

HOUSE BILL No. 5414

September 17, 2009, Introduced by Reps. DeShazor, Tlaib, Opsommer, Kurtz, Rocca, Moore, Robert Jones, Geiss, Roberts, Kennedy, Nathan and Jackson and referred to the Committee on Banking and Financial Services.

A bill to amend 1980 PA 307, entitled
"Savings and loan act of 1980,"
(MCL 491.102 to 491.1202) by adding sections 1136, 1137, and 1138.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 1136. (1) AN ASSOCIATION SHALL USE REASONABLE CARE TO
2 SECURE NONPUBLIC PERSONAL FINANCIAL INFORMATION FROM UNAUTHORIZED
3 ACCESS.

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

9 (3) AN ASSOCIATION SHALL DISCLOSE NONPUBLIC PERSONAL FINANCIAL
10 INFORMATION TO WHICH SUBSECTION (2) DOES NOT APPLY ONLY IF THE

1 PERSON TO WHOM THE DISCLOSURE IS MADE AGREES TO PROTECT AND USE THE
2 DISCLOSED INFORMATION ONLY IN THE MANNER AUTHORIZED BY THE
3 ASSOCIATION UNDER SECTION 1137. THIS SUBSECTION DOES NOT APPLY TO A
4 DISCLOSURE MADE TO THE SUPERVISOR, ANOTHER GOVERNMENTAL AGENCY OR
5 ENTITY, OR A COURT.

6 (4) IF AN INDIVIDUAL AUTHORIZES THE RELEASE OF NONPUBLIC
7 PERSONAL FINANCIAL INFORMATION UNDER SUBSECTION (2) TO A SPECIFIC
8 PERSON, AN ASSOCIATION SHALL DISCLOSE THE INFORMATION TO THAT
9 PERSON ONLY IF THE PERSON AGREES NOT TO RELEASE THE INFORMATION TO
10 ANOTHER PERSON WITHOUT ANOTHER PRIOR AND SPECIFIC INFORMED CONSENT
11 FROM THE INDIVIDUAL, IN WRITING, AUTHORIZING THE ADDITIONAL
12 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) AN ASSOCIATION SHALL NOT REFUSE TO EXTEND OR CONTINUE
17 CREDIT TO, REFUSE TO OPEN OR CONTINUE AN ACCOUNT FOR, DENY
18 MEMBERSHIP TO OR TERMINATE THE MEMBERSHIP OF, REFUSE TO PROVIDE ANY
19 BENEFITS OF MEMBERSHIP TO, OR OTHERWISE UNFAIRLY RETALIATE OR
20 DISCRIMINATE AGAINST AN INDIVIDUAL BECAUSE THAT INDIVIDUAL REFUSES
21 OR FAILS TO CONSENT TO DISCLOSURE OF HIS OR HER NONPUBLIC PERSONAL
22 FINANCIAL INFORMATION UNDER SUBSECTION (2).

23 (7) AS USED IN THIS SECTION AND SECTION 1137:

24 (A) "NONPUBLIC PERSONAL FINANCIAL INFORMATION" MEANS
25 PERSONALLY IDENTIFIABLE FINANCIAL INFORMATION AND ANY LIST,
26 DESCRIPTION, OR OTHER GROUPING OF CONSUMERS AND PUBLICLY AVAILABLE
27 INFORMATION PERTAINING TO THEM THAT IS DERIVED USING ANY PERSONALLY

1 IDENTIFIABLE FINANCIAL INFORMATION THAT IS NOT PUBLICLY AVAILABLE.
2 NONPUBLIC PERSONAL FINANCIAL INFORMATION DOES NOT INCLUDE ANY OF
3 THE FOLLOWING:

4 (i) FINANCIAL INFORMATION OTHERWISE PROTECTED BY STATE OR
5 FEDERAL LAW.

6 (ii) PUBLICLY AVAILABLE INFORMATION.

7 (iii) ANY LIST, DESCRIPTION, OR OTHER GROUPING OF CONSUMERS AND
8 PUBLICLY AVAILABLE INFORMATION PERTAINING TO THEM THAT IS DERIVED
9 WITHOUT USING ANY PERSONALLY IDENTIFIABLE FINANCIAL INFORMATION
10 THAT IS NOT PUBLICLY AVAILABLE.

11 (B) "PERSONALLY IDENTIFIABLE FINANCIAL INFORMATION" MEANS ANY
12 OF THE FOLLOWING:

13 (i) INFORMATION A CONSUMER PROVIDES TO AN ASSOCIATION TO OBTAIN
14 A FINANCIAL PRODUCT OR SERVICE FROM THE ASSOCIATION.

15 (ii) INFORMATION ABOUT A CONSUMER RESULTING FROM ANY
16 TRANSACTION INVOLVING A FINANCIAL PRODUCT OR SERVICE BETWEEN AN
17 ASSOCIATION AND A CONSUMER.

