

SB0236



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB0236

Introduced 2/7/2007, by Sen. Ira I. Silverstein

SYNOPSIS AS INTRODUCED:

205 ILCS 305/10

from Ch. 17, par. 4411

Amends the Illinois Credit Union Act. Provides that a credit union may not disclose to any person, except to the member or his or her duly authorized agent, any financial records relating to that member of the credit union unless the financial records are disclosed in response to a lawful subpoena, summons, warrant, citation to discover assets, or court order that meets certain requirements (now, a disclosure is only permissible in response to a lawful subpoena, summons, warrant, or court order). Makes corresponding changes in provisions concerning disclosure procedures and reimbursement of costs associated with compliance.

LRB095 07908 MJR 28070 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 Credit Union Act is amended by
5 changing Section 10 as follows:

6 (205 ILCS 305/10) (from Ch. 17, par. 4411)

7 Sec. 10. Credit union records; member financial records.

8 (1) A credit union shall establish and maintain books,
9 records, accounting systems and procedures which accurately
10 reflect its operations and which enable the Department to
11 readily ascertain the true financial condition of the credit
12 union and whether it is complying with this Act.

13 (2) A photostatic or photographic reproduction of any
14 credit union records shall be admissible as evidence of
15 transactions with the credit union.

16 (3) (a) For the purpose of this Section, the term "financial
17 records" means any original, any copy, or any summary of (1) a
18 document granting signature authority over an account, (2) a
19 statement, ledger card or other record on any account which
20 shows each transaction in or with respect to that account, (3)
21 a check, draft or money order drawn on a financial institution
22 or other entity or issued and payable by or through a financial
23 institution or other entity, or (4) any other item containing

1 information pertaining to any relationship established in the
2 ordinary course of business between a credit union and its
3 member, including financial statements or other financial
4 information provided by the member.

5 (b) This Section does not prohibit:

6 (1) The preparation, examination, handling or
7 maintenance of any financial records by any officer,
8 employee or agent of a credit union having custody of such
9 records, or the examination of such records by a certified
10 public accountant engaged by the credit union to perform an
11 independent audit.

12 (2) The examination of any financial records by or the
13 furnishing of financial records by a credit union to any
14 officer, employee or agent of the Department, the National
15 Credit Union Administration, Federal Reserve board or any
16 insurer of share accounts for use solely in the exercise of
17 his duties as an officer, employee or agent.

18 (3) The publication of data furnished from financial
19 records relating to members where the data cannot be
20 identified to any particular customer of account.

21 (4) The making of reports or returns required under
22 Chapter 61 of the Internal Revenue Code of 1954.

23 (5) Furnishing information concerning the dishonor of
24 any negotiable instrument permitted to be disclosed under
25 the Uniform Commercial Code.

26 (6) The exchange in the regular course of business of

1 (i) credit information between a credit union and other
2 credit unions or financial institutions or commercial
3 enterprises, directly or through a consumer reporting
4 agency or (ii) financial records or information derived
5 from financial records between a credit union and other
6 credit unions or financial institutions or commercial
7 enterprises for the purpose of conducting due diligence
8 pursuant to a merger or a purchase or sale of assets or
9 liabilities of the credit union.

10 (7) The furnishing of information to the appropriate
11 law enforcement authorities where the credit union
12 reasonably believes it has been the victim of a crime.

13 (8) The furnishing of information pursuant to the
14 Uniform Disposition of Unclaimed Property Act.

15 (9) The furnishing of information pursuant to the
16 Illinois Income Tax Act and the Illinois Estate and
17 Generation-Skipping Transfer Tax Act.

18 (10) The furnishing of information pursuant to the
19 federal "Currency and Foreign Transactions Reporting Act",
20 Title 31, United States Code, Section 1051 et sequentia.

21 (11) The furnishing of information pursuant to any
22 other statute which by its terms or by regulations
23 promulgated thereunder requires the disclosure of
24 financial records other than by subpoena, summons, warrant
25 or court order.

