S T A T E O F N E W Y O R K

944

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. McDONOUGH -- Multi-Sponsored by -- M. of A. BUTLER -- read once and referred to the Committee on Banks

AN ACT to amend the banking law, in relation to regulating the use and dissemination of confidential customer information by financial institutions

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The banking law is amended by adding a new article 17 to read as follows:

ARTICLE 17
PROTECTION OF CUSTOMER FINANCIAL INFORMATION

SECTION 9020. DEFINITIONS.
9021. PRIVACY OF CONFIDENTIAL CUSTOMER INFORMATION.
9022. LIMITATIONS.
9023. RECORD RETENTION.
9024. ENFORCEMENT BY THE ATTORNEY GENERAL.
9025. PRIVATE RIGHT OF ACTION.

S 9020. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "FINANCIAL INSTITUTION" MEANS ANY INSTITUTION THE BUSINESS OF WHICH IS ENGAGING IN FINANCIAL ACTIVITIES AS DESCRIBED IN SECTION 4(K) OF THE FEDERAL BANK HOLDING COMPANY ACT OF 1956.

2. "CONFIDENTIAL CUSTOMER INFORMATION" SHALL MEAN PERSONALLY IDENTIFIABLE INFORMATION:

(A) PROVIDED BY A CUSTOMER TO A FINANCIAL INSTITUTION;

(B) RESULTING FROM ANY TRANSACTION WITH THE CUSTOMER OR THE SERVICE PERFORMED FOR THE CUSTOMER; OR

(C) OTHERWISE OBTAINED BY THE FINANCIAL INSTITUTION.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD01380-01-9

3. "CUSTOMER" SHALL MEAN ANY INDIVIDUAL WHO OBTAINS, FROM A FINANCIAL INSTITUTION, A PRODUCT OR SERVICE WHICH IS INTENDED TO BE USED PRIMARILY FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES, AND ALSO MEANS THE LEGAL REPRESENTATIVE OF SUCH AN INDIVIDUAL, AND SHALL INCLUDE AN INDIVIDUAL WHOSE APPLICATION FOR SUCH PRODUCT OR SERVICE HAS BEEN DENIED.

4. "UNAFFILIATED THIRD PARTY" SHALL MEAN ANY ENTITY OR PERSON THAT IS NOT AN AFFILIATE OF, OR RELATED BY COMMON OWNERSHIP OR AFFILIATED BY CORPORATE CONTROL WITH, THE FINANCIAL INSTITUTION, BUT DOES NOT INCLUDE A JOINT EMPLOYEE OF SUCH INSTITUTION.

5. "AFFILIATE" SHALL MEAN ANY COMPANY THAT CONTROLS, IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH ANOTHER COMPANY.

S 9021. PRIVACY OF CONFIDENTIAL CUSTOMER INFORMATION. 1. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS ARTICLE, A FINANCIAL INSTITUTION SHALL NOT DIRECTLY OR THROUGH AN AFFILIATE DISCLOSE CONFIDENTIAL CUSTOMER INFORMATION TO AN UNAFFILIATED THIRD PARTY UNLESS THE FINANCIAL INSTITUTION HAS FIRST GIVEN WRITTEN NOTICE MEETING THE REQUIREMENTS OF THIS SECTION TO THE CUSTOMER TO WHOM THE INFORMATION RELATES, AND HAS OBTAINED THE INFORMED WRITTEN OR ELECTRONIC CONSENT OF THAT CUSTOMER FOR SUCH DISCLOSURE, AND SUCH CONSENT HAS NOT BEEN WITHDRAWN.

2. ANY FINANCIAL INSTITUTION THAT SEEKS TO DISCLOSE CONFIDENTIAL CUSTOMER INFORMATION SHALL FIRST PROVIDE A WRITTEN NOTICE, ENTITLED "FINANCIAL PRIVACY NOTICE," WRITTEN IN ACCORDANCE WITH SECTION 5-702 OF THE GENERAL OBLIGATIONS LAW, TO EACH OF ITS CUSTOMERS AT THE TIME AT WHICH A FINANCIAL RELATIONSHIP IS INITIATED AND AT LEAST ANNUALLY THEREAFTER. SUCH NOTICE SHALL BE GIVEN AT THE TIME AN ACCOUNT IS OPENED, AT THE TIME A LOAN OR MORTGAGE APPLICATION IS MADE, AT THE TIME A LOAN OR MORTGAGE IS GRANTED, OR AT THE TIME THE CUSTOMER ENTERS INTO ANOTHER FORM OF FINANCIAL TRANSACTION WITH THE FINANCIAL INSTITUTION.

