

[First Reprint]

**SENATE, No. 547**

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**STATE OF NEW JERSEY**  
**212th LEGISLATURE**

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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 reported by the Senate Commerce Committee on October 12, 2006, with amendments.



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

15 <sup>1</sup>[(2)] b. To afford persons greater privacy protections than  
 16 those provided in <sup>1</sup>title V of<sup>1</sup> the federal "Gramm-Leach-Bliley  
 17 Act," Pub.L. 106-102 (15 U.S.C. <sup>1</sup>[s.6701 et al.] s.6801 et seq.<sup>1</sup> )  
 18 and that this act be interpreted consistently with that purpose.

19 <sup>1</sup>[(3)] c. To ensure that New Jersey residents have the ability  
 20 to control the disclosure of their nonpublic personal information.

21 <sup>1</sup>[(4)] d. 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 <sup>1</sup>[(5)] e. To adopt, to the maximum extent feasible and  
 27 consistent with the purposes cited above, definitions consistent with  
 28 federal 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

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate SCM committee amendments adopted October 12, 2006.

1 financial product or service, other than an affinity card, on behalf of  
2 the affinity partner.

3 "Affinity partner" means an organization or business that is not a  
4 financial institution that has entered into an agreement with a  
5 financial institution to issue an affinity card or other affinity  
6 financial product or service.

7 "Clear and conspicuous" means that a notice is reasonably  
8 understandable and designed to call attention to the nature and  
9 significance of the information contained in the notice.

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

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

1 section 2(a) (9) of the federal "Investment Company Act of 1940,"  
2 Pub.L.76-768 (15 U.S.C. s.80a-2(a)(9)).

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

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

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

38 (1) The disclosure is required, or is a usual, appropriate, or  
39 acceptable method to carry out the transaction or the 'financial'  
40 product or service business of which the transaction is a part, '[and  
41 record or service or maintain the consumer's account in the ordinary  
42 course of providing the financial product or service,']' or '[to]'  
43 administer or service benefits or claims relating to the transaction or  
44 the 'financial' product or service business of which '[it] the  
45 transaction' is a part, 'or record, service or maintain the consumer's  
46 account in the ordinary course of providing the financial product or  
47 service.' and includes the following:

- 1 (a) Providing the consumer or the consumer's agent or broker  
2 with a confirmation, statement, or other record of the transaction, or  
3 information on the status or value of the financial product or  
4 service.
- 5 (b) The accrual or recognition of incentives, discounts, or  
6 bonuses associated with the transaction or communications to  
7 eligible existing consumers of the financial institution regarding the  
8 availability of those incentives, discounts and bonuses that are  
9 provided by the financial institution or another party.
- 10 (c) In the case of a financial institution that has issued a credit  
11 account bearing the name of a company primarily engaged in retail  
12 sales or a name proprietary to a company primarily engaged in retail  
13 sales, the financial institution providing the retailer with nonpublic  
14 personal information <sup>1</sup> as follows:
- 15 (i) Providing the retailer, or licensees or contractors of the  
16 retailer that provide products or services in the name of the retailer  
17 and under a contract with the retailer, with the names and addresses  
18 of the consumers in whose name the account is held and a record of  
19 the purchases made using the credit account from a business  
20 establishment, including a website or catalog, bearing the brand  
21 name of the retailer.
- 22 (ii) Where the credit account can only be used for transactions  
23 with the retailer or affiliates of that retailer that are also primarily  
24 engaged in retail sales, providing the retailer, or licensees or  
25 contractors of the retailer that provide products or services in the  
26 name of the retailer and under a contract with the retailer, with  
27 nonpublic personal information concerning the credit account, in  
28 connection with the offering or provision of the products or services  
29 of the retailer and those licensees or contractors.
- 30 (2) The disclosure is required or is one of the lawful or  
31 appropriate methods to enforce the rights of the financial institution  
32 or of other persons engaged in carrying out the financial transaction  
33 or providing the 'financial' product or service.
- 34 (3) The disclosure is required, or is a usual, appropriate, or  
35 acceptable method for insurance underwriting or the placement of  
36 insurance products by licensed agents and brokers with authorized  
37 insurance companies at the consumer's request, for reinsurance, stop  
38 loss insurance, or excess loss insurance purposes, or for any of the  
39 following purposes as they relate to a consumer's insurance:
- 40 (a) Account administration.
- 41 (b) Reporting, investigating, or preventing fraud or material  
42 misrepresentation.
- 43 (c) Processing premium payments.
- 44 (d) Processing insurance claims.
- 45 (e) Administering insurance benefits, including utilization  
46 review activities.
- 47 (f) Participating in research projects.

1 (g) As otherwise required or specifically permitted by federal or  
2 State law.

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

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

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

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

11 (5) The disclosure is required in a transaction covered by the  
12 federal "Real Estate Settlement Procedures Act of 1974," Pub.L.93-  
13 533 (12 U.S.C. s.2601 et seq.) in order to offer settlement services  
14 prior to the close of escrow, as those services are defined in section  
15 3 of that federal act (12 U.S.C. s.2602), provided that: (a) the  
16 nonpublic personal information is disclosed for the sole purpose of  
17 offering those settlement services; and (b) the nonpublic personal  
18 information disclosed is limited to that necessary to enable the  
19 financial institution to offer those settlement services in that  
20 transaction.

