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2001 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1447

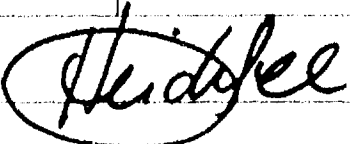
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1447

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date Feb., 13, 2001

Tape Number	Side A	Side B	Meter #
1	X		0
		X	-31
Committee Clerk Signature 			

Minutes: Chairman R. Berg, Vice-Chair G. Keiser, Rep. M. Ekstrom, Rep. R. Froelich, Rep. G. Froseth, Rep. R. Jensen, Rep. N. Johnson, Rep. J. Kasper, Rep. M. Klein, Rep. Koppang, Rep. D. Lemieux, Rep. B. Pietseh, Rep. D. Ruby, Rep. D. Severson, Rep. E. Thorpe.

Rep Jim Kasper: Sponsor of bill on financial privacy. Reviewed and supplied GLB Act.

Rep George Keiser: I support this bill and the idea is catching on in other states. This bill goes into effect before the next session and this is very well defined on what can and cannot happen.

Cynthia Auen: **Written testimony in support.**

Syver Vinje: *Securities Commissioner* I'm neutral on the issue until further information.

Marilyn Foss: *NDBA* **Written testimony in opposition.**

Rep Kasper: When a financial institution receives info., who owns it?

Foss: The bank owns the records but its an open question.

Chairman Berg: When is the deadline?

Foss: July 1, 2001 notices have to be out and in compliance.

Page 2

House Industry, Business and Labor Committee

Bill/Resolution Number HIB 1447

Hearing Date Feb. 13, 2001

Pat Ward: *ND Domestics Ins. Co.* **Written testimony in opposition.**

Vice-Chairman Keiser: Why is medical data different?

Foss: People are more protective of medical data.

Chairman Berg: How do you know your information is not being shared?

Foss: There is no official way of knowing.

Rep Kasper: Isn't it easier under opt-in?

Foss: Yes but that would be closing down e-commerce.

Rep Pietsch: This does not allow trade with affiliates?

Foss: GLB says that they can, no current law covers it but HIB 1447 prevents it.

Greg Morris: **Opposed** Banks have an exemption with affiliates that insurance companies don't get. The Insurance Department had to get GLB pushed back from November 2000 to July 2001.

Joel Gilbertson: *Independent Banks ND* **Written testimony opposed.**

Buell Reich: *ND Credit Union League* **Written testimony opposed.**

Gary Preszler: *Bank and Financial Inst.* **Written testimony neutral.**

Chairman Berg: We'll close the hearing on HIB 1447.

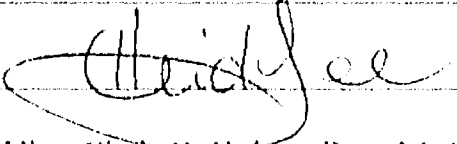
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1447(B)

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date Feb. 14, 2001

Tape Number	Side A	Side B	Meter #
2		X	12.1-43.6
Committee Clerk Signature 			

Minutes: Chairman R. Berg, Vice-Chair G. Kelsner, Rep. M. Ekstrom, Rep. R. Froelich, Rep. G. Froseth, Rep. R. Jensen, Rep. N. Johnson, Rep. J. Kasper, Rep. M. Klein, Rep. Koppang, Rep. D. Lemieux, Rep. B. Pietsch, Rep. D. Ruby, Rep. D. Severson, Rep. E. Thorpe,

Rep Kasper: Provided and explained new amendments, chapter 6-08.1, and Title V.

Rep Kelsner: I move the amendments.

Rep Ekstrom: I second.

Rep Kasper: I move a do pass as amended.

Rep Kelsner: I second.

6 yea, 7 nay, 2 absent

Rep Severson: I move a do not pass as amended.

Rep Koppang: I second.

7 yea, 6 nay, 2 absent Carrier Rep Berg

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1447

Page 1, line 2, remove "; and to provide a penalty"

Page 1, replace lines 4 through 23 with:

"SECTION 1. Definitions. As used in this Act, unless the context otherwise requires:

1. "Affiliate" has the same meaning provided in section 509 of the Federal Gramm-Leach-Bliley Financial Services Modernization Act [Pub. L. 106-102; 113 Stat. 1443; 15 U.S.C. 6809].
2. "Consumer" has the same meaning provided in section 509 of the Federal Gramm-Leach-Bliley Financial Services Modernization Act [Pub. L. 106-102; 113 Stat. 1443; 15 U.S.C. 6809].
3. "Financial activities" includes lending, trust, and other banking activities; insurance activities; financial or economic advice or services; pooled investments; and securities underwriting and dealing.
4. "Financial institution" has the same meaning as provided in section 509 of the Federal Gramm-Leach-Bliley Financial Services Modernization Act [Pub. L. 106-102; 113 Stat. 1443; 15 U.S.C. 6809]. The term includes any institution engaging in financial activities.
5. "Nonaffiliated third party" has the same meaning provided in section 509 of the Federal Gramm-Leach-Bliley Financial Services Modernization Act [Pub. L. 106-102; 113 Stat. 1443; 15 U.S.C. 6809].
6. "Nonpublic personal information" has the same meaning provided in section 509 of the Federal Gramm-Leach-Bliley Financial Services Modernization Act [Pub. L. 106-102; 113 Stat. 1443; 15 U.S.C. 6809] and includes a consumer's social security number, income amount, income source, net worth, employer, and occupation.

SECTION 2. Privacy of financial data - Exceptions. Except as expressly provided in this Act, every financial institution doing business in this state shall comply with the privacy provisions in title V of the Federal Gramm-Leach-Bliley Financial Services Modernization Act [Pub. L. 106-102, title V, sec. 501 et seq.; 113 Stat. 1436 et seq.; 15 U.S.C. 6801 et seq.].

