

HOUSE BILL NO. 1447

Introduced by

Representatives Kasper, Devlin, Keiser, M. Klein

Senators Fischer, Klein

1 A BILL for an Act to provide for consumer privacy protection of information in financial institution
2 records; and to provide a penalty.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. Definitions.** As used in this Act, unless the context otherwise requires,
5 "affiliate", "consumer", "financial institution", "nonaffiliated third party", and "nonpublic personal
6 information" have the meanings provided in section 509 of the Federal Gramm-Leach-Bliley
7 Financial Services Modernization Act [Pub. L. 106-102; 113 Stat. 1443; 15 U.S.C. 6809].
8 Notwithstanding the definitions of "affiliate" and "nonaffiliated third party" in section 509 of the
9 Federal Gramm-Leach-Bliley Financial Services Modernization Act, the terms do not include an
10 independent agent acting in the agent's capacity as an independent agent for an insurance
11 company.

12 **SECTION 2. Privacy of financial data.** Every financial institution doing business in
13 this state shall comply with sections 502 and 503 of the Federal Gramm-Leach-Bliley Financial
14 Services Modernization Act [Pub. L. 106-102; 113 Stat. 1437 and 113 Stat. 1439; 15 U.S.C.
15 6802 and 15 U.S.C. 6803].

16 1. A financial institution doing business in this state may not disclose nonpublic
17 personal information about a consumer to any affiliate or nonaffiliated third party
18 unless the disclosure complies with the opt-out provisions of section 502(b) of the
19 Federal Gramm-Leach-Bliley Financial Services Modernization Act [Pub. L.
20 106-102; 113 Stat. 1437; 15 U.S.C. 6802] if the disclosure is made:
21 a. As an exchange in the regular course of business of customer credit
22 information between a financial institution and other financial institutions or
23 commercial entities, directly, or through a customer reporting agency; or

- 1 b. For the purpose of examining, handling, or maintaining any customer
2 information by any governmental agency or law enforcement agency for
3 purposes of verifying information necessary in the licensing process.
- 4 2. Except as provided in subsection 1, a financial institution doing business in this
5 state may not disclose nonpublic personal information about a consumer to any
6 affiliate or nonaffiliated third party, including a disclosure described in section
7 502(b)(2) of the Federal Gramm-Leach-Bliley Financial Services Modernization Act
8 [Pub. L. 106-102; 113 Stat. 1437; 15 U.S.C. 6802], unless the disclosure is made:
- 9 a. Pursuant to consent granted by the consumer as provided under this Act;
- 10 b. Pursuant to the general exceptions in section 502(e) of the Federal
11 Gramm-Leach-Bliley Financial Services Modernization Act [Pub. L. 106-102;
12 113 Stat. 1437; 15 U.S.C. 6802];
- 13 c. For the purpose of reporting a suspected violation of law;
- 14 d. For the purpose of the preparing, examining, handling, or maintaining any
15 customer information by any officer, employee, or agent of a financial
16 institution having custody of such information or the examining of such
17 information by an accountant engaged by the financial institution to perform
18 an audit;
- 19 e. For the purpose of examining any customer information by, or the furnishing
20 of customer information to, any officer, employee, or agent of a financial
21 institution regulatory agency solely for use in the exercise of official duties;
- 22 f. For publication of data derived from customer information if the data cannot
23 be identified to any particular customer or account;
- 24 g. Pursuant to any acts required of the financial institution by the Internal
25 Revenue Code;
- 26 h. As a disclosure permitted under the Uniform Commercial Code concerning
27 the dishonor of any negotiable instrument;
- 28 i. As a release by the industrial commission, in the commission's capacity as
29 the managing body of the Bank of North Dakota, if the disclosure is:
- 30 (1) The name of any person who, either directly or indirectly, obtained
31 financing through the Bank of North Dakota; or

(2) The amount of any financing obtained, either directly or indirectly,
through the Bank of North Dakota;

j. As a disclosure of customer information to a law enforcement agency or
governmental agency pursuant to a search warrant or subpoena duces tecum
issued in accordance with applicable statutes or the North Dakota Rules of
Criminal Procedure; or

k. As a disclosure by a financial institution to the agriculture commissioner that
the financial institution gave a customer notice of the availability of the North
Dakota agricultural mediation service.

SECTION 3. Consent. Consent or waiver may not be required as a condition of doing
business with any financial institution, and any consent or waiver obtained from a consumer as
a condition of doing business with a financial institution is not consent granted by the consumer
for purposes of section 2 of this Act.

SECTION 4. Form. To be valid, a consent must be in writing and signed by the
consumer. The consent signed by the consumer must be contained on a separate page that
clearly and conspicuously discloses:

1. The time during which the consent will operate, not exceeding five years;
2. Specification of each category of consumer information to be disclosed, including
the consumer's social security number, account number, account balance, credit
limit, amount or date of any transaction, identity of persons to whom the
consumer's checks are made payable, and the identity of any merchant or other
person honoring the consumer's credit card; and
3. The affiliates and nonaffiliated third parties to which disclosure may be made.

SECTION 5. Scope - Penalty - Civil penalty. This Act does not limit any right or
remedy protecting the privacy of information which is available under other law. Any financial
institution that violates this Act is guilty of a class B misdemeanor, and any officer or employee
of any financial institution who willfully violates this Act is guilty of a class B misdemeanor.