

ASSEMBLY, No. 2735

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 20, 1997

By Assemblyman BATEMAN

1 AN ACT concerning voluntary compliance reviews by depository
2 institutions and supplementing Title 17 of the Revised Statutes.

3

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

6

7 1. The Legislature finds and declares that it is in the public interest
8 for depository institutions in this State to conduct voluntary internal
9 reviews and audits of their operations, practices and procedures for
10 the purpose of discovering and correcting any operations, practices
11 or procedures which do not comply with applicable law or regulation
12 or which do not comply with recognized industry standards or with the
13 institution's own standards and for the purpose of preventing
14 continuing and more serious violations. Since the primary goal of
15 enforcement policies is to promote compliance, not to punish the
16 violator, a legal structure that promotes self-policing programs can
17 achieve improved compliance effectively at less cost to the State and
18 to the depository institutions. Voluntary compliance review, when
19 properly conducted and implemented, results not only in better
20 compliance with law, but in the adoption of procedures and policies by
21 the depository institutions that exceed minimum legal requirements,
22 and that save money by benefiting customers, lowering costs and
23 reducing potential liabilities.

24 The Legislature therefore determines that it is the public policy of
25 the State to fashion an overall statutory and regulatory scheme, by the
26 use of incentives and the elimination of disincentives, to encourage
27 depository institutions to participate in voluntary compliance reviews
28 and corrective action programs and that it is appropriate that a safe
29 harbor from civil actions be established for violations discovered as a
30 result of a voluntary compliance review.

31

32 2. As used in this act:

33 "Affiliate" shall have the meaning given it pursuant to section 2 of
34 the federal "Bank Holding Company Act of 1956," 12 U.S.C. §1841.

35 "Department" means the Department of Banking and Insurance.

36 "Depository institution" means a state or federally chartered bank,
37 savings bank, savings and loan association or credit union that is

1 authorized to maintain deposit or share accounts.

2 "Enforcement action" means a criminal investigation or prosecution,
3 or an administrative proceeding or order by a governmental unit or
4 authority which is intended to ensure the safe and sound operation of
5 a depository institution.

6 "Voluntary compliance review" means review, assessment, audit or
7 evaluation instituted by the governing body of the depository
8 institution or an affiliate of the depository institution, not required by
9 statute or regulation, of the transactions, activities, records or policies
10 of the depository institution for the purposes of identifying and
11 correcting procedural and operational problems of compliance with
12 applicable laws and regulations, including without limitation, safe,
13 sound and fair lending practices, financial reporting to federal and
14 state regulatory agencies, compliance with all applicable state and
15 federal laws and regulatory requirements, and compliance with
16 industry standards of due care.

17 "Voluntary compliance review report" means any document or
18 documents prepared or assembled by any person or group of persons,
19 committee or entity conducting a voluntary compliance review,
20 including without limitation, supporting information and documents
21 such as notes, records of observations, findings, conclusions, drafts,
22 memoranda, drawings, photographs, charts, graphs and surveys,
23 provided, however, that the documents and supporting information are
24 collected or developed for the purpose of and in the course of a
25 voluntary compliance review.

26

27 3. A voluntary compliance review report shall be privileged and
28 neither it nor its existence shall be discoverable or admissible as
29 evidence in any legal action or administrative proceeding of any nature
30 involving the depository institution or an affiliate of the depository
31 institution, except as provided in section 5 or 6 of this act.

32

33 4. Persons involved in the preparation of a voluntary compliance
34 review report shall not be required to give answers to any questions or
35 provide testimony regarding the existence, contents or conclusions of
36 any voluntary compliance review report, except as provided in section
37 5 or 6 of this act.

38

39 5. a. The provisions of section 3 and 4 of this act shall not apply
40 if:

41 (1) an enforcement action is taken, that enforcement action is
42 contested, and a court of competent jurisdiction, by order in
43 accordance with the rules of discovery set forth in the Rules
44 Governing the Courts of the State of New Jersey, requires disclosure
45 of materials and documents pertaining to that enforcement action;

46 (2) there is a statutory requirement that the violation identified or

1 discovered as a result of the voluntary compliance review be reported.

