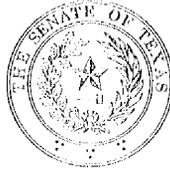


## **APPENDIX A**



Committees:

ECONOMIC DEVELOPMENT, Chairman  
ELECTRIC UTILITY RESTRUCTURING, Chairman  
BORDER AFFAIRS, *Vice Chairman*  
EDUCATION

**DAVID SIBLEY**  
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March 31, 2000

Mr. Randall S. James  
Banking Commissioner  
Banking Department of Texas  
2601 North Lamar  
Austin, TX 78705

Mr. Jose Montemayor  
Commissioner of Insurance  
Texas Department of Insurance  
P. O. Box 149104  
Austin, TX 787 14

Ms. Denise Voigt Crawford  
Securities Commissioner  
State Securities Board  
P. O. Box 13167  
Austin, TX 78711

Mr. James L. Pledger  
Commissioner  
Savings and Loan Department of Texas  
260 1 North Lamar, Suite 20 1  
Austin, TX 78705

Dear Commissioners,

As directed by interim charges from Lt. Governor Rick Perry and Speaker Pete Laney, the Senate Economic Development Committee, House Committee on Financial Institutions and House Committee on Insurance are in the process of studying state law and regulatory structure ramifications of the Gramm-Leach-Bliley Financial Modernization Act ("GLBA").

Effective March 1 I, 2000, the GLBA allows and encourages the convergence of the banking, insurance and securities industries while maintaining appropriate safety and soundness safeguards. Legal barriers that have historically separated the industries are substantially eliminated from federal law, and in many respects the new federal law will preempt any impending state law.



March 31, 2000

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We appreciate that GLBA also recognizes the vital regulatory interests of this State by endorsing functional regulation of newly authorized bank activities by those regulatory agencies, both state and federal, that are most knowledgeable regarding the need for and public policies underlying regulation of a specific activity. Although state law may not discriminate against banks in licensing or authorizing securities and insurance activities, a state may impose suitable and reasonable licensing and consumer protection requirements consistent with the underlying rationale for regulation.

The vital interests of this State will be best served by empowering the state-chartered bank to fully participate in and adapt to modern banking practices to the extent consistent with safety and soundness and the purpose of functional regulation. We view very positively recent efforts by the Banking Commissioner, the Insurance Commissioner, and the Securities Commissioner of this State to implement financial modernization and coordinate functional regulation of banks, and in particular we are encouraged by the recent promulgation by the Insurance Commissioner of Commissioner's Bulletin B- 1005-00 (January 18, 2000). We also believe these efforts must continue, and should further involve the Savings and Loan Commissioner with respect to the impact of GLBA on state savings banks.

To the extent consistent with GLBA and other applicable federal law, our references to state-chartered banks include state savings banks. The Banking Commissioner, the Insurance Commissioner, the Securities Commissioner, and the Savings and Loan Commissioner are collectively referred to as the "Commissioners."

Therefore, we are requesting the Banking Commissioner to perform a study in consultation and cooperation with the aforementioned Commissioners. The continuing efforts of the Commissioners should focus on:

1. cooperative study of the impact of financial modernization on existing Texas statutes and rules, to identify those provisions that are preempted by or inconsistent with the goals and purposes of GLBA and the competitiveness of state-chartered banks, and to assess the continuing effectiveness of existing investor and consumer protection statutes;
2. to the extent possible without legislative action, cooperative authorization and implementation of permissible non-banking activities for insured depository institutions (state or national) as contemplated by GLBA, subject to permissible functional regulation and applicability of investor and consumer protection statutes; and
3. consensus recommendations to the Committees regarding needed legislative changes to State law, including but not limited to recommendations for the purpose of:
  - A. eliminating provisions of state law that prevent or restrict an insured depository institution (state or national) from affiliating with insurance or securities firms, or that prevent or significantly interfere with the ability of an insured depository

institution to engage in the sale, solicitation, or cross marketing of insurance as contemplated by GLBA;

