

ASSEMBLY, No. 2518

STATE OF NEW JERSEY

212th LEGISLATURE

INTRODUCED FEBRUARY 9, 2006

Sponsored by:

Assemblyman NEIL M. COHEN

District 20 (Union)

Assemblyman JEFF VAN DREW

District 1 (Cape May, Atlantic and Cumberland)

SYNOPSIS

“New Jersey Financial Information Privacy Act.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/23/2006)

1 AN ACT providing consumers certain privacy protections with
2 respect to their financial information and supplementing Title 56
3 of the Revised Statutes.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. This act shall be known and may be cited as the "New Jersey
9 Financial Information Privacy Act."

10
11 2. It is the intent of the Legislature in enacting this act:

12 (1) To provide consumers with notice and a meaningful choice
13 about how their nonpublic personal information is shared or sold by
14 financial institutions.

15 (2) To afford persons greater privacy protections than those
16 provided in the federal "Gramm-Leach-Bliley Act," Pub.L. 106-102
17 (15 U.S.C. s.6701 et al.) and that this act be interpreted consistently
18 with that purpose.

19 (3) To ensure that New Jersey residents have the ability to
20 control the disclosure of their nonpublic personal information.

21 (4) To achieve that control for New Jersey consumers by
22 requiring that financial institutions that want to share information
23 with third parties and unrelated companies seek and acquire the
24 affirmative consent of New Jersey consumers prior to sharing the
25 information.

26 (5) To adopt, to the maximum extent feasible and consistent
27 with the purposes cited above, definitions consistent with federal
28 law, so that, in particular, there is no change in the ability of
29 businesses to carry out normal processes of commerce for
30 transactions voluntarily entered into by consumers.

31

32 3. For the purposes of this act:

33 "Affiliate" means any entity that controls, is controlled by, or is
34 under common control with, another entity, but does not include a
35 joint employee of the entity and the affiliate. A franchisor,
36 including any affiliate thereof, shall be deemed an affiliate of the
37 franchisee for purposes of this act.

38 "Affinity card" means an agreement between a financial
39 institution and an affinity partner to issue a credit card in the name
40 of the affinity partner.

41 "Affinity financial product or service" means an agreement
42 between a financial institution and an affinity partner to issue a
43 financial product or service, other than an affinity card, on behalf of
44 the affinity partner.

45 "Affinity partner" means an organization or business that is not a
46 financial institution that has entered into an agreement with a
47 financial institution to issue an affinity card or other affinity
48 financial product or service.

1 "Clear and conspicuous" means that a notice is reasonably
2 understandable and designed to call attention to the nature and
3 significance of the information contained in the notice.

4 "Consumer" means an individual resident of this State, or that
5 individual's legal representative, who obtains or has obtained from a
6 financial institution a financial product or service to be used
7 primarily for personal, family, or household purposes. For purposes
8 of this act, an individual resident of this State is someone whose last
9 known mailing address, other than an Armed Forces Post Office or
10 Fleet Post Office address, as shown in the records of the financial
11 institution, is located in this State. For purposes of this act, an
12 individual is not a consumer of a financial institution solely because
13 they are: (1) a participant or beneficiary of an employee benefit
14 plan that a financial institution administers or sponsors, or for
15 which the financial institution acts as a trustee, insurer, or fiduciary;
16 (2) covered under a group or blanket insurance policy or group
17 annuity contract issued by the financial institution; (3) a beneficiary
18 in a workers' compensation plan; (4) a beneficiary of a trust for
19 which the financial institution is a trustee; or (5) a person who has
20 designated the financial institution as trustee for a trust, provided
21 that the financial institution provides all required notices and rights
22 required by this act to the plan sponsor, group or blanket insurance
23 policyholder, or group annuity contract holder.

24 "Control" means: (1) ownership or power to vote 25 percent or
25 more of the outstanding shares of any class of voting security of a
26 company, acting through one or more persons; (2) control in any
27 manner over the election of a majority of the directors, or of
28 individuals exercising similar functions; or (3) the power to
29 exercise, directly or indirectly, a controlling influence over the
30 management or policies of a company. For purposes of applying
31 this definition to a financial institution subject to regulation by the
32 United States Securities and Exchange Commission, a person who
33 owns beneficially, either directly or through one or more controlled
34 companies, more than 25 percent of the voting securities of a
35 company is presumed to control the company, and a person who
36 does not own more than 25 percent of the voting securities of a
37 company is presumed not to control the company, and a
38 presumption regarding control may be rebutted by evidence, but in
39 the case of an investment company, the presumption shall continue
40 until the United States Securities and Exchange Commission makes
41 a decision to the contrary according to the procedures described in
42 section 2(a) (9) of the federal "Investment Company Act of 1940,"
43 Pub.L. 76-768 (15 U.S.C. s.80a-2(a)(9)).

44 "Financial institution" means any institution, the business of
45 which is engaging in financial activities as described in section 4(k)
46 of Pub.L. No.84-511 (12 U.S.C. s.1843(k)) and doing business in
47 this State. An institution that is not significantly engaged in
48 financial activities is not a financial institution. The term "financial

1 institution" does not include: (1) an institution that is primarily
2 engaged in providing hardware, software, or interactive services,
3 provided that it does not act as a debt collector, as defined in
4 section 803 of Pub.L. 95-109 (15 U.S.C. s.1692a), or engage in
5 activities for which the institution is required to acquire a charter,
6 license or registration from a state or federal governmental banking,
7 insurance, or securities agency; (2) the Federal Agricultural
8 Mortgage Corporation or any entity chartered and operating under
9 the "Farm Credit Act of 1971," Pub.L. 92-181 (12 U.S.C. s.2001 et
10 seq.), provided that the entity does not sell or transfer nonpublic
11 personal information to a nonaffiliated third party; (3) institutions
12 chartered by Congress specifically to engage in a proposed or actual
13 securitization, secondary market sale, including sales of servicing
14 rights, or similar transactions related to a transaction of the
15 consumer, as long as those institutions do not sell or transfer
16 nonpublic personal information to a nonaffiliated third party; or (4)
17 any provider of professional services, or any wholly owned affiliate
18 thereof, that is prohibited by rules of professional ethics and
19 applicable law from voluntarily disclosing confidential client
20 information without the consent of the client.

