

**2003 DRAFTING REQUEST**

**Bill**

Received: **06/13/2003**

Received By: **rmarchan**

Wanted: **As time permits**

Identical to LRB:

For: **Charles Chvala (608) 266-9170**

By/Representing: **maribeth**

This file may be shown to any legislator: **NO**

Drafter: **rmarchan**

May Contact:

Addl. Drafters:

Subject: **Fin. Inst. - miscellaneous**

Extra Copies: **RNK**

Submit via email: **YES**

Requester's email: **Sen.Chvala@legis.state.wi.us**

Carbon copy (CC:) to: **robert.marchant@legis.state.wi.us**

**Pre Topic:**

No specific pre topic given

**Topic:**

Gramm-Leach-Bliley Opt-in for disclosure of customer information

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rmarchan 06/16/2003	wjackson 06/18/2003 wjackson 06/18/2003		_____			State
/1	rmarchan 09/22/2003	wjackson 09/22/2003	chaskett 06/18/2003	_____	lemery 06/18/2003		State

Vers.      Drafted      Reviewed      Typed      Proofed      Submitted      Jacketed      Required

/2

jfrantze \_\_\_\_\_  
09/22/2003 \_\_\_\_\_

sbasford  
09/22/2003

mbarman  
11/04/2003

FE Sent For:

<END>

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/2  
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09/22/2003 \_\_\_\_\_ 09/22/2003

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/?	rmarchan 06/16/2003	wjackson 06/18/2003 wjackson 06/18/2003		_____			State
/1			chaskett 06/18/2003	_____	lemery 06/18/2003		

*Handwritten signatures and dates:*  
6/22, 9/22

Vers.      Drafted      Reviewed      Typed      Proofed      Submitted      Jacketed      Required

FE Sent For:

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/?	rmarchan	1 WLJ 6/18	1 cph 6/18	Cnh/cph <u>6/18</u>			

FE Sent For:

<END>

RJM  
?

# Bill Request Form

**Legislative Reference Bureau**  
100 N. Hamilton Street  
Legal Section 266-3561

You may use this form or talk directly with the LRB attorney who will draft the bill.

Date 6-11-03

Legislator, agency, or other person requesting this draft Senator Chvala

Person submitting request (name and phone number) Maribeth Witzel-Behl

Persons to contact for questions about this draft (names and phone numbers) 266-9170

Describe the problem, including any helpful examples. How do you want to solve the problem?

Senator Chvala would like a bill drafted modeled after the Vermont law, to prohibit financial entities from sharing customer financial information unless the customer "opts-in" to have that information shared.

Please attach a copy of any correspondence or other material that may help us. If you know of any statute sections that might be affected, list them or provide a marked-up copy.

You may attach a marked-up copy of any LRB draft or provide its number (e.g., 2001 LRB-2345/1 or 1999 AB-67).

Requests are confidential unless stated otherwise. May we tell others that we are working on this for you? YES  NO

If yes:                      Anyone who asks?    YES    NO  
   Any legislator?        YES    NO

Only the following persons \_\_\_\_\_

Do you consider this request urgent? YES  NO  If yes, please indicate why \_\_\_\_\_

Should we give this request priority over any pending request of this legislator, agency, or person? YES  NO

# The Vermont Statutes Online

## Title 8: Banking and Insurance

### *Chapter 200: Consumer Protection*

#### **8 V.S.A. § 10203. Disclosure of financial records prohibited**

##### **§ 10203. Disclosure of financial records prohibited**

Except as otherwise expressly provided in this subchapter, a financial institution, its officers, employees, agents and directors shall not disclose to any person any financial information relating to a customer. Financial institutions shall adopt reasonable procedures to assure compliance with this subchapter. (Added 1999, No. 153 (Adj. Sess.), § 2, eff. Jan. 1, 2001.)

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# The Vermont Statutes Online

## Title 8: Banking and Insurance

### *Chapter 200: Consumer Protection*

#### **8 V.S.A. § 10204. Exceptions**

##### § 10204. EXCEPTIONS

This subchapter does not prohibit any of the activities listed in this section. This section shall not be construed to require any financial institution to make any disclosure not otherwise required by law. This section shall not be construed to require or encourage any financial institution to alter any procedures or practices not inconsistent with this subchapter. This section shall not be construed to expand or create any authority in any person or entity other than a financial institution.

