

SENATE, No. 1852

STATE OF NEW JERSEY
208th LEGISLATURE

INTRODUCED MAY 6, 1999

Sponsored by:

Senator WALTER J. KAVANAUGH

District 16 (Morris and Somerset)

SYNOPSIS

Provides standards for retention of records of certain financial institutions.

CURRENT VERSION OF TEXT

As introduced.



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2

1 AN ACT concerning the retention of records by certain financial
2 institutions.

3

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

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7 1. The Legislature declares that it is in the public interest to require
8 State chartered financial institutions to retain certain records for
9 specified periods of time. Creating record retention requirements will
10 assist financial institution regulators in their supervisory role and in the
11 examination of financial institutions, help resolve disputes between
12 financial institutions and others, and prevent fraud against financial
13 institutions. This act is intended to promote simplification of financial
14 institution administration by acting as a basis for parity and uniformity
15 with respect to record retention requirements.

16

17 2. As used in this act:

18 "Date of the passbook" means the date of the last entry by the
19 financial institution of a transaction with respect to the passbook
20 account, or if the form of the passbook is such that it does not provide
21 for entry of transactions, the last date for which the financial
22 institution has a record of an account transaction. If there is no record
23 of activity with respect to a passbook account subsequent to the
24 issuance of the passbook, the date of issuance shall be the date of the
25 passbook.

26 "Financial institution" means a State chartered bank, savings bank
27 or savings and loan association.

28 "Owner" means the person or persons in whose name the account
29 was opened.

30 "Passbook" means a document or record issued by a financial
31 institution, which document or record represents an obligation of the
32 financial institution, which obligation either has no fixed maturity or
33 due date or which by its term is subject to automatic renewal or
34 renewals for an indefinite time or indefinite number of times. Neither
35 a periodic account statement nor any obligation for which applicable
36 law provides a time by which the payment is due is a passbook for the
37 purposes of this act.

38 "Passbook account" means an account which is evidenced by a
39 passbook, certificate of deposit or similar document.

40 "Statement account" means an account which is not a passbook
41 account and for which a financial institution supplies a periodic
42 statement of the account's activity, balance or both, or supplies any
43 other statement of the account as the owner and financial institution
44 may agree.

1 3. A financial institution shall retain records of its accounts as
2 follows:

3 a. Statement accounts:

4 (1) Records of transactions in a statement account sufficient to
5 reconstruct the account and to trace checks, drafts and other orders
6 shall be retained for not less than six years.

7 (2) Account opening records shall be retained for as long as the
8 account is open, plus not less than six years after the closing of the
9 account.

10 (3) Account closing records shall be retained for not less than six
11 years after the closing of the account.

12 (4) A record of the last transaction or contact with the owner,
13 pursuant to section 1 of P.L.1989, c.58 (C.46:30B-18), shall be
14 retained for not less than 10 years after the date of the transaction or
15 contact, as applicable.

16 b. Certificates of deposit which have a specific maturity date and
17 which are not automatically renewed:

18 (1) Records of the account opening, transactions regarding the
19 account, if any, and the closing of the account shall be retained for not
20 less than six years following the stated maturity date.

21 (2) A record of the most recent transaction shall be retained for not
22 less than 10 years after the date of the transaction.

23 c. Passbook accounts:

24 (1) Records of transactions in a passbook account sufficient to
25 reconstruct the account shall be retained for a period of not less than
26 six years.

27 (2) Account opening records shall be retained for as long as the
28 account is open, plus not less than six years after the closing of the
29 account.

30 (3) Account closing records shall be retained for not less than 15
31 years after the closing of the account.

32 (4) A record of the last transaction or contact with the owner,
33 pursuant to section 1 of P.L.1989, c.58 (C.46:30B-18), shall be
34 retained for not less than 10 years after the date of the transaction or
35 contact, as applicable.

