3 (b) A licensee may reasonably expect that a consumer will
4 receive actual notice if the licensee:

- 5 (1) hand delivers a printed copy of a notice to the consumer;
6 (2) mails a printed copy of a notice to the last known address
7 of the consumer:

- 8 (A) separately;
9 (B) in a policy communication;
10 (C) in a billing communication; or
11 (D) in another written communication;

12 (3) clearly and conspicuously posts an electronic notice on the
13 licensee's Internet site for a consumer who regularly accesses
14 the licensee's Internet site to conduct transactions; or

15 (4) for an isolated transaction with the consumer, including a
16 transaction in which the licensee:

- 17 (A) provides an insurance quote; or
18 (B) sells travel insurance to the consumer;

19 requires the consumer to acknowledge receipt of the notice as
20 a necessary step to obtaining the particular financial product
21 or service.

22 (c) A licensee may not reasonably expect that a consumer will
23 receive actual notice of the licensee's privacy policies and practices
24 if the licensee only:

- 25 (1) posts a sign in the licensee's branch or office;
26 (2) generally publishes advertisements of the licensee's
27 privacy policies and practices; or
28 (3) sends notice via electronic mail to a consumer who does
29 not agree to receive notices electronically.

30 Sec. 2. A licensee may reasonably expect that a customer will
31 receive actual notice of the licensee's annual privacy notice if the
32 customer:

33 (1) agrees to receive notices at the licensee's Internet site, and
34 the licensee posts the licensee's current privacy notice
35 continuously in a clear and conspicuous manner on the
36 Internet site; or

37 (2) has requested that the licensee refrain from sending any
38 information regarding the customer relationship, and the
39 licensee's current privacy notice remains available to the
40 customer upon request.

41 Sec. 3. A licensee may not provide any notice required under
42 this article solely by orally explaining the notice in person or over

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the telephone.

Sec. 4. A licensee shall provide to customers the initial notice, the annual notice, and the revised notice required under this article in a manner in which the customer may retain or obtain the notices at a later date in writing or, if the customer agrees, electronically, including:

- (1) hand delivery of a printed copy of the notice to the customer;**
- (2) mailing a printed copy of the notice to the last known address of the customer upon request of the customer; or**
- (3) making the licensee's current privacy notice available on an Internet site, or a link to another Internet site, for a customer who agrees to receive the notice at the Internet site.**

Sec. 5. A licensee may provide a joint notice from the licensee and one (1) or more:

- (1) of the licensee's affiliates;**
- (2) other licensees; or**
- (3) other financial institutions;**

or on behalf of another financial institution if the notice is accurate with respect to the licensee and the other institutions.

Sec. 6. If two (2) or more consumers jointly obtain a financial product or service from a licensee, the licensee may satisfy the initial and revised notice requirements of IC 27-16-2, IC 27-16-3, and IC 27-16-6 by providing one (1) notice to the consumers jointly.

Chapter 8. Nondiscrimination

Sec. 1. A licensee shall not unfairly discriminate against any customer or consumer on the basis of the customer's or consumer's exercise of the right to opt out of the disclosure of nonpublic personal information as provided under this article.

Sec. 2. This article does not require a licensee to:

- (1) provide a benefit; or**
- (2) commence or continue payment of a claim;**

in the absence of personally identifiable health information or nonpublic personal financial information that is necessary to support or deny the claim.

Sec. 3. This chapter does not prohibit a licensee from engaging in the licensee's usual, appropriate, or acceptable method of insurance underwriting.

Chapter 9. Limits on Disclosure of Nonpublic Personal Financial Information to Nonaffiliated Third Parties

Sec. 1. (a) Except as otherwise authorized under this article, a

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1 licensee may not, directly or through an affiliate, disclose
2 nonpublic personal financial information regarding a consumer to
3 a nonaffiliated third party unless:

- 4 (1) the licensee has provided to the consumer an initial notice
5 under IC 27-16-2;
- 6 (2) the licensee has provided to the consumer an opt out notice
7 under IC 27-16-5; and
- 8 (3) the licensee has given the consumer a reasonable
9 opportunity, before the licensee discloses information to a
10 nonaffiliated third party, to opt out of the disclosure.

