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Title 17.
Chapter 16W (New)
Records Retention
§§1-11
C.17:16W-1
to
17:16W-11
§12
Note

P.L. 1999, CHAPTER 257, *approved October 15, 1999*
Assembly Committee Substitute for
Assembly, No. 2806

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:

6

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

1 purposes of this act.

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

4 "Statement account" means an account which is not a passbook
5 account and for which a financial institution supplies a periodic
6 statement of the account's activity, balance or both, or supplies any
7 other statement of the account as the owner and financial institution
8 may agree.

9

10 3. A financial institution shall retain records of its accounts as
11 follows:

12 a. Statement accounts:

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

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

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

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

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

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

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

32 c. Passbook accounts:

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

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

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

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

45

46 4. The following rules shall apply if a passbook is presented to a

1 financial institution for payment and the financial institution has no
2 record of the account and there is no record of payment of the account
3 to the State pursuant to any applicable escheat or unclaimed property
4 act:

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

10 b. If the presentation of the passbook is made by a successor of
11 the owner within 15 years after the date of the passbook, there shall
12 be a rebuttable presumption that the account exists and the financial
13 institution is obligated to the owner's heirs, successors or personal
14 representatives. An affidavit of lost passbook by the owner or
15 successor to the owner made prior to the presentation of the passbook
16 shall rebut the presumption of nonpayment and shall create a
17 presumption that the account was duly paid in full to or on behalf of
18 the owner or to a successor to the owner by the financial institution.

19 c. If the presentation of the passbook is made by the owner, and
20 the presentation is accompanied by a sworn certificate of the owner
21 that the owner never received payment of the account nor transferred
22 the account, there shall be a rebuttable presumption that the account
23 exists and that the financial institution is holding the account for the
24 benefit of the owner. An affidavit of lost passbook by the owner or
25 successor to the owner made prior to the presentation of the passbook
26 shall rebut the presumption of nonpayment and shall create a
27 presumption that the account was duly paid in full to or on behalf of
28 the owner or to a successor to the owner by the financial institution.

29

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

32 a. For all loans:

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

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

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

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

42 (5) Loan files, including, but not limited to, appraisals, financial
43 statements, information regarding collateral and the perfection of
44 security interests, guarantees, credit information and correspondence
45 with the borrower shall be retained for not less than six years after the
46 closing of the loan file. For lines of credit and open-end loans, records

1 of transactions shall be retained for six years after the date of a
2 transaction.

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

5 (7) Record of compliance with all applicable State and federal
6 regulatory requirements shall be retained for the period specified in the
7 applicable State or federal law or regulation. If no record retention
8 period is specified in the law or regulation, the financial institution
9 shall retain the records necessary to show compliance for not less than
10 six years.

11 b. Collateralized loans:

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

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

19 (3) For collateral that is real estate, records regarding the title,
20 including searches, title insurance policies and legal opinions as to title
21 shall be retained for at least 20 years after the date of disposition of
22 the property if the property is transferred to a party other than the
23 borrower. If the lien is released or otherwise satisfied and the
24 borrower retains ownership of the property, the title records shall be
25 retained for not less than six years. Records of foreclosure
26 proceedings shall be retained for not less than 20 years after the date
27 of the judgment of foreclosure or if no judgment, from the date of the
28 termination of those proceedings.

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

31

32 6. A financial institution shall retain records of checks, drafts,
33 money orders and cashier's checks issued by it for not less than six
34 years after the date of issue. Records of certified checks and
35 electronic transfers and of other means of transferring funds from the
36 financial institution shall be retained for not less than six years after
37 the date of transfer of the funds.

38

39 7. A financial institution shall maintain records relating to safe
40 deposit boxes, which records include access records, access
41 agreements, lease agreements, signature cards, records of payment for
42 the rental or use of the box, power of attorney and records of
43 abandoned property, for a period of not less than six years after the
44 date of termination of the lease or access agreement. Correspondence
45 which is not included as a record shall be retained for not less than
46 three years after the date of the correspondence.

