

# SENATE, No. 456

## STATE OF NEW JERSEY 213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

**Sponsored by:**  
**Senator BARBARA BUONO**  
**District 18 (Middlesex)**

### **SYNOPSIS**

“New Jersey Financial Information Privacy Act.”

### **CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



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

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

21 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 e. To adopt, to the maximum extent feasible and consistent with  
27 the purposes cited above, definitions consistent with federal law, so  
28 that, in particular, there is no change in the ability of businesses to  
29 carry out normal processes of commerce for transactions voluntarily  
30 entered into by consumers.  
31

32 3. For the purposes of this act:

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

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

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

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

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

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

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

45 "Financial institution" means any institution, the business of  
46 which is engaging in financial activities as described in section 4(k)  
47 of Pub.L. 84-511 (12 U.S.C. s.1843(k)) and doing business in this

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

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

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

33 (1) The disclosure is required, or is a usual, appropriate, or  
34 acceptable method to carry out the transaction or the financial  
35 product or service business of which the transaction is a part, or  
36 administer or service benefits or claims relating to the transaction or  
37 the financial product or service business of which the transaction is  
38 a part, or record, service or maintain the consumer's account in the  
39 ordinary course of providing the financial product or service, and  
40 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 financial 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 review  
39 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 to, 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: (1) personally  
20 identifiable financial information: (a) provided by a consumer to a  
21 financial institution; (b) resulting from any transaction with the  
22 consumer or providing any financial product or service to the  
23 consumer; or (c) otherwise obtained by the financial institution.  
24 (2) The term "nonpublic personal information" includes any list,  
25 description, or other grouping of consumers, and publicly available  
26 information pertaining to them, that is derived using any nonpublic  
27 personal information other than publicly available information, but  
28 shall not include any list, description, or other grouping of  
29 consumers, and publicly available information pertaining to them,  
30 that is derived without using any nonpublic personal information.

31 (3) The term "nonpublic personal information" shall not include  
32 publicly available information that the financial institution has a  
33 reasonable basis to believe is lawfully made available to the general  
34 public from: (a) federal, state, or local government records; (b)  
35 widely distributed media; or (c) disclosures to the general public  
36 that are required to be made by federal, State, or local law.

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

45 (4) The term "personally identifiable financial information"  
46 includes all of 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 and 8 of this act, a financial  
25 institution shall not sell, share, transfer or otherwise disclose  
26 nonpublic personal information to or with any nonaffiliated third  
27 parties without the explicit prior consent of the consumer to whom  
28 the nonpublic personal information relates, as provided by the  
29 consumer in an opt-in acknowledgment form, statement, or writing.

30  
31 5. a. (1) Except as provided in subsection b. of this section, a  
32 financial institution shall not disclose to or share a consumer's  
33 nonpublic personal information with any nonaffiliated third party,  
34 unless the financial institution has obtained an opt-in  
35 acknowledgment form, statement, or writing from the consumer that  
36 complies with paragraph (2) of this subsection which authorizes the  
37 financial institution to disclose or share the nonpublic personal  
38 information.

39 (a) A financial institution shall not discriminate against or deny  
40 an otherwise qualified consumer a financial product or service  
41 because the consumer has not provided consent pursuant to this  
42 subsection and section 4 of this act to authorize the financial  
43 institution to disclose or share nonpublic personal information  
44 pertaining to the consumer with any nonaffiliated third party.  
45 Nothing in this subsection shall prohibit a financial institution from  
46 denying a consumer a financial product or service if the financial  
47 institution could not provide the product or service to a consumer

1 without the consent to disclose the consumer's nonpublic personal  
2 information required by this subsection and section 4 of this act,  
3 and the consumer has failed to provide consent. A financial  
4 institution shall not be liable for failing to offer a financial product  
5 or service to a consumer solely because that consumer has failed to  
6 provide consent pursuant to this subsection and section 4 of this act,  
7 and the financial institution could not offer the product or service  
8 without that consent.