1. In the case of a financial institution regulated under chapter 6-08.1, the provisions relating to disclosure of customer information under chapter 6-08.1 supersede this Act.
2. In the case of a financial institution not regulated under chapter 6-08.1, the financial institution may not disclose nonpublic personal information about a consumer to any affiliate or nonaffiliated third party, including a disclosure described in section 502(b)(2) of the Federal Gramm-Leach-Bliley Financial Services Modernization Act [Pub. L. 106-102; 113 Stat. 1437; 15 U.S.C. 6802], unless the disclosure is made pursuant to a consent granted by the consumer as provided under this Act. However, a financial institution regulated under this subsection may disclose nonpublic personal

Information about a consumer without a consent granted by the consumer if the disclosure is made:

- a. Pursuant to one of the general exceptions in section 502(e) of the Federal Gramm-Leach-Bliley Financial Services Modernization Act [Pub. L. 106-102; 110 Stat. 1437; 15 U.S.C. 6802];
- b. For the purpose of reporting a suspected violation of law or rule to the appropriate state agency or law enforcement agency; or
- c. For the purpose of complying with state law or rule, including the sharing of information between the department of banking and financial institutions, insurance commissioner, and securities commissioner in the course of official duties."

Page 2, remove lines 1 through 31

Page 3, remove lines 1 through 9

Page 3, line 17, replace "five" with "two"

Page 3, line 24, remove "- Penalty - Civil penalty"

Page 3, line 25, remove "Any financial"

Page 3, remove lines 26 and 27

Renumber accordingly

Date: 2-14-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1447

House Industry, Business and Labor Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as amended

Motion Made By Kasper Seconded By Keiser

Representatives	Yes	No	Representatives	Yes	No
Chairman- Rick Berg		✓	Rep. Jim Kasper	✓	
Vice-Chairman George Keiser	✓		Rep. Matthew M. Klein		
Rep. Mary Ekstorm	✓		Rep. Myron Koppang		✓
Rep. Rod Froelich	✓		Rep. Doug Lemieux	✓	
Rep. Glen Froseth			Rep. Bill Pletsch		✓
Rep. Roxanne Jensen		✓	Rep. Dan Ruby		✓
Rep. Nancy Johnson		✓	Rep. Dale C. Severson		✓
			Rep. Elwood Thorpe	✓	

Total (Yes) 6 No 7

Absent 2

Floor Assignment Rep Keiser

If the vote is on an amendment, briefly indicate intent:

Date: 2-14-01
Roll Call Vote #: 2

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1447

House Industry, Business and Labor Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass as amended

Motion Made By Severson Seconded By Koppang

Representatives	Yes	No	Representatives	Yes	No
Chairman- Rick Berg	✓		Rep. Jim Kasper		✓
Vice-Chairman George Keiser		✓	Rep. Matthew M. Klein		✓
Rep. Mary Ekstorm		✓	Rep. Myron Koppang	✓	
Rep. Rod Froelich		✓	Rep. Doug Lemieux		✓
Rep. Glen Froseth		✓	Rep. Bill Pietsch	✓	
Rep. Roxanne Jensen	✓		Rep. Dan Ruby	✓	
Rep. Nancy Johnson	✓		Rep. Dale C. Severson	✓	
			Rep. Elwood Thorpe		✓

Total (Yes) 7 No 6

Absent 0

Floor Assignment Rep Berg

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1447: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (7 YEAS, 6 NAYS, 2 ABSENT AND NOT VOTING). HB 1447 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "penalty" with "contingent effective clause"

Page 1, replace lines 4 through 23 with:

"SECTION 1. Definitions. As used in this Act, unless the context otherwise requires:

1. "Consumer" has the same meaning provided in section 509 of the Federal Gramm-Leach-Bliley Financial Services Modernization Act [Pub. L. 106-102; 113 Stat. 1443; 15 U.S.C. 6809].
2. "Financial activities" includes lending, trust, and other banking activities; insurance activities; financial or economic advice or services; pooled investments; and securities underwriting and dealing.
3. "Financial institution" has the same meaning as provided in section 509 of the Federal Gramm-Leach-Bliley Financial Services Modernization Act [Pub. L. 106-102; 113 Stat. 1443; 15 U.S.C. 6809]. The term includes any institution engaging in financial activities.
4. "Nonaffiliated third party" has the same meaning provided in section 509 of the Federal Gramm-Leach-Bliley Financial Services Modernization Act [Pub. L. 106-102; 113 Stat. 1443; 15 U.S.C. 6809].
5. "Nonpublic personal information" has the same meaning provided in section 509 of the Federal Gramm-Leach-Bliley Financial Services Modernization Act [Pub. L. 106-102; 113 Stat. 1443; 15 U.S.C. 6809].

SECTION 2. Privacy of financial data - Exceptions. Except as expressly provided in this Act, every financial institution doing business in this state shall comply with the privacy provisions in title V of the Federal Gramm-Leach-Bliley Financial Services Modernization Act [Pub. L. 106-102, title V, sec. 501 et seq.; 113 Stat. 1436 et seq.; 15 U.S.C. 6801 et seq.].

1. In the case of a financial institution regulated under chapter 6-08.1, the provisions relating to disclosure of customer information under chapter 6-08.1 supersede this Act.
2. In the case of a financial institution not regulated under chapter 6-08.1, the financial institution may not disclose nonpublic personal information about a consumer to any nonaffiliated third party, including a disclosure described in section 502(b)(2) of the Federal Gramm-Leach-Bliley Financial Services Modernization Act [Pub. L. 106-102; 113 Stat. 1437; 15 U.S.C. 6802], unless the disclosure is made pursuant to a consent granted by the consumer as provided under this Act. However, a financial institution regulated under this subsection may disclose nonpublic personal information about a consumer without a consent granted by the consumer if the disclosure is made:

- a. Pursuant to one of the general exceptions in section 502(e) of the Federal Gramm-Leach-Bliley Financial Services Modernization Act [Pub. L. 106-102; 113 Stat. 1437; 15 U.S.C. 6802];
- b. For the purpose of reporting a suspected violation of law or rule to the appropriate state agency or law enforcement agency; or
- c. For the purpose of complying with state law or rule, including the sharing of information between the department of banking and financial institutions, insurance commissioner, and securities commissioner in the course of official duties.

