



STATE OF CONNECTICUT
DEPARTMENT OF BANKING

260 CONSTITUTION PLAZA • HARTFORD, CT 06103-1800



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John P. Burke
Commissioner

April 19, 2001

APR 23 2001

OFFICE OF THE CHAIRMAN

The Honorable Robert Pitofsky, Chairman
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

Dear Chairman Pitofsky:

As you are aware, a state statute is not inconsistent with the provisions of Subtitle A of Title V of the Gramm-Leach-Bliley Act ("Act"), governing the disclosure of nonpublic personal information, if the protection of such statute afforded any person is greater than the protection provided under Subtitle A, as determined by the Federal Trade Commission upon the petition of any interested party.

Therefore, I hereby petition the Federal Trade Commission for a determination under Section 507 of the Act and 16 C.F.R. Section 313.17 as to whether Connecticut's financial privacy laws, Sections 36a-41, et seq. of the Connecticut General Statutes, afford the customers of the "financial institutions" subject to their provisions greater protection with respect to disclosure of "financial records" than is provided under Subtitle A of Title V of the Act and, therefore, are not preempted.

As Commissioner of Banking of the state of Connecticut, I am an interested party in that I am charged with administering and enforcing the provisions of Title 36a of the Connecticut General Statutes, the Banking Law of Connecticut, which includes Sections 36a-41, et seq.

I am enclosing a copy of Sections 36a-41, et seq. of the Connecticut General Statutes, and direct your attention to Section 36a-42 of the Connecticut General Statutes which, generally, prohibits disclosure of financial records to any person unless the customer has authorized such disclosure. Inasmuch as Section 36a-42 requires the customer's consent prior to disclosure, it is an opt-in provision affording the customer greater protection than the opt-out provision of the Act. I recognize that the coverage of the Connecticut privacy provisions is narrower than that of the privacy provisions of the Act, both with respect to the financial institutions to which they apply as well as the information that is protected against disclosure, and that financial institutions would have to comply with the privacy provisions of the Act with respect to the information not protected by the Connecticut provisions. However, to the extent that they are applicable, the Connecticut provisions afford customers greater protection and should, therefore, not be preempted.

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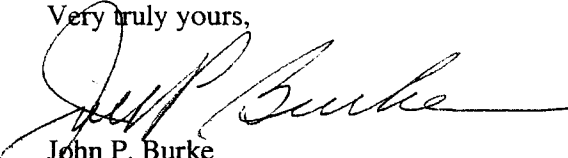
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If you have any questions or need further information concerning this matter, please do not hesitate to contact Nirja Savill, Principal Attorney, at 860-240-8152.

Very truly yours,



John P. Burke
Commissioner of Banking

JPB/NS/mbm

Enclosures

Sec. 36a-41. (Formerly Sec. 36-9j). Definitions. As used in sections 36a-41 to 36a-45, inclusive:

(1) "Financial institution" means a bank, Connecticut credit union, federal credit union and any other institution wherever chartered or organized that is authorized to accept deposits in this state.

(2) "Financial records" means any original or any copy, whether physically or electronically retained, of: (A) A document granting signature authority over a deposit account or a share account with a financial institution; (B) a statement, ledger card or other record on any deposit account or share account with a financial institution which shows each transaction in or with respect to that account; (C) any check, draft or money order drawn on a financial institution or issued and payable by such an institution or (D) any item, other than an institutional or periodic charge, made pursuant to any agreement by a financial institution and a customer which constitutes a debit or credit to that person's deposit account or share account with such financial institution if the item is not included in subdivision (C) of this subsection.

(P.A. 77-294, S. 1, 6; 77-614, S. 161, 587, 610; P.A. 78-303, S. 85, 136; P.A. 87-9, S. 2, 3; P.A. 88-65, S. 9, 48; P.A. 91-357, S. 3, 78; P.A. 92-12, S. 5; P.A. 94-122, S. 22, 340.)

