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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/5/07

SPONSOR Picraux LAST UPDATED \_\_\_\_\_ HB 612

SHORT TITLE Consent for Sharing of Certain Financial Info SB \_\_\_\_\_

ANALYST C.Sanchez

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

**Duplicates,**  
SB 606

### SOURCES OF INFORMATION

LFC Files

Responses Received From  
Financial Institutions Division  
Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of Bill

According to the Attorney General's Office, HB 612 parallels certain sections of the federal law, specifically, 15 U.S.C. §§ 6802 and 6809, regarding the duties and obligations of financial institutions to protect nonpublic personal information of consumers.

HB 612 prohibits financial institutions from disclosing nonpublic personal information to any nonaffiliated third-party without the express prior consent of the consumer. HB 612 further prohibits any financial institution from discriminating against any otherwise qualified consumer who refuses to give consent.

In order to obtain consumer consent, a financial institution must use a separate document, signed and dated by the consumer. The form must clearly and conspicuously disclose that, by signing, the consumer is consenting to the disclosure of nonpublic personal information to third parties not affiliated with the financial institution. Such consent will remain in effect until revoked or

modified by the consumer.

### **FISCAL IMPLICATIONS**

Other than any costs potentially incurred by the Office of the Attorney General, the Securities Division or the Financial Institutions Division to draft any exceptions to the restrictions and limitations of HB 612, any direct fiscal impact to the State would appear to be nominal, if any.

### **SIGNIFICANT ISSUES**

HB 612 provides greater protection to consumers than the federal law by requiring financial institutions to obtain the express, written consent of the consumer prior to disclosing nonpublic personal information to third parties not affiliated with the financial institution, rather than rely upon an “opt-out” clause.

HB 612 further empowers the Office of the Attorney General to draft, after consultation with the Director of the Securities Division and the Director of the Financial Institutions Division, any exceptions to the prohibition against disclosure of nonpublic personal information. Any such exceptions are to be fashioned along the lines of the federal law.

### **PERFORMANCE IMPLICATIONS**

The cost of hearings cannot be determined since the number and length of hearings necessary is unknown.

### **ADMINISTRATIVE IMPLICATIONS**

The time required of division personnel to perform the requirements of this bill cannot be determined at this time.

### **DUPLICATION,**

SB 606

### **TECHNICAL ISSUES**

According to the Attorney General’s Office, the term “financial institution” as defined by HB 612 is both broader and narrower than the same term as defined under federal law. On the one hand, persons “in the business of making loans,” a term not included in either 15 U.S.C. §6802 or §6809, may be broadly construed to include such entities as Small Loan licensees and “holders” under the Motor Vehicle Sales Finance Act. Thus, these entities otherwise engaged in financial activities, including the lending of money, would, presumably, be subject to the restrictions and limitations of HB 612.

However, on the other hand, the term “financial institution” as defined by HB 612 does not include such entities as credit counseling services and credit repair organizations whereas the federal law does. What is also unclear is whether farm credit institutions or secondary market institutions would be subject to the prohibitions of HB 612.

Also not covered by HB 612 is the re-use of information. Unlike the federal law, HB 612 does not restrict nonaffiliated third parties that receive nonpublic personal information from a financial institution from disclosing such information to any other person. Similarly, the federal law prohibits disclosure of any list, description or grouping of consumers that is derived from nonpublic personal information; HB 612 does not.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status Quo

CS/mt