

By: Shapleigh

S.B. No. 76

A BILL TO BE ENTITLED

AN ACT

relating to a consumer's option to prevent the disclosure of the consumer's financial information by a financial institution; providing a civil penalty.

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

SECTION 1. Subtitle Z, Title 3, Finance Code, is amended by adding Chapter 279 to read as follows:

CHAPTER 279. DISCLOSURE OF CONSUMER'S FINANCIAL INFORMATION

Sec. 279.001. DEFINITIONS. In this chapter:

(1) "Affiliate of a financial institution" means a person who controls, is controlled by, or is under common control with the financial institution. In this subdivision, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(2) "Consumer" means an individual resident of this state, or the legal representative of an individual resident of this state, who obtains a financial product or service for personal, family, or household purposes.

(3) "Financial information" means information, other than information that a financial institution has a reasonable basis to believe is lawfully made available to the general public, obtained by a financial institution in connection with providing a

financial product or service to a consumer, including:

(A) information provided on an application for a loan, credit card, or other financial product or service;

(B) account balance information;

(C) payment or overdraft history;

(D) credit or debit purchase information;

(E) information that indicates whether an individual is or has been a consumer of a financial institution;

(F) information obtained in connection with collecting on or servicing a loan; or

(G) information from a consumer report.

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

Sec. 279.002. AUTHORIZATION REQUIRED FOR DISCLOSURE OF FINANCIAL INFORMATION FOR MARKETING PURPOSES. (a) A financial institution may disclose a consumer's financial information to another person for marketing purposes only if the consumer authorizes the disclosure as provided by this chapter.

(b) A financial institution may disclose a consumer's financial information to an affiliate of the financial institution without the consumer's authorization. An affiliate who receives a consumer's financial information from a financial institution may disclose the information for marketing purposes only if the consumer authorizes the financial institution to disclose the information as provided by this chapter.

Sec. 279.003. PRIVACY NOTICE AND AUTHORIZATION FOR DISCLOSURE. (a) A financial institution shall provide a written

1 privacy notice to:

2 (1) each consumer who is transacting business with or  
3 using the services of the financial institution; and

4 (2) a consumer who begins a relationship with the  
5 financial institution at the time the financial institution first  
6 communicates in writing or in person with the consumer.

7 (b) The privacy notice shall:

8 (1) inform the consumer that the financial institution  
9 may not disclose the consumer's financial information for marketing  
10 purposes if the consumer does not authorize the disclosure; and

11 (2) provide a form that the consumer may sign and  
12 return to the financial institution to indicate that the consumer  
13 authorizes the financial institution to disclose the consumer's  
14 financial information for marketing purposes.

15 (c) A financial institution may disclose a consumer's  
16 financial information only after the financial institution  
17 receives the form authorizing the disclosure.

18 (d) A financial institution that does not disclose a  
19 consumer's financial information to a person other than an  
20 affiliate of the financial institution is not required to provide a  
21 privacy notice to a consumer under this section.

22 Sec. 279.004. WITHDRAWAL OF AUTHORIZATION FOR DISCLOSURE.  
23 A consumer who has authorized disclosure under Section 279.003 may  
24 at any time withdraw the authorization in writing. The withdrawal  
25 of an authorization is effective on the date the financial  
26 institution receives the withdrawal.

27 Sec. 279.005. JOINT RELATIONSHIPS. (a) If two or more

1 consumers jointly obtain a financial product or service, the  
2 financial institution may provide a privacy notice to one or all of  
3 the consumers.

4 (b) If a consumer authorizes the disclosure of the  
5 consumer's financial information as provided by this chapter, the  
6 financial institution may disclose any financial information  
7 relating to that consumer, including information relating to a  
8 jointly obtained product or service.

9 (c) If a consumer who does not authorize the disclosure of  
10 the consumer's financial information as provided by this chapter  
11 jointly obtains a financial product or service with another  
12 consumer who has authorized the disclosure, the financial  
13 institution may disclose only the financial information of the  
14 first consumer that relates to the jointly obtained product or  
15 service.

16 Sec. 279.006. FINANCIAL INSTITUTION MAY NOT REQUIRE  
17 DISCLOSURE AUTHORIZATION. A financial institution may not require  
18 a consumer's authorization for disclosure of the customer's  
19 financial information for marketing purposes as a condition of  
20 doing business with the financial institution. A consent or waiver  
21 obtained from a consumer as a condition of doing business with a  
22 financial institution is not valid.

23 Sec. 279.007. LIABILITY. A person is liable to a consumer  
24 for an intentional violation of this chapter in an amount equal to  
25 the greater of:

26 (1) \$1,000; or

27 (2) actual damages caused by the disclosure of the

1 financial information.

2       SECTION 2. (a) A financial institution shall provide each  
3 person who is transacting business with or using the services of a  
4 financial institution on the effective date of this Act a privacy  
5 notice as required by Section 279.003, Finance Code, as added by  
6 this Act, not later than the 60th day after the effective date of  
7 this Act.

8       (b) A financial institution may not disclose a consumer's  
9 financial information for marketing purposes after the 180th day  
10 after the effective date of this Act unless authorized by the  
11 consumer under Chapter 279, Finance Code, as added by this Act.

12       SECTION 3. This Act takes effect immediately if it receives  
13 a vote of two-thirds of all the members elected to each house, as  
14 provided by Section 39, Article III, Texas Constitution. If this  
15 Act does not receive the vote necessary for immediate effect, this  
16 Act takes effect September 1, 2005.