11 (b) A licensee complies with the requirements of subsection (a)
12 if:

- 13 (1) the licensee mails the notice required under subsection
14 (a)(1) to the consumer and allows the consumer to opt out by:
15 (A) mailing a form;
16 (B) calling a toll free telephone number; or
17 (C) any other reasonable means;
18 within thirty (30) days after the date on which the licensee
19 mails the notice;
- 20 (2) a customer:
21 (A) opens an online account with the licensee; and
22 (B) agrees to receive notice required under subsection
23 (a)(1) electronically;
24 and the licensee makes the notices available to the customer
25 on the licensee's Internet site and allows the customer to opt
26 out by any reasonable means within thirty (30) days after the
27 date that the customer acknowledges receipt of the notice in
28 conjunction with opening the account; or
- 29 (3) for an isolated transaction, including providing the
30 consumer with an insurance quote, the licensee:
31 (A) provides the consumer with the notice required under
32 subsection (a)(1) at the time of the transaction;
33 (B) requests that the consumer decide, as a necessary act
34 of the transaction, whether to opt out before completing
35 the transaction; and
36 (C) provides a reasonable opportunity to opt out; and
37 the consumer does not opt out.

38 Sec. 2. (a) A licensee shall comply with this chapter regardless
39 of whether the licensee and the consumer have established a
40 customer relationship.

41 (b) If a licensee does not comply with this chapter, the licensee
42 may not, directly or through an affiliate, disclose nonpublic

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1 personal financial information about a consumer that the licensee
2 has collected, regardless of whether the licensee collected the
3 nonpublic personal financial information before or after receiving
4 the direction to opt out from the consumer.

5 **Chapter 10. Limits on Rediscovery and Reuse of Information**

6 **Sec. 1. If a licensee receives nonpublic personal information**
7 **from a nonaffiliated financial institution through an exception**
8 **under this article or through an authorization under IC 27-16-15,**
9 **the licensee's disclosure and use of the information is limited as**
10 **follows:**

11 (1) The licensee may disclose the information to the affiliates
12 of the financial institution from which the licensee received
13 the information.

14 (2) The licensee may disclose the information to the licensee's
15 affiliates and agents, but the affiliates and agents may disclose
16 and use the information only to the extent that the licensee
17 may disclose and use the information.

18 (3) The licensee may disclose and use the information through
19 an exception in IC 27-16-13 or IC 27-16-14 in the ordinary
20 course of business to carry out the activity covered under the
21 exception through which the licensee received the
22 information.

23 **Sec. 2. If a licensee receives nonpublic personal information**
24 **from a nonaffiliated financial institution other than through an**
25 **exception under this article or through an authorization under**
26 **IC 27-16-15, the licensee may disclose the information only:**

27 (1) to the affiliates of the financial institution from which the
28 licensee received the information;

29 (2) to the licensee's affiliates and agents, but the licensee's
30 affiliates and agents may disclose the information only to the
31 extent that the licensee can disclose the information; and

32 (3) to any other person, if the disclosure would be lawful if
33 made directly to the person by the financial institution from
34 which the licensee received the information.

35 **Sec. 3. If a licensee discloses nonpublic personal financial**
36 **information to a nonaffiliated third party through an exception**
37 **under IC 27-16-13 or IC 27-16-14, the nonaffiliated third party**
38 **may disclose and use the information only as follows:**

39 (1) The nonaffiliated third party may disclose the information
40 to the licensee's affiliates.

41 (2) The nonaffiliated third party may disclose the information
42 to the nonaffiliated third party's affiliates, but the affiliates

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may disclose and use the information only to the extent that the nonaffiliated third party may disclose and use the information.

