

HOUSE BILL No. 5413

September 17, 2009, Introduced by Reps. Tlaib, Switalski, Geiss, Durhal, Roberts, Robert Jones, Liss, Kennedy, Nathan and Jackson and referred to the Committee on Banking and Financial Services.

A bill to amend 1999 PA 276, entitled
"Banking code of 1999,"
(MCL 487.11101 to 487.15105) by adding sections 3914, 3915, and
3916.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 3914. (1) A BANK SHALL USE REASONABLE CARE TO SECURE
2 NONPUBLIC PERSONAL FINANCIAL INFORMATION FROM UNAUTHORIZED ACCESS.

3 (2) A BANK SHALL NOT DISCLOSE NONPUBLIC PERSONAL FINANCIAL
4 INFORMATION TO A PERSON WITHOUT THE PRIOR AND SPECIFIC INFORMED
5 CONSENT, IN WRITING, OF THE INDIVIDUAL TO WHOM THE NONPUBLIC
6 PERSONAL FINANCIAL INFORMATION PERTAINS. THIS SUBSECTION DOES NOT
7 APPLY IF THE DISCLOSURE IS REQUIRED BY LAW.

8 (3) A BANK SHALL DISCLOSE NONPUBLIC PERSONAL FINANCIAL
9 INFORMATION TO WHICH SUBSECTION (2) DOES NOT APPLY ONLY IF THE
10 PERSON TO WHOM THE DISCLOSURE IS MADE AGREES TO PROTECT AND USE THE

1 DISCLOSED INFORMATION ONLY IN THE MANNER AUTHORIZED BY THE BANK
2 UNDER SECTION 3915. THIS SUBSECTION DOES NOT APPLY TO A DISCLOSURE
3 MADE TO THE COMMISSIONER, ANOTHER GOVERNMENTAL AGENCY OR ENTITY, OR
4 A COURT.

5 (4) IF AN INDIVIDUAL AUTHORIZES THE RELEASE OF NONPUBLIC
6 PERSONAL FINANCIAL INFORMATION UNDER SUBSECTION (2) TO A SPECIFIC
7 PERSON, A BANK SHALL DISCLOSE THE INFORMATION TO THAT PERSON ONLY
8 IF THE PERSON AGREES NOT TO RELEASE THE INFORMATION TO ANOTHER
9 PERSON WITHOUT ANOTHER PRIOR AND SPECIFIC INFORMED CONSENT FROM THE
10 INDIVIDUAL, IN WRITING, AUTHORIZING THE ADDITIONAL RELEASE.

11 (5) THIS SECTION DOES NOT PRECLUDE THE RELEASE OF INFORMATION
12 PERTAINING TO AN INDIVIDUAL TO THAT INDIVIDUAL BY TELEPHONE IF THE
13 IDENTITY OF THE INDIVIDUAL IS VERIFIED.

14 (6) A BANK SHALL NOT REFUSE TO EXTEND OR CONTINUE CREDIT TO,
15 REFUSE TO OPEN OR CONTINUE AN ACCOUNT FOR, TERMINATE OR REFUSE TO
16 CREATE A CUSTOMER OR DEPOSITOR RELATIONSHIP WITH, REFUSE TO PROVIDE
17 ANY BENEFITS TO WHICH CUSTOMERS OR DEPOSITORS ARE ENTITLED TO, OR
18 OTHERWISE UNFAIRLY RETALIATE OR DISCRIMINATE AGAINST AN INDIVIDUAL
19 BECAUSE THAT INDIVIDUAL REFUSES OR FAILS TO CONSENT TO DISCLOSURE
20 OF HIS OR HER NONPUBLIC PERSONAL FINANCIAL INFORMATION UNDER
21 SUBSECTION (2).

22 (7) AS USED IN THIS SECTION AND SECTION 3915:

23 (A) "NONPUBLIC PERSONAL FINANCIAL INFORMATION" MEANS
24 PERSONALLY IDENTIFIABLE FINANCIAL INFORMATION AND ANY LIST,
25 DESCRIPTION, OR OTHER GROUPING OF CONSUMERS AND PUBLICLY AVAILABLE
26 INFORMATION PERTAINING TO THEM THAT IS DERIVED USING ANY PERSONALLY
27 IDENTIFIABLE FINANCIAL INFORMATION THAT IS NOT PUBLICLY AVAILABLE.

1 NONPUBLIC PERSONAL FINANCIAL INFORMATION DOES NOT INCLUDE ANY OF
2 THE FOLLOWING:

3 (i) FINANCIAL INFORMATION OTHERWISE PROTECTED BY STATE OR
4 FEDERAL LAW.

5 (ii) PUBLICLY AVAILABLE INFORMATION.

6 (iii) ANY LIST, DESCRIPTION, OR OTHER GROUPING OF CONSUMERS AND
7 PUBLICLY AVAILABLE INFORMATION PERTAINING TO THEM THAT IS DERIVED
8 WITHOUT USING ANY PERSONALLY IDENTIFIABLE FINANCIAL INFORMATION
9 THAT IS NOT PUBLICLY AVAILABLE.