26 (12) The furnishing of information in accordance with

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

19 (13) The furnishing of information to law enforcement
20 authorities, the Illinois Department on Aging and its
21 regional administrative and provider agencies, the
22 Department of Human Services Office of Inspector General,
23 or public guardians: (i) upon subpoena by the investigatory
24 entity or the guardian, or (ii) if there is suspicion by
25 the credit union that a member who is an elderly or
26 disabled person has been or may become the victim of

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

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

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

26 (B) maintaining or servicing a member's account

1 with the credit union; or

2 (C) a proposed or actual securitization or
3 secondary market sale (including sales of servicing
4 rights) related to a transaction of a member.

5 Nothing in this item (14), however, authorizes the sale
6 of the financial records or information of a member without
7 the consent of the member.

8 (15) The disclosure of financial records or
9 information as necessary to protect against or prevent
10 actual or potential fraud, unauthorized transactions,
11 claims, or other liability.

12 (16)(a) The disclosure of financial records or
13 information related to a private label credit program
14 between a financial institution and a private label party
15 in connection with that private label credit program. Such
16 information is limited to outstanding balance, available
17 credit, payment and performance and account history,
18 product references, purchase information, and information
19 related to the identity of the customer.

20 (b)(1) For purposes of this paragraph (16) of
21 subsection (b) of Section 10, a "private label credit
22 program" means a credit program involving a financial
23 institution and a private label party that is used by a
24 customer of the financial institution and the private label
25 party primarily for payment for goods or services sold,
26 manufactured, or distributed by a private label party.

1 (2) For purposes of this paragraph (16) of subsection
2 (b) of Section 10, a "private label party" means, with
3 respect to a private label credit program, any of the
4 following: a retailer, a merchant, a manufacturer, a trade
5 group, or any such person's affiliate, subsidiary, member,
6 agent, or service provider.

7 (c) Except as otherwise provided by this Act, a credit
8 union may not disclose to any person, except to the member or
9 his duly authorized agent, any financial records relating to
10 that member of the credit union unless:

11 (1) the member has authorized disclosure to the person;

12 (2) the financial records are disclosed in response to
13 a lawful subpoena, summons, warrant, citation to discover
14 assets, or court order that meets the requirements of
15 subparagraph (d) of this Section; or

16 (3) the credit union is attempting to collect an
17 obligation owed to the credit union and the credit union
18 complies with the provisions of Section 2I of the Consumer
19 Fraud and Deceptive Business Practices Act.

20 (d) A credit union shall disclose financial records under
21 subparagraph (c)(2) of this Section pursuant to a lawful
22 subpoena, summons, warrant, citation to discover assets, or
23 court order only after the credit union mails a copy of the
24 subpoena, summons, warrant or court order to the person
25 establishing the relationship with the credit union, if living,
26 and otherwise his personal representative, if known, at his

1 last known address by first class mail, postage prepaid unless
2 the credit union is specifically prohibited from notifying the
3 person by order of court or by applicable State or federal law.
4 In the case of a grand jury subpoena, a credit union shall not
5 mail a copy of a subpoena to any person pursuant to this
6 subsection if the subpoena was issued by a grand jury under the
7 Statewide Grand Jury Act or notifying the person would
8 constitute a violation of the federal Right to Financial
9 Privacy Act of 1978.

10 (e)(1) Any officer or employee of a credit union who
11 knowingly and wilfully furnishes financial records in
12 violation of this Section is guilty of a business offense and
13 upon conviction thereof shall be fined not more than \$1,000.

14 (2) Any person who knowingly and wilfully induces or
15 attempts to induce any officer or employee of a credit union to
16 disclose financial records in violation of this Section is
17 guilty of a business offense and upon conviction thereof shall
18 be fined not more than \$1,000.

19 (f) A credit union shall be reimbursed for costs which are
20 reasonably necessary and which have been directly incurred in
21 searching for, reproducing or transporting books, papers,
22 records or other data of a member required or requested to be
23 produced pursuant to a lawful subpoena, summons, warrant,
24 citation to discover assets, or court order. The Director may
25 determine, by rule, the rates and conditions under which
26 payment shall be made. Delivery of requested documents may be

1 delayed until final reimbursement of all costs is received.

2 (Source: P.A. 94-495, eff. 8-8-05; 94-851, eff. 6-13-06.)