9 (b) Nothing in this subsection is intended to prohibit a financial  
10 institution from offering incentives or discounts to elicit a specific  
11 response regarding the opt-in acknowledgment form, statement, or  
12 writing.

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

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

26 (b) The form, statement, or writing shall be dated and signed by  
27 the consumer.

28 (c) The form, statement, or writing shall clearly and  
29 conspicuously disclose that by signing, the consumer is consenting  
30 to the disclosure to nonaffiliated third parties of nonpublic personal  
31 information pertaining to the consumer.

32 (d) The form, statement, or writing shall clearly and  
33 conspicuously disclose: (i) that the consent will remain in effect  
34 until revoked or modified by the consumer; (ii) that the consumer  
35 may revoke the consent at any time; and (iii) the procedure for the  
36 consumer to revoke consent.

37 (e) The form, statement, or writing shall clearly and  
38 conspicuously inform the consumer that: (i) the financial institution  
39 will maintain the document or a true and correct copy; (ii) the  
40 consumer is entitled to a copy of the document upon request; and  
41 (iii) the consumer may want to make a copy of the document for the  
42 consumer's records.

43 b. (1) This section shall not prohibit a financial institution from  
44 releasing a consumer's nonpublic personal information to a  
45 nonaffiliated financial institution for purposes of jointly offering a  
46 financial product or service pursuant to a written agreement with



1 the financial institution that receives the nonpublic personal  
2 information provided that all of the following requirements are met:

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

6 (b) The financial product or service is jointly offered, endorsed,  
7 or sponsored, and clearly and conspicuously identifies for the  
8 consumer the financial institutions that disclose and receive the  
9 disclosed nonpublic personal information.

10 (c) The written agreement provides that the financial institution  
11 that receives the nonpublic personal information is required to  
12 maintain the confidentiality of the information and is prohibited  
13 from disclosing or using the information other than to carry out the  
14 joint offering or servicing of the financial product or service that is  
15 the subject of the written agreement.

16 (2) This section shall not prohibit a financial institution from  
17 releasing a consumer's nonpublic personal information to an  
18 affinity partner.

19 (3) This section shall not prohibit the disclosure of nonpublic  
20 personal information as set forth in section 8 of this act.

21 c. (1) A financial institution shall provide an opt-in  
22 acknowledgment form, statement, or writing to a consumer, either  
23 using the model text and format set forth in paragraph (2) of this  
24 subsection, and additionally complying, as otherwise appropriate,  
25 with subparagraphs (a) to (k), inclusive, of this paragraph, or not  
26 using the model text and format of paragraph (2) of this subsection,  
27 but fully complying with subparagraphs (a) to (k), inclusive, of this  
28 paragraph, so that the consumer may make a decision and provide  
29 direction to the financial institution regarding the sharing of the  
30 consumer's nonpublic personal information. The financial  
31 institution shall be conclusively presumed to have satisfied the  
32 notice requirements of subsection a. of this section if it uses the  
33 model text and format set forth in paragraph (2) of this subsection,  
34 and additionally complies, as otherwise appropriate, with  
35 subparagraphs (a) to (k), inclusive, of this paragraph. If the  
36 financial institution does not use an opt-in acknowledgment form,  
37 statement, or writing with the model text and format set forth in  
38 paragraph (2) of this subsection, the financial institution shall use a  
39 form, statement, or writing that meets all of the following  
40 requirements:

