



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
HB1301

Introduced 02/09/05, by Rep. John A. Fritchey

SYNOPSIS AS INTRODUCED:

205 ILCS 5/48.1

from Ch. 17, par. 360

Amends the Illinois Banking Act. Provides that the Act does not prohibit the furnishing of information to certain entities if there is suspicion by the entity or the bank (rather than the bank suspects) that a customer who is an elderly or disabled person has been or may become the victim of financial exploitation. Provides that a bank or person furnishing the information shall be entitled to the same rights and protections as a person furnishing information under the Abuse of Adults with Disabilities Intervention Act. Effective immediately.

LRB094 03887 AMC 33898 b

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Banking Act is amended by changing
5 Section 48.1 as follows:

6 (205 ILCS 5/48.1) (from Ch. 17, par. 360)

7 Sec. 48.1. Customer financial records; confidentiality.

8 (a) For the purpose of this Section, the term "financial
9 records" means any original, any copy, or any summary of:

10 (1) a document granting signature authority over a
11 deposit or account;

12 (2) a statement, ledger card or other record on any
13 deposit or account, which shows each transaction in or with
14 respect to that account;

15 (3) a check, draft or money order drawn on a bank or
16 issued and payable by a bank; or

17 (4) any other item containing information pertaining
18 to any relationship established in the ordinary course of a
19 bank's business between a bank and its customer, including
20 financial statements or other financial information
21 provided by the customer.

22 (b) This Section does not prohibit:

23 (1) The preparation, examination, handling or
24 maintenance of any financial records by any officer,
25 employee or agent of a bank having custody of the records,
26 or the examination of the records by a certified public
27 accountant engaged by the bank to perform an independent
28 audit.

29 (2) The examination of any financial records by, or the
30 furnishing of financial records by a bank to, any officer,
31 employee or agent of (i) the Commissioner of Banks and Real
32 Estate, (ii) after May 31, 1997, a state regulatory

1 authority authorized to examine a branch of a State bank
2 located in another state, (iii) the Comptroller of the
3 Currency, (iv) the Federal Reserve Board, or (v) the
4 Federal Deposit Insurance Corporation for use solely in the
5 exercise of his duties as an officer, employee, or agent.

6 (3) The publication of data furnished from financial
7 records relating to customers where the data cannot be
8 identified to any particular customer or account.

9 (4) The making of reports or returns required under
10 Chapter 61 of the Internal Revenue Code of 1986.

11 (5) Furnishing information concerning the dishonor of
12 any negotiable instrument permitted to be disclosed under
13 the Uniform Commercial Code.

14 (6) The exchange in the regular course of business of
15 (i) credit information between a bank and other banks or
16 financial institutions or commercial enterprises, directly
17 or through a consumer reporting agency or (ii) financial
18 records or information derived from financial records
19 between a bank and other banks or financial institutions or
20 commercial enterprises for the purpose of conducting due
21 diligence pursuant to a purchase or sale involving the bank
22 or assets or liabilities of the bank.

23 (7) The furnishing of information to the appropriate
24 law enforcement authorities where the bank reasonably
25 believes it has been the victim of a crime.

26 (8) The furnishing of information under the Uniform
27 Disposition of Unclaimed Property Act.

28 (9) The furnishing of information under the Illinois
29 Income Tax Act and the Illinois Estate and
30 Generation-Skipping Transfer Tax Act.

31 (10) The furnishing of information under the federal
32 Currency and Foreign Transactions Reporting Act Title 31,
33 United States Code, Section 1051 et seq.

34 (11) The furnishing of information under any other
35 statute that by its terms or by regulations promulgated
36 thereunder requires the disclosure of financial records

1 other than by subpoena, summons, warrant, or court order.

2 (12) The furnishing of information about the existence
3 of an account of a person to a judgment creditor of that
4 person who has made a written request for that information.

5 (13) The exchange in the regular course of business of
6 information between commonly owned banks in connection
7 with a transaction authorized under paragraph (23) of
8 Section 5 and conducted at an affiliate facility.

9 (14) The furnishing of information in accordance with
10 the federal Personal Responsibility and Work Opportunity
11 Reconciliation Act of 1996. Any bank governed by this Act
12 shall enter into an agreement for data exchanges with a
13 State agency provided the State agency pays to the bank a
14 reasonable fee not to exceed its actual cost incurred. A
15 bank providing information in accordance with this item
16 shall not be liable to any account holder or other person
17 for any disclosure of information to a State agency, for
18 encumbering or surrendering any assets held by the bank in
19 response to a lien or order to withhold and deliver issued
20 by a State agency, or for any other action taken pursuant
21 to this item, including individual or mechanical errors,
22 provided the action does not constitute gross negligence or
23 willful misconduct. A bank shall have no obligation to
24 hold, encumber, or surrender assets until it has been
25 served with a subpoena, summons, warrant, court or
26 administrative order, lien, or levy.

27 (15) The exchange in the regular course of business of
28 information between a bank and any commonly owned affiliate
29 of the bank, subject to the provisions of the Financial
30 Institutions Insurance Sales Law.