(3) The nonaffiliated third party may disclose and use the information through an exception under IC 27-16-13 or IC 27-16-14 in the ordinary course of business to carry out the activity covered by the exception through which the nonaffiliated third party received the information.

Sec. 4. If a licensee discloses nonpublic personal information to a nonaffiliated third party other than through an exception under IC 27-16-13 or IC 27-16-14, or through an authorization under IC 27-16-15, the nonaffiliated third party may disclose the information only:

- (1) to the licensee's affiliates;
- (2) to the nonaffiliated third party's affiliates, but the nonaffiliated third party's affiliates may disclose the information only to the extent the nonaffiliated third party can disclose the information; and
- (3) to any other person if the disclosure would be lawful if the licensee made it directly to the person.

Chapter 11. Limits on Disclosure of Policy or Contract Number Information for Marketing Purposes

Sec. 1. A licensee may not, directly or through an affiliate, disclose, other than to a consumer reporting agency:

- (1) a policy or contract number; or
- (2) similar form of access number or access code;

for a consumer's credit card account, deposit account, or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing, or marketing through electronic mail to the consumer.

Sec. 2. Section 1 of this chapter does not apply if a licensee discloses a policy or contract number or similar form of access number or access code:

- (1) to the licensee's agent or service provider solely in order to perform marketing for the licensee's products or services, as long as the agent or service provider is not authorized to directly initiate charges to the account;
- (2) to a participant in a private label credit card program or an affinity or similar program, where the participants in the program are identified to the customer when the customer enters the program; or
- (3) to a licensee who is an agent solely in order to perform

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1 marketing for the licensee's own products or services.

2 **Chapter 12. Exception to Opt Out Requirements for Service**
 3 **Providers and Joint Marketing**

4 **Sec. 1. For purposes of this chapter, "joint agreement" means**
 5 **a written contract under which a licensee and one (1) or more**
 6 **financial institutions jointly offer, endorse, or sponsor a financial**
 7 **product or service.**

8 **Sec. 2. The opt out requirements of this article do not apply**
 9 **when a licensee provides nonpublic personal financial information**
 10 **to a nonaffiliated third party to perform services for, or functions**
 11 **on behalf of, the licensee if the licensee:**

12 (1) provides the initial notice in compliance with this article;
 13 and

14 (2) enters into a contractual agreement with the nonaffiliated
 15 third party that prohibits the nonaffiliated third party from
 16 disclosing or using the information other than to carry out the
 17 purposes for which the licensee disclosed the information,
 18 including use through an exception under IC 27-16-13 or
 19 IC 27-16-14, in the ordinary course of business.

20 **Sec. 3. A licensee may use and disclose personally identifiable**
 21 **financial information to a person acting on behalf of or at the**
 22 **direction of the licensee to perform the licensee's insurance**
 23 **functions, including:**

- 24 (1) claims administration;
 25 (2) claims adjustment and management;
 26 (3) fraud investigation;
 27 (4) underwriting;
 28 (5) loss control;
 29 (6) rate making functions;
 30 (7) reinsurance;
 31 (8) risk management;
 32 (9) case management;
 33 (10) disease management;
 34 (11) quality assessment;
 35 (12) quality improvement;
 36 (13) provider credentialing verification;
 37 (14) utilization review;
 38 (15) peer review activities;
 39 (16) grievance procedures;
 40 (17) internal administration of compliance;
 41 (18) managerial and information systems;
 42 (19) policyholder service functions;

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- 1 (20) account administration;
- 2 (21) processing premium payments;
- 3 (22) processing insurance claims;
- 4 (23) administering insurance benefits (including utilization
- 5 review activities); and
- 6 (24) participating in research projects;
- 7 and as otherwise required or specifically permitted by federal or
- 8 state law.

9 **Sec. 4. The services performed for a licensee by a nonaffiliated**
 10 **third party under section 2 of this chapter may include:**

- 11 (1) marketing of the licensee's own products or services; or
- 12 (2) marketing of financial products or services offered under
- 13 a joint agreement between the licensee and one (1) or more
- 14 financial institutions.

