

REFERENCE TITLE: financial information privacy act

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

SB 1617

Introduced by
Senator Aboud: Representatives Gallardo, Lopez

AN ACT

AMENDING TITLE 6, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 16; RELATING TO
THE FINANCIAL INFORMATION PRIVACY ACT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 6, Arizona Revised Statutes, is amended by adding
3 chapter 16, to read:

4 CHAPTER 16

5 FINANCIAL INFORMATION PRIVACY ACT

6 ARTICLE 1. GENERAL PROVISIONS

7 6-1601. Definitions

8 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 1. "ACCOUNT VERIFICATION SERVICE" MEANS ANY PERSON THAT, FOR MONETARY
10 FEES OR DUES OR ON A COOPERATIVE NONPROFIT BASIS, REGULARLY ENGAGES, IN WHOLE
11 OR IN PART, IN THE PRACTICE OF EITHER:

12 (a) ASSEMBLING INFORMATION ON THE FREQUENCY AND LOCATION OF DEPOSITORY
13 ACCOUNT OPENINGS OR ATTEMPTED OPENINGS BY A CUSTOMER OR FORCED CLOSINGS BY A
14 DEPOSITORY INSTITUTION OF ACCOUNTS OF A CUSTOMER.

15 (b) AUTHENTICATING OR VALIDATING SOCIAL SECURITY NUMBERS OR ADDRESSES
16 FOR THE PURPOSE OF REPORTING TO THIRD PARTIES FOR USE IN FRAUD PREVENTION.

17 2. "AFFILIATE" OR "AFFILIATED COMPANY" MEANS ANY COMPANY THAT
18 CONTROLS, IS CONTROLLED BY OR IS UNDER COMMON CONTROL WITH ANOTHER COMPANY AS
19 THAT TERM IS USED IN 15 UNITED STATES CODE SECTION 1681a(d).

20 3. "CREDIT REPORTING AGENCY" MEANS ANY PERSON THAT, FOR MONETARY FEES
21 OR DUES OR ON A COOPERATIVE NONPROFIT BASIS, REGULARLY ENGAGES IN WHOLE OR IN
22 PART IN THE PRACTICE OF ASSEMBLING OR EVALUATING CONSUMER CREDIT INFORMATION
23 OR OTHER INFORMATION ON CONSUMERS FOR THE PURPOSE OF REPORTING TO THIRD
24 PARTIES ON THE CREDIT RATING OR CREDITWORTHINESS OF ANY CONSUMER.

25 4. "CUSTOMER" MEANS ANY PERSON THAT DEPOSITS, BORROWS OR INVESTS WITH
26 A FINANCIAL INSTITUTION, INCLUDING A SURETY OR A GUARANTOR ON A LOAN.

27 5. "FINANCIAL INSTITUTION" MEANS ANY INSTITUTION, THE BUSINESS OF
28 WHICH IS ENGAGING IN FINANCIAL ACTIVITIES AS DESCRIBED IN 12 UNITED STATES
29 CODE SECTION 1843(k), THAT DOES BUSINESS IN THIS STATE.

30 6. "MERCANTILE AGENCY" MEANS ANY PERSON THAT, FOR MONETARY FEES OR
31 DUES OR ON A COOPERATIVE NONPROFIT BASIS, REGULARLY ENGAGES IN WHOLE OR IN
32 PART IN THE PRACTICE OF ASSEMBLING OR EVALUATING BUSINESS CREDIT INFORMATION
33 OR OTHER INFORMATION ON BUSINESSES FOR THE PURPOSE OF REPORTING TO THIRD
34 PARTIES ON THE CREDIT RATING OR CREDITWORTHINESS OF ANY BUSINESS.

35 7. "NONAFFILIATED PARTY" MEANS ANY PERSON THAT IS NOT AN AFFILIATE OF
36 THE FINANCIAL INSTITUTION.

37 8. "PERSONAL FINANCIAL INFORMATION" MEANS INFORMATION THAT IS NOT
38 WIDELY AVAILABLE TO THE GENERAL PUBLIC AND THAT IS AN ORIGINAL OR COPY OF
39 INFORMATION DERIVED FROM ANY OF THE FOLLOWING:

40 (a) A DOCUMENT THAT GRANTS SIGNATURE AUTHORITY OVER A DEPOSIT OR SHARE
41 ACCOUNT.

42 (b) A STATEMENT, LEDGER CARD OR OTHER RECORD OF A DEPOSIT OR SHARE
43 ACCOUNT THAT SHOWS TRANSACTIONS IN OR WITH RESPECT TO THAT DEPOSIT OR
44 ACCOUNT.

1 (c) A CHECK, CLEAR DRAFT OR MONEY ORDER THAT IS DRAWN ON A FINANCIAL
2 INSTITUTION OR ISSUED AND PAYABLE BY OR THROUGH A FINANCIAL INSTITUTION.