21 "Financial product or service" means any product or service that
22 a financial holding company could offer by engaging in an activity
23 that is financial in nature or incidental to a financial activity under
24 section 4 of Pub.L. 84-511 (12 U.S.C. s.1843). The term "financial
25 product or service" includes a financial institution's evaluation or
26 brokerage of information that the financial institution collects in
27 connection with a request or an application from a consumer for a
28 financial product or service.

29 "Necessary to effect, administer or enforce" means, with respect
30 to the disclosure of information, the following:

31 (1) The disclosure is required, or is a usual, appropriate, or
32 acceptable method to carry out the transaction or the product or
33 service business of which the transaction is a part, and record or
34 service or maintain the consumer's account in the ordinary course of
35 providing the financial product or service, or to administer or
36 service benefits or claims relating to the transaction or the product
37 or service business of which it is a part, and includes the following:

38 (a) Providing the consumer or the consumer's agent or broker
39 with a confirmation, statement, or other record of the transaction, or
40 information on the status or value of the financial product or
41 service.

42 (b) The accrual or recognition of incentives, discounts, or
43 bonuses associated with the transaction or communications to
44 eligible existing consumers of the financial institution regarding the
45 availability of those incentives, discounts and bonuses that are
46 provided by the financial institution or another party.

47 (c) In the case of a financial institution that has issued a credit
48 account bearing the name of a company primarily engaged in retail

1 sales or a name proprietary to a company primarily engaged in retail
2 sales, the financial institution providing the retailer with nonpublic
3 personal information as follows:

4 (i) Providing the retailer, or licensees or contractors of the
5 retailer that provide products or services in the name of the retailer
6 and under a contract with the retailer, with the names and addresses
7 of the consumers in whose name the account is held and a record of
8 the purchases made using the credit account from a business
9 establishment, including a website or catalog, bearing the brand
10 name of the retailer.

11 (ii) Where the credit account can only be used for transactions
12 with the retailer or affiliates of that retailer that are also primarily
13 engaged in retail sales, providing the retailer, or licensees or
14 contractors of the retailer that provide products or services in the
15 name of the retailer and under a contract with the retailer, with
16 nonpublic personal information concerning the credit account, in
17 connection with the offering or provision of the products or services
18 of the retailer and those licensees or contractors.

19 (2) The disclosure is required or is one of the lawful or
20 appropriate methods to enforce the rights of the financial institution
21 or of other persons engaged in carrying out the financial transaction
22 or providing the product or service.

23 (3) The disclosure is required, or is a usual, appropriate, or
24 acceptable method for insurance underwriting or the placement of
25 insurance products by licensed agents and brokers with authorized
26 insurance companies at the consumer's request, for reinsurance, stop
27 loss insurance, or excess loss insurance purposes, or for any of the
28 following purposes as they relate to a consumer's insurance:

29 (a) Account administration.

30 (b) Reporting, investigating, or preventing fraud or material
31 misrepresentation.

32 (c) Processing premium payments.

33 (d) Processing insurance claims.

34 (e) Administering insurance benefits, including utilization
35 review activities.

36 (f) Participating in research projects.

37 (g) As otherwise required or specifically permitted by federal or
38 State law.

39 (4) The disclosure is required, or is a usual, appropriate, or
40 acceptable method, in connection with the following:

41 (a) The authorization, settlement, billing, processing, clearing,
42 transferring, reconciling or collection of amounts charged, debited
43 or otherwise paid using a debit, credit or other payment card, check
44 or account number or by other payment means.

45 (b) The transfer of receivables, accounts or interests therein.

46 (c) The audit of debit, credit, or other payment information.

47 (5) The disclosure is required in a transaction covered by the
48 federal "Real Estate Settlement Procedures Act of 1974," Pub.L. 93-

1 533 (12 U.S.C. s.2601 et seq.) in order to offer settlement services
2 prior to the close of escrow, as those services are defined in section
3 3 of that federal act (12 U.S.C. s.2602), provided that: (a) the
4 nonpublic personal information is disclosed for the sole purpose of
5 offering those settlement services; and (b) the nonpublic personal
6 information disclosed is limited to that necessary to enable the
7 financial institution to offer those settlement services in that
8 transaction.

9 "Nonaffiliated third party" means any entity that is not an
10 affiliate of, or related by common ownership or affiliated by
11 corporate control with, the financial institution, but does not include
12 a joint employee of that institution and a third party.

13 "Nonpublic personal information" means personally identifiable
14 financial information: (1) provided by a consumer to a financial
15 institution; (2) resulting from any transaction with the consumer or
16 any service performed for the consumer; or (3) otherwise obtained
17 by the financial institution. Nonpublic personal information does
18 not include publicly available information that the financial
19 institution has a reasonable basis to believe is lawfully made
20 available to the general public from: (4) federal, state, or local
21 government records; (5) widely distributed media; or (6) disclosures
22 to the general public that are required to be made by federal, State,
23 or local law. Nonpublic personal information shall include any list,
24 description, or other grouping of consumers, and publicly available
25 information pertaining to them, that is derived using any nonpublic
26 personal information other than publicly available information, but
27 shall not include any list, description, or other grouping of
28 consumers, and publicly available information pertaining to them,
29 that is derived without using any nonpublic personal information.

