WEST VIRGINIA CODE CHAPTER 31A ARTICLE 2A

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§31A-2A-1. Definitions.

As used in this article:

(a) "Customer" means any person or his or her duly authorized representative who has transacted business with or has used the services of a financial institution or for whom a financial institution has acted as a fiduciary in relation to an account maintained in such person's name;

(b) "Financial institution" means a bank, a savings and loan association, a trust company or a credit union chartered pursuant to any state or federal law, a regulated consumer lender licensed under article four, chapter forty-six-a of this code, a mortgage lender broker or servicer licensed under article seventeen, chapter thirty-one of this code, a money service business licensed under article two, chapter thirty-two-a of this code or other institutions which are by law under the jurisdiction and supervision of the Commissioner of Banking;

(c) "Financial record" means the original or a copy of any record or document held by a financial institution pertaining to a customer of the financial institution, including any record of a transaction conducted by means of a customer bank communication terminal or other electronic device. "Financial record" also means any information derived from such records or documents;

(d) "Investigation" includes, but is not limited to, any inquiry by a state or local law-enforcement officer, sheriff or prosecuting attorney or any inquiry made by a state or local governmental entity for the purpose of determining whether there has been a violation of any law which is punishable by imprisonment or by a fine or other monetary liability;

(e) "Person" means an individual, partnership, corporation, limited liability company, association, trust or any other legal entity;

(f) "State entity" means any state or local governmental office, officer, department, division, bureau, board or commission, including the Legislature, and any other state or local government agency of West Virginia, its political subdivisions and any agent thereof; and

(g) "Subpoena" includes a subpoena duces tecum or any other lawful subpoena to compel testimony or the disclosure or production of documents.

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§31A-2A-2. Requirements for government access to records.

(a) No state entity may have access to or obtain from a financial institution financial records of any customer except as set forth in section four of this article or under the following circumstances:

(1) The customer has executed a written authorization pursuant to section three of this article;

(2) The financial records are disclosed in response to a judicial order, warrant, summons or subpoena issued by a court of competent jurisdiction or a valid administrative order or subpoena of a state entity expressly ordering or requiring the disclosure of financial records: Provided, That any subpoena issued pursuant to the provisions of this subsection shall comply with the provisions of section five of this article;

(3) The financial records are disclosed in response to a judicial order authorizing the appointment of the state entity or its agent: (A) As guardian of the customer or conservator of his or her property; or (B) as administrator or executor of the customer's estate;

(4) The financial records are disclosed: (A) Pursuant to a state or federal rule of civil or criminal procedure or any comparable rule of another court of competent jurisdiction; (B) in response to a subpoena issued in connection with any pending civil or criminal proceeding in which a state entity is a party; or (C) in response to interrogatories in aid of execution propounded by a state entity where it is a judgment creditor of the customer;

(5) The financial records are disclosed to law-enforcement officers pursuant to a grand jury or trial subpoena resulting from a criminal investigation which complies with the provisions of section six of this article; or

(6) As may be required or permitted by any other state or federal law.

(b) No state entity obtaining financial records pursuant to the provisions of this article and no person who obtains financial records from a state entity which obtained such financial records pursuant to the provisions of this article shall disclose such financial records: (i) To any other state entity unless such other state entity has authority or authorization to receive the financial record in accordance with the provisions of this article; or (ii) to any person unless such person has authority or authorization to receive the financial record: Provided, That nothing herein shall limit or prevent the disclosure of financial records which are otherwise public documents or matters of public record or the disclosure of financial records made to facilitate a lawful proceeding, investigation, examination or inspection by a state entity. Financial records obtained under this article by a state entity shall not be subject to disclosure under the provisions of article one, chapter twenty-nine-b of this code.

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§31A-2A-3. Written authorization of customer; contents; certification of compliance.

(a) A customer may authorize disclosure under section two of this article by signing and dating a statement in which he or she:

(1) Authorizes the disclosure for such period as may be agreed upon;

(2) Indicates an understanding of his or her right to revoke such authorization at any time before the financial records are disclosed;

(3) Identifies the financial records which are authorized to be disclosed;

(4) Specifies the purposes for which, and the state entity to which, such records may be disclosed; and

(5) Acknowledges that he or she has been advised of his or her rights under this article by the state entity seeking the disclosure of the financial records.

(b) No authorization as provided in subsection (a) of this section shall be required as a condition of doing business with any financial institution.

(c) No financial institution shall release the financial records of a customer pursuant to his or her authorization under this section until the state entity seeking the records also provides certification in writing to the financial institution that it has complied with the applicable provisions of this article. The financial institution and the state entity seeking to obtain the disclosure of the financial records shall retain copies of this written authorization.

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§31A-2A-4. Exceptions.