SECTION 3. Privacy of financial data - Exceptions. Except as expressly provided in this Act, every financial institution doing business in this state shall comply with the privacy provisions in title V of the Federal Gramm-Leach-Bliley Financial Services Modernization Act [Pub. L. 106-102, title V, sec. 501 et seq.; 113 Stat. 1436 et seq.; 15 U.S.C. 6801 et seq.]. A financial institution may not disclose nonpublic personal information about a consumer to any nonaffiliated third party, including a disclosure described in section 502(b)(2) of the Federal Gramm-Leach-Bliley Financial Services Modernization Act [Pub. L. 106-102; 113 Stat. 1437; 15 U.S.C. 6802], unless the disclosure is made pursuant to a consent granted by the consumer as provided under this Act. However, a financial institution may disclose nonpublic personal information about a consumer without a consent granted by the consumer if the disclosure is made:

1. Pursuant to one of the general exceptions in section 502(e) of the Federal Gramm-Leach-Bliley Financial Services Modernization Act [Pub. L. 106-102; 113 Stat. 1437; 15 U.S.C. 6802];
2. For the purpose of reporting a suspected violation of law or rule to the appropriate state agency or law enforcement agency; or
3. For the purpose of complying with state law or rule, including the sharing of information between the department of banking and financial institutions, insurance commissioner, and securities commissioner in the course of official duties."

Page 2, remove lines 1 through 31

Page 3, remove lines 1 through 9

Page 3, line 13, remove "for purposes of section 2 of this Act"

Page 3, line 17, replace "five" with "two"

Page 3, line 19, remove "consumer's social security number,"

Page 3, line 23, remove "affiliates and"

Page 3, line 24, remove "- **Penalty - Civil penalty**"

Page 3, line 25, replace "Any financial" with:

"SECTION 7. CONTINGENT EFFECTIVE CLAUSE. If Senate Bill No. 2191 fails to become effective, section 2 of this Act becomes effective on the effective date of this Act and section 3 of this Act does not become effective. If Senate Bill No. 2191 is passed by the fifty-seventh legislative assembly and becomes effective, section 3 of

RETAKE

DATTRUE

**2705 Twin City Dr
Mandan, ND 58554
701-663-8930**

[illegible]

- a Pursuant to one of the general exceptions in section 502(e) of the Federal Gramm-Leach-Bliley Financial Services Modernization Act [Pub. L. 106-102; 113 Stat. 1437; 15 U.S.C. 6802];
- b. For the purpose of reporting a suspected violation of law or rule to the appropriate state agency or law enforcement agency; or
- c. For the purpose of complying with state law or rule, including the sharing of information between the department of banking and financial institutions, insurance commissioner, and securities commissioner in the course of official duties.

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2. For the purpose of reporting a suspected violation of law or rule to the appropriate state agency or law enforcement agency; or
3. For the purpose of complying with state law or rule, including the sharing of information between the department of banking and financial institutions, insurance commissioner, and securities commissioner in the course of official duties."

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REPORT OF STANDING COMMITTEE (410)
February 16, 2001 9:45 a.m.

Module No: HR-29-3626
Carrier: Berg
Insert LC: 10308.0302 Title: .0400

this Act becomes effective on the effective date of this Act and section 2 of this Act does not become effective."

Page 3, remove lines 26 and 27

Renumber accordingly

2001 TESTIMONY

HB 1447

Mr. Chairman and Committee members,

My name is Cynthia Auen; I am a resident of Burleigh County. I am a citizen concerned about the erosion of privacy through the exchange of personal information under the guise of convenience and profit. I believe we have entered an era where the risks of this practice are now outweighing the benefits; thus, I offer my comments in favor of house bill 1447.

Contained in the information I have given you is a copy of my statements, a few examples of "personal information" sites, some information concerning the use and possible sale of private/public information currently handled by government and the cyber companies assisting government into the 21st century and finally a page from a "search site" indicating the scope of personal information distribution. In addition two legislators here have received documents I copied using three different web sites on the Internet: discovernd.com, altavista.com/whitepages/yellowpages and ezgov.com. The documents contain their residential address and all of the information they themselves would find on their personal property tax statement as sent to them by their county treasurers office. Some of the documents may even contain the same information concerning their place of business or other real estate owned by them. I chose these two representatives because they listed only a post office box as their address in their legislative biographies. Within an hour through the use of the Internet only and some simple deduction I was able to find this information. As a computer user I have only just learned to "copy and paste" in order to bring this information to you. Let me emphasize that I am new at this.

I apologize to them for having participated in the abuse of information deemed public because of a need to know. I do not need to know. In December of 2000, using my home computer, I looked up the home page of ezgov.com. This is the cyber company employed by two North Dakota counties to give citizens access to their property information as it pertains to real estate taxes via the Internet. In the posted welcoming statement of this company I was told the purpose for their existence was for, among other things, my entertainment. I wish I could give you a copy of that page but it has since been replaced and is no longer available. Their present statement now cites more consumer oriented desires such as service, quality, cost effective government and convenience.

Wondering how accessible I might be to the public I began browsing the Internet in an effort to find myself. I was amazed at the scope of information sharing and selling and how without my consent I had become a commodity. Webster defines commodity as a product as distinguished from a service. My personal information has become a commodity, for those who feel it is within their commercial and public service right to use what I am required to give them in exchange for service, to inform others of my potential needs according to my information profile. Entrepreneurs aside, I am also a form of entertainment. In addition for a price I can obtain personal statistics that may date back ten years.

We are an information addicted and dependent society. Information has never been so public as it is today in the age of our world-wide-web and the opportunities it provides. In the past, citizens have entrusted the public institutions designed to assist them in their "pursuit of happiness" with personal information; information given under the assumption that it be handled in a manner assuring them the dignity of privacy. Today, our privacy is literally being eroded bit by computer bit. It is being done for profit under the guise of better service and convenience. Given more time I could present more evidence to this fact. Instead I ask you to recount the unsolicited mail in your box and the telemarketing efforts directed at bringing to you the product or service "tailored just for you". How is it that minors receive credit cards in the mail ready for use? Then consider what I have presented to you today. Consider that with nearly every action requiring a transaction my information profile is expanded, shared and or sold. Now it is accomplished with the speed of a keystroke and it is made available to those who think it is in my best interest that they know.

The magnitude of the situation is almost too far reaching to comprehend. I sought answers from my district representative. He advised me to start with this legislative session; with this bill among others. In the world of commerce (in which as a consumer I must participate) I am but a folder of information. I stand before you not as the computer generated information profile to be used for profit, but as a member of society on the brink of dehumanization. I trust that you acknowledge this burgeoning situation; that you possess the capacity to manage it in such a way that the benefit of the public sharing and the commercial trade of personal information will always exceed the risk; the risk of the erosion of personal privacy and in turn the dignity of law abiding citizens.

