

CHAPTER 16**CONFIDENTIAL FINANCIAL RECORDS****§161. Definitions; exemptions****1. Definitions.**

[PL 2001, c. 667, Pt. A, §5 (RP).]

1-A. Definitions. As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Affiliate" has the same meaning as in section 131, subsection 1-A. [PL 2001, c. 262, Pt. B, §2 (NEW).]

B. "Credit union authorized to do business in this State" has the same meaning as in section 131, subsection 12-A. [PL 2001, c. 262, Pt. B, §2 (NEW).]

C. "Customer" means any person as that term "person" is defined in section 131, subsection 30 who utilized or is utilizing any service of a financial institution authorized to do business in this State or a credit union authorized to do business in this State or for whom a financial institution authorized to do business in this State or a credit union authorized to do business in this State is acting or has acted as a fiduciary in relation to an account maintained in the person's name. In addition, "customer" means any person who provides information to a financial institution authorized to do business in this State or a credit union authorized to do business in this State in an attempt to utilize any service of that financial institution or credit union. [PL 2001, c. 262, Pt. B, §2 (NEW).]

D. "Financial institution authorized to do business in this State" has the same meaning as in section 131, subsection 17-A. [PL 2001, c. 262, Pt. B, §2 (NEW).]

E. "Financial records" means the originals or copies of records held by a financial institution authorized to do business in this State or a credit union authorized to do business in this State or their agents or affiliates pertaining to a customer's relationship with the financial institution or credit union and includes information derived from such records. [PL 2001, c. 262, Pt. B, §2 (NEW).]

F. "Supervisory agency" means:

- (1) The Federal Deposit Insurance Corporation;
 - (2) The Office of Thrift Supervision;
 - (3) The Federal Home Loan Bank Board;
 - (4) The National Credit Union Administration;
 - (5) The Federal Reserve Board;
 - (6) The Office of the Comptroller of the Currency;
 - (7) The Bureau of Financial Institutions within the Department of Professional and Financial Regulation;
 - (8) The Bureau of Consumer Credit Protection within the Department of Professional and Financial Regulation;
 - (9) The Bureau of Insurance within the Department of Professional and Financial Regulation;
 - (10) The Office of Securities within the Department of Professional and Financial Regulation;
- and

(11) The United States Securities and Exchange Commission. [PL 2001, c. 44, §11 (AMD); PL 2001, c. 44, §14 (AFF); PL 2001, c. 262, Pt. B, §2 (NEW); PL 2007, c. 273, Pt. B, §5 (REV); PL 2007, c. 695, Pt. A, §47 (AFF).]
 [PL 2001, c. 44, §11 (AMD); PL 2001, c. 44, §14 (AFF); PL 2001, c. 182, §16 (AMD); PL 2001, c. 262, Pt. B, §2 (NEW); PL 2007, c. 273, Pt. B, §5 (REV); PL 2007, c. 695, Pt. A, §47 (AFF).]

2. Exemptions. This chapter does not prohibit:

A. The preparation, examination, handling or maintenance of any financial records by any officer, employee or agent of a financial institution authorized to do business in this State or credit union authorized to do business in this State having custody of such records or the examination of such records by a certified public accountant engaged by the financial institution or credit union to perform an independent audit; [PL 2001, c. 262, Pt. B, §3 (AMD).]

B. The examination of any financial records by, or the furnishing of financial records by a financial institution authorized to do business in this State or credit union authorized to do business in this State to, any officer, employee or agent of a supervisory agency for use solely in the exercise of the duties of the officer, employee or agent; [PL 2001, c. 262, Pt. B, §3 (AMD).]

C. The publication of data furnished from financial records relating to customers when the data can not be identified to any particular customer or account; [PL 2001, c. 262, Pt. B, §3 (AMD).]

D. The making of reports or returns required under the United States Internal Revenue Code, Chapter 61, including the submission of information concerning interest earned on accounts, investigatory activity authorized by the United States Internal Revenue Code and any use to which the reports or returns would be subjected once submitted; [PL 2001, c. 262, Pt. B, §3 (AMD).]

