

**FINANCIAL RECORDS PRIVACY**

1998 GENERAL SESSION

STATE OF UTAH

**Sponsor: John W. Hickman**

AN ACT RELATING TO THE JUDICIAL CODE; AMENDING PROVISIONS RELATED TO A GOVERNMENTAL ENTITY OBTAINING FINANCIAL INFORMATION; DEFINING TERMS; ADDRESSING LIABILITIES OF FINANCIAL INSTITUTIONS; AND MAKING TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**78-27-45**, as last amended by Chapter 241, Laws of Utah 1989

**78-27-46**, as enacted by Chapter 143, Laws of Utah 1977

**78-27-47**, as enacted by Chapter 143, Laws of Utah 1977

**78-27-48**, as enacted by Chapter 143, Laws of Utah 1977

**78-27-50**, as last amended by Chapter 316, Laws of Utah 1994

ENACTS:

**78-27-50.5**, Utah Code Annotated 1953

*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **78-27-45** is amended to read:

**78-27-45. Financial information privacy -- Written consent or court order for disclosure by financial institution -- Exception.**

(1) As used in Sections 78-27-45 through 78-27-50:

(a) "governmental entity" means:

(i) the state, including all departments, institutions, boards, divisions, bureaus, offices, commissions, committees, and elected officials; and

(ii) any political subdivision of the state, including any county, city, town, school district, public transit district, redevelopment agency, special improvement, or taxing district;

1           **(b) "nonprotected record" means a record maintained by the financial institution to**  
2 **facilitate the conduct of its business regarding a person or account, including:**

3           **(i) the existence of an account and the account number; and**

4           **(ii) the opening and closing dates of an account;**

5           **(c) "protected record" means a record not defined as a nonprotected record; and**

6           **(d) "record" means information that is:**

7           **(i) prepared, owned, received, or retained by a financial institution;**

8           **(ii) (A) inscribed on a tangible medium; or**

9           **(B) stored in an electronic or other medium; and**

10           **(iii) retrievable in perceivable form.**

11           ~~[(1) A person]~~ **(2) Except as provided in Section 78-27-50, an individual acting in behalf**  
12 **of [the state, or any agency, office, department, bureau, or political subdivision of the state] a**  
13 **governmental entity may not request or obtain by subpoena or otherwise information from a state**  
14 **or federally chartered financial institution [regarding the financial transactions or other records]**  
15 **that constitutes a record reflecting the financial condition of any person without first obtaining:**

16           **(a) written permission from the person [whose financial transactions or other records of**  
17 **financial condition are] named or referenced within the record to be examined[-]; or [obtaining]**

18           **(b) an order from a court of competent jurisdiction permitting access to the [information]**  
19 **record.**

20           ~~[(2)]~~ **(3) This section does not apply to:**

21           **(a) reviews made by the commissioner of financial institutions to determine whether a**  
22 **financial institution is operating in accordance with law; or**

23           **(b) reports filed as required by Section 76-10-1906.**

24           ~~[(3) As used in this section, "person" includes an individual, corporation, partnership, or~~  
25 ~~association.]~~

26           Section 2. Section **78-27-46** is amended to read:

27           **78-27-46. Financial information privacy -- Notice to person about whom information**  
28 **sought.**

29           (1) ~~[In the event]~~ **(a) If a court order is obtained pursuant to Section 78-27-45, the**  
30 **governmental entity that obtained the order shall give notice [thereof shall be given] to the person**  
31 **about whom information is sought within three days of the day on which service of the order is**

1 made upon the financial institution, but no later than seven days before the day fixed in the order  
2 as the day upon which the records are to be produced or examined.

3 (b) The notice required by Subsection (1)(a) shall be accompanied by:

4 (i) a copy of the order [~~which~~] that has been served upon the financial institution [~~and~~];

5 (ii) a copy of the motion or application upon which [~~it~~] the order is based; and [~~shall be~~  
6 accompanied by]

7 (iii) a statement setting forth the rights of the person under Section 78-27-47.

8 (2) (a) The notice shall be sufficient if, on or before the third day after issuance of the  
9 order, notice is:

10 (i) served in the manner provided in Rule 4(e), Utah Rules of Civil Procedure, upon the  
11 person entitled to notice[~~;~~]; or [~~is~~]

12 (ii) mailed by certified or registered mail to the last-known address of the person. [~~In the~~  
13 event the]

14 (b) Notwithstanding Subsection (2)(a), if the person entitled to notice is deceased or under  
15 legal disability, notice shall be served upon or mailed to the last-known address of such person's  
16 executor, administrator, guardian, or other fiduciary.

