

ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE BILL NO. 2362

By: Morgan and Weaver

An Act relating to financial privacy; amending 6 O.S. 1991, Sections 2201, 2204, 2205 and 2206, which relate to the Financial Privacy Act; modifying short title; providing exceptions to certain notice and challenge procedures; modifying statutory references; providing circumstances under which a court may order a financial institution not to notify a customer; identifying fees deemed reasonable; providing procedures relating to search warrants; requiring certification of compliance by government authorities; providing immunity from liability for certain disclosures; providing for codification; and providing an effective date.

AUTHOR: Add the following Senate Author: Henry (principal)

AMENDMENT NO. 1. Page 1, line 5, strike the title, enacting clause and entire bill and insert

"An Act relating to financial privacy and grand juries; amending 6 O.S. 1991, Sections 2201, 2204, 2205 and 2206, which relate to the Financial Privacy Act; modifying short title; providing exceptions to certain notice and challenge procedures; modifying statutory references; providing circumstances under which a court may order a financial institution not to notify a customer; identifying fees deemed reasonable; providing procedures relating to search warrants; requiring certification of compliance by government authorities; providing immunity from liability for certain disclosures; clarifying who may issue certain subpoenas; requiring subpoena to specify evidence sought; clarifying methods for issuance, enforcement, and challenge of certain subpoenas; requiring certain notices; providing exceptions to certain notice and challenge procedures;

providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 6 O.S. 1991, Section 2201, is amended to read as follows:

Section 2201. ~~This~~ Sections 2201 through 2206 of this title and Sections 5 and 6 of this act shall be known and may be cited as the "Financial Privacy Act". Its purpose is to maintain the privacy and confidentiality of the records of customers of financial institutions.

SECTION 2. AMENDATORY 6 O.S. 1991, Section 2204, is amended to read as follows:

Section 2204. ~~(a)~~ A. A court of competent jurisdiction, state agency or legislative committee may issue a subpoena for a customer's financial record only if such subpoena is authorized by law. Said subpoena shall specify what financial record is sought. A subpoena issued by a state agency or legislative committee shall be enforced pursuant to Section 315 of Title 75 of the Oklahoma Statutes.

~~(b)~~ B. A copy of the subpoena shall be served on the customer or mailed to his last-known address on or before the date the subpoena is served on the financial institution.

~~(c)~~ C. The customer shall have fourteen (14) days after the subpoena was served or mailed in which to file a motion to quash the subpoena on the following grounds:

~~(i) that~~ 1. That the financial record sought is incompetent, irrelevant or immaterial for the purpose or purposes for which it is sought;

~~(ii) that~~ 2. That the release of the financial record would cause an unreasonable burden or hardship under the circumstances;

~~(iii) that~~ 3. That the government authority seeking said financial record is attempting to harass the customer; or

~~(iv) that~~ 4. That there is no merit in the purpose or purposes for which said financial record is sought.

If the subpoena was issued by the district court, the motion to quash the subpoena shall be filed in the district court that issued the subpoena. If the subpoena was issued by a state agency or a legislative committee, the motion to quash the subpoena shall be filed with the state agency or legislative committee that issued the subpoena.

~~(d)~~ D. A copy of the motion to quash filed by the customer shall be served by personal service or by mail on:

~~(i) a~~ 1. A chairman, presiding officer, or any member of the governing body of the government authority seeking the records; and

~~(ii) any~~ 2. Any officer of the financial institution which has been served the subpoena,
at least ten (10) days before any hearing on the motion to quash.

~~(e)~~ E. Failure of the customer to file a motion to quash in the time provided for in subsection ~~(e)~~ C shall constitute a waiver of his right to object to the release or disclosure of the financial record sought by the government authority.

~~(f)~~ F. During the period for filing the motion to quash and continuing until a ruling is made on such motion, if one is filed the financial institution shall make available to its customer a copy of the records sought and shall preserve the original records without alteration.