15 **Chapter 13. Exceptions to Notice and Opt Out Requirements for**
 16 **Processing and Servicing Transactions**

17 **Sec. 1. As used in this chapter, "necessary to effect, administer,**
 18 **or enforce a transaction" means that a disclosure is:**

- 19 (1) required or is one (1) of the lawful or appropriate methods
- 20 to enforce the licensee's rights or the rights of other persons
- 21 engaged in carrying out the financial transaction or providing
- 22 the product or service; or
- 23 (2) required or is a usual, an appropriate, or an acceptable
- 24 method:
 - 25 (A) to carry out the transaction or the product or service
 - 26 business of which the transaction is a part, and record,
 - 27 service, or maintain a consumer's account in the ordinary
 - 28 course of providing a financial service or financial
 - 29 product;
 - 30 (B) to administer, adjudicate, or service benefits or claims
 - 31 relating to a transaction or a product or service business of
 - 32 which the transaction is a part;
 - 33 (C) to provide a confirmation, a statement, or other record
 - 34 of a transaction, or information on the status or value of a
 - 35 financial service or financial product to a consumer or a
 - 36 consumer's agent or broker;
 - 37 (D) to accrue or recognize incentives or bonuses associated
 - 38 with a transaction that are provided by a licensee or any
 - 39 other party;
 - 40 (E) in connection with:
 - 41 (i) the authorization, settlement, billing, processing,
 - 42 clearing, transferring, reconciling, or collection of

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- amounts charged, debited, or otherwise paid using a debit, credit, or other payment card, check, or policy or contract number, or by other payment means;
 - (ii) the transfer of receivables, accounts, or interests in receivables or accounts; or
 - (iii) the audit of debit, credit, or other payment information; or
- (F) to underwrite insurance at a consumer's request or for reinsurance purposes, or for any of the following purposes, as they relate to a consumer's insurance account administration:
- (i) Reporting fraud or material misrepresentation.
 - (ii) Investigating fraud or material misrepresentation.
 - (iii) Preventing fraud or material misrepresentation.
 - (iv) Processing premium payments.
 - (v) Processing insurance claims.
 - (vi) Administering insurance benefits (including utilization review activities).
 - (vii) Participating in research projects.
 - (viii) Other purposes that are required or specifically permitted under federal or state law.

Sec. 2. The requirement of initial notice to consumers under IC 27-16-2-1(2), the requirement to provide the opportunity to consumers and customers to opt out of a disclosure, and the application of this article to service providers and joint marketing do not apply if a licensee discloses nonpublic personal financial information as necessary to effect, administer, or enforce a transaction requested or authorized by the consumer, or in connection with:

- (1) servicing or processing a financial product or service requested or authorized by the consumer, including financial products or services under consideration by the consumer;
- (2) maintaining or servicing the consumer's account with the licensee or with another entity;
- (3) transactions involving a person acting as an agent of the licensee, provided that the agent agrees not to disclose nonpublic personal financial information to additional nonaffiliated third parties; or
- (4) a proposed or actual securitization, a secondary market sale, including sales of servicing rights, or a similar transaction related to a transaction of the consumer.

Sec. 3. The requirements of this article do not apply if a licensee

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1 discloses nonpublic personal financial information or personally
 2 identifiable health information for any purpose related to effecting,
 3 administering, or replacing a group benefit plan, a group health
 4 plan, or a group welfare plan.

