

[First Reprint]
ASSEMBLY, No. 2735

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 20, 1997

By Assemblymen BATEMAN and DORIA

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. ¹[Since the primary goal of
15 enforcement policies is to promote compliance, not to punish the
16 violator, a] However, if studies and reports beyond those legally
17 required are available to third parties and potentially can result in
18 liabilities and penalties to the institution, the institution is discouraged
19 from making these additional efforts. A¹ legal structure that promotes
20 self-policing programs can achieve improved compliance effectively at
21 less cost to the State and to the depository institutions. Voluntary
22 compliance review, when properly conducted and implemented, results
23 not only in better compliance with law, but in the adoption of
24 procedures and policies by the depository institutions that exceed
25 minimum legal requirements, and that save money by benefiting
26 customers, lowering costs and reducing potential liabilities.

27 The Legislature therefore determines that it is the public policy of
28 the State to ¹[fashion an overall statutory and regulatory scheme, by
29 the use of incentives and the elimination of disincentives, to]¹
30 encourage depository institutions to participate in voluntary
31 compliance reviews and corrective action programs ¹[and that it is

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AFI committee amendments adopted June 12, 1997.

1 appropriate that a safe harbor from civil actions be established for
2 violations discovered as a result of a voluntary compliance review] by
3 protecting the results of voluntary compliance reviews from third
4 parties. This privilege is intended to apply only to efforts beyond the
5 normal processing of customer transactions of the institution, to
6 protect reports newly created for the purpose of testing and
7 monitoring compliance, which otherwise might not be undertaken.
8 Information required to be maintained pursuant to any federal or State
9 law or regulation or in the normal processing of customer transactions
10 will not become privileged just because it is utilized or incorporated
11 in a voluntary compliance review report¹.

12

13 2. As used in this act:

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

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

17 "Depository institution" means a state or federally chartered bank,
18 savings bank, savings and loan association or credit union that is
19 authorized to maintain deposit or share accounts.

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

24 "Voluntary compliance review" means review, ¹project, testing
25 program, ¹ assessment, audit or evaluation instituted by the governing
26 body of the depository institution or an affiliate of the depository
27 institution ¹to collect information or prepare analyses¹, not required
28 by statute or regulation ¹and which would not be collected, maintained
29 or prepared in the normal processing of customer transactions¹, of the
30 transactions, activities, records or policies of the depository institution
31 for the purposes of identifying and correcting procedural and
32 operational problems of compliance with applicable laws and
33 regulations, including without limitation, safe, sound and fair lending
34 practices, financial reporting to federal and state regulatory agencies,
35 compliance with all applicable state and federal laws and regulatory
36 requirements, and compliance with industry standards of due care.

37 "Voluntary compliance review report" means any document or
38 documents prepared or assembled by any person or group of persons,
39 committee or entity conducting a voluntary compliance review,
40 including without limitation, supporting information and documents
41 such as notes, records of observations, findings, conclusions, drafts,
42 memoranda, drawings, photographs, charts, graphs and surveys,
43 provided, however, that the documents and supporting information are
44 collected or developed for the purpose of and in the course of a
45 voluntary compliance review.

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

6
7 4. Persons involved in the preparation of a voluntary compliance
8 review report shall not be required to give answers to any questions or
9 provide testimony regarding the existence, contents or conclusions of
10 any voluntary compliance review report, except as provided in section
11 5 or 6 of this act.

12
13 5. a. The provisions of section 3 and 4 of this act shall not apply
14 if:

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

20 (2) there is a statutory requirement that the violation identified or
21 discovered as a result of the voluntary compliance review be reported.

22 b. The disclosure authorized under paragraphs (1) and (2) of
23 subsection a. of this section shall apply only to those sections and
24 portions of the voluntary compliance review report that pertain to the
25 specific violation which is the subject of the enforcement action. All
26 other sections and portions of the voluntary compliance review report
27 shall remain privileged.