2 b. The disclosure authorized under paragraphs (1) and (2) of
3 subsection a. of this section shall apply only to those sections and
4 portions of the voluntary compliance review report that pertain to the
5 specific violation which is the subject of the enforcement action. All
6 other sections and portions of the voluntary compliance review report
7 shall remain privileged.

8 c. If there is a dispute concerning the sections or portions of the
9 voluntary compliance review report subject to disclosure, a court of
10 competent jurisdiction, upon petition of either party, shall conduct an
11 in camera review of those sections or portions subject to dispute.

12

13 6. The provisions of sections 3 and 4 of this act shall not extend to:

14 a. Documents, communications, data, reports or other information
15 required to be collected, developed, maintained, reported or made
16 available to a regulatory agency pursuant to any federal or State law,
17 regulation, permit or order.

18 b. Information obtained by observation, sampling or monitoring by
19 any regulatory agency.

20 c. Information obtained from a source independent of the voluntary
21 compliance review.

22

23 7. No person shall use any information privileged pursuant to this
24 act to discover any other information and any information so
25 discovered shall be inadmissible in any action or proceeding. If a court
26 or an administrative law judge determines that any information is not
27 privileged, it shall by the entry of appropriate protective orders ensure
28 that information is disclosed only to the extent required for the proper
29 conduct of the subject action or proceeding.

30

31 8. Nothing in this act shall limit, waive or abrogate the scope or
32 nature of any statutory or common law privilege, including, without
33 limitation, the work product doctrine and the attorney-client privilege.

34

35 9. No regulatory agency shall adopt a rule for the purpose of
36 circumventing the privilege established in this act by requiring
37 disclosure of a voluntary compliance review report.

38

39 10. Whenever a person responsible for a violation of a law or
40 regulation, which violation is discovered as a result of a voluntary
41 compliance review, voluntarily discloses the violation to the
42 department or other appropriate regulatory agency, neither the
43 department nor the other appropriate agency shall impose a criminal,
44 civil or civil administrative penalty for the violation, provided that the
45 person responsible for the violation discloses the violation within 60
46 days of completion of the voluntary compliance review report, and

1 provided that the person responsible for the violation demonstrates,
2 and the department determines, that the violation is not the result of
3 knowing, purposeful, reckless or criminally negligent conduct.
4

5 11. a. Information contained within a voluntary compliance review
6 report and disclosed to the department or other agency pursuant to
7 section 10 of this act shall be exempt from public disclosure by the
8 department or other agency.

9 b. No person who discloses information for the purposes of section
10 10 of this act shall be obligated to disclose whether that information
11 is a portion or section of a voluntary compliance review report or
12 whether a voluntary compliance review report has been performed by
13 the person disclosing that information.
14

15 12. Nothing in this act shall be construed to permit any third party
16 access to any voluntary compliance review report subject to the
17 provisions of this act. For the purpose of this section, "third party"
18 means a person other than a State or local enforcing agency.
19

20 13. This act shall take effect immediately and shall apply to all
21 voluntary compliance reviews and reports completed on or after that
22 date.
23

24 STATEMENT

25
26
27 Banks, savings banks, savings and loan associations and credit
28 unions are subject to a multitude of legal and regulatory provisions and
29 are responsible for providing bank services to millions of people and
30 entities in this State. This bill recognizes and encourages depository
31 institutions to initiate voluntary self-audits to identify and correct
32 problems in their operations and procedures by providing that the
33 voluntary compliance review and the voluntary compliance review
34 report are privileged and are not evidential in legal proceedings, except
35 as provided in the bill. The exceptions include situations of
36 administrative civil actions or criminal actions in which a court may
37 order disclosure. The evidential privilege applies only to documents,
38 data, communications, reports or other information disclosed through
39 the self-review process which are not otherwise available or
40 discoverable. Failure to create and preserve this evidentiary privilege
41 will act as a disincentive to institutions to conduct self-examinations
42 and will lead to increased regulatory costs and expenses.

1

2

3

4 Concerns certain voluntary compliance reviews by depository

5 institutions.