

# SENATE BILL No. 428

April 26, 2005, Introduced by Senators BERNERO, JACOBS, BASHAM, PRUSI, THOMAS, CHERRY, OLSHOVE, SCOTT, LELAND, EMERSON, SCHAUER, CLARK-COLEMAN, BRATER, BARCIA and CLARKE and referred to the Committee on Banking and Financial Institutions.

A bill to amend 1999 PA 276, entitled  
"Banking code of 1999,"  
(MCL 487.11101 to 487.15105) by adding sections 3914, 3915, and  
3916.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1           SEC. 3914. (1) A BANK SHALL USE REASONABLE CARE TO SECURE  
2   NONPUBLIC PERSONAL FINANCIAL INFORMATION FROM UNAUTHORIZED ACCESS.

3           (2) A BANK SHALL NOT DISCLOSE NONPUBLIC PERSONAL FINANCIAL  
4   INFORMATION TO A PERSON WITHOUT THE PRIOR AND SPECIFIC INFORMED  
5   CONSENT, IN WRITING, OF THE INDIVIDUAL TO WHOM THE NONPUBLIC  
6   PERSONAL FINANCIAL INFORMATION PERTAINS. THIS SUBSECTION DOES NOT  
7   APPLY IF THE DISCLOSURE IS REQUIRED BY LAW.

8           (3) A BANK SHALL DISCLOSE NONPUBLIC PERSONAL FINANCIAL

1 INFORMATION TO WHICH SUBSECTION (2) DOES NOT APPLY ONLY IF THE  
2 PERSON TO WHOM THE DISCLOSURE IS MADE AGREES TO PROTECT AND USE THE  
3 DISCLOSED INFORMATION ONLY IN THE MANNER AUTHORIZED BY THE BANK  
4 UNDER SECTION 3915. THIS SUBSECTION DOES NOT APPLY TO A DISCLOSURE  
5 MADE TO THE COMMISSIONER, ANOTHER GOVERNMENTAL AGENCY OR ENTITY, OR  
6 A COURT.

7 (4) IF AN INDIVIDUAL AUTHORIZES THE RELEASE OF NONPUBLIC  
8 PERSONAL FINANCIAL INFORMATION UNDER SUBSECTION (2) TO A SPECIFIC  
9 PERSON, A BANK SHALL DISCLOSE THE INFORMATION TO THAT PERSON ONLY  
10 IF THE PERSON AGREES NOT TO RELEASE THE INFORMATION TO ANOTHER  
11 PERSON WITHOUT ANOTHER PRIOR AND SPECIFIC INFORMED CONSENT FROM THE  
12 INDIVIDUAL, IN WRITING, AUTHORIZING THE ADDITIONAL RELEASE.

13 (5) THIS SECTION DOES NOT PRECLUDE THE RELEASE OF INFORMATION  
14 PERTAINING TO AN INDIVIDUAL TO THAT INDIVIDUAL BY TELEPHONE IF THE  
15 IDENTITY OF THE INDIVIDUAL IS VERIFIED.

16 (6) AS USED IN THIS SECTION AND SECTION 3915:

17 (A) "NONPUBLIC PERSONAL FINANCIAL INFORMATION" MEANS  
18 PERSONALLY IDENTIFIABLE FINANCIAL INFORMATION AND ANY LIST,  
19 DESCRIPTION, OR OTHER GROUPING OF CONSUMERS AND PUBLICLY AVAILABLE  
20 INFORMATION PERTAINING TO THEM THAT IS DERIVED USING ANY PERSONALLY  
21 IDENTIFIABLE FINANCIAL INFORMATION THAT IS NOT PUBLICLY AVAILABLE.  
22 NONPUBLIC PERSONAL FINANCIAL INFORMATION DOES NOT INCLUDE ANY OF  
23 THE FOLLOWING:

24 (i) FINANCIAL INFORMATION OTHERWISE PROTECTED BY STATE OR  
25 FEDERAL LAW.

26 (ii) PUBLICLY AVAILABLE INFORMATION.

27 (iii) ANY LIST, DESCRIPTION, OR OTHER GROUPING OF CONSUMERS AND

1 PUBLICLY AVAILABLE INFORMATION PERTAINING TO THEM THAT IS DERIVED  
2 WITHOUT USING ANY PERSONALLY IDENTIFIABLE FINANCIAL INFORMATION  
3 THAT IS NOT PUBLICLY AVAILABLE.

4 (B) "PERSONALLY IDENTIFIABLE FINANCIAL INFORMATION" MEANS ANY  
5 OF THE FOLLOWING:

6 (i) INFORMATION A CONSUMER PROVIDES TO A BANK TO OBTAIN A  
7 FINANCIAL PRODUCT OR SERVICE FROM THE BANK.

8 (ii) INFORMATION ABOUT A CONSUMER RESULTING FROM ANY  
9 TRANSACTION INVOLVING A FINANCIAL PRODUCT OR SERVICE BETWEEN A BANK  
10 AND A CONSUMER.

