



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB1891

by Rep. Daniel Biss

#### SYNOPSIS AS INTRODUCED:

205 ILCS 5/48.1

from Ch. 17, par. 360

Amends the Illinois Banking Act. Provides that a bank shall utilize a form, statement, or writing to obtain a customer's consent to disclose any financial records or information obtained from financial records relating to that customer to non-affiliated third persons or parties. Provides criteria for banks to meet regarding the form, statement, or writing to obtain a customer's consent to disclose financial information relating to the customer's financial records. Provides that a bank shall not discriminate against or deny an otherwise qualified customer a financial product or financial service because the customer has not provided the consent to authorize the bank to disclose or share financial records or financial information obtained from financial records relating to that customer with any non-affiliated third person. Provides that a bank shall not be liable for failing to offer products and services to a customer solely because (i) that customer has failed to provide consent and the bank could not offer the product or service without consent and (ii) the customer has failed to provide consent.

LRB097 07104 CEL 47203 b

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 Banking Act is amended by changing  
5 Section 48.1 as follows:

6 (205 ILCS 5/48.1) (from Ch. 17, par. 360)

7 Sec. 48.1. Customer financial records; confidentiality.

8 (a) For the purpose of this Section, the term "financial  
9 records" means any original, any copy, or any summary of:

10 (1) a document granting signature authority over a  
11 deposit or account;

12 (2) a statement, ledger card or other record on any  
13 deposit or account, which shows each transaction in or with  
14 respect to that account;

15 (3) a check, draft or money order drawn on a bank or  
16 issued and payable by a bank; or

17 (4) any other item containing information pertaining  
18 to any relationship established in the ordinary course of a  
19 bank's business between a bank and its customer, including  
20 financial statements or other financial information  
21 provided by the customer.

22 (b) This Section does not prohibit:

23 (1) The preparation, examination, handling or

1 maintenance of any financial records by any officer,  
2 employee or agent of a bank having custody of the records,  
3 or the examination of the records by a certified public  
4 accountant engaged by the bank to perform an independent  
5 audit.

6 (2) The examination of any financial records by, or the  
7 furnishing of financial records by a bank to, any officer,  
8 employee or agent of (i) the Commissioner of Banks and Real  
9 Estate, (ii) after May 31, 1997, a state regulatory  
10 authority authorized to examine a branch of a State bank  
11 located in another state, (iii) the Comptroller of the  
12 Currency, (iv) the Federal Reserve Board, or (v) the  
13 Federal Deposit Insurance Corporation for use solely in the  
14 exercise of his duties as an officer, employee, or agent.

15 (3) The publication of data furnished from financial  
16 records relating to customers where the data cannot be  
17 identified to any particular customer or account.

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

20 (5) Furnishing information concerning the dishonor of  
21 any negotiable instrument permitted to be disclosed under  
22 the Uniform Commercial Code.

23 (6) The exchange in the regular course of business of  
24 (i) credit information between a bank and other banks or  
25 financial institutions or commercial enterprises, directly  
26 or through a consumer reporting agency or (ii) financial

1 records or information derived from financial records  
2 between a bank and other banks or financial institutions or  
3 commercial enterprises for the purpose of conducting due  
4 diligence pursuant to a purchase or sale involving the bank  
5 or assets or liabilities of the bank.

6 (7) The furnishing of information to the appropriate  
7 law enforcement authorities where the bank reasonably  
8 believes it has been the victim of a crime.

9 (8) The furnishing of information under the Uniform  
10 Disposition of Unclaimed Property Act.

11 (9) The furnishing of information under the Illinois  
12 Income Tax Act and the Illinois Estate and  
13 Generation-Skipping Transfer Tax Act.

14 (10) The furnishing of information under the federal  
15 Currency and Foreign Transactions Reporting Act Title 31,  
16 United States Code, Section 1051 et seq.

17 (11) The furnishing of information under any other  
18 statute that by its terms or by regulations promulgated  
19 thereunder requires the disclosure of financial records  
20 other than by subpoena, summons, warrant, or court order.

21 (12) The furnishing of information about the existence  
22 of an account of a person to a judgment creditor of that  
23 person who has made a written request for that information.

24 (13) The exchange in the regular course of business of  
25 information between commonly owned banks in connection  
26 with a transaction authorized under paragraph (23) of

1 Section 5 and conducted at an affiliate facility.

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

20 (15) The exchange in the regular course of business of  
21 information between a bank and any commonly owned affiliate  
22 of the bank, subject to the provisions of the Financial  
23 Institutions Insurance Sales Law.

24 (16) The furnishing of information to law enforcement  
25 authorities, the Illinois Department on Aging and its  
26 regional administrative and provider agencies, the

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

25 (17) The disclosure of financial records or  
26 information as necessary to effect, administer, or enforce

1 a transaction requested or authorized by the customer, or  
2 in connection with:

3 (A) servicing or processing a financial product or  
4 service requested or authorized by the customer;

5 (B) maintaining or servicing a customer's account  
6 with the bank; or

7 (C) a proposed or actual securitization or  
8 secondary market sale (including sales of servicing  
9 rights) related to a transaction of a customer.

10 Nothing in this item (17), however, authorizes the sale  
11 of the financial records or information of a customer  
12 without the consent of the customer.

13 (18) The disclosure of financial records or  
14 information as necessary to protect against actual or  
15 potential fraud, unauthorized transactions, claims, or  
16 other liability.