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37 4. The following rules shall apply if a passbook is presented to a
38 financial institution for payment and the financial institution has no
39 record of the account and there is no record of payment of the account
40 to the State pursuant to any applicable escheat or unclaimed property
41 act:

42 a. If the presentation of the passbook is made by a successor of the
43 owner more than 15 years after the date of the passbook, there shall
44 be a rebuttable presumption that the account was paid in full to or on
45 behalf of the owner or to a successor of the owner. The passbook
46 itself does not rebut this presumption.

1 b. If the presentation of the passbook is made by a successor of the
2 owner within 15 years after the date of the passbook, there shall be a
3 rebuttable presumption that the account exists and the financial
4 institution is obligated to the owner's heirs, successors or personal
5 representatives. An affidavit of lost passbook by the owner or
6 successor to the owner made prior to the presentation of the passbook
7 shall rebut the presumption of nonpayment and shall create a
8 presumption that the account was duly paid in full to or on behalf of
9 the owner or to a successor to the owner by the financial institution.

10 c. If the presentation of the passbook is made by the owner, and
11 the presentation is accompanied by a sworn certificate of the owner
12 that the owner never received payment of the account nor transferred
13 the account, there shall be a rebuttable presumption that the account
14 exists and that the financial institution is holding the account for the
15 benefit of the owner. An affidavit of lost passbook by the owner or
16 successor to the owner made prior to the presentation of the passbook
17 shall rebut the presumption of nonpayment and shall create a
18 presumption that the account was duly paid in full to or on behalf of
19 the owner or to a successor to the owner by the financial institution.

20
21 5. A financial institution shall retain records relating to the making,
22 collection and administration of loans as follows:

23 a. For all loans:

24 (1) Records of bankruptcies of borrowers, judgments against
25 parties obligated on the loan, and charge-off loans or closing of loan
26 files shall be retained for at least 20 years after the closing of the loan.

27 (2) Litigation files shall be retained for not less than six years
28 following the date of the final disposition of the litigation.

29 (3) Records of approval of loans or credit shall be retained for not
30 less than six years after the closing of the loan or credit files.

31 (4) Records of denials of a loan applications shall be retained for
32 not less than 25 months after the date of the denial.

33 (5) Loan files, including, but not limited to, appraisals, financial
34 statements, information regarding collateral and the perfection of
35 security interests, guarantees, credit information and correspondence
36 with the borrower shall be retained for not less than six years after the
37 closing of the loan file. For lines of credit and open-end loans, records
38 of transactions shall be retained for six years after the date of a
39 transaction.

40 (6) Loan committee minutes shall be retained for not less than six
41 years after the date of the committee meeting.

42 (7) Record of compliance with all applicable State and federal
43 regulatory requirements shall be retained for the period specified in the
44 applicable State or federal law or regulation. If no record retention
45 period is specified in the law or regulation, the financial institution
46 shall retain the records necessary to show compliance for not less than

1 six years.

2 b. Collateralized loans:

3 (1) Records identifying the collateral perfection of the financial
4 institution's security interest in the collateral and, for tangible personal
5 property, the place and method of possession of the collateral shall be
6 retained for not less than six years after the close of the file.

7 (2) Records of the disposition of the collateral that is personal
8 property shall be retained for not less than six years after the date of
9 disposition.

10 (3) For collateral that is real estate, records regarding the title,
11 including searches, title insurance policies and legal opinions as to title
12 shall be retained for at least 20 years after the date of disposition of
13 the property if the property is transferred to a party other than the
14 borrower. If the lien is released or otherwise satisfied and the
15 borrower retains ownership of the property, the title records shall be
16 retained for not less than six years. Records of foreclosure
17 proceedings shall be retained for not less than 20 years after the date
18 of the judgment of foreclosure or if no judgment, from the date of the
19 termination of those proceedings.

20 (4) Records of escrow analyses and statements and of transactions
21 in escrow accounts shall be retained for not less than six years.

22

23 6. A financial institution shall retain records of checks, drafts,
24 money orders and cashier's checks issued by it for not less than six
25 years after the date of issue. Records of certified checks and
26 electronic transfers and of other means of transferring funds from the
27 financial institution shall be retained for not less than six years after
28 the date of transfer of the funds.

