

Introduced by Senator Walters

February 18, 2011

An act to amend Section 4052 of the Financial Code, relating to financial information.

LEGISLATIVE COUNSEL'S DIGEST

SB 849, as introduced, Walters. Financial information: privacy.

Existing law, the California Financial Information Privacy Act, states the intent of the Legislature to provide greater protection of a person's nonpublic personal information provided to a financial institution and defines certain terms for its purposes.

This bill would make nonsubstantive changes to those definitions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4052 of the Financial Code is amended
2 to read:
3 4052. For the purposes of this division:
4 (a) "Nonpublic personal information" means personally
5 identifiable financial information (1) provided by a consumer to
6 a financial institution, (2) resulting from any transaction with the
7 consumer or any service performed for the consumer, or (3)
8 otherwise obtained by the financial institution. Nonpublic personal
9 information does not include publicly available information that
10 the financial institution has a reasonable basis to believe is lawfully
11 made available to the general public from (1) federal, state, or local
12 government records, (2) widely distributed media, or (3) disclosures

1 to the general public that are required to be made by federal, state,
2 or local law. Nonpublic personal information shall include any
3 list, description, or other grouping of consumers, and publicly
4 available information pertaining to them, that is derived using any
5 nonpublic personal information other than publicly available
6 information, but shall not include any list, description, or other
7 grouping of consumers, and publicly available information
8 pertaining to them, that is derived without using any nonpublic
9 personal information.

10 (b) “Personally identifiable financial information” means
11 information (1) that a consumer provides to a financial institution
12 to obtain a product or service from the financial institution, (2)
13 about a consumer resulting from any transaction involving a
14 product or service between the financial institution and a consumer,
15 or (3) that the financial institution otherwise obtains about a
16 consumer in connection with providing a product or service to that
17 consumer. Any personally identifiable information is financial if
18 it was obtained by a financial institution in connection with
19 providing a financial product or service to a consumer. Personally
20 identifiable financial information includes all of the following:

21 (1) Information a consumer provides to a financial institution
22 on an application to obtain a loan, credit card, or other financial
23 product or service.

24 (2) Account balance information, payment history, overdraft
25 history, and credit or debit card purchase information.

26 (3) The fact that an individual is, or has been, a consumer of a
27 financial institution or has obtained a financial product or service
28 from a financial institution.

29 (4) Any information about a financial institution’s consumer if
30 it is disclosed in a manner that indicates that the individual is or
31 has been the financial institution’s consumer.

32 (5) Any information that a consumer provides to a financial
33 institution or that a financial institution or its agent otherwise
34 obtains in connection with collecting on a loan or servicing a loan.

35 (6) Any personally identifiable financial information collected
36 through an Internet cookie or an information collecting device
37 from a Web server.

38 (7) Information from a consumer report.

39 (c) “Financial institution” means any institution the business of
40 which is engaging in financial activities as described in Section

1 1843(k) of Title 12 of the United States Code and doing business
2 in this state. An institution that is not significantly engaged in
3 financial activities is not a financial institution. The term “financial
4 institution” does not include any institution that is primarily
5 engaged in providing hardware, software, or interactive services,
6 provided that it does not act as a debt collector, as defined in 15
7 U.S.C. Sec. 1692a, or engage in activities for which the institution
8 is required to acquire a charter, license, or registration from a state
9 or federal governmental banking, insurance, or securities agency.
10 The term “financial institution” does not include the Federal
11 Agricultural Mortgage Corporation or any entity chartered and
12 operating under the Farm Credit Act of 1971 (12 U.S.C. Sec. 2001
13 et seq.), provided that the entity does not sell or transfer nonpublic
14 personal information to an affiliate or a nonaffiliated third party.
15 The term “financial institution” does not include institutions
16 chartered by Congress specifically to engage in a proposed or
17 actual securitization, secondary market sale, including sales of
18 servicing rights, or similar transactions related to a transaction of
19 the consumer, as long as those institutions do not sell or transfer
20 nonpublic personal information to a nonaffiliated third party. The
21 term “financial institution” does not include any provider of
22 professional services, or any wholly owned affiliate thereof, that
23 is prohibited by rules of professional ethics and applicable law
24 from voluntarily disclosing confidential client information without
25 the consent of the client. The term “financial institution” does not
26 include any person licensed as a dealer under Article 1
27 (commencing with Section 11700) of Chapter 4 of Division 5 of
28 the Vehicle Code that enters into contracts for the installment sale
29 or lease of motor vehicles pursuant to the requirements of Chapter
30 2B (commencing with Section 2981) or 2D (commencing with
31 Section 2985.7) of Title 14 of Part 4 of Division 3 of the Civil
32 Code and assigns substantially all of those contracts to financial
33 institutions within 30 days.