History: P.A. 77-614 and P.A. 78-303 replaced bank commissioner with banking commissioner, effective January 1, 1979; pursuant to P.A. 87-9 "banking commissioner" was changed editorially by the Revisors to "commissioner of banking"; P.A. 88-65 redefined "financial institution" to delete a reference to industrial bank and amended the definition of "supervisory agency" in Subsec. (e) by excluding the Connecticut Credit Union Share Insurance Corporation; P.A. 91-357 redefined "supervisory agency" to delete references to the Federal Savings and Loan Insurance Corporation and the Federal Home Loan Bank Board and to add references to the Resolution Trust Corporation and the Office of Thrift Supervision; P.A. 92-12 redesignated Subsecs. and Subdivs. and made technical changes; P.A. 94-122 deleted the definition of "customer" in Subdiv. (1), renumbered the remaining Subdivs., added electronically retained records to the definition of "financial records", deleted Subdivs. (4) and (5) defining "person" and "supervisory agency" and made technical changes, effective January 1, 1995; Sec. 36-9j transferred to Sec. 36a-41 in 1995.

Sec. 36a-42. (Formerly Sec. 36-9k). Disclosure of financial records prohibited; exceptions. A financial institution may not disclose to any person, except to the customer or the customer's duly authorized agent, any financial records relating to such customer unless the customer has authorized disclosure to such person or the financial records are disclosed in response to (1) a certificate signed by the Commissioner of Administrative Services or the Commissioner of Social Services pursuant to the provisions of section 17b-137, (2) a lawful subpoena, summons, warrant or court order as provided in section 36a-43, (3) interrogatories by a judgment creditor or a demand by a levying officer as provided in sections 52-351b and 52-356a, (4) a certificate issued by a medical provider or its attorney under subsection (b) of section 17b-124, provided nothing in this subsection shall require the provider or its attorney to furnish to the financial institution any application for medical assistance filed under section 17b-259 or pursuant to an agreement with the IV-D agency under subsection (e) of section 17b-137, or (5) a certificate signed by the Commissioner of Veterans' Affairs pursuant to section 27-117.

(P.A. 77-294, S. 2, 6; P.A. 79-361, S. 1; P.A. 81-61, S. 1; P.A. 83-581, S. 37, 40; P.A. 93-262, S. 61, 87; P.A. 94-122, S. 23, 340; P.A. 95-244, S. 3; P.A. 97-206, S. 1; June 18 Sp. Sess. P.A. 97-7, S. 13, 38.)

History: P.A. 79-361 allowed disclosure of financial records in response to certificate signed by administrative services commissioner pursuant to Sec. 17-303; P.A. 81-61 permitted the commissioner of income maintenance and the commissioner of human resources to obtain the disclosure of financial records by use of a certificate pursuant to Sec. 17-303; P.A. 83-581 authorized disclosure in response to interrogatories by a judgment creditor or a demand by a levying officer as provided in Secs. 52-351b and 52-356a; P.A. 93-262 replaced reference to commissioners of income maintenance and human resources with commissioner of social services, effective July 1, 1993; P.A. 94-122 made technical changes, effective January 1, 1995; Sec. 36-9k transferred to Sec. 36a-42 in 1995; P.A. 95-244 added Subdiv. (4) re the exemption and proviso for certificates issued by a medical provider or its attorney; P.A. 97-206 added new Subdiv. (5) re exception for certificates signed by the Commissioner of Veterans' Affairs pursuant to Sec. 27-117; June 18 Sp. Sess. P.A. 97-7 amended Subdiv. (4) to add "or pursuant to an agreement with the IV-D agency under subsection (e) of section 17b-137", effective July 1, 1997.

Sec. 36a-43. (Formerly Sec. 36-9l). Disclosure of financial records pursuant to lawful authority. (a) Except as provided in section 36a-44, a financial institution shall disclose financial records pursuant to a lawful subpoena, summons, warrant or court order served upon it if the party seeking the records causes such subpoena, summons, warrant or court order or a certified copy thereof to be served upon the customer whose records are being sought, at least ten days prior to the date on which the records are to be disclosed, provided a court of competent jurisdiction, for good cause, may waive service of such subpoena, summons, warrant or court order, or certified copy thereof, upon such customer. If such subpoena was issued by the Commissioner of Administrative Services or the Commissioner of Social Services pursuant to section 17b-137, service of such subpoena upon the customer shall not be required.

