

## **Chapter 53B.**

### **Financial Privacy Act.**

#### **§ 53B-1. Short title.**

This act may be cited as the North Carolina Financial Privacy Act. (1985 (Reg. Sess., 1986), c. 1002, s. 1.)

#### **§ 53B-2. Definitions.**

As used in this Chapter, unless the context otherwise requires, the term:

- (1) "Customer" means a person who has transacted business with a financial institution or has used the services offered by a financial institution.
- (2) "Financial institution" means a banking corporation, trust company, savings and loan association, credit union, or other entity principally engaged in the business of lending money or receiving or soliciting money on deposit.
- (3) "Financial record" means an original of, a copy of, or information derived from, a record held by a financial institution pertaining to a customer's relationship with the financial institution and identified with or identifiable with the customer. Financial record shall not include forged or counterfeit financial instruments or records relating to an account established under a fictitious name or another person's name without proper authorization.
- (4) "Government authority" means an agency or department of the State or of any of its political subdivisions, including any officer, employee, or agent thereof.
- (5) "Government inquiry" means a lawful investigation by a government agency or official proceeding inquiring into a violation of, or failure to comply with, any criminal or civil statute, law, or rule.
- (6) "Supervisory agency" means a State agency or department having the statutory authority to examine the financial condition or business operation of a financial institution. (1985 (Reg. Sess., 1986), c. 1002, s. 1; 2006-259, s. 14(a).)

#### **§ 53B-3. Public policy.**

It is the policy of this State that financial records should be treated as confidential and that no financial institution may provide to any government authority and no government authority may have access to any financial records except in accordance with the provisions of this Chapter. (1985 (Reg. Sess., 1986), c. 1002, s. 1.)

#### **§ 53B-4. Access to financial records.**

Notwithstanding any other provision of law, no government authority may have access to a customer's financial record held by a financial institution unless the financial record is described with reasonable specificity and access is sought pursuant to any of the following:

- (1) Customer authorization that meets the requirements of the Right to Financial Privacy Act § 1104, 12 U.S.C. § 3404, provided, however, a customer authorization received by a State agency or a county department of social services for the purpose of determining eligibility for the programs of public assistance under Chapter 108A of the General Statutes, or for purposes of a government inquiry concerning these same programs of public assistance, cannot be revoked and shall remain valid for 12 months unless a shorter period is specified in the authorization, or a customer authorization that is given by a

- licensed attorney with respect to an account in which the attorney holds funds as a fiduciary.
- (2) Authorization under G.S. 105-242 or G.S. 105-258.
  - (3) Search warrant as provided in Article 11 of Chapter 15A of the General Statutes.
  - (4) Statutory authority of a supervisory agency to examine or have access to financial records in the exercise of its supervisory, regulatory, or monetary functions with respect to a financial institution.
  - (5) The authority granted under G.S. 116B-72 and G.S. 116B-75.
  - (6) Examination and review by the State Auditor or his authorized representative under G.S. 147-64.6(c)(9) or G.S. 147-64.7(a).
  - (7) Request by a government authority authorized to buy and sell student loan notes under Article 23 of Chapter 116 of the General Statutes for financial records relating to insured student loans.
  - (8) Pending litigation to which the government authority and the customer are parties.
  - (9) Subpoena or court order in connection with a grand jury proceeding.
  - (10) A writ of execution under Article 28 of Chapter 1 of the General Statutes.
  - (11) Other court order or administrative or judicial subpoena authorized by law if the requirements of G.S. 53B-5 are met.
  - (12) The authority granted to the Attorney General under Chapter 75 of the General Statutes.
  - (13) A subpoena delivered to the financial institution pursuant to G.S. 108A-116 by (i) a county department of social services director investigating a credible report of financial exploitation of a disabled adult or (ii) a law enforcement agency investigating a credible report of financial exploitation of a disabled adult or older adult.

As used in this section, the term "reasonable specificity" means that degree of specificity reasonable under all the circumstances, and, with respect to requests under G.S. 116B-72 and G.S. 116B-75, may include designation by general type or class. (1985 (Reg. Sess., 1986), c. 1002, s. 1; 1999-460, s. 11; 2006-259, s. 14(b); 2007-527, s. 1; 2010-31, s. 31.8(j); 2013-337, s. 2(a).)

**§ 53B-5. Service on customer certification.**

A government authority may have access to a customer's financial record pursuant to G.S. 53B-4(11) only if:

- (1) The court order or subpoena describes with reasonable specificity the financial record to which access is sought;
- (2) A copy of the court order or subpoena has been served on the customer pursuant to G.S. 1A-1, Rule 4 (j) of the N.C. Rules of Civil Procedure or by certified mail to the customer's last known address and the court order or subpoena states the name of the government authority seeking access to the financial record and the purpose for which access is sought;
- (3) The following notice has been served on the customer pursuant to G.S. 1A-1, Rule 4 (j) of the N.C. Rules of Civil Procedure or by certified mail to the customer's last known address together with the court order or subpoena:

"Records or information held by the financial institution named in the attached process are being sought by government authority in accordance with the North Carolina Financial Privacy Act. You may have rights under the act to challenge access to the records or information. You must, however, act within 10 days from the date this notice was served on you to make a challenge in court or the records or information will be made available. You may wish to employ an attorney to represent you and protect your rights.";

- (4) The customer has not challenged the court order or subpoena within 10 days after service by certified mail which is presumed to be received three days from mailing;
- (5) The government authority has certified in writing to the financial institution that it has complied with the applicable provisions of this Chapter. (1985 (Reg. Sess., 1986), c. 1002, s. 1; 1995, c. 222, s. 1.)