- (1) Disclosure of information to the customer after proper identification.
- (2) Disclosure authorized by the customer, provided the disclosure is limited to the scope and purpose that the customer authorizes.
- (3) Disclosure of information sought by the office of child support services pursuant to its authority and obligations under section 115 and chapter 41 of Title 33, or by an agency of similar function of another state, pursuant to similar authority.
- (4) Disclosure of information sought by the department of social welfare pursuant to its authority and obligations under 33 V.S.A. § 112.
- (5) Disclosure sought by the Vermont student assistance corporation pursuant to its authority and obligations under 16 V.S.A. chapter 87.
- (6) The preparation, examination, handling or maintenance of financial records by any officer, employee, or agent of a financial institution that has custody of the records.
- (7) The examination of financial records by a certified public accountant while engaged by the financial institution to perform an independent audit.
- (8) The disclosure of information to a collection agency, its employees or agents, or to any person engaged by the financial institution to assist in recovering an amount owed to the financial institution, if such disclosure is made in the furtherance of recovering such amount.
- (9) The examination of financial records by, or the disclosure of financial records to, any officer, employee or agent of a regulatory agency for use only in the exercise of that person's duties as an officer, employee or agent.

- (10) The publication of information derived from financial records if the information cannot be identified to any particular customer, deposit or account.
- (11) The making of reports, disclosures or returns required by federal or state law.
- (12) The disclosure of any information permitted to be disclosed under the laws governing dishonor of negotiable instruments.
- (13) The exchange, in the regular course of business, of credit information between a financial institution and a credit reporting agency, provided such exchange is in compliance with the Vermont Fair Credit Reporting Act, 9 V.S.A. chapter 63, subchapter 3, and the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq.
- (14) The exchange, in the regular course of business, of information between a financial institution and an account verification service, provided such exchange is in compliance with the Vermont Fair Credit Reporting Act, 9 V.S.A. chapter 63, subchapter 3, and the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq.
- (15) The exchange, in the regular course of business, of information between a financial institution and a mercantile agency, provided such exchange is solely for the purpose of reporting to third parties on the credit rating or creditworthiness of any business, and is in compliance with the Vermont Fair Credit Reporting Act, 9 V.S.A. chapter 63, subchapter 3, and the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq.
- (16) The exchange of loan information that specifically affects a sale, foreclosure or loan closing, provided such exchange is for the purpose of accomplishing such sale, foreclosure or loan closing.
- (17) The disclosure to civil or criminal law enforcement authorities for use in the exercise of such authority's duties, or the sharing of information, within an industry network, of suspected criminal activities.
- (18) Disclosures requested pursuant to a summons for trustee process under Rule 4.2 of the Vermont Rules of Civil Procedure.
- (19) Disclosure requested pursuant to subpoena, provided that no disclosure shall be made until ten days after the financial institution has notified the customer that financial information has been requested by subpoena. Such notice shall be served by first class mail to the customer at the most recent address known to the financial institution. The provisions of this subdivision shall not apply where the subpoena is issued by or on behalf of a regulatory, criminal or civil law enforcement agency.
- (20) Disclosure required by order of court.
- (21) Disclosure of customer financial information among directors, officers, employees or agents of affiliated financial institutions, provided that such disclosure is limited to information necessary or appropriate to the fulfillment of any such persons' duties and responsibilities to the financial institution or institutions, and provided further that such disclosure is made in compliance with the Vermont Fair Credit Reporting Act, 9 V.S.A. chapter 63, subchapter 3, and the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq.

(22) Disclosure of customer financial information of one financial institution to another financial institution in connection with a proposed merger, consolidation, acquisition or other reorganization transaction involving such institution, provided that no further disclosure is made except in compliance with this subchapter, and provided further that such disclosure is made in compliance with the Vermont Fair Credit Reporting Act, 9 V.S.A. chapter 63, subchapter 3, and the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq.

(23) Disclosure in accordance with rules adopted by the commissioner, provided that the commissioner may permit disclosure by temporary order, until such time as rules under this subdivision are adopted.

(24) Disclosure sought by the department of taxes of this state pursuant to its authority and obligations under Title 32.

(25) Reports or disclosure of information to the department of aging and disabilities, pursuant to sections 6903(b) and 6904 of Title 33.

(Added 1999, No. 153 (Adj. Sess.), § 2, eff. Jan. 1, 2001.; 2001, No. 115 (Adj. Sess.) § 3.)