5 **Chapter 14. Other Exceptions to Notice and Opt Out**
 6 **Requirements**

7 **Sec. 1. The requirements for initial notice to consumers under**
 8 **IC 27-16-2-1(2), the opportunity to opt out, and the provisions**
 9 **applicable to service providers and joint marketing under this**
 10 **article do not apply when a licensee discloses nonpublic personal**
 11 **financial information in any of the following circumstances:**

12 (1) **With the consent of or at the direction of the consumer,**
 13 **unless the consumer revokes the consent or direction.**

14 (2) **One (1) of the following:**

15 (A) **To protect the confidentiality or security of a licensee's**
 16 **records pertaining to the consumer, service, product, or**
 17 **transaction.**

18 (B) **To protect against or prevent actual or potential fraud,**
 19 **unauthorized transactions, claims, or other liability.**

20 (C) **For required institutional risk control or for resolving**
 21 **consumer disputes or inquiries.**

22 (D) **To persons holding a legal or beneficial interest related**
 23 **to the consumer.**

24 (E) **To persons acting in a fiduciary or representative**
 25 **capacity on behalf of the consumer.**

26 (3) **To provide information to:**

27 (A) **an insurance rate advisory organization;**

28 (B) **a guaranty fund or agency;**

29 (C) **an agency that rates the licensee;**

30 (D) **a person that assesses the licensee's compliance with**
 31 **industry standards; and**

32 (E) **the licensee's attorneys, accountants, and auditors.**

33 (4) **To the extent specifically permitted or required under**
 34 **other provisions of law and under the federal Right to**
 35 **Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.), to law**
 36 **enforcement agencies, including:**

37 (A) **a federal functional regulator;**

38 (B) **the United States Secretary of the Treasury with**
 39 **respect to 31 U.S.C. 53 II and 12 U.S.C. 21;**

40 (C) **a state insurance authority with respect to a person**
 41 **that is engaged in providing insurance and is domiciled in**
 42 **the insurance authority's state; and**

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1 **(D) the Federal Trade Commission;**
 2 **to self-regulatory organizations, or for an investigation on a**
 3 **matter related to public safety.**

4 **(5) One (1) of the following:**

5 **(A) To a consumer reporting agency in accordance with**
 6 **the federal Fair Credit Reporting Act (15 U.S.C. 1681 et**
 7 **seq.) and the fair credit laws of Indiana.**

8 **(B) From a consumer report reported by a consumer**
 9 **reporting agency.**

10 **(6) In connection with a proposed or actual sale, merger,**
 11 **transfer, or exchange of all or a portion of a business or**
 12 **operating unit if the disclosure of nonpublic personal financial**
 13 **information concerns only consumers of the business or**
 14 **operating unit.**

15 **(7) One (1) of the following:**

16 **(A) To comply with federal, state, or local laws, rules and**
 17 **other applicable legal requirements.**

18 **(B) To comply with a properly authorized civil, criminal,**
 19 **or regulatory investigation, or a subpoena or summons by**
 20 **federal, state, or local authorities.**

21 **(C) To respond to judicial process or government**
 22 **regulatory authorities that have jurisdiction over a licensee**
 23 **for examination, compliance, or other purposes as**
 24 **authorized by law.**

25 **(8) If necessary to provide ongoing health care treatment.**

26 **(9) In connection with quality assessment evaluations or**
 27 **investigations.**

28 **(10) To reveal a consumer's presence in a facility owned by a**
 29 **licensee and the consumer's general health condition.**

30 **(11) To a reinsure, stop loss, or excess loss carrier for the**
 31 **purpose of underwriting, claims adjudication, and conducting**
 32 **claim file audits.**

33 **(12) If needed for one (1) of the following purposes:**

34 **(A) To identify a deceased individual.**

35 **(B) To determine the cause and manner of death by a chief**
 36 **medical examiner or the medical examiner's designee.**

37 **(C) To provide necessary protected health information**
 38 **about a deceased individual who is a donor of an**
 39 **anatomical gift.**

40 **(13) To a state department of insurance that is performing an**
 41 **examination, investigation, or audit of the licensee.**

42 **(14) Under a court order issued after the court's**

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determination that the public interest in disclosure outweighs the consumer's privacy interest and that the personally identifiable health information is not reasonably available by other means.

Sec. 2. This article does not apply to information disclosures by a licensee in connection with the purchase of insurance coverage by the licensee or the arrangement of insurance coverage by the licensee for the licensee's employees.

