



**Ninety-Seventh Legislature - First Session - 2001**  
**Committee Statement**  
**LB 359**

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**Hearing Date:** January 30, 2001  
**Committee On:** Banking, Commerce and Insurance

**Introducers:** (Landis)  
**Title:** Adopt the Privacy of Insurance Consumer Information Act

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**Roll Call Vote – Final Committee Action:**

- Advanced to General File
  - X Advanced to General File with Amendments
  - Indefinitely Postponed
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**Vote Results:**

8	Yes	Senators Landis, Tyson, Aguilar, Bourne, Bruning, Jensen, Kremer, Smith
	No	
	Present, not voting	
	Absent	

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**Proponents:**

Senator David Landis  
 Tim Wagner  
 Jan McKenzie  
 June Remington

**Representing:**

Introducer  
 NE Department of Insurance  
 NE Insurance Federation  
 National Assn. of Insurance & Financial Advisors  
 NE Assn. of Health Underwriters

**Opponents:**

Bob Skochdopole  
 Ted Fraizer

**Representing:**

National Assn. of Independent Insurers  
 American Insurance Assn.

**Neutral:**

**Representing:**

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**Summary of purpose and/or changes:**

LB 359 (Landis), introduced at the request of the Department of Insurance, would enact the Privacy of Insurance Consumer Information Act to govern the treatment of nonpublic personal financial information and nonpublic personal health information by licensees of the department. The bill would also amend various sections throughout the insurance statutes to allow the Director of Insurance to share otherwise confidential or privileged information with other state, federal, foreign, and international regulatory or law enforcement agencies and from

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the National Association of Insurance Commissioners (NAIC), in order to facilitate regulatory and enforcement cooperation.

The bill would provide, section by section, as follows:

- Section 1. Designates sections 1 to 25 of LB 359 as “the Privacy of Insurance Consumer Information Act”.
- Section 2. States that the purpose of the Privacy of Insurance Consumer Information Act is to govern treatment of nonpublic personal financial information and nonpublic personal health information held licensees of the Department of Insurance.
- Section 3. Defines terms.
- Section 4. Requires a licensee to provide clear and conspicuous notices reflecting its privacy policies to customers at the inception of the customer relationship, and to consumers before disclosing nonpublic personal financial information about them to a nonaffiliated third party unless the disclosure is as authorized in section 14 and 15. An initial notice is not required for a consumer if the licensee does not disclose nonpublic personal financial information to a nonaffiliated third party unless as authorized in sections 14 and 15 and the licensee does not have a customer relationship with the consumer; or a notice has been provided by an affiliated licensee. Describes when a licensee establishes a customer relationship.
- Section 5. Requires a licensee to provide an annual notice to customers reflecting privacy policies and practices.
- Section 6. Sets forth requirements for initial, annual, and revised notices. Requires notices to contain an explanation of a consumer's right to opt out of disclosure of nonpublic personal financial information to nonaffiliated third parties as authorized in section 10, including the methods by which the consumer may exercise that right at that time. Requires notices to set forth policies and practices with respect to protecting confidentiality and security of information. Authorizes a short form notice to a consumer who is not a customer.
- Section 7. Sets forth provisions for opt out notices to consumers if required under section 10. Addresses joint consumers and provides that a consumer may opt out at any time and that such opt out is effective until revoked.
- Section 8. Prohibits a licensee from disclosing nonpublic personal financial information about a consumer to a nonaffiliated third party other than as described in the initial notice of section 4 unless the consumer is provided a new opt out notice, a reasonable opportunity to opt out, and the consumer does not opt out.
- Section 9. Sets forth delivery requirements.

