

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 896 Session of
2005

INTRODUCED BY SAYLOR, BOYD, CREIGHTON, DENLINGER, HARRIS,
R. MILLER, THOMAS, TURZAI, WANSACZ, CALTAGIRONE, CRAHALLA,
DeLUCA, FRANKEL, GILLESPIE, GOODMAN, KILLION, O'NEILL,
PHILLIPS, PICKETT, REICHLEY, SATHER, SCAVELLO, STABACK,
E. Z. TAYLOR, WASHINGTON AND YOUNGBLOOD, MARCH 14, 2005

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 14, 2005

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, adding provisions relating to privacy
3 protection for customer information of financial
4 transactions; and imposing penalties.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Chapter 73 of Title 18 of the Pennsylvania
8 Consolidated Statutes is amended by adding a subchapter to read:

9 SUBCHAPTER C

10 PRIVACY PROTECTION FOR CUSTOMER INFORMATION OF

11 FINANCIAL INSTITUTIONS

12 Sec.

13 7371. Definitions.

14 7372. Prohibition on obtaining customer information by false
15 pretenses.

16 7373. Prohibition on solicitation of a person to obtain
17 customer information from financial institution under

1 false pretenses.

2 7374. Nonapplicability.

3 7375. Penalty.

4 7376. Regulations.

5 § 7371. Definitions.

6 The following words and phrases when used in this subchapter
7 shall have the meanings given to them in this section unless the
8 context clearly indicates otherwise:

9 "Customer." With respect to a financial institution, any
10 person, or authorized representative of a person, to whom the
11 financial institution provides a product or service, including
12 that of acting as a fiduciary.

13 "Customer information of a financial institution." Any
14 information maintained by or for a financial institution which
15 is derived from the relationship between the financial
16 institution and a customer of the financial institution and is
17 identified with the customer.

18 "Document." Any information in any form.

19 "Financial institution." Any institution engaged in the
20 business of providing financial services to customers who
21 maintain a credit, deposit, trust or other financial account or
22 relationship with the institution. The following apply:

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

29 (2) For purposes of this definition:

30 (i) the terms "broker" and "dealer" have the same

meanings as given in section 3 of the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a et seq.);

(ii) 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

(iii) 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.).

(3) 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).

§ 7372. Prohibition on obtaining customer information by false pretenses.

It shall be unlawful for a person to obtain or attempt to obtain, or cause to be disclosed or attempt 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

(3) by providing any document to an officer, employee or

1 agent of a financial institution, knowing that the document
2 is forged, counterfeit, lost or stolen, was fraudulently
3 obtained or contains a false, fictitious or fraudulent
4 statement or representation.

5 § 7373. Prohibition on solicitation of a person to obtain
6 customer information from financial institution under
7 false pretenses.

8 It shall be unlawful for a person to request another person
9 to obtain customer information of a financial institution,
10 knowing that the other person will obtain, or attempt to obtain,
11 the information from the institution in any manner described in
12 section 7372 (relating to prohibition on obtaining customer
13 information by false pretenses).

14 § 7374. Nonapplicability.

15 (a) Law enforcement agencies.--No provision of section 7372
16 (relating to prohibition on obtaining customer information by
17 false pretenses) or 7373 (relating to prohibition on
18 solicitation of a person to obtain customer information from
19 financial institution under false pretenses) shall be construed
20 so as to prevent any action by a law enforcement agency, or any
21 officer, employee or agent of such agency, to obtain customer
22 information of a financial institution in connection with the
23 performance of the official duties of the agency.

24 (b) Financial institutions in certain cases.--No provision
25 of section 7372 or 7373 shall be construed so as to prevent a
26 financial institution, or an officer, employee or agent of a
27 financial institution, from obtaining customer information of
28 the financial institution in the course of:

29 (1) testing the security procedures or systems of the
30 institution for maintaining the confidentiality of customer

1 information;

2 (2) investigating allegations of misconduct or
3 negligence on the part of an officer, employee or agent of
4 the financial institution; or

5 (3) recovering customer information of the financial
6 institution which was obtained or received by another person
7 in any manner described in section 7372 or 7373.

8 (c) Insurance institutions for investigation of insurance
9 fraud.--No provision of section 7372 or 7373 shall be construed
10 so as to prevent an insurance institution or an officer,
11 employee or agency of an insurance institution, from obtaining
12 information as part of an insurance investigation into criminal
13 activity, fraud, material misrepresentation or material
14 nondisclosure that is authorized for such institution under
15 State law, regulation, interpretation or order.

16 (d) Certain types of customer information of financial
17 institutions.--No provision of section 7372 or 7373 shall be
18 construed so as to prevent a person from obtaining customer
19 information of a financial institution that otherwise is
20 available as a public record filed pursuant to securities laws.

21 (e) Nonapplicability to collection of child support
22 judgments.--No provision of section 7372 or 7373 shall be
23 construed to prevent any State-licensed private investigator, or
24 any officer, employee or agent of such private investigator,
25 from obtaining customer information of a financial institution,
26 to the extent reasonably necessary to collect child support from
27 a person adjudged to have been delinquent in the person's
28 obligations by a Federal or State court, and to the extent that
29 such action by a State-licensed private investigator is not
30 unlawful under any other Federal or State law or regulation, and

1 has been authorized by an order or judgment of a court of
2 competent jurisdiction.

3 § 7375. Penalty.

4 (a) General rule.--Except as provided in subsection (b), a
5 person who knowingly and intentionally violates, or knowingly
6 and intentionally attempts to violate, section 7372 (relating to
7 prohibition on obtaining customer information by false
8 pretenses) or 7373 (relating to prohibition on solicitation of a
9 person to obtain customer information from financial institution
10 under false pretenses) commits a misdemeanor of the first degree
11 and shall, upon conviction, be sentenced to pay a fine of not
12 more than \$10,000 or to imprisonment for not more than five
13 years, or both.

14 (b) Enhanced penalty for aggravated cases.--A person who
15 violates, or attempts to violate, section 7372 or 7373 while
16 violating another law of the United States or this Commonwealth
17 or as part of a pattern of any illegal activity involving more
18 than \$100,000 in a 12-month period commits a felony of the third
19 degree and shall, upon conviction, be sentenced to pay a fine of
20 not more than \$15,000 or to imprisonment for not more than seven
21 years, or both.

22 § 7376. Regulations.

23 The Department of Banking, after consultation with the
24 Pennsylvania Securities Commission and the Attorney General, may
25 prescribe regulations clarifying or describing the types of
26 institutions which shall be treated as financial institutions
27 for purposes of this subchapter.

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