17 Section 3. Section **78-27-47** is amended to read:

18 **78-27-47. Financial information privacy -- Intervention to challenge or stay order**  
19 **-- Burden on governmental entity.**

20 (1) Notwithstanding any other law or rule of law, any person who is entitled to notice of  
21 a court order under Section 78-27-46 shall have the right to intervene in any proceeding with  
22 respect to enforcement of the order to challenge the issuance of the order or to stay compliance  
23 [~~therewith~~] with the order.

24 (2) Upon intervention, the burden shall be [~~upon~~] on the [~~state, agency, officer,~~  
25 department, bureau or political subdivision] governmental entity obtaining the order to show that  
26 there is reasonable cause for the issuance of the order [~~and that the information sought may further~~  
27 the investigation].

28 Section 4. Section **78-27-48** is amended to read:

29 **78-27-48. Financial information privacy -- Reimbursement of financial institution**  
30 **for costs of obtaining information.**

31 (1) Any financial institution [~~which produced~~] that produces records pursuant to

1 permission ~~[or]~~, in compliance with an order obtained under ~~[this act]~~ Sections 78-27-45 through  
 2 78-27-50, or in compliance with an order of a court of competent jurisdiction shall be entitled to  
 3 reimbursement by the ~~[party or parties]~~ governmental entity seeking the information, for costs  
 4 reasonably and directly incurred in searching for, reproducing, or transporting books, papers,  
 5 records, or other data required to be produced.

6 (2) The commissioner of financial institutions shall by ~~[regulation]~~ rule establish the rates  
 7 and conditions under which reimbursement shall be made.

8 Section 5. Section **78-27-50** is amended to read:

9 **78-27-50. Financial information privacy -- Inapplicable to certain official**  
 10 **investigations.**

11 (1) ~~[This chapter shall]~~ Sections 78-27-45 through 78-27-50 do not apply ~~[where]~~ when  
 12 an examination of records is a part of an official investigation by ~~[any]:~~

13 (a) a local police~~[-];~~

14 (b) a sheriff~~[-];~~

15 (c) a peace officer~~[-];~~

16 (d) a city attorney~~[-];~~

17 (e) a county attorney~~[-];~~

18 (f) a district attorney~~[-];~~

19 (g) the attorney general~~[-];~~

20 (h) the Department of Public Safety~~[-];~~

21 (i) the Office of Recovery Services of the Department of Human Services~~[-];~~

22 (j) the Insurance Department~~[-or];~~

23 (k) the Department of Commerce; or

24 (l) the state auditor.

25 ~~[(2) Any financial institution or its agent or employee making a disclosure of financial~~  
 26 ~~records pursuant to any court order, subpoena, administrative subpoena, or other legal process, is~~  
 27 ~~not liable to the customer for disclosure.]~~

28 (2) If a governmental entity listed in Subsection (1) seeks a record, the entity shall obtain  
 29 the record as follows:

30 (a) if the record is a nonprotected record, by request in writing from a representative of the  
 31 governmental entity that is conducting the official investigation; or

1           (b) if the record is a protected record, by obtaining a subpoena or other legal process:

2           (i) ordered by a court of competent jurisdiction; and

3           (ii) served upon the financial institution.

4           (3) A financial institution may not give notice to any person named or referenced within  
5 the record disclosed pursuant to Subsection (1)(a).

6           (4) A protected record obtained under this section shall be subject to reimbursement from  
7 the agency conducting the official investigation for costs reasonably incurred by the financial  
8 institution in accordance with Section 78-27-48.

9           Section 6. Section **78-27-50.5** is enacted to read:

10          **78-27-50.5. Liability of financial institutions.**

11          A financial institution is not liable to any person named or referenced within a record for  
12 any disclosure that is the result of a subpoena, order, or request made pursuant to Sections  
13 78-27-45 through 78-27-50 if the financial institution reasonably believes that the subpoena, order,  
14 or request is properly made under Sections 78-27-45 through 78-27-50.

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**Legislative Review Note**  
**as of 1-27-98 8:37 AM**

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**