In closing I urge you to keep in mind what I have presented here when considering privacy legislation. I hope that common sense will prevail in an era where speed and efficiency govern the complexity of a modern global economy. Again I offer my apologies to Mr. Berg and Mr. Pietsch. I thank all of you for your interest in serving the public and for listening to my concerns. I ask you to vote yes for house bill 1447.

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tion of government itself — specifically, government employees. Initiatives such as electronic procurement, Web-based document management, electronic forms, and the like are all leveraging the Internet to simplify the operational demands of government.

Although Online Services and Government Operations face different stakeholders — one outward and one inward — they should not be thought of as independent initiatives. For example, the deployment of an application for online business license renewal might allow businesses to enjoy automatic notification of license expiration as well as a 24-7 renewal option free of paper work. Government employees, whose job it is to enforce accurate license renewals and timely payment, would clearly benefit as well.

"Adding people is very expensive, there's nothing earth shattering about it. That's why people in the commercial sector have gone to using the Web because you can set up a self-service module that gives people a tremendous range of options that really didn't exist before."

What e-Government is Not

Terms such as "data resale" and "digital democracy" are also frequently mentioned within the same breath as "e-government." Neither of these terms, however, observes the principle of leveraging the Internet to simplify government. Data re-sale, which includes such common practices as the sale of DMV records to insurance companies, has only gained association with e-government since governments began using it as a source of funding for online initiatives (such as portal development). Digital democracy is, in fact, "e-politics" rather than e-government; that is, leveraging the Internet to simplify the election process (rather than government).

It is important that these terms not muddle the objectives of e-government. Consider the issue of data resale. Some governments have recently bundled data reselling into their e-government initiatives as a means of funding the development costs. The result, however, is a rather Faustian bargain for the public: simplified services via the Internet offered not at a dollar cost but rather in exchange for private citizen information sold to commercial entities.

The underlying flaw of this approach is that the online services are only beneficial if citizens use them, and they will only use them if they trust the services implicitly. The trust factor is the key to success: a recent survey of 1,000 U.S. citizens found that an overwhelming 94 percent would be "very concerned" or "extremely concerned" if their governments were to fund e-government initiatives in such a manner.

Creating Efficiency Through e-Government

Much of the interest in e-government is owed to the following theory: electronic government improves the "business of government" by creating more efficient and convenient constituent-to-government, business-to-government, and even government-to-govern-

WHAT KEEPS THEM UP AT NIGHT: "Just trying to keep up with this thing," Trimble said. "The excitement of what we're doing keeps me up at night. It's an incredible space and an incredible time to be doing it."

CONTACT: ezgov.com, 1375 Peachtree Street, Suite 575, Atlanta, GA 30309; 404-888-9801; FAX 404-888-0245; www.ezgov.com.

Evelina Shmukler covers the Atlanta area for dbusiness.com. E-mail her with story ideas or



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Testimony in Opposition To House Bill 1447

Buell Reich, ND Credit Union League

Mr. Chairman and members of the Industry, Business, and Labor Committee, I am Buell Reich, and I am president of the North Dakota Credit Union League.

Credit unions support the Legislature's concern for privacy rights. Various bills and a proposed constitutional amendment have been introduced by legislators to protect and deal with privacy concerns.

Presently there are numerous federal privacy laws including the Gramm-Leach-Bliley Act. North Dakota also has a privacy law. The concerns of credit unions in North Dakota are several:

1. Which laws apply to North Dakota credit unions? Are we subject to Gramm-Leach-Bliley, or are we subject to North Dakota law or some hybrid of both? Neither the North Dakota Banking Department nor the Federal Trade Commission has provided us with an answer. SB 2191 would solve this problem. SB 2191 would make North Dakota credit unions subject to the provisions of Gramm-Leach-Bliley.
2. HB 1447 addresses privacy information related to consumers but does not address commercial accounts. The result is that commercial accounts would be "opt-in." If a commercial account did not return an "opt-in" consent, financial institutions would be faced with the choice of violating the law or closing the accounts. That would be a most undesirable result.
3. HB 1447 will result in a competitive disadvantage to North Dakota financial institutions with the "opt-in" provisions, since those provisions would only apply to financial institutions located in North Dakota. Those entities which

offer financial services and products via the mail, telephone, the Internet, or other media or technological methods would not be subject to HB 1447.

4. The prohibition in Section 2 of HB 1447 against disclosing non-public personal information will have a very negative impact on the smaller credit unions that rely on affiliates and non-affiliated third parties for data processing; check processing; Visa credit card services; printing of monthly, quarterly, and annual statements; insurance and related matters. Because of the size of most credit unions in North Dakota, they are financially unable to perform those services in-house—it would just be cost-prohibitive plus requiring levels of expertise that are not available in normal credit union staff employees. This is our greatest concern.

I don't pretend to be an expert on privacy rights or existing privacy law. The issue is very complex and the laws and the proposed solutions many.

Senate Concurrent Resolution 4019 proposes an interim study of privacy issues by a legislative commission, which will report to and make recommendations to the next legislative assembly. Since Gramm-Leach-Bliley goes into effect on July 1, 2001, the legislature will be able to study the impact that Gramm-Leach-Bliley has on North Dakota citizens. Therefore, the North Dakota Credit Union League respectfully requests that this committee support the interim study and avoid pursuing privacy legislation until the interim study has been completed.

Testimony in Oposition to H.B. 1447
Joel Gilbertson, Executive Vice President
Independent Community Banks of North Dakota

Mr. Chairman, I am Joel Gilbertson, Executive Vice President and General Counsel for the Independent Community Banks of North Dakota. ICBND is a state association of 94 banks located in communities of all sizes located all over the state.

We have not had a big problem with the present law. All was fine and then Gramm Leach Bliley came along. There are many other Congressional bills that have been filed as well.

We have shaken up the privacy "globe" a lot. There is much public interest and there are many bills. We do have federal legislation that has passed and affects every state in some respect. We still don't know what the exact effect will be in North Dakota because of our unusual predicament. We want to let our community banks read all of the regulations sent out after Gramm Leach Bliley and know that if they meet those requirements they are ok.

