

ASSEMBLY FINANCIAL INSTITUTIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2735

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 12, 1997

The Assembly Financial Institutions Committee reports favorably and with committee amendments, Assembly Bill No. 2735.

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

The committee amended the bill to clarify that the privilege afforded voluntary compliance review applies only to efforts beyond the normal processing of customer transactions of the institution, and to protect reports newly created for the purpose of testing and monitoring compliance, which otherwise might not be undertaken. Information required to be maintained pursuant to any federal or State law or regulation or in the normal processing of customer transactions will not become privileged just because it is utilized or incorporated in a voluntary compliance review report. The amendments further provide that information exchanged by and among the department and other appropriate regulators pursuant to an agreement between or among the regulatory agencies does not become subject to the compliance privilege, but that the compliance privilege shall continue to apply with respect to entities that who are not regulatory agencies. Furthermore the amendments provide that if a depository institution voluntarily discloses information it obtains from a voluntary

compliance review within 60 days of completion of the voluntary compliance review and the depository institution responsible for the violation demonstrates and the regulator determines that the violation is not the result of knowing, purposeful, reckless or criminally negligent conduct, and that the institution has made or is making a good-faith effort to prevent similar violations, that information remains privileged. However, the regulating agency may use the information to take enforcement action. However, in deciding an appropriate penalty or sanction, the fact that the information was voluntarily disclosed shall be a mitigating factor.