18 (iii) INFORMATION AN ASSOCIATION OTHERWISE OBTAINS ABOUT A
19 CONSUMER IN CONNECTION WITH PROVIDING A FINANCIAL PRODUCT OR
20 SERVICE TO THAT CONSUMER.

21 (C) "PUBLICLY AVAILABLE INFORMATION" MEANS ANY INFORMATION
22 THAT AN ASSOCIATION HAS A REASONABLE BASIS TO BELIEVE IS LAWFULLY
23 MADE AVAILABLE TO THE GENERAL PUBLIC FROM FEDERAL, STATE, OR LOCAL
24 GOVERNMENT RECORDS BY WIDE DISTRIBUTION BY THE MEDIA OR BY
25 DISCLOSURES TO THE GENERAL PUBLIC THAT ARE REQUIRED TO BE MADE BY
26 FEDERAL, STATE, OR LOCAL LAW. AN ASSOCIATION HAS A REASONABLE BASIS
27 TO BELIEVE THAT INFORMATION IS LAWFULLY MADE AVAILABLE TO THE

1 GENERAL PUBLIC IF BOTH OF THE FOLLOWING APPLY:

2 (i) THE ASSOCIATION HAS TAKEN STEPS TO DETERMINE THAT THE
3 INFORMATION IS OF THE TYPE THAT IS AVAILABLE TO THE GENERAL PUBLIC.

4 (ii) IF AN INDIVIDUAL CAN DIRECT THAT THE INFORMATION NOT BE
5 MADE AVAILABLE TO THE GENERAL PUBLIC, THAT THE ASSOCIATION'S
6 CONSUMER HAS NOT DIRECTED THAT THE INFORMATION NOT BE MADE
7 AVAILABLE TO THE GENERAL PUBLIC.

8 SEC. 1137. AN ASSOCIATION SHALL ESTABLISH AND MAKE PUBLIC A
9 POLICY REGARDING THE PROTECTION OF PRIVACY AND THE CONFIDENTIALITY
10 OF NONPUBLIC PERSONAL FINANCIAL INFORMATION. THE POLICY SHALL DO AT
11 LEAST ALL OF THE FOLLOWING:

12 (A) PROVIDE FOR THE ASSOCIATION'S IMPLEMENTATION OF THE
13 REQUIREMENTS OF THIS ACT AND OTHER APPLICABLE LAWS RESPECTING
14 COLLECTION, SECURITY, USE, RELEASE OF, AND ACCESS TO NONPUBLIC
15 PERSONAL FINANCIAL INFORMATION.

16 (B) IDENTIFY THE ROUTINE USES OF NONPUBLIC PERSONAL FINANCIAL
17 INFORMATION BY THE ASSOCIATION; PRESCRIBE THE MEANS BY WHICH
18 INDIVIDUALS WILL BE NOTIFIED REGARDING THOSE USES; AND PROVIDE FOR
19 NOTIFICATION REGARDING THE ACTUAL RELEASE OF NONPUBLIC PERSONAL
20 FINANCIAL INFORMATION THAT MAY BE IDENTIFIED WITH, OR THAT MAY
21 CONCERN, AN INDIVIDUAL, UPON SPECIFIC REQUEST BY THAT INDIVIDUAL.
22 AS USED IN THIS SUBDIVISION, "ROUTINE USE" MEANS THE ORDINARY USE
23 OR RELEASE OF NONPUBLIC PERSONAL FINANCIAL INFORMATION COMPATIBLE
24 WITH THE PURPOSE FOR WHICH THE INFORMATION WAS COLLECTED.

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

27 (D) ESTABLISH THE CONTRACTUAL OR OTHER CONDITIONS UNDER WHICH

1 THE ASSOCIATION MAY RELEASE NONPUBLIC PERSONAL FINANCIAL
2 INFORMATION.

3 (E) PROVIDE THAT ENROLLMENT APPLICATIONS AND CLAIM FORMS
4 DEVELOPED BY THE ASSOCIATION SHALL CONTAIN AN INDIVIDUAL'S CONSENT
5 TO THE RELEASE OF DATA AND INFORMATION THAT IS LIMITED TO THE DATA
6 AND INFORMATION NECESSARY FOR THE PROPER REVIEW AND PAYMENT OF
7 CLAIMS, AND SHALL REASONABLY NOTIFY INDIVIDUALS OF THEIR RIGHTS
8 UNDER THE ASSOCIATION'S POLICY AND APPLICABLE LAW.

9 SEC. 1138. SECTIONS 1136 AND 1137 DO NOT LIMIT ACCESS TO
10 RECORDS OR ENLARGE OR DIMINISH THE INVESTIGATIVE AND EXAMINATION
11 POWERS OF GOVERNMENTAL AGENCIES AS PROVIDED FOR BY LAW.