3 (d) ANY ITEM, OTHER THAN AN INSTITUTIONAL OR PERIODIC CHARGE, THAT IS
4 MADE UNDER AN AGREEMENT BETWEEN A FINANCIAL INSTITUTION AND ANOTHER PERSON'S
5 DEPOSIT OR SHARE ACCOUNT.

6 (e) ANY INFORMATION THAT RELATES TO A LOAN ACCOUNT OR AN APPLICATION
7 FOR A LOAN.

8 (f) EVIDENCE OF A TRANSACTION CONDUCTED BY ELECTRONIC OR TELEPHONIC
9 MEANS.

10 6-1602. Personal financial information protected; opt in
11 consent

12 A. EXCEPT AS PROVIDED IN SECTION 6-1603, A FINANCIAL INSTITUTION SHALL
13 NOT SELL, SHARE, TRANSFER OR OTHERWISE DISCLOSE PERSONAL FINANCIAL
14 INFORMATION TO OR WITH ANY NONAFFILIATED PARTY WITHOUT THE EXPLICIT PRIOR
15 CONSENT OF THE CUSTOMER TO WHOM THE NONPUBLIC PERSONAL INFORMATION RELATES.
16 THIS MAY BE CALLED "OPT IN" CONSENT.

17 B. ANY PERSON THAT RECEIVES PERSONAL FINANCIAL INFORMATION FROM A
18 FINANCIAL INSTITUTION SHALL NOT DISCLOSE THIS INFORMATION TO ANY OTHER
19 PERSON, UNLESS THE DISCLOSURE WOULD BE LAWFUL IF MADE DIRECTLY TO THE OTHER
20 PERSON BY THE FINANCIAL INSTITUTION.

21 C. THE SUPERINTENDENT SHALL DIRECT THE SIZE, TYPESIZE AND WORDING OF
22 AN OPT IN CONSENT FORM.

23 6-1603. Exceptions to disclosure prohibition

24 THE PROHIBITIONS PRESCRIBED IN SECTION 6-1602 DO NOT APPLY TO:

25 1. THE DISCLOSURE OF INFORMATION TO THE CUSTOMER AFTER VERIFICATION OF
26 THE CUSTOMER'S IDENTITY.

27 2. DISCLOSURE EXPLICITLY AUTHORIZED BY THE CUSTOMER AND LIMITED TO THE
28 SCOPE AND PURPOSE AUTHORIZED.

29 3. THE DISCLOSURE OF INFORMATION TO AGENCIES OF THIS STATE OR ANY
30 POLITICAL SUBDIVISION OF THIS STATE THAT IS AUTHORIZED BY STATE LAW.

31 4. THE DISCLOSURE OF INFORMATION PURSUANT TO A LAWFUL SUBPOENA OR
32 COURT ORDER.

33 5. THE PREPARATION, EXAMINATION, HANDLING OR MAINTENANCE OF FINANCIAL
34 RECORDS BY ANY OFFICER, EMPLOYEE OR AGENT OF A FINANCIAL INSTITUTION THAT HAS
35 CUSTODY OF THE RECORDS.

36 6. THE EXAMINATION OF FINANCIAL RECORDS BY A CERTIFIED PUBLIC
37 ACCOUNTANT WHILE ENGAGED BY THE FINANCIAL INSTITUTION TO PERFORM AN
38 INDEPENDENT AUDIT.

39 7. THE DISCLOSURE OF INFORMATION TO A COLLECTION AGENCY OR ITS
40 EMPLOYEES OR AGENTS OR TO ANY PERSON ENGAGED BY THE FINANCIAL INSTITUTION TO
41 ASSIST IN RECOVERING AN AMOUNT OWED TO THE FINANCIAL INSTITUTION, IF THE
42 DISCLOSURE IS MADE IN THE FURTHERANCE OF RECOVERING THAT AMOUNT.

1 8. THE EXAMINATION OF FINANCIAL RECORDS BY, OR THE DISCLOSURE OF
2 FINANCIAL RECORDS TO, ANY OFFICER, EMPLOYEE OR AGENT OF A REGULATORY AGENCY
3 FOR USE ONLY IN THE EXERCISE OF THAT PERSON'S DUTIES AS AN OFFICER, EMPLOYEE
4 OR AGENT.

5 9. THE PUBLICATION OF INFORMATION DERIVED FROM FINANCIAL RECORDS IF
6 THE INFORMATION CANNOT BE IDENTIFIED TO ANY PARTICULAR CUSTOMER, DEPOSIT OR
7 ACCOUNT.

8 10. THE MAKING OF REPORTS, DISCLOSURES OR RETURNS REQUIRED BY FEDERAL
9 OR STATE LAW.

10 11. THE DISCLOSURE OF ANY INFORMATION PERMITTED TO BE DISCLOSED UNDER
11 THE LAWS GOVERNING DISHONOR OF NEGOTIABLE INSTRUMENTS.

