

106TH CONGRESS  
1ST SESSION

# H. R. 1929

To amend the Federal Deposit Insurance Act to control the disclosure by financial institutions of personal financial information of customers of the institutions, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 25, 1999

Mr. INSLEE (for himself, Mr. CAPUANO, Mr. FILNER, Mr. HINCHEY, Mr. HOEFFEL, Mr. KANJORSKI, Ms. LEE, Mr. McDERMOTT, Ms. RIVERS, Mr. SANDERS, Ms. SCHAKOWSKY, and Mr. STARK) introduced the following bill; which was referred to the Committee on Banking and Financial Services

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## A BILL

To amend the Federal Deposit Insurance Act to control the disclosure by financial institutions of personal financial information of customers of the institutions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Banking Privacy Act  
5 of 1999”.

1 **SEC. 2. PERSONAL INFORMATION SHARING.**

2 (a) DEPOSITORY INSTITUTIONS AND SUBSIDIARIES  
3 OF DEPOSITORY INSTITUTIONS.—Section 18 of the Fed-  
4 eral Deposit Insurance Act (12 U.S.C. 1828) is amended  
5 by adding at the end the following new subsection:

6 “(t) PERSONAL INFORMATION SHARING REQUIRE-  
7 MENTS.—

8 “(1) INFORMATION SHARING PROHIBITED IF  
9 CUSTOMER OPTS OUT.—Notwithstanding any other  
10 provision of law and except as permitted under para-  
11 graph (5), an insured depository institution and a  
12 subsidiary of a depository institution may not dis-  
13 close or transfer customer information relating to  
14 any customer to any other person, including an affil-  
15 iate of the depository institution, unless—

16 “(A) the customer to whom such informa-  
17 tion relates has been provided with notice in ac-  
18 cordance with paragraph (2); and

19 “(B) the customer has not provided a writ-  
20 ten directive (including a transmission by e-  
21 mail, facsimile, or other form of electronic com-  
22 munication) to the insured depository institu-  
23 tion or subsidiary, at any time before the close  
24 of business on the 6th business day before such  
25 disclosure or transfer, that such information  
26 shall not be disclosed or transferred, except

1 when specifically authorized by the customer in  
2 connection with and pertaining to a specific  
3 transaction with the depository institution or  
4 subsidiary.

5 “(2) NOTICE.—

6 “(A) IN GENERAL.—The notice referred to  
7 in paragraph (1)(A) shall fully and fairly dis-  
8 close, in accordance with regulations which the  
9 Federal banking agencies shall jointly prescribe,  
10 what information is being disclosed or trans-  
11 ferred, the policy of the insured depository in-  
12 stitution or subsidiary of an insured depository  
13 institution with regard to information sharing,  
14 and the right of the customer to prohibit the  
15 disclosure or transfer of such information.

16 “(B) FORM OF NOTICE.—

17 “(i) IN GENERAL.—The regulations  
18 prescribed pursuant to subparagraph (A)  
19 shall require that the notice required under  
20 such subparagraph—

21 “(I) be prominently displayed on  
22 a document which is separate from  
23 any other document;

1           “(II) have the term ‘Privacy No-  
2           tice’ in prominent typeface at the top  
3           of the notice.

4           “(ii) NOTICE REQUIREMENTS.—

5           “(I) MAILING.—If the notice re-  
6           quired under subparagraph (A) is  
7           mailed to the customer, the notice  
8           shall be mailed separately from any  
9           other statement, document, or notice  
10          mailed to the customer.

11          “(II) IN PERSON.—If the notice  
12          required under subparagraph (A) is  
13          disclosed to the customer in person by  
14          an officer, director, or agent of the  
15          depository institution or subsidiary  
16          thereof, the officer, employee, or agent  
17          shall obtain the written acknowledge-  
18          ment of the customer of the receipt of  
19          such notice separately from any other  
20          signature or written acknowledgment  
21          of the customer.

22          “(3) CUSTOMER INFORMATION DEFINED.—For  
23          purposes of this subsection, the term ‘customer in-  
24          formation’ means any information acquired from a  
25          customer of the insured depository institution that is

1 personally identifiable to the customer, including in-  
2 formation relating to transactions, balances, matu-  
3 rity dates, payouts, and payout dates, and trans-  
4 action or experience information.

5 “(4) REASONABLE OPPORTUNITY TO RESPOND  
6 TO NOTICE.—In order to provide any customer of an  
7 insured depository institution or any subsidiary of  
8 an insured depository institution with reasonable op-  
9 portunity to respond to any notice referred to in  
10 paragraph (1)(A), the prohibition contained in para-  
11 graph (1) on the disclosure or transfer of any cus-  
12 tomer information relating to such customer to any  
13 other person, including an affiliate, shall continue  
14 during the 30-day period beginning on the date the  
15 notice referred to in such paragraph was sent or de-  
16 livered to such customer, unless the customer has  
17 authorized such disclosure or transfer.