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# The Vermont Statutes Online

## Title 8: Banking and Insurance

### *Chapter 200: Consumer Protection*

#### **8 V.S.A. § 10205. Penalties**

##### **§ 10205. Penalties**

In addition to the authority provided under sections 11601, 11602 and 11603 of this title, the commissioner may impose an administrative penalty of not more than \$1,000.00 for each violation of this subchapter resulting from willful conduct, or from a failure by a financial institution to provide reasonable supervision of its employees to prevent violations of this subchapter. (Added 1999, No. 153 (Adj. Sess.), § 2, eff. Jan. 1, 2001.)

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Senator Chuck Chvala  
Room 130 South  
State Capitol  
P.O. Box 7882  
Madison, WI 53707-7882

JUN 09 2003

*Would you like  
to introduce an  
opt-in bill?  
(Yes)/No*

4 June 2003

Dear Senator Chvala,

I have a few connected questions that I hope one of your staff may be able to answer. A short while ago there was legislation relating to privacy of information and the need for businesses to divulge their information-sharing policies to the public. Usually they provide an opportunity to "opt out" from practices that share information with certain other businesses.

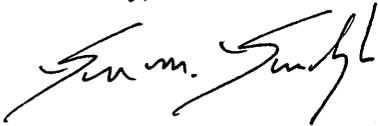
While this is all very well and good, I have come to feel rather burdened recently by the need to keep up with all these policies. While this may be an exaggeration, it does feel like at least once a week I come home from work to find yet another letter telling me I have to call or write if I wish to opt out from an information-sharing program (and I do, I do!). Yesterday provided me with two aggravations: 1) I had to call the (thankfully) toll-free number during **business hours** in order to opt out (which required me to find a moment at work today to do so), and 2) I read with great envy the following information:

**VERMONT RESIDENTS ONLY.** If you are a resident of Vermont... under Vermont law, we are not permitted to share information you give us or that we receive from others unless you consent to that sharing. **You don't need to contact us to give us your preference.** [emphasis mine].

This seems a much more pleasant method for preserving my privacy. Is there indeed any way to enact such a law for Wisconsin residents? Has there been or is there currently any attempt to do so? What makes Vermont so unique in this matter? Is there anything I can do to help get such a legislative effort "off the ground?"

I'd appreciate any information you may be able to share on this matter!

Sincerely,



Kevin M. Kurdylo  
4913 Turner Avenue  
Madison, WI 53716

*W. Chvala 6/9/03*



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-2844/1

RJM:.....

WJ  
KMN

IN: 6-16

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

DWOTZ

SER #. AM; Chapter 138 (title) :  
# -> CHAPTER 138  
SOLID { MONEY AND RATES OF INTEREST  
LICENSED LENDERS AND FINANCIAL  
} PRIVACY

GEN

1 AN ACT ...; relating to: the disclosure of personal financial information by  
2 financial institutions, granting rule-making authority, and providing a  
3 penalty.

No  
However, federal law permits the states to more strictly regulate such disclosures

Currently

**Analysis by the Legislative Reference Bureau.**

generally

With certain exceptions, federal law currently 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. This bill, ~~instead~~ 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:*

4

SECTION 1. 138.25 of the statutes is created to read:

5

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

1 (a) "Credit reporting agency" means any person who regularly engages in whole  
2 or in part in the practice of assembling or evaluating consumer credit information  
3 or other information on consumers for the purpose of reporting to <sup>3rd</sup> ~~the~~ parties on the  
4 credit rating or creditworthiness of any consumer.

5 (b) "Customer" means any individual who deposits, borrows, or invests with a  
6 financial institution or who acts as a surety or guarantor on a loan made by a  
7 financial institution.

8 (c) "Financial institution" means any of the following and any subsidiary of any  
9 of the following:

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

13 2. Any entity that is authorized under the laws of this state, the United States,  
14 or any other state or territory to engage in activities that are financial in nature,  
15 incidental to activities that are financial in nature, or complementary to activities  
16 that are financial in nature, as determined or specified under 12 USC 1843 (k).

17 (d) "Public agency" means a county, city, village, town, or school district; an  
18 agency of this state, of another state, of the United States, or of a county, city, village,  
19 town, or school district; or a board, commission, council, or committee in the United  
20 States government or in state government in this state or another state.

