

By: Giddings

H.B. No. 885

A BILL TO BE ENTITLED

1 AN ACT

2 relating to a consumer's option to prevent the sale of the  
3 consumer's financial information by a financial institution;  
4 providing a civil penalty.

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

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

8 CHAPTER 279. SALE OF CONSUMER'S FINANCIAL INFORMATION

9 Sec. 279.001. DEFINITIONS. In this chapter:

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

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

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

1 financial product or service to a consumer, including:

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

4 (B) account balance information;

5 (C) payment or overdraft history;

6 (D) credit or debit purchase information;

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

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

11 (G) information from a consumer report.

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

14 Sec. 279.002. AUTHORIZATION REQUIRED FOR SALE OF FINANCIAL  
15 INFORMATION. (a) A financial institution may sell a consumer's  
16 financial information to another person only if the consumer  
17 authorizes the sale of the information as provided by this chapter.

18 (b) A financial institution may sell a consumer's financial  
19 information to an affiliate of the financial institution without  
20 the consumer's authorization. An affiliate who receives a  
21 consumer's financial information from a financial institution may  
22 sell the information only if the consumer authorizes the financial  
23 institution to sell the information as provided by this chapter.

24 Sec. 279.003. PRIVACY NOTICE AND AUTHORIZATION FOR SALE.

25 (a) A financial institution shall provide a written privacy notice  
26 to:

27 (1) each consumer who is transacting business with or

1 using the services of the financial institution; and

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

5 (b) The privacy notice shall:

6 (1) inform the consumer that the financial institution  
7 may not sell the consumer's financial information if the consumer  
8 does not authorize the sale of the information; and

9 (2) provide a form that the consumer may sign and  
10 return to the financial institution to indicate that the consumer  
11 authorizes the financial institution to sell the consumer's  
12 financial information.

13 (c) A financial institution may sell a consumer's financial  
14 information only after the financial institution receives the form  
15 authorizing the sale of the information.

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

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

26 Sec. 279.005. JOINT RELATIONSHIPS. (a) If two or more  
27 consumers jointly obtain a financial product or service, the

1 financial institution may provide a privacy notice to one or all of  
2 the consumers.

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

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

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

21 Sec. 279.007. LIABILITY. A person is liable to a consumer  
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 sale of the financial  
26 information.

27 SECTION 2. (a) A financial institution shall provide each

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

6 (b) A financial institution may not sell a consumer's  
7 financial information after the 180th day after the effective date  
8 of this Act unless authorized by the consumer under Chapter 279,  
9 Finance Code, as added by this Act. For purposes of this subsection,  
10 a sale occurs on the earlier of the date an enforceable agreement to  
11 sell information is made or the date the information being sold is  
12 disclosed.

13 SECTION 3. This Act takes effect immediately if it receives  
14 a vote of two-thirds of all the members elected to each house, as  
15 provided by Section 39, Article III, Texas Constitution. If this  
16 Act does not receive the vote necessary for immediate effect, this  
17 Act takes effect September 1, 2007.