21 "Nonaffiliated third party" means any entity that is not an  
22 affiliate of, or related by common ownership <sup>1</sup>to, or affiliated by  
23 corporate control with, the financial institution, but does not include  
24 a joint employee of that institution and a third party.

25 "Nonpublic personal information" means <sup>1</sup>:(1) personally  
26 identifiable financial information: <sup>1</sup>[(1)] (a) provided by a  
27 consumer to a financial institution; <sup>1</sup>[(2)] (b) resulting from any  
28 transaction with the consumer or <sup>1</sup>providing any <sup>1</sup>financial product  
29 or service <sup>1</sup>[performed for] to the consumer; or <sup>1</sup>[(3)] (c)  
30 otherwise obtained by the financial institution. <sup>1</sup>[Nonpublic  
31 personal information does not include publicly available  
32 information that the financial institution has a reasonable basis to  
33 believe is lawfully made available to the general public from: (4)  
34 federal, state, or local government records; (5) widely distributed  
35 media; or (6) disclosures to the general public that are required to  
36 be made by federal, State, or local law. Nonpublic] (2) The term  
37 "nonpublic" personal <sup>1</sup>[information shall include] information  
38 includes any list, description, or other grouping of consumers, and  
39 publicly available information pertaining to them, that is derived  
40 using any nonpublic personal information other than publicly  
41 available information, but shall not include any list, description, or  
42 other grouping of consumers, and publicly available information  
43 pertaining to them, that is derived without using any nonpublic  
44 personal information. <sup>1</sup>(3) The term "nonpublic personal  
45 information" shall not include publicly available information that  
46 the financial institution has a reasonable basis to believe is lawfully

1 made available to the general public from: (a) federal, state, or local  
2 government records; (b) widely distributed media; or (c) disclosures  
3 to the general public that are required to be made by federal, State,  
4 or local law.<sup>1</sup>

5 "Personally identifiable financial information" means 'any'  
6 information: (1) that a consumer provides to a financial institution  
7 to obtain a 'financial' product or service from the financial  
8 institution; (2) about a consumer resulting from any transaction  
9 involving a 'financial' product or service between the financial  
10 institution and a consumer; or (3) that the financial institution  
11 otherwise obtains about a consumer in connection with providing a  
12 'financial' product or service to that consumer. 'Any personally  
13 identifiable information is financial if it was obtained by a financial  
14 institution in connection with providing a financial product or  
15 service to a consumer.'<sup>1</sup>

16 (4) 'Personally' The term "personally"<sup>1</sup> identifiable financial  
17 'information' information''<sup>1</sup> includes all of the following:

18 (a) Information a consumer provides to a financial institution on  
19 an application to obtain a loan, credit card, or other financial  
20 product or service.

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

23 (c) The fact that an individual is or has been a consumer of a  
24 financial institution or has obtained a financial product or service  
25 from the financial institution.

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

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

32 (f) Any personally identifiable financial information collected  
33 through an Internet cookie or an information collecting device from  
34 a Web server.

35 (g) Information from a consumer report.

36 "Widely distributed media" means media available to the general  
37 public and includes a telephone book, a television or radio program,  
38 a newspaper, or a website that is available to the general public on  
39 an unrestricted basis.

40  
41 4. Except as provided in sections 5 '8'<sup>1</sup> and '9'<sup>1</sup> of this  
42 act, a financial institution shall not sell, share, transfer or otherwise  
43 disclose nonpublic personal information to or with any nonaffiliated  
44 third parties without the explicit prior consent of the consumer to  
45 whom the nonpublic personal information relates 'as provided by

1 the consumer in an opt-in acknowledgment form, statement, or  
2 writing<sup>1</sup>.

3  
4 5. a. (1) <sup>1</sup>~~['A]~~ Except as provided in subsection b. of this  
5 section, a<sup>1</sup> financial institution shall not disclose to or share a  
6 consumer's nonpublic personal information with any nonaffiliated  
7 third party, <sup>1</sup>~~['as prohibited by section 4 of this act,']~~ unless the  
8 financial institution has obtained an opt-in acknowledgment <sup>1</sup>form,  
9 statement, or writing<sup>1</sup> from the consumer that complies with  
10 paragraph (2) of this subsection <sup>1</sup>~~['that']~~ which<sup>1</sup> authorizes the  
11 financial institution to disclose or share the nonpublic personal  
12 information. <sup>1</sup>~~['Nothing in this section shall prohibit or otherwise~~  
13 ~~apply to the disclosure of nonpublic personal information as~~  
14 ~~allowed in section 9 of this act.']~~<sup>1</sup>

15 <sup>1</sup>(a)<sup>1</sup> A financial institution shall not discriminate against or  
16 deny an otherwise qualified consumer a financial product or service  
17 because the consumer has not provided consent pursuant to this  
18 subsection and section 4 of this act to authorize the financial  
19 institution to disclose or share nonpublic personal information  
20 pertaining to the consumer with any nonaffiliated third party.  
21 Nothing in this <sup>1</sup>~~['section']~~ subsection<sup>1</sup> shall prohibit a financial  
22 institution from denying a consumer a financial product or service if  
23 the financial institution could not provide the product or service to a  
24 consumer without the consent to disclose the consumer's nonpublic  
25 personal information required by this subsection and section 4 of  
26 this act, and the consumer has failed to provide consent. A  
27 financial institution shall not be liable for failing to offer <sup>1</sup>~~['products~~  
28 ~~and services']~~ a financial product or service<sup>1</sup> to a consumer solely  
29 because that consumer has failed to provide consent pursuant to this  
30 subsection and section 4 of this act <sup>1</sup>~~','~~ and the financial institution  
31 could not offer the product or service without <sup>1</sup>~~['the']~~ that<sup>1</sup> consent  
32 <sup>1</sup>~~['to disclose the consumer's nonpublic personal information~~  
33 ~~required by this subsection and section 4 of this act, and the~~  
34 ~~consumer has failed to provide consent']~~<sup>1</sup>.