(b) A customer of a financial institution shall have standing to challenge a subpoena of the customer's financial records, by filing an application or motion to quash in a court of competent jurisdiction within the ten-day notice period required by subsection (a) of this section. Upon the filing of such application or motion by the customer, and service of such application or motion upon the financial institution and the person issuing the subpoena, production of the records shall be stayed, without liability to the financial institution, until the court holds a hearing on the motion or application and an order is entered sustaining, modifying or quashing the subpoena.

(c) A financial institution shall disclose financial records pursuant to a certificate, signed by the Commissioner of Administrative Services or the Commissioner of Social Services in accordance with the provisions of section 36a-42, or pursuant to an agreement with the IV-D agency under subsection (c) of section 17b-137.

(d) No such financial institution shall be held civilly or criminally responsible for disclosure of financial records pursuant to a certificate, subpoena, summons, warrant or court order which on its face appears to have been issued upon lawful authority.

(P.A. 77-294, S. 3, 6; P.A. 79-361, S. 2; P.A. 81-61, S. 2; P.A. 86-161; P.A. 88-251; P.A. 89-264, S. 1; P.A. 93-262, S. 62, 87; P.A. 94-122, S. 24, 340; June 18 Sp. Sess. P.A. 97-7, S. 14, 38.)

History: P.A. 79-361 made previous provisions Subsecs. (a) and (c), inserting new Subsec. (b) re disclosure of records under certificate signed by administrative services commissioner and adding reference to such certificates in Subsec. (c); P.A. 81-61 amended Subsec. (a) to provide that if a subpoena is issued by the commissioner of administrative services, income maintenance or human resources service upon the customer is not required, and amended Subsec. (b) to require disclosure pursuant to a certificate signed by the commissioner of income maintenance or human resources and to delete the requirement that a copy of the certificate be mailed to the customer five days prior to disclosure; P.A. 86-161 amended Subsec. (a) to make the party seeking the disclosure of a customer's financial records responsible for serving the subpoena or similar legal document on the customer; P.A. 88-251 inserted new Subsec. (b) re a customer's standing to challenge a subpoena of his financial records and relettered previously existing Subsecs; P.A. 89-264 amended Subsec. (a) by adding exception re Sec. 36-9m; P.A. 93-262 changed reference to commissioners of income maintenance and human resources to commissioner of social services, effective July 1, 1993; P.A. 94-122 made technical changes, effective January 1, 1995; Sec. 36-9l transferred to Sec. 36a-43 in 1995; June 18 Sp. Sess. P.A. 97-7 amended Subsec. (c) by adding "or pursuant to an agreement with the IV-D agency under subsection (c) of section 17b-137", effective July 1, 1997.

Annotations to former section 36-9l:

Cannot infer the right to a hearing from the provision for notice in statute. 179 C. 102, 106110. Cited. 188 C. 325, 333. Cited. 219 C. 204, 211, 212, 214.

Cited. 36 CA 171, 174, 176, 177.

Subsec. (a):

Cited. 219 C. 204, 205, 207, 209, 214.

Subsec. (b):

Bank customer has no standing to challenge procedural irregularities in manner of administrative subpoena service on financial institution in which he has account. 219 C. 204, 205, 208, 212.

Cited. 28 CA 653, 654, 658.