Chapter 15. Personally Identifiable Health Information Privacy Notice and Disclosure Authorization

Sec. 1. A licensee shall, before making a disclosure, obtain an authorization to disclose personally identifiable health information if the purpose of the disclosure is for the marketing of services or goods for personal, family, or household purposes.

Sec. 2. The request for authorization required under this chapter may be included in the initial notice required under IC 27-16-2 if the request for authorization complies with the following requirements:

- (1) The purpose of the disclosure of personally identifiable health information is stated in clear and simple terms and appears in a separate paragraph.
- (2) The request for authorization specifies that the authorization is valid for not more than twenty-four (24) months and may be revoked at any time.
- (3) The request for authorization specifies that the terms and conditions of an insurance policy will not be affected in any way by a refusal to give authorization, as provided in IC 27-16-8.

Sec. 3. This article does not apply, and the authorization under this chapter is not required, if a licensee discloses nonpublic personal information or personally identifiable health information for a purpose related to effecting, administering, or replacing a group benefit plan, a group health plan, or a group welfare plan.

Sec. 4. This chapter does not prohibit, restrict, or require an authorization for the disclosure of nonpublic personal health information by a licensee for the performance of insurance functions by or on behalf of the licensee, including:

- (1) claims administration;
- (2) claims adjustment and management;
- (3) detection, investigation, or reporting of actual or potential fraud, misrepresentation, or criminal activity;
- (4) underwriting;

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- 1 (5) policy placement of issuance;
- 2 (6) loss control;
- 3 (7) ratemaking and guaranty fund functions;
- 4 (8) reinsurance and excess loss insurance;
- 5 (9) risk management;
- 6 (10) case management;
- 7 (11) disease management;
- 8 (12) quality assurance;
- 9 (13) quality improvement;
- 10 (14) performance evaluation;
- 11 (15) provider credentialing verification;
- 12 (16) utilization review;
- 13 (17) peer review activities;
- 14 (18) actuarial, scientific, medical or public policy research;
- 15 (19) grievance procedures;
- 16 (20) internal administration of compliance, managerial, and
- 17 information systems;
- 18 (21) policyholder service functions;
- 19 (22) auditing;
- 20 (23) reporting;
- 21 (24) data base security;
- 22 (25) administration of consumer disputes and inquiries;
- 23 (26) external accreditation standards;
- 24 (27) the replacement of a group benefit plan or worker's
- 25 compensation policy or program;
- 26 (28) activities in connection with a sale, merger, transfer, or
- 27 exchange of all or part of a business or operating unit;
- 28 (29) any activity that permits disclosure without authorization
- 29 under the federal Health Insurance Portability and
- 30 Accountability Act privacy rules promulgated by the United
- 31 States Department of Health and Human Services;
- 32 (30) disclosure that is required, or is one (1) of the lawful or
- 33 appropriate methods, to enforce the licensee's rights or rights
- 34 of other persons engaged in carrying out a transaction or
- 35 providing a product or service that a consumer requests or
- 36 authorizes; and
- 37 (31) any activity otherwise permitted by law, required under
- 38 governmental reporting authority, or to comply with legal
- 39 process.

Chapter 16. Relation to Other Laws

Sec. 1. This article does not modify, limit, or supersede:

- 40 (1) the operation of the federal Fair Credit Reporting Act (15
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1 U.S.C. 1681 et seq.), and an inference shall not be drawn on
 2 the basis of the provisions of this article regarding whether
 3 information is transaction or experience information under
 4 Section 603 of the federal Fair Credit Reporting Act (15
 5 U.S.C. 1681 et seq.);
 6 (2) the operation of the fair credit law of Indiana;
 7 (3) Indiana law related to medical records, health, or
 8 insurance information privacy; and
 9 (4) the standards governing the privacy of individually
 10 identifiable health information promulgated by the United
 11 States Secretary of Health and Human Services under the
 12 authority of the federal Health Insurance Portability and
 13 Accountability Act of 1996 (42 U.S.C. 1320d-1320d-8).