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

- 1 (b) The titles and headers in the form, statement, or writing are  
2 clearly and conspicuously displayed, and no text is smaller than 10-  
3 point type.
- 4 (c) The form, statement, or writing is a separate document,  
5 except as otherwise permitted by subparagraph (a) of paragraph (2)  
6 of subsection a. of this section or section 7 of this act.
- 7 (d) The choice provided in the form, statement, or writing to  
8 explicitly permit the disclosure of nonpublic personal information is  
9 stated separately and may be selected by checking a box.
- 10 (e) The form, statement, or writing is designed to call attention  
11 to the nature and significance of the information in the document.
- 12 (f) The form, statement, or writing presents information in clear  
13 and concise sentences, paragraphs, and sections.
- 14 (g) The form, statement, or writing uses short explanatory  
15 sentences which average between 15 and 20 words or bullet lists  
16 whenever possible.
- 17 (h) The form, statement, or writing avoids multiple negatives,  
18 legal terminology, and highly technical terminology whenever  
19 possible.
- 20 (i) The form, statement, or writing avoids explanations that are  
21 imprecise and readily subject to different interpretations.
- 22 (j) The form, statement, or writing provides wide margins,  
23 ample line spacing and uses boldface or italics for key words.
- 24 (k) The form, statement, or writing is not more than one page, or  
25 one page per language, if the document is provided in more than  
26 one language, or the document's contents, as required by this act,  
27 shall be not more than one page, or one page per language, if  
28 instead incorporated pursuant to subparagraph (a) of paragraph (2)  
29 of subsection a. of this section as a separate, clear and conspicuous  
30 opt-in section within a notice provided to the consumer in  
31 accordance with title V of the "Gramm-Leach-Bliley Act,"  
32 Pub.L.106-102 (15 U.S.C. s.6801 et seq.).
- 33 (2) (a) None of the instructional items appearing in brackets in  
34 the opt-in acknowledgment form, statement, or writing set forth in  
35 this paragraph shall appear in the form, statement, or writing  
36 provided to the consumer, as those items are for explanation  
37 purposes only. If a financial institution does not disclose or share  
38 nonpublic personal information as described in a header of the  
39 form, statement, or writing, the financial institution may omit the  
40 applicable header, and the accompanying information and box, in  
41 the form, statement, or writing it provides pursuant to this  
42 paragraph. An opt-in acknowledgment form, statement, or writing  
43 which utilizes the model text and format as presented in this  
44 paragraph, regardless of the number of omissions, shall be  
45 conclusively presumed to satisfy the notice requirements of  
46 subsection a. of this section.

1 (b) If a financial institution, instead of using an opt-in  
2 acknowledgment form, statement, or writing which utilizes the  
3 model text and format of that set forth in this paragraph, uses an  
4 opt-in acknowledgment form, statement, or writing which complies  
5 with subparagraphs (a) to (k), inclusive, of paragraph (1) of this  
6 subsection, the financial institution may submit that document to  
7 its functional regulator for approval, which approval shall create a  
8 rebuttable presumption that the opt-in acknowledgment form,  
9 statement, or writing complies with the notice requirements of this  
10 section.

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

17 (d) The outside of the envelope in which the opt-in  
18 acknowledgment form, statement, or writing is sent to the consumer  
19 shall clearly state in 16-point boldface type "IMPORTANT  
20 PRIVACY CHOICE," except that a financial institution sending the  
21 document to a consumer in the same envelope as a bill, account  
22 statement, or application requested by the consumer does not have  
23 to include the wording "IMPORTANT PRIVACY CHOICE" on that  
24 envelope.

25

### 26 **Important Privacy Choice for Consumers**

27

28 New Jersey law requires that we not share your personal financial  
29 information, except under limited circumstances. However, you  
30 have the right to choose whether we can more broadly share some  
31 of your personal financial information. Please read the following  
32 information carefully before you make your choice below.

33

#### 34 **Your Rights**

35

36 You have the right to permit, or "opt-in" to, the sharing of personal  
37 financial information with certain outside companies that we do  
38 business with (non-affiliated third parties). Nothing in this opt-in  
39 form prohibits the sharing of information permitted by law or  
40 otherwise necessary for us to follow the law, or to give you the best  
41 service on your accounts with us. This includes sending you  
42 information about some other products or services.

