

104TH CONGRESS
1ST SESSION

S. 633

To amend the Federal Deposit Insurance Act to provide certain consumer protections if a depository institution engages in the sale of nondeposit investment products, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 28 (legislative day, MARCH 27), 1995

Mr. PRYOR introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Federal Deposit Insurance Act to provide certain consumer protections if a depository institution engages in the sale of nondeposit investment products, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Bank Customer Con-
5 fidentiality and Protection Act of 1995”.

1 **SEC. 2. CUSTOMER PROTECTIONS REGARDING**
2 **NONDEPOSIT INVESTMENT PRODUCTS.**

3 (a) AMENDMENT TO THE FEDERAL DEPOSIT INSUR-
4 ANCE ACT.—Section 18 of the Federal Deposit Insurance
5 Act (12 U.S.C. 1828) is amended by adding at the end
6 the following new subsection:

7 “(q) SAFEGUARDS FOR SALE OF NONDEPOSIT IN-
8 VESTMENT PRODUCTS.—

9 “(1) DEFINITIONS.—For purposes of this sub-
10 section—

11 “(A) the terms ‘broker’, ‘dealer’, and ‘reg-
12 istered broker or dealer’ have the same mean-
13 ings as in section 3 of the Securities Act of
14 1934;

15 “(B) the term ‘customer’—

16 “(i) means any person who maintains
17 or establishes a deposit, trust, or credit re-
18 lationship with an insured depository insti-
19 tution;

20 “(ii) includes any person who renews
21 an account in an insured depository insti-
22 tution and any person who rolls over a de-
23 posit in any such account; and

24 “(iii) any person who contacts an in-
25 sured depository institution, in person or
26 otherwise, for the purpose of inquiring

1 about or purchasing a nondeposit invest-
2 ment product;

3 “(C) the term ‘Federal securities law’ has
4 the meaning given to the term ‘securities laws’
5 in section 3(a)(47) of the Securities Exchange
6 Act of 1934;

7 “(D) the term ‘nondeposit investment
8 product’—

9 “(i) includes any investment product
10 that is not a deposit; and

11 “(ii) does not include—

12 “(I) any loan or other extension
13 of credit by an insured depository in-
14 stitution;

15 “(II) any letter of credit; or

16 “(III) any other instrument or
17 investment product specifically ex-
18 cluded from the definition of such
19 term by regulations prescribed jointly
20 by the Federal banking agencies after
21 consultation with the Securities and
22 Exchange Commission;

23 “(E) the term ‘nonpublic customer infor-
24 mation’—

1 “(i) means information regarding any
2 person which has been derived from any
3 record of any insured depository institution
4 and pertains to the person’s relationship
5 with the institution, including the provision
6 or servicing of a credit card; and

7 “(ii) does not include information
8 about a person that could be obtained from
9 a credit reporting agency that is subject to
10 the restrictions of the Fair Credit Report-
11 ing Act by a third party that is not enter-
12 ing into a credit relationship with the per-
13 son, but that otherwise has a legitimate
14 business need for that information in con-
15 nection with a business transaction involv-
16 ing the person; and

17 “(F) the term ‘self-regulatory organization’
18 has the same meaning as in section 3(a)(26) of
19 the Securities Exchange Act of 1934.

20 “(2) MISREPRESENTATION OF GUARANTEES.—
21 It shall be unlawful for any insured depository insti-
22 tution sponsoring, selling, or soliciting the purchase
23 of any nondeposit investment product to represent or
24 imply in any manner whatsoever that such
25 nondeposit investment product—

1 “(A) is guaranteed or approved by the
2 United States or any agency or officer thereof;
3 or

4 “(B) is insured under this Act.

5 “(3) CUSTOMER DISCLOSURE.—

6 “(A) IN GENERAL.—An insured depository
7 institution shall, concurrently with the opening
8 of an investment account by a customer or with
9 the initial purchase of a nondeposit investment
10 product by a customer, prominently disclose, in
11 writing, to that customer—

12 “(i) that nondeposit investment prod-
13 ucts offered, recommended, sponsored, or
14 sold by the institution—

15 “(I) are not deposits;

16 “(II) are not insured under this
17 Act;

18 “(III) are not guaranteed by the
19 insured depository institution; and

20 “(IV) carry risk of a loss of prin-
21 cipal;

22 “(ii) the nature of the relationship be-
23 tween the insured depository institution
24 and the broker or dealer;

1 “(iii) any fees that the customer will
2 or may incur in connection with the
3 nondeposit investment product;

4 “(iv) whether the broker or dealer
5 would receive any higher or special com-
6 pensation for the sale of certain types of
7 nondeposit investment products; and

8 “(v) any other information that the
9 Federal banking agencies jointly determine
10 to be appropriate.

11 “(B) CUSTOMER ACKNOWLEDGMENT OF
12 DISCLOSURE.—

13 “(i) IN GENERAL.—Concurrently with
14 the opening of an investment account by a
15 customer or with the initial purchase of a
16 nondeposit investment product by a cus-
17 tomer, an insured depository institution or
18 other person required to make disclosures
19 to the customer under subparagraph (A)
20 shall obtain from each such customer a
21 written acknowledgment of receipt of such
22 disclosures, including the date of receipt
23 and the name, address, account number,
24 and signature of the customer.