- Section 10. Provides that unless otherwise authorized in the Privacy of Insurance Consumer Information Act, a licensee may not directly or through an affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party unless the licensee has provided an initial notice required under section 4, an opt out notice required under section 7, the consumer has been provided a reasonable opportunity to opt out of the disclosure and has not opted out. Defines opt out for purposes of this section and requires licensee compliance regardless of whether a customer relationship exists.
- Section 11. Limits disclosure and use of nonpublic personal financial information received by a licensee from a nonaffiliated financial institution under an exception in sections 14 and 15.
- Section 12. Prohibits a licensee from disclosing, other than to a consumer reporting agency, a policy number or similar form of access number or code for a policy or transaction to any nonaffiliated third party for telemarketing. Sets forth exceptions.
- Section 13. Clarifies that opt out provisions of sections 7 and 10 do not apply when a licensee provides nonpublic personal financial information to a nonaffiliated third party to perform services for the licensee on the licensee's behalf if initial notice has been provided and if a contract exists with the third party prohibiting disclosure beyond authorized activities of sections 14 and 15 in the ordinary course of business. Clarifies that services may include joint marketing.
- Section 14. Clarifies that the initial notice requirements of section 4, the opt out requirements of sections 7 and 10, and service providers and joint marketing of section 13 do not apply when the licensee discloses nonpublic personal financial information as necessary to effect, administer, or enforce a transaction that a consumer requests, or authorizes, or in connection with: servicing or processing an insurance product, credit transaction, securitization or reinsurance. Sets forth specific functions that would be deemed to effect, administer, or enforce a transaction, including underwriting and servicing functions.
- Section 15. Clarifies additional circumstances in which the initial notice requirements of section 4, the opt out requirements of sections 7 and 10, and service providers and joint marketing of section 13 do not apply when the licensee discloses nonpublic personal financial information.
- Section 16. Prohibits licensees, beginning January 1, 2003, from disclosing nonpublic personal health information about a consumer or customer unless an authorization is obtained from the consumer or customer whose nonpublic personal health information is sought to be disclosed. Clarifies that licensees are not prohibited from disclosing nonpublic personal health information for the performance of enumerated insurance functions.
- Section 17. Sets forth requirements for a valid authorization to disclose nonpublic personal health information.

- Section 18. Addresses delivery requirements for authorizations.
- Section 19. Exempts licensees from requirements of sections 16 to 20 if in compliance with federal Health Insurance Portability and Accountability Act privacy rule.
- Section 20. Clarifies that nothing in sections 16 to 20 shall preempt or supersede existing laws relating to medical records or health or insurance information privacy.
- Section 21. Clarifies that nothing in the act shall modify, limit or supersede 15 U.S.C. 1681.
- Section 22. Prohibits discrimination based upon an exercise of opt out opportunity with regard to nonpublic personal financial information or has not granted authorization to release nonpublic personal health information.
- Section 23. Violations of the Privacy of Insurance Consumer Information Act shall constitute an unfair trade practice.
- Section 24. Authorizes the Director of Insurance to adopt and promulgate rules and regulations to carry out the Privacy Insurance Consumer Information Act. Provides that prior to January 1, 2003, the director may adopt and promulgate rules and regulations that (1) set standards for the maintenance of the privacy of health and nonpublic personal health information and (2) conform to standards contained in the act for such information; and that such rules and regulations expire on January 1, 2003.
- Section 25. Provides that by July 1, 2001, licensees shall provide an initial notice as required by section 4 to consumers who are customers on July 1, 2001, with regard to nonpublic personal financial information and delays compliance for licensee contracts with nonaffiliated third parties until July 1, 2002.
- Section 26. Allows the Director of Insurance to share confidential or privileged information with other state, federal, foreign and international regulatory or law enforcement agencies and from the National Association of Insurance Commissioners (“NAIC”), unless otherwise expressly prohibited by Chapter 44. Requires the director to maintain confidential information received from such agencies and the NAIC with notice or the understanding that the material is confidential or privileged. Allows the director to enter into information sharing agreements. Specifies that all information received under this section is confidential, not a public record, or subject to subpoena or discovery, or admissible. Allows the director to use such documents in a regulatory or legal action brought by the director. Prohibits the director or the director’s employees from testifying regarding such information.
- Section 27. Allows the Director of Insurance to share and receive memorandums in support of an actuarial opinion, and information provided by the company in connection with the opinion. Requires the director to maintain such information as confidential if received with notice that the jurisdiction or organization providing the memorandums hold such information as confidential under their laws. Such records

are not subject to subpoena, subject to discovery, or admissible. Prohibits the director or the director's employees from testifying in private civil actions regarding such information. (Amends section 44-425.)