30 "Personally identifiable financial information" means
31 information: (1) that a consumer provides to a financial institution
32 to obtain a product or service from the financial institution; (2)
33 about a consumer resulting from any transaction involving a
34 product or service between the financial institution and a consumer;
35 or (3) that the financial institution otherwise obtains about a
36 consumer in connection with providing a product or service to that
37 consumer. Any personally identifiable information is financial if it
38 was obtained by a financial institution in connection with providing
39 a financial product or service to a consumer.

40 (4) Personally identifiable financial information includes all of
41 the following:

42 (a) Information a consumer provides to a financial institution on
43 an application to obtain a loan, credit card, or other financial
44 product or service.

45 (b) Account balance information, payment history, overdraft
46 history, and credit or debit card purchase information.

1 (c) The fact that an individual is or has been a consumer of a
2 financial institution or has obtained a financial product or service
3 from the financial institution.

4 (d) Any information about a financial institution's consumer if it
5 is disclosed in a manner that indicates that the individual is or has
6 been the financial institution's consumer.

7 (e) Any information that a consumer provides to a financial
8 institution or that a financial institution or its agent otherwise
9 obtains in connection with collecting on a loan or servicing a loan.

10 (f) Any personally identifiable financial information collected
11 through an Internet cookie or an information collecting device from
12 a Web server.

13 (g) Information from a consumer report.

14 "Widely distributed media" means media available to the general
15 public and includes a telephone book, a television or radio program,
16 a newspaper, or a website that is available to the general public on
17 an unrestricted basis.

18
19 4. Except as provided in sections 5, 8 and 9 of this act, a
20 financial institution shall not sell, share, transfer or otherwise
21 disclose nonpublic personal information to or with any nonaffiliated
22 third parties without the explicit prior consent of the consumer to
23 whom the nonpublic personal information relates.

24
25 5. a. (1) A financial institution shall not disclose to or share a
26 consumer's nonpublic personal information with any nonaffiliated
27 third party, as prohibited by section 4 of this act, unless the
28 financial institution has obtained an opt-in acknowledgment from
29 the consumer that complies with paragraph (2) of this subsection
30 that authorizes the financial institution to disclose or share the
31 nonpublic personal information. Nothing in this section shall
32 prohibit or otherwise apply to the disclosure of nonpublic personal
33 information as allowed in section 9 of this act. A financial
34 institution shall not discriminate against or deny an otherwise
35 qualified consumer a financial product or service because the
36 consumer has not provided consent pursuant to this subsection and
37 section 4 of this act to authorize the financial institution to disclose
38 or share nonpublic personal information pertaining to the consumer
39 with any nonaffiliated third party. Nothing in this section shall
40 prohibit a financial institution from denying a consumer a financial
41 product or service if the financial institution could not provide the
42 product or service to a consumer without the consent to disclose the
43 consumer's nonpublic personal information required by this
44 subsection and section 4 of this act, and the consumer has failed to
45 provide consent. A financial institution shall not be liable for
46 failing to offer products and services to a consumer solely because
47 that consumer has failed to provide consent pursuant to this
48 subsection and section 4 of this act and the financial institution

1 could not offer the product or service without the consent to
2 disclose the consumer's nonpublic personal information required by
3 this subsection and section 4 of this act, and the consumer has failed
4 to provide consent. Nothing in this section is intended to prohibit a
5 financial institution from offering incentives or discounts to elicit a
6 specific response to the notice.

7 (2) A financial institution shall utilize an opt-in form, statement,
8 or writing to obtain consent to disclose nonpublic personal
9 information to nonaffiliated third parties as required by this
10 subsection and section 4 of this act. The opt-in form, statement or
11 writing shall meet all of the following criteria:

12 (a) The opt-in form, statement or writing shall be a separate
13 document, not attached to any other document.

14 (b) The opt-in form, statement or writing shall be dated and
15 signed by the consumer.

16 (c) The opt-in form, statement or writing shall clearly and
17 conspicuously disclose that by signing, the consumer is consenting
18 to the disclosure to nonaffiliated third parties of nonpublic personal
19 information pertaining to the consumer.

20 (d) The opt-in form, statement, or writing shall clearly and
21 conspicuously disclose (i) that the consent will remain in effect
22 until revoked or modified by the consumer; (ii) that the consumer
23 may revoke the consent at any time; and (iii) the procedure for the
24 consumer to revoke consent.

25 (e) The opt-in form, statement, or writing shall clearly and
26 conspicuously inform the consumer that (i) the financial institution
27 will maintain the document or a true and correct copy; (ii) the
28 consumer is entitled to a copy of the document upon request; and
29 (iii) the consumer may want to make a copy of the document for the
30 consumer's records.

31 b. (1) This subsection shall not prohibit the release of nonpublic
32 personal information by a financial institution with whom the
33 consumer has a relationship to a nonaffiliated financial institution
34 for purposes of jointly offering a financial product or financial
35 service pursuant to a written agreement with the financial institution
36 that receives the nonpublic personal information provided that all of
37 the following requirements are met:

38 (a) The financial product or service offered is a product or
39 service of, and is provided by, at least one of the financial
40 institutions that is a party to the written agreement.

41 (b) The financial product or service is jointly offered, endorsed,
42 or sponsored, and clearly and conspicuously identifies for the
43 consumer the financial institutions that disclose and receive the
44 disclosed nonpublic personal information.

45 (c) The written agreement provides that the financial institution
46 that receives that nonpublic personal information is required to
47 maintain the confidentiality of the information and is prohibited
48 from disclosing or using the information other than to carry out the

1 joint offering or servicing of a financial product or financial service
2 that is the subject of the written agreement.