Other than that, we want to let things settle. Let's wait until the session is over and embark on a two year extensive study by those that are interested and take another look at the environment in two years. We support S.C.R. 4019, which does just that.

We must urge a Do Not Pass on this bill. We want to take a look at what is happening around the country and then jump into this task. Although rushing into implementation of new state laws may have some appeal, we believe the wiser course is to let the dust settle and undertake a comprehensive but deliberate study of this significant, but highly complex public policy matter.

consumer privacy vs. financial services: striking a balance can be tricky

March 2, 2000 (*Finance and Commerce*)

By Karen L. Grandstrand, Banking

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State legislatures should not feel pressured to quickly enact state privacy laws to protect financial data. Late in 1999, Congress passed a new privacy law that attempts to protect consumer privacy without overwhelmingly burdening financial institutions or consumers. Striking this balance is tricky and we do not know whether the new federal law has it right. Only time will tell – we need to operate under the new law to gain an understanding of its practical implications. Adding laws in 50 states, on top of an untested federal law, is not the way to approach this important public policy issue.

The federal financial modernization legislation, known as the Gramm-Leach-Bliley Act, includes a new privacy law, captioned Disclosure of Nonpublic Personal Information. This law limits the instances in which a financial institution may disclose nonpublic personal information about a consumer to nonaffiliated third parties. It also requires a financial institution to disclose to all of its customers the institution's privacy policies and practices with respect to information sharing with both affiliates and nonaffiliated third parties.

The federal law applies to any company engaged in financial services – whether or not the company is affiliated with a bank. Thus, the law not only covers banks, thrifts, and credit unions, it covers other companies that traditionally have not been considered financial institutions.

As explained by the Federal Trade Commission's ("FTC") proposed rule of February 24, personal property appraisers, real estate appraisers, retailers, career counselors for employees in financial occupations, real estate settlement services, manufacturers of computer hardware and software, and travel agencies operated in connection with financial services are considered financial institutions under the privacy act.

The FTC rule further explains, however, that while many of these entities come within the broad definition of financial institution, they will likely not be subject to many of the privacy rules because they do not provide services or products to "consumers." The law does not cover the provision of products or services to businesses. Also, not every product or service that a financial institution provides to a consumer is a financial product. Thus, a department store that issues its own credit card directly to consumers provides a financial service (credit) to consumers who use the card; but when it sells merchandise, it provides a nonfinancial product or service.

The law imposes three basic requirements:

- Financial institutions must provide an initial notice to consumers

about their privacy policies, describing the conditions under which they may disclose nonpublic personal information to nonaffiliated third parties and affiliates. Institutions must provide this notice before disclosing the information to nonaffiliated third parties.

- Financial institutions must provide annual notices of their privacy policies to consumers with whom they establish a customer relationship.
- Financial institutions must provide a method for consumers to "opt out" of disclosures to nonaffiliated third parties.

The law does contain a number of exceptions. Financial institutions can disclose information, without giving consumers the ability to prohibit disclosure, in recognition of the need for financial institutions to disclose information to process and service transactions, prevent fraud, comply with other laws, respond to judicial process, and the like.

The law also recognizes that smaller financial institutions may have a greater need to rely on nonaffiliated third parties to provide products and services to their customers. Unlike large banks, small banks do not typically own their own insurance agencies or securities firms. They contract with other companies to provide these services to their customers. The law recognizes this marketplace reality, and allows an institution to provide information about a consumer to a nonaffiliated third party to perform services (which may include joint marketing) or functions on the bank's behalf. This can only be done, however, if the consumer is given notice and if the financial institution enters into a confidentiality contract with the third party.

Will this new federal privacy law work? We don't know. It is new and untested. No one knows whether the law will offer the right protections without unduly burdening financial institutions and consumers. While all of us, as consumers, want some amount of privacy in our lives, we also want to be able to conduct our financial transactions without delays and excessive paperwork. Crafting a law to accomplish this balance is not easy.

The new federal law is effective as of November 13, 2000. In the meantime, eight different federal agencies are drafting regulations to clarify its scope. These regulations are due to be final by May 12, 2000.

While it may be politically popular to rush and implement state laws in each of the states, is this the best way to approach this significant, highly complex, public policy matter? I think not. Let's see how the federal scheme is working before adding potentially inconsistent and costly state laws.

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February 11, 2001

Testimony of Patrick J. Ward in Opposition to HB 1447

Dear Chairman Berg and members of the House IBL Committee:

This testimony is submitted in opposition to HB 1447.

I represent the North Dakota Domestic Insurance Companies, State Farm Insurance Company, the National Association of Independent Insurers, and the American Council of Life Insurers. All of these companies and organizations oppose HB 1447. We urge a do not pass from this Committee.

HB 1447 is certainly well-intentioned. It seeks to protect the privacy of citizens of North Dakota with respect to sharing of their financial information by companies in possession of that information. However, when considered together with other privacy legislation proposed this session and with numerous federal laws in the area of privacy, it goes way too far and disrupts the uniformity which would be achieved by less intrusive state regulation in this area.

The Senate has already passed SB 2127 and it has been forwarded to this Committee for consideration. SB 2127 gives the Insurance Commissioner authority to adopt regulations at least as strict as the National Association of Insurance Commissioners guidelines. SCR 4019 is a concurrent resolution directing the Legislative Council to study medical and financial information privacy.

Testimony of Patrick J. Ward in Opposition to HB 1447

February 11, 2001

Page 2

Many of the companies that I represent do business in several states. A North Dakota rule which is significantly different from other state and federal rules would disrupt the attempt to achieve uniformity by the NAIC and other regulators and would hinder the ability to do business in North Dakota.

Gramm-Leach-Bliley requires that by July 1st of this year, insurers and financial institutions must:

1. Disclose to all existing and new customers each year policies for collecting and sharing nonpublic information about customers.
2. Give customers the right to "opt out" of disclosures of their non-public information to non-affiliated third parties for marketing purposes.
3. Not disclose account access information of customers to third party marketers.
4. Abide by new standards to protect the security and confidentiality of customers' nonpublic personal information.

This already creates a significant burden of compliance on these companies. Due to the July 1st deadline and the volume of notices necessary, financial institutions are diligently preparing those notices as we speak.