- B. expanding the authority of state-chartered banks and their subsidiaries to conduct non-banking activities of the nature contemplated by GLBA, and to conduct activities beyond those allowed for national banks and their subsidiaries to the extent consistent with principles of safety and soundness and applicable federal law;
- C. allowing bank holding companies to become financial holding companies and engage in activities that are financial in nature or incidental to such financial activity, or complementary to a financial activity, as determined in the manner provided by GLBA, or to the extent otherwise permissible under federal law;
- D. implementing uniform licensing and continuing education requirements for insurance agents and companies as contemplated by GLBA;
- E. authorizing and requiring coordination and information sharing among the Commissioners as well as between state and federal banking and functional regulators, including adequate safeguards for shared confidential information;
- F. granting each Commissioner adequate discretion and flexibility to promptly adapt regulatory practices from time to time as needed to allow financial institutions to compete in an ever-changing, technology-driven market, to the extent consistent with principles of safety and soundness and applicable federal law; and
- G. granting the Banking Commissioner authority to approve new financial activities for state-chartered banks and financial holding companies that are financial in nature or incidental to such financial activity, or complementary to a financial activity, to the extent permissible under federal law, subject to a duty to consult and coordinate with the Commissioners and other affected functional regulators in connection with implementation of such approvals.

Further, we are of the sense that the Commissioners need not engage in study of or formulate recommendations regarding the financial privacy provisions of GLBA. This is a subject that will be studied and addressed appropriately by our committees and functional regulatory expertise is not required to evaluate the need for state response. For purposes of developing our committee reports, we would greatly appreciate a status report on any findings or recommendations the group might develop on or before August 1, 2000. We recognize that the complexity of this subject may require the group to continue its efforts after this date.

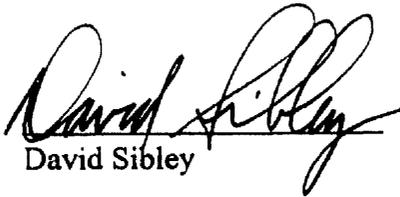
Thank you for your assistance in this matter. As always, we value the work of your respective agencies and look forward to working with you on this very important issue. Please feel free to

March 3 I, 2000

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contact one of us, Bruce Scott in the Senate Economic Deveipment Committee. Bryan McMath in the House Committee on Financial Institutions. or Bryan Taylor in the House Committee on Insurance.

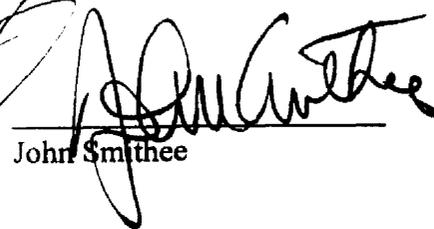
Yours truly,



David Sibley



Kip Averitt



John Smith

cc: Lt. Governor Rick Perry  
Speaker of the House Pete Laney  
Members of the Senate Economic Development Committee  
Members of the House Committee on Financial Institutions  
Members of the House Committee on Insurance

## **APPENDIX B**

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## S.900

### Gramm-Leach-Bliley Act (Enrolled Bill (Sent to President))

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#### TITLE V--PRIVACY

##### Subtitle A--Disclosure of Nonpublic Personal Information

#### SEC. 501. PROTECTION OF NONPUBLIC PERSONAL INFORMATION.

(a) PRIVACY OBLIGATION POLICY- It is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information.

(b) FINANCIAL INSTITUTIONS SAFEGUARDS- In furtherance of the policy in subsection (a), each agency or authority described in section 505(a) shall establish appropriate standards for the financial institutions subject to their jurisdiction relating to administrative, technical, and physical safeguards--

- (1) to insure the security and confidentiality of customer records and information;
- (2) to protect against any anticipated threats or hazards to the security or integrity of such records; and
- (3) to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer.

#### SEC. 502. OBLIGATIONS WITH RESPECT TO DISCLOSURES OF PERSONAL INFORMATION.

(a) NOTICE REQUIREMENTS- Except as otherwise provided in this subtitle, a financial institution may not, directly or through any affiliate, disclose to a nonaffiliated third party any nonpublic personal information, unless such financial institution provides or has provided to the consumer a notice that complies with section 503.