18 “(5) EXCEPTIONS.—Paragraph (1) shall not  
19 apply to the disclosure or transfer of customer  
20 information—

21 “(A) in connection with processing a spe-  
22 cific financial transaction that the customer to  
23 whom the information relates has authorized,  
24 if—

1           “(i) the customer has been informed  
2           that any such transaction will necessarily  
3           involve the disclosure or transfer of such  
4           information; and

5           “(ii) the person to whom such infor-  
6           mation is transferred or disclosed is sub-  
7           ject to a legal or contractual obligation not  
8           to use such information for any purpose  
9           other than in connection with facilitating  
10          the transaction;

11          “(B) in connection with any routine finan-  
12          cial transaction which does not involve mar-  
13          keting of services or the sale of customer infor-  
14          mation, if the person to whom such information  
15          is transferred or disclosed is subject to a legal  
16          or contractual obligation not to use such infor-  
17          mation for any purpose other than in connec-  
18          tion with effectuating the transaction;

19          “(C) in connection with clearing checks,  
20          processing credit transactions or electronic fund  
21          transfers, or providing mailing services, if the  
22          person to whom such information is transferred  
23          or disclosed is subject to a legal or contractual  
24          obligation not to use such information for any  
25          purpose other than in connection with clearing

1 or processing the transaction or providing the  
2 service;

3 “(D) to a governmental, regulatory, or  
4 self-regulatory authority having jurisdiction  
5 over the insured depository institution for ex-  
6 amination, compliance, or other authorized pur-  
7 poses;

8 “(E) to a court of competent jurisdiction;

9 “(F) to a consumer reporting agency, as  
10 defined in section 603(f) of the Fair Credit Re-  
11 porting Act, for use solely in accordance with  
12 such Act;

13 “(G) in the case of a default by the cus-  
14 tomer on an obligation to the depository institu-  
15 tion or subsidiary, to a debt collector, as de-  
16 fined in section 803(6) of the Fair Debt Collec-  
17 tion Practices Act, counsel, or other entity in-  
18 volved in debt collection, for use solely in ac-  
19 cordance with such Act;

20 “(H) in the case of any claim or litigation  
21 between the customer and a depository institu-  
22 tion or subsidiary, to a counsel or other person  
23 involved in the resolution of the dispute;

24 “(I) that is not personally identifiable to  
25 the customer or is public information; or

1           “(J) that is necessary to prevent or inves-  
2           tigate fraudulent or unlawful acts which the de-  
3           pository institution or subsidiary has a good  
4           faith belief may occur or may have occurred.”.

5           (b) BANK HOLDING COMPANIES AND AFFILIATES OF  
6 BANK HOLDING COMPANIES.—Section 5 of the Bank  
7 Holding Company Act of 1956 (12 U.S.C. 1844) is  
8 amended by adding at the end the following new sub-  
9 section:

10          “(g) PERSONAL INFORMATION SHARING REQUIRE-  
11 MENTS.—

12           “(1) INFORMATION SHARING PROHIBITED IF  
13 CUSTOMER OPTS OUT.—Notwithstanding any other  
14 provision of law and except as permitted under para-  
15 graph (5), a bank holding company and an affiliate  
16 of a bank holding company (other than a depository  
17 institution subsidiary or subsidiary of such deposi-  
18 tory institution) may not disclose or transfer cus-  
19 tomer information relating to any customer to any  
20 other person, including another affiliate of the bank  
21 holding company, unless—

22           “(A) the customer to whom such informa-  
23 tion relates has been provided with notice in ac-  
24 cordance with paragraph (2); and

1           “(B) the customer has not provided a writ-  
2           ten directive (including a transmission by e-  
3           mail, facsimile, or other form of electronic com-  
4           munication) to the bank holding company or af-  
5           filiate, at any time before the close of business  
6           on the 6th business day before such disclosure  
7           or transfer, that such information shall not be  
8           disclosed or transferred, except when specifi-  
9           cally authorized by the customer in connection  
10          with and pertaining to a specific transaction  
11          with the bank holding company or affiliate.

12          “(2) NOTICE.—

13                 “(A) IN GENERAL.—The notice referred to  
14                 in paragraph (1)(A) shall fully and fairly dis-  
15                 close, in accordance with regulations which the  
16                 Board shall prescribe, what information is being  
17                 disclosed or transferred, the policy of the bank  
18                 holding company or affiliate of a bank holding  
19                 company with regard to information sharing,  
20                 and the right of the customer to prohibit the  
21                 disclosure or transfer of such information.