3. THE NOTICE SHALL CLEARLY AND CONSPICUOUSLY STATE OR DESCRIBE:

(A) THE SPECIFIC TYPES OF CONFIDENTIAL CUSTOMER INFORMATION THAT THE FINANCIAL INSTITUTION SEEKS TO DISCLOSE;

(B) THE CIRCUMSTANCES UNDER WHICH DISCLOSURE WILL BE MADE;

(C) THE SPECIFIC TYPES OF UNAFFILIATED THIRD PARTIES TO WHICH DISCLOSURE WILL BE MADE;

(D) THE SPECIFIC USES THAT WILL BE MADE OF THE INFORMATION AFTER IT IS DISCLOSED;

(E) ALL DISCLOSURES REQUIRED UNDER SECTION 603(D)(2)(A)(III) OF THE FEDERAL FAIR CREDIT REPORTING ACT AND COMPARABLE DISCLOSURES UNDER ARTICLE TWENTY-FIVE OF THE GENERAL BUSINESS LAW;

(F) THAT DISCLOSURE WILL BE LIMITED TO THE CONDITIONS SET FORTH IN THE NOTICE;

(G) THAT THE CUSTOMER HAS THE RIGHT TO REVOKE THE CONSENT AT ANY TIME;

(H) THAT A NEW AUTHORIZATION WILL BE SOUGHT FROM THE CUSTOMER PRIOR TO THE DISCLOSURE OF ANY CONFIDENTIAL CUSTOMER INFORMATION OTHER THAN UNDER THE CONDITIONS SET FORTH IN THE NOTICE OR FOLLOWING REVOCATION OF THE CONSENT;

(I) WHETHER THE FINANCIAL INSTITUTION WILL RECEIVE COMPENSATION FOR THE DISCLOSURE;

(J) THAT A DENIAL OF APPROVAL WILL NOT ADVERSELY AFFECT THE CUSTOMER'S FINANCIAL RELATIONSHIP WITH THE INSTITUTION;

(K) AN EXPIRATION DATE OF NO MORE THAN TWO YEARS FROM THE DATE OF EXECUTION OF THE FORM; AND

(L) A SPACE FOR THE CUSTOMER'S SIGNATURE AND THE DATE OF EXECUTION OF THE FORM.

4. NO DISCLOSURE OF CONFIDENTIAL CUSTOMER INFORMATION SHALL BE MADE PRIOR TO RECEIPT BY THE FINANCIAL INSTITUTION OF A SIGNED AND DATED

CONSENT FORM FROM THE CUSTOMER. IN ADDITION, NO DISCLOSURE OF CONFIDENTIAL CUSTOMER INFORMATION SHALL BE MADE AFTER RECEIPT BY THE FINANCIAL INSTITUTION OF A REVOCATION OF ANY CONSENT PREVIOUSLY GIVEN, UNLESS AND UNTIL THE CUSTOMER EXECUTES A NEW INFORMED CONSENT FORM.

5. EVERY FINANCIAL INSTITUTION SHALL ESTABLISH APPROPRIATE ADMINISTRATIVE, TECHNICAL AND PHYSICAL SAFEGUARDS TO ENSURE THE SECURITY AND CONFIDENTIALITY OF RECORDS CONTAINING CONFIDENTIAL CONSUMER INFORMATION AND TO PROTECT AGAINST ANY ANTICIPATED THREATS OR HAZARDS TO THEIR SECURITY OR INTEGRITY THAT COULD RESULT IN SUBSTANTIAL HARM, EMBARRASSMENT, INCONVENIENCE OR UNFAIRNESS TO ANY DATA SUBJECT ABOUT WHOM INFORMATION IS MAINTAINED.

S 9022. LIMITATIONS. 1. NOTWITHSTANDING SECTION NINE THOUSAND TWENTY-ONE OF THIS ARTICLE, A FINANCIAL INSTITUTION SHALL NOT BE PROHIBITED FROM DISCLOSING CONFIDENTIAL CUSTOMER INFORMATION UNDER THE FOLLOWING CIRCUMSTANCES:

(A) WHEN SPECIFICALLY AUTHORIZED BY THE CUSTOMER;

(B) WHEN NECESSARY TO MAINTAIN OR SERVICE THE CUSTOMER'S ACCOUNT WITH THE FINANCIAL INSTITUTION;

(C) TO ANY PERSON OR ORGANIZATION PROVIDING PROFESSIONAL SERVICES TO THE FINANCIAL INSTITUTION, INCLUDING, BUT NOT LIMITED TO, AN ACCOUNTANT ENGAGED BY THE FINANCIAL INSTITUTION TO PREPARE AN INDEPENDENT AUDIT, AN ATTORNEY PERFORMING A SERVICE ON BEHALF OF THE FINANCIAL INSTITUTION, OR AN AGENT OR OTHER PERSON REPRESENTING THE FINANCIAL INSTITUTION IN COLLECTING A DEBT OR OTHERWISE SECURING PAYMENT OF A LOAN OR ADVANCE;

(D) TO PROTECT THE CONFIDENTIALITY OR SECURITY OF ITS RECORDS PERTAINING TO THE CUSTOMER, THE SERVICE OR PRODUCT, OR THE TRANSACTION THEREIN, OR TO PROTECT AGAINST OR PREVENT ACTUAL OR POTENTIAL FRAUD, UNAUTHORIZED TRANSACTIONS, CLAIMS OR OTHER LIABILITY;

