

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 257 Session of
2003

INTRODUCED BY GEORGE, ALLEN, ARMSTRONG, BARD, BEBKO-JONES,
BELARDI, BISHOP, CORRIGAN, COY, CURRY, DeLUCA, DeWEESE,
DIVEN, EACHUS, FRANKEL, FREEMAN, GEIST, GRUCELA, HARHAI,
HERMAN, HERSHEY, HORSEY, JAMES, JOSEPHS, KIRKLAND, LAUGHLIN,
LEDERER, LEACH, KOTIK, MANDERINO, McGEEHAN, McILHATTAN,
MELIO, PETRARCA, READSHAW, ROEBUCK, ROHRER, SANTONI, SATHER,
SHANER, SOLOBAY, STABACK, TANGRETTI, THOMAS, TIGUE,
TRAVAGLIO, WALKO AND WANSACZ, FEBRUARY 12, 2003

REFERRED TO COMMITTEE ON COMMERCE, FEBRUARY 12, 2003

AN ACT

1 Amending the act of November 30, 1965 (P.L.847, No.356),
2 entitled "An act relating to and regulating the business of
3 banking and the exercise by corporations of fiduciary powers;
4 affecting persons engaged in the business of banking and
5 corporations exercising fiduciary powers and affiliates of
6 such persons; affecting the shareholders of such persons and
7 the directors, trustees, officers, attorneys and employes of
8 such persons and of the affiliates of such persons; affecting
9 national banks located in the Commonwealth; affecting persons
10 dealing with persons engaged in the business of banking,
11 corporations exercising fiduciary powers and national banks;
12 conferring powers and imposing duties on the Banking Board,
13 on certain departments and officers of the Commonwealth and
14 on courts, prothonotaries, clerks and recorders of deeds;
15 providing penalties; and repealing certain acts and parts of
16 acts," providing for privacy protection for customer
17 information.

18 The General Assembly of the Commonwealth of Pennsylvania
19 hereby enacts as follows:

20 Section 1. The act of November 30, 1965 (P.L.847, No.356),
21 known as the Banking Code of 1965, is amended by adding a
22 chapter to read:

1 CHAPTER 19-A

2 PRIVACY PROTECTION FOR CUSTOMER INFORMATION

3 Section 1901-A. Definitions

4 The following words and phrases when used in this chapter
5 shall have, unless the context clearly indicates otherwise, the
6 meanings given to them in this section:

7 (a) "Customer"--with respect to a financial institution, any
8 person, or authorized representative of a person, to whom the
9 financial institution provides a product or service, including
10 that of acting as a fiduciary.

11 (b) "Customer information of a financial institution"--any
12 information maintained by or for a financial institution which
13 is derived from the relationship between the financial
14 institution and a customer of the financial institution and is
15 identified with the customer.

16 (c) "Document"--any information in any form.

17 (d) "Financial institution"--any institution engaged in the
18 business of providing financial services to customers who
19 maintain a credit, deposit, trust or other financial account or
20 relationship with the institution. The following apply:

21 (i) The term includes any depository institution,
22 any broker or dealer, any investment adviser or
23 investment company, any insurance company, any loan or
24 finance company, any credit card issuer or operator of a
25 credit card system and any consumer reporting agency that
26 compiles and maintains files on consumers on a nationwide
27 basis.

28 (ii) For purposes of this definition:

29 (A) the terms "broker" and "dealer" have the
30 same meanings as given in section 3 of the Securities

Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a et seq.);

(B) the term "investment adviser" has the same meaning as given in section 202(a)(11) of the Investment Advisers Act of 1940 (54 Stat. 847, 15 U.S.C. § 80b-1 et seq.); and

(C) the term "investment company" has the same meaning as given in section 3 of the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.).

(iii) The term does not include any person or entity with respect to any financial activity that is subject to jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (42 Stat. 988, 7 U.S.C. § 1 et seq.) and does not include the Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 (Public Law 92-181, 12 U.S.C. §§ 2001-2023).

Section 1902-A. Obtaining Customer Information By False Pretenses

A person commits an offense if the person obtains or attempts to obtain, or causes to be disclosed or attempts to cause to be disclosed to any person, customer information of a financial institution relating to another person:

(1) by making a false, fictitious or fraudulent statement or representation to an officer, employee or agent of a financial institution;

(2) by making a false, fictitious or fraudulent statement or representation to a customer of a financial institution; or

1 (3) by providing any document to an officer, employe or
2 agent of a financial institution, knowing that the document
3 is forged, counterfeit, lost or stolen, was fraudulently
4 obtained or contains a false, fictitious or fraudulent
5 statement or representation.

6 Section 1903-A. Solicitation of a Person To Obtain Customer
7 Information Under False Pretenses

8 A person commits an offense if the person requests a person
9 to obtain customer information of a financial institution,
10 knowing that the person will obtain, or attempt to obtain, the
11 information from the institution in any manner described in
12 section 1902-A.

13 Section 1904-A. Nonapplicability

14 (a) Nonapplicability to law enforcement agencies--No
15 provision of this chapter shall be construed so as to prevent
16 any action by a law enforcement agency, or any officer, employe
17 or agent of such agency, to obtain customer information of a
18 financial institution in connection with the performance of the
19 official duties of the agency.

20 (b) Nonapplicability to financial institutions in certain
21 cases--No provision of this chapter shall be construed so as to
22 prevent any financial institution, or any officer, employe or
23 agent of a financial institution, from obtaining customer
24 information of such financial institution in the course of:

25 (i) testing the security procedures or systems of
26 such institution for maintaining the confidentiality of
27 customer information,

28 (ii) investigating allegations of misconduct or
29 negligence on the part of any officer, employe or agent
30 of the financial institution, or

(iii) recovering customer information of the financial institution which was obtained or received by another person in any manner described in this chapter.

(c) Nonapplicability to insurance institutions for investigation of insurance fraud--No provision of this chapter shall be construed so as to prevent any insurance institution or any officer, employee or agency of an insurance institution, from obtaining information as part of an insurance investigation into criminal activity, fraud, material misrepresentation or material nondisclosure that is authorized for such institution under State law, regulation, interpretation or order.

(d) Nonapplicability to certain types of customer information of financial institutions--No provision of this chapter shall be construed so as to prevent any person from obtaining customer information of a financial institution that otherwise is available as a public record filed pursuant to securities laws.

(e) Nonapplicability to collection of child support judgments--No provision of this chapter shall be construed to prevent any State-licensed private investigator, or any officer, employee or agent of such private investigator, from obtaining customer information of a financial institution, to the extent reasonably necessary to collect child support from a person adjudged to have been delinquent in the person's obligations by a Federal or State court, and to the extent that such action by a State-licensed private investigator is not unlawful under any other Federal or State law or regulation, and has been authorized by an order or judgment of a court of competent jurisdiction.

Section 1905-A. Penalty

1 (a) General rule--Whoever knowingly and intentionally
2 violates, or knowingly and intentionally attempts to violate,
3 this chapter commits a misdemeanor of the first degree.

4 (b) Enhanced penalty for aggravated cases--Whoever violates,
5 or attempts to violate, this chapter while violating another law
6 of the United States or this Commonwealth or as part of a
7 pattern of any illegal activity involving more than one hundred
8 thousand dollars in a twelve-month period commits a felony of
9 the third degree.

10 Section 1906-A. Regulations

11 The Department of Banking, after consultation with the
12 Pennsylvania Securities Commission and the Attorney General, may
13 prescribe regulations clarifying or describing the types of
14 institutions which shall be treated as financial institutions
15 for purposes of this chapter.

16 Section 2. This act shall take effect in 60 days.