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

5
6 9. For any records not specifically covered by this act and for
7 which there is no applicable state or federal retention period
8 prescribed, the Commissioner of Banking and Insurance may, by
9 regulation, establish minimum record retention requirements. Any
10 regulations shall be consistent with retention periods for federally
11 chartered banks and savings banks and should reflect the legislative
12 intent of this act to provide parity and uniformity among financial
13 institutions.

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

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

27
28 11. The provisions of this act shall apply to all financial
29 institutions chartered by this State and to the records of out-of-State
30 banks, savings banks and savings and loan associations which relate to
31 accounts, loans or other transactions which are made or located in this
32 State. The provisions of this act shall apply to federally chartered
33 banks and savings banks in this State to the extent that they are not
34 inconsistent with applicable federal law.

35
36 12. This act shall be effective on the first business day following
37 the date of enactment and shall apply to the records held by financial
38 institutions on the effective date.

39
40
41 _____
42
43 Provides standards for retention of records of certain financial
44 institutions.

ASSEMBLY, No. 2806

STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED JANUARY 21, 1999

Sponsored by:

Assemblyman CHRISTOPHER "KIP" BATEMAN

District 16 (Morris and Somerset)

Assemblyman ALAN M. AUGUSTINE

District 22 (Middlesex, Morris, Somerset and Union)

SYNOPSIS

Provides standards for retention of records of certain banking institutions.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the retention of records by certain banking
2 institutions and supplementing P.L.1948, c.67 (C.17:9A-1 et seq.).

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. The Legislature declares that it is in the public interest to require
8 State chartered banking institutions to retain certain records for
9 specified periods of time. Creating record retention requirements will
10 assist bank regulators in their supervisory role and in the examination
11 of banking institutions, help resolve disputes between banking
12 institutions and others, and prevent fraud against banks. This act is
13 intended to promote simplification of bank administration by acting as
14 a basis for parity and uniformity with respect to record retention
15 requirements.

16
17 2. As used in this act:

18 "Banking institution" means a State chartered bank or savings bank.

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

26 "Owner" means the person or persons in whose name the account
27 was opened.

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

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

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

43
44 3. A banking institution shall retain records of its accounts as
45 follows:

46 a. Statement accounts:

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

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

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

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

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

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

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

20 c. Passbook accounts:

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

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

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

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

33

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

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

44 b. If the presentation of the passbook is made by a successor of the
45 owner within 15 years after the date of the passbook, there shall be a
46 rebuttable presumption that the account exists and the banking

1 institution is obligated to the owner's heirs, successors or personal
2 representatives. An affidavit of lost passbook by the owner or
3 successor to the owner made prior to the presentation of the passbook
4 shall rebut the presumption of nonpayment and shall create a
5 presumption that the account was duly paid in full to or on behalf of
6 the owner or to a successor to the owner by the banking institution.

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

17

18 5. A banking institution shall retain records relating to the making,
19 collection and administration of loans as follows:

20 a. For all loans:

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

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

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

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

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

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

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

45 b. Collateralized loans:

46 (1) Records identifying the collateral perfection of the banking

1 institution's security interest in the collateral and, for tangible personal
2 property, the place and method of possession of the collateral shall be
3 retained for not less than six years after the close of the file.

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

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

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

19

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

26

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

35

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

40

41 9. For any records not specifically covered by this act and for
42 which there is no applicable state or federal retention period
43 prescribed, the Commissioner of Banking and Insurance may, by
44 regulation, establish minimum record retention requirements. Any
45 regulations shall be consistent with retention periods for federally
46 chartered banks and should reflect the legislative intent of this act to

1 provide parity and uniformity among banking institutions.

2

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

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

15

16 11. The provisions of this act shall apply to all banking institutions
17 chartered by this State and to the records of out-of-State banks and
18 savings banks which relate to accounts, loans or other transactions
19 which are made or located in this State. The provisions of this act
20 shall apply to federally chartered banks in this State to the extent that
21 they are not inconsistent with applicable federal law.

