

**SB1711**



**94TH GENERAL ASSEMBLY**

**State of Illinois**

**2005 and 2006**

**SB1711**

Introduced 2/25/2005, by Sen. Ira I. Silverstein

**SYNOPSIS AS INTRODUCED:**

205 ILCS 5/48.1

from Ch. 17, par. 360

Amends the Illinois Banking Act. Requires a bank to disclose certain financial records under a lawful citation to discover assets.

LRB094 11370 MKM 42238 b

**A BILL FOR**

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 the bank suspects that a customer  
36 who is an elderly or disabled person has been or may become

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

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

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

25 (B) maintaining or servicing a customer's account  
26 with the bank; or

27 (C) a proposed or actual securitization or  
28 secondary market sale (including sales of servicing  
29 rights) related to a transaction of a customer.

30 Nothing in this item (17), however, authorizes the sale  
31 of the financial records or information of a customer  
32 without the consent of the customer.

33 (18) The disclosure of financial records or  
34 information as necessary to protect against actual or  
35 potential fraud, unauthorized transactions, claims, or  
36 other liability.

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

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

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

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

27           (1) the customer has authorized disclosure to the  
28 person;

29           (2) the financial records are disclosed in response to  
30 a lawful subpoena, summons, warrant, citation to discover  
31 assets, or court order which meets the requirements of  
32 subsection (d) of this Section; or

33           (3) the bank is attempting to collect an obligation  
34 owed to the bank and the bank complies with the provisions  
35 of Section 2I of the Consumer Fraud and Deceptive Business  
36 Practices Act.

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

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

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

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

30 (Source: P.A. 91-330, eff. 7-29-99; 91-929, eff. 12-15-00;  
31 92-483, eff. 8-23-01; 92-543, eff. 6-12-02.)