

By: Giddings

H.B. No. 3820

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 (5) "Joint Agreement" means a formal written contract
15 pursuant to which two or more institutions jointly offer, endorse,
16 or sponsor a financial product or service.

17 (6) "Financial product or service" means any product
18 or service that a financial holding company could offer by engaging
19 in an activity that is financial in nature or incidental to such
20 financial activity under section 4(k) of the Bank Holding Company
21 Act of 1956 (12 USC 1843 (k)).

22 Sec. 279.002. EXCEPTIONS. This chapter does not apply to
23 the sale of a consumer's financial information as necessary to:

24 (1) effect, administer, or enforce a transaction
25 requested or authorized by the consumer to protect against or
26 prevent actual or potential fraud, unauthorized transactions,
27 claims, or other liability; or

1 (2) comply with a federal or state law, rule, or
2 regulation.

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

7 (b) A financial institution may sell a consumer's financial
8 information to an affiliate of the financial institution or to a
9 financial institution that offers financial products or services
10 which the financial institution has entered into a joint agreement.
11 An affiliate of a financial institution who receives a consumer's
12 financial information from a financial institution or a financial
13 institution with which the financial institution has entered into a
14 joint agreement may sell the information only if the consumer
15 authorizes the financial institution to sell the information as
16 provided by this chapter.

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

18 (a) A financial institution shall provide a written privacy notice
19 to:

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

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

25 (b) The privacy notice shall:

26 (1) inform the consumer that the financial institution
27 may not sell the consumer's financial information if the consumer

1 does not authorize the sale of the information; and

2 (2) provide a form that the consumer may sign and
3 return to the financial institution to indicate that the consumer
4 authorizes the financial institution to sell the consumer's
5 financial information.

6 (c) A financial institution may sell a consumer's financial
7 information only after the financial institution receives the form
8 authorizing the sale of the information.

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

13 Sec. 279.005. WITHDRAWAL OF AUTHORIZATION FOR SALE OF
14 INFORMATION. A consumer who has authorized the sale of financial
15 information under Section 279.004 may at any time withdraw the
16 authorization in writing. The withdrawal of an authorization is
17 effective on the date the financial institution receives the
18 withdrawal.

19 Sec. 279.006. JOINT RELATIONSHIPS. (a) If two or more
20 consumers jointly obtain a financial product or service, the
21 financial institution may provide a privacy notice to one or all of
22 the consumers.

23 (b) If a consumer authorizes the sale of the consumer's
24 financial information as provided by this chapter, the financial
25 institution may sell any financial information relating to that
26 consumer, including information relating to a jointly obtained
27 product or service.

1 (c) If a consumer who does not authorize the sale of the
2 consumer's financial information as provided by this chapter
3 jointly obtains a financial product or service with another
4 consumer who has authorized the sale, the financial institution may
5 sell only the financial information of the first consumer that
6 relates to the jointly obtained product or service.

7 Sec. 279.007. FINANCIAL INSTITUTION MAY NOT REQUIRE
8 AUTHORIZATION. A financial institution may not require a
9 consumer's authorization for the sale of the consumer's financial
10 information as a condition of doing business with the financial
11 institution. A consent or waiver obtained from a consumer as a
12 condition of doing business with a financial institution is not
13 valid.

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

17 (1) \$1,000; or

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

20 Sec. 279.009. CIVIL PENALTY. (a) A person who knowingly
21 violates this chapter is liable to the state for a civil penalty in
22 an amount not to exceed \$1,000 for each violation. The attorney
23 general or the prosecuting attorney in the county in which the
24 violation occurs may bring:

25 (1) a suit to recover the civil penalty imposed under
26 this section; and

27 (2) an action in the name of the state to restrain or

1 enjoin a person from violating this chapter.

2 (b) The attorney general or the prosecuting attorney in the
3 county in which the violation occurs, as appropriate, is entitled
4 to recover reasonable expenses incurred in obtaining injunctive
5 relief, civil penalties, or both, under this section, including
6 reasonable attorney's fees, court costs, and investigatory costs.

7 SECTION 2. (a) A financial institution shall provide each
8 person who is transacting business with or using the services of a
9 financial institution on the effective date of this Act a privacy
10 notice as required by Section 279.004, Finance Code, as added by
11 this Act, not later than November 1, 2011.

12 (b) A financial institution may not sell a consumer's
13 financial information after March 1, 2012, unless authorized by the
14 consumer under Chapter 279, Finance Code, as added by this Act. For
15 purposes of this subsection, a sale occurs on the earlier of the
16 date an enforceable agreement to sell information is made or the
17 date the information being sold is disclosed.

18 SECTION 3. This Act takes effect September 1, 2011.