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

1           **(3) EXCEPTIONS.** Subsection (2)<sup>✓</sup> does not prohibit any of the following activities:

2           (a) Disclosure of information to a customer after the customer presents proper  
3 identification.

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

7           (c) Disclosure of information to a public agency.

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

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

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

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

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

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

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

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

7 (L) The exchange, in the regular course of business, of information between a  
8 financial institution and a mercantile agency, provided such exchange is solely for  
9 the purpose of reporting to <sup>3rd</sup> ~~third~~ parties on the credit rating or creditworthiness of  
10 any business <sup>and</sup> and is in compliance with any applicable federal law.

11 (m) The exchange of loan information that specifically affects a sale,  
12 foreclosure, or loan closing, provided such exchange is for the purpose of  
13 accomplishing such sale, foreclosure <sup>or</sup> or loan closing.

14 (n) The sharing of information, within an industry network, of suspected  
15 criminal activities.

16 (p) Except as otherwise provided in this paragraph, disclosure requested  
17 pursuant to subpoena, provided that no disclosure shall be made until <sup>10</sup> ~~ten~~ days after  
18 the financial institution has notified the customer that financial information has  
19 been requested by subpoena. The financial institution shall serve the notice by <sup>first</sup>  
20 class mail to the customer at the most recent address known to the financial  
21 institution. The notice need not be given if the subpoena is issued by or on behalf of  
22 a public agency.

23 (q) Disclosure required by order of court.

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

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

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

10 (4) PENALTIES. (a) 1. Any person <sup>that</sup> ~~who~~ willfully violates sub. (2) <sup>✓</sup> may be required  
11 to forfeit not more than \$1,000 <sup>00</sup> for each violation.

12 2. Any person <sup>that</sup> ~~who~~ violates sub. (2) <sup>✓</sup> may be required to forfeit not more than  
13 \$1,000 <sup>00</sup> for each violation ~~resulting from~~ <sup>as a result of</sup> a failure by a financial institution to  
14 provide reasonable supervision of its employees to prevent violations <sup>✓</sup>

15 (b) The penalties in par. (a) are in addition to any applicable penalties under  
16 s. 220.04 (9) (f) <sup>✓</sup>.

17 SECTION 2. 220.02 (2) (bm) of the statutes is created to read:

18 220.02 (2) (bm) Financial institutions and officers, employees, agents <sup>✓</sup> and  
19 directors of financial institutions under s. 138.25 <sup>✓</sup>.

20 SECTION 3. 220.02 (5) of the statutes is amended to read:

21 220.02 (5) Except for acts and decisions of the division under chs. 138, 217 and  
22 218 <sup>under</sup> and, except for s. 138.25 <sup>✓</sup>, ch. 138, any interested person or any bank or banking  
23 corporation aggrieved by an act, order or determination of the division may, within  
24 10 days from the date thereof, apply to the banking review board to review the same.  
25 All such applications for review shall be considered and disposed of as speedily as

1 possible. The banking review board may require the division to submit any of the  
2 division's actions subject to such review to said board for its approval.

History: 1971 c. 239, 307; 1973 c. 3, 243; 1975 c. 65; 1977 c. 196 s. 131; 1977 c. 418; 1981 c. 390; 1985 a. 127; 1987 a. 399; 1989 a. 31; 1991 a. 221, 316; 1995 a. 27 ss. 52c, 5979 to 5984; 1995 a. 55, 216; 1997 a. 27.

3 **SECTION 4.** 220.035 (1) (a) of the statutes is amended to read:

4 220.035 (1) (a) The banking review board shall advise the division and others  
5 in respect to improvement in the condition and service of banks and banking  
6 business in this state and shall review the acts and decisions of the division with  
7 respect to banks, except for such acts and decisions of the division under chs. 138, 217  
8 and 218 and, except for s. 138.25, <sup>under</sup> ch. 138, and shall perform such other review  
9 functions in relation to banking as are provided by law. The banking review board  
10 may require the division to submit any of the division's actions to it for its approval.  
11 The board may make rules of procedure as provided in ch. 227.

History: 1971 c. 307; 1991 a. 316; 1995 a. 27; 1997 a. 27.