34 (d) “Affiliate” means any entity that controls, is controlled by,
35 or is under common control with, another entity, but does not
36 include a joint employee of the entity and the affiliate. A franchisor,
37 including any affiliate thereof, shall be deemed an affiliate of the
38 franchisee for purposes of this division.

39 (e) “Nonaffiliated third party” means any entity that is not an
40 affiliate of, or related by common ownership or affiliated by

1 corporate control with, the financial institution, but does not include
2 a joint employee of that institution and a third party.

3 (f) “Consumer” means an individual resident of this state, or
4 that individual’s legal representative, who obtains or has obtained
5 from a financial institution a financial product or service to be used
6 primarily for personal, family, or household purposes. For purposes
7 of this division, an individual resident of this state is someone
8 whose last known mailing address, other than an Armed Forces
9 Post Office or Fleet Post Office address, as shown in the records
10 of the financial institution, is located in this state. For purposes of
11 this division, an individual is not a consumer of a financial
12 institution solely because he or she is (1) a participant or
13 beneficiary of an employee benefit plan that a financial institution
14 administers or sponsors, or for which the financial institution acts
15 as a trustee, insurer, or fiduciary, (2) covered under a group or
16 blanket insurance policy or group annuity contract issued by the
17 financial institution, (3) a beneficiary in a workers’ compensation
18 plan, (4) a beneficiary of a trust for which the financial institution
19 is a trustee, or (5) a person who has designated the financial
20 institution as trustee for a trust, provided that the financial
21 institution provides all required notices and rights required by this
22 division to the plan sponsor, group or blanket insurance
23 policyholder, or group annuity contractholder.

24 (g) “Control” means (1) ownership or power to vote 25 percent
25 or more of the outstanding shares of any class of voting security
26 of a company, acting through one or more persons, (2) control in
27 any manner over the election of a majority of the directors, or of
28 individuals exercising similar functions, or (3) the power to
29 exercise, directly or indirectly, a controlling influence over the
30 management or policies of a company. However, for purposes of
31 the application of the definition of control as it relates to credit
32 unions, a credit union has a controlling influence over the
33 management or policies of a credit union service organization
34 (CUSO), as that term is defined by state or federal law or
35 regulation, if the CUSO is at least 67 percent owned by credit
36 unions. For purposes of the application of the definition of control
37 to a financial institution subject to regulation by the United States
38 Securities and Exchange Commission, a person who owns
39 beneficially, either directly or through one or more controlled
40 companies, more than 25 percent of the voting securities of a

1 company is presumed to control the company, and a person who
2 does not own more than 25 percent of the voting securities of a
3 company is presumed not to control the company, and a
4 presumption regarding control may be rebutted by evidence, but
5 in the case of an investment company, the presumption shall
6 continue until the United States Securities and Exchange
7 Commission makes a decision to the contrary according to the
8 procedures described in Section 2(a)(9) of the federal Investment
9 Company Act of 1940.

10 (h) “Necessary to effect, administer, or enforce” means the
11 following:

12 (1) The disclosure is required, or is a usual, appropriate, or
13 acceptable method to carry out the transaction or the product or
14 service business of which the transaction is a part, and record or
15 service or maintain the consumer’s account in the ordinary course
16 of providing the financial service or financial product, or to
17 administer or service benefits or claims relating to the transaction
18 or the product or service business of which it is a part, and includes
19 the following:

20 (A) Providing the consumer or the consumer’s agent or broker
21 with a confirmation, statement, or other record of the transaction,
22 or information on the status or value of the financial service or
23 financial product.