35 <sup>1</sup>(b)<sup>1</sup> Nothing in this <sup>1</sup>~~['section']~~ subsection<sup>1</sup> is intended to  
36 prohibit a financial institution from offering incentives or discounts  
37 to elicit a specific response <sup>1</sup>~~['to']~~ regarding<sup>1</sup> the <sup>1</sup>~~['notice']~~ opt-in  
38 acknowledgment form, statement, or writing<sup>1</sup>.

39 (2) A financial institution shall utilize an opt-in  
40 <sup>1</sup>acknowledgment<sup>1</sup> form, statement, or writing to obtain consent to  
41 disclose nonpublic personal information to nonaffiliated third  
42 parties as required by this subsection and section 4 of this act. The  
43 opt-in <sup>1</sup>acknowledgment<sup>1</sup> form, statement <sup>1</sup>~~','~~ or writing shall meet  
44 all of the following criteria:

1 (a) The '[opt-in]' form, statement or writing shall be a separate  
2 document, not attached to any other document ' , or its contents, as  
3 required by this paragraph and paragraphs (1) or (2) of subsection c.  
4 of this section, shall be incorporated as a separate, clear and  
5 conspicuous opt-in section within a notice provided to the consumer  
6 in accordance with title V of the "Gramm-Leach-Bliley Act,"  
7 Pub.L.106-102 (15 U.S.C. s.6801 et seq.)' .

8 (b) The '[opt-in]' form, statement ' ,' or writing shall be dated  
9 and signed by the consumer.

10 (c) The '[opt-in]' form, statement ' ,' or writing shall clearly  
11 and conspicuously disclose that by signing, the consumer is  
12 consenting to the disclosure to nonaffiliated third parties of  
13 nonpublic personal information pertaining to the consumer.

14 (d) The '[opt-in]' form, statement, or writing shall clearly and  
15 conspicuously disclose ' ,' (i) that the consent will remain in effect  
16 until revoked or modified by the consumer; (ii) that the consumer  
17 may revoke the consent at any time; and (iii) the procedure for the  
18 consumer to revoke consent.

19 (e) The '[opt-in]' form, statement, or writing shall clearly and  
20 conspicuously inform the consumer that ' ,' (i) the financial  
21 institution will maintain the document or a true and correct copy;  
22 (ii) the consumer is entitled to a copy of the document upon request;  
23 and (iii) the consumer may want to make a copy of the document  
24 for the consumer's records.

25 b. (1) This '[subsection] section' shall not prohibit '[the  
26 release of] a financial institution from releasing a consumer's'  
27 nonpublic personal information '[by a financial institution with  
28 whom the consumer has a relationship]' to a nonaffiliated financial  
29 institution for purposes of jointly offering a financial product or  
30 '[financial]' service pursuant to a written agreement with the  
31 financial institution that receives the nonpublic personal  
32 information provided that all of the following requirements are met:

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

36 (b) The financial product or service is jointly offered, endorsed,  
37 or sponsored, and clearly and conspicuously identifies for the  
38 consumer the financial institutions that disclose and receive the  
39 disclosed nonpublic personal information.

40 (c) The written agreement provides that the financial institution  
41 that receives '[that] the' nonpublic personal information is  
42 required to maintain the confidentiality of the information and is  
43 prohibited from disclosing or using the information other than to  
44 carry out the joint offering or servicing of '[a] the' financial  
45 product or '[financial]' service that is the subject of the written  
46 agreement.

1       <sup>1</sup>[(d) The financial institution that releases the nonpublic  
2 personal information has complied with subsection d. of this section  
3 and the consumer has directed that the nonpublic personal  
4 information be disclosed.

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

14       (2) <sup>1</sup>[(Nothing in this subsection shall prohibit a financial  
15 institution from disclosing or sharing nonpublic personal  
16 information as otherwise specifically permitted by this section.]  
17 This section shall not prohibit a financial institution from releasing  
18 a consumer's nonpublic personal information to an affinity partner.<sup>1</sup>

19       (3) <sup>1</sup>[A financial institution shall not discriminate against or  
20 deny an otherwise qualified consumer a financial product or service  
21 because the consumer has directed that nonpublic personal  
22 information pertaining to them not be disclosed. Nothing in this  
23 section is intended to prohibit a financial institution from offering  
24 incentives or discounts to elicit a specific response to the notice set  
25 forth in this section. Nothing in this] This<sup>1</sup> section shall 'not'  
26 prohibit the disclosure of nonpublic personal information as  
27 '[allowed by] set forth in' section '[9] 8' of this act.

