

**Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003**

HOUSE BILL NO. 1478
(Representatives Kasper, Keiser, Ruby, Tieman)
(Senators Mutch, Tollefson)

AN ACT to create and enact two new sections to chapter 6-08.1 of the North Dakota Century Code, relating to disclosure of financial information; and to amend and reenact sections 6-08.1-01 and 6-08.1-02 of the North Dakota Century Code, relating to financial institution customer privacy definitions and exceptions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. "Customer" means any person ~~who~~ that is a resident of or is domiciled in this state and which has transacted or is transacting business with; or has used or is using the services of; a financial institution, or for ~~whom~~ which a financial institution has acted as a fiduciary with respect to trust property.
2. "Customer information" means either of the following:
 - a. Any original or any copy of any records held by a financial institution pertaining to a customer's relationship with the financial institution.
 - b. Any information derived from a record described in this subsection.
3. "Financial institution" means any organization that is physically located in the state which is authorized to do business under state or federal laws relating to financial institutions, including, without limitation, a bank, including the Bank of North Dakota, a savings bank, a trust company, a savings and loan association, or a credit union.
4. "Financial institution regulatory agency" means any of the following:
 - a. The federal deposit insurance corporation.
 - b. The federal savings and loan insurance corporation.
 - c. The national credit union administration.
 - d. The federal reserve board.
 - e. The United States comptroller of the currency.
 - f. The department of financial institutions.
 - g. The federal home loan bank board.
5. "Governmental agency" means any agency or department of this state, or any authorized officer, employee, or agent of an agency or department of this state.
6. "Law enforcement agency" means any agency or department of this state or of any political subdivision of this state authorized by law to enforce the law and to conduct or engage in investigations or prosecutions for violations of law.

7. ~~"Person" means any individual, partnership, corporation, limited liability company, association, trust, or other legal entity.~~

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

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

1. The disclosure of necessary customer information in the preparation, examination, handling, or maintenance of any customer information by any officer, employee, or agent of a financial institution having custody of such information or in the examination of such necessary information by an accountant engaged by the financial institution to perform an audit.
2. The disclosure of necessary customer information in the examination of any customer information by; or the furnishing of customer information to; any officer, employee, or agent of a financial institution regulatory agency solely for use in the exercise of that person's duties.
3. The publication of data derived from customer information ~~where~~ if the data cannot be identified to any particular customer or account.
4. Any acts required of the financial institution by the Internal Revenue Code.
5. Disclosures permitted under the Uniform Commercial Code concerning the dishonor of any negotiable instrument.
6. The exchange in the regular course of business of necessary customer credit information between a financial institution and other financial institutions or commercial entities, directly; or through a customer reporting agency.
7. The release by the industrial commission, in its capacity as the managing body of the Bank of North Dakota, of either of the following:
 - a. The name of any person who, either directly or indirectly, has obtained financing through the Bank of North Dakota.
 - b. The amount of any financing obtained either directly or indirectly through the Bank of North Dakota.
8. ~~A~~ The disclosure of customer information in the examination, handling, or maintenance of any customer information by any governmental agency or law enforcement agency for purposes of verifying information necessary in the licensing process, provided prior consent is obtained from the licensee and customer.
9. 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.
10. Disclosure by a financial institution to the agriculture commissioner that it has given a customer notice of the availability of the North Dakota agricultural mediation service.
11. The disclosure by a financial institution to any financial institution or other entity that controls, is controlled by, or is under common control with the financial institution if the financial institution or other entity receiving the information complies with section 6-08.1-03.
12. A disclosure of customer information under section 502(e) of the federal Financial Services Modernization Act of 1999 [Pub. L. 106-102; 113 Stat. 1436; 15 U.S.C. 6802(e)]. A

disclosure under this subsection must comply with the rules adopted under section 4 of this Act.

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

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

SECTION 4. A new section to chapter 6-08.1 of the North Dakota Century Code is created and enacted as follows:

Rules. The state banking board and the state credit union board shall adopt rules to implement subsection 12 of section 6-08.1-02. The rules must provide at least as much customer protection as would be provided in the case of disclosure of information under circumstances where there has been an opt-out election under title V of the federal Financial Services Modernization Act of 1999 [Pub. L. 106-102; 113 Stat. 1436].

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1478.

House Vote: Yeas 89 Nays 2 Absent 3

Senate Vote: Yeas 47 Nays 0 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,

at _____ o'clock _____ M.

Secretary of State