3 (d) The financial institution that releases the nonpublic personal
4 information has complied with subsection d. of this section and the
5 consumer has directed that the nonpublic personal information be
6 disclosed.

7 (e) Notwithstanding this section, until January 1, 2007, a
8 financial institution may disclose nonpublic personal information to
9 a nonaffiliated financial institution pursuant to a preexisting
10 contract with the nonaffiliated financial institution, for purposes of
11 offering a financial product or service, if that contract was entered
12 into on or before January 1, 2006. Beginning on January 1, 2007,
13 no nonpublic personal information may be disclosed pursuant to
14 that contract unless all the requirements of this subsection are met.

15 (2) Nothing in this subsection shall prohibit a financial
16 institution from disclosing or sharing nonpublic personal
17 information as otherwise specifically permitted by this section.

18 (3) A financial institution shall not discriminate against or deny
19 an otherwise qualified consumer a financial product or service
20 because the consumer has directed that nonpublic personal
21 information pertaining to them not be disclosed. Nothing in this
22 section is intended to prohibit a financial institution from offering
23 incentives or discounts to elicit a specific response to the notice set
24 forth in this section. Nothing in this section shall prohibit the
25 disclosure of nonpublic personal information as allowed by section
26 9 of this act.

27 c. Nothing in this section shall restrict or prohibit the sharing of
28 nonpublic personal information: between a financial institution and
29 its wholly owned financial institution subsidiaries; among financial
30 institutions that are each wholly owned by the same financial
31 institution; among financial institutions that are wholly owned by
32 the same holding company; or among the insurance and
33 management entities of a single insurance holding company system
34 consisting of one or more reciprocal insurance exchanges which has
35 a single corporation or its wholly owned subsidiaries providing
36 management services to the reciprocal insurance exchanges,
37 provided that in each case all of the following requirements are met:

38 (1) The financial institution disclosing the nonpublic personal
39 information and the financial institution receiving it are regulated
40 by the same functional regulator; provided, however, that for
41 purposes of this paragraph, financial institutions regulated by the
42 federal Office of the Comptroller of the Currency, the federal Office
43 of Thrift Supervision, National Credit Union Administration, or a
44 state regulator of depository institutions shall be deemed to be
45 regulated by the same functional regulator; financial institutions
46 regulated by the United States Securities and Exchange
47 Commission, the United States Department of Labor, or a state
48 securities regulator shall be deemed to be regulated by the same

1 functional regulator; and insurers admitted in this State to transact
2 insurance and licensed to write insurance policies shall be deemed
3 to be in compliance with this subsection.

4 (2) The financial institution disclosing the nonpublic personal
5 information and the financial institution receiving it are both
6 principally engaged in the same line of business. For purposes of
7 this paragraph, "same line of business" shall represent not more
8 than one of the following:

9 (a) Insurance;

10 (b) Banking; or

11 (c) Securities.

12 (3) The financial institution disclosing the nonpublic personal
13 information and the financial institution receiving it share a
14 common brand, excluding a brand consisting solely of a graphic
15 element or symbol, within their trademark, service mark or trade
16 name, which is used to identify the source of the products and
17 services provided.

18 A wholly owned subsidiary shall include a subsidiary wholly
19 owned directly or indirectly in a chain of wholly owned
20 subsidiaries.

21 d. (1) A financial institution shall be conclusively presumed to
22 have satisfied the notice requirements of subsections a. and b. of
23 this section if it uses the opt-in form set forth in paragraph (2) of
24 this subsection. The opt-in form set forth in paragraph (2) or a form
25 that complies with subparagraphs (a) to (k), inclusive, of this
26 paragraph shall be sent by the financial institution to the consumer
27 so that a consumer may make a decision and provide direction to
28 the financial institution regarding the sharing of their nonpublic
29 personal information. If a financial institution does not use the opt-
30 in form set forth in paragraph (2) of this subsection, the financial
31 institution shall use a form that meets all of the following
32 requirements:

33 (a) The form uses the same title ("IMPORTANT PRIVACY
34 CHOICE FOR CONSUMERS") and the header, if applicable, as
35 follows: "Allow Information Sharing With Other Companies We
36 Do Business With To Provide Financial Products And Services."

37 (b) The titles and headers in the form are clearly and
38 conspicuously displayed, and no text in the form is smaller than 12-
39 point type.

40 (c) The form is a separate document, except as provided in this
41 section and section 7 of this act.

42 (d) The choice pursuant to subsection a. and b. of this section
43 and section 8 of this act, if applicable, provided in the form are
44 stated separately and may be selected by checking a box.

45 (e) The form is designed to call attention to the nature and
46 significance of the information in the document.

47 (f) The form presents information in clear and concise
48 sentences, paragraphs, and sections.

- 1 (g) The form uses short explanatory sentences which average
2 between 15 and 20 words or bullet lists whenever possible.
- 3 (h) The form avoids multiple negatives, legal terminology, and
4 highly technical terminology whenever possible.
- 5 (i) The form avoids explanations that are imprecise and readily
6 subject to different interpretations.
- 7 (j) The form provides wide margins, ample line spacing and uses
8 boldface or italics for key words.
- 9 (k) The form is not more than one page.
- 10 (l) The form is provided to consumers in English and Spanish.
- 11 (2) (a) None of the instructional items appearing in brackets in
12 the opt-in form set forth in this paragraph shall appear in the opt-in
13 form provided to the consumer, as those items are for explanation
14 purposes only. If a financial institution does not disclose or share
15 nonpublic personal information as described in a header of the
16 form, the financial institution may omit the applicable header or
17 headers, and the accompanying information and box, in the form it
18 provides pursuant to this paragraph. The opt-in form with those
19 omissions shall be conclusively presumed to satisfy the notice
20 requirements of this paragraph.
- 21 (b) If a financial institution uses an opt-in form other than that
22 set forth in this paragraph, the financial institution may submit that
23 opt-in form to its functional regulator for approval, which approval
24 shall create a rebuttable presumption that the opt-in form complies
25 with this section.
- 26 (c) A financial institution shall not be in violation of this section
27 solely because it includes in the opt-in form one or more brief
28 examples or explanations of the purpose, or context, within which
29 information will be shared, as long as those examples meet the
30 clarity and readability standards set forth in paragraph (1) of this
31 subsection.
- 32 (d) The outside of the envelope in which the opt-in form is sent
33 to the consumer shall clearly state in 16-point boldface type
34 "IMPORTANT PRIVACY CHOICE," except that a financial
35 institution sending the form to a consumer in the same envelope as
36 a bill, account statement, or application requested by the consumer
37 does not have to include the wording "IMPORTANT PRIVACY
38 CHOICE" on that envelope.

