WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1998

ENROLLED
Committee Substitute for
SENATE BILL NO. 442

(By Senator Ross, et al.)

PASSED March 14, 1998
In Effect 90 Days From Passage
AN ACT to amend chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-a; to amend article four of said chapter by adding thereto a new section, designated section ten-a; and to amend article five, chapter thirty-one-c of said code by adding thereto a new section, designated section eleven, all relating generally to limiting access to certain records of financial institutions; providing for the access of certain
governmental entities to financial records; defining terms; establishing requirements for government access to records; permitting access upon written authorization of a customer; requiring state entity to certify compliance; enumerating exceptions; establishing subpoena and notice requirements; setting forth procedures when subpoena issued by grand jury; providing for civil and criminal liability and penalties; establishing the statute of limitations and the tolling thereof; authorizing injunctive relief; providing for the exclusiveness of remedies; limiting stockholder inspection of books and records of state banking institutions; and limiting the inspection of books and records by credit union members.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article two-a; that article four of said chapter be amended by adding thereto a new section, designated section ten-a; and that article five, chapter thirty-one-c of said code be amended by adding thereto a new section, designated section eleven, all to read as follows:

CHAPTER 31A. BANKS AND BANKING.

ARTICLE 2A. MAXWELL GOVERNMENTAL ACCESS TO FINANCIAL RECORDS ACT.


1 As used in this article:

2 (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;

3 (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;

(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.

§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.

§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.


(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;

(2) The lawful authority or ability of the commissioner of insurance 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 health and human resources, 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 department of health and human resources, 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 article fourteen, chapter forty-seven of this code;

(11) The disclosure of financial records relating to unclaimed property pursuant to article eight, chapter thirty-six 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 section twenty of said article;

(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 utter-
ance 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 agen-
cies 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. The
disclosure of any information pursuant to this subdivision
may only include the name or other identifying informa-
tion concerning any individual, corporation or account
involved in and the nature of any suspected illegal activ-
ity;

(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, per-
flecting 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 agree-
ment, 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;

(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 submit-
134 ted by a financial institution in contravention of section
135 seven of this article.

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

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

12 (b) Any person whose financial records are to be dis-
13 closed pursuant to a subpoena served under the provisions
14 of subdivision (1), subsection (a) of this section may
15 challenge the subpoena by filing a motion to quash in a
16 court of competent jurisdiction at any time prior to the
17 disclosure of the records. After the filing and service of
18 the motion upon the financial institution and the state
19 entity requesting the issuance of the subpoena, the pro-
20 duction of financial records shall be stayed, without
21 liability to the financial institution, until the court holds
22 a hearing on the motion and an order is entered sustain-
23 ing, modifying or quashing the subpoena.


1 (a) In addition to the requirements of section five of this
2 article, financial records obtained pursuant to a subpoena
3 issued under the authority of a grand jury:

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

6 (2) Shall be used only: (A) For the purpose of consider-
7 ing whether to issue an indictment or presentment by that

(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 one thousand dollars.

(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 one thousand dollars 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 subsection (13), 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.


(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.

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.


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

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-10a. Stockholder inspection of books and records.

(a) Any stockholder or group of stockholders of a state banking institution, holding of record the number of voting shares of such bank specified below, upon making written demand stating a proper purpose, shall have the right to examine, in person or by agent or attorney, at any reasonable time or times, nonconfidential portions of its books and records of account, minutes and record of stockholders and to make extracts therefrom. Such right of examination is limited to a stockholder or group of stockholders holding of record:

(1) Voting shares having a cost of not less than one hundred thousand dollars or constituting not less than one percent of the total outstanding voting shares: Provided, That such stockholder or group of stockholders have held of record such voting shares for a period of at least six months before making such written demand; or

(2) Not less than five percent of the total outstanding voting shares.

(b) Except as provided in subsection (a) of this section and in section ten of this article with respect to inspection of a list of stockholders, no stockholder or group of stockholders of a state banking institution shall have any other right under this section or common law to examine
its books and records of account, minutes and record of stockholders.

(c) The right to examination authorized by subsection (a) of this section and any right to inspect the list of stockholders provided by a bank's bylaws to an extent greater than that authorized under section ten of this article may be denied to any stockholder or group of stockholders upon the refusal of any such stockholder or group of stockholders to furnish such institution, its transfer agent or registrar an affidavit that such examination or inspection is not desired for any purpose which is in the interest of a business or object other than the business of the institution, that such stockholder has not within the five years preceding the date of the affidavit sold or offered for sale, and does not now intend to sell or offer for sale, any list of stockholders of the bank or of any other bank or bank holding company, and that such stockholder has not within said five-year period aided or abetted any other person in procuring any list of stockholders for purposes of selling or offering such list for sale.

(d) Notwithstanding any provision of this section or any common law, no stockholder or group of stockholders shall have the right to obtain, inspect or copy any portion of any books or records of a state banking institution containing:

(1) A list of depositors in, borrowers from or customers of such banking institution;

(2) The addresses of the banking institution's depositors, borrowers or customers;

(3) Individual deposit or loan balances or records of the banking institution's depositors, borrowers or customers;

(4) Any data from which such information could be reasonably constructed.
(e) For purposes of this section a confidential record includes, but is not limited to:

(1) Any document or information relating to a nonpublic market strategy or plan of the bank;

(2) Any document or information relating to matters declared confidential under state or federal law, including, but not limited to, bank regulatory reports;

(3) Any document or information relating to a proposed merger, acquisition or sale of assets which has not yet been disclosed to the public by the bank, including any document or information which constitutes inside information for purposes of state or federal securities law; and

(4) Any document or information deemed by the bank as proprietary relating to the loan policy established by the bank.

CHAPTER 31C. CREDIT UNIONS.

ARTICLE 5. DIRECTION OF CREDIT UNION AFFAIRS.

§31C-5-11. Inspection of books and records by members.

(a) Each credit union shall keep at its principal office in this state a record of the names and addresses of its members entitled to vote. A credit union shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors and committees having any of the authority of the board of directors. Any member or group of members of a credit union, upon making a demand stating a proper purpose, shall have the right to examine, in person or by agent or attorney, at any reasonable time or times, nonconfidential portions of its books and records of account, minutes and records of members and to make extracts therefrom.

(b) The right to examination authorized by subsection (a) of this section and any right to inspect the list of members provided by a credit union’s bylaws to an extent
greater than that provided by this section may be denied to any member or group of members upon the refusal of any such member or group of members to furnish the credit union with an affidavit that such examination or inspection is not desired for any purpose which is in the interest of a business or object other than the business of the credit union.

(c) Notwithstanding any provision of this section or common law, no member or group of members shall have the right to obtain, inspect or copy any portion of any books or records of a credit union containing:

(1) Individual deposit or loan balances or records regarding other credit union members or information respecting their personal affairs; or

(2) Any data from which such information could be reasonably constructed.

(d) For purposes of this section, a confidential record includes, but is not limited to, the following:

(1) Any document or information relating to a nonpublic market strategy or plan of the credit union;

(2) Any document or information relating to matters declared confidential under state or federal law, including, but not limited to, credit union regulatory reports; and

(3) Any document or information deemed by the credit union as proprietary relating to the loan policy established by the credit union.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 6th day of 1963.

Governor
PRESENTED TO THE
GOVERNOR
Date  3/31/98
Time  10:45 AM