28       c. <sup>1</sup>[(Nothing in this section shall restrict or prohibit the sharing  
29 of nonpublic personal information: between a financial institution  
30 and its wholly owned financial institution subsidiaries; among  
31 financial institutions that are each wholly owned by the same  
32 financial institution; among financial institutions that are wholly  
33 owned by the same holding company; or among the insurance and  
34 management entities of a single insurance holding company system  
35 consisting of one or more reciprocal insurance exchanges which has  
36 a single corporation or its wholly owned subsidiaries providing  
37 management services to the reciprocal insurance exchanges,  
38 provided that in each case all of the following requirements are met:

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

1 Commission, the United States Department of Labor, or a state  
 2 securities regulator shall be deemed to be regulated by the same  
 3 functional regulator; and insurers admitted in this State to transact  
 4 insurance and licensed to write insurance policies shall be deemed  
 5 to be in compliance with this subsection.

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

- 11 (a) Insurance;
- 12 (b) Banking; or
- 13 (c) Securities.

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

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

23 d.]<sup>1</sup> (1) A financial institution shall <sup>1</sup>[be conclusively  
 24 presumed to have satisfied the notice requirements of subsections  
 25 a. and b. of this section if it uses the opt-in form set forth in  
 26 paragraph (2) of this subsection. The] provide an<sup>1</sup> opt-in  
 27 'acknowledgment' form <sup>1</sup>, statement, or writing to a consumer,  
 28 either using the model text and format<sup>1</sup> set forth in paragraph (2)  
 29 'of this subsection, and additionally complying, as otherwise  
 30 appropriate, with subparagraphs (a) to (k), inclusive, of this  
 31 paragraph,<sup>1</sup> or <sup>1</sup>[a form that complies] not using the model text and  
 32 format of paragraph (2) of this subsection, but fully complying<sup>1</sup>  
 33 with subparagraphs (a) to (k), inclusive, of this paragraph <sup>1</sup>[shall be  
 34 sent by the financial institution to the consumer] <sup>1</sup>, so that <sup>1</sup>[a]  
 35 the<sup>1</sup> consumer may make a decision and provide direction to the  
 36 financial institution regarding the sharing of <sup>1</sup>[their] the  
 37 consumer's<sup>1</sup> nonpublic personal information. <sup>1</sup>The financial  
 38 institution shall be conclusively presumed to have satisfied the  
 39 notice requirements of subsection a. of this section if it uses the  
 40 model text and format set forth in paragraph (2) of this subsection,  
 41 and additionally complies, as otherwise appropriate, with  
 42 subparagraphs (a) to (k), inclusive, of this paragraph.<sup>1</sup> If <sup>1</sup>[a] the<sup>1</sup>  
 43 financial institution does not use <sup>1</sup>[the] an<sup>1</sup> opt-in  
 44 'acknowledgment' form <sup>1</sup>, statement, or writing with the model text  
 45 and format<sup>1</sup> set forth in paragraph (2) of this subsection, the

1 financial institution shall use a form ' , statement, or writing'<sup>1</sup> that  
2 meets all of the following requirements:

3 (a) The form ' , statement, or writing'<sup>1</sup> uses the same title  
4 ("IMPORTANT PRIVACY CHOICE FOR CONSUMERS") and the  
5 header, if applicable, as follows: "Allow Information Sharing With  
6 Other Companies We Do Business With To Provide Financial  
7 Products And Services."

8 (b) The titles and headers in the form ' , statement, or writing'<sup>1</sup>  
9 are clearly and conspicuously displayed, and no text '[in the form]'<sup>1</sup>  
10 is smaller than '[12-point] 10-point'<sup>1</sup> type.

11 (c) The form ' , statement, or writing'<sup>1</sup> is a separate document,  
12 except as '[provided in] otherwise permitted by subparagraph (a)  
13 of paragraph (2) of subsection a. of'<sup>1</sup> this section '[and] or'<sup>1</sup> section  
14 7 of this act.

15 (d) The choice '[pursuant to subsection a. and b. of this section  
16 and section 8 of this act, if applicable, provided in the form are]  
17 provided in the form, statement, or writing to explicitly permit the  
18 disclosure of nonpublic personal information is'<sup>1</sup> stated separately  
19 and may be selected by checking a box.

20 (e) The form ' , statement, or writing'<sup>1</sup> is designed to call  
21 attention to the nature and significance of the information in the  
22 document.

23 (f) The form ' , statement, or writing'<sup>1</sup> presents information in  
24 clear and concise sentences, paragraphs, and sections.

25 (g) The form ' , statement, or writing'<sup>1</sup> uses short explanatory  
26 sentences which average between 15 and 20 words or bullet lists  
27 whenever possible.

28 (h) The form ' , statement, or writing'<sup>1</sup> avoids multiple negatives,  
29 legal terminology, and highly technical terminology whenever  
30 possible.

31 (i) The form ' , statement, or writing'<sup>1</sup> avoids explanations that  
32 are imprecise and readily subject to different interpretations.

33 (j) The form ' , statement, or writing'<sup>1</sup> provides wide margins,  
34 ample line spacing and uses boldface or italics for key words.

35 (k) The form ' , statement, or writing'<sup>1</sup> is not more than one page  
36 ' , or one page per language, if the document is provided in more  
37 than one language, or the document's contents, as required by this  
38 act, shall be not more than one page, or one page per language, if  
39 instead incorporated pursuant to subparagraph (a) of paragraph (2)  
40 of subsection a. of this section as a separate, clear and conspicuous  
41 opt-in section within a notice provided to the consumer in  
42 accordance with title V of the "Gramm-Leach-Bliley Act,"  
43 Pub.L.106-102 (15 U.S.C. s.6801 et seq.)'<sup>1</sup>.

