

SENATE, No. 547

STATE OF NEW JERSEY 212th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2006 SESSION

Sponsored by:
Senator BARBARA BUONO
District 18 (Middlesex)

SYNOPSIS

“New Jersey Financial Information Privacy Act.”

CURRENT VERSION OF TEXT

As introduced.



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

1 financial institution to issue an affinity card or other affinity
2 financial product or service.

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

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

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

46 "Financial institution" means any institution, the business of
47 which is engaging in financial activities as described in section 4(k)

1 of Pub.L. No.84-511 (12 U.S.C. s.1843(k)) and doing business in
2 this State. An institution that is not significantly engaged in
3 financial activities is not a financial institution. The term "financial
4 institution" does not include: (1) an institution that is primarily
5 engaged in providing hardware, software, or interactive services,
6 provided that it does not act as a debt collector, as defined in
7 section 803 of Pub.L. 95-109 (15 U.S.C. s.1692a), or engage in
8 activities for which the institution is required to acquire a charter,
9 license or registration from a state or federal governmental banking,
10 insurance, or securities agency; (2) the Federal Agricultural
11 Mortgage Corporation or any entity chartered and operating under
12 the "Farm Credit Act of 1971," Pub.L. 92-181 (12 U.S.C. s.2001 et
13 seq.), provided that the entity does not sell or transfer nonpublic
14 personal information to a nonaffiliated third party; (3) institutions
15 chartered by Congress specifically to engage in a proposed or actual
16 securitization, secondary market sale, including sales of servicing
17 rights, or similar transactions related to a transaction of the
18 consumer, as long as those institutions do not sell or transfer
19 nonpublic personal information to a nonaffiliated third party; or (4)
20 any provider of professional services, or any wholly owned affiliate
21 thereof, that is prohibited by rules of professional ethics and
22 applicable law from voluntarily disclosing confidential client
23 information without the consent of the client.

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

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

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

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

45 (b) The accrual or recognition of incentives, discounts, or
46 bonuses associated with the transaction or communications to
47 eligible existing consumers of the financial institution regarding the

1 availability of those incentives, discounts and bonuses that are
2 provided by the financial institution or another party.

3 (c) In the case of a financial institution that has issued a credit
4 account bearing the name of a company primarily engaged in retail
5 sales or a name proprietary to a company primarily engaged in retail
6 sales, the financial institution providing the retailer with nonpublic
7 personal information as follows:

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

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

23 (2) The disclosure is required or is one of the lawful or
24 appropriate methods to enforce the rights of the financial institution
25 or of other persons engaged in carrying out the financial transaction
26 or providing the product or service.

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

33 (a) Account administration.

34 (b) Reporting, investigating, or preventing fraud or material
35 misrepresentation.

36 (c) Processing premium payments.

37 (d) Processing insurance claims.

38 (e) Administering insurance benefits, including utilization
39 review activities.

40 (f) Participating in research projects.

41 (g) As otherwise required or specifically permitted by federal or
42 State law.

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

45 (a) The authorization, settlement, billing, processing, clearing,
46 transferring, reconciling or collection of amounts charged, debited

1 or otherwise paid using a debit, credit or other payment card, check
2 or account number or by other payment means.

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

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

5 (5) The disclosure is required in a transaction covered by the
6 federal "Real Estate Settlement Procedures Act of 1974," Pub.L. 93-
7 533 (12 U.S.C. s.2601 et seq.) in order to offer settlement services
8 prior to the close of escrow, as those services are defined in section
9 3 of that federal act (12 U.S.C. s.2602), provided that: (a) the
10 nonpublic personal information is disclosed for the sole purpose of
11 offering those settlement services; and (b) the nonpublic personal
12 information disclosed is limited to that necessary to enable the
13 financial institution to offer those settlement services in that
14 transaction.

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

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

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

46 (4) Personally identifiable financial information includes all of
47 the following:

1 (a) Information a consumer provides to a financial institution on
2 an application to obtain a loan, credit card, or other financial
3 product or service.

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

6 (c) The fact that an individual is or has been a consumer of a
7 financial institution or has obtained a financial product or service
8 from the financial institution.

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

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

15 (f) Any personally identifiable financial information collected
16 through an Internet cookie or an information collecting device from
17 a Web server.

18 (g) Information from a consumer report.

19 "Widely distributed media" means media available to the general
20 public and includes a telephone book, a television or radio program,
21 a newspaper, or a website that is available to the general public on
22 an unrestricted basis.

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

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

1 consumer's nonpublic personal information required by this
2 subsection and section 4 of this act, and the consumer has failed to
3 provide consent. A financial institution shall not be liable for
4 failing to offer products and services to a consumer solely because
5 that consumer has failed to provide consent pursuant to this
6 subsection and section 4 of this act and the financial institution
7 could not offer the product or service without the consent to
8 disclose the consumer's nonpublic personal information required by
9 this subsection and section 4 of this act, and the consumer has failed
10 to provide consent. Nothing in this section is intended to prohibit a
11 financial institution from offering incentives or discounts to elicit a
12 specific response to the notice.

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

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

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

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

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

31 (e) The opt-in form, statement, or writing shall clearly and
32 conspicuously inform the consumer that (i) the financial institution
33 will maintain the document or a true and correct copy; (ii) the
34 consumer is entitled to a copy of the document upon request; and
35 (iii) the consumer may want to make a copy of the document for the
36 consumer's records.

37 b. (1) This subsection shall not prohibit the release of nonpublic
38 personal information by a financial institution with whom the
39 consumer has a relationship to a nonaffiliated financial institution
40 for purposes of jointly offering a financial product or financial
41 service pursuant to a written agreement with the financial institution
42 that receives the nonpublic personal information provided that all of
43 the following requirements are met:

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

1 (b) The financial product or service is jointly offered, endorsed,
2 or sponsored, and clearly and conspicuously identifies for the
3 consumer the financial institutions that disclose and receive the
4 disclosed nonpublic personal information.

5 (c) The written agreement provides that the financial institution
6 that receives that nonpublic personal information is required to
7 maintain the confidentiality of the information and is prohibited
8 from disclosing or using the information other than to carry out the
9 joint offering or servicing of a financial product or financial service
10 that is the subject of the written agreement.

11 (d) The financial institution that releases the nonpublic personal
12 information has complied with subsection d. of this section and the
13 consumer has directed that the nonpublic personal information be
14 disclosed.

15 (e) Notwithstanding this section, until January 1, 2007, a
16 financial institution may disclose nonpublic personal information to
17 a nonaffiliated financial institution pursuant to a preexisting
18 contract with the nonaffiliated financial institution, for purposes of
19 offering a financial product or service, if that contract was entered
20 into on or before January 1, 2006. Beginning on January 1, 2007,
21 no nonpublic personal information may be disclosed pursuant to
22 that contract unless all the requirements of this subsection are met.

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

26 (3) A financial institution shall not discriminate against or deny
27 an otherwise qualified consumer a financial product or service
28 because the consumer has directed that nonpublic personal
29 information pertaining to them not be disclosed. Nothing in this
30 section is intended to prohibit a financial institution from offering
31 incentives or discounts to elicit a specific response to the notice set
32 forth in this section. Nothing in this section shall prohibit the
33 disclosure of nonpublic personal information as allowed by section
34 9 of this act.

35 c. Nothing in this section shall restrict or prohibit the sharing of
36 nonpublic personal information: between a financial institution and
37 its wholly owned financial institution subsidiaries; among financial
38 institutions that are each wholly owned by the same financial
39 institution; among financial institutions that are wholly owned by
40 the same holding company; or among the insurance and
41 management entities of a single insurance holding company system
42 consisting of one or more reciprocal insurance exchanges which has
43 a single corporation or its wholly owned subsidiaries providing
44 management services to the reciprocal insurance exchanges,
45 provided that in each case all of the following requirements are met:

46 (1) The financial institution disclosing the nonpublic personal
47 information and the financial institution receiving it are regulated

1 by the same functional regulator; provided, however, that for
2 purposes of this paragraph, financial institutions regulated by the
3 federal Office of the Comptroller of the Currency, the federal Office
4 of Thrift Supervision, National Credit Union Administration, or a
5 state regulator of depository institutions shall be deemed to be
6 regulated by the same functional regulator; financial institutions
7 regulated by the United States Securities and Exchange
8 Commission, the United States Department of Labor, or a state
9 securities regulator shall be deemed to be regulated by the same
10 functional regulator; and insurers admitted in this State to transact
11 insurance and licensed to write insurance policies shall be deemed
12 to be in compliance with this subsection.

13 (2) The financial institution disclosing the nonpublic personal
14 information and the financial institution receiving it are both
15 principally engaged in the same line of business. For purposes of
16 this paragraph, "same line of business" shall represent not more
17 than one of the following:

- 18 (a) Insurance;
- 19 (b) Banking; or
- 20 (c) Securities.

21 (3) The financial institution disclosing the nonpublic personal
22 information and the financial institution receiving it share a
23 common brand, excluding a brand consisting solely of a graphic
24 element or symbol, within their trademark, service mark or trade
25 name, which is used to identify the source of the products and
26 services provided.

27 A wholly owned subsidiary shall include a subsidiary wholly
28 owned directly or indirectly in a chain of wholly owned
29 subsidiaries.

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

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

- 1 (b) The titles and headers in the form are clearly and
2 conspicuously displayed, and no text in the form is smaller than 12-
3 point type.
- 4 (c) The form is a separate document, except as provided in this
5 section and section 7 of this act.
- 6 (d) The choice pursuant to subsection a. and b. of this section
7 and section 8 of this act, if applicable, provided in the form are
8 stated separately and may be selected by checking a box.
- 9 (e) The form is designed to call attention to the nature and
10 significance of the information in the document.
- 11 (f) The form presents information in clear and concise
12 sentences, paragraphs, and sections.
- 13 (g) The form uses short explanatory sentences which average
14 between 15 and 20 words or bullet lists whenever possible.
- 15 (h) The form avoids multiple negatives, legal terminology, and
16 highly technical terminology whenever possible.
- 17 (i) The form avoids explanations that are imprecise and readily
18 subject to different interpretations.
- 19 (j) The form provides wide margins, ample line spacing and uses
20 boldface or italics for key words.
- 21 (k) The form is not more than one page.
- 22 (l) The form is provided to consumers in English and Spanish.
- 23 (2) (a) None of the instructional items appearing in brackets in
24 the opt-in form set forth in this paragraph shall appear in the opt-in
25 form provided to the consumer, as those items are for explanation
26 purposes only. If a financial institution does not disclose or share
27 nonpublic personal information as described in a header of the
28 form, the financial institution may omit the applicable header or
29 headers, and the accompanying information and box, in the form it
30 provides pursuant to this paragraph. The opt-in form with those
31 omissions shall be conclusively presumed to satisfy the notice
32 requirements of this paragraph.
- 33 (b) If a financial institution uses an opt-in form other than that
34 set forth in this paragraph, the financial institution may submit that
35 opt-in form to its functional regulator for approval, which approval
36 shall create a rebuttable presumption that the opt-in form complies
37 with this section.
- 38 (c) A financial institution shall not be in violation of this section
39 solely because it includes in the opt-in form one or more brief
40 examples or explanations of the purpose, or context, within which
41 information will be shared, as long as those examples meet the
42 clarity and readability standards set forth in paragraph (1) of this
43 subsection.
- 44 (d) The outside of the envelope in which the opt-in form is sent
45 to the consumer shall clearly state in 16-point boldface type
46 "IMPORTANT PRIVACY CHOICE," except that a financial
47 institution sending the form to a consumer in the same envelope as

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- 1 a bill, account statement, or application requested by the consumer
- 2 does not have to include the wording "IMPORTANT PRIVACY
- 3 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.

1 e. Nothing in this act shall prohibit a financial institution from
2 marketing its own products and services or the products and
3 services of nonaffiliated third parties to customers of the financial
4 institution so long as: (1) nonpublic personal information is not
5 disclosed in connection with the delivery of the applicable
6 marketing materials to those customers except as permitted by
7 section 9 of this act; and (2) in cases in which the applicable
8 nonaffiliated third party may extrapolate nonpublic personal
9 information about the consumer responding to those marketing
10 materials, the applicable nonaffiliated third party has signed a
11 contract with the financial institution under the terms of which: (a)
12 the nonaffiliated third party is prohibited from using that
13 information for any purpose other than the purpose for which it was
14 provided, as set forth in the contract; and (b) the financial
15 institution has the right by audit, inspections, or other means to
16 verify the nonaffiliated third party's compliance with that contract.

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

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

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

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

41 (a) The notice, and the manner in which it is sent, meets all of
42 the requirements for notices that are required by law to be in
43 writing, as set forth in section 101 of the federal "Electronic
44 Signatures in Global and National Commerce Act," Pub.L.106-229
45 (15 U.S.C. s.7001).

46 (b) All other requirements applicable to the notice are met,
47 including, but not limited to, requirements concerning content,

1 timing, form and delivery. An electronic notice sent pursuant to
2 this section is not required to include a return envelope.

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

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

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

13

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

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

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

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

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

1 information or offering the affinity partner's own products or
2 services to the consumer.

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

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

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

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

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

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

17

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

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

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

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

36 (3) The nonpublic personal information is released:

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

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

42 (c) For required institutional risk control or for resolving
43 customer disputes or inquiries.

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

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

1 (4) The nonpublic personal information is released to provide
2 information to insurance rate advisory organizations, guaranty
3 funds or agencies, applicable rating agencies of the financial
4 institution, persons assessing the institution's compliance with
5 industry standards, and the institution's attorneys, accountants and
6 auditors.

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

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

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

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

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

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

46 (c) The nonpublic personal information provided to the
47 nonaffiliated third party is limited to that which is necessary for the

1 nonaffiliated third party to perform the services contracted for on
2 behalf of the financial institution.

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

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

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

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

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

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

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

37

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 e. The civil penalties provided for in this section shall be
31 exclusively assessed and recovered in a civil action brought in a
32 summary proceeding pursuant to the "Penalty Enforcement Law of
33 1999," P.L.1999, c.274 (C.2A:58-10 et seq.) by the Attorney
34 General or the functional regulator with jurisdiction over regulation
35 of the financial institution.
36

37 12. Nothing in this act shall be construed as altering or annulling
38 the authority of any department or agency of the State to regulate
39 any financial institution subject to its jurisdiction.
40

41 13. The Commissioner of Banking and Insurance shall
42 promulgate regulations pursuant to the "Administrative Procedure
43 Act," P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate
44 the provisions of this act.
45

46 14. This act shall take effect on the 180th day after the date of
47 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.