Other federal laws are also quite involved in this area. The Fair Credit Reporting Act (FCRA) requires customers be given the opportunity to opt out of having personal information shared by affiliated companies. The Health Information Portability and Accessibility Act (HIPAA) is a regulation of the Department of Health and Human Services. It is 150 pages long. It protects privacy of health information. The implementation deadline for HIPAA is 2003. NAIC and NCOIL have each adopted model regulations. There has been activity in other states also. At this point, no state has gone as far as HB 1447. There is a website to update the activity of other states in this area, www.naic.org/s/privacy.htm.

Testimony of Patrick J. Ward in Opposition to HB 1447

February 11, 2001

Page 3

We believe it is essential that states adopt privacy requirements consistent with GLB. If fifty different states pass fifty different sets of rules, it will result in confusion for consumers as well as for insurers, banks, and other businesses that do business in more than one state. Such a patchwork of state laws would also create additional administrative costs for insurers. Those costs would eventually be passed on to consumers.

There are two significant problems with HB 1447. One is the opt in requirement. Opt in would be much more costly and difficult to implement than opt out for financial institutions. It would actually lead to more solicitation of consumers rather than less. Financial institutions would have to make multiple contacts with customers to ascertain their wishes. Opt in would force marketers to use a blanket approach on direct mail offers because they would have a more difficult time identifying target consumers which means more junk mail, not less. An opt in approach would also likely increase fraud because it would restrict information sharing available to insurers now to identify and combat fraud. Presently such measures are estimated to consume as much 25¢ of every premium dollar collected.

Property and casualty insurers typically do not collect or use a customer's health information unless it is relevant in settling a claim, such as paying hospital bills for injuries sustained in an auto accident. P&C insurers are not opposed to keeping health information private. However, P&C insurers do oppose having to establish multiple notice and tracking systems to implement conflicting requirements in the models and federal health regulations. This is another area where insurance fraud is rampant. Consistency among state and federal laws is key to avoiding additional cost and confusion for consumers and insurers.

The significant second problem with HB 1447 is that it does not allow companies to even share with their affiliates, which is allowed by GLB and other privacy regulations implemented to date.

Testimony of Patrick J. Ward in Opposition to HB 1447

February 11, 2001

Page 4

In conclusion, HB 1447 simply goes too far and is not necessary. GLB becomes effective July 1st. Companies are already scrambling to comply with its notice and opt out requirements. North Dakota has taken appropriate action with SB 2127 to regulate insurance companies pursuant to and consistent with GLB. Further study or consideration of this issue should be left to the Legislative Council through SCR 4019.

We respectfully request that this Committee issue a strong Do Not Pass on HB 1447.

GRAMM-LEACH-BLILEY ACT (GLB) AND OTHER PRIVACY REGULATIONS

Under Gramm-Leach-Bliley, by July 1, insurers and financial institutions must:

1. Disclose to all existing and new customers each year our policies for collecting and sharing nonpublic information about our customers.
2. Give customers the right to "opt out" of disclosures of their nonpublic information to non-affiliated third parties for marketing purposes.
3. Not disclose account access information of customers to third party marketers.
4. Abide by new standards to protect the security and confidentiality of our customers' nonpublic personal information.

* Due to the deadline of July 1 and the volume of notice necessary, financial institutions are diligently preparing those notices at this time.

THE FAIR CREDIT REPORTING ACT (FCRA)

Requires that customers be given the opportunity to "opt-out" of having personal information shared among State Farm-affiliated companies each year.

THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPPA)/ HHS REGULATION

Under this recently issued 150-page Health and Human Services regulation and HIPPA, privacy of health information is protected. The implementation deadline for the HIPPA regulation is 2003.

TWO MAJOR PROPOSALS FOR PRIVACY REGULATION: NAIC AND NCOIL

The National Conference of Insurance Legislators has adopted a model regulation that does not address health information. It does not require "opt in" from the customer or consumer.

The National Association of Insurance Commissioners has adopted a model regulation as well.

OTHER STATES' ACTIVITY THUS FAR

For an update on states' activity thus far, go to www.namic.org/s/privacy.htm. At this point, no state has gone as far as HB 1447.

Glossary of Terms

The following terms are used throughout this document:

"Affiliate" is a company that controls, is controlled by, or is under common control with another company. Under the Gramm-Leach-Bliley Act (GLBA), insurers and banks can become affiliates.

"Consumers" are individuals who are seeking to obtain, obtaining, or have obtained a product or service from an insurer. For example, an individual who has submitted an application for insurance is a consumer of the company to which he or she has applied, as is an individual whose policy with the company has expired.

"Customers" are consumers with whom insurers have on-going relationships. Policyholders are customers, for example.

"Insurers" are insurance companies, insurance agents, or other entities that are required to comply with the privacy regulation.

"Nonaffiliated third party" means a company that is not affiliated with an insurer.

"Opt in" means granting affirmative consent to the disclosure of protected information by an insurer. It only applies to health information. An insurer can share protected health information with other entities – including its affiliates or third parties – only if the customer or consumer opts in.

"Opt out" means prohibiting the disclosure of protected information by an insurer. It only applies to financial information. An individual can opt out of the disclosure of his or her protected financial information to third parties.

TESTIMONY OF MARILYN FOSS OPPOSING HB 1447

Chairman Berg, members of the House IBL committee, my name is Marilyn Foss. I am general counsel for the North Dakota Bankers Association (NDBA).

First, I want to start out with an unequivocal statement: **NDBA member banks care about the privacy of their customer's financial information and are spending considerable amounts of money to protect it.** That was true without GLB and it is even more true with GLB and its implementing regulations. As we speak our members are developing written privacy policies and drafting notices to consumers 1) which explain the policies and, 2) tell the consumers how to "opt out" if they don't want a financial institution to be able to share certain information with non-affiliated third parties. Under GLB regulations, banks will be sending written notices to consumers before July 1, 2001. After that, banks will be giving the written notice to consumers whenever a consumer customer relationship is established. Then, every year, consumer will again be reminded of the details of the policy and how to exercise their consumer rights. The notice to consumers must be both clear and conspicuous.

I want to be straightforward about another thing. . . we think North Dakota's current customer information law, Ch. 6-08.1, needs to be changed. We are supporting SB 2191 to accomplish those changes. If HB 1447 is amended and passes both houses of this legislative assembly and SB 2191 also passes both houses, the changes we seek for North Dakota banks are achieved. That's not necessarily apparent from the face of the

amendments, but the committee should be aware of it. And still, NDBA opposes this bill. Why ?