(E) TO PROVIDE INFORMATION TO APPLICABLE RATING AGENCIES OF THE FINANCIAL INSTITUTION AND PERSONS ASSESSING THE INSTITUTION'S COMPLIANCE WITH INDUSTRY STANDARDS;

(F) WHEN THE FINANCIAL INSTITUTION IS COMPELLED TO DISCLOSE THE CONTENTS OF THE INFORMATION PURSUANT TO A LAWFUL SUBPOENA, SUMMONS, WARRANT, OR COURT ORDER;

(G) WHEN DISCLOSURE IS REQUIRED BY FEDERAL OR STATE LAW OR REGULATION;

(H) TO A CREDIT-REPORTING AGENCY AS DEFINED BY SECTION SIX HUNDRED THREE OF THE FEDERAL FAIR CREDIT REPORTING ACT FOR INCLUSION IN A CONSUMER REPORT THAT MAY BE RELEASED TO A THIRD PARTY FOR A PURPOSE PERMISSIBLE UNDER SECTION SIX HUNDRED FOUR OF SUCH ACT;

(I) TO GOVERNMENT ENTITIES;

(J) TO THE FINANCIAL INSTITUTION'S BOND OR INSURANCE COMPANIES WHEN THE FINANCIAL INSTITUTION HAS INFORMATION RELATIVE TO A CLAIM PURSUANT TO ITS BOND OR DIRECTOR'S AND OFFICER'S LIABILITY INSURANCE POLICY OR OTHER INSURANCE COVERAGE; OR

(K) IN CONNECTION WITH AN ACTUAL SALE, MERGER, TRANSFER OR EXCHANGE OF ALL OR A PORTION OR UNIT OF THE FINANCIAL INSTITUTION IF THE DISCLOSURE CONCERNS SOLELY CUSTOMERS OF SUCH FINANCIAL INSTITUTION OR PORTION OR UNIT.

2. PRIOR TO RELEASE OF CONFIDENTIAL CUSTOMER INFORMATION AUTHORIZED BY SUBDIVISION ONE OF SECTION NINE THOUSAND TWENTY-ONE OF THIS ARTICLE, OR AUTHORIZED BY PARAGRAPHS (B), (C), (D), (E) AND (J) OF SUBDIVISION ONE OF THIS SECTION, THE FINANCIAL INSTITUTION SHALL ENTER INTO A CONTRACTUAL AGREEMENT WITH ANY THIRD PARTY RECEIVING SUCH CONFIDENTIAL CUSTOMER INFORMATION, PROHIBITING SUCH THIRD PARTY FROM DISCLOSING SUCH INFORMATION.

S 9023. RECORD RETENTION. 1. A FINANCIAL INSTITUTION SHALL MAINTAIN RECORDS OF FINANCIAL PRIVACY NOTIFICATION, AS REQUIRED IN THIS ARTICLE, AND RETAIN COPIES OF EACH CUSTOMER'S APPROVAL OF DISCLOSURE OF CONFIDENTIAL CUSTOMER INFORMATION OR WITHDRAWAL OF SUCH APPROVAL FOR AT LEAST FIVE YEARS.

2. A FINANCIAL INSTITUTION SHALL MAINTAIN RECORDS OF ALL COMPLAINTS UNDER THIS ARTICLE AND THEIR DISPOSITION, IF ANY, FOR AT LEAST TEN YEARS.

S 9024. ENFORCEMENT BY THE ATTORNEY GENERAL. IN ADDITION TO THE OTHER REMEDIES PROVIDED, WHENEVER THERE SHALL BE A VIOLATION OF THIS ARTICLE, APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH VIOLATIONS; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS ARTICLE, AN INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE, ENJOINING THE RESTRAINING OF ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH PROCEEDINGS, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITUTION. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS ARTICLE HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN TWO THOUSAND DOLLARS FOR EACH VIOLATION. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES.

S 9025. PRIVATE RIGHT OF ACTION. IN THE EVENT THAT CONFIDENTIAL CUSTOMER INFORMATION IS DISCLOSED BY A FINANCIAL INSTITUTION ABOUT ANY CUSTOMER IN VIOLATION OF THIS ARTICLE, SUCH CUSTOMER MAY BRING AN ACTION FOR RECOVERY OF DAMAGES. JUDGMENT SHALL BE ENTERED IN FAVOR OF A CONSUMER IN AN AMOUNT NOT TO EXCEED THREE TIMES THE ACTUAL DAMAGES OR ONE THOUSAND DOLLARS, WHICHEVER IS GREATER. THE COURT MAY AWARD REASONABLE ATTORNEY'S FEES TO A PREVAILING PLAINTIFF.

S 2. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

S 3. This act shall take effect on the ninetieth day after it shall have become a law.