- Section 28. Specifies that a violation of the Privacy of Insurance Consumer Information Act is an Unfair Trade Practice Act. (Amends section 44-1525.)
- Section 29. Adds federal, foreign, and international regulatory or law enforcement agencies to the states and the NAIC as entities that the Director of Insurance may provide information regarding the examination of an insurance holding company. Requires the director to maintain such information as confidential if received with notice that the jurisdiction or organizations providing the information hold such information as confidential under their laws. Such records are not subject to subpoena, subject to discovery, or admissible. Prohibits the director or the director's employees from testifying in private civil actions regarding such information. (Amends section 44-2138.)
- Section 30. Allows the Director of Insurance to share and receive information regarding risk retention groups with and from state, federal, foreign, or international law enforcement or regulatory agencies. Requires the director to maintain such information as confidential if received with notice that the jurisdiction or organization providing the memorandums holds such information as confidential under their laws. Such records are not subject to subpoena, subject to discovery, or admissible. Prohibits the director or the director's employees from testifying in private civil actions regarding such information. (Amends section 44-4405.)
- Section 31. Allows the Director of Insurance to share and receive information received pursuant to the insolvency statutes with and from state, federal, foreign, or international law enforcement or regulatory agencies. Requires the director to maintain such information as confidential if received with notice that the jurisdiction or organization providing the memorandums holds such information as confidential under their laws. Such records are not subject to subpoena, subject to discovery, or admissible. Prohibits the director or the director's employees from testifying in private civil actions regarding such information. (Amends section 44-4811.)
- Section 32. Allows the Director of Insurance to share and receive information regarding third party administrators with and from state, federal, foreign, or international law enforcement or regulatory agencies. Requires the director to maintain such information as confidential if received with notice that the jurisdiction or organization providing the memorandums holds such information as confidential under their laws. Such records are not subject to subpoena, subject to discovery, or admissible. Prohibits the director or the director's employees from testifying in private civil actions regarding such information. (Amends section 44-5805.)
- Section 33. Allows the Director of Insurance to share and receive information received pursuant to the insurer examination statutes with and from state, federal, foreign, or

international law enforcement or regulatory agencies. Requires the director to maintain such information as confidential if received with notice that the jurisdiction or organization providing the memorandums holds such information as confidential under their laws. Such records are not subject to subpoena, subject to discovery, or admissible. Prohibits the director or the director's employees from testifying in private civil actions regarding such information. (Amends section 44-5906.)

Section 34. Allows the Director of Insurance to share and receive information received regarding risk-based capital reports with and from state, federal, foreign, or international law enforcement or regulatory agencies. Requires the director to maintain such information as confidential if received with notice that the jurisdiction or organization providing the memorandums holds such information as confidential under their laws. Such records are not subject to subpoena, subject to discovery, or admissible. Prohibits the director or the director's employees from testifying in private civil actions regarding such information. (Amends section 44-6021.)

Section 35. Allows the Director of Insurance to share and receive information received in the course of preparing an application for conversion from a mutual insurer to a stock insurer with and from state, federal, foreign, or international law enforcement or regulatory agencies. Requires the director to maintain such information as confidential if received with notice that the jurisdiction or organization providing the memorandums holds such information as confidential under their laws. Such records are not subject to subpoena, subject to discovery, or admissible. Prohibits the director or the director's employees from testifying in private civil actions regarding such information. (Amends section 44-6119.01.)

Section 36. Allows the Director of Insurance to share and receive information received in the course of preparing an application for conversion to a mutual holding company with and from state, federal, foreign, or international law enforcement or regulatory agencies. Requires the director to maintain such information as confidential if received with notice that the jurisdiction or organization providing the memorandums holds such information as confidential under their laws. Such records are not subject to subpoena, subject to discovery, or admissible. Prohibits the director or the director's employees from testifying in private civil actions regarding such information. (Amends section 44-6140.)

Section 37. Allows the Director of Insurance to share and receive information received regarding certain corporate organization related transactions with and from state, federal, foreign, or international law enforcement or regulatory agencies. Requires the director to maintain such information as confidential if received with notice that the jurisdiction or organization providing the memorandums holds such information as confidential under their laws. Such records are not subject to subpoena, subject to discovery, or admissible. Prohibits the director or the director's employees from testifying in private civil actions regarding such information. (Amends section 44-6303.)

