

House Bill 1678

By: Representatives Jamieson of the 22nd and Parrish of the 144th

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 6 of Article 2 of Chapter 1 of Title 7 of the Official Code of Georgia
2 Annotated, relating to deposits, safe-deposit agreements, and money received for
3 transmission, so as to change certain provisions regarding third-party claims and disclosure
4 of certain information; to provide for procedures, conditions, and limitations with respect to
5 disclosure of certain records of accounts or other customer accounts; to provide for powers,
6 duties, and authority of courts of competent jurisdiction with respect to the foregoing; to
7 provide an effective date; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Part 6 of Article 2 of Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating
11 to deposits, safe-deposit agreements, and money received for transmission, is amended by
12 striking Code Section 7-1-360, relating to third-party claims and disclosure of certain
13 information, and inserting in its place a new Code Section 7-1-360 to read as follows:

14 "7-1-360.

15 (a) No financial institution shall be required to recognize the claim of any third party to
16 any deposit, or withhold payment of any deposit to the depositor or to his or her order,
17 unless and until the financial institution is served with citation, order, or other appropriate
18 process issuing out of a court of competent jurisdiction in connection with a suit instituted
19 by such third party for the purpose of recovering or establishing an interest in such deposit.
20 Neither shall any financial institution be required to disclose or produce to third parties, or
21 permit third parties to examine any records pertaining to a deposit account, loan account,
22 or other banking relationship except:

23 (1) Where the financial institution itself is a proper or necessary party to a proceeding
24 in a court of competent jurisdiction;

1 (2) Where the records of accounts or other customer records are requested through
 2 subpoena or other administrative process issued by a state, federal, or local administrative
 3 agency having competent jurisdiction over the depositor or other customer;

4 (3) Where the records of accounts or other customer records are requested in conjunction
 5 with an ongoing criminal or tax investigation of the depositor or other customer by a state
 6 or federal grand jury; or a taxing authority; or law enforcement agency; or;

7 (4) Where the records of accounts or other customer records are requested by any state
 8 or federal regulatory agency having jurisdiction over the financial institution; or

9 (5) Where the records of accounts or other customer records are ordered to be produced
 10 through a search warrant issued by a court of competent jurisdiction according to the
 11 procedures provided for under Article 2 of Chapter 5 of Title 17.

12 (b)(1) Unless directed otherwise by a court of competent jurisdiction, before disclosure,
 13 production, or examination of records produced under paragraph (1) or (2) of subsection
 14 (a) of this Code section, the agency or other party seeking the disclosure or production
 15 of the records shall provide notification to the depositor or other customer of such
 16 request. Notification of the depositor or other customer under circumstances set forth in
 17 paragraphs (3) and (4) of subsection (a) of this Code section shall not be made without
 18 the consent of the requesting authority. For purposes of ascertaining whether or not
 19 proper notice has been given or whether or not the depositor or other customer may be
 20 notified, the financial institution may rely upon appropriate certification or written
 21 assurances from the requesting party and in doing so shall be relieved of any liability
 22 which might be asserted in connection with such disclosures.

23 (2)(A) Where a search warrant is sought pursuant to paragraph (5) of subsection (a) of
 24 this Code section, the court issuing such warrant shall require disclosure of such search
 25 warrant to the person whose records are being sought with such disclosure to occur
 26 before or at the time of execution of such search warrant unless the court finds from a
 27 showing of credible evidence that probable cause exists to believe that such disclosure
 28 will result in:

29 (i) Endangering the life or physical safety of any person;

30 (ii) Flight from prosecution;

31 (iii) Destruction of or tampering with evidence;

32 (iv) Intimidation of potential witnesses; or

33 (v) Otherwise seriously jeopardizing an investigation or official proceeding or unduly
 34 delaying a trial or ongoing official proceeding to the same extent as the circumstances
 35 in divisions (i) through (iv) of this subparagraph.

1 (B) No later than 90 days after the search warrant is served, the law enforcement
 2 agency obtaining such warrant shall mail to the customer's last known address a copy
 3 of the search warrant together with the following notice:

4 'Records or information concerning your transactions held by the financial institution
 5 named in the attached search warrant were obtained by this (agency or department)
 6 on (date) for the following purpose:_____.'

7 (C) Upon application of the law enforcement agency, the court granting such search
 8 warrant may grant a delay in the mailing of the notice required in subsection (b) of this
 9 Code section, which delay shall not exceed 180 days following the service of the
 10 warrant, if the court makes the findings required in subparagraph (A) of this paragraph.
 11 If the court so finds, it shall enter an ex parte order granting the requested delay and an
 12 order prohibiting the financial institution from disclosing that records have been
 13 obtained or that a search warrant for such records has been executed. Additional delays
 14 of up to 90 days may be granted by the court upon application, but only in accordance
 15 with this subparagraph. Upon expiration of the period of delay of notification of the
 16 customer, the following notice shall be mailed to the customer along with a copy of the
 17 search warrant:

18 'Records or information concerning your transactions held by the financial institution
 19 named in the attached search warrant were obtained by this (agency or department)
 20 on (date). Notification was delayed beyond the statutory 90 day delay period pursuant
 21 to a determination by the court that such notice would seriously jeopardize an
 22 investigation concerning_____.'

23 (c) Each customer or depositor to whom notice of an order, subpoena, or request for
 24 disclosure, examination, or production of records was lawfully given may, prior to the date
 25 specified therein for disclosure, examination, or production, file in the court issuing an
 26 order or subpoena for the records or, in the absence of such a court, in the superior court
 27 of the county in which the financial institution is located a motion to quash the order,
 28 subpoena, or request or for a protective order and shall serve such motion on the party
 29 requesting disclosure as otherwise provided by law for similar motions. Failure to file and
 30 serve such motion to quash or for protection shall constitute consent for all purposes to
 31 disclosure, production, or examination made pursuant to this Code section."

32 SECTION 2.

33 This Act shall become effective upon its approval by the Governor or upon its becoming law
 34 without such approval.

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SECTION 3.

2 All laws and parts of laws in conflict with this Act are repealed.