G. The notice and challenge procedures provided for in this section shall not apply when the financial records of the customer:

1. Are sought pursuant to a subpoena in connection with litigation to which the customer is a party, including, but not limited to, litigation between a government authority and the customer; or

2. Are sought pursuant to an administrative subpoena in an adjudicatory proceeding in which the customer is a party.

SECTION 3. AMENDATORY 6 O.S. 1991, Section 2205, is amended to read as follows:

Section 2205. ~~(a)~~ A. Nothing in ~~Sections 2201 through 2206 of this title~~ the Financial Privacy Act shall prohibit the disclosure or release of any financial record or information to any supervisory agency in the exercise of its supervisory or regulatory functions with respect to a financial institution.

~~(b)~~ B. Nothing in ~~Sections 2201 through 2206 of this title~~ the Financial Privacy Act prohibits a financial institution from disclosing or releasing any financial record or information to another financial institution for the usual and regular business purposes of the latter or from providing copies of any financial record to any court or government authority as an incident to perfecting a security interest, proving a claim in bankruptcy or otherwise collecting on a debt either owed the financial institution itself or owed the financial institution in its role as a fiduciary.

~~(c)~~ C. Nothing in ~~Sections 2201 through 2206 of this title~~ the Financial Privacy Act prohibits a financial institution from notifying a government authority that such institution or an officer, employee or agent of such institution has information that may be relevant to a possible violation of any statute or regulation.

~~(d)~~ D. Sections 2201 through ~~2205~~ 2204 of this title shall not apply to any court order or subpoena issued in connection with proceedings before a multicounty grand jury, except that a court shall have authority to order a financial institution, on which a multicounty grand jury subpoena for customer records has been served, not to notify the customer of the existence of the subpoena or information that has been furnished to the multicounty grand

jury. The court may order that the customer not be notified only if after a hearing it finds:

1. That the records are relevant to a legitimate law enforcement inquiry; and

2. There is reason to believe that the notice will result in:

a. endangering the life or physical safety of any person,

b. flight from prosecution,

c. destruction of or tampering with evidence,

d. intimidation of potential witnesses, or

e. otherwise seriously jeopardizing an investigation or official proceeding or unduly delaying a trial or unduly delaying an ongoing official proceeding.

SECTION 4. AMENDATORY 6 O.S. 1991, Section 2206, is amended to read as follows:

Section 2206. A. A government authority shall pay to the financial institution assembling, reproducing or providing any financial record of a customer a reasonable fee for such costs, including copying costs and labor costs. Said costs are to be paid prior to the time the record is released.

B. For purposes of this section, the following fees shall be deemed reasonable:

1. Search and processing costs. Reimbursement for search and processing costs shall be the total amount of direct personnel time incurred in locating and retrieving, reproducing, packaging and preparing financial records for shipment or delivery. The rate for search and processing costs shall be Ten Dollars (\$10.00) per hour per person, computed on the basis of Two Dollars and fifty cents (\$2.50) per quarter hour or fraction thereof, and shall be limited to the total amount of personnel time spent in locating and retrieving documents or information or reproducing or packaging and preparing documents for shipment where required or requested by a government authority. If itemized separately, search and processing

costs may include the actual cost of extracting information stored by computer in the format in which it is normally produced, based on computer time and necessary supplies. Personnel time for computer search may be paid for only at the rate specified in this paragraph;

2. Reproduction costs. Reimbursement for reproduction costs shall be for costs incurred in making copies of documents required or requested. The rate for reproduction costs for making copies of required or requested documents shall be fifteen cents (\$0.15) for each page, including copies produced by reader/printer reproduction processes. Photographs, films and other materials shall be reimbursed at actual cost;

3. Transportation costs. Reimbursement for transportation costs shall be for necessary costs, directly incurred, to transport personnel to locate and retrieve the information required or requested, and necessary costs, directly incurred solely by the need to convey the required or requested material to the place of examination; and

4. Directly incurred costs. A financial institution also may receive reimbursement for costs incurred solely and necessarily as a consequence of searching for, reproducing or transporting books, papers, records, or other data, in order to comply with legal process. If a financial institution has records that are stored at an independent storage facility that charges a fee to search for, reproduce, or transport particular records requested, these costs shall be considered to be directly incurred by the financial institution.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2207 of Title 6, unless there is created a duplication in numbering, reads as follows:

A. A government authority may obtain financial records for use in a criminal investigation or proceeding through use of a search warrant obtained pursuant to a hearing wherein the court finds that

the records are relevant to a legitimate law enforcement inquiry and delayed notice is appropriate as prescribed in paragraph 2 of subsection D of Section 2205 of Title 6 of the Oklahoma Statutes.