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Important Privacy Choice for Consumers

You have the right to control whether we share some of your personal information.
Please read the following information carefully before you make your choice below.

Your Rights

You have the right to restrict the sharing of personal and financial information with outside companies that we do business with (non-affiliated third party). Nothing in this opt-in form prohibits the sharing of information necessary for us to follow the law or to give you the best service on your accounts with us. This includes sending you information about some other products or services.

Your Choice

Information Sharing With Other Companies We Do Business With To Provide Financial Products and Services: Unless you say "Yes," we may not share personal and financial information about you with outside companies we contract with to provide financial products and services to you.

(☐) YES, You may share personal and financial information with outside companies we contract with to provide financial products and services.

Time Sensitive Reply

You may make your privacy choice at any time. Your choice marked here will remain unless you state otherwise.

Name:
Account or Policy Number(s): _____ [to be filled in by consumer]

Signature:

To exercise your choice do [one of] the following: (1) Fill out, sign and send back this form to us using the envelope provided (you may want to make a copy for your records); [#1 is mandatory] [(2) Call this toll free number (800) xxx-xxxx; [optional] [(3) Reply electronically by contacting us through the following Internet option: xxxxx.com] [optional]

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The form shall be sent in one or more of the following ways:

1 (i) With a bill, other statement of account, or application
2 requested by the consumer, in which case the information required
3 by Title V of the "Gramm-Leach-Bliley Act," Pub.L 106-102 (15
4 U.S.C. s.6801 et seq.) may also be included in the same envelope.

5 (ii) As a separate notice or with the information required by
6 Title V of the "Gramm-Leach-Bliley Act," Pub.L 106-102 (15
7 U.S.C. s.6801 et seq.) and including only information related to
8 privacy.

9 (iii) With any other mailing, in which case it shall be the first
10 page of the mailing.

11 (3) When a consumer directs that nonpublic personal
12 information may be disclosed, that direction shall remain in effect
13 until otherwise stated by the consumer. A financial institution that
14 has not provided a consumer with annual notice pursuant to this
15 section shall provide the consumer with a form that meets the
16 requirements of this subsection.

17 (4) If a financial institution does not have a continuing
18 relationship with a consumer other than the initial transaction in
19 which the product or service is provided, no annual disclosure
20 requirement exists pursuant to this section as long as the financial
21 institution provides the consumer with the form required by this
22 section at the time of the initial transaction. As used in this section,
23 "annually" means at least once in any period of 12 consecutive
24 months during which that relationship exists. The financial
25 institution may define the 12-consecutive-month period, but shall
26 apply it to the consumer on a consistent basis.

27 (5) A financial institution with assets in excess of \$25,000,000
28 shall include a self-addressed first class business reply return
29 envelope with the notice. A financial institution with assets of up to
30 and including \$25,000,000 shall include a self-addressed return
31 envelope with the notice. In lieu of the first class business reply
32 return envelope required by this paragraph, a financial institution
33 may offer a self-addressed return envelope with the notice and at
34 least two alternative cost-free means for consumers to communicate
35 their privacy choices, such as calling a toll-free number, sending a
36 facsimile to a toll-free telephone number, or using electronic means.

37 A financial institution shall clearly and conspicuously disclose in
38 the form required by this subsection the information necessary to
39 direct a consumer on how to communicate their choices, including
40 the toll-free or facsimile number or website address that may be
41 used, if those means of communication are offered by the financial
42 institution.

43 (6) A financial institution may provide a joint notice from it or
44 other financial institutions, as identified in the notice, so long as the
45 notice is accurate with respect to the financial institution and other
46 financial institutions.

47 e. Nothing in this act shall prohibit a financial institution from
48 marketing its own products and services or the products and

1 services of nonaffiliated third parties to customers of the financial
2 institution so long as: (1) nonpublic personal information is not
3 disclosed in connection with the delivery of the applicable
4 marketing materials to those customers except as permitted by
5 section 9 of this act; and (2) in cases in which the applicable
6 nonaffiliated third party may extrapolate nonpublic personal
7 information about the consumer responding to those marketing
8 materials, the applicable nonaffiliated third party has signed a
9 contract with the financial institution under the terms of which: (a)
10 the nonaffiliated third party is prohibited from using that
11 information for any purpose other than the purpose for which it was
12 provided, as set forth in the contract; and (b) the financial
13 institution has the right by audit, inspections, or other means to
14 verify the nonaffiliated third party's compliance with that contract.

15

16 6. Except as otherwise provided in this act, an entity that
17 receives nonpublic personal information from a financial institution
18 as permitted under this act shall not disclose this information to any
19 other entity, unless the disclosure would be lawful if made directly
20 to the other entity by the financial institution. An entity that
21 receives nonpublic personal information pursuant to any exception
22 set forth in section 9 of this act shall not use or disclose the
23 information except in the ordinary course of business to carry out
24 the activity covered by the exception under which the information
25 was received.