22

23 12. This act shall be effective on the first business day following
24 the date of enactment and shall apply to the records held by banking
25 institutions on the effective date.

26

27

28

STATEMENT

29

30 This bill provides basic requirements regarding the retention of
31 records by banking institutions. The bill makes a distinction between
32 an account for which a bank provides a periodic statement of the
33 account's activity and an account for which the owner has a passbook
34 into which a record of the account's activity is recorded.

35 For all accounts, the bill requires a banking institution to keep a
36 record of the opening of the account for as long as the account is
37 open, plus six additional years beyond the closing of the account. For
38 statement accounts, the bill requires a banking institution to keep a
39 record of the account closing for not less than six years after the date
40 of closing of the account. For passbook accounts, the bill requires a
41 banking institution to keep a record of the account closing for not less
42 than 15 years after the date of closing of the account. For all
43 accounts, the bill requires a banking institution to keep a record of the
44 last transaction or contact with a customer, for not less than 10 years
45 after the date of the transaction or contact.

46 The bill establishes the following provisions that apply if a passbook

1 is presented by a successor to the owner of the passbook to a banking
2 institution for which passbook account the banking institution has no
3 record or record of payment of the account to the State pursuant to
4 any applicable escheat or unclaimed property act: if a passbook is
5 presented to a banking institution more than 15 years after the date of
6 the passbook, there is a rebuttable presumption that the account was
7 paid in full; if the passbook is presented to a banking institution within
8 15 years after the date of the passbook, there is a rebuttable
9 presumption that the account exists and the banking institution is
10 obligated to the successor; an affidavit of lost passbook made prior to
11 the presentation of the passbook, rebuts the presumption of
12 nonpayment and creates in its place the presumption that the account
13 was paid in full.

14 The bill also sets requirements for the retention of records related
15 to: the making, collection and administration of loans; the issuance of
16 checks, drafts, money orders, cashier's checks; the means of
17 transferring funds from the banking institution, including, but not
18 limited to certified checks and electronic fund transfers; and safe
19 deposit boxes.

ASSEMBLY BANKING AND INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 2806**

STATE OF NEW JERSEY

DATED: JANUARY 21, 1999

The Assembly Banking and Insurance Committee reports favorably Assembly Committee Substitute for Assembly Bill No. 2806.

This bill, Assembly Committee Substitute for Assembly, No.2806, provides a basic framework for requirements regarding the retention of records by financial institutions. The bill makes a distinction between an account for which a financial institution provides a periodic statement of the account's activity and an account for which the owner has a passbook into which a record of the account's activity is recorded. For all accounts, the bill requires a financial institution to keep a record of the opening of the account for as long as the account is open, plus six additional years beyond the closing of the account. For statement accounts, the bill requires a financial institution to keep a record of the account closing for not less than six years after the date of closing of the account. For passbook accounts, the bill requires a financial institution to keep a record of the account closing for not less than 15 years after the date of closing of the account. For all accounts, the bill requires a financial institution to keep a record of the last transaction or contact with a customer, pursuant to section 1 of P.L.1989, c.58 (C.46:30B-18), for not less than 10 years after the date of the transaction or contact.

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

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

SENATE STATE GOVERNMENT, BANKING AND FINANCIAL
INSTITUTIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2806

STATE OF NEW JERSEY

DATED: MAY 20, 1999

The Senate State Government, Banking and Financial Institutions Committee reports favorably Assembly Bill No. 2806.