10 (B) "PERSONALLY IDENTIFIABLE FINANCIAL INFORMATION" MEANS ANY
11 OF THE FOLLOWING:

12 (i) INFORMATION A CONSUMER PROVIDES TO A BANK TO OBTAIN A
13 FINANCIAL PRODUCT OR SERVICE FROM THE BANK.

14 (ii) INFORMATION ABOUT A CONSUMER RESULTING FROM ANY
15 TRANSACTION INVOLVING A FINANCIAL PRODUCT OR SERVICE BETWEEN A BANK
16 AND A CONSUMER.

17 (iii) INFORMATION A BANK OTHERWISE OBTAINS ABOUT A CONSUMER IN
18 CONNECTION WITH PROVIDING A FINANCIAL PRODUCT OR SERVICE TO THAT
19 CONSUMER.

20 (C) "PUBLICLY AVAILABLE INFORMATION" MEANS ANY INFORMATION
21 THAT A BANK HAS A REASONABLE BASIS TO BELIEVE IS LAWFULLY MADE
22 AVAILABLE TO THE GENERAL PUBLIC FROM FEDERAL, STATE, OR LOCAL
23 GOVERNMENT RECORDS BY WIDE DISTRIBUTION BY THE MEDIA OR BY
24 DISCLOSURES TO THE GENERAL PUBLIC THAT ARE REQUIRED TO BE MADE BY
25 FEDERAL, STATE, OR LOCAL LAW. A BANK HAS A REASONABLE BASIS TO
26 BELIEVE THAT INFORMATION IS LAWFULLY MADE AVAILABLE TO THE GENERAL
27 PUBLIC IF BOTH OF THE FOLLOWING APPLY:

1 (i) THE BANK HAS TAKEN STEPS TO DETERMINE THAT THE INFORMATION
2 IS OF THE TYPE THAT IS AVAILABLE TO THE GENERAL PUBLIC.

3 (ii) IF AN INDIVIDUAL CAN DIRECT THAT THE INFORMATION NOT BE
4 MADE AVAILABLE TO THE GENERAL PUBLIC, THE BANK'S CONSUMER HAS NOT
5 DIRECTED THAT THE INFORMATION NOT BE MADE AVAILABLE TO THE GENERAL
6 PUBLIC.

7 SEC. 3915. A BANK SHALL ESTABLISH AND MAKE PUBLIC A POLICY
8 REGARDING THE PROTECTION OF PRIVACY AND THE CONFIDENTIALITY OF
9 NONPUBLIC PERSONAL FINANCIAL INFORMATION. THE POLICY SHALL DO AT
10 LEAST ALL OF THE FOLLOWING:

11 (A) PROVIDE FOR THE BANK'S IMPLEMENTATION OF THE REQUIREMENTS
12 OF THIS ACT AND OTHER APPLICABLE LAWS RESPECTING COLLECTION,
13 SECURITY, USE, RELEASE OF, AND ACCESS TO NONPUBLIC PERSONAL
14 FINANCIAL INFORMATION.

15 (B) IDENTIFY THE ROUTINE USES OF NONPUBLIC PERSONAL FINANCIAL
16 INFORMATION BY THE BANK; PRESCRIBE THE MEANS BY WHICH INDIVIDUALS
17 WILL BE NOTIFIED REGARDING THOSE USES; AND PROVIDE FOR NOTIFICATION
18 REGARDING THE ACTUAL RELEASE OF NONPUBLIC PERSONAL FINANCIAL
19 INFORMATION THAT MAY BE IDENTIFIED WITH, OR THAT MAY CONCERN, AN
20 INDIVIDUAL, UPON SPECIFIC REQUEST BY THAT INDIVIDUAL. AS USED IN
21 THIS SUBDIVISION, "ROUTINE USE" MEANS THE ORDINARY USE OR RELEASE
22 OF NONPUBLIC PERSONAL FINANCIAL INFORMATION COMPATIBLE WITH THE
23 PURPOSE FOR WHICH THE INFORMATION WAS COLLECTED.

24 (C) ASSURE THAT NO PERSON HAS ACCESS TO NONPUBLIC PERSONAL
25 FINANCIAL INFORMATION EXCEPT ON THE BASIS OF A NEED TO KNOW.

26 (D) ESTABLISH THE CONTRACTUAL OR OTHER CONDITIONS UNDER WHICH
27 THE BANK MAY RELEASE NONPUBLIC PERSONAL FINANCIAL INFORMATION.

1 (E) PROVIDE THAT ENROLLMENT APPLICATIONS AND CLAIM FORMS
2 DEVELOPED BY THE BANK SHALL CONTAIN AN INDIVIDUAL'S CONSENT TO THE
3 RELEASE OF DATA AND INFORMATION THAT IS LIMITED TO THE DATA AND
4 INFORMATION NECESSARY FOR THE PROPER REVIEW AND PAYMENT OF CLAIMS,
5 AND SHALL REASONABLY NOTIFY INDIVIDUALS OF THEIR RIGHTS UNDER THE
6 BANK'S POLICY AND APPLICABLE LAW.

7 SEC. 3916. SECTIONS 3914 AND 3915 DO NOT LIMIT ACCESS TO
8 RECORDS OR ENLARGE OR DIMINISH THE INVESTIGATIVE AND EXAMINATION
9 POWERS OF GOVERNMENTAL AGENCIES AS PROVIDED FOR BY LAW.