44 '[(l) The form is provided to consumers in English and  
45 Spanish.]'<sup>1</sup>

1 (2) (a) None of the instructional items appearing in brackets in  
 2 the opt-in 'acknowledgment' form ', statement, or writing' set  
 3 forth in this paragraph shall appear in the '[opt-in]' form ',  
 4 statement, or writing' provided to the consumer, as those items are  
 5 for explanation purposes only. If a financial institution does not  
 6 disclose or share nonpublic personal information as described in a  
 7 header of the form ', statement, or writing', the financial institution  
 8 may omit the applicable header '[or headers]', and the  
 9 accompanying information and box, in the form ', statement, or  
 10 writing' it provides pursuant to this paragraph. '[The] An' opt-in  
 11 'acknowledgment' form '[with those] , statement, or writing  
 12 which utilizes the model text and format as presented in this  
 13 paragraph, regardless of the number of' omissions ',' shall be  
 14 conclusively presumed to satisfy the notice requirements of '[this  
 15 paragraph] subsection a. of this section'.

16 (b) If a financial institution '[uses] , instead of using' an opt-in  
 17 'acknowledgment' form '[other than] , statement, or writing which  
 18 utilizes the model text and format of' that set forth in this  
 19 paragraph, 'uses an opt-in acknowledgment form, statement, or  
 20 writing which complies with subparagraphs (a) to (k), inclusive, of  
 21 paragraph (1) of this subsection,' the financial institution may  
 22 submit that '[opt-in form] document' to its functional regulator for  
 23 approval, which approval shall create a rebuttable presumption that  
 24 the opt-in 'acknowledgment' form ', statement, or writing'  
 25 complies with 'the notice requirements of' this section.

26 (c) A financial institution shall not be in violation of this section  
 27 solely because it includes in the opt-in 'acknowledgment' form ',  
 28 statement, or writing' one or more brief examples or explanations  
 29 of the purpose, or context, within which information will be shared,  
 30 as long as those examples meet the clarity and readability standards  
 31 set forth in paragraph (1) of this subsection.

32 (d) The outside of the envelope in which the opt-in  
 33 'acknowledgment' form ', statement, or writing' is sent to the  
 34 consumer shall clearly state in 16-point boldface type  
 35 "IMPORTANT PRIVACY CHOICE," except that a financial  
 36 institution sending the '[form] document' to a consumer in the  
 37 same envelope as a bill, account statement, or application requested  
 38 by the consumer does not have to include the wording  
 39 "IMPORTANT PRIVACY CHOICE" on that envelope.

40

#### 41 **Important Privacy Choice for Consumers**

42

43 '[You] New Jersey law requires that we not share your personal  
 44 financial information, except under limited circumstances.  
 45 However, you' have the right to '[control] choose' whether we

1 'can more broadly' share some of your personal 'financial'  
2 information. Please read the following information carefully before  
3 you make your choice below.

4  
5 **Your Rights**

6  
7 You have the right to '[restrict] permit, or "opt-in" to.' the sharing  
8 of personal '[and]' financial information with 'certain' outside  
9 companies that we do business with (non-affiliated third '[party]  
10 parties'). Nothing in this opt-in form prohibits the sharing of  
11 information 'permitted by law or otherwise' necessary for us to  
12 follow the law '.' or to give you the best service on your accounts  
13 with us. This includes sending you information about some other  
14 products or services.

15  
16 **Your Choice**

17  
18 **Information Sharing With Other Companies 'With Which' We**  
19 **Do Business '[With To Provide Financial Products and**  
20 **Services]'**: Unless you say "Yes," we may not share 'your'  
21 personal '[and]' financial information '[about you]' with outside  
22 companies 'with which' we contract '[with to provide financial  
23 products and services to you] , except as permitted by law or as  
24 otherwise necessary for us to follow the law'.

25  
26 (\_\_\_\_) YES, You may share 'my' personal '[and]' financial  
27 information with outside companies '[we] with which you'  
28 contract '[with to provide financial products and services]'.

29  
30 -----  
31  
32 **'[Time Sensitive] Your Method of' Reply**

33  
34 You may make your '[privacy]' choice 'to permit the sharing of  
35 your personal financial information' at any time. Your choice 'to  
36 permit information sharing' marked here will remain unless you  
37 state otherwise.

38  
39 Name:

40 Account or Policy Number(s): \_\_\_\_\_ [to be filled in by consumer]

41  
42 Signature:  
43  
44

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]