This bill provides a basic framework for requirements regarding the retention of records by financial institutions. The bill makes a distinction between an account for which a financial institution provides a periodic statement of the account's activity and an account for which the owner has a passbook into which a record of the account's activity is recorded. For all accounts, the bill requires a financial institution to keep a record of the opening of the account for as long as the account is open, plus six additional years beyond the closing of the account. For statement accounts, the bill requires a financial institution to keep a record of the account closing for not less than six years after the date of closing of the account. For passbook accounts, the bill requires a financial institution to keep a record of the account closing for not less than 15 years after the date of closing of the account. For all accounts, the bill requires a financial institution to keep a record of the last transaction or contact with a customer, pursuant to section 1 of P.L.1989, c.58 (C.46:30B-18), for not less than 10 years after the date of the transaction or contact.

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

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

This bill is identical to Senate, No.1852.

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.



S1852 KAVANAUGH

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:*

6

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.

36

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.

38

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.

43

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.

27
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.

31
32
33 STATEMENT

34
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.

SENATE STATE GOVERNMENT, BANKING AND FINANCIAL
INSTITUTIONS COMMITTEE

STATEMENT TO

SENATE, No. 1852

STATE OF NEW JERSEY

DATED: MAY 20, 1999

The Senate State Government, Banking and Financial Institutions Committee reports favorably Senate Bill No. 1852.

This bill provides a basic framework for requirements regarding the retention of records by financial institutions. The bill makes a distinction between an account for which a financial institution provides a periodic statement of the account's activity and an account for which the owner has a passbook into which a record of the account's activity is recorded. For all accounts, the bill requires a financial institution to keep a record of the opening of the account for as long as the account is open, plus six additional years beyond the closing of the account. For statement accounts, the bill requires a financial institution to keep a record of the account closing for not less than six years after the date of closing of the account. For passbook accounts, the bill requires a financial institution to keep a record of the account closing for not less than 15 years after the date of closing of the account. For all accounts, the bill requires a financial institution to keep a record of the last transaction or contact with a customer, pursuant to section 1 of P.L.1989, c.58 (C.46:30B-18), for not less than 10 years after the date of the transaction or contact.

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

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

This bill is identical to Assembly Bill No.2806(ACS).

Office of the Governor
NEWS RELEASE

CONTACT: Jayne O'Connor
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RELEASE: October 15, 1999

Governor Christie Whitman today signed the following legislation:

A-1447, sponsored by Assembly Speaker Jack Collins, requires legislative counsel to provide prime sponsors of legislation with advice of legal defects at the same time the counsel provides a written response to a request for a confidential written opinion on a bill.

A-170, sponsored by Assembly Members John Kelly (R-Bergen/Essex/Passaic) and Louis Romano (D-Hudson), eliminates the dual-licensing requirement for rooming and boarding houses and it increases the fee that may be charged by the Department of Community Affairs to license rooming and boarding houses.

A-1670, sponsored by Assemblywomen Marion Crecco (R-Essex/Passaic) and Charlotte Vandervalk (R-Bergen) and Senator Diane Allen (R- Burlington/Camden), establishes the neighborhood-Based Child Care Incentive Demonstration Program. This program expands the availability of safe, affordable child care to low and middle income families by encouraging the use of volunteer networks in the delivery of neighborhood-based child care services. The demonstration program, administered by the Department of Human Services, will operate in five counties, two of which will be in municipalities targeted by the Governor's Urban Coordinating Council.

A-2023, sponsored by Assembly Members Arline Friscia (D-Middlesex) and Reed Gusciora (D-Mercer), requires public employers to promptly pay amounts due certain employee annuity programs to ensure there is no loss of interest earnings . This bill would ensure that amounts payable by an employer on behalf of an employee be transmitted on, and credited as of, the fifth day after the employee is paid for that pay period.

A-3025, sponsored by Assemblymen Jerry Green (D- Middlesex/Somerset/Union) and John Kelly (R-Bergen/Essex/Passaic) and Senators Andrew Ciesla (R-Monmouth/Ocean) and John Matheussen (R-Camden/Gloucester), makes various changes to the "Map Filing Law." The bill eliminates the requirement that outside tract line monuments be installed by the developer prior to filing a map and it requires the developer to post a guarantee, to ensure that that developer eventually installs the outbound monuments.