1 “(ii) RECORDS OF CUSTOMER AC-
2 KNOWLEDGEMENT.—An insured depository
3 institution shall maintain appropriate
4 records of the written acknowledgement re-
5 quired by this subparagraph for an appro-
6 priate period, as determined by the Cor-
7 poration. Such record shall include the
8 date on which the acknowledgment was ob-
9 tained and the customer’s name and ad-
10 dress.

11 “(iii) DURATION OF ACKNOWLEDGE-
12 MENT.—Written acknowledgement shall
13 not be considered valid for purposes of this
14 subparagraph for a period of more than 5
15 years, beginning on the date on which it
16 was obtained.

17 “(C) PROHIBITION ON INCONSISTENT
18 ORAL REPRESENTATIONS.—No employee of an
19 insured depository institution shall make any
20 oral representation to a customer of an insured
21 depository institution that is contradictory or
22 otherwise inconsistent with the information re-
23 quired to be disclosed to the customer under
24 this paragraph.

1 “(D) MODEL FORMS AND REGULATIONS.—

2 The Federal banking agencies, after consulta-
3 tion with the Securities and Exchange Commis-
4 sion, shall jointly issue appropriate regulations
5 incorporating the requirements of this para-
6 graph. Such regulations shall include a require-
7 ment for a model disclosure form solely for such
8 purpose to be used by all insured depository in-
9 stitutions incorporating the disclosures required
10 by this paragraph.

11 “(4) REFERRAL COMPENSATION.—A one-time
12 nominal referral fee may be paid by an insured de-
13 pository institution to any employee of that institu-
14 tion who refers a customer of that institution either
15 to a broker or dealer or to another employee of that
16 insured depository institution for services related to
17 the sale of a nondeposit investment product, if the
18 fee is not based upon whether or not the customer
19 referred makes a purchase from the broker, dealer,
20 or other employee.

21 “(5) PROHIBITION OF JOINT MARKETING AC-
22 TIVITIES.—No nondeposit investment product may
23 be offered, recommended, or sold by a person unaf-
24 filiated with an insured depository institution on the
25 premises of that institution as part of joint market-

1 ing activities, unless the person marketing such
2 nondeposit investment product—

3 “(A) prominently discloses to its cus-
4 tomers, in writing, in addition to the disclosures
5 required in paragraph (3), that such person is
6 not an insured depository institution and is sep-
7 arate and distinct from the insured depository
8 institution with which it shares marketing ac-
9 tivities; and

10 “(B) otherwise complies with the require-
11 ments of this subsection.

12 “(6) LIMITATIONS ON ADVERTISING.—

13 “(A) MISLEADING ADVERTISING.—No in-
14 sured depository institution may employ any ad-
15 vertisement that would mislead or otherwise
16 cause a reasonable person to believe mistakenly
17 that an insured depository institution or the
18 Federal Government is responsible for the ac-
19 tivities of an affiliate of the institution, stands
20 behind the affiliate’s credit, guarantees any re-
21 turns on nondeposit investment products, or is
22 a source of payment of any obligation of or sold
23 by the affiliate.

24 “(B) NAMES, LETTERHEADS, AND
25 LOGOS.—In offering, recommending, sponsor-

1 ing, or selling nondeposit investment products,
2 an insured depository institution shall use
3 names, letterheads, and logos that are suffi-
4 ciently different from the names, letterheads,
5 and logos of the institution so as to avoid the
6 possibility of confusion.

7 “(C) SEPARATION OF LITERATURE.—All
8 sales literature related to the marketing of
9 nondeposit investment products by an insured
10 depository institution shall be kept separate and
11 apart from, and not be commingled with, the
12 banking literature of that institution.

13 “(7) LIMITATIONS ON SOLICITATION.—The
14 place of solicitation or sale of nondeposit investment
15 products by an insured depository institution shall
16 be—

17 “(A) physically separated from the banking
18 activities of the institution; and

19 “(B) readily distinguishable by the public
20 as separate and distinct from that of the insti-
21 tution.

22 “(8) SALES STAFF REQUIREMENT.—Solicitation
23 for the purchase or sale of nondeposit investment
24 products by any insured depository institution may
25 only be conducted by a person—

1 “(A) who—

2 “(i) is a registered broker or dealer or
3 a person affiliated with a registered broker
4 or dealer; or

5 “(ii) has passed a qualification exam-
6 ination that the appropriate Federal bank-
7 ing agency, in consultation with the Secu-
8 rities and Exchange Commission, deter-
9 mines to be comparable to those used by a
10 national security exchange registered under
11 section 6 of the Securities Exchange Act of
12 1934, or a national securities association
13 registered under section 15A of that Act,
14 for persons required to be registered with
15 the exchange or association; and

16 “(B) whose responsibilities are restricted
17 to such nondeposit investment products.