24 (B) The accrual or recognition of incentives, discounts, or
25 bonuses associated with the transaction or communications to
26 eligible existing consumers of the financial institution regarding
27 the availability of those incentives, discounts, and bonuses that
28 are provided by the financial institution or another party.

29 (C) In the case of a financial institution that has issued a credit
30 account bearing the name of a company primarily engaged in retail
31 sales or a name proprietary to a company primarily engaged in
32 retail sales, the financial institution providing the retailer with
33 nonpublic personal information as follows:

34 (i) Providing the retailer, or licensees or contractors of the
35 retailer that provide products or services in the name of the retailer
36 and under a contract with the retailer, with the names and addresses
37 of the consumers in whose name the account is held and a record
38 of the purchases made using the credit account from a business
39 establishment, including a *an Internet* Web site or catalog, bearing
40 the brand name of the retailer.

1 (ii) Where the credit account can only be used for transactions
2 with the retailer or affiliates of that retailer that are also primarily
3 engaged in retail sales, providing the retailer, or licensees or
4 contractors of the retailer that provide products or services in the
5 name of the retailer and under a contract with the retailer, with
6 nonpublic personal information concerning the credit account, in
7 connection with the offering or provision of the products or services
8 of the retailer and those licensees or contractors.

9 (2) The disclosure is required or is one of the lawful or
10 appropriate methods to enforce the rights of the financial institution
11 or of other persons engaged in carrying out the financial transaction
12 or providing the product or service.

13 (3) The disclosure is required, or is a usual, appropriate, or
14 acceptable method for insurance underwriting or the placement of
15 insurance products by licensed agents and brokers with authorized
16 insurance companies at the consumer's request, for reinsurance,
17 stop loss insurance, or excess loss insurance purposes, or for any
18 of the following purposes as they relate to a consumer's insurance:

19 (A) Account administration.

20 (B) Reporting, investigating, or preventing fraud or material
21 misrepresentation.

22 (C) Processing premium payments.

23 (D) Processing insurance claims.

24 (E) Administering insurance benefits, including utilization
25 review activities.

26 (F) Participating in research projects.

27 (G) As otherwise required or specifically permitted by federal
28 or state law.

29 (4) The disclosure is required, or is a usual, appropriate, or
30 acceptable method, in connection with the following:

31 (A) The authorization, settlement, billing, processing, clearing,
32 transferring, reconciling, or collection of amounts charged, debited,
33 or otherwise paid using a debit, credit or other payment card, check,
34 or account number, or by other payment means.

35 (B) The transfer of receivables, accounts, or interests therein.

36 (C) The audit of debit, credit, or other payment information.

37 (5) The disclosure is required in a transaction covered by the
38 federal Real Estate Settlement Procedures Act (12 U.S.C. Sec.
39 2601 et seq.) in order to offer settlement services prior to the close
40 of escrow (as those services are defined in 12 U.S.C. Sec. 2602),

1 provided that (A) the nonpublic personal information is disclosed
2 for the sole purpose of offering those settlement services and (B)
3 the nonpublic personal information disclosed is limited to that
4 necessary to enable the financial institution to offer those settlement
5 services in that transaction.

6 (i) “Financial product or service” means any product or service
7 that a financial holding company could offer by engaging in an
8 activity that is financial in nature or incidental to a financial activity
9 under subsection (k) of Section 1843 of Title 12 of the United
10 States Code (the United States Bank Holding Company Act of
11 1956). Financial service includes a financial institution’s evaluation
12 or brokerage of information that the financial institution collects
13 in connection with a request or an application from a consumer
14 for a financial product or service.

15 (j) “Clear and conspicuous” means that a notice is reasonably
16 understandable and designed to call attention to the nature and
17 significance of the information contained in the notice.

18 (k) “Widely distributed media” means media available to the
19 general public and includes a telephone book, a television or radio
20 program, a newspaper, or a Web site that is available to the general
21 public on an unrestricted basis.