43

#### 44 **Your Choice**

45

46 **Information Sharing With Other Companies With Which We**  
47 **Do Business:** Unless you say "Yes," we may not share your  
48 personal financial information with outside companies with which

1 we contract, except as permitted by law or as otherwise necessary  
2 for us to follow the law.

3

4 (\_\_\_) YES, You may share my personal financial information with  
5 outside companies with which you contract.

6

7 -----

8

9 **Your Method of Reply**

10

11 You may make your choice to permit the sharing of your personal  
12 financial information at any time. Your choice to permit  
13 information sharing marked here will remain unless you state  
14 otherwise.

15

16 Name:

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

18

19 Signature:

20

21

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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22

23 (3) The opt-in acknowledgment form, statement, or writing shall  
24 be provided to the consumer in one or more of the following ways:

25 (a) With a bill, other statement of account, or application  
26 requested by the consumer.

27 (b) As a separate notice among materials sent to the consumer  
28 related only to privacy.

29 (c) With any other mailing, in which case the form, statement, or  
30 writing shall be the first page of the mailing.

31 (d) As a separate, clear and conspicuous opt-in section,  
32 containing all of the document's contents, as required by this act,  
33 incorporated into a notice provided to the consumer in accordance  
34 with title V of the "Gramm-Leach-Bliley Act," Pub.L 106-102 (15  
35 U.S.C. s.6801 et seq.).

36 (4) When a consumer directs that nonpublic personal  
37 information may be disclosed, that direction shall remain in effect  
38 until otherwise stated by the consumer.

39 (5) A financial institution shall provide a consumer with an opt-  
40 in acknowledgment form, statement, or writing meeting the  
41 requirements of this section at least annually, except when the

1 financial institution does not have a continuing relationship with the  
2 consumer other than the initial transaction in which the product or  
3 service is provided, then no annual disclosure requirement exists  
4 pursuant to this paragraph as long as that financial institution  
5 provides the consumer with the opt-in acknowledgment form,  
6 statement, or writing at the time of the initial transaction. As used  
7 in this section, "annually" means at least once in any period of 12  
8 consecutive months during which that relationship exists. The  
9 financial institution may define the 12-consecutive-month period,  
10 but shall apply it to the consumer on a consistent basis.

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

23 A financial institution shall clearly and conspicuously disclose in  
24 the document required by this section the information necessary to  
25 direct a consumer on how to communicate their choices, including  
26 the toll-free or facsimile number or website address that may be  
27 used, if those means of communication are offered by the financial  
28 institution.

29 (7) A financial institution may provide a joint opt-in  
30 acknowledgment form, statement, or writing from it or other  
31 financial institutions, as identified in the document, so long as the  
32 document is accurate with respect to the financial institution and  
33 other financial institutions.

34 d. Nothing in this act shall prohibit a financial institution from  
35 marketing its own products and services or the products and  
36 services of nonaffiliated third parties to customers of the financial  
37 institution so long as: (1) nonpublic personal information is not  
38 disclosed in connection with the delivery of the applicable  
39 marketing materials to those customers except as permitted by  
40 section 8 of this act; and (2) in cases in which the applicable  
41 nonaffiliated third party may extrapolate nonpublic personal  
42 information about the consumer responding to those marketing  
43 materials, the applicable nonaffiliated third party has signed a  
44 contract with the financial institution under the terms of which: (a)  
45 the nonaffiliated third party is prohibited from using that  
46 information for any purpose other than the purpose for which it was  
47 provided, as set forth in the contract; and (b) the financial

1 institution has the right by audit, inspections, or other means to  
2 verify the nonaffiliated third party's compliance with that contract.

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

19  
20 7. a. Nothing in this act shall require a financial institution to  
21 provide an opt-in acknowledgment form, statement, or writing to a  
22 consumer pursuant to section 5 of this act if the financial institution  
23 does not disclose nonpublic personal information to any  
24 nonaffiliated third party, except as allowed in this act.