#### **§ 53B-6. Delayed notice.**

Upon application of a government authority, a superior court judge may order that the customer notice required by G.S. 53B-5 be delayed if the court finds there is reason to believe that:

- (1) The financial record to which access is sought is relevant to a legitimate government inquiry; and
- (2) Notice to the customer will:
  - a. Endanger life or physical safety of any person;
  - b. Result in flight from prosecution;
  - c. Lead to intimidation of a witness;
  - d. Result in destruction of or tampering with evidence; or
  - e. Otherwise seriously jeopardize the government inquiry or an official proceeding or investigation.

A court order granting delay of notice to a customer under this section shall set out the specific facts supporting its findings, specify the period of delay, and direct that the government authority shall serve on the customer at the end of that period a copy of the court order or subpoena and a notice that the records have been furnished. (1985 (Reg. Sess., 1986), c. 1002, s. 1.)

#### **§ 53B-7. Customer challenge.**

(a) Within 10 days after service of a court order or subpoena under this Chapter a customer may apply to the superior court of the county in which he resides for an order quashing or modifying the court order or subpoena. The customer shall deliver or mail a copy of the application to the government authority and the financial institution named in the court order or subpoena. The superior court shall grant or deny the application within 10 days after it is filed.

(b) Nothing in this Chapter affects the right of a financial institution to challenge a request for financial records by a government authority under existing law. (1985 (Reg. Sess., 1986), c. 1002, s. 1.)

#### **§ 53B-8. Disclosure of financial records.**

No financial institution or its officer, employee, or agent may disclose a customer's financial record to a government authority except as provided in this Chapter. This section does not prohibit a financial institution from giving notice of or disclosing a financial record to a government authority, as defined in G.S. 53B-2(4), to the same extent as is authorized with respect to federal

government authorities in the Right to Financial Privacy Act § 1103(d), 12 U.S.C. § 3403(d). Nothing in this section shall prohibit a financial institution or its officer, employee or agent from disclosing, or require the disclosure of, the name, address, and existence of an account of any customer to a government authority that makes a written request stating the reason for the request. Nothing in this Chapter shall prohibit a financial institution or its officer, employee, or agent from notifying a government authority that the financial institution or its officer, employee, or agent has information that may be relevant to a possible violation of law or regulation. The information shall be limited to a description of the suspected illegal activity and the name or other identifying information concerning any individual, corporation, or account involved in the activity. Any financial institution or its officer, employee, or agent making a disclosure of information pursuant to this section shall not be liable to the customer under the laws and rules of the State of North Carolina or any political subdivision of the State for disclosure or for failure to notify the customer of the disclosure. (1985 (Reg. Sess., 1986), c. 1002, s. 1; 1995, c. 222, s. 2; 1998-119, s. 3.)

**§ 53B-9. Duty of financial institutions; fee; limitation of liability.**

(a) Upon service of a subpoena or court order pursuant to G.S. 53B-4(1), (3), (9), or (11) and receipt of certification pursuant to G.S. 53B-5(5), or upon receipt of a subpoena pursuant to G.S. 53B-4(13), a financial institution shall locate the financial records requested and prepare to make them available to the government authority seeking access to them. Upon receipt of notice that a customer has challenged the court order or subpoena, the financial institution may suspend its efforts to make the records available until after final disposition of the challenge.

(b) Upon receipt of access to financial records pursuant to G.S. 53B-4(1), (3), (9), (11), or (13), a government authority shall pay the financial institution that provided the financial records a fee for costs directly incurred in assembling and delivering the financial records. The fee shall be at the rate established pursuant to the Right to Financial Privacy Act § 1115(a), 12 U.S.C. § 3415, and 12 C.F.R. 219, unless waived, in whole or in part, by the financial institution.

(c) A financial institution that discloses a financial record pursuant to this Chapter in good faith reliance upon certification by a government authority pursuant to G.S. 53B-5(5) is not liable for damages resulting from the disclosure. (1985 (Reg. Sess., 1986), c. 1002, s. 1; 2013-337, s. 2(b).)

**§ 53B-10. Penalty.**

(a) Any financial institution disclosing financial records or information contained therein in violation of this Chapter shall be liable to the customer to whom the records relate in an amount equal to the sum of:

- (1) One thousand dollars (\$1,000);
- (2) Any actual damages sustained by the customer as a result of the disclosure; and
- (3) Such punitive damages as the court may allow, where the violation is found to have been willful or intentional.

(b) Any government authority that participates in or induces or solicits a violation of this Chapter shall be liable to the customer to whom the violation relates in the amount set out in subsection (a) above. It shall be a defense to an action under this subsection that the government authority acted in good faith in obtaining and relying upon process issued pursuant to G.S. 53B-4. (1985 (Reg. Sess., 1986), c. 1002, s. 1.)