(a) Nothing in this article is intended to, or shall prohibit, apply to, or interfere with:

(1) The lawful authority or ability of the commissioner of banking or any other state or federal regulatory agency of a bank, savings and loan association, trust company, or credit union to obtain or to share between such regulatory agencies any records which the commissioner of banking or such state or federal regulatory agency may deem appropriate for the examination and regulation of the financial institution: *Provided*, That nothing in this subdivision permits disclosure of protected financial information in violation of §31A-2B-1 *et seq*. of this code;

(2) The lawful authority or ability of the Insurance Commissioner or the State Auditor to obtain any records from a financial institution relating to the financial institution's sale of insurance or securities;

(3) The dissemination or publication of information derived from financial records if the information cannot be identified to any particular customer, deposit, or account, or if the information is in composite form and is not disseminated or published in a way which identifies any particular customer, deposit, or account;

(4) The making of reports or returns specifically required or permitted by federal or state law, including applicable tax law or regulations;

(5) The disclosure of any information under the provisions of the uniform commercial code governing the dishonor of a negotiable instrument, or the disclosure to any purported state entity payee or to any purported state entity holder of a check, draft, order, or other item, whether or not such instrument has been accepted by such payee or holder as payment, as to whether or not such instrument would be honored if presented at the time of such disclosure;

(6) A state entity obtaining a credit report or consumer credit report from anyone other than a financial institution;

(7) The exchange, in the regular course of business, of information showing the outstanding balance of a mortgage loan account in connection with a sale, refinancing, or foreclosure of real property in a transaction to which the state entity is a party; or the disclosure, in the regular course of business, of information on a mortgage or deed of trust on a subject property to a state entity as holder of any subordinate mortgage, deed of trust or security interest;

(8) The disclosure to the Department of Human Services, upon written request, of an individual's financial records which the department determines are necessary to verify or confirm the individual's eligibility or ineligibility for public assistance;

(9) The disclosure of an individual's financial records in response to a written request by the

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Department of Human Services, as authorized by the federal parent locator service of the United States Department of Health and Human Services;

(10) The examination or audit of financial records relating to preneed funeral trust accounts pursuant to §47-14-1 *et seq*. of this code;

(11) The disclosure of financial records relating to unclaimed property pursuant to §36-8-1 *et seq*. of this code, including the examination of financial records by the State Treasurer or his or her agent to determine compliance with the handling and reporting of unclaimed property as provided by, and subject to, the limitations set forth in §36-8-20 of this code;

(12) The presentation to appropriate local, state, or federal law-enforcement authorities of a certificate under oath by an authorized representative of a financial institution drawee that declares the dishonor of the check, draft, or order by the drawee, the lack of an account with the drawee at the time of utterance or the insufficiency of the drawer's funds at the time of presentation and utterance in connection with any criminal action for obtaining property or services by a worthless check, draft, or order;

(13) The notification to appropriate local, state, or federal law-enforcement authorities or regulatory agencies that the financial institution, its officers, employees or agents thereof have information which may be relevant to a possible violation of any statute or regulation: *Provided*, That nothing in this subdivision permits disclosure of protected financial information in violation of §31A-2B-1 *et seq*. of this code. The disclosure of any information pursuant to this subdivision may only include the name or other identifying information concerning any individual, corporation, or account involved in and the nature of any suspected illegal activity;

(14) The disclosure of information or records by a financial institution to any court or other appropriate state entity which is incidental to recording a lien, perfecting a security interest, proving a claim in bankruptcy, or otherwise collecting on a debt owing either to the financial institution itself or in its role as a fiduciary;

(15) The disclosure of information or records by a financial institution which is incidental to processing an application for assistance to a customer in the form of a government loan, loan guaranty, or loan insurance agreement, or which is incidental to processing a default on, or administering, a government guaranteed or insured loan or to initiating contact with an appropriate state entity for the purpose of providing any financial record necessary to permit such authority to carry out its responsibilities under a loan, loan guaranty, or loan insurance agreement;

(16) The disclosure of information incidental to a transaction in the normal course of business of the financial institution where there is no reasonable cause to believe that the information is intended to be used by the state entity in connection with an investigation of the customer;

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(17) The preparation, review, handling, or maintenance of financial records in the ordinary course of business by any officer, employee, or agent of a financial institution having custody of the records; or

(18) The disclosure to appropriate law-enforcement officials of the financial records of any officer, director, employee, or controlling shareholder of a financial institution by a financial institution or by any state or federal regulatory agency having authority to regulate the financial institution, if there is reason to believe that the financial record is relevant to a possible violation by such person of any law relating to a crime against the financial institution or any such state or federal regulatory agency. No state or federal regulatory agency which discloses any information pursuant to this subdivision shall be deemed to have waived any privilege applicable to that record under law.

(b) Nothing in this article shall preclude a state entity from obtaining information that is public record without regard to this article although the information may have been derived from financial records.

