

Regular Session, 2012

SENATE BILL NO. 449

BY SENATOR MARTINY

BANKS/BANKING. Provides relative to privileged bank documents. (8/1/12)

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AN ACT

To amend and reenact R.S. 6:284.1(B) and 336, relative to state banks; to provide for compliance review; to provide for privilege of results of the compliance review; to provide for evidence in court or administrative proceedings; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 6:284.1(B) and 336 are hereby amended and reenacted to read as follows:

§284.1. Compliance review committees; privilege created

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B. Notwithstanding any other provision of law to the contrary, the results of any such self-evaluation, self-assessment, self-testing, or self-correction, and any notes, reports, or work product derived therefrom, whether prepared by internal personnel or outside attorneys, accountants, **third-party service providers**, or consultants, shall be deemed privileged for all purposes and shall not be subject to discovery **and shall not be admissible as evidence, unless specifically agreed to by the FDIC-insured financial institution, holding company, subsidiary, or**

1 affiliate, in any private, public, or administrative civil action brought against the  
 2 FDIC-insured financial institution, its holding company, subsidiaries, or  
 3 affiliates ~~bank~~ alleging noncompliance with or violation of applicable state and  
 4 federal banking laws and regulations.

5 \* \* \*

6 §336. Legal and regulatory compliance; self-evaluations; privilege of results

7 A. It is the intent of the legislature to encourage ~~banks and other financial~~  
 8 ~~institutions~~ FDIC-insured financial institutions, their holding companies,  
 9 subsidiaries, and affiliates to engage in self-evaluations, self-assessments, self-  
 10 testing, and self-corrections with respect to compliance with applicable state and  
 11 federal banking laws and regulations. To that end, and notwithstanding any other  
 12 law to the contrary, the results of any such self-determination, self-assessment, self-  
 13 testing, or self-corrections, and any notes, reports, or work product derived  
 14 therefrom, whether prepared by internal personnel or by outside attorneys,  
 15 accountants, third-party service providers, or consultants, shall be deemed  
 16 privileged for all purposes and shall not be subject to discovery and shall not be  
 17 admissible as evidence, unless specifically agreed to by the FDIC-insured  
 18 financial institution, its holding company, subsidiary, or affiliate, in any private,  
 19 public, or administrative civil action brought against the ~~bank or other financial~~  
 20 ~~institution~~ FDIC- insured financial institution, holding company, subsidiaries,  
 21 or affiliates alleging noncompliance with or violation of such applicable state and  
 22 federal banking laws and regulations.

23 B.(1) The submission by any FDIC-insured financial institution of any  
 24 information to any federal banking agency or bureau, including but not limited  
 25 to the Consumer Financial Protection Bureau, or to the commissioner of the  
 26 office of financial institutions, or to any other state agency or department, for  
 27 any purpose in the course of any supervisory, regulatory, or enforcement  
 28 process of such agency, bureau, commissioner, or state agency or department,  
 29 shall not be construed as waiving, destroying, or otherwise affecting any

1 privilege the FDIC-insured financial institution may claim with respect to such  
2 information under federal or state law as to any person or entity other than  
3 such agency, bureau, commissioner, or state agency or department.

4 (2) The provisions of Paragraph (1) of this Subsection shall not be  
5 construed as implying or establishing either of the following:

6 (a) That any FDIC-insured financial institution waives any privilege  
7 applicable to information that is submitted or transferred under any  
8 circumstances to which Paragraph (1) of this Subsection does not apply.

9 (b) That any FDIC-insured financial institution would waive any  
10 privilege applicable to any information by submitting the information to any  
11 federal banking agency or bureau or the commissioner of the office of financial  
12 institution, but for the provisions of this Section.

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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Michelle Ducharme.

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#### DIGEST

Martiny (SB 449)

Present law relative to state banks provides notwithstanding any other provision of law to the contrary, the results of any self-evaluation, self-assessment, self-testing, or self-correction, and any notes, reports, or work product derived therefrom, whether prepared by internal personnel or outside attorneys, accountants, or consultants, shall be deemed privileged for all purposes and shall not be subject to discovery in any private civil action brought against the bank alleging noncompliance with or violation of applicable state and federal banking laws and regulations.

Proposed law adds third-party service providers to the list of those who may prepare self-evaluations, self-assessments, self-testing, or self-correction as privileged documents.

Proposed law provides that such privileged documents shall not be admissible as evidence, unless specifically agreed to by the FDIC insured financial institution, holding company, subsidiary, or affiliate, in any private, or administrative civil action brought against the FDIC insured financial institution, holding company, subsidiaries, or affiliates alleging noncompliance.

Proposed law provides the submission by any FDIC financial institution of any information to any federal banking agency or bureau, including, but not limited to, the Consumer Financial Protection Bureau, the commissioner of the office of financial institutions, or any other state agency or department, for any purpose in the course of any supervisory, regulatory, or enforcement process of such agency, bureau, commissioner, authority or state agency or department, shall not be construed as waiving, destroying, or otherwise affecting any privilege the FDIC insured financial institution may claim with respect to such information under federal or state law as any person or entity other than such agency, bureau, commissioner, or state agency or department.

Proposed law provides that the provisions of proposed law shall not be construed as implying or establishing either of the following:

1. That any FDIC insured financial institution waives any privilege applicable to certain information that is submitted or transferred.
2. That any FDIC insured financial institution would waive any privilege applicable to any information by submitting the information to any federal banking agency or bureau or the commissioner of the office of financial institution, but for the provisions of proposed law.

Effective August 1, 2012.

(Amends R.S. 6:284.1(B) and 336)