E. Furnishing information permitted to be disclosed under the Uniform Commercial Code concerning the dishonor of any negotiable instrument; [PL 1977, c. 416 (NEW).]

F. The exchange in the regular course of business of credit information between a financial institution authorized to do business in this State or credit union authorized to do business in this State and other financial institutions or credit unions or commercial enterprises, directly or through a consumer reporting agency; [PL 2001, c. 262, Pt. B, §3 (AMD).]

G. Any disclosure of financial records made pursuant to section 226; [PL 2001, c. 262, Pt. B, §3 (AMD).]

H. The examination of the financial records authorized by Title 36, section 112, section 176-A, subsection 4 or section 176-B; [PL 2009, c. 213, Pt. AAAA, §1 (AMD).]

I. Any disclosure of financial records made pursuant to Title 22, section 16, 17 or 4314; [PL 2001, c. 262, Pt. B, §3 (AMD).]

J. Any disclosure of financial records made under the Federal Currency and Foreign Transactions Reporting Act, Public Law 91-508, 31 United States Code, Section 5311, et seq., as amended; [PL 2001, c. 262, Pt. B, §3 (AMD).]

K. The examination or furnishing of any financial records by a financial institution authorized to do business in this State or credit union authorized to do business in this State to any officer, employee or agent of the Treasurer of State for use solely in the exercise of that officer's, employee's or agent's duties under Title 33, chapter 45; [PL 2019, c. 498, §3 (AMD).]

L. The exchange of financial records between a financial institution authorized to do business in this State or credit union authorized to do business in this State and a consumer reporting agency or between or among a financial institution authorized to do business in this State or credit union authorized to do business in this State and its subsidiaries, employees, agents or affiliates, including those permitted under Title 10, chapter 209-B or 15 United States Code, Chapter 41; [PL 2013, c. 588, Pt. C, §5 (AMD).]

M. The sharing of information to the extent permitted by the provisions of the federal Gramm-Leach-Bliley Act, 15 United States Code, Section 6801 et seq. (1999) and the applicable implementing federal Privacy of Consumer Information regulations, as adopted by the Office of the Comptroller of the Currency, 12 Code of Federal Regulations, Part 40 (2001); the Board of Governors of the Federal Reserve System, 12 Code of Federal Regulations, Part 216 (2001); the Federal Deposit Insurance Corporation, 12 Code of Federal Regulations, Part 332 (2001); the Office of Thrift Supervision, 12 Code of Federal Regulations, Part 573 (2001); the National Credit Union Administration, 12 Code of Federal Regulations, Part 716 (2001); the Federal Trade Commission, 16 Code of Federal Regulations, Part 313 (2001); or the Securities and Exchange Commission, 17 Code of Federal Regulations, Part 248 (2001). This paragraph is not intended to permit the release of health care information except as permitted by Title 22, section 1711-C or Title 24-A, chapter 24; [PL 2011, c. 518, §1 (AMD).]

N. The sharing of financial records with affiliates other than as permitted under paragraphs L and M; or [PL 2011, c. 518, §2 (AMD).]

O. The disclosure of the financial records of a customer for the same reasons that such disclosure is permitted for nonpublic personal information under paragraph M and the federal Gramm-Leach-Bliley Act, 15 United States Code, Section 6802(e) (2010). [PL 2011, c. 518, §3 (NEW).]
[PL 2019, c. 498, §3 (AMD).]