1  
 2       '(3)' The 'opt-in acknowledgment' form ', statement, or  
 3 writing' shall be 'sent' provided to the consumer' in one or more  
 4 of the following ways:  
 5       '[(i)] (a)' With a bill, other statement of account, or application  
 6 requested by the consumer '], in which case the information  
 7 required by Title V of the "Gramm-Leach-Bliley Act," Pub.L 106-  
 8 102 (15 U.S.C. s.6801 et seq.) may also be included in the same  
 9 envelope]'.  
 10       '[(ii)] (b)' As a separate notice '[or with the information  
 11 required by Title V of the "Gramm-Leach-Bliley Act," Pub.L 106-  
 12 102 (15 U.S.C. s.6801 et seq.) and including only information]  
 13 among materials sent to the consumer' related 'only' to privacy.  
 14       '[(iii)] (c)' With any other mailing, in which case '[it] the  
 15 form, statement, or writing' shall be the first page of the mailing.  
 16       '(d) As a separate, clear and conspicuous opt-in section,  
 17 containing all of the document's contents, as required by this act,  
 18 incorporated into a notice provided to the consumer in accordance  
 19 with title V of the "Gramm-Leach-Bliley Act," Pub.L 106-102 (15  
 20 U.S.C. s.6801 et seq.).'  
 21       '[(3)] (4)' When a consumer directs that nonpublic personal  
 22 information may be disclosed, that direction shall remain in effect  
 23 until otherwise stated by the consumer. '[A financial institution  
 24 that has not provided a consumer with annual notice pursuant to this  
 25 section shall provide the consumer with a form that meets the  
 26 requirements of this subsection.  
 27       (4) If a] (5) A' financial institution 'shall provide a consumer  
 28 with an opt-in acknowledgment form, statement, or writing meeting  
 29 the requirements of this section at least annually, except when the  
 30 financial institution' does not have a continuing relationship with  
 31 '[a] the' consumer other than the initial transaction in which the  
 32 product or service is provided, 'then' no annual disclosure  
 33 requirement exists pursuant to this '[section] paragraph' as long as  
 34 '[the] that' financial institution provides the consumer with the  
 35 'opt-in acknowledgment' form '[required by this section] ,  
 36 statement, or writing' at the time of the initial transaction. As used  
 37 in this section, "annually" means at least once in any period of 12  
 38 consecutive months during which that relationship exists. The

1 financial institution may define the 12-consecutive-month period,  
2 but shall apply it to the consumer on a consistent basis.

3 ~~'[(5)] (6)'~~ A financial institution with assets in excess of  
4 \$25,000,000 shall include a self-addressed first class business reply  
5 return envelope with the ~~'[notice] opt-in acknowledgment form,~~  
6 ~~statement, or writing'~~. A financial institution with assets of up to  
7 and including \$25,000,000 shall include a self-addressed return  
8 envelope with the ~~'[notice] opt-in acknowledgment form,~~  
9 ~~statement, or writing'~~. In lieu of the first class business reply return  
10 envelope required by this paragraph, a financial institution may  
11 offer a self-addressed return envelope with the ~~'[notice] document'~~  
12 and at least two alternative cost-free means for consumers to  
13 communicate their privacy choices, such as calling a toll-free  
14 number, sending a facsimile to a toll-free telephone number, or  
15 using electronic means.

16 A financial institution shall clearly and conspicuously disclose in  
17 the ~~'[form] document'~~ required by this ~~'[subsection] section'~~ the  
18 information necessary to direct a consumer on how to communicate  
19 their choices, including the toll-free or facsimile number or website  
20 address that may be used, if those means of communication are  
21 offered by the financial institution.

22 ~~'[(6)] (7)'~~ A financial institution may provide a joint ~~'[notice]~~  
23 ~~opt-in acknowledgment form, statement, or writing'~~ from it or other  
24 financial institutions, as identified in the ~~'[notice] document'~~, so  
25 long as the ~~'[notice] document'~~ is accurate with respect to the  
26 financial institution and other financial institutions.

27 ~~'[e.] d.'~~ Nothing in this act shall prohibit a financial institution  
28 from marketing its own products and services or the products and  
29 services of nonaffiliated third parties to customers of the financial  
30 institution so long as: (1) nonpublic personal information is not  
31 disclosed in connection with the delivery of the applicable  
32 marketing materials to those customers except as permitted by  
33 section ~~'[9] 8'~~ of this act; and (2) in cases in which the applicable  
34 nonaffiliated third party may extrapolate nonpublic personal  
35 information about the consumer responding to those marketing  
36 materials, the applicable nonaffiliated third party has signed a  
37 contract with the financial institution under the terms of which: (a)  
38 the nonaffiliated third party is prohibited from using that  
39 information for any purpose other than the purpose for which it was  
40 provided, as set forth in the contract; and (b) the financial  
41 institution has the right by audit, inspections, or other means to  
42 verify the nonaffiliated third party's compliance with that contract.

43  
44 6. Except as otherwise provided in this act, an entity that  
45 receives nonpublic personal information from a financial institution  
46 as permitted under this act shall not disclose this information to any

1 other entity, unless the disclosure would be lawful if made directly  
2 to the other entity by the financial institution. An entity that  
3 receives nonpublic personal information pursuant to any exception  
4 set forth in section '[9] 8' of this act shall not use or disclose the  
5 information except in the ordinary course of business to carry out  
6 the activity covered by the exception under which the information  
7 was received 'and to protect the confidentiality or security of the  
8 entity's records pertaining to the consumer, the financial service or  
9 product, or the transaction thereon, to protect against or prevent  
10 actual or potential fraud, identity theft, unauthorized transactions,  
11 claims or other liability, for required institutional risk control and  
12 for resolving customer disputes or inquiries'.  
13

14 7. a. Nothing in this act shall require a financial institution to  
15 provide '[a written notice] an' opt-in 'acknowledgment form,  
16 statement, or writing' to a consumer pursuant to section 5 of this act  
17 if the financial institution does not disclose nonpublic personal  
18 information to any nonaffiliated third party, except as allowed in  
19 this act.