29

30 7. A financial institution shall maintain records relating to safe
31 deposit boxes, which records include access records, access
32 agreements, lease agreements, signature cards, records of payment for
33 the rental or use of the box, power of attorney and records of
34 abandoned property, for a period of not less than six years after the
35 date of termination of the lease or access agreement. Correspondence
36 which is not included as a record shall be retained for not less than
37 three years after the date of the correspondence.

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39 8. If any records are subject to the provisions of more than one of
40 the time periods for the retention of records specified in sections 3
41 through 7 of this act, the longest time period for which those records
42 are required to be retained shall be applicable.

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44 9. For any records not specifically covered by this act and for
45 which there is no applicable state or federal retention period
46 prescribed, the Commissioner of Banking and Insurance may, by

1 regulation, establish minimum record retention requirements. Any
2 regulations shall be consistent with retention periods for federally
3 chartered banks and savings banks and should reflect the legislative
4 intent of this act to provide parity and uniformity among financial
5 institutions.

6
7 10. a. In the event of any claim against a financial institution
8 where the claimant relies in any way on records of the financial
9 institution, which records are not required to be retained by the
10 financial institution by the terms of this act or by other applicable State
11 or federal record retention statutes or regulations and the records have
12 not been retained by the financial institution, the fact that the financial
13 institution does not have the records shall not give rise to any
14 inference or presumption against the financial institution as to the
15 content of the records nor shall the lack of the records shift any burden
16 of proof from the claimant to the financial institution.

17 b. Nothing in this act shall be deemed to amend or alter any statute
18 of limitations.

19
20 11. The provisions of this act shall apply to all financial institutions
21 chartered by this State and to the records of out-of-State banks,
22 savings banks and savings and loan associations which relate to
23 accounts, loans or other transactions which are made or located in this
24 State. The provisions of this act shall apply to federally chartered
25 banks and savings banks in this State to the extent that they are not
26 inconsistent with applicable federal law.

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28 12. This act shall be effective on the first business day following
29 the date of enactment and shall apply to the records held by financial
30 institutions on the effective date.

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33 STATEMENT

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35 This bill provides a basic framework for requirements regarding the
36 retention of records by financial institutions. The bill makes a
37 distinction between an account for which a financial institution
38 provides a periodic statement of the account's activity and an account
39 for which the owner has a passbook into which a record of the
40 account's activity is recorded. For all accounts, the bill requires a
41 financial institution to keep a record of the opening of the account for
42 as long as the account is open, plus six additional years beyond the
43 closing of the account. For statement accounts, the bill requires a
44 financial institution to keep a record of the account closing for not less
45 than six years after the date of closing of the account. For passbook
46 accounts, the bill requires a financial institution to keep a record of the

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1 account closing for not less than 15 years after the date of closing of
2 the account. For all accounts, the bill requires a financial institution
3 to keep a record of the last transaction or contact with a customer,
4 pursuant to section 1 of P.L.1989, c.58 (C.46:30B-18), for not less
5 than 10 years after the date of the transaction or contact.

6 The bill establishes the following provisions that apply if a passbook
7 is presented by a successor to the owner of the passbook to a financial
8 institution for which passbook account the financial institution has no
9 record or record of payment of the account to the State pursuant to
10 any applicable escheat or unclaimed property act: if a passbook is
11 presented to a financial institution more than 15 years after the date of
12 the passbook, there is a rebuttable presumption that the account was
13 paid in full; if the passbook is presented to a financial institution
14 within 15 years after the date of the passbook, there is a rebuttable
15 presumption that the account exists and the financial institution is
16 obligated to the successor; an affidavit of lost passbook made prior to
17 the presentation of the passbook, rebuts the presumption of
18 nonpayment and creates in its place the presumption that the account
19 was paid in full.

20 The bill also sets requirements for the retention of records related
21 to: the making, collection and administration of loans; the issuance of
22 checks, drafts, money orders, cashier's checks; the means of
23 transferring funds from the financial institution, including, but not
24 limited to certified checks and electronic fund transfers; and safe
25 deposit boxes.