

HOUSE BILL NO. 1478

Introduced by

Representatives Kasper, Keiser, Ruby, Tieman

Senators Mutch, Tollefson

1 A BILL for an Act to create and enact a new section to chapter 6-08.1 of the North Dakota
2 Century Code, relating to disclosure of financial information; and to amend and reenact sections
3 6-08.1-01 and 6-08.1-02 of the North Dakota Century Code, relating to financial institution
4 customer privacy definitions and exceptions.

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

6 **SECTION 1. AMENDMENT.** Section 6-08.1-01 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **6-08.1-01. Definitions.** As used in this chapter:

- 9 1. "Customer" means any person ~~who~~ that is a resident of or is domiciled in this state
10 and which has transacted or is transacting business with; or has used or is using
11 the services of; a financial institution, or for ~~whom~~ which a financial institution has
12 acted as a fiduciary with respect to trust property.
- 13 2. "Customer information" means either of the following:
14 a. Any original or any copy of any records held by a financial institution
15 pertaining to a customer's relationship with the financial institution.
16 b. Any information derived from a record described in this subsection.
- 17 3. "Financial institution" means any organization that is physically located in the state
18 which is authorized to do business under state or federal laws relating to financial
19 institutions, including, without limitation, a bank, including the Bank of North
20 Dakota, a savings bank, a trust company, a savings and loan association, or a
21 credit union.
- 22 4. "Financial institution regulatory agency" means any of the following:
23 a. The federal deposit insurance corporation.
24 b. The federal savings and loan insurance corporation.

- 1 c. The national credit union administration.
- 2 d. The federal reserve board.
- 3 e. The United States comptroller of the currency.
- 4 f. The department of financial institutions.
- 5 g. The federal home loan bank board.
- 6 5. "Governmental agency" means any agency or department of this state, or any
7 authorized officer, employee, or agent of an agency or department of this state.
- 8 6. "Law enforcement agency" means any agency or department of this state or of any
9 political subdivision of this state authorized by law to enforce the law and to
10 conduct or engage in investigations or prosecutions for violations of law.
- 11 ~~7. "Person" means any individual, partnership, corporation, limited liability company,
12 association, trust, or other legal entity.~~

13 **SECTION 2. AMENDMENT.** Section 6-08.1-02 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **6-08.1-02. Exemptions.** This chapter does not apply to any of the following:

- 16 1. The disclosure of necessary customer information in the preparation, examination,
17 handling, or maintenance of any customer information by any officer, employee, or
18 agent of a financial institution having custody of such information or in the
19 examination of such necessary information by an accountant engaged by the
20 financial institution to perform an audit.
- 21 2. The disclosure of necessary customer information in the examination of any
22 customer information by, or the furnishing of customer information to, any officer,
23 employee, or agent of a financial institution regulatory agency solely for use in the
24 exercise of that person's duties.
- 25 3. The publication of data derived from customer information ~~where~~ if the data cannot
26 be identified to any particular customer or account.
- 27 4. Any acts required of the financial institution by the Internal Revenue Code.
- 28 5. Disclosures permitted under the Uniform Commercial Code concerning the
29 dishonor of any negotiable instrument.

- 1 6. The exchange in the regular course of business of necessary customer credit
2 information between a financial institution and other financial institutions or
3 commercial entities, directly; or through a customer reporting agency.
- 4 7. The release by the industrial commission, in its capacity as the managing body of
5 the Bank of North Dakota, of either of the following:
 - 6 a. The name of any person who, either directly or indirectly, has obtained
7 financing through the Bank of North Dakota.
 - 8 b. The amount of any financing obtained either directly or indirectly through the
9 Bank of North Dakota.
- 10 8. ~~As~~ The disclosure of customer information in the examination, handling, or
11 maintenance of any customer information by any governmental agency or law
12 enforcement agency for purposes of verifying information necessary in the
13 licensing process, provided prior consent is obtained from the licensee and
14 customer.
- 15 9. Disclosure of customer information to a law enforcement agency or governmental
16 agency pursuant to a search warrant or subpoena duces tecum issued in
17 accordance with applicable statutes or the North Dakota Rules of Criminal
18 Procedure.
- 19 10. Disclosure by a financial institution to the agriculture commissioner that it has given
20 a customer notice of the availability of the North Dakota agricultural mediation
21 service.
- 22 11. The disclosure by a financial institution to any financial institution or other entity
23 that controls, is controlled by, or is under common control with the financial
24 institution if the financial institution or other entity receiving the information
25 complies with section 6-08.1-03.
- 26 12. If the financial institution has provided the customer with a clear notice of the
27 circumstances under which the customer's information is disclosed and the types
28 of customer information disclosed, the disclosure of customer information by a
29 financial institution to a nonaffiliated third party:
 - 30 a. As necessary to effect, administer, or enforce a transaction that is requested
31 or otherwise authorized by the customer;

- 1 b. As necessary in connection with servicing or processing a financial product or
2 financial service that is requested or otherwise authorized by the customer;
3 c. As necessary in connection with maintaining or servicing the customer's
4 account with the financial institution;
5 d. As necessary in connection with maintaining or servicing the customer's
6 account with another person as part of a private label credit card program or
7 as part of some other extension of credit on behalf of that other person; or
8 e. At the direction or with the consent of the customer.

9 **SECTION 3.** A new section to chapter 6-08.1 of the North Dakota Century Code is
10 created and enacted as follows:

11 **Joint marketing agreements - Consent.** A financial institution must have a
12 customer's consent before the financial institution may disclose the customer's information to a
13 nonaffiliated third party under a joint marketing agreement as provided under section 502(b)(2)
14 of the federal Financial Services Modernization Act of 1999 [Pub. L. 106-102; 113 Stat. 1437;
15 15 U.S.C. 6802(b)(2)].