12 **SECTION 5.** 220.04 (10) of the statutes is amended to read:

13 220.04 (10) If it appears to the division that a person has engaged or is about  
14 to engage in an act or practice constituting a violation of the laws of this state relating  
15 to banks and banking, including this chapter, chs. 217, 218 and 221 to 224 and s. ss.  
16 138.09 and 138.25, or a rule promulgated or order issued under those laws, the  
17 division may bring an action in the name of the state in the circuit court of the  
18 appropriate county to enjoin the acts or practices and to enforce compliance with the  
19 laws, rules or orders, or the division may refer the matter to the district attorney of  
20 the appropriate county or, if the alleged violation may be enforced by the attorney  
21 general under sub. (12) or s. 220.12, 221.1005 or 224.06 (7) or is statewide in nature,  
22 to the attorney general. Upon a proper showing, the court may grant a permanent  
23 or temporary injunction or restraining order, appoint a receiver for the defendant or

1 the defendant's assets or order rescission of any acts determined to be unlawful. The  
2 court may not require the division to post a bond.

3 **History:** 1971 c. 239; 1975 c. 65; 1981 c. 45; 1983 a. 119; 1987 a. 252; 1991 a. 221, 269, 315, 316; 1993 a. 213; 1995 a. 27, 55, 336; 1997 a. 35, 146.

**(END)**

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2844/?dn

RJM:/.....

WLj

Senator Chvala:

Attached is the draft you requested <sup>that</sup> ~~which~~ establishes an "opt-in" scheme for the disclosure of personal, financial information by financial institutions. This draft is based upon the Vermont law you provided to me, although I changed several provisions to fit the draft within our statutes. Please review the draft to ensure that it satisfies your intent. In particular, please review the definition of "financial institution" and the various exceptions. These areas required significant changes. ~~Also, you may want to have DFI review the draft to ensure that it is administratively workable.~~

Please call if you have any questions or desire any changes to the draft.

Robert J. Marchant  
Legislative Attorney  
Phone: (608) 261-4454  
E-mail: robert.marchant@legis.state.wi.us

7/15/08  
DUB

2003-2004 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2844/11  
RJM:.....  
105  
ca

DNOTE INSERT

In addition,  
note that

(P)  
PML

Also, please note that the draft provides for enforcement by DFI. ~~However,~~  
federal law may not allow DFI to enforce the draft against federally chartered  
institutions. Rather, the draft would need to be enforced by the appropriate federal  
regulatory agency. See *The Nat'l State Bank, Elizabeth N.J. v. Long*, 630 F. 2d 981  
(3rd Cir. 1980) (holding that federal Office of the Comptroller of the Currency has sole  
authority to enforce state anti-redlining law against national banks).

No  
#

You may want to have DFI  
review the draft to ensure that  
it is administratively  
workable.

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2844/1dn  
RJM:wlj:cph

June 18, 2003

Senator Chvala:

Attached is the draft you requested that establishes an "opt-in" scheme for the disclosure of personal, financial information by financial institutions. This draft is based upon the Vermont law you provided to me, although I changed several provisions to fit the draft within our statutes. Please review the draft to ensure that it satisfies your intent. In particular, please review the definition of "financial institution" and the various exceptions. These areas required significant changes.

Please note that the draft provides for enforcement by DFI. You may want to have DFI review the draft to ensure that it is administratively workable. In addition, note that federal law may not allow DFI to enforce the draft against federally chartered institutions. Rather, the draft would need to be enforced by the appropriate federal regulatory agency. See *The Nat'l State Bank, Elizabeth N.J. v. Long*, 630 F. 2d 981 (3rd Cir. 1980) (holding that federal Office of the Comptroller of the Currency has sole authority to enforce state anti-redlining law against national banks).

Please call if you have any questions or desire any changes to the draft.

Robert J. Marchant  
Legislative Attorney  
Phone: (608) 261-4454  
E-mail: robert.marchant@legis.state.wi.us

## Marchant, Robert

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**From:** Witzel-Behl, Maribeth  
**Sent:** Monday, September 22, 2003 8:21 AM  
**To:** Marchant, Robert  
**Subject:** RE: LRB 2844/1 (Opt -In Bill)

Sounds wonderful!

-----Original Message-----

**From:** Marchant, Robert  
**Sent:** Friday, September 19, 2003 11:13 AM  
**To:** Witzel-Behl, Maribeth  
**Subject:** RE: LRB 2844/1 (Opt -In Bill)

Hi, Maribeth--

I apologize for the delay in responding. Things have been really hopping over here.

With regard to your first question I see no problem adding rule-making language, although as a legal matter such language is unnecessary. See s. 227.11 (2) (a).