A-307, sponsored by Assemblywoman Nia Gill (D-Essex) and LeRoy J. Jones, Jr. (D-Essex), allows senior citizens with personal lines of insurance to designate third parties to receive insurance cancellation and nonrenewal notices. Envelopes including such information must be labeled clearly "Important Insurance Policy Information; Open Immediately."

A-2636, sponsored by Assembly Members Anthony Impreveduto (D- Bergen/Hudson) and Joseph R. Malone III (R- Burlington/Monmouth/Ocean), eliminates prohibition against a school official action on certain matters. The bill specifically defines "personal involvement" and provides that no school official can act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the official or his family member.

A-2050, sponsored by Assembly Members Nicholas Felice (R-Bergen/Passaic) and Carol Murphy (R-Essex/Morris/Passaic) and Senator Peter Inverso (R-Mercer/Middlesex), clarifies sales and use tax imposition upon prepaid telephone calling cards. The bill requires that sellers collect sales tax for the value of the card and remit it to the state.

A-2255, sponsored by Assemblymen Christopher "Kip" Bateman (R- Morris/Somerset) and Neil Cohen (D-Union) and Senator Peter Inverso (R-Mercer/Middlesex), makes certain changes in the "New Jersey Licensed Lenders Act." The bill changes the definition of "principal amount" as applied to secondary mortgage loans. The bill prohibits including the amount of discount points in the amount to be financed. In addition, the bill increases the cap on the application fee for sales finance companies from \$300 to \$500.

A-2302, sponsored by Assemblymen Nicholas Asselta (R-Cape May/Atlantic/Cumberland) and Jack Gibson (R-Cape May/Atlantic/Cumberland) and Senators James Cafiero (R-Cape May/Atlantic/Cumberland) and John Matheussen (R-Camden/Gloucester), provides immunities and other benefits to personnel who participate in search and rescue teams. The bill also ensures that members of search and rescue teams accrue their employment benefits while working with the teams.

A-2393, sponsored by Assemblymen Christopher "Kip" Bateman (R- Morris/Somerset) and Neil Cohen (D-Union) and Senator Walter Kavanaugh (R-Morris/Somerset), simplifies certain banking procedures to conform the state's laws to federal ones.

A-2469, sponsored by Assembly Speaker Jack Collins (R-Salem/Cumberland/Gloucester) and Assemblyman Neil Cohen (D-Union), makes permanent the \$5 instant rebate program for purchases of trigger locks that the Governor introduced as part of her anti- school violence initiatives.

A-2806, sponsored by Assemblymen Alan Augustine (R-Middlesex/Morris/Somerset/Union) and Christopher "Kip" Bateman (R- Morris/Somerset) and Senator Walter Kavanaugh (R-Morris/Somerset), provides standards for retention of records of certain financial institutions. The bill will assist regulators in their supervisory role as well as prevent fraud against financial institutions.

A-3040, sponsored by Assemblymen Paul DiGaetano (R-Bergen/Essex/Passaic) and Neil Cohen (D-Union), clarifies the tenant rebate provisions of the NJ SAVER and Homestead Rebate Act. The clarification ensures that benefits provided to tenants who are 65 years of age or older, or who are eligible to claim a deduction as a blind or disabled taxpayer, are equal to the benefits provided to other eligible tenants.

A-722, sponsored by Assembly Members Paul Kramer (R-Mercer/Middlesex) and Barbara Wright (R-Mercer/Middlesex), establishes a regulatory scheme for certain private facilities under contract with

the Department of Corrections. The bill enhances communications between halfway houses and municipal officials and residents and supplements the criteria used to determine whether an inmate is eligible for a halfway house. Primarily, the bill establishes: community relations advisory boards, a procedure for notifying local law enforcement officials of an inmates transfer to their community, supplements the department's regulations regarding the procedure for reporting an escape and codifies and supplements the department's regulations that set forth criteria used to determine whether an inmate is eligible for a halfway house.