

By: Giddings

H.B. No. 2129

Substitute the following for H.B. No. 2129:

By: Veasey

C.S.H.B. No. 2129

A BILL TO BE ENTITLED

AN ACT

1
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. INAPPLICABILITY TO CREDIT BUREAU. Nothing in
15 this chapter shall be interpreted to prevent a credit bureau from
16 obtaining a consumer's financial information without the consumer's
17 authorization.

18 Sec. 279.003. AUTHORIZATION REQUIRED FOR SALE OF FINANCIAL
19 INFORMATION. (a) A financial institution may sell a consumer's
20 financial information to another person only if the consumer
21 authorizes the sale of the information as provided by this chapter.

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

1 Sec. 279.004. PRIVACY NOTICE AND AUTHORIZATION FOR SALE.

2 (a) A financial institution shall provide a written privacy notice
3 to:

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

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

9 (b) The privacy notice shall:

10 (1) inform the consumer that the financial institution
11 may not sell the consumer's financial information if the consumer
12 does not authorize the sale of the information; and

13 (2) provide a form that the consumer may sign and
14 return to the financial institution to indicate that the consumer
15 authorizes the financial institution to sell the consumer's
16 financial information.

17 (c) A financial institution may sell a consumer's financial
18 information only after the financial institution receives the form
19 authorizing the sale of the information.

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

24 Sec. 279.005. WITHDRAWAL OF AUTHORIZATION FOR SALE OF
25 INFORMATION. A consumer who has authorized the sale of financial
26 information under Section 279.004 may at any time withdraw the
27 authorization in writing. The withdrawal of an authorization is

1 effective on the date the financial institution receives the
2 withdrawal.

3 Sec. 279.006. JOINT RELATIONSHIPS. (a) If two or more
4 consumers jointly obtain a financial product or service, the
5 financial institution may provide a privacy notice to one or all of
6 the consumers.

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

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

18 Sec. 279.007. FINANCIAL INSTITUTION MAY NOT REQUIRE
19 AUTHORIZATION. A financial institution may not require a
20 consumer's authorization for the sale of the consumer's financial
21 information as a condition of doing business with the financial
22 institution. A consent or waiver obtained from a consumer as a
23 condition of doing business with a financial institution is not
24 valid.

25 Sec. 279.008. LIABILITY. A person is liable to a consumer
26 for an intentional violation of this chapter in an amount equal to
27 the greater of:

1 (1) \$1,000; or

2 (2) actual damages caused by the sale of the financial
3 information.

4 SECTION 2. (a) A financial institution shall provide each
5 person who is transacting business with or using the services of a
6 financial institution on the effective date of this Act a privacy
7 notice as required by Section 279.004, Finance Code, as added by
8 this Act, not later than the 60th day after the effective date of
9 this Act.

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

17 SECTION 3. This Act takes effect September 1, 2009.