

LEGISLATIVE BILL 156

Approved by the Governor May 28, 2003

Introduced by Quandahl, 31

AN ACT relating to information; to amend sections 8-1401 and 8-1402, Revised Statutes Supplement, 2002; to change provisions relating to disclosure of confidential information; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 8-1401, Revised Statutes Supplement, 2002, is amended to read:

8-1401. (1) No person ~~or corporation or association~~ organized under the Business Corporation Act, the Credit Union Act, the Nebraska Banking Act, ~~the Nebraska Depository Institution Guaranty Corporation Act,~~ the Nebraska Industrial Development Corporation Act, the Nebraska Nonprofit Corporation Act, the Nebraska Professional Corporation Act, the Nebraska Trust Company Act, or Chapter 8, article 3, ~~or 4,~~ or otherwise authorized to conduct business in Nebraska or organized under the laws of the United States, shall be required to disclose any records or information, financial or otherwise, that it deems confidential concerning its affairs or the affairs of any person ~~or corporation~~ with which it is doing business to any person, party, agency, or organization, unless:

(a) The ~~(a)~~ disclosure relates to a lawyers trust account and is required to be made to the Counsel for Discipline of the Nebraska Supreme Court pursuant to a rule adopted by the Nebraska Supreme Court;

(b) The disclosure is governed by rules for discovery promulgated pursuant to section 25-1273.01;

(c) The request for disclosure is made by a law enforcement agency regarding a crime, a fraud, or any other unlawful activity in which the person to whom the request for disclosure is made is or may be a victim of such crime, fraud, or unlawful activity;

(d) The request for disclosure is made by a governmental agency which is a duly constituted supervisory regulatory agency of the person to whom the request for disclosure is made and the disclosure relates to examinations, audits, investigations, or inquiries of such persons;

(e) The request for disclosure is made pursuant to subpoena issued under the laws of this state by a governmental agency exercising investigatory or adjudicative functions with respect to a matter within the agency's jurisdiction;

(f) The production of records is pursuant to a written demand of the Tax Commissioner under section 77-375;

(g) There is first presented to such person a subpoena, summons, or warrant issued by a court of competent jurisdiction;

(h) A statute by its terms or rules and regulations adopted and promulgated thereunder requires the disclosure, other than by subpoena, summons, warrant, or court order;

(i) There ~~or (b)~~ there is presented to such person, ~~corporation, or association~~ a court an order of a court of competent jurisdiction setting forth the exact nature and limits of such required disclosure and a showing that all persons ~~or organizations~~ to be affected by such order have had reasonable notice and an opportunity to be heard upon the merits of such order; or

(j) There is first presented to such person the written permission of the person about whom records or information is being sought authorizing the release of the requested records or information. The requesting party shall pay the costs of providing such records or information pursuant to section 8-1402. This section shall not apply to any duly constituted supervisory regulatory agency of such person, ~~corporation, or association,~~ to the production of records pursuant to a written demand of the Tax Commissioner under section 77-375, to disclosures governed by rules for discovery adopted and promulgated pursuant to section 25-1273.01, or to such cases for which specific disclosures are specifically required by other sections of the statutes heretofore or hereafter enacted, except that the Department of Banking and Finance shall be subject to the payment of cost provision of this section when making inquiries that are beyond those normally made in conducting examinations and inquiries for the purpose of determining the safety and soundness of a financial institution, but shall not be subject to the disclosure and reasonable notice provisions of this section when making

reasonable inquiries of any person, corporation, or association for the purpose of enforcing any of the laws over which the department has jurisdiction.

(2) Any person, corporation, or association which who makes a disclosure of records or information as required by subsection (1) of this section shall not be held civilly or criminally liable for such disclosure in the absence of malice, bad faith, intent to deceive, or gross negligence.

Sec. 2. Section 8-1402, Revised Statutes Supplement, 2002, is amended to read:

8-1402. If any person, corporation, or association covered by section 8-1401 is required by court order, by lawful subpoena, summons, or warrant, or by written demand pursuant to subsection (2) of section 77-375 or, after receiving the written permission of the person, corporation, or association about whom records or information is being sought, voluntarily consents to provide records or information in its possession, it shall be paid by the requesting person, party, agency, or organization for the service. (1) Any person, party, agency, or organization requesting disclosure of records or information pursuant to section 8-1401 shall pay the costs of providing such records or information, unless:

(a) The request for disclosure is made pursuant to subdivision (1) (a) of section 8-1401 and a Nebraska Supreme Court rule provides for the method of payment;

(b) The request is made pursuant to subdivision (1) (b) of section 8-1401 and the rules for discovery provide for the method of payment;

(c) The request for disclosure is made pursuant to subdivision (1) (c) or (1) (d) of section 8-1401;

(d) Otherwise ordered by a court of competent jurisdiction; or

(e) The person making the disclosure waives any or all of the costs.

(2) The requesting person, party, agency, or organization shall pay five dollars per hour per person for the time actually spent on the service or, if such person, corporation, or association can show that its actual expense in providing the records or information was greater than five dollars per hour per person, it shall be paid the actual cost of providing the records or information.

(3) No person, corporation, or association authorized to receive payment pursuant to subsection (1) of this section has an obligation to provide any records or information pursuant to section 8-1401, other than pursuant to a court order, a lawful subpoena, summons, or warrant, or a written demand pursuant to subsection (2) of section 77-375, until assurances are received that the costs due under this section will be paid, except for requests made pursuant to subdivisions (1) (c), (1) (d), (1) (e), and (1) (f) of section 8-1401.

Sec. 3. For purposes of sections 8-1401 and 8-1402:

(1) Governmental agency means any agency, department, or commission of this state or any authorized officer, employee, or agent of such agency, department, or commission;

(2) Law enforcement agency means an agency or department of this state or of any political subdivision of this state that obtains, serves, and enforces arrest warrants or that conducts or engages in prosecutions for violations of the law; and

(3) Person means any individual, corporation, partnership, limited liability company, association, joint stock association, trust, unincorporated organization, and any other legal entity.

Sec. 4. Original sections 8-1401 and 8-1402, Revised Statutes Supplement, 2002, are repealed.