22                 “(B) FORM OF NOTICE.—

23                         “(i) IN GENERAL.—The regulations  
24                         prescribed pursuant to subparagraph (A)

1 shall require that the notice required under  
2 such subparagraph—

3 “(I) be prominently displayed on  
4 a document which is separate from  
5 any other document:

6 “(II) have the term ‘Privacy No-  
7 tice’ in prominent typeface at the top  
8 of the notice.

9 “(ii) NOTICE REQUIREMENTS.—

10 “(I) MAILING.—If the notice re-  
11 quired under subparagraph (A) is  
12 mailed to the customer, the notice  
13 shall be mailed separately from any  
14 other statement, document, or notice  
15 mailed to the customer.

16 “(II) IN PERSON.—If the notice  
17 required under subparagraph (A) is  
18 disclosed to the customer in person by  
19 an officer, director, or agent of the  
20 bank holding company or affiliate  
21 thereof, the officer, employee, or agent  
22 shall obtain the written acknowledge-  
23 ment of the customer of the receipt of  
24 such notice separately from any other

1 signature or written acknowledgment  
2 of the customer.

3 “(3) CUSTOMER INFORMATION DEFINED.—For  
4 purposes of this subsection, the term ‘customer in-  
5 formation’ means any information acquired from a  
6 customer of the bank holding company or affiliate  
7 that is personally identifiable to the customer, in-  
8 cluding information relating to transactions, bal-  
9 ances, maturity dates, payouts, and payout dates,  
10 and transaction or experience information.

11 “(4) REASONABLE OPPORTUNITY TO RESPOND  
12 TO NOTICE.—In order to provide any customer of a  
13 bank holding company or any affiliate of a bank  
14 holding company with reasonable opportunity to re-  
15 spond to any notice referred to in paragraph (1)(A),  
16 the prohibition contained in paragraph (1) on the  
17 disclosure or transfer of any customer information  
18 relating to such customer to any other person, in-  
19 cluding another affiliate, shall continue during the  
20 30-day period beginning on the date the notice re-  
21 ferred to in such paragraph was sent or delivered to  
22 such customer, unless the customer has authorized  
23 such disclosure or transfer.

1           “(5) EXCEPTIONS.—Paragraph (1) shall not  
2           apply to the disclosure or transfer of customer  
3           information—

4                   “(A) in connection with processing a spe-  
5                   cific financial transaction that the customer to  
6                   whom the information relates has authorized,  
7                   if—

8                           “(i) the customer has been informed  
9                           that any such transaction will necessarily  
10                          involve the disclosure or transfer of such  
11                          information; and

12                           “(ii) the person to whom such infor-  
13                          mation is transferred or disclosed is sub-  
14                          ject to a legal or contractual obligation not  
15                          to use such information for any purpose  
16                          other than in connection with facilitating  
17                          the transaction;

18                          “(B) in connection with any routine finan-  
19                          cial transaction which does not involve mar-  
20                          keting of services or the sale of customer infor-  
21                          mation, if the person to whom such information  
22                          is transferred or disclosed is subject to a legal  
23                          or contractual obligation not to use such infor-  
24                          mation for any purpose other than in connec-  
25                          tion with effectuating the transaction;

1           “(C) in connection with clearing checks,  
2           processing financial transactions or electronic  
3           fund transfers, or providing mailing services, if  
4           the person to whom such information is trans-  
5           ferred or disclosed is subject to a legal or con-  
6           tractual obligation not to use such information  
7           for any purpose other than in connection with  
8           clearing or processing the transaction or pro-  
9           viding the service;

10           “(D) to a governmental, regulatory, or  
11           self-regulatory authority having jurisdiction  
12           over the insured depository institution for ex-  
13           amination, compliance, or other authorized pur-  
14           poses;

15           “(E) to a court of competent jurisdiction;

16           “(F) to a consumer reporting agency, as  
17           defined in section 603(f) of the Fair Credit Re-  
18           porting Act, for use solely in accordance with  
19           such Act;

20           “(G) in the case of a default by the cus-  
21           tomer on an obligation to the bank holding  
22           company or affiliate, to a debt collector, as de-  
23           fined in section 803(6) of the Fair Debt Collec-  
24           tion Practices Act, counsel, or other entity in-

1           involved in debt collection, for use solely in ac-  
2           cordance with such Act;

3           “(H) in the case of any claim or litigation  
4           between the customer and a depository institu-  
5           tion or subsidiary, to counsel or any other per-  
6           son involved in the resolution of the dispute;

7           “(I) that is not personally identifiable to  
8           the customer or is public information; or

9           “(J) that is necessary to prevent or inves-  
10          tigate fraudulent or unlawful acts which the  
11          bank holding company or affiliate has a good  
12          faith belief may occur or may have occurred.”.

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