Section 38. Allows the Director of Insurance to share and receive information received in the course of investigating insurance fraud with and from state, federal, foreign, or international law enforcement or regulatory agencies. Requires the director to maintain such information as confidential if received with notice that the jurisdiction or organization providing the memorandums holds such information as confidential under their laws. Such records are not subject to subpoena, subject to discovery, or admissible. Prohibits the director or the director's employees from testifying in private civil actions regarding such information. (Amends section 44-6606.)

Section 39. Requires the Revisor of Statutes to assign section 26 to Article 1 of Chapter 44.

Section 40. Sets operative date for information sharing provisions, section 26, 27, 29 to 38, and 42 of the bill as three months after adjournment. Specifies that sections 16 to 20 of the bill are operative January 1, 2003, and the remainder of the sections become operative on their effective date.

Section 41. Severability clause.

Section 42. Repeals original section

Section 43. Repeals original section.

Section 44. Declares emergency.

**Explanation of amendments, if any:**

The committee amendments were recommended by the Department of Insurance and are based on model language developed by the National Association of Insurance Commissioners. The committee amendments would provide as follows:

1. (Section 3 of the bill, as introduced.) The committee amendments would expand the definition of "consumer" by adding examples of individuals who are included and not included within the term.

The committee amendments would expand the definition of "customer relationship" to provide that the term includes a relationship between a consumer and a licensee if (1) the consumer is a current policyholder of an insurance product issued by or through the licensee, or (2) the consumer obtains financial, investment, or economic advisory services relating to an insurance product or service from a licensee for a fee.

The committee amendments would expand the definition of "nonpublic personal financial information" to provide that the term includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as account numbers.

The committee amendments would expand the definition of “publicly available information” to specify circumstances under which a licensee has a reasonable basis to believe that information is lawfully made available to the general public.

2. (Section 4 of the bill, as introduced.) The committee amendments would add examples of when a licensee may provide initial notice of its privacy policies and practices within a reasonable time after the licensee establishes a customer relationship if (1) establishing the customer relationship is not at the customer’s election, or (2) providing notice not later than when the licensee establishes a customer relationship would substantially delay the customer’s transaction and the customer agrees to receive the notice at a later time.

3. (Section 5 of the bill, as introduced.) The committee amendments would add examples of the term “former customer” to provisions which provide that a licensee is not required to provide an annual notice to a former customer.

4. (Section 6 of the bill, as introduced.) The committee amendments would add examples of the term “reasonable means” to provisions which provide that a short form initial notice shall, among other things, explain a reasonable means by which the consumer may obtain the privacy notice.

5. (Section 7 of the bill, as introduced.) The committee amendments would add examples of reasonable means by which a consumer may exercise the consumer’s right to opt-out.

6. (Section 9 of the bill, as introduced.) The committee amendments would add examples of when a licensee may reasonably expect that a consumer will receive actual notice of its privacy policies and practices, and when a licensee may reasonably expect that a customer will receive actual notice of the licensee’s annual privacy notice.

7. (Section 10 of the bill, as introduced.) The committee amendments would add examples of when a licensee shall be deemed to provide a consumer with a reasonable opportunity to opt out before the licensee discloses nonpublic personal financial information about the consumer to a nonaffiliated third party.

8. (Section 12 of the bill, as introduced.) The committee amendments would amend provisions which prohibit a licensee from disclosing a policy number or similar form of access number or access code for a consumer’s policy or transaction account to any nonaffiliated third party by providing that a policy number, or similar form of access number or access code, does not include a number or code in an encrypted form, if the licensee does not provide the recipient with a means to decode the number or code.

9. (Section 25 of the bill, as introduced.) The committee amendments would repeal provisions which provide that by January 1, 2003, a licensee shall provide an initial privacy notice to consumers who are the licensee’s customers on January 1, 2003, with regard to nonpublic personal health information.

10. (Section 32 of the bill, as introduced.) The committee amendments would amend proposed new subdivision (2)(b) of section 44-5805 of the Third Party Administrator Act to

clarify that records “relating to” (rather than “maintained by”) a third- party administrator which are “maintained by” the Director of Insurance may be provided to other regulatory and law enforcement agencies and the National Association of Insurance Commissioners and its affiliates and subsidiaries if the recipient agrees in writing to maintain the confidentiality of the records.

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**Senator David M. Landis, Chairperson**