25 b. An opt-in acknowledgment form, statement, or writing  
26 provided to a member of a household pursuant to section 5 of this  
27 act shall be considered an opt-in acknowledgment form, statement,  
28 or writing to all members of that household unless that household  
29 contains another individual who also has a separate account with  
30 the financial institution.

31 c. (1) Any requirement pursuant to this act to send an opt-in  
32 acknowledgment form, statement, or writing to a consumer may be  
33 fulfilled by electronic means if the following requirements are met:

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

39 (b) All other requirements applicable to the opt-in  
40 acknowledgment form, statement, or writing are met, including, but  
41 not limited to, requirements concerning content, timing, form and  
42 delivery. However, any electronic document sent pursuant to this  
43 subsection is not required to include a return envelope.

44 (c) The document is delivered to the consumer in a form the  
45 consumer may keep.

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

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

9  
10 8 a. This section shall not apply to information that is not  
11 personally identifiable to a particular person.

12 b. Notwithstanding sections 4 and 5 of this act, a financial  
13 institution may release nonpublic personal information under the  
14 following circumstances:

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

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

28 (3) The nonpublic personal information is released:

29 (a) To protect the confidentiality or security of the financial  
30 institution's records pertaining to the consumer, the financial  
31 product or service, or the transaction thereon.

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

34 (c) For required institutional risk control or for resolving  
35 customer disputes or inquiries.

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

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

40 (4) The nonpublic personal information is released to provide  
41 information to insurance rate advisory organizations, guaranty  
42 funds or agencies, applicable rating agencies of the financial  
43 institution, persons assessing the institution's compliance with  
44 industry standards, and the institution's attorneys, accountants and  
45 auditors.

46 (5) The nonpublic personal information is released to the extent  
47 specifically required or specifically permitted under other

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

11 (6) The nonpublic personal information is released in connection  
12 with a proposed or actual sale, merger, transfer, or exchange of all  
13 or a portion of a business or operating unit if the disclosure of  
14 nonpublic personal information concerns solely consumers of the  
15 business or unit.

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

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

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

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

38 (c) The nonpublic personal information provided to the  
39 nonaffiliated third party is limited to that which is necessary for the  
40 nonaffiliated third party to perform the services contracted for on  
41 behalf of the financial institution.

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

45 (9) The nonpublic personal information is released to identify or  
46 locate missing and abducted children, witnesses, criminals and  
47 fugitives, parties to lawsuits, parents delinquent in child support



1 payments, organ and bone marrow donors, pension fund  
2 beneficiaries, and missing heirs.

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

8 (11) The nonpublic personal information is released to an  
9 insurance producer licensed pursuant to the "New Jersey Insurance  
10 Producer Licensing Act of 2001," P.L.2001, c.210 (C.17:22A-26 et  
11 seq.), in the line of title insurance, in connection with the issuance  
12 of a title insurance commitment or policy, or the closing of a  
13 transaction involving real property in this State. This exemption is  
14 intended to apply to real estate transactions in addition to the real  
15 estate exemptions provided for disclosures required in a transaction  
16 covered by the federal "Real Estate Settlement Procedures Act of  
17 1974," Pub.L.93-533 (12 U.S.C. s.2601 et seq.), pursuant to the  
18 definition of "necessary to effect, administer or enforce" in section  
19 3 of this act and the reference to this term under paragraph (1) of  
20 subsection b. of this section.

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

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

29 (14) The nonpublic personal information is released in  
30 connection with a written agreement between a consumer and a  
31 broker-dealer registered under the federal "Securities Exchange Act  
32 of 1934," Pub.L. 73-291 (15 U.S.C. s.78a et al.) or an investment  
33 adviser registered under the federal "Investment Advisers Act of  
34 1940," Pub.L. 76-768 (15 U.S.C. s.80b-1 et seq.) to provide  
35 investment management services, portfolio advisory services, or  
36 financial planning and the nonpublic personal information is  
37 released for the sole purpose of providing the products and services  
38 covered by that agreement.