As for the second question, insurers are probably the biggest category of financial entity that DFI might be required to regulate under the bill. It may make some sense to have three types of enforcement as follows:

1. The commissioner of insurance enforces the bill against insurers.
2. DFI enforces the bill against banking institutions and their subsidiaries (except insurers), financial service providers licensed by DFI, mortgage bankers, mortgage brokers, loan originators, securities broker-dealers, and investment advisers.
3. Individual customers enforce the bill via small claims court against any other financial institutions that violate its requirements.

Let me know what you think and feel free to call with any questions.

Rob

-----Original Message-----

**From:** Witzel-Behl, Maribeth  
**Sent:** Monday, September 15, 2003 10:46 AM  
**To:** Marchant, Robert  
**Subject:** LRB 2844/1 (Opt -In Bill)

Robert -

I have talked to Kathryn Carlson at DFI about Senator Chvala's Opt-In bill. DFI wonders if the bill could contain the same rule-making authority language used in other DFI-related statutes. I think Kathryn may have already discussed this with you.

Another concern brought forward by DFI was that the department may not have any oversight of some entities included in 12 USC 1843 (k). One example cited by DFI was that the bill would cover attorneys who offer financial advice. If the bill were narrowed to cover only financial institutions regulated by DFI or the federal Office of the Comptroller of the Currency, who would be included in draft 1 and not in draft 2?

Thank you!

IN: 9-72

10-9-03

RWNE  
DUNOTE

2003 BILL

re-yr

1 AN ACT *to amend* chapter 138 (title), 220.02 (5), 220.035 (1) (a) and 220.04 (10);  
 2 and *to create* 138.25 and 220.02 (2) (bm) of the statutes; **relating to:** the  
 3 disclosure of personal financial information by financial institutions, granting  
 4 **rule-making authority, and providing ~~with~~ <sup>195</sup> penalty**

***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:

**BILL**

**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.

*or seeks to purchase*

*borrowed from, or purchases goods or services from*

(b) "Customer" means any individual who deposits, ~~borrowed~~ or invests with 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 <sup>other</sup> entity ~~that is authorized under the laws of this state, the United States, or any other state or territory to engage in activities that are financial in nature, incidental to activities that are financial in nature, or complementary to activities that are financial in nature, as determined or specified under~~ 12 USC 1843 (k).

(d) "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,

*(d) Insured has the meaning given in s. 600.03(27)*

*unless the entity is excluded from the definition of "financial institution" under 15 USC 6809 (3)(B) to (D).*

**BILL**

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 <sup>financial</sup> information <sup>relating</sup> to a customer <sup>to that customer</sup> after <sup>he or she</sup> presents proper  
10 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 <sup>financial</sup> 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 information to a collection agency or its employees or  
21 agents, or to any person engaged by the financial institution to assist in recovering  
22 an amount owed to the financial institution, if the disclosure is made in the  
23 furtherance of recovering such amount.

**BILL**

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, <sup>concerning</sup> ~~of~~ suspected  
22 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

BILL

SECTION 2

(c) ~~Revises~~ The department of financial institutions and the commissioner of insurance may promulgate rules for the administration of this section with regard to persons subject to their jurisdiction under sub (5)

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.

financial

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

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

Inter 5-19

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 (b) The penalties in par. (a) are in addition to any applicable penalties under  
21 § 220.04 (9) (f).

22 ~~Section 3, 220.02 (2) (bm) of the statutes is created to read:~~  
23 220.02 (2) (bm) Financial institutions and officers, employees, agents, and  
24 directors of financial institutions under s. 438.25.

25 ~~Section 4, 220.02 (5) of the statutes is amended to read:~~

(a) ENFORCEMENT. (a) The commissioner of insurance shall enforce sub. (2) with respect to insurors.  
(b) Except as provided in par. (a), the department of financial institutions shall enforce sub. (2) with respect  
to banks, savings banks, savings and loan associations, and credit unions and their subsidiaries and  
any subsidiary of such an entity.  
(c) Except as provided in pars. (a) and (b), a customer may commence an action to enforce sub. (2) against a financial  
institution that violates sub. (2) with respect to information relating to the customer.

