

17:16K-1 to 17:16K-6

**LEGISLATIVE HISTORY CHECKLIST**

**NJSA:** 17:16K-1 to 17:16K-6 (Electronic Fund Transfer Privacy Act)

**LAWS OF:** 1983 **CHAPTER:** 466

**Bill No:** A832

**Sponsor(s):** Kern and others

**Date Introduced:** February 22, 1982

**Committee:** **Assembly:** Banking and Insurance  
**Senate:** Labor, Industry and Professions

**Amended during passage:** YES Amendments denoted by asterisks  
According to Governor's recommendations

**Date of Passage:** **Assembly:** June 21, 1982 Re-enacted 12/8/83  
**Senate:** June 23, 1983 Re-enacted 1/9/84

**Date of Approval:** January 12, 1984

**Following statements are attached if available:**

**Sponsor statement:** YES

**Committee statement:** **Assembly** YES  
**Senate** YES

**Fiscal Note:** NO

**Veto Message:** YES

**Message on Signing:** NO

**Following were printed:**

**Reports:** NO

**Hearings:** NO

**Regulation E of Federal Reserve Board:** 12CFR Part 205

cbc

CHAPTER 466 LAWS OF N. J. 1983  
APPROVED 1/13/84

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ASSEMBLY, No. 832

# STATE OF NEW JERSEY

INTRODUCED FEBRUARY 22, 1982

By Assemblymen KERN, KOSCO, MARKERT and FRANKS

Referred to Committee on Banking and Insurance

AN Act restricting the disclosure of certain information contained  
in electronic fund transfers.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. This act shall be known and may be cited as the "Electronic  
2 Fund Transfer Privacy Act."

1 2. As used in this act:

2 a. "Access device" means a card, code, or other means of access  
3 to a consumer's account, or any combination thereof, that may be  
4 used by the consumer for the purpose of initiating electronic fund  
5 transfers.

6 b. "Account" means a demand, time, \*or\* savings deposit, or other  
7 consumer asset account, other than an occasional or incidental  
8 credit balance, held either directly or indirectly by a financial  
9 institution and established for personal, family or household  
10 purposes.

11 c. "Electronic fund transfer" means any transfer of funds,  
12 other than a transaction originated by check, draft, or similar paper  
13 instrument, that is initiated through an electronic terminal, tele-  
14 phone, or computer or magnetic tape for the purpose of ordering,  
15 instructing, or authorizing a financial institution to debit or credit  
16 an account. The term includes, but is not limited to point-of-sale  
17 transfers, automated teller machine transfers, direct deposits or  
18 withdrawals of funds and transfers initiated by telephone. The  
19 term does not include payments made by check, draft, or similar  
20 paper instrument at an electronic terminal or any transaction which

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

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

\*—Senate committee amendments adopted April 25, 1983.

\*\*—Assembly amendments adopted in accordance with Governor's recom-  
mendations November 21, 1983.

21 is exempt, by statute or regulation, from the provisions of Title IX  
22 of the Federal Consumer Credit Protection Act.

23 d. "Financial institution" means a State or National Bank, a  
24 State or Federal Savings and Loan Association, a State or Federal  
25 Mutual Savings Bank, a State or Federal Credit Union, or any  
26 other person who, directly or indirectly, holds an account belonging  
27 to a consumer. The term also includes any person who issues an  
28 access device and agrees with a consumer to provide electronic  
29 fund transfer services.

30 e. "Government agency" means any federal, State, or local unit  
31 of government or any agency or instrumentality thereof.

32 \*f. "Supervisory agency" means the New Jersey Department of  
33 Banking and any other State or federal agency which has statutory  
34 authority to examine the financial condition or business operations  
35 of a particular financial institution.\*

1 3. A financial institution may disclose information relative to an  
2 electronic fund transfer \*or account\* to a third party when:

3 a. The disclosure is necessary for the completion of an electronic  
4 fund transfer; \***[or]**\*

5 b. The possessor of the account gives written permission to the  
6 financial institution to disclose the information; \***[or]**\*

7 c. The disclosure is for the purpose of verifying the existence  
8 and condition of an account for a third party, including, but not  
9 limited to, a credit bureau or a merchant; \***[or]**\*

10 d. The disclosure is necessary to resolve an error or an inquiry  
11 as to an alleged error\***[.]**\* \*; \*\***[or\*]**\*\*

12 \*e. The disclosure is made to a supervisory agency in the exercise  
13 of its supervisory and regulatory examination functions with  
14 respect to a financial institution\*\***[.]**\*\* \*\*; or\*\*

15 \*\*f. The disclosure is made to a government agency in the exer-  
16 cise of its statutory functions with respect to a person applying  
17 for or receiving public assistance.\*\*

1 4. No government agency\*, except as provided for in \*\***[subsec-**  
2 **tion]**\*\* \*\*subsections\*\* e. \*\*and f.\*\* of section 3 of this act,\* may  
3 obtain information from an electronic fund transfer account with-  
4 out first obtaining a search warrant or subpoena.

