



2003 SENATE BILL 309

November 11, 2003 - Introduced by Senators CHVALA, HANSEN, CARPENTER and RISSER, cosponsored by Representatives SCHNEIDER, STASKUNAS, MILLER, BERCEAU, J. LEHMAN and TAYLOR. Referred to Committee on Agriculture, Financial Institutions and Insurance.

1 **AN ACT** *to amend* chapter 138 (title); and *to create* 138.25 and 601.415 (13) of
2 the statutes; **relating to:** the disclosure of personal financial information by
3 financial institutions, granting rule-making authority, and providing
4 penalties.

Analysis by the Legislative Reference Bureau

Currently, federal law generally allows a financial institution to disclose personal, financial information relating to a customer of the financial institution, unless the customer “opts out” of the financial institution’s policy of disclosing such information to third parties. However, federal law permits the states to more strictly regulate such disclosures. This bill generally prohibits any financial institution from disclosing personal, financial information relating to a customer of the financial institution, unless the customer “opts in” or consents to the disclosure. The bill specifies numerous exceptions to this prohibition.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

5 **SECTION 1.** Chapter 138 (title) of the statutes is amended to read:

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CHAPTER 138

MONEY AND RATES OF INTEREST,

LICENSED LENDERS, AND FINANCIAL

PRIVACY

SECTION 2. 138.25 of the statutes is created to read:

138.25 Financial privacy. (1) DEFINITIONS. In this section:

(a) “Credit reporting agency” means any person who regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of reporting to 3rd parties on the credit rating or creditworthiness of any consumer.

(b) “Customer” means any individual who deposits, or invests with, borrows from, or purchases or seeks to purchase goods or services from a financial institution or who acts as a surety or guarantor on a loan made by a financial institution.

(c) “Financial institution” means any of the following and any subsidiary of any of the following:

1. A bank, savings bank, savings and loan association, or credit union that is organized under the laws of this state, the United States, or any other state or territory.

2. Any other entity the business of which is engaging in financial activities as described in 12 USC 1843 (k), unless the entity is excluded from the definition of “financial institution” under 15 USC 6809 (3) (B) to (D).

(d) “Insurer” has the meaning given in s. 600.03 (27).

(e) “Public agency” means a county, city, village, town, or school district; an agency of this state, of another state, of the United States, or of a county, city, village,

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1 town, or school district; or a board, commission, council, or committee in the United
2 States government or in state government in this state or another state.

3 **(2) DISCLOSURE OF FINANCIAL RECORDS PROHIBITED.** Except as provided under
4 sub. (3), a financial institution and its officers, employees, agents, and directors may
5 not disclose to any person any financial information relating to a customer of the
6 financial institution. Financial institutions shall adopt reasonable procedures to
7 assure compliance with this subsection.

8 **(3) EXCEPTIONS.** Subsection (2) does not prohibit any of the following activities:

9 (a) Disclosure of financial information relating to a customer to that customer
10 after he or she presents proper identification.

11 (b) Disclosure of financial information relating to a customer, if the disclosure
12 is authorized by the customer and is limited to the scope and purpose that the
13 customer authorizes.

14 (c) Disclosure of financial information to a public agency.

15 (d) The preparation, examination, handling, or maintenance of financial
16 records by any officer, employee, or agent of a financial institution that has custody
17 of the records.

18 (e) The examination of financial records by a certified public accountant while
19 engaged by the financial institution to perform an independent audit.

20 (f) The disclosure of financial information to a collection agency or its
21 employees or agents, or to any person engaged by the financial institution to assist
22 in recovering an amount owed to the financial institution, if the disclosure is made
23 in the furtherance of recovering such amount.

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1 (g) The publication of information derived from financial records if the
2 information cannot be identified as relating to any particular customer, deposit, or
3 account.

4 (h) The making of reports, disclosures, or returns required by federal or state
5 law.

6 (i) The disclosure of any information permitted to be disclosed under the laws
7 governing dishonor of negotiable instruments.

8 (j) The exchange, in the regular course of business, of credit information
9 between a financial institution and a credit reporting agency, provided such
10 exchange is in compliance with any applicable federal law.

11 (k) The exchange, in the regular course of business, of information between a
12 financial institution and an account verification service, provided such exchange is
13 in compliance with any applicable federal law.

14 (L) The exchange, in the regular course of business, of information between a
15 financial institution and a mercantile agency, provided such exchange is solely for
16 the purpose of reporting to 3rd parties on the credit rating or creditworthiness of any
17 business and is in compliance with any applicable federal law.

18 (m) The exchange of loan information that specifically affects a sale,
19 foreclosure, or loan closing, provided such exchange is for the purpose of
20 accomplishing such sale, foreclosure, or loan closing.

21 (n) The sharing of information, within an industry network, concerning
22 suspected criminal activities.

23 (p) Except as otherwise provided in this paragraph, disclosure requested
24 pursuant to subpoena, provided that no disclosure shall be made until 10 days after
25 the financial institution has notified the customer that financial information has

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1 been requested by subpoena. The financial institution shall serve the notice by first
2 class mail to the customer at the most recent address known to the financial
3 institution. The notice need not be given if the subpoena is issued by or on behalf of
4 a public agency.

5 (q) Disclosure required by order of court.

6 (r) Disclosure of financial information by a financial institution to the directors,
7 officers, employees, or agents of an affiliate of the financial institution, if the
8 disclosure is made in compliance with any applicable federal law.

9 (s) Disclosure of financial information by one financial institution to another
10 financial institution in connection with a proposed merger, consolidation,
11 acquisition, or other reorganization involving the institutions, if the disclosure is
12 made in compliance with any applicable federal law.

13 (t) Disclosure in accordance with rules adopted by the department of financial
14 institutions.

15 **(4) PENALTIES.** (a) Any person that willfully violates sub. (2) may be required
16 to forfeit not more than \$1,000 for each violation.

17 (b) Any person that violates sub. (2) as a result of a failure by a financial
18 institution to provide reasonable supervision of its employees to prevent violations
19 may be required to forfeit not more than \$1,000 for each violation.

20 **(5) ENFORCEMENT.** (a) The commissioner of insurance shall enforce sub. (2) with
21 respect to insurers.

22 (b) Except as provided in par. (a), the department of financial institutions shall
23 enforce sub. (2) with respect to all of the following:

24 1. Banks, savings banks, savings and loan associations, and credit unions and
25 any subsidiary of such an entity.