B. No later than ninety (90) days after the government authority serves the search warrant upon the financial institution, it shall mail to the last-known address of the customer a copy of the search warrant together with a notice that the records were obtained on a certain date.

C. Search warrants served upon a financial institution may be served only upon the person in charge, as designated by the institution, and only during normal business hours.

D. The financial institution shall be given a reasonable time, not to exceed ten (10) calendar days, to search the records and produce and deliver the requested information.

E. If the financial institution is uncertain whether the financial records requested are those of its customer, the financial institution shall deliver the records for in-camera inspection by the court.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2208 of Title 6, unless there is created a duplication in numbering, reads as follows:

A. A financial institution shall not release the records of a customer until the government authority seeking the records certifies in writing that it has complied with the applicable provisions of the Financial Privacy Act.

B. Any financial institution or employee thereof that discloses the financial records of a customer pursuant to the Financial Privacy Act in good faith reliance upon a certificate of the government authority shall not be liable to the customer for the disclosure.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 331.1 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. Except as provided by Section 335 of Title 22 of the Oklahoma Statutes, a grand jury or multicounty grand jury or a district attorney or the Attorney General on behalf of a grand jury or multicounty grand jury may issue a subpoena duces tecum only in a manner authorized by this act.

B. A subpoena shall specify what record or document is sought.

C. A copy of the subpoena shall be served on the person to whom the record or document belongs and to the person about whom the record or document relates.

D. 1. The person served pursuant to subsection C of this section shall have fourteen (14) days after the subpoena was served by personal service or by certified mail, return receipt requested, in which to file a motion to quash the subpoena on any of the following grounds:

- a. that the record or document sought is incompetent, irrelevant, or immaterial for the purpose or purposes for which it is sought,
- b. that the release of the record or document would cause an unreasonable burden or hardship under the circumstances,
- c. that the grand jury or multicounty grand jury seeking the record or document is attempting to harass the person served, or
- d. that there is no merit in the purpose or purposes for which the record or document is sought.

2. A motion to quash a subpoena issued by a grand jury or multicounty grand jury or a district attorney or the Attorney General on behalf of a grand jury or multicounty grand jury shall be filed in the district court.

E. A copy of a motion to quash filed pursuant to subsection D of this section shall, at least ten (10) days before any hearing on the motion to quash, be served by personal service or by certified mail, return receipt requested, on the district attorney or Attorney General advising the grand jury or multicounty grand jury which issued or requested issuance of the subpoena.

F. Failure to file a motion to quash in the time specified in subsection D of this section shall constitute a waiver of the right to object to the release, disclosure, or production of the record or document sought by the grand jury or multicounty grand jury.

G. During the period for filing the motion to quash and continuing until a ruling is made on the motion, if one is filed, the person in possession of the record or document sought shall preserve the original record or document without alteration.

H. Upon proper application, a district court may order that a person not be notified of the issuance and service of a subpoena only if after a hearing which may be closed it finds:

1. That the records are relevant to a legitimate law enforcement inquiry; and

2. There is reason to believe that notice will result in:

- a. endangering the life or physical safety of any person,
- b. flight from prosecution,
- c. destruction of or tampering with evidence,
- d. intimidation of potential witnesses, or
- e. otherwise seriously jeopardizing an investigation or official proceeding or unduly delaying a trial or unduly delaying an ongoing official proceeding.

SECTION 8. This act shall become effective November 1, 1996."

Passed the Senate the 2nd day of April, 1996.

President of the Senate

Passed the House of Representatives the ____ day of
_____, 1996.

Speaker of the House of
Representatives