39 c. Nothing in this section is intended to change existing law  
40 relating to access by law enforcement agencies to information held  
41 by financial institutions.

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

- 1       (1) The person or entity is licensed in either of the following  
2 categories and is acting within the scope of the respective license or  
3 certificate:
- 4       (a) As an insurance producer, or as an investment adviser.  
5       (b) Is licensed to sell securities by the National Association of  
6 Securities Dealers.
- 7       (2) The person or entity meets the requirements in paragraph (1)  
8 and has a written contractual agreement with another person or  
9 entity described in paragraph (1) and the contract clearly and  
10 explicitly includes the following:
- 11       (a) The rights and obligations between the licensees arising out  
12 of the business relationship relating to insurance or securities  
13 transactions;
- 14       (b) An explicit limitation on the use of nonpublic personal  
15 information about a consumer to transactions authorized by the  
16 contract and permitted pursuant to this act; and
- 17       (c) A requirement that transactions specified in the contract fall  
18 within the scope of activities permitted by the licenses of the  
19 parties.
- 20       b. The restrictions on disclosure and use of nonpublic personal  
21 information and the requirement for notification and disclosure  
22 shall not limit the ability of insurance producers and brokers to  
23 respond to written, telephone or electronic requests from consumers  
24 seeking price quotes on insurance products and services or to obtain  
25 competitive quotes to renew an existing insurance contract,  
26 provided that any nonpublic personal information disclosed  
27 pursuant to this subsection shall not be used or disclosed except in  
28 the ordinary course of business in order to obtain those quotes.
- 29       c. (1) The disclosure or sharing of nonpublic personal  
30 information from an insurer or its affiliates to an exclusive agent or  
31 broker whose contractual or employment relationship requires that  
32 the agent offer only the insurer's policies for sale or financial  
33 products or services authorized by the insurer, or whose contractual  
34 or employment relationship with an insurer gives the insurer the  
35 right of first refusal for all policies of insurance by the agent, and  
36 who may not share nonpublic personal information with any insurer  
37 other than the insurer with whom the agent has a contractual or  
38 employment relationship as described above, is not a violation of  
39 this section, provided that the agent may not disclose nonpublic  
40 personal information to any party except as permitted by this  
41 section. An insurer shall not disclose or share nonpublic personal  
42 information with exclusive agents merely because information is  
43 maintained in common information systems or databases, and  
44 exclusive agents of the insurer have access to those common  
45 information systems or databases, provided that where a consumer  
46 has exercised his or her rights to prohibit disclosure pursuant to this

1 section, nonpublic personal information is not further disclosed or  
2 used by an exclusive agent except as permitted by this section.

3 (2) Nothing in this subsection is intended to affect the sharing of  
4 information as allowed in subsection a. or subsection b. of this  
5 section.

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

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

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

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

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

36 e. The civil penalties provided for in this section shall be  
37 exclusively assessed and recovered in a civil action brought in a  
38 summary proceeding pursuant to the "Penalty Enforcement Law of  
39 1999," P.L.1999, c.274 (C.2A:58-10 et seq.) by the Attorney  
40 General or the functional regulator with jurisdiction over regulation  
41 of the financial institution.

42  
43 11. Nothing in this act shall be construed as altering or annulling  
44 the authority of any department or agency of the State to regulate  
45 any financial institution subject to its jurisdiction.

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

5  
6       13. This act shall take effect on the 180th day after the date of  
7 enactment.