26

27 7. a. Nothing in this act shall require a financial institution to
28 provide a written notice to a consumer pursuant to section 5 of this
29 act if the financial institution does not disclose nonpublic personal
30 information to any nonaffiliated third party, except as allowed in
31 this act.

32 b. A notice provided to a member of a household pursuant to
33 section 5 of this act shall be considered notice to all members of
34 that household unless that household contains another individual
35 who also has a separate account with the financial institution.

36 c. (1) Any requirement pursuant to this act to send a written
37 notice to a consumer may be fulfilled by electronic means if the
38 following requirements are met:

39 (a) The notice, and the manner in which it is sent, meets all of
40 the requirements for notices that are required by law to be in
41 writing, as set forth in section 101 of the federal "Electronic
42 Signatures in Global and National Commerce Act," Pub.L.106-229
43 (15 U.S.C. s.7001).

44 (b) All other requirements applicable to the notice are met,
45 including, but not limited to, requirements concerning content,
46 timing, form and delivery. An electronic notice sent pursuant to
47 this section is not required to include a return envelope.

1 (c) The notice is delivered to the consumer in a form the
2 consumer may keep.

3 (2) A notice that is made available to a consumer, and is not
4 delivered to the consumer, does not satisfy the requirements of
5 paragraph (1) of this subsection.

6 (3) Any electronic consumer reply to an electronic notice sent
7 pursuant to this subsection is effective. A person that electronically
8 sends a notice required by this section to a consumer may not by
9 contract, or otherwise, eliminate the effectiveness of the consumer's
10 electronic reply.

11

12 8. a. When a financial institution and an affinity partner have an
13 agreement to issue an affinity card, the financial institution shall be
14 permitted to disclose to the affinity partner in whose name the card
15 is issued only the following information pertaining to the financial
16 institution's customers who are in receipt of the affinity card: (1)
17 name, address, telephone number and electronic mail address; and
18 (2) a record of purchases made using the affinity card in a business
19 establishment, including a website, bearing the brand name of the
20 affinity partner.

21 b. When a financial institution and an affinity partner have an
22 agreement to issue an affinity financial product or service, the
23 financial institution shall be permitted to disclose to the affinity
24 partner only the following information pertaining to the financial
25 institution's customers who obtained the affinity financial product
26 or service: name, address, telephone number and electronic mail
27 address.

28 c. The disclosures specified in subsections a. and b. of this
29 section shall be permitted only if the following requirements are
30 met:

31 (1) The financial institution has provided the consumer a notice
32 meeting the requirements of section 5 of this act, and the consumer
33 has consented to the disclosure of nonpublic personal information.
34 A response to a notice meeting the requirements of section 5 of this
35 act directing the financial institution to disclose nonpublic personal
36 information to a nonaffiliated financial institution shall be deemed a
37 direction to the financial institution to disclose nonpublic personal
38 information to an affinity partner, unless the form containing the
39 notice provides the consumer with a separate choice for disclosure
40 to affinity partners.

41 (2) The financial institution has a contractual agreement with the
42 affinity partner that requires the affinity partner to maintain the
43 confidentiality of the nonpublic personal information and prohibits
44 affinity partners from using the information for any purposes other
45 than verifying membership, verifying the consumer's contact
46 information or offering the affinity partner's own products or
47 services to the consumer.

1 (3) The customer list is not disclosed in any way that reveals or
2 permits extrapolation of any additional nonpublic personal
3 information about any customer on the list.

4 (4) If the affinity partner sends any message to any electronic
5 mail addresses obtained pursuant to this section, the message shall
6 include at least both of the following:

7 (a) The identity of the sender of the message.

8 (b) A cost-free means for the recipient to notify the sender not to
9 electronically mail any further message to the recipient.

10 d. Nothing in this section shall prohibit the disclosure of
11 nonpublic personal information pursuant to section 9 of this act.

12 e. This section shall not apply to credit cards issued in the name
13 of an entity primarily engaged in retail sales or a name proprietary
14 to a company primarily engaged in retail sales.

15

16 9. a. This section shall not apply to information that is not
17 personally identifiable to a particular person.

18 b. Notwithstanding sections 4, 5, 7, and 8 of this act, a financial
19 institution may release nonpublic personal information under the
20 following circumstances:

21 (1) The nonpublic personal information is necessary to effect,
22 administer, or enforce a transaction requested or authorized by the
23 consumer, or in connection with servicing or processing a financial
24 product or service requested or authorized by the consumer, or in
25 connection with maintaining or servicing the consumer's account
26 with the financial institution, or with another entity as part of a
27 private label credit card program or other extension of credit on
28 behalf of that entity, or in connection with a proposed or actual
29 securitization or secondary market sale, including sales of servicing
30 rights, or similar transactions related to a transaction of the
31 consumer.

32 (2) The nonpublic personal information is released with the
33 consent of or at the direction of the consumer.

34 (3) The nonpublic personal information is released:

35 (a) To protect the confidentiality or security of the financial
36 institution's records pertaining to the consumer, the service or
37 product, or the transaction therein.

38 (b) To protect against or prevent actual or potential fraud,
39 identity theft, unauthorized transactions, claims or other liability.

40 (c) For required institutional risk control or for resolving
41 customer disputes or inquiries.

42 (d) To persons holding a legal or beneficial interest relating to
43 the consumer, including for purposes of debt collection.

44 (e) To persons acting in a fiduciary or representative capacity on
45 behalf of the consumer.

46 (4) The nonpublic personal information is released to provide
47 information to insurance rate advisory organizations, guaranty
48 funds or agencies, applicable rating agencies of the financial

1 institution, persons assessing the institution's compliance with
2 industry standards, and the institution's attorneys, accountants and
3 auditors.