Sec. 36a-44. (Formerly Sec. 36-9m). Exceptions re confidential treatment of customer records. No provision of sections 36a-41 to 36a-45, inclusive, shall be construed to prohibit: (1) The preparation, examination, handling or maintenance of any financial records by any officer, employee or agent of a financial institution having custody of such records or the examination of such records by a certified public accountant engaged by the financial institution to perform an independent audit; (2) the examination of any financial records by, or the furnishing of financial records by a financial institution to any official, employee or agent of a supervisory agency solely for use in the exercise of the duties of such official, employee or agent; (3) the publication of data furnished from financial records relating to customers where such data does not contain information identifying any particular customer or account; (4) the making of reports or returns required under the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, or under section 12-382; (5) disclosure of information permitted under the Uniform Commercial Code concerning the dishonor of any negotiable instrument; (6) the exchange, in the regular course of business, of credit information between a financial institution and other financial institutions or commercial enterprises, directly or through a consumer reporting agency; (7) disclosures to appropriate officials of federal, state or local governments upon suspected violations of the criminal law; (8) disclosures pursuant to a search warrant issued by a judge of the Superior Court under the provisions of section 54-33a; (9) disclosures concerning lawyers' clients' funds accounts made to the state-wide grievance committee pursuant to any rule adopted by the judges of the Superior Court; (10) disclosures to the purported payee or to any purported holder of a check, draft, money order or other item, whether or not such check, draft, money order or other item has been accepted by such payee or holder as payment, or to any financial institution purportedly involved in the collection process of a check, draft, money order or other item whether such check, draft, money order or other item would be paid if presented at the time of such disclosure; (11) any disclosure made in connection with a financial institution's attempts to preserve its rights or determine its liabilities with regard to any funds transfer or any check, draft, money order or other item drawn by or upon it or handled by it for collection or otherwise; (12) the transfer of information from a Connecticut credit union to a shared service center and the personnel of such shared service center which takes place when a member of such Connecticut credit union uses a shared service center to effect a transaction with such Connecticut credit union; (13) any other disclosure required under applicable state or federal law or authorized to be made to any regulatory or law enforcement agency under applicable state or federal law.

(P.A. 77-294, S. 4, 6; P.A. 79-107; 79-631, S. 97, 111; P.A. 80-381; P.A. 81-61, S. 3; P.A. 89-211, S. 38; 89-264, S. 2; P.A. 90-56, S. 1, 2; P.A. 92-12, S. 6; P.A. 94-122, S. 25, 340; P.A. 95-253, S. 8.)

History: P.A. 79-107 and P.A. 79-631 added Subdiv. (h) re disclosure of whether or not drafts have been accepted as payments; P.A. 80-381 included reports or returns required under Sec. 12-382 in Subdiv. (d); P.A. 81-61 amended Subsec. (g) by replacing "notification" with "disclosures" and "of" with "upon"; P.A. 89-211 clarified reference to the Internal Revenue Code of 1986; P.A. 89-264 added new Subdiv. (h) re disclosures pursuant to search warrant and relettered remaining Subdiv.; P.A. 90-56 added provisions re disclosures concerning lawyers' clients' funds accounts and relettered Subsec. (i) as Subsec. (j); P.A. 92-12 redesignated Subdivs.; P.A. 94-122 added Subdivs. (11) and (12) re disclosures concerning institution's rights or liabilities over funds transfer, checks or funds drawn on or collected by it and disclosure required or authorized by law, effective January 1, 1995; Sec. 36-9m transferred to Sec. 36a-44 in 1995; P.A. 95-253 added Subdiv. (12) re certain transfers of information to a shared service center and its personnel and renumbered former Subdiv. (12) as (13).

See Sec. 36a-475 for definition of "shared service center".

Annotations to former section 36-9m:
Cited. 219 C. 204, 212.

Sec. 36a-45. (Formerly Sec. 36-9n). Violations of financial records disclosure provisions. (a) Any officer or employee of a financial institution who knowingly and wilfully furnishes financial records in violation of sections 36a-41 to 36a-44, inclusive, shall be guilty of a class C misdemeanor.

(b) Any person who knowingly and wilfully induces or attempts to induce any officer or employee of a financial institution to disclose financial records in violation of sections 36a-41 to 36a-44, inclusive, shall be guilty of a class C misdemeanor.

(P.A. 77-294, S. 5, 6; P.A. 88-65, S. 50.)

History: P.A. 88-65 substituted references to Sec. 36-9m for references to Sec. 36-9n; Sec. 36-9n transferred to Sec. 36a-45 in 1995.

Annotations to former section 36-9n:

Subsec. (b):

Cited. 219 C. 204, 213, 214.