

**SUBJECT:** Privacy of certain information provided by consumers to insurers

**COMMITTEE:** Insurance — committee substitute recommended

**VOTE:** 8 ayes — Smithee, Averitt, Burnam, G. Lewis, J. Moreno, Olivo, Seaman, Thompson  
0 nays  
1 absent — Eiland

**SENATE VOTE:** On final passage, March 15 — 30-0, on Local and Uncontested Calendar

**WITNESSES:** For — Will Davis, Texas Association of Life and Health Insurers; Rayford Price, American Bankers Insurance Co. of Florida  
Against — None  
On — Rob Schneider, Consumers Union

**BACKGROUND:** Congress enacted the Gramm-Leach-Bliley Act (GLBA) in November 1999, in part requiring states to adopt requirements on privacy and disclosure of nonpublic, personal financial information applicable to the insurance industry. The National Association of Insurance Commissioners (NAIC) developed a privacy model in an effort to help states adopt consistent privacy requirements.

**DIGEST:** CSSB 712 would direct insurers and other entities regulated by the Texas Department of Insurance (TDI) to comply with requirements of the GLBA. It would require the insurance commissioner to adopt rules based on the NAIC privacy model consistent with the GLBA, providing penalties. The bill would apply to each authorized company regulated by the commissioner and to an agent for any authorized insurer or entity, as well as to a person engaged in the business of insurance who held an authorization or was regulated by the commissioner. An entity covered by the bill would have to comply with federal provisions on disclosure of personal information and disclosure of a privacy policy in the same manner as a financial institution. An entity that

was a nonaffiliated third party in relation to a covered entity would have to comply with federal limits on the reuse of information obtained from a financial institution. The disclosure of such information would not apply to a covered entity to the extent that that entity was acting solely as an insurance agent or other authorized representative for another covered entity.

CSSB 712 would not affect the authority of TDI or another state agency to adopt stricter rules governing the treatment of health information, if another law gave TDI or another state agency that authority, including any laws or rules related to the privacy of individually identifiable health information under the federal Health Insurance Portability and Accountability Act of 1996, as amended.

The commissioner would have to adopt rules to implement these provisions and any other rules necessary to comply with federal provisions related to the disclosure of nonpublic personal information in order to make Texas eligible to override federal regulation. In adopting the rules, the commissioner would have to ensure that state privacy requirements were consistent with and not stricter than related federal regulations. The commissioner would have to adopt the required rules within 30 days after the bill's effective date and could adopt these initial rules on an emergency basis. TDI would have to implement standards for insurers and other entities applicable to national institutions or entities and would have general enforcement authority.

The attorney general could institute an action for injunctive or declaratory relief to restrain a violation of the bill's provisions. In addition, the attorney general could institute an action for civil penalties against a covered entity or third party. A civil penalty assessed under these provisions could not exceed \$3,000 for each violation. If a court found that a violation of these provisions had occurred with such frequency as to constitute a pattern or practice, the court could assess a civil penalty not to exceed \$250,000. If the attorney general substantially prevailed, the state could recover reasonably incurred attorney's fees, costs, and expenses, including court costs and witness fees.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001.

NOTES:

The committee substitute modified the Senate engrossed bill by including other authorized representatives under the exemption from provisions related to the disclosure of information obtained from a financial institution. The substitute also would require the commissioner to ensure that state privacy requirements were consistent with and not stricter than federal regulations relating to the disclosure of nonpublic personal information, rather than requiring the commissioner to attempt to keep state privacy requirements consistent with federal regulations.