

**SB0228**



**95TH GENERAL ASSEMBLY**

**State of Illinois**

**2007 and 2008**

**SB0228**

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

**SYNOPSIS AS INTRODUCED:**

205 ILCS 105/3-8

from Ch. 17, par. 3303-8

Amends the Illinois Savings and Loan Act of 1985. Provides that an association may not disclose to any person, except to the member or holder of capital or his or her duly authorized agent, any financial records relating to that member or holder of capital of that association unless the financial records are disclosed in response to a lawful subpoena, summons, warrant, citation to discover assets, or court order that meets the requirements of specified criteria (now, a disclosure may only be made in response to a lawful subpoena, summons, warrant, or court order). Makes corresponding changes in provisions concerning disclosure procedures and the reimbursement of costs associated with disclosure compliance.

LRB095 07906 MJR 28068 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 Savings and Loan Act of 1985 is  
5 amended by changing Section 3-8 as follows:

6 (205 ILCS 105/3-8) (from Ch. 17, par. 3303-8)

7 Sec. 3-8. Access to books and records; communication with  
8 members.

9 (a) Every member or holder of capital shall have the right  
10 to inspect the books and records of the association that  
11 pertain to his account. Otherwise, the right of inspection and  
12 examination of the books and records shall be limited as  
13 provided in this Act, and no other person shall have access to  
14 the books and records or shall be entitled to a list of the  
15 members.

16 (b) For the purpose of this Section, the term "financial  
17 records" means any original, any copy, or any summary of (i) a  
18 document granting signature authority over a deposit or  
19 account; (ii) a statement, ledger card, or other record on any  
20 deposit or account that shows each transaction in or with  
21 respect to that account; (iii) a check, draft, or money order  
22 drawn on an association or issued and payable by an  
23 association; or (iv) any other item containing information

1 pertaining to any relationship established in the ordinary  
2 course of an association's business between an association and  
3 its customer, including financial statements or other  
4 financial information provided by the member or holder of  
5 capital.

6 (c) This Section does not prohibit:

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

13 (2) The examination of any financial records by, or the  
14 furnishing of financial records by an association to, any  
15 officer, employee, or agent of the Commissioner of Banks  
16 and Real Estate or federal depository institution  
17 regulator for use solely in the exercise of his duties as  
18 an officer, employee, or agent.

19 (3) The publication of data furnished from financial  
20 records relating to members or holders of capital where the  
21 data cannot be identified to any particular member, holder  
22 of capital, or account.

23 (4) The making of reports or returns required under  
24 Chapter 61 of the Internal Revenue Code of 1986.

25 (5) Furnishing information concerning the dishonor of  
26 any negotiable instrument permitted to be disclosed under

1 the Uniform Commercial Code.

2 (6) The exchange in the regular course of business of  
3 (i) credit information between an association and other  
4 associations or financial institutions or commercial  
5 enterprises, directly or through a consumer reporting  
6 agency or (ii) financial records or information derived  
7 from financial records between an association and other  
8 associations or financial institutions or commercial  
9 enterprises for the purpose of conducting due diligence  
10 pursuant to a purchase or sale involving the association or  
11 assets or liabilities of the association.

12 (7) The furnishing of information to the appropriate  
13 law enforcement authorities where the association  
14 reasonably believes it has been the victim of a crime.

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

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

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

23 (11) The furnishing of information pursuant to any  
24 other statute that by its terms or by regulations  
25 promulgated thereunder requires the disclosure of  
26 financial records other than by subpoena, summons,

1 warrant, or court order.

2 (12) The exchange of information between an  
3 association and an affiliate of the association; as used in  
4 this item, "affiliate" includes any company, partnership,  
5 or organization that controls, is controlled by, or is  
6 under common control with an association.

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

26 (14) The furnishing of information to law enforcement

1 authorities, the Illinois Department on Aging and its  
2 regional administrative and provider agencies, the  
3 Department of Human Services Office of Inspector General,  
4 or public guardians: (i) upon subpoena by the investigatory  
5 entity or the guardian, or (ii) if there is suspicion by  
6 the association that a customer who is an elderly or  
7 disabled person has been or may become the victim of  
8 financial exploitation. For the purposes of this item (14),  
9 the term: (i) "elderly person" means a person who is 60 or  
10 more years of age, (ii) "disabled person" means a person  
11 who has or reasonably appears to the association to have a  
12 physical or mental disability that impairs his or her  
13 ability to seek or obtain protection from or prevent  
14 financial exploitation, and (iii) "financial exploitation"  
15 means tortious or illegal use of the assets or resources of  
16 an elderly or disabled person, and includes, without  
17 limitation, misappropriation of the elderly or disabled  
18 person's assets or resources by undue influence, breach of  
19 fiduciary relationship, intimidation, fraud, deception,  
20 extortion, or the use of assets or resources in any manner  
21 contrary to law. An association or person furnishing  
22 information pursuant to this item (14) shall be entitled to  
23 the same rights and protections as a person furnishing  
24 information under the Elder Abuse and Neglect Act, the  
25 Illinois Domestic Violence Act of 1986, and the Abuse of  
26 Adults with Disabilities Intervention Act.