1 5. a. No government agency shall intercept an electronic fund  
2 transfer without first obtaining a court order.

3 b. The judge, upon consideration of an application, may enter  
4 an ex parte order, as requested or as modified, authorizing the  
5 interception of an electronic fund transfer, if the court determines  
6 on the basis of the facts submitted by the applicant that there is or  
7 was probable cause for belief that:

8 (1) The person whose electronic fund transfer is to be inter-  
9 cepted is engaging or was engaged over a period of time as a part  
10 of a continuing criminal activity or is committing, has or had com-  
11 mitted or is about to commit an offense;

12 (2) Particular communications concerning such offense may be  
13 obtained through such interception;

14 (3) Normal investigative procedures with respect to such offense  
15 have been tried and have failed or reasonably appear to be unlikely  
16 to succeed if tried or to be too dangerous to employ;

17 c. To effect an order issued pursuant to this section, the govern-  
18 mental agency shall deliver a true copy of the order to the  
19 financial institution which shall promptly carry out the terms of the  
20 order under the direct supervision of the investigative law enforce-  
21 ment officers or agency authorized to intercept the electronic fund  
22 transfer.

1 6. If a court of competent jurisdiction determines that a financial  
2 institution or a government agency acted negligently, willfully, or  
3 recklessly *\*in violating this act\**, the financial institution or govern-  
4 ment agency shall be liable to the aggrieved person for actual  
5 damages sustained by him; **\*\*[punitive damages where appropri-**  
6 **ate;]\*\*** reasonable litigation costs; **\*\*[and]\*\*** reasonable attor-  
7 neys' fees<sup>\*\*</sup>; *and only in cases where a financial institution or*  
8 *government agency acted willfully or recklessly, a court of compe-*  
9 *tent jurisdiction may award punitive damages where appropri-*  
10 *ate\*\*.*

1 7. This act shall take effect immediately.

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19 financial institution which shall promptly carry out the terms of the  
20 order under the direct supervision of the investigative law enforce-  
21 ment officers or agency authorized to intercept the electronic fund  
22 transfer.

1 6. If a court of competent jurisdiction determines that a financial  
2 institution or a government agency acted negligently, willfully, or  
3 recklessly, the financial institution or government agency shall be  
4 liable to the aggrieved person for actual damages sustained by  
5 him; punitive damages where appropriate; reasonable litigation  
6 costs; and reasonable attorneys' fees.

1 7. This act shall take effect immediately.

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*SPONSORS'* STATEMENT

This bill would restrict the disclosure of information contained in an electronic fund transfer (EFT) account by financial institutions and permit the interception of an EFT by a government agency only after obtaining a court order. The bill provides that any person violating the act would be liable to an aggrieved person for actual damages, punitive damages, reasonable litigation costs, and reasonable attorney's fees.

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*AB 32 (1992)*

ASSEMBLY BANKING AND INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 832

**STATE OF NEW JERSEY**

DATED: JUNE 14, 1982

Assembly Bill No. 832 statutorily prescribes who can provide or obtain and under what circumstances information concerning an electronic fund transfer (EFT) account.

A financial institution, as defined in subsection 2d., may disclose information regarding an EFT account, as defined in subsection 2c., to a third party pursuant to section 3, if:

(1) The possessor of the account gives written permission to the financial institution for disclosure; or

(2) Disclosure is necessary for completion of a fund transfer, to verify the existence and condition of an account (as to credit bureau or merchant), or to resolve an error or a question of an alleged error.

No government agency:

(1) May obtain information from an EFT account without a search warrant or subpoena;

(2) Shall intercept an electronic fund transfer without a court order, a true copy of which shall be delivered to the financial institution.

Section 5 provides legislative standards to guide in evaluating a government agency application for an ex parte court order.

Section 6 makes a financial institution or government agency liable, where appropriate, for compensatory and punitive damages and reasonable litigation costs in the event that either party has acted negligently, willfully or recklessly.

SENATE LABOR, INDUSTRY AND PROFESSIONS  
COMMITTEE

STATEMENT TO  
**ASSEMBLY, No. 832**  
with Senate committee amendment

**STATE OF NEW JERSEY**

DATED: APRIL 25, 1983

This bill statutorily prescribes who can provide or obtain and under what circumstances information concerning an electronic fund transfer or electronic fund transfer account.