SECTION HISTORY

PL 1977, c. 416 (NEW). PL 1977, c. 696, §115 (AMD). PL 1981, c. 501, §28 (AMD). PL 1981, c. 706, §1 (AMD). PL 1983, c. 784, §§1-3 (AMD). PL 1985, c. 311, §§2-4 (AMD). PL 1985, c. 647, §1 (AMD). PL 1985, c. 668, §1 (AMD). PL 1985, c. 819, §A14 (AMD). PL 1989, c. 368, §§1-3 (AMD). PL 1989, c. 880, §E1 (AMD). PL 1995, c. 86, §1 (AMD). PL 1995, c. 419, §§4,5 (AMD). PL 1997, c. 315, §§10-12 (AMD). PL 1997, c. 398, §L6 (AMD). PL 1997, c. 453, §1 (AMD). PL 1997, c. 508, §A3 (AFF). PL 1997, c. 508, §B1 (AMD). PL 1999, c. 127, §A21 (AMD). PL 1999, c. 218, §1 (AMD). PL 2001, c. 44, §§6, 11 (AMD). PL 2001, c. 44, §14 (AFF). PL 2001, c. 262, §§B1-3 (AMD). PL 2001, c. 667, §A5 (AMD). PL 2007, c. 273, Pt. B, §5 (REV). PL 2007, c. 273, Pt. B, §7 (AFF). PL 2007, c. 695, Pt. A, §47 (AFF). PL 2009, c. 213, Pt. AAAA, §1 (AMD). PL 2011, c. 518, §§1-3 (AMD). PL 2013, c. 588, Pt. C, §5 (AMD). PL 2019, c. 498, §3 (AMD).

§162. Disclosure of financial records prohibited; exceptions

A financial institution authorized to do business in this State or credit union authorized to do business in this State or its affiliates may not disclose to any person, except to the customer or the customer's duly authorized agent, any financial records relating to that customer of that financial institution or credit union unless: [PL 2001, c. 262, Pt. B, §4 (AMD).]

1. Authorized disclosure. The customer has authorized disclosure to the person; [PL 1997, c. 537, §1 (AMD); PL 1997, c. 537, §62 (AFF).]

2. Disclosure in response to legal process. The financial records are disclosed in response to a lawful subpoena, summons, warrant or court order that meets the requirements of section 163; [PL 2001, c. 211, §1 (AMD).]

3. Disclosure in response to a request by the Department of Health and Human Services. The financial records are disclosed in response to a request for information by the Department of Health and Human Services for purposes related to establishing, modifying or enforcing a child support order; [PL 2007, c. 108, §1 (AMD).]

4. Disclosure in response to a request by the Department of Labor. The financial records are disclosed in response to a notice of levy issued by the Department of Labor pursuant to Title 26, section 1233;

[PL 2009, c. 213, Pt. AAAA, §2 (AMD).]

5. Disclosure to the Department of Health and Human Services upon suspicion of financial exploitation. The financial records are disclosed to the Department of Health and Human Services pursuant to Title 22, section 3479 because a financial institution authorized to do business in this State or its affiliate or a credit union authorized to do business in this State or its affiliate has reasonable cause to suspect that an incapacitated or dependent adult has been or is at substantial risk of abuse, neglect or exploitation; or

[PL 2009, c. 213, Pt. AAAA, §3 (AMD).]

6. Disclosure in response to a request by the Department of Administrative and Financial Services, Bureau of Revenue Services. The financial records are disclosed in response to a request for information by the Department of Administrative and Financial Services, Bureau of Revenue Services for purposes related to establishing, modifying or enforcing tax debts.

[PL 2009, c. 213, Pt. AAAA, §4 (NEW).]

7. Disclosure of notice of mortgagor's right to cure. The financial records pertain to a notice of mortgagor's right to cure and are disclosed to the Bureau of Consumer Credit Protection pursuant to Title 14, section 6111, subsection 3-A.

[PL 2009, c. 402, §8 (NEW).]

SECTION HISTORY

PL 1977, c. 416 (NEW). PL 1997, c. 537, §1 (AMD). PL 1997, c. 537, §62 (AFF). PL 2001, c. 211, §§1,2 (AMD). PL 2001, c. 262, §B4 (AMD). PL 2003, c. 689, §B6 (REV). PL 2007, c. 108, §§1-3 (AMD). PL 2009, c. 213, Pt. AAAA, §§2-4 (AMD). PL 2009, c. 402, §8 (AMD).