1           (15) The disclosure of financial records or  
2 information as necessary to effect, administer, or enforce  
3 a transaction requested or authorized by the member or  
4 holder of capital, or in connection with:

5           (A) servicing or processing a financial product or  
6 service requested or authorized by the member or holder  
7 of capital;

8           (B) maintaining or servicing an account of a member  
9 or holder of capital with the association; or

10          (C) a proposed or actual securitization or  
11 secondary market sale (including sales of servicing  
12 rights) related to a transaction of a member or holder  
13 of capital.

14          Nothing in this item (15), however, authorizes the sale  
15 of the financial records or information of a member or  
16 holder of capital without the consent of the member or  
17 holder of capital.

18          (16) The disclosure of financial records or  
19 information as necessary to protect against or prevent  
20 actual or potential fraud, unauthorized transactions,  
21 claims, or other liability.

22          (17) (a) The disclosure of financial records or  
23 information related to a private label credit program  
24 between a financial institution and a private label party  
25 in connection with that private label credit program. Such  
26 information is limited to outstanding balance, available

1 credit, payment and performance and account history,  
2 product references, purchase information, and information  
3 related to the identity of the customer.

4 (b) (1) For purposes of this paragraph (17) of  
5 subsection (c) of Section 3-8, a "private label credit  
6 program" means a credit program involving a financial  
7 institution and a private label party that is used by a  
8 customer of the financial institution and the private label  
9 party primarily for payment for goods or services sold,  
10 manufactured, or distributed by a private label party.

11 (2) For purposes of this paragraph (17) of subsection  
12 (c) of Section 3-8, a "private label party" means, with  
13 respect to a private label credit program, any of the  
14 following: a retailer, a merchant, a manufacturer, a trade  
15 group, or any such person's affiliate, subsidiary, member,  
16 agent, or service provider.

17 (d) An association may not disclose to any person, except  
18 to the member or holder of capital or his duly authorized  
19 agent, any financial records relating to that member or holder  
20 of capital of that association unless:

21 (1) The member or holder of capital has authorized  
22 disclosure to the person; or

23 (2) The financial records are disclosed in response to  
24 a lawful subpoena, summons, warrant, citation to discover  
25 assets, or court order that meets the requirements of  
26 subsection (e) of this Section.



1           (e) An association shall disclose financial records under  
2 subsection (d) of this Section pursuant to a lawful subpoena,  
3 summons, warrant, citation to discover assets, or court order  
4 only after the association mails a copy of the subpoena,  
5 summons, warrant, or court order to the person establishing the  
6 relationship with the association, if living, and, otherwise,  
7 his personal representative, if known, at his last known  
8 address by first class mail, postage prepaid, unless the  
9 association is specifically prohibited from notifying that  
10 person by order of court.

11           (f) (1) Any officer or employee of an association who  
12 knowingly and willfully furnishes financial records in  
13 violation of this Section is guilty of a business offense and,  
14 upon conviction, shall be fined not more than \$1,000.

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

20           (g) However, if any member desires to communicate with the  
21 other members of the association with reference to any question  
22 pending or to be presented at a meeting of the members, the  
23 association shall give him upon request a statement of the  
24 approximate number of members entitled to vote at the meeting  
25 and an estimate of the cost of preparing and mailing the  
26 communication. The requesting member then shall submit the

1 communication to the Commissioner who, if he finds it to be  
2 appropriate and truthful, shall direct that it be prepared and  
3 mailed to the members upon the requesting member's payment or  
4 adequate provision for payment of the expenses of preparation  
5 and mailing.

6 (h) An association shall be reimbursed for costs that are  
7 necessary and that have been directly incurred in searching  
8 for, reproducing, or transporting books, papers, records, or  
9 other data of a customer required to be reproduced pursuant to  
10 a lawful subpoena, warrant, citation to discover assets, or  
11 court order.

12 (Source: P.A. 93-271, eff. 7-22-03; 94-495, eff. 8-8-05;  
13 94-851, eff. 6-13-06.)