20 b. '[A notice] An opt-in acknowledgment form, statement, or  
21 writing' provided to a member of a household pursuant to section 5  
22 of this act shall be considered '[notice] an opt-in acknowledgment  
23 form, statement, or writing' to all members of that household unless  
24 that household contains another individual who also has a separate  
25 account with the financial institution.

26 c. (1) Any requirement pursuant to this act to send '[a written  
27 notice] an opt-in acknowledgment form, statement, or writing' to a  
28 consumer may be fulfilled by electronic means if the following  
29 requirements are met:

30 (a) The '[notice] document', and the manner in which it is sent,  
31 meets all of the requirements for notices 'or documents' that are  
32 required by law to be in writing, as set forth in section 101 of the  
33 federal "Electronic Signatures in Global and National Commerce  
34 Act," Pub.L.106-229 (15 U.S.C. s.7001).

35 (b) All other requirements applicable to the '[notice] opt-in  
36 acknowledgment form, statement, or writing' are met, including,  
37 but not limited to, requirements concerning content, timing, form  
38 and delivery. '[An electronic notice] However, any electronic  
39 document' sent pursuant to this '[section] subsection' is not  
40 required to include a return envelope.

41 (c) The '[notice] document' is delivered to the consumer in a  
42 form the consumer may keep.

43 (2) A '[notice] document' that is made available to a consumer,  
44 and is not delivered to the consumer, does not satisfy the  
45 requirements of paragraph (1) of this subsection.

1 (3) Any electronic consumer reply to an electronic '[notice]  
2 document' sent pursuant to this subsection is effective. A  
3 '[person] financial institution' that electronically sends a '[notice]  
4 document' required by this '[section] subsection' to a consumer  
5 may not by contract, or otherwise, eliminate the effectiveness of the  
6 consumer's electronic reply.

7  
8 '[8. a. When a financial institution and an affinity partner have  
9 an agreement to issue an affinity card, the financial institution shall  
10 be permitted to disclose to the affinity partner in whose name the  
11 card is issued only the following information pertaining to the  
12 financial institution's customers who are in receipt of the affinity  
13 card: (1) name, address, telephone number and electronic mail  
14 address; and (2) a record of purchases made using the affinity card  
15 in a business establishment, including a website, bearing the brand  
16 name of the affinity partner.

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

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

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

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

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

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

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

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

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

9 e. This section shall not apply to credit cards issued in the name  
10 of an entity primarily engaged in retail sales or a name proprietary  
11 to a company primarily engaged in retail sales.】<sup>1</sup>

12  
13 ‘[9.] 8’ a. This section shall not apply to information that is  
14 not personally identifiable to a particular person.

15 b. Notwithstanding sections 4 ‘[.] and’ 5 ‘[, 7, and 8]’ of this  
16 act, a financial institution may release nonpublic personal  
17 information under the following circumstances:

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

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

31 (3) The nonpublic personal information is released:

32 (a) To protect the confidentiality or security of the financial  
33 institution's records pertaining to the consumer, the ‘financial  
34 product or’ service ‘[or product]’, or the transaction ‘[therein]  
35 thereon’.

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

38 (c) For required institutional risk control or for resolving  
39 customer disputes or inquiries.

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

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

44 (4) The nonpublic personal information is released to provide  
45 information to insurance rate advisory organizations, guaranty  
46 funds or agencies, applicable rating agencies of the financial  
47 institution, persons assessing the institution's compliance with

1 industry standards, and the institution's attorneys, accountants and  
2 auditors.

3 (5) The nonpublic personal information is released to the extent  
4 specifically required or specifically permitted under other  
5 provisions of law and in accordance with the federal "Right to  
6 Financial Privacy Act of 1978," Pub.L. 95-630 (12 U.S.C. s.3401 et  
7 seq.), to law enforcement agencies, including a federal functional  
8 regulator, the Secretary of the Treasury with respect to subchapter  
9 II of Chapter 53 of Title 31 of the United States Code (31 U.S.C.  
10 s.5311 et seq.), and '[Chapter] chapter' 2 of '[Title] title' I of  
11 Pub.L. 91-508 (12 U.S.C. s.1951 et seq.), the New Jersey  
12 Department of Banking and Insurance or other state insurance  
13 regulators, the Federal Trade Commission, self-regulatory  
14 organizations or for an investigation on a matter related to public  
15 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 to an  
15 insurance producer licensed pursuant to the "New Jersey Insurance  
16 Producer Licensing Act of 2001," P.L.2001, c.210 (C.17:22A-26 et  
17 seq.), in the line of title insurance, in connection with the issuance  
18 of a title insurance commitment or policy, or the closing of a  
19 transaction involving real property in this State. This exemption is  
20 intended to apply to real estate transactions in addition to the real  
21 estate exemptions provided for disclosures required in a transaction  
22 covered by the federal "Real Estate Settlement Procedures Act of  
23 1974," Pub.L.93-533 (12 U.S.C. s.2601 et seq.), pursuant to the  
24 definition of "necessary to effect, administer or enforce" in section  
25 3 of this act and the reference to this term under paragraph (1) of  
26 subsection b. of this section.

27 (12)<sup>1</sup> The nonpublic personal information is released as required  
28 by the federal "International Money Laundering Abatement and  
29 Financial Anti-Terrorism Act of 2001," Pub.L. 107-56 (31 U.S.C.  
30 s.5311 et al.).