(b) OPT OUT-

(1) IN GENERAL- A financial institution may not disclose nonpublic personal information to a nonaffiliated third party unless--

(A) such financial institution clearly and conspicuously discloses to the consumer, in writing or in electronic form or other form permitted by the regulations prescribed under section 504, that such information may be disclosed to such third party;

(B) the consumer is given the opportunity, before the time that such information is initially disclosed, to direct that such information not be disclosed to such third party; and

(C) the consumer is given an explanation of how the consumer can exercise that nondisclosure option.

(2) EXCEPTION- This subsection shall not prevent a financial institution from providing nonpublic

personal information to a nonaffiliated third party to perform services for or functions on behalf of the financial institution, including marketing of the financial institution's own products or services, or financial products or services offered pursuant to joint agreements between two or more financial institutions that comply with the requirements imposed by the regulations prescribed under section 504, if the financial institution fully discloses the providing of such information and enters into a contractual agreement with the third party that requires the third party to maintain the confidentiality of such information.

(c) LIMITS ON REUSE OF INFORMATION- Except as otherwise provided in this subtitle, a nonaffiliated third party that receives from a financial institution nonpublic personal information under this section shall not, directly or through an affiliate of such receiving third party, disclose such information to any other person that is a nonaffiliated third party of both the financial institution and such receiving third party, unless such disclosure would be lawful if made directly to such other person by the financial institution.

(d) LIMITATIONS ON THE SHARING OF ACCOUNT NUMBER INFORMATION FOR MARKETING PURPOSES- A financial institution shall not disclose, other than to a consumer reporting agency, **an** account number or similar form of access number or access code for a credit card account, deposit account, or transaction account of a consumer to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

(e) GENERAL EXCEPTIONS- Subsections (a) and (b) shall not prohibit the disclosure of nonpublic personal information--

(1) as necessary to effect, administer, or enforce a transaction requested or authorized by the consumer, or in connection with--

(A) servicing or processing a financial product or service requested or authorized by the consumer;

(B) maintaining or servicing the consumer's account with the financial institution, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or

(C) a proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer;

(2) with the consent or at the direction of the consumer;

(3)(A) to protect the confidentiality or security of the financial institution's records pertaining to the consumer, the service or product, or the transaction therein; (B) to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability; (C) for required institutional risk control, or for resolving customer disputes or inquiries; (D) to persons holding a legal or beneficial interest relating to the consumer; or (E) to persons acting in a fiduciary or representative capacity on behalf of the consumer:

(4) to provide information to insurance rate advisory organizations, guaranty funds or agencies, applicable rating agencies of the financial institution, persons assessing the institution's compliance with industry standards, and the institution's attorneys, accountants, and auditors;

(5) to the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978, to law enforcement agencies (including a Federal functional regulator, the Secretary of the Treasury with respect to subchapter II of chapter 53 of title 31, United States Code, and chapter 2 of title I of Public Law 91-508 (12 U.S.C. 1951-I 959), a State insurance authority, or the Federal Trade Commission), self-regulatory organizations, or for an investigation on a matter related to public safety;

(6)(A) to a consumer reporting agency in accordance with the Fair Credit Reporting Act, or (B) from a consumer report reported by a consumer reporting agency;

(7) in connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit; or

(8) to comply with Federal, State, or local laws, rules, and other applicable legal requirements; to comply with a properly authorized civil, criminal, or regulatory investigation or subpoena or summons by Federal, State, or local authorities; or to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes as authorized by law.

## **SEC. 503. DISCLOSURE OF INSTITUTION PRIVACY POLICY.**

(a) **DISCLOSURE REQUIRED-** At the time of establishing a customer relationship with a consumer and not less than annually during the continuation of such relationship, a financial institution shall provide a clear and conspicuous disclosure to such consumer, in writing or in electronic form or other form permitted by the regulations prescribed under section 504, of such financial institution's policies and practices with respect to--

(1) disclosing nonpublic personal information to affiliates and nonaffiliated third parties, consistent with section 502, including the categories of information that may be disclosed;

(2) disclosing nonpublic personal information of persons who have ceased to be customers of the financial institution; and

(3) protecting the nonpublic personal information of consumers.