4 (5) The nonpublic personal information is released to the extent
5 specifically required or specifically permitted under other
6 provisions of law and in accordance with the federal "Right to
7 Financial Privacy Act of 1978," Pub.L. 95-630 (12 U.S.C. s.3401 et
8 seq.), to law enforcement agencies, including a federal functional
9 regulator, the Secretary of the Treasury with respect to subchapter
10 II of Chapter 53 of Title 31 of the United States Code (31 U.S.C.
11 s.5311 et seq.), and Chapter 2 of Title I of Pub.L. 91-508 (12 U.S.C.
12 s.1951 et seq.), the New Jersey Department of Banking and
13 Insurance or other state insurance regulators, the Federal Trade
14 Commission, self-regulatory organizations or for an investigation
15 on a matter related to public safety.

16 (6) The nonpublic personal information is released in connection
17 with a proposed or actual sale, merger, transfer, or exchange of all
18 or a portion of a business or operating unit if the disclosure of
19 nonpublic personal information concerns solely consumers of the
20 business or unit.

21 (7) The nonpublic personal information is released to comply
22 with federal, State, or local laws, rules, and other applicable legal
23 requirements; to comply with a properly authorized civil, criminal,
24 administrative, or regulatory investigation or subpoena or summons
25 by federal, State, or local authorities; or to respond to judicial
26 process or government regulatory authorities having jurisdiction
27 over the financial institution for examination, compliance, or other
28 purposes as authorized by law.

29 (8) The nonpublic personal information is released to a
30 nonaffiliated third party in order for the nonaffiliated third party to
31 perform business or professional services, such as printing, mailing
32 services, data processing or analysis, or customer surveys, on behalf
33 of the financial institution, provided that all of the following
34 requirements are met:

35 (a) The services to be performed by the nonaffiliated third party
36 could lawfully be performed by the financial institution.

37 (b) There is a written contract between the nonaffiliated third
38 party and the financial institution that prohibits the nonaffiliated
39 third party from disclosing or using the nonpublic personal
40 information other than to carry out the purpose for which the
41 financial institution disclosed the information, as set forth in the
42 written contract.

43 (c) The nonpublic personal information provided to the
44 nonaffiliated third party is limited to that which is necessary for the
45 nonaffiliated third party to perform the services contracted for on
46 behalf of the financial institution.

1 (d) The financial institution does not receive any payment from
2 or through the nonaffiliated third party in connection with, or as a
3 result of, the release of the nonpublic personal information.

4 (9) The nonpublic personal information is released to identify or
5 locate missing and abducted children, witnesses, criminals and
6 fugitives, parties to lawsuits, parents delinquent in child support
7 payments, organ and bone marrow donors, pension fund
8 beneficiaries, and missing heirs.

9 (10) The nonpublic personal information is released to a real
10 estate appraiser licensed or certified by the State for submission to
11 central data repositories and the nonpublic personal information is
12 compiled strictly to complete other real estate appraisals and is not
13 used for any other purpose.

14 (11) The nonpublic personal information is released as required
15 by the federal "International Money Laundering Abatement and
16 Financial Anti-Terrorism Act of 2001," Pub.L. 107-56 (31 U.S.C.
17 s.5311 et al.).

18 (12) The nonpublic personal information is released either to a
19 consumer reporting agency pursuant to the federal "Fair Credit
20 Reporting Act," Pub.L. 91-508 (15 U.S.C. s.1681 et seq.) or from a
21 consumer report reported by a consumer reporting agency.

22 (13) The nonpublic personal information is released in
23 connection with a written agreement between a consumer and a
24 broker-dealer registered under the federal "Securities Exchange Act
25 of 1934," Pub.L. 73-291 (15 U.S.C. s.78a et al.) or an investment
26 adviser registered under the federal "Investment Advisers Act of
27 1940," Pub.L. 76-768 (15 U.S.C. s.80b-1 et seq.) to provide
28 investment management services, portfolio advisory services, or
29 financial planning and the nonpublic personal information is
30 released for the sole purpose of providing the products and services
31 covered by that agreement.

32 c. Nothing in this section is intended to change existing law
33 relating to access by law enforcement agencies to information held
34 by financial institutions.

35
36 10. a. The provisions of this section shall not apply to any
37 person or entity that meets the requirements of paragraph (1) or (2)
38 of this subsection. However, when nonpublic personal information
39 is shared by a person or entity meeting the requirements of
40 paragraph (1) or (2) with a nonaffiliated third party, this section
41 shall apply.

42 (1) The person or entity is licensed in either of the following
43 categories and is acting within the scope of the respective license or
44 certificate:

45 (a) As an insurance producer, or as an investment adviser.

46 (b) Is licensed to sell securities by the National Association of
47 Securities Dealers.

1 (2) The person or entity meets the requirements in paragraph (1)
2 and has a written contractual agreement with another person or
3 entity described in paragraph (1) and the contract clearly and
4 explicitly includes the following:

5 (a) The rights and obligations between the licensees arising out
6 of the business relationship relating to insurance or securities
7 transactions;

8 (b) An explicit limitation on the use of nonpublic personal
9 information about a consumer to transactions authorized by the
10 contract and permitted pursuant to this act; and

11 (c) A requirement that transactions specified in the contract fall
12 within the scope of activities permitted by the licenses of the
13 parties.

14 b. The restrictions on disclosure and use of nonpublic personal
15 information and the requirement for notification and disclosure
16 shall not limit the ability of insurance producers and brokers to
17 respond to written, telephone or electronic requests from consumers
18 seeking price quotes on insurance products and services or to obtain
19 competitive quotes to renew an existing insurance contract,
20 provided that any nonpublic personal information disclosed
21 pursuant to this subsection shall not be used or disclosed except in
22 the ordinary course of business in order to obtain those quotes.