18 “(9) NO FAVORING OF CAPTIVE AGENTS.—No
19 insured depository institution may directly or indi-
20 rectly require, as a condition of providing any prod-
21 uct or service to any customer, or any renewal of
22 any contract for providing such product or service,
23 that the customer acquire, finance, negotiate, refi-
24 nance, or renegotiate any nondeposit investment
25 product through a named broker or dealer.

1 “(10) RESTRICTIONS ON USE OF NONPUBLIC
2 CUSTOMER INFORMATION.—

3 “(A) IN GENERAL.—Except as provided in
4 subparagraph (B), no insured depository insti-
5 tution may use or disclose to any person any
6 nonpublic customer information for the purpose
7 of soliciting the purchase or sale of nondeposit
8 investment products.

9 “(B) EXCEPTION BASED ON DISCLO-
10 SURE.—An insured depository institution may
11 use or disclose nonpublic customer information
12 for the purpose of soliciting the purchase or
13 sale of nondeposit investment products if, be-
14 fore such use or disclosure—

15 “(i) the customer gives explicit written
16 consent to such use or disclosure; and

17 “(ii) such written consent is given
18 after the institution has provided the cus-
19 tomer with written disclosure that—

20 “(I) the information may be used
21 to target the customer for marketing
22 or advertising for nondeposit invest-
23 ment products;

24 “(II) such nondeposit investment
25 products are not guaranteed or ap-

1 proved by the United States or any
2 agency thereof; and

3 “(III) such nondeposit invest-
4 ment products are not insured under
5 this Act.

6 “(C) RECORDS OF CUSTOMER CONSENT.—

7 An insured depository institution shall maintain
8 appropriate records of the written consent re-
9 quired by subparagraph (B) for an appropriate
10 period, as determined by the Corporation. Such
11 record shall include the date on which the con-
12 sent was signed and the customer’s name and
13 address.

14 “(D) DURATION OF CONSENT.—Written

15 consent shall not be considered valid for pur-
16 poses of this paragraph for a period of more
17 than 5 years, beginning on the date on which
18 it was obtained.

19 “(E) ADDITIONAL RESTRICTIONS.—The

20 Corporation may, by regulation or order, pre-
21 scribe additional restrictions and requirements
22 limiting the disclosure of nonpublic customer in-
23 formation, including information to be used in
24 an evaluation of the credit worthiness of an is-
25 suer or other customer of that insured deposi-

1 tory institution and such additional restrictions
2 as may be necessary or appropriate to avoid
3 any significant risk to insured depository insti-
4 tutions, protect customers, and avoid conflicts
5 of interest or other abuses.

6 “(11) SCOPE OF APPLICATION.—

7 “(A) APPLICATION LIMITED TO RETAIL
8 ACTIVITIES.—The Federal banking agencies,
9 after consultation with the Securities and Ex-
10 change Commission, may waive the require-
11 ments of any provision of this subsection, other
12 than paragraph (10), with respect to any trans-
13 action otherwise subject to such provision be-
14 tween—

15 “(i) any insured depository institution
16 or any other person who is subject, directly
17 or indirectly, to the requirements of this
18 section; and

19 “(ii) any other insured depository in-
20 stitution, any registered broker or dealer,
21 any person who is, or meets the require-
22 ments for, an accredited investor, as such
23 term is defined in section 2(15)(i) of the
24 Securities Act of 1933, or any other cus-
25 tomer who the Federal banking agencies,

1 after consultation with the Securities and
2 Exchange Commission, jointly determine,
3 on the basis of the financial sophistication
4 of the customer, does not need the protec-
5 tion afforded by the requirements to be
6 waived.

7 “(B) NO EFFECT ON OTHER AUTHOR-
8 ITY.—No provision of this subsection shall be
9 construed as limiting or otherwise affecting—

10 “(i) any authority of the Securities
11 and Exchange Commission, any self-regu-
12 latory organization, the Municipal Securi-
13 ties Rulemaking Board, or the Secretary of
14 the Treasury under any Federal securities
15 law;

16 “(ii) any authority of any State secu-
17 rities regulatory agency; or

18 “(iii) the applicability of any Federal
19 securities law, or any rule or regulation
20 prescribed by the Commission, any self-
21 regulatory organization, the Municipal Se-
22 curities Rulemaking Board, or the Sec-
23 retary of the Treasury pursuant to any
24 such law, to any person.

1 Act) and the regulations promulgated thereunder;
2 and

3 (2) are consistent with the purposes of that sec-
4 tion 18(q) and the protection of investors.

5 (b) ENFORCEMENT.—The Commission shall have the
6 same authority to enforce rules or regulations promul-
7 gated under subsection (a) as it has to enforce the provi-
8 sions of the Securities Exchange Act of 1934.

9 **SEC. 4. ENFORCEMENT COORDINATION.**

10 The Federal banking agencies and the Securities and
11 Exchange Commission shall work together to develop com-
12 parable methods of securities enforcement and a process
13 for the interagency exchange of enforcement-related infor-
14 mation.

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