Such disclosures shall be made in accordance with the regulations prescribed under section 504.

(b) **INFORMATION TO BE INCLUDED-** The disclosure required by subsection (a) shall include--

(I) the policies and practices of the institution with respect to disclosing nonpublic personal information to nonaffiliated third parties, other than agents of the institution, consistent with section 502 of this subtitle, and including--

(A) the categories of persons to whom the information is or may be disclosed, other than the persons to whom the information may be provided pursuant to section 502(e); and

(B) the policies and practices of the institution with respect to disclosing of nonpublic personal information of persons who have ceased to be customers of the financial institution;

(2) the categories of nonpublic personal information that are collected by the financial institution;

(3) the policies that the institution maintains to protect the confidentiality and security of nonpublic personal information in accordance with section 501; and

(4) the disclosures required, if any, under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act.

## **SEC. 504. RULEMAKING.**

(a) **REGULATORY AUTHORITY-**

(1) **RULEMAKING-** The Federal banking agencies, the National Credit Union Administration, the Secretary of the Treasury, the Securities and Exchange Commission, and the Federal Trade Commission shall each prescribe, after consultation as appropriate with representatives of State insurance authorities designated by the National Association of Insurance Commissioners, such regulations as may be necessary to carry out the purposes of this subtitle with respect to the financial institutions subject to their jurisdiction under section 505.

(2) **COORDINATION, CONSISTENCY, AND COMPARABILITY-** Each of the agencies and authorities required under paragraph (1) to prescribe regulations shall consult and coordinate with the other such agencies and authorities for the purposes of assuring, to the extent possible, that the regulations prescribed by each such agency and authority are consistent and comparable with the regulations prescribed by the other such agencies and authorities.

(3) PROCEDURES AND DEADLINE- Such regulations shall be prescribed in accordance with applicable requirements of title 5, United States Code, and shall be issued in final form not later than 6 months after the date of the enactment of this Act.

(b) AUTHORITY TO GRANT EXCEPTIONS- The regulations prescribed under subsection (a) may include such additional exceptions to subsections (a) through (d) of section 502 as are deemed consistent with the purposes of this subtitle.

## **SEC. 505. ENFORCEMENT.**

(a) IN GENERAL- This subtitle and the regulations prescribed thereunder shall be enforced by the Federal functional regulators, the State insurance authorities, and the Federal Trade Commission with respect to financial institutions and other persons subject to their jurisdiction under applicable law, as follows:

(1) Under section 8 of the Federal Deposit Insurance Act, in the case of--

(A) national banks, Federal branches and Federal agencies of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers), by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act, and bank holding companies and their nonbank subsidiaries or affiliates (except brokers, dealers, persons providing insurance, investment companies, and investment advisers), by the Board of Governors of the Federal Reserve System;

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), insured State branches of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers), by the Board of Directors of the Federal Deposit Insurance Corporation; and

(D) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, and any subsidiaries of such savings associations (except brokers, dealers, persons providing insurance, investment companies, and investment advisers), by the Director of the Office of Thrift Supervision.

(2) Under the Federal Credit Union Act, by the Board of the National Credit Union Administration with respect to any federally insured credit union, and any subsidiaries of such an entity.

(3) Under the Securities Exchange Act of 1934, by the Securities and Exchange Commission with respect to any broker or dealer.

(4) Under the Investment Company Act of 1940, by the Securities and Exchange Commission with respect to investment companies.

(5) Under the Investment Advisers Act of 1940, by the Securities and Exchange Commission with respect to investment advisers registered with the Commission under such Act.

(6) Under State insurance law, in the case of any person engaged in providing insurance, by the applicable State insurance authority of the State in which the person is domiciled, subject to section 104 of this Act.

(7) Under the Federal Trade Commission Act, by the Federal Trade Commission for any other financial institution or other person that is not subject to the jurisdiction of any agency or authority under paragraphs (1) through (6) of this subsection.