**BILL**

1       220.02 (5) Except for acts and decisions of the division under chs. 138, 217 and  
2       218 and, except for s. 138.25, under ch. 138, any interested person or any bank or  
3       banking corporation aggrieved by an act, order or determination of the division may,  
4       within 10 days from the date thereof, apply to the banking review board to review  
5       the same. All such applications for review shall be considered and disposed of as  
6       speedily as possible. The banking review board may require the division to submit  
7       any of the division's actions subject to such review to said board for its approval.

8       **SECTION 5.** 220.035 (1) (a) of the statutes is amended to read:

9       220.035 (1) (a) The banking review board shall advise the division and others  
10      in respect to improvement in the condition and service of banks and banking  
11      business in this state and shall review the acts and decisions of the division with  
12      respect to banks, except for such acts and decisions of the division under chs. 138, 217  
13      and 218 and, except for s. 138.25, under ch. 138, and shall perform such other review  
14      functions in relation to banking as are provided by law. The banking review board  
15      may require the division to submit any of the division's actions to it for its approval.  
16      The board may make rules of procedure as provided in ch. 227.

17      **SECTION 6.** 220.04 (10) of the statutes is amended to read:

18      220.04 (10) If it appears to the division that a person has engaged or is about  
19      to engage in an act or practice constituting a violation of the laws of this state relating  
20      to banks and banking, including this chapter, chs. 217, 218 and 221 to 224 and s. ss.  
21      138.09 and 138.25, or a rule promulgated or order issued under those laws, the  
22      division may bring an action in the name of the state in the circuit court of the  
23      appropriate county to enjoin the acts or practices and to enforce compliance with the  
24      laws, rules or orders, or the division may refer the matter to the district attorney of  
25      the appropriate county or, if the alleged violation may be enforced by the attorney

**BILL**

1 general under sub. (12) or s. 220.12, 221.1005 or 224.06 (7) or is statewide in nature,  
2 to the attorney general. Upon a proper showing, the court may grant a permanent  
3 or temporary injunction or restraining order, appoint a receiver for the defendant or  
4 the defendant's assets or order rescission of any acts determined to be unlawful. The  
5 court may not require the division to post a bond.

6

(END)

DISSECT 7-5 ↓

2003-2004 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2844/2ins  
RJM:.....

INSERT 5-19

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

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

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

2. Persons required to obtain a license under s. 138.09, 138.12, 218.02, 218.06, 218.04, 218.0114, 217.03, or 551.31.

3. Persons required to obtain a certificate of registration under s. 224.72 (1m).

(c) Except as provided in pars. (a) and (b), a customer may commence an action to enforce sub. (2) against any financial institution that violates sub. (2) with regard to information relating to that customer.

*Note: Any forfeiture ordered in an action under this paragraph shall be paid to the customer.*

INSERT 7-5

**SECTION 601.415 (13)** of the statutes is created to read:

**601.415 (13) FINANCIAL PRIVACY.** The commissioner shall perform the duties specified in s. 138.25 (5) (a).

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2844/2dn

RJM:./:....

WLj

Senator Chvala:

Attached is the redraft of the financial privacy bill you requested. Please note that I made a few additional clarifications in addition to the changes concerning enforcement. See the changes to the definitions of "customer" and "financial institution" and the revised language in proposed s. 138.25 (3) (a), (c), (f), (n), (r), and (s). Please feel free to call if you have any questions.

Robert J. Marchant  
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**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2844/2dn  
RJM:wlj:jf

September 22, 2003

Senator Chvala:

Attached is the redraft of the financial privacy bill you requested. Please note that I made a few additional clarifications in addition to the changes concerning enforcement. See the changes to the definitions of "customer" and "financial institution" and the revised language in proposed s. 138.25 (3) (a), (c), (f), (n), (r), and (s). Please feel free to call if you have any questions.

Robert J. Marchant  
Legislative Attorney  
Phone: (608) 261-4454  
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**Barman, Mike**

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**From:** Marchant, Robert  
**Sent:** Tuesday, November 04, 2003 11:05 AM  
**To:** Barman, Mike  
**Subject:** FW: bill jacket request

Mike--

Please take care of this request. Thanks.

Rob

-----Original Message-----

**From:** Witzel-Behl, Maribeth  
**Sent:** Tuesday, November 04, 2003 11:04 AM  
**To:** Marchant, Robert  
**Subject:** bill jacket request

Senator Chvala would like to get LRB 2844/2 (financial disclosure opt-in) jacketed for introduction. Thank you!

- Maribeth  
Senator Chvala's Office