31 (16) The furnishing of information to law enforcement
32 authorities, the Illinois Department on Aging and its
33 regional administrative and provider agencies, the
34 Department of Human Services Office of Inspector General,
35 or public guardians, if there is suspicion by the
36 investigatory entity, the guardian, or the bank suspects

1 that a customer who is an elderly or disabled person has
2 been or may become the victim of financial exploitation.
3 For the purposes of this item (16), the term: (i) "elderly
4 person" means a person who is 60 or more years of age, (ii)
5 "disabled person" means a person who has or reasonably
6 appears to the bank to have a physical or mental disability
7 that impairs his or her ability to seek or obtain
8 protection from or prevent financial exploitation, and
9 (iii) "financial exploitation" means tortious or illegal
10 use of the assets or resources of an elderly or disabled
11 person, and includes, without limitation, misappropriation
12 of the elderly or disabled person's assets or resources by
13 undue influence, breach of fiduciary relationship,
14 intimidation, fraud, deception, extortion, or the use of
15 assets or resources in any manner contrary to law. A bank
16 or person furnishing information pursuant to this item (16)
17 shall be entitled to the same rights and protections as a
18 person furnishing information under the Elder Abuse and
19 Neglect Act, ~~and~~ the Illinois Domestic Violence Act of
20 1986, and the Abuse of Adults with Disabilities
21 Intervention Act.

22 (17) The disclosure of financial records or
23 information as necessary to effect, administer, or enforce
24 a transaction requested or authorized by the customer, or
25 in connection with:

26 (A) servicing or processing a financial product or
27 service requested or authorized by the customer;

28 (B) maintaining or servicing a customer's account
29 with the bank; or

30 (C) a proposed or actual securitization or
31 secondary market sale (including sales of servicing
32 rights) related to a transaction of a customer.

33 Nothing in this item (17), however, authorizes the sale
34 of the financial records or information of a customer
35 without the consent of the customer.

36 (18) The disclosure of financial records or

1 information as necessary to protect against actual or
2 potential fraud, unauthorized transactions, claims, or
3 other liability.

4 (19) (a) The disclosure of financial records or
5 information related to a private label credit program
6 between a financial institution and a private label party
7 in connection with that private label credit program. Such
8 information is limited to outstanding balance, available
9 credit, payment and performance and account history,
10 product references, purchase information, and information
11 related to the identity of the customer.

12 (b) (1) For purposes of this paragraph (19) of
13 subsection (b) of Section 48.1, a "private label credit
14 program" means a credit program involving a financial
15 institution and a private label party that is used by a
16 customer of the financial institution and the private label
17 party primarily for payment for goods or services sold,
18 manufactured, or distributed by a private label party.

19 (2) For purposes of this paragraph (19) of subsection
20 (b) of Section 48.1, a "private label party" means, with
21 respect to a private label credit program, any of the
22 following: a retailer, a merchant, a manufacturer, a trade
23 group, or any such person's affiliate, subsidiary, member,
24 agent, or service provider.

25 (c) Except as otherwise provided by this Act, a bank may
26 not disclose to any person, except to the customer or his duly
27 authorized agent, any financial records or financial
28 information obtained from financial records relating to that
29 customer of that bank unless:

30 (1) the customer has authorized disclosure to the
31 person;

32 (2) the financial records are disclosed in response to
33 a lawful subpoena, summons, warrant or court order which
34 meets the requirements of subsection (d) of this Section;
35 or

36 (3) the bank is attempting to collect an obligation

1 owed to the bank and the bank complies with the provisions
2 of Section 2I of the Consumer Fraud and Deceptive Business
3 Practices Act.

4 (d) A bank shall disclose financial records under paragraph
5 (2) of subsection (c) of this Section under a lawful subpoena,
6 summons, warrant, or court order only after the bank mails a
7 copy of the subpoena, summons, warrant, or court order to the
8 person establishing the relationship with the bank, if living,
9 and, otherwise his personal representative, if known, at his
10 last known address by first class mail, postage prepaid, unless
11 the bank is specifically prohibited from notifying the person
12 by order of court or by applicable State or federal law. A bank
13 shall not mail a copy of a subpoena to any person pursuant to
14 this subsection if the subpoena was issued by a grand jury
15 under the Statewide Grand Jury Act.

16 (e) Any officer or employee of a bank who knowingly and
17 willfully furnishes financial records in violation of this
18 Section is guilty of a business offense and, upon conviction,
19 shall be fined not more than \$1,000.

20 (f) Any person who knowingly and willfully induces or
21 attempts to induce any officer or employee of a bank to
22 disclose financial records in violation of this Section is
23 guilty of a business offense and, upon conviction, shall be
24 fined not more than \$1,000.

25 (g) A bank shall be reimbursed for costs that are
26 reasonably necessary and that have been directly incurred in
27 searching for, reproducing, or transporting books, papers,
28 records, or other data of a customer required or requested to
29 be produced pursuant to a lawful subpoena, summons, warrant, or
30 court order. The Commissioner shall determine the rates and
31 conditions under which payment may be made.

32 (Source: P.A. 91-330, eff. 7-29-99; 91-929, eff. 12-15-00;
33 92-483, eff. 8-23-01; 92-543, eff. 6-12-02.)

34 Section 99. Effective date. This Act takes effect upon
35 becoming law.