

Legislative Analysis



INSURER PRIVACY POLICY NOTICES

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Senate Bill 172 (H-1) as reported from House committee

Sponsor: Sen. Jim Stamas

1st House Committee: Insurance

2nd House Committee: Ways and Means

Senate Committee: Insurance and Banking

Revised 6-3-20

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 90 of 2020)

SUMMARY:

Senate Bill 172 would amend the Insurance Code to exempt insurers, under certain circumstances, from having to provide customers with an annual privacy policy notice.

Currently under the code, a licensee must annually provide to its current customers a clear and conspicuous notice that accurately describes its privacy policies and practices.

The bill would exempt licensees from the above requirement if both of the following conditions were met:

- The licensee only provides nonpublic personal information to a nonaffiliated third party under section 535, 537, or 539 of the code (see **Background**, below).
- The licensee's privacy policies and practices have not changed from the previous notice provided to the customer.

The bill would take effect 90 days after its enactment.

MCL 500.513

BRIEF DISCUSSION:

The federal Fixing America's Surface Transportation (FAST) Act, signed into law and effective on December 4, 2015, amended the Gramm-Leach-Bliley Act (GLBA) to eliminate a provision that required some financial institutions to send privacy notices on an annual basis. The act still requires financial institutions to send an initial privacy notice. Institutions that share nonpublic personal information in a way that requires them, under federal law, to offer consumers a chance to opt out must still send an annual notice. However, institutions that do not share information in a way that requires the opt-out offer must send an updated privacy notice only when the policies have changed; they do not need to send an annual notice if there has been no change.

In 2017, the National Association of Insurance Commissioners revised its Privacy of Consumer Financial and Health Information Model Regulation to reflect the GLBA amendments. According to committee testimony, as of February 2020, 36 states had adopted these regulatory changes. The bill would incorporate them into Michigan law. Proponents point to the cost of producing and sending duplicative annual notices and also argue that sending a notice only when there has been a policy change might help to cut through information clutter and signal to a consumer the notice's claim to his or her attention.

BACKGROUND:

Section 535 of the Insurance Code pertains to nonpublic personal financial information disclosed to a third party to perform services for the licensee under a contract that prohibits the third party from disclosing or using the information for any other purpose. These services can include marketing the licensee's product or services or marketing insurance products and services offered under a joint agreement with the licensee and one or more financial institutions.

Section 537 of the Insurance Code pertains to nonpublic personal financial information disclosed as follows:

- To effect, administer, or enforce a consumer-authorized transaction.
- To service, adjust, or process a consumer-authorized insurance product or service.
- To maintain or service the consumer's account with the licensee or with another entity as part of an extension of credit on behalf of that entity.
- In connection with a proposed or actual securitization, secondary market sale, or similar transaction related to a transaction of the consumer.

Section 539 of the Insurance Code pertains to nonpublic personal financial information disclosed as follows:

- At the consumer's direction or with the consumer's consent.
- To protect the confidentiality or security of a licensee's records.
- To protect against fraud or unauthorized transactions.
- For resolving consumer disputes or inquiries or for required institutional risk control.
- To persons holding a legal or beneficial interest relating to the consumer.
- To persons acting in a fiduciary or representative capacity on behalf of the consumer.
- To provide information to the licensee's attorneys, accountants, and auditors or to insurance rate advisory organization, guaranty funds or agencies, agencies rating a licensee, or persons assessing the licensee's compliance with industry standards.
- To law enforcement or regulatory agencies as allowed or required by law.
- To a consumer reporting agency.
- From a consumer report prepared by a consumer reporting agency.
- In connection with an actual or proposed sale, merger, or transfer of all or part of a business or operating unit of the licensee, if the information is that of consumers of that business or unit.
- To comply with federal, state, and local laws and regulations.
- To comply with a federal, state, or local investigation, subpoena, or summons.
- To respond to judicial process or a regulatory authority.
- To the extent necessary, for purposes related to replacing a group benefit plan, group health plan, group welfare plan, or worker's compensation plan.

FISCAL IMPACT:

Senate Bill 172 would not have a fiscal impact on any unit of state or local government.

POSITIONS:

A representative of the American Property Casualty Insurance Association testified in support of the bill. (2-6-20)

The following entities indicated support for the bill:

- Insurance Alliance of Michigan (3-5-20)
- State Farm (2-6-20)
- John Hancock Life Insurance (2-6-20)
- Life Insurance Association of Michigan (5-19-20)

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