11 (iii) INFORMATION A BANK OTHERWISE OBTAINS ABOUT A CONSUMER IN  
12 CONNECTION WITH PROVIDING A FINANCIAL PRODUCT OR SERVICE TO THAT  
13 CONSUMER.

14 (C) "PUBLICLY AVAILABLE INFORMATION" MEANS ANY INFORMATION  
15 THAT A BANK HAS A REASONABLE BASIS TO BELIEVE IS LAWFULLY MADE  
16 AVAILABLE TO THE GENERAL PUBLIC FROM FEDERAL, STATE, OR LOCAL  
17 GOVERNMENT RECORDS BY WIDE DISTRIBUTION BY THE MEDIA OR BY  
18 DISCLOSURES TO THE GENERAL PUBLIC THAT ARE REQUIRED TO BE MADE BY  
19 FEDERAL, STATE, OR LOCAL LAW. A BANK HAS A REASONABLE BASIS TO  
20 BELIEVE THAT INFORMATION IS LAWFULLY MADE AVAILABLE TO THE GENERAL  
21 PUBLIC IF BOTH OF THE FOLLOWING APPLY:

22 (i) THE BANK HAS TAKEN STEPS TO DETERMINE THAT THE INFORMATION  
23 IS OF THE TYPE THAT IS AVAILABLE TO THE GENERAL PUBLIC.

24 (ii) IF AN INDIVIDUAL CAN DIRECT THAT THE INFORMATION NOT BE  
25 MADE AVAILABLE TO THE GENERAL PUBLIC, THE BANK'S CONSUMER HAS NOT  
26 DIRECTED THAT THE INFORMATION NOT BE MADE AVAILABLE TO THE GENERAL  
27 PUBLIC.

1           SEC. 3915. A BANK SHALL ESTABLISH AND MAKE PUBLIC A POLICY  
2 REGARDING THE PROTECTION OF PRIVACY AND THE CONFIDENTIALITY OF  
3 NONPUBLIC PERSONAL FINANCIAL INFORMATION. THE POLICY SHALL DO AT  
4 LEAST ALL OF THE FOLLOWING:

5           (A) PROVIDE FOR THE BANK'S IMPLEMENTATION OF THE REQUIREMENTS  
6 OF THIS ACT AND OTHER APPLICABLE LAWS RESPECTING COLLECTION,  
7 SECURITY, USE, RELEASE OF, AND ACCESS TO NONPUBLIC PERSONAL  
8 FINANCIAL INFORMATION.

9           (B) IDENTIFY THE ROUTINE USES OF NONPUBLIC PERSONAL FINANCIAL  
10 INFORMATION BY THE BANK; PRESCRIBE THE MEANS BY WHICH INDIVIDUALS  
11 WILL BE NOTIFIED REGARDING THOSE USES; AND PROVIDE FOR NOTIFICATION  
12 REGARDING THE ACTUAL RELEASE OF NONPUBLIC PERSONAL FINANCIAL  
13 INFORMATION THAT MAY BE IDENTIFIED WITH, OR THAT MAY CONCERN, AN  
14 INDIVIDUAL, UPON SPECIFIC REQUEST BY THAT INDIVIDUAL. AS USED IN  
15 THIS SUBDIVISION, "ROUTINE USE" MEANS THE ORDINARY USE OR RELEASE  
16 OF NONPUBLIC PERSONAL FINANCIAL INFORMATION COMPATIBLE WITH THE  
17 PURPOSE FOR WHICH THE INFORMATION WAS COLLECTED.

18           (C) ASSURE THAT NO PERSON HAS ACCESS TO NONPUBLIC PERSONAL  
19 FINANCIAL INFORMATION EXCEPT ON THE BASIS OF A NEED TO KNOW.

20           (D) ESTABLISH THE CONTRACTUAL OR OTHER CONDITIONS UNDER WHICH  
21 THE BANK MAY RELEASE NONPUBLIC PERSONAL FINANCIAL INFORMATION.

22           (E) PROVIDE THAT ENROLLMENT APPLICATIONS AND CLAIM FORMS  
23 DEVELOPED BY THE BANK SHALL CONTAIN AN INDIVIDUAL'S CONSENT TO THE  
24 RELEASE OF DATA AND INFORMATION THAT IS LIMITED TO THE DATA AND  
25 INFORMATION NECESSARY FOR THE PROPER REVIEW AND PAYMENT OF CLAIMS,  
26 AND SHALL REASONABLY NOTIFY INDIVIDUALS OF THEIR RIGHTS UNDER THE  
27 BANK'S POLICY AND APPLICABLE LAW.

1           SEC. 3916. SECTIONS 3914 AND 3915 DO NOT LIMIT ACCESS TO  
2 RECORDS OR ENLARGE OR DIMINISH THE INVESTIGATIVE AND EXAMINATION  
3 POWERS OF GOVERNMENTAL AGENCIES AS PROVIDED FOR BY LAW.