(b) ENFORCEMENT OF SECTION 501-

(1) **IN GENERAL**- Except as provided in paragraph (2), the agencies and authorities described in subsection (a) shall implement the standards prescribed under section 501 (b) in the same manner, to the extent practicable, as standards prescribed pursuant to section 39(a) of the Federal Deposit Insurance Act are implemented pursuant to such section.

(2) **EXCEPTION**- The agencies and authorities described in paragraphs (3), (4), (5), (6), and (7) of subsection (a) shall impfement the standards prescribed under section 501 (b) by rule with respect to the financial institutions and other persons subject to their respective jurisdictions under subsection (a)-

(c) **ABSENCE OF STATE ACTION**- If a State insurance authority fails to adopt regulations to carry out this subtitle, such State shall not be eligible to override, pursuant to section 47(g)(2)(B)(iii) of the Federal Deposit Insurance Act, the insurance customer protection regulations prescribed by a Federal banking agency under section 47(a) of such Act.

(d) **DEFINITIONS**- The terms used in subsection (a)(l) that are not defined in this subtitle or otherwise defined in section 3(s) of the Federal Deposit Insurance Act shall have the same meaning as given in section 1 (b) of the International Banking Act of 1978.

## **SEC. 506. PROTECTION OF FAIR CREDIT REPORTING ACT.**

(a) **AMENDMENT**- Section 621 of the Fair Credit Reporting Act (15 U.S.C. 1681s) is amended--

(l) in subsection (d), by striking everything following the end of the second sentence; and

(2) by striking subsection (e) and inserting the following:

‘(e) **REGULATORY AUTHORITY**-

‘(1) The Federal banking agencies referred to in paragraphs (l) and (2) of subsection (b) shall jointly prescribe such regulations as necessary to carry out the purposes of this Act with respect to any persons identified under paragraphs (1) and (2) of subsection (b), and the Board of Governors of the Federal Reserve System shall have authority to prescribe regulations consistent with such joint regulations with respect to bank holding companies and affiliates (other than depository institutions and consumer reporting agencies) of such holding companies.

‘(2) The Board of the National Credit Union Administration shall prescribe such regulations as necessary to carry out the purposes of this Act with respect to any persons identified under paragraph (3) of subsection (b).’.

(b) **CONFORMING AMENDMENT**- Section 621(a) of the Fair Credit Reporting Act (15 U.S.C. 1681s(a)) is amended by striking paragraph (4).

(c) **RELATION TO OTHER PROVISIONS**- Except for the amendments made by subsections (a) and (b), nothing in this title shall be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act, and no inference shall be drawn on the basis of the provisions of this title regarding whether information is transaction or experience information under section 603 of such Act.

## **SEC. 507. RELATION TO STATE LAWS.**

(a) **IN GENERAL**- This subtitle and the amendments made by this subtitle shall not be construed as superseding, altering, or affecting any statute, regulation, order, or interpretation in effect in any State, except to the extent that such statute, regulation, order, or interpretation is inconsistent with the provisions of this subtitle, and then only to the extent of the inconsistency.

(b) **GREATER PROTECTION UNDER STATE LAW**- For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this subtitle if the protection such statute, regulation, order, or interpretation affords any person is greater than the protection provided under this subtitle and the amendments made by this subtitle, as determined by the Federal Trade Commission, after consultation with the agency or authority with jurisdiction under section 505(a) of either the person that initiated the complaint or that is the subject of the complaint, on its own motion or upon the petition of any

interested party.

**SEC. 508. STUDY OF INFORMATION SHARING AMONG FINANCIAL AFFILIATES.**

(a) IN GENERAL- The Secretary of the Treasury, in conjunction with the Federal functional regulators and the Federal Trade Commission, shall conduct a study of information sharing practices among financial institutions and their affiliates. Such study shall include--

- (1) the purposes for the sharing of confidential customer information with affiliates or with nonaffiliated third parties;
- (2) the extent and adequacy of security protections for such information;
- (3) the potential risks for customer privacy of such sharing of information;
- (4) the potential benefits for financial institutions and affiliates of such sharing of information;
- (5) the potential benefits for customers of such sharing of information;

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