We believe the basic rules which apply to the disclosure of information by *financial service providers, whether they be banks or other financial institution, insurance companies or securities firms*, must be fundamentally the same for financial service providers which are at home in North Dakota and those with home states other than North Dakota because our banks and other financial service providers are competing with each other and with providers who offer their services and products through the mail, over telephone lines and other national and regional media, and over the Internet. When it gets right down to it, HB 1447, even as amended, subjects North Dakota financial service providers to different consent requirements than those which apply to providers from outside North Dakota. HB 1447 intends to apply "opt-in" as the standard that applies to all North Dakota financial service providers, even though no state legislature which has considered the issue since GLB has chosen to impose opt- in on their financial institutions.

With our heightened sensitivity to the issue in general and to the details of Ch. 6-08.1 we have also discovered a problem which needs to be addressed and which isn't - by either GLB or HB 1447. GLB includes several categories of information sharing which reflect contemporary banking practices or protect the ability of small banks to offer a broad range of products and to thereby effectively compete with larger financial institutions. These are the service provider exception, the joint marketing exception and a specialized exception for private label credit cards. The service provider exception recognizes banks use third party providers for

things like data processing, preparing 1099's, preparing account statements, and things of that nature. The joint marketing exception permits small banks to enter agreements with third parties to market the bank's financial products. The private label credit card exception comes into play when a retailer offers a credit card under its name, but the substantive transaction is a credit card transaction through a bank. Larger banks engage in these activities through affiliates, but smaller institutions must rely on third party providers and purchase the expertise to perform these functions in an efficient and cost effective manner. Under GLB there is no consumer right to "opt out" from information exchanges under these three categories. Current North Dakota law doesn't include exceptions for these categories. With GLB it appears these exceptions cover consumer accounts, but not commercial accounts. This gap must be corrected. If it's not, North Dakota banks and credit unions will be in the position of asking commercial customers to return written consents for the information sharing which is required to service accounts. If the consents aren't returned, and many won't be, the banks and credit unions will be faced with the choice of violating the law or closing the accounts. This is a very subtle point and it was recognized only very recently - by the regulators and by NDBA. HB 1447 leaves this gap open.

The question of how information should be used is one which has arisen largely because of technological change and telemarketing. We at NDBA agree that the subject should be studied in a forum where all sides of the issue can be considered and where the responses of other states and the federal government can also be considered. For that reason we are supporting and will be testifying in favor of SCR 4019 which proposes an

interim study of "privacy" issues by a legislative commission which is directed to report to and make recommendations to the next legislative assembly.

So far as I can tell from the sources I have reviewed, no state legislature has enacted post GLB legislation to require an 'opt-in' where GLB provides for an "opt-out". We don't think North Dakota should be the only state to do so and we don't think our banks and credit unions should operate at a disadvantage to their out of state competitors .

GIBSON, DUNN & CRUTCHER LLP

THE GRAMM-LEACH-BLILEY ACT

P.L. 106-102

FINANCIAL SERVICES MODERNIZATION

Working Summary No. 4

WASHINGTON REPORT ON FINANCIAL INSTITUTIONS

**Gibson, Dunn & Crutcher LLP
Financial Institutions Group
Washington, D.C.
www.gdclaw.com**

December 16, 1999

fall within the opt-out notice requirement, and a clarification that the term "nonpublic personal information" does not encompass lists or descriptions derived without using any nonpublic personal information.

Smaller financial institutions fought hard in Conference for the expansion of the notice and opt-out requirements to include affiliates of financial institutions as well as third parties, arguing that permitting information to be freely shared among affiliates places them at a competitive disadvantage. Although they were supported in this effort by consumer groups, privacy advocacy groups and initially, the Administration, the compromise ultimately did not expand upon the structure agreed to in the House. The result of their effort is hortatory language in the Conference Report urging that "agencies and authorities described in section 504(a)(1) should take into consideration any adverse competitive effects on small commercial banks, thrifts and credit unions."

As an accommodation to certain software manufacturers, the GLB Act also includes hortatory language allowing that agencies and Departments may permit by regulation disclosures in an "encrypted, scrambled, or similarly coded form".

B. Overview

The Title V privacy provisions of the GLB Act now include the following:

- A new "affirmative and continuing" obligation to safeguard privacy applicable to all firms that engage in financial services (not just banks or traditional finance service providers), as well as to firms engaged in activities "incidental" to financial activities.
- A requirement that each financial regulator establish "standards" to implement this privacy obligation.
- A general privacy disclosure to consumers about the institution's privacy policy, including its policies concerning information sharing with affiliates and third parties, which is required upon opening an account or beginning a relationship and reiterated not less than annually. A separate opt-out disclaimer with respect to the transfer of information to unaffiliated third parties also upon the opening of an account [or beginning of a relationship] and not less than annually thereafter.
- A prohibition against transfers of "nonpublic personal information" to unaffiliated third parties, unless the possibility of such transfers and the option to opt-out are disclosed and the customer has been given the opportunity to "opt-out".
- Numerous specific exceptions that permit disclosures to third parties without providing notice or opportunity to opt-out.
- A mandate that the bank regulators, the NCUA, the Treasury and the SEC, in consultation with the FTC and representatives of state insurance regulators,

engage in separate "coordinated" rule-makings to detail how the two disclosures should be provided and what they should include.

- A requirement that the Treasury Department study information sharing practices among financial institutions and their affiliates.
- A prohibition against the practice of "pretext calling" that includes criminal sanctions.

C. Duty to Protect Consumer Information

Sec. 501 (pp. 99-100)

The privacy provisions of the GLB Act impose on each "financial institution" an "affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information." Section 501(a). To accomplish this goal, the GLB Act requires each functional regulator to issue "appropriate standards for the financial institutions subject to their jurisdiction" to insure "the security and confidentiality of customer records and information;" to protect against "any anticipated threats or hazards to the security or integrity of such records;" and "to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer."

This is a broad mandate that each functional regulator will have to interpret, and the Act provides no means for ensuring consistent interpretations. Moreover, it is not clear whether the term "standards" necessarily requires rulemaking. It is quite possible that a regulator could issue a loose directive to protect the security and confidentiality of customer records, while another could issue detailed regulations covering a wide range of activity.