§163. Subpoena, summons, warrant or court order

1. Service. A financial institution authorized to do business in this State or credit union authorized to do business in this State shall disclose financial records under section 162 pursuant to a subpoena, summons, warrant or court order that on its face appears to have been issued upon lawful authority only if the subpoena, summons, warrant or court order is served upon the customer prior to disclosure by the financial institution or credit union. The agency or person requesting the disclosure of financial records shall certify in writing to the financial institution or credit union the fact that the subpoena, summons, warrant or court order has been served upon the customer. The court for good cause shown may delay or dispense with service of the subpoena, summons, warrant or court order upon the customer. The court shall delay or dispense with service of the subpoena, summons, warrant or court order upon the customer upon notice by the Attorney General, the Attorney General's designee or the District Attorney that service upon the customer would not be in the public interest. A subpoena, summons or warrant issued in connection with a criminal proceeding or state or federal grand jury proceeding, a request for information by the Department of Health and Human Services for purposes related to establishing, modifying or enforcing a child support order, a request for information by the Department of Administrative and Financial Services, Bureau of Revenue Services for purposes related to establishing, modifying or enforcing tax liabilities or a trustee process lawfully issued need not be served upon the customer.

[PL 2009, c. 213, Pt. AAAA, §5 (AMD).]

SECTION HISTORY

PL 1977, c. 416 (NEW). PL 1985, c. 647, §2 (AMD). PL 1997, c. 16, §1 (AMD). PL 1997, c. 537, §2 (AMD). PL 1997, c. 537, §62 (AFF). PL 1999, c. 197, §1 (AMD). PL 2001, c. 262, §B5 (AMD). PL 2003, c. 689, §B6 (REV). PL 2009, c. 213, Pt. AAAA, §5 (AMD).

§164. Penalties

1. Violation. Any officer or employee of a financial institution authorized to do business in this State, credit union authorized to do business in this State, affiliate or consumer reporting agency who intentionally or knowingly furnishes financial records in violation of this chapter commits a civil violation for which the superintendent may assess a civil penalty of not more than \$5,000 per violation. Any financial institution authorized to do business in this State or credit union authorized to do business in this State that intentionally or knowingly furnishes financial records in violation of this chapter or intentionally or knowingly allows an affiliate to furnish financial records in violation of this chapter commits a civil violation for which the superintendent may assess a civil penalty of not more than \$10,000 per violation. Any financial institution authorized to do business in this State or credit union authorized to do business in this State or any agent or employee of a financial institution or credit union making a disclosure of financial records in good-faith reliance upon the certificate of agency or person requesting the disclosure, that the provisions of section 163 requiring prior notice to the customer have been complied with, is not liable to the customer for the disclosures and is not liable for any civil penalties under this section.

[PL 2001, c. 262, Pt. B, §6 (AMD).]

2. Inducing violation. Any person who intentionally or knowingly induces or attempts to induce any officer or employee of a financial institution authorized to do business in this State, credit union authorized to do business in this State or consumer reporting agency to disclose financial records in violation of this chapter commits a civil violation for which the superintendent may assess a civil penalty of not more than \$10,000 per violation.

[PL 2001, c. 262, Pt. B, §6 (AMD).]

3. Immunity. A financial institution authorized to do business in the State or its affiliate or a credit union authorized to do business in the State or its affiliate that in good faith discloses financial records to the Department of Health and Human Services pursuant to section 162, subsection 5 or the Department of Administrative and Financial Services, Bureau of Revenue Services pursuant to section 162, subsection 6 is immune from civil or criminal liability that might otherwise arise from the disclosure. In a proceeding regarding immunity from liability, there is a rebuttable presumption of good faith.

[PL 2009, c. 213, Pt. AAAA, §6 (AMD).]

SECTION HISTORY

PL 1977, c. 416 (NEW). PL 1985, c. 647, §3 (AMD). PL 1991, c. 824, §A11 (AMD). PL 2001, c. 262, §B6 (AMD). PL 2007, c. 108, §4 (AMD). PL 2009, c. 213, Pt. AAAA, §6 (AMD).

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