A financial institution may disclose information relative to an electronic fund transfer or account to a third party when disclosure is necessary for completion of an electronic fund transfer; the possessor of the account gives written permission to the financial institution for disclosure; disclosure is for the purpose of verifying the existence and condition of an account; or disclosure is necessary to resolve an error or a question of an alleged error.

A government agency, with certain exceptions, may not obtain information from an electronic fund transfer account without a search warrant or subpoena. In addition, it may not intercept an electronic fund transfer without a court order. Section 5 of the bill also provides legislative standards to guide the court in evaluating a government agency's application for an ex parte court order.

This bill provides that a financial institution or government agency which acts negligently, willfully or recklessly in violating the provisions of this bill is liable to an aggrieved person for actual damages, punitive damages where appropriate, and reasonable litigation costs and attorneys' fees.

The committee amendments provide that the provisions of this bill will not impede or interfere with the supervisory or regulatory examination functions of federal or state regulatory agencies with respect to financial institutions.

The committee made technical amendments to the bill.

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STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

September 6, 1983

ASSEMBLY BILL NO. 832 OCR

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the Constitution, I am returning Assembly Bill No. 832 with my objections and recommendations for amendment.

The purpose of this bill is to statutorily prescribe who can provide or obtain, and under what circumstances, information concerning an electronic fund transfer or electronic fund transfer account. The substance of this bill is patterned after Regulation E promulgated by the Federal Reserve Board.

I am returning A-832 to you for two reasons. First, this bill ignores current law by not providing for a provision that would allow a State governmental agency to require disclosure by a financial institution of electronic fund transfer or account information with respect to a person applying for or receiving public assistance. For instance, section 1140 of the Public Assistance Manual gives our Department of Human Services the power and the right to investigate the "second sources" (which include financial institutions) listed on an applicant's application for financial assistance. Clearly, the purpose of such a provision is to provide the State governmental agency with a means of detecting fraud. Accordingly, I recommend that A-832 be amended to require a financial institution to disclose electronic fund transfer or account information when requested by a governmental agency in connection with the agency's investigation of a person applying for or receiving public assistance.

Secondly, I recommend that a portion of Section 6 of this bill be amended. Section 6 of this bill establishes a civil cause of action against financial institutions or government agencies who act negligently, willfully, or recklessly in violating this act. This section then enumerates the damages which may be recovered if an institution or agency is found to have acted negligently, willfully, or recklessly. Among these damages are punitive damages. This bill



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does not make it clear that punitive damages should not be awarded where an institution's or agency's conduct is found to be only negligent. Punitive damages should be awarded only where an institution's or agency's conduct is found to be either willful or reckless. In Di Giovanni v. Pessel 55 N.J. 188 (1970), the New Jersey Supreme Court observed that something more than the mere commission of a tort is always required for punitive damages. Id. at 190. The court reasoned:

"There must be circumstances of aggravation or outrage, such as spite or 'malice,' or a fraudulent or evil motive on the part of the defendant, or such a conscious and deliberate disregard of the interests of others that his conduct may be called willful or wanton. Lacking this element, mere negligence, however 'gross,' is generally held not to be enough."

Id. at 190-191.

See also: La Bruno v. Lawrence 64 N.J. Super 570, 575 (App. Div. 1960) cert. denied 34 N.J. 323 (1961); Stern v. Abramson 150 N.J. Super 571, 574 (Law Div. 1977); Prosser on Torts sec. 2 at 9-10 (2d ed. 1955).

Accordingly, I herewith return Assembly Bill No. 832 for reconsideration and recommend it be amended as follows:

Page 2, Section 3, Line 11: DELETE "or".

Page 2, Section 3, Line 14: DELETE "."; INSERT "; or".

Page 2, Section 3, After Line 14: ADD a new subsection: "f. The disclosure is made to a government agency in the exercise of its statutory functions with respect to a person applying for or receiving public assistance."

Page 3, Section 4, Line 1: DELETE "subsection" insert "subsections", after "e." insert "and f."

Page 3, Section 6, Line 5: DELETE "punitive damages where appropriate;"

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Page 3, Section 6, Line 6: DELETE "and"; after "fees" INSERT "; and only in cases where a financial institution or government agency acted willfully or recklessly, a court of competent jurisdiction may award punitive damages where appropriate"

Respectfully,

/s/ Thomas H. Kean  
GOVERNOR

Attest:

/s/ W. Cary Edwards

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Chief Counsel to the Governor