8  
9  
10                               STATEMENT

11  
12       Under title V of the federal "Gramm-Leach-Bliley Act,"  
13 Pub.L.106-102 (15 U.S.C. s.6801 et seq.), financial institutions are  
14 permitted to share a consumer's nonpublic personal information  
15 with nonaffiliated third parties, but these institutions must provide  
16 their consumers with a notice concerning the use and sharing of this  
17 information, and in turn any consumer may direct that their  
18 information not be shared; in other words, the consumer may "opt-  
19 out" of the sharing of such information with such entities. However,  
20 this federal law permits states to enact more restrictive laws, and  
21 thereby afford citizens more privacy protections, with respect to this  
22 nonpublic personal information sharing.

23       This bill, the "New Jersey Financial Information Privacy Act,"  
24 establishes a more restrictive information sharing procedure,  
25 whereby financial institutions, including generally banks, credit  
26 unions, savings and loan associations, financial services and  
27 securities firms, and insurance companies, shall not sell, share or  
28 otherwise disclose a consumer's nonpublic personal information  
29 without the consumer's explicit prior consent; meaning the  
30 consumer must "opt-in" to permit the sharing of information, as  
31 opposed to the federal "opt-out" system.

32       Financial institutions, other than those institutions which do not  
33 disclose information to nonaffiliated third parties, shall provide  
34 consumers with an "opt-in" acknowledgment form, statement or  
35 writing, at least annually, concerning the consumers' privacy  
36 choices and the opportunity to "opt in" to allow the sharing of their  
37 information. This document shall clearly and conspicuously: 1)  
38 disclose that by signing, a consumer consents to the disclosure of  
39 information; 2) explain that the consent remains in effect until  
40 revoked; and 3) provide the procedure for the consumer to revoke  
41 consent. The bill provides a sample document as a template for use  
42 by financial institutions, or financial institutions may instead utilize  
43 their own document, subject to specific form and content  
44 requirements set forth in the bill.

45       The bill sets forth exceptions, whereby financial institutions need  
46 not obtain any prior consent from consumers to disclose their  
47 nonpublic personal information. These exceptions, more fully  
48 detailed in the bill, include disclosures: to a non-affiliated third

1 party for the limited purpose of jointly offering a financial product  
2 or service; to an affinity partner; to law enforcement agencies; to  
3 effect, administer, or enforce certain transactions, such as credit and  
4 debit card processing or real estate transactions; and to protect the  
5 financial institution and its customers from such concerns as fraud,  
6 unauthorized transactions, or identity theft.

7 These exceptions also include the disclosure of information to  
8 meet the requirements of federal, State, or local law. As such, the  
9 bill is not intended to interfere with the disclosure and use  
10 requirements of nonpublic personal information as governed by  
11 other laws, including the federal “Health Insurance Portability and  
12 Accountability Act of 1996” (HIPAA), Pub.L.104-191 (42 U.S.C.A.  
13 1181 et al.), the federal “Employee Retirement Income Security Act  
14 of 1974” (ERISA), Pub.L.93-406 (29 U.S.C. s.1001 et seq.), and the  
15 State insurance information practices set forth at P.L.1985, c.179  
16 (C.17:23A-1 et seq.).

17 In order to further protect nonpublic personal information, the  
18 bill establishes a range of civil penalties for disclosures of  
19 information in violation of the bill’s provisions, based upon the  
20 severity of the violation. A negligent disclosure makes a violator  
21 liable to a civil penalty not to exceed \$2,500 per violation, which is  
22 limited to a total of \$500,000 for a violation leading to the release  
23 of information of more than one customer. A knowing and willful  
24 disclosure makes a violator liable to a civil penalty not to exceed  
25 \$5,000 per violation, with no corresponding limit. Additionally, if  
26 any violation results in theft of a consumer’s identity, the applicable  
27 civil penalty shall be doubled. Any penalty shall be collected by  
28 the Attorney General or an appropriate functional regulator in a  
29 summary manner pursuant to the “Penalty Enforcement Law of  
30 1999,” P.L.1999, c.274 (C.2A:58-10 et seq.).