23 c. (1) The disclosure or sharing of nonpublic personal
24 information from an insurer or its affiliates to an exclusive agent or
25 broker whose contractual or employment relationship requires that
26 the agent offer only the insurer's policies for sale or financial
27 products or services authorized by the insurer, or whose contractual
28 or employment relationship with an insurer gives the insurer the
29 right of first refusal for all policies of insurance by the agent, and
30 who may not share nonpublic personal information with any insurer
31 other than the insurer with whom the agent has a contractual or
32 employment relationship as described above, is not a violation of
33 this section, provided that the agent may not disclose nonpublic
34 personal information to any party except as permitted by this
35 section. An insurer shall not disclose or share nonpublic personal
36 information with exclusive agents merely because information is
37 maintained in common information systems or databases, and
38 exclusive agents of the insurer have access to those common
39 information systems or databases, provided that where a consumer
40 has exercised his or her rights to prohibit disclosure pursuant to this
41 section, nonpublic personal information is not further disclosed or
42 used by an exclusive agent except as permitted by this section.

43 (2) Nothing in this subsection is intended to affect the sharing of
44 information as allowed in subsection a. or subsection b. of this
45 section.

46

47 11. a. An entity that negligently discloses or shares nonpublic
48 personal information in violation of this act shall be liable,

1 irrespective of the amount of damages suffered by the consumer as
2 a result of that violation, for a civil penalty not to exceed \$2,500 per
3 violation. However, if the disclosure or sharing results in the
4 release of nonpublic personal information of more than one
5 individual, the total civil penalty awarded pursuant to this
6 subsection shall not exceed \$500,000.

7 b. An entity that knowingly and willfully obtains, discloses,
8 shares, or uses nonpublic personal information in violation of this
9 act shall be liable for a civil penalty not to exceed \$5,000 per
10 individual violation, irrespective of the amount of damages suffered
11 by the consumer as a result of that violation.

12 c. In determining the penalty to be assessed pursuant to a
13 violation of this act, the court shall take into account the following
14 factors:

15 (1) The total assets and net worth of the violating entity.

16 (2) The nature and seriousness of the violation.

17 (3) The persistence of the violation, including any attempts to
18 correct the situation leading to the violation.

19 (4) The length of time over which the violation occurred.

20 (5) The number of times the entity has violated this act.

21 (6) The harm caused to consumers by the violation.

22 (7) The level of proceeds derived from the violation.

23 (8) The impact of possible penalties on the overall fiscal
24 solvency of the violating entity.

25 d. In the event a violation of this act results in the identity theft
26 of a consumer as defined in N.J.S.2C:21-17, the civil penalties set
27 forth in this act shall be doubled.

28 e. The civil penalties provided for in this section shall be
29 exclusively assessed and recovered in a civil action brought in a
30 summary proceeding pursuant to the "Penalty Enforcement Law of
31 1999," P.L.1999, c.274 (C.2A:58-10 et seq.) by the Attorney
32 General or the functional regulator with jurisdiction over regulation
33 of the financial institution.

34

35 12. Nothing in this act shall be construed as altering or annulling
36 the authority of any department or agency of the State to regulate
37 any financial institution subject to its jurisdiction.

38

39 13. The Commissioner of Banking and Insurance shall
40 promulgate regulations pursuant to the "Administrative Procedure
41 Act," P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate
42 the provisions of this act.

43

44 14. This act shall take effect on the 180th day after the date of
45 enactment.

STATEMENT

Under the federal "Gramm-Leach-Bliley Act," Pub.L.106-102 (15 U.S.C. s.6701 et al.), financial institutions are required to provide a notice to consumers relative to the use by the financial institution of nonpublic personal information, and in that regard the federal act authorizes consumers to direct that the information not be shared with nonaffiliated third parties; in other words, to "opt out" of the sharing of such information.

This bill enacts the "New Jersey Financial Information Privacy Act," which requires a financial institution to provide a specified written form to a consumer relative to the sharing of the consumer's nonpublic personal information and, instead to permit consumers to "opt in" to allow the sharing of such information.

Under this bill, a consumer could direct the financial institution to share the nonpublic personal information with nonaffiliated financial companies with which the financial institution has contracted to provide financial products and services. However, the bill does not restrict or prohibit the sharing of nonpublic personal information between a financial institution and its wholly owned financial institution subsidiaries or entities that are regulated by the same functional regulator and are engaged in the same line of business. Thus, in order for a financial institution to share nonpublic personal information with other nonaffiliated companies, the permission of the consumer is required by the bill. A financial institution is not required to provide the written form to its consumers if the financial institution does not disclose any nonpublic personal information to any nonaffiliated third party or to any affiliate.

This bill also provides that a financial institution shall not discriminate in offering or denying an otherwise qualified consumer a financial product or service because the consumer has not provided the necessary consent that would authorize the financial institution to disclose or share nonpublic personal information and requires a financial institution to comply with the consumer's request regarding nonpublic personal information within 45 days of receipt of the request.

Nonetheless, there are certain situations in which a financial institution may disclose nonpublic personal information to a nonaffiliated third party in order to perform certain services on behalf of the financial institution. However, the bill specifies the requirements that must be met for the financial institution to disclose a consumer's nonpublic personal information. The bill also provides that nonpublic personal information may be released in order to identify or locate missing children, witnesses, criminals and fugitives, parties to lawsuits, and missing heirs and that it would not change existing law regarding access by law enforcement agencies to information held by financial institutions.

1 Finally, this bill would also provide various civil penalties for
2 negligent, or knowing and willful violations of its provisions.