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

32
33 6. ¹[The] Materials described in this section shall not become
34 privileged pursuant to the¹ provisions of sections 3 and 4 of this act
35 ¹[shall not extend to] because they are utilized or incorporated in a
36 voluntary compliance review report¹:

37 a. Documents, communications, data, reports or other information
38 required to be collected, developed, maintained, reported or made
39 available to a regulatory agency pursuant to any federal or State law,
40 regulation, permit or order ¹or in the normal processing of customer
41 transactions¹.

42 b. Information obtained by observation, sampling or monitoring by
43 any regulatory agency.

44 c. Information obtained from a source independent of the voluntary
45 compliance review.

46 ¹d. Information exchanged by and among the department and other

1 appropriate regulators pursuant to an agreement between or among
2 the regulatory agencies; provided, however, that notwithstanding this
3 permitted exchange of information by the regulatory agencies, sections
4 3 and 4 of this act shall continue to apply with respect to a person who
5 is not a regulatory agency.¹

6
7 7. No person shall use any information privileged pursuant to this
8 act to discover any other information and any information so
9 discovered shall be inadmissible in any action or proceeding. If a court
10 or an administrative law judge determines that any information is not
11 privileged, it shall by the entry of appropriate protective orders ensure
12 that information is disclosed only to the extent required for the proper
13 conduct of the subject action or proceeding.

14
15 8. Nothing in this act shall limit, waive or abrogate the scope or
16 nature of any statutory or common law privilege, including, without
17 limitation, the work product doctrine and the attorney-client privilege.

18
19 9. No regulatory agency shall adopt a rule for the purpose of
20 circumventing the privilege established in this act by requiring
21 disclosure of a voluntary compliance review report.

22
23 10. ¹[Whenever a person responsible for a violation of a law or
24 regulation, which violation is discovered as a result of a voluntary
25 compliance review, voluntarily discloses the violation to the
26 department or other appropriate regulatory agency, neither the
27 department nor the other appropriate agency shall impose a criminal,
28 civil or civil administrative penalty for the violation, provided that the
29 person responsible for the violation discloses the violation within
30 60 days of completion of the voluntary compliance review report, and
31 provided that the person responsible for the violation demonstrates,
32 and the department determines, that the violation is not the result of
33 knowing, purposeful, reckless or criminally negligent conduct.] If a
34 depository institution voluntarily discloses information it obtained
35 from a voluntary compliance review to the department or to another
36 appropriate regulatory agency, that information and the voluntary
37 compliance review which resulted in the information shall remain
38 subject to sections 3 and 4 of this act except that the agency receiving
39 the information may use it with respect to an enforcement action. The
40 regulatory agency, in deciding on the appropriate penalty or sanction
41 for a violation shall consider the disclosure as a mitigating factor if the
42 violation is disclosed within 60 days of completion of the voluntary
43 compliance review and the depository institution responsible for the
44 violation demonstrates and the regulator determines that the violation
45 is not the result of knowing, purposeful, reckless or criminally
46 negligent conduct, and that the institution has made or is making a

1 good-faith effort to prevent similar violations.¹

2

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

7 b. No person who discloses information for the purposes of section
8 10 of this act shall be obligated to disclose whether that information
9 is a portion or section of a voluntary compliance review report or
10 whether a voluntary compliance review report has been performed by
11 the person disclosing that information.]¹

12

13 ¹[12.] 11.¹ Nothing in this act shall be construed to permit any
14 third party access to any voluntary compliance review report subject
15 to the provisions of this act. For the purpose of this section, "third
16 party" means a person other than a State or local enforcing agency.

17

18 ¹[13.] 12.¹ This act shall take effect immediately and shall apply to
19 all voluntary compliance reviews and reports completed on or after
20 that date.

21

22

23

24

25 _____
26 Concerns certain voluntary compliance reviews by depository
institutions.