(c) Nothing in this article shall preclude a state entity from obtaining information or financial records voluntarily submitted to it by others in an attempt to seek governmental assistance or redress of a grievance, including legislative change: *Provided*, That the financial record or information was not solicited by the state entity in an effort to evade the requirements of this article or submitted by a financial institution in contravention of §31A-2A-7 of this code.

(d) Notwithstanding the exceptions set forth in this section, a financial institution may not disclose financial records to a state entity and a state entity may not compel disclosure of financial records in a manner that singles out or discriminates against any person based on activity protected by the Second Amendment to the United States Constitution or Section 22, Article III of the West Virginia Constitution.

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§31A-2A-5. Subpoena and notice requirements.

(a) A financial institution may disclose or produce financial records to a state entity in compliance with a subpoena served upon it if the subpoena contains a certification that: (1) A copy of the subpoena has been served on the customer whose records are sought by the state entity seeking disclosure or production of the records at least ten days prior to the date on which disclosure or production is sought; or (2) that service on the customer has been waived for good cause by the circuit court of Kanawha County or other circuit court of competent jurisdiction.

(b) Any person whose financial records are to be disclosed pursuant to a subpoena served under the provisions of subdivision (1), subsection (a) of this section may challenge the subpoena by filing a motion to quash in a court of competent jurisdiction at any time prior to the disclosure of the records. After the filing and service of the motion upon the financial institution and the state entity requesting the issuance of the subpoena, the production of financial records shall be stayed, without liability to the financial institution, until the court holds a hearing on the motion and an order is entered sustaining, modifying or quashing the subpoena.

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§31A-2A-6. Subpoena issued by grand jury.

(a) Notwithstanding the provisions of section five of this article, a financial institution may disclose or produce financial records upon being served with a subpoena issued under authority of a grand jury without notice or service upon the customer.

(b) Financial records obtained pursuant to a subpoena issued under the authority of a grand jury:

(1) Shall be returned and actually presented to the grand jury;

(2) Shall be used only: (A) For the purpose of considering whether to issue an indictment or presentment by that grand jury; (B) for the purpose of prosecuting a crime for which that indictment or presentment is issued; or (C) for any other purpose authorized by the West Virginia rules of criminal procedure; and

(3) Shall be destroyed or returned to the financial institution if not used for one of the purposes specified in subdivision (2) of this subsection.

(c) Financial records obtained pursuant to a subpoena issued under the authority of a grand jury and any descriptions of the contents of such financial records must be maintained in sealed records of the grand jury unless such financial records or descriptions thereof have been used in the prosecution of a crime for which the grand jury issued an indictment or presentment or for any other purpose authorized by the West Virginia rules of criminal procedure.

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§31A-2A-7. Penalties.

(a) Any state, county or local government official or employee who knowingly and willfully discloses financial records with intent to violate this article, or who knowingly and willfully induces or attempts to induce an officer, employee, agent or director of a financial institution to disclose financial records to a state entity with intent to violate this article, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000.

(b) Any customer whose financial records or the information contained therein has been negligently disclosed by a state entity or a financial institution in violation of this article may file an action in any circuit court of this state against the state entity or financial institution and, if the customer proves that the state entity or financial institution negligently disclosed the customer's financial records or the information contained therein, may recover from the state entity or financial institution an amount equal to the sum of:

(1) Up to $1,000 in civil damages, as penalty, without regard to the volume of records involved or lack of actual damages;

(2) Any actual damages sustained by the customer as a result of the disclosure; and

(3) The costs of the action, including reasonable attorney's fees, as may be allowed by the court.

(c) No financial institution or person shall be held liable, notwithstanding subsection (a) or (b) of this section, for the disclosure of financial records pursuant to a subpoena, summons, warrant, court order or administrative order which on its face appears to have been issued upon lawful authority. No financial institution or agent or employee thereof who discloses financial records pursuant to this article: (i) In good faith reliance upon a certificate by any state entity that this article has been complied with; or (ii) pursuant to the provisions of subdivision (13), subsection (a), section four of this article shall be liable under this article or any other law or rule of this state or any political subdivision hereof.

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§31A-2A-8. Statute of limitations; tolling of statute.

(a) An action to enforce any provision of this article may be brought in any circuit court of competent jurisdiction in this state within three years from the date on which the violation occurs or the date of discovery of such violation, whichever is later.

(b) If any customer files a motion or application under this article which has the effect of delaying the access of a state entity to financial records pertaining to such customer, any applicable statute of limitations shall be tolled for the period extending from the date such motion or application was filed until the date an order is entered pursuant thereto.

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§31A-2A-9. Injunctive relief; recovery of attorney fees.

In addition to any other remedy contained in this article, injunctive relief shall be available to require compliance with any procedure established in this article. Any customer awarded injunctive relief pursuant to this section may recover costs and reasonable attorney's fees as determined by the court.

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§31A-2A-10. Exclusive remedies.

The remedies provided in this article are exclusive for any violations or alleged violations of this article.

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