The term "consumer" is defined as "an individual who obtains, from a financial institution, financial products or services which are to be used primarily for personal, family, or household purposes, and also means the legal representative of such an individual."

D. Opt-Out for Third-Party Sharing

Sec. 502 (pp. 100-102); Sec. 509(5) (p. 107-108)

As noted above, the most publicized and controversial part of the privacy provisions of the GLB Act is its requirement that financial institutions may not disclose "nonpublic personal information" to nonaffiliated third parties *unless* they provide a specific opt-out notice to consumers and the opportunity to opt-out prior to such third party sharing. The Act provides that such notice must be provided "clearly and conspicuously," in "writing or in electronic form or other form permitted by regulation." The notice must provide consumers with an explanation of how to direct that their information not be disclosed, and an opportunity to exercise this option prior to disclosure to an affiliated third party.

"Nonaffiliated third party" is defined to mean any entity that is not an affiliate of, or related by common ownership or affiliated by corporate control with, the financial institution.

1. General Exception for Marketing and Servicing
Sec. 502(b)(2) (p. 100)

The GLB Act provides a general exception for providing nonpublic personal information to third parties to perform services or functions on behalf of the financial institution intended to cover transfers necessary for joint marketing arrangements, or to facilitate a third party servicing of consumer accounts. However, these transfers must be fully disclosed to consumers, and financial institutions must enter into contractual agreements with the third parties that require the third parties to "maintain the confidentiality of such information."

2. Specific Exceptions
Sec. 502(e) (p. 101), Sec. 509(7) (p. 107)

The GLB Act further provides a number of specific exceptions for circumstances that do not require that any notice be given to consumers prior to disclosure of nonpublic personal data to some third parties. However, if any third party disclosure does not fall completely within one or more of these exceptions, then the notice and opportunity to opt-out must be provided. These include the following circumstances:

- Transfers "as necessary to effect, administer, or enforce a transaction requested or authorized by the consumer" in connection with servicing or processing a financial product or service, maintaining or servicing the consumer's account, or a proposed or actual securitization, secondary market sale or similar transaction. ("As necessary to effect, administer, or enforce the transaction" is defined in detail in Section 509(7).)
- Transfers made with the consent or at the direction of the consumer.
- Transfers made to protect the confidentiality or security of a consumer's records, to protect against fraud, unauthorized transactions, for required institutional risk control or other liability, or for resolving customer disputes or inquiries.
- Transfers to persons holding a beneficial interest relating to the consumer, or to persons acting in a fiduciary or representative capacity on behalf of the consumer.
- Transfers to provide information to an insurance rate advisory organization, guaranty fund or agency, a credit rating agency, and to permit the assessment of the financial institution's compliance with industry standards.
- Transfers to the financial institution's attorneys, accountants and auditors.
- Transfers permitted or required under other laws and in accordance with the Right to Financial Privacy Act of 1978, to law enforcement agencies (including federal functional regulators; the secretary of the Treasury with respect to the Bank Secrecy Act, state insurance authorities or the Federal Trade Commission), self-

regulatory organizations, or for an investigation on a matter related to public safety.

- Transfers to a consumer reporting agency, and transfers from a consumer report produced by a consumer reporting agency in compliance with the Fair Credit Reporting Act, in accordance with interpretations of such Act by the Board of Governors of the Federal Reserve System or the Federal Trade Commission.
- Transfers in connection with a sale, merger, transfer, or exchange of all or a portion of the business or operating unit of the financial institution if the disclosure concerns only customers of that business or unit.
- To comply with federal, state, or local laws, rules, and to comply with civil, criminal, or regulatory investigations, federal, state or local summons or subpoenas or to respond to judicial process of government authorities with jurisdiction over the financial institution under these authorities.

3. Limits on Reuse of Information
Sec. 502(c) (p. 100)

Unaffiliated third parties that receive nonpublic personal information from a financial institution for any purpose (including pursuant to the exceptions set forth above) may only disclose such information if "such disclosure would be lawful if made directly to such other person by the financial institution." This effectively makes third parties that receive nonpublic personal information from financial institutions subject to the these provisions of the law.

4. Prohibition on Sale of Account Information for Telemarketing
Sec. 502(d) (pp. 100-101)

The GLB Act includes a provision to address the kinds of abuses involving the sale of customer account information to third party telemarketers that have recently received so much publicity. Disclosures of account numbers or similar access numbers or credit card numbers or access codes information to third parties for use in telemarketing, direct mail marketing or other marketing through electronic mail is expressly prohibited.

E. Disclosure of Privacy Policy and Procedure
Sec. 503 (p. 102)

Each financial institution is required by the GLB Act to make certain required disclosures of its privacy policies to each consumer, both at the time of establishing a customer relationship and then "not less than annually" during the continuation of the relationship. These disclosures, which must be clear and conspicuous, may be made either in writing or in electronic form or other form authorized by regulation, must set forth the institution's privacy policies and practices and must include:

- The policies and practices with respect to disclosures to affiliates and to nonaffiliated third parties including the categories of persons to whom information may be disclosed.
- The institution's policies with respect to disclosures of nonpublic information related to former customers.
- General policies for protecting the confidentiality and security of nonpublic personal information of consumers.
- The categories of nonpublic personal information that the institution collects.
- Disclosures required, if any, under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act.

While this disclosure requirement is independent of the opt-out disclosure requirement in Section 502, it appears that these disclosures could be combined, if the combined notice complies with the requirement that notice be provided when the customer relationship is established (and then not less than annually) and provides sufficient opportunity for customers to opt-out.

F. Rulemakings to Develop Federal Privacy Standards
Sec. 504 (pp. 102-103)

The GLB Act directs the federal bank regulators, the NCUA, the Treasury, the SEC, and the FTC, *after consultation* with representatives of the State insurance authorities designated by the NAIC, each to prescribe regulations to carry out the privacy provisions. This broad authorization to promulgate "such regulations as may be necessary to carry out the purposes of this subtitle" could encompass additional details about disclosures and notice to consumers, as well as elaboration on any of the exceptions to the third-party opt-out requirement. The GLB Act specifically authorizes the creation of additional exceptions to the notice and opt-out provisions in the rulemaking "as are deemed consistent with the purposes