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

25 (b) (1) For purposes of this paragraph (19) of  
26 subsection (b) of Section 48.1, a "private label credit

1 program" means a credit program involving a financial  
2 institution and a private label party that is used by a  
3 customer of the financial institution and the private label  
4 party primarily for payment for goods or services sold,  
5 manufactured, or distributed by a private label party.

6 (2) For purposes of this paragraph (19) of subsection  
7 (b) of Section 48.1, a "private label party" means, with  
8 respect to a private label credit program, any of the  
9 following: a retailer, a merchant, a manufacturer, a trade  
10 group, or any such person's affiliate, subsidiary, member,  
11 agent, or service provider.

12 (c) Except as otherwise provided by this Act, a bank may  
13 not disclose to any person, except to the customer or his duly  
14 authorized agent, any financial records or financial  
15 information obtained from financial records relating to that  
16 customer of that bank unless:

17 (1) the customer has authorized disclosure to the  
18 person;

19 (A) A bank shall utilize a form, statement, or  
20 writing to obtain consent to disclose any financial  
21 records or financial information obtained from  
22 financial records relating to that customer to  
23 non-affiliated third persons as required. The form,  
24 statement, or writing shall meet all of the following  
25 criteria:

26 (i) the form, statement, or writing is a



1 separate document, not attached to any other  
2 documents;

3 (ii) the form, statement, or writing is dated  
4 and signed by the customer;

5 (iii) the form, statement, or writing clearly  
6 and conspicuously discloses that by signing, the  
7 customer is consenting to the disclosure to  
8 non-affiliated third persons of financial records  
9 or financial information obtained from financial  
10 records relating to that customer;

11 (iv) the form, statement, or writing clearly  
12 and conspicuously discloses (a) that the consent  
13 will remain in effect until revoked or modified by  
14 the customer; (b) that the customer may revoke the  
15 consent at any time; and (c) the procedure for the  
16 customer to revoke consent; and

17 (v) the form, statement, or writing clearly  
18 and conspicuously informs the customer that (a)  
19 the financial institution will maintain the  
20 document or a true and correct copy; (b) the  
21 customer is entitled to a copy of the document upon  
22 request; and (c) the customer may want to make a  
23 copy of the document for the customer's records.

24 (B) A bank shall not discriminate against or deny  
25 an otherwise qualified customer a financial product or  
26 financial service because the customer has not

1 provided the consent under this subsection (c) to  
2 authorize the bank to disclose or share financial  
3 records or financial information obtained from  
4 financial records relating to that customer with any  
5 non-affiliated third person. Nothing in this  
6 subsection (c) shall prohibit a bank from denying a  
7 customer a financial product or service if (i) the  
8 financial institution could not provide the product or  
9 service to a customer without the consent to disclose  
10 financial records or financial information obtained  
11 from financial records relating to that customer  
12 required by this subsection (c) and (ii) the customer  
13 has failed to provide consent.

14 (C) A bank shall not be liable for failing to offer  
15 products and services to a customer solely because (i)  
16 that customer has failed to provide consent under this  
17 subsection (c) and the bank could not offer the product  
18 or service without consent to disclose the customer's  
19 financial records or financial information obtained  
20 from financial records relating to that customer  
21 required by this subsection (c) and (ii) the customer  
22 has failed to provide consent. Nothing in this Section  
23 is intended to prohibit a financial institution from  
24 offering incentives or discounts to elicit a specific  
25 response to the notice.

26 (2) the financial records are disclosed in response to

1 a lawful subpoena, summons, warrant, citation to discover  
2 assets, or court order which meets the requirements of  
3 subsection (d) of this Section; or

4 (3) the bank is attempting to collect an obligation  
5 owed to the bank and the bank complies with the provisions  
6 of Section 2I of the Consumer Fraud and Deceptive Business  
7 Practices Act.

8 (d) A bank shall disclose financial records under paragraph  
9 (2) of subsection (c) of this Section under a lawful subpoena,  
10 summons, warrant, citation to discover assets, or court order  
11 only after the bank mails a copy of the subpoena, summons,  
12 warrant, citation to discover assets, or court order to the  
13 person establishing the relationship with the bank, if living,  
14 and, otherwise his personal representative, if known, at his  
15 last known address by first class mail, postage prepaid, unless  
16 the bank is specifically prohibited from notifying the person  
17 by order of court or by applicable State or federal law. A bank  
18 shall not mail a copy of a subpoena to any person pursuant to  
19 this subsection if the subpoena was issued by a grand jury  
20 under the Statewide Grand Jury Act.

21 (e) Any officer or employee of a bank who knowingly and  
22 willfully furnishes financial records in violation of this  
23 Section is guilty of a business offense and, upon conviction,  
24 shall be fined not more than \$1,000.

25 (f) Any person who knowingly and willfully induces or  
26 attempts to induce any officer or employee of a bank to

1 disclose financial records in violation of this Section is  
2 guilty of a business offense and, upon conviction, shall be  
3 fined not more than \$1,000.

4 (g) A bank shall be reimbursed for costs that are  
5 reasonably necessary and that have been directly incurred in  
6 searching for, reproducing, or transporting books, papers,  
7 records, or other data of a customer required or requested to  
8 be produced pursuant to a lawful subpoena, summons, warrant,  
9 citation to discover assets, or court order. The Commissioner  
10 shall determine the rates and conditions under which payment  
11 may be made.

12 (Source: P.A. 94-495, eff. 8-8-05; 94-851, eff. 6-13-06;  
13 95-661, eff. 1-1-08.)