14 **Chapter 17. Exceptions**

15 **Sec. 1.** A licensee that is an agent licensed under IC 27-1-15.5 is
 16 subject to all the requirements of this article except when the agent
 17 is acting as an agent for another licensee. When the agent acts as
 18 an agent for another licensee, the agent is exempt only from the
 19 notice requirements of this article if the agent does not disclose
 20 consumer information except as provided under IC 27-16-12,
 21 IC 27-16-13, and IC 27-16-14.

22 **Sec. 2. (a)** As used in this section, "covered entity" means an
 23 insurer that:

- 24 (1) does not have a certificate of authority to do the business
 25 of insurance in Indiana; and
- 26 (2) sells surplus lines insurance in Indiana through a surplus
 27 lines agent licensed under IC 27-1-15.5.

28 (b) This section applies to a covered entity only with respect to
 29 surplus lines insurance sold in Indiana.

30 (c) A licensed surplus lines insurance agent that sells a surplus
 31 lines insurance policy that is underwritten by a covered entity is in
 32 compliance with the notice and opt out requirements for disclosure
 33 of nonpublic personal financial information under this article if:

- 34 (1) the agent and the covered entity do not disclose nonpublic
 35 personal information of a consumer or a customer to
 36 nonaffiliated third parties for any purpose, including joint
 37 servicing or marketing under IC 27-16-12, except as
 38 permitted under IC 27-16-13 and IC 27-16-14; and
- 39 (2) when the customer relationship is established, a notice is
 40 delivered to the consumer on behalf of all licensed surplus
 41 lines insurance agents and covered entities that provide a
 42 financial product or service to a consumer or customer on

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1 which a privacy notice specified under subsection (d) is
 2 printed in 16 point type.
 3 (d) The privacy notice required under subsection (c) must
 4 contain a provision as follows:
 5 "Neither the United States broker that handled this insurance
 6 nor the insurer that has underwritten this insurance will
 7 disclose nonpublic personal information concerning the buyer
 8 to nonaffiliates of the broker or insurer except as permitted
 9 by law."
 10 **Chapter 18. Authority of the Commissioner**
 11 **Sec. 1. The insurance commissioner may investigate alleged**
 12 **violations of this article and may impose any fines and other**
 13 **sanctions that apply under IC 27.**
 14 **Sec. 2. A licensee shall not knowingly or willfully violate the**
 15 **provisions of this article.**
 16 **Sec. 3. A violation of this article is an unfair or deceptive act or**
 17 **practice in the business of insurance under IC 27-4-1-4.**
 18 **Sec. 4. The department may adopt rules under IC 4-22-2 to**
 19 **implement this article.**
 20 **SECTION 3. [EFFECTIVE JULY 1, 2001] (a) As used in this**
 21 **SECTION:**
 22 (1) "consumer" has the meaning set forth in IC 27-16-1-7, as
 23 added by this act;
 24 (2) "customer" has the meaning set forth in IC 27-16-1-10, as
 25 added by this act;
 26 (3) "licensee" has the meaning set forth in IC 27-16-1-15, as
 27 added by this act; and
 28 (4) "nonaffiliated third party" has the meaning set forth in
 29 IC 27-16-1-16, as added by this act.
 30 (b) If a licensee enters into a contract with a nonaffiliated third
 31 party before July 1, 2001, to perform services for the licensee or
 32 functions on the licensee's behalf, the contract is not required to
 33 satisfy the provisions of IC 27-16-12, as added by this act, until
 34 December 31, 2002.
 35 (c) A licensee shall, not later than December 31, 2001, provide
 36 an initial notice as required under IC 27-16-2, as added by this act,
 37 to a consumer who is a customer of the licensee on December 31,
 38 2001.
 39 (d) This SECTION expires January 1, 2003.

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