

By: Shapleigh

S.B. No. 796

A BILL TO BE ENTITLED

AN ACT

relating to the disclosure of a customer's personal information by a financial institution.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle Z, Title 3, Finance Code, is amended by adding Chapter 278 to read as follows:

CHAPTER 278. DISCLOSURE OF CUSTOMER INFORMATION

Sec. 278.001. DEFINITIONS. In this chapter:

(1) "Customer" means:

(A) a person who has transacted or is transacting business with, or has used or is using the services of, a financial institution; or

(B) a person for whom a financial institution has acted as a fiduciary with respect to trust property.

(2) "Customer information" means:

(A) an original or a copy of a record held by a financial institution relating to a customer's relationship with the financial institution; or

(B) any information derived from a record described by Paragraph (A).

(3) "Financial institution" has the meaning assigned by Section 201.101.

(4) "Financial institution regulatory agency" means the:

- 1 (A) Federal Deposit Insurance Corporation;
- 2 (B) National Credit Union Administration;
- 3 (C) Board of Governors of the Federal Reserve
- 4 System;
- 5 (D) Office of the Comptroller of the Currency;
- 6 (E) Texas Department of Banking;
- 7 (F) Savings and Loan Department;
- 8 (G) Credit Union Department; or
- 9 (H) Federal Housing Finance Board.

10 (5) "Law enforcement agency" means the Department of
11 Public Safety or a local police or sheriff department.

12 Sec. 278.002. EXEMPTIONS. (a) This chapter does not apply
13 to:

14 (1) the preparation, examination, handling, or
15 maintenance of customer information by an officer, employee, or
16 agent of the financial institution that has custody of the
17 customer's information;

18 (2) the examination of customer information by an
19 accountant performing an audit for the financial institution that
20 has custody of the customer's information;

21 (3) the examination of customer information by, or the
22 furnishing of customer information to, an officer, employee, or
23 agent of a financial institution regulatory agency for use only in
24 the exercise of that person's duties;

25 (4) the publication of data derived from customer
26 information that cannot be identified to a particular customer or
27 account;

1 (5) an act required of the financial institution by
2 the Internal Revenue Code;

3 (6) a disclosure authorized under Title 1, Business &
4 Commerce Code, concerning the dishonor of a negotiable instrument;

5 (7) the exchange in the regular course of business of
6 customer information relating to a customer's credit between a
7 financial institution and another financial institution or
8 commercial entity, directly or through a consumer reporting agency;

9 (8) the examination of customer information by a
10 governmental or law enforcement agency for purposes of verifying
11 information necessary in a licensing process under state law, if
12 the agency obtains consent to the disclosure from the person
13 seeking the license and the customer before examining the
14 customer's information;

15 (9) the compelled discovery of customer information
16 under Section 59.006;

17 (10) the disclosure of customer information by a
18 financial institution to which Section 59.006 does not apply to a
19 law enforcement or governmental agency in response to a warrant,
20 court order, or subpoena, including an administrative subpoena
21 issued under a law of this state, another state, or the United
22 States;

23 (11) the disclosure by a financial institution to any
24 other financial institution or other entity that controls, is
25 controlled by, or is under common control with the financial
26 institution; or

27 (12) the disclosure of customer information to a

1 governmental agency to satisfy any reporting requirement imposed on
2 the financial institution under other law.

3 (b) An entity that receives customer information under
4 Subsection (a)(11) shall comply with this chapter as if the entity
5 were a financial institution to which this chapter applies.

6 Sec. 278.003. DISCLOSURE OF CUSTOMER INFORMATION
7 PROHIBITED. A financial institution may not disclose customer
8 information to any person, except as provided by this chapter.

9 Sec. 278.004. CONSENT TO DISCLOSURE. (a) A customer may
10 authorize a financial institution to disclose the customer's
11 information to any person.

12 (b) A customer's consent must be in writing and signed by
13 the customer. The consent may specify:

- 14 (1) the time during which the consent is effective;
15 (2) the customer information that may be disclosed;
16 and

17 (3) the persons to whom disclosure may be made.

18 (c) A financial institution may not require a customer's
19 consent to disclosure of the customer's information as a condition
20 of doing business with the financial institution. A consent or
21 waiver obtained from a customer as a condition of doing business
22 with a financial institution is not valid.

23 Sec. 278.005. DISCLOSURE OF CUSTOMER INFORMATION
24 AUTHORIZED: UNLAWFUL ACTIVITY OR FRAUD. (a) A financial
25 institution may initiate contact with and disclose customer
26 information to a law enforcement agency if the financial
27 institution reasonably believes that the customer to whom the

1 disclosed information relates is engaged in unlawful activity or is
2 defrauding the financial institution.

3 (b) The burden is on the financial institution to show that
4 a disclosure made under this section was reasonable at the time the
5 disclosure was made. The conviction of the customer for the offense
6 or the admission by the customer that the customer committed the
7 offense for which the financial institution disclosed the
8 information is conclusive proof of the reasonableness of the
9 financial institution's disclosure for purposes of this
10 subsection.

11 Sec. 278.006. REIMBURSEMENT OF COSTS. (a) A financial
12 institution that assembles or provides customer information may
13 require the person requesting the information to pay a fee for the
14 reimbursement of reasonable and necessary costs incurred by the
15 financial institution in assembling or providing the information.

16 (b) A financial institution shall deliver the customer
17 information as soon as practicable notwithstanding any dispute
18 concerning the amount of reimbursement due under this section.

19 (c) A financial institution may bring an action for recovery
20 of reimbursement under this section.

21 Sec. 278.007. LIABILITY. A person is liable to a customer
22 for an intentional violation of this chapter in an amount equal to
23 the greater of:

24 (1) \$1,000; or

25 (2) actual damages caused by the disclosure of the
26 customer information.

27 SECTION 2. This Act takes effect September 1, 2003.