12 12. THE EXCHANGE IN THE REGULAR COURSE OF BUSINESS OF CREDIT
13 INFORMATION BETWEEN A FINANCIAL INSTITUTION AND A CREDIT REPORTING AGENCY.
14 THE EXCHANGE SHALL BE IN COMPLIANCE WITH THE FEDERAL FAIR CREDIT REPORTING
15 ACT (15 UNITED STATES CODE SECTIONS 1681 THROUGH 1681x).

16 13. THE EXCHANGE IN THE REGULAR COURSE OF BUSINESS OF INFORMATION
17 BETWEEN A FINANCIAL INSTITUTION AND AN ACCOUNT VERIFICATION SERVICE. THE
18 EXCHANGE SHALL BE IN COMPLIANCE WITH THE FEDERAL FAIR CREDIT REPORTING ACT
19 (15 UNITED STATES CODE SECTIONS 1681 THROUGH 1681x).

20 14. THE EXCHANGE IN THE REGULAR COURSE OF BUSINESS OF INFORMATION
21 BETWEEN A FINANCIAL INSTITUTION AND A MERCANTILE AGENCY. THE EXCHANGE SHALL
22 BE IN COMPLIANCE WITH THE FEDERAL FAIR CREDIT REPORTING ACT (15 UNITED STATES
23 CODE SECTIONS 1681 THROUGH 1681x).

24 15. THE EXCHANGE OF LOAN INFORMATION THAT SPECIFICALLY AFFECTS A SALE,
25 FORECLOSURE OR LOAN CLOSING. THE EXCHANGE SHALL BE FOR THE PURPOSE OF
26 ACCOMPLISHING THE SALE, FORECLOSURE OR LOAN CLOSING.

27 16. DISCLOSURE OF SUSPECTED CRIMINAL ACTIVITIES TO CIVIL OR CRIMINAL
28 LAW ENFORCEMENT AUTHORITIES FOR USE IN THE EXERCISE OF THE AUTHORITY'S DUTIES
29 OR THE SHARING OF INFORMATION WITHIN AN INDUSTRY NETWORK.

30 17. DISCLOSURE IN ACCORDANCE WITH RULES ADOPTED BY THE SUPERINTENDENT
31 TO CARRY OUT THE CLEAR INTENT OF THIS SECTION.

32 6-1604. Enforcement

33 A. A PERSON THAT NEGLIGENTLY DISCLOSES OR SHARES PERSONAL FINANCIAL
34 INFORMATION IN VIOLATION OF THIS CHAPTER SHALL BE LIABLE, IRRESPECTIVE OF THE
35 AMOUNT OF DAMAGES SUFFERED BY THE CUSTOMER AS A RESULT OF THAT VIOLATION, FOR
36 A CIVIL PENALTY OF NOT MORE THAN TWO THOUSAND FIVE HUNDRED DOLLARS PER
37 VIOLATION. HOWEVER, IF THE DISCLOSURE OR SHARING RESULTS IN THE RELEASE OF
38 PERSONAL FINANCIAL INFORMATION OF MORE THAN ONE INDIVIDUAL, THE TOTAL CIVIL
39 PENALTY AWARDED PURSUANT TO THIS SUBSECTION SHALL NOT EXCEED FIVE HUNDRED
40 THOUSAND DOLLARS.

41 B. A PERSON THAT KNOWINGLY AND WILFULLY OBTAINS, DISCLOSES, SHARES OR
42 USES NONPUBLIC PERSONAL INFORMATION IN VIOLATION OF THIS CHAPTER SHALL BE
43 LIABLE FOR A CIVIL PENALTY OF NOT MORE THAN TWO THOUSAND FIVE HUNDRED DOLLARS
44 PER INDIVIDUAL VIOLATION, IRRESPECTIVE OF THE AMOUNT OF DAMAGES SUFFERED BY
45 THE CUSTOMER AS A RESULT OF THAT VIOLATION.

1 C. IF A VIOLATION OF THIS CHAPTER RESULTS IN THE TAKING THE IDENTIFY
2 OF ANOTHER PERSON OR ENTITY PURSUANT TO SECTION 13-2008 OR THE AGGRAVATED
3 TAKING THE IDENTITY OF ANOTHER PERSON OR ENTITY PURSUANT TO SECTION 13-2009,
4 THE CIVIL PENALTIES SET FORTH IN THIS SECTION SHALL BE DOUBLED.
5 D. THE SUPERINTENDENT SHALL ADOPT RULES NECESSARY TO ENFORCE THIS
6 SECTION.
7 Sec. 2. Short title
8 Title 6, chapter 16, Arizona Revised Statutes, as added by this act,
9 may be cited as the "Financial Information Privacy Act".
10 Sec. 3. Severability
11 If a provision of this act or its application to any person or
12 circumstance is held invalid, the invalidity does not affect other provisions
13 or applications of the act that can be given effect without the invalid
14 provision or application, and to this end the provisions of this act are
15 severable.
16 Sec. 4. Retroactivity
17 This act is effective retroactively to from and after June 30, 2007.