

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

337I0069

HOUSE BILL NO. 1085

Introduced by: Representatives Glenski, Burg, Cutler, Engels, Hanson, Hennies, Lange, Peterson (Jim), and Van Etten and Senators Duenwald, Albers, Dennert, Ham, Kooistra, and Reedy

1 FOR AN ACT ENTITLED, An Act to require that financial institutions obtain consent before
2 sharing a consumer's personally identifiable information with nonaffiliated third parties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "Affiliate," any company that controls, is controlled by, or is under common control
6 with another company, as defined in 15 U.S.C. § 6809;

7 (2) "Consumer," any customer or any other person obtaining or utilizing any service of
8 a financial institution;

9 (3) "Financial institution," any person that engages in financial activities as defined in 15
10 U.S.C. § 6809;

11 (4) "Nonaffiliated third party," any entity that is not an affiliate of or is related by
12 common ownership or control, as defined in 15 U.S.C. § 6809;

13 (5) "Nonpublic personal information," personally identifiable financial information as
14 defined in 15 U.S.C. § 6809.

15 Section 2. A financial institution may not disclose the nonpublic personal information of a



1 South Dakota resident to a nonaffiliated third party unless such financial institution does both
2 of the following on an annual basis:

3 (1) The financial institution clearly and conspicuously discloses to the consumer in writing
4 what nonpublic personal information the financial institution desires or intends to
5 disclose to a nonaffiliated third party; and

6 (2) The financial institution obtains a written consent from the consumer to the disclosure
7 of the information, signed and dated in the consumer's handwriting.

8 Section 3. The consumer may revoke the consent by written request, signed and dated in the
9 consumer's handwriting, at any time. The revocation shall be given effect immediately upon
10 receipt by the financial institution.

11 Section 4. The Division of Insurance shall promulgate rules pursuant to chapter 1-26 relating
12 to the disclosure of personally identifiable information in accordance with this Act. The rules may
13 include:

- 14 (1) Definition of terms;
- 15 (2) Opt in procedures;
- 16 (3) Disclosure requirements; and
- 17 (4) Procedures for revoking consent.

18 Section 5. The Division of Banking shall promulgate rules pursuant to chapter 1-26 relating
19 to the disclosure of personally identifiable information in accordance with this Act. The rules may
20 include:

- 21 (1) Definition of terms;
- 22 (2) Opt in procedures;
- 23 (3) Disclosure requirements; and
- 24 (4) Procedures for revoking consent.

1 Section 6. That § 58-2-41 be repealed.

2 ~~—58-2-41. The director shall promulgate rules pursuant to chapter 1-26 relating to the privacy~~
3 ~~of personal nonpublic financial information. The rules must be designed to provide privacy to the~~
4 ~~public of the personal nonpublic financial information that is shared or obtained in connection~~
5 ~~with insurance transactions. The director shall design the rules to protect the public's personal~~
6 ~~nonpublic financial information but also consider the impact of any rules on the cost and~~
7 ~~availability of insurance in this state. In promulgating the rules required by this section the~~
8 ~~director shall give substantial consideration to the privacy standards contained in the NAIC~~
9 ~~Privacy of Consumer Financial and Health Information Regulation as in effect as of January 1,~~
10 ~~2001, and otherwise design the rules to achieve uniformity, to the degree reasonably possible,~~
11 ~~in the standards for personal nonpublic financial information. The rules may include the following~~
12 ~~as they relate to financial privacy:~~

13 ~~—(1)—Definition of terms;~~

14 ~~—(2)—Permitting the disclosure and use of personal nonpublic financial information between~~
15 ~~affiliates;~~

16 ~~—(3)—Opt out procedures for the disclosure and use of personal nonpublic financial~~
17 ~~information with nonaffiliates;~~

18 ~~—(4)—Notice and disclosure requirements and formats;~~

19 ~~—(5)—Limits on disclosure of personal nonpublic financial information;~~

20 ~~—(6)—Limits on redisclosure and reuse of personal nonpublic financial information;~~

21 ~~—(7)—Limits on sharing account number information for marketing purposes;~~

22 ~~—(8)—Exceptions for opt out and notice requirements; and~~

23 ~~—(9)—Nondiscrimination requirements as they relate to persons who opt out or who do not~~
24 ~~grant an authorization.~~

- 1 ~~Nothing in this section applies to any rules that may be promulgated pursuant to § 58-2-40.~~
- 2 ~~Nothing in this section may be construed to impair or conflict with the Fair Credit Reporting Act.~~