31 **'[(12)] (13)<sup>1</sup>** The nonpublic personal information is released  
32 either to a consumer reporting agency pursuant to the federal "Fair  
33 Credit Reporting Act," Pub.L. 91-508 (15 U.S.C. s.1681 et seq.) or  
34 from a consumer report reported by a consumer reporting agency.

35 **'[(13)] (14)<sup>1</sup>** The nonpublic personal information is released in  
36 connection with a written agreement between a consumer and a  
37 broker-dealer registered under the federal "Securities Exchange Act  
38 of 1934," Pub.L. 73-291 (15 U.S.C. s.78a et al.) or an investment  
39 adviser registered under the federal "Investment Advisers Act of  
40 1940," Pub.L. 76-768 (15 U.S.C. s.80b-1 et seq.) to provide  
41 investment management services, portfolio advisory services, or  
42 financial planning and the nonpublic personal information is  
43 released for the sole purpose of providing the products and services  
44 covered by that agreement.

45 c. Nothing in this section is intended to change existing law  
46 relating to access by law enforcement agencies to information held  
47 by financial institutions.

1       '【10.】 9.' a. The provisions of this section shall not apply to  
2 any person or entity that meets the requirements of paragraph (1) or  
3 (2) of this subsection. However, when nonpublic personal  
4 information is shared by a person or entity meeting the  
5 requirements of paragraph (1) or (2) with a nonaffiliated third party,  
6 this section shall apply.

7       (1) The person or entity is licensed in either of the following  
8 categories and is acting within the scope of the respective license or  
9 certificate:

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

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

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

17       (a) The rights and obligations between the licensees arising out  
18 of the business relationship relating to insurance or securities  
19 transactions;

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

23       (c) A requirement that transactions specified in the contract fall  
24 within the scope of activities permitted by the licenses of the  
25 parties.

26       b. The restrictions on disclosure and use of nonpublic personal  
27 information and the requirement for notification and disclosure  
28 shall not limit the ability of insurance producers and brokers to  
29 respond to written, telephone or electronic requests from consumers  
30 seeking price quotes on insurance products and services or to obtain  
31 competitive quotes to renew an existing insurance contract,  
32 provided that any nonpublic personal information disclosed  
33 pursuant to this subsection shall not be used or disclosed except in  
34 the ordinary course of business in order to obtain those quotes.

35       c. (1) The disclosure or sharing of nonpublic personal  
36 information from an insurer or its affiliates to an exclusive agent or  
37 broker whose contractual or employment relationship requires that  
38 the agent offer only the insurer's policies for sale or financial  
39 products or services authorized by the insurer, or whose contractual  
40 or employment relationship with an insurer gives the insurer the  
41 right of first refusal for all policies of insurance by the agent, and  
42 who may not share nonpublic personal information with any insurer  
43 other than the insurer with whom the agent has a contractual or  
44 employment relationship as described above, is not a violation of  
45 this section, provided that the agent may not disclose nonpublic  
46 personal information to any party except as permitted by this  
47 section. An insurer shall not disclose or share nonpublic personal

1 information with exclusive agents merely because information is  
2 maintained in common information systems or databases, and  
3 exclusive agents of the insurer have access to those common  
4 information systems or databases, provided that where a consumer  
5 has exercised his or her rights to prohibit disclosure pursuant to this  
6 section, nonpublic personal information is not further disclosed or  
7 used by an exclusive agent except as permitted by this section.

8 (2) Nothing in this subsection is intended to affect the sharing of  
9 information as allowed in subsection a. or subsection b. of this  
10 section.

11  
12 '[11.] 10.' a. An entity that negligently discloses or shares  
13 nonpublic personal information in violation of this act shall be  
14 liable, irrespective of the amount of damages suffered by the  
15 consumer as a result of that violation, for a civil penalty not to  
16 exceed \$2,500 per violation. However, if the disclosure or sharing  
17 results in the release of nonpublic personal information of more  
18 than one individual, the total civil penalty awarded pursuant to this  
19 subsection shall not exceed \$500,000.

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

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

- 28 (1) The total assets and net worth of the violating entity.  
29 (2) The nature and seriousness of the violation.  
30 (3) The persistence of the violation, including any attempts to  
31 correct the situation leading to the violation.  
32 (4) The length of time over which the violation occurred.  
33 (5) The number of times the entity has violated this act.  
34 (6) The harm caused to consumers by the violation.  
35 (7) The level of proceeds derived from the violation.  
36 (8) The impact of possible penalties on the overall fiscal  
37 solvency of the violating entity.

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

41 e. The civil penalties provided for in this section shall be  
42 exclusively assessed and recovered in a civil action brought in a  
43 summary proceeding pursuant to the "Penalty Enforcement Law of  
44 1999," P.L.1999, c.274 (C.2A:58-10 et seq.) by the Attorney  
45 General or the functional regulator with jurisdiction over regulation  
46 of the financial institution.

1       '【12.】 11.' Nothing in this act shall be construed as altering or  
2       annulling the authority of any department or agency of the State to  
3       regulate any financial institution subject to its jurisdiction.

4  
5       '【13.】 12.' The Commissioner of Banking and Insurance shall  
6       promulgate regulations pursuant to the "Administrative Procedure  
7       Act," P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate  
8       the provisions of this act.

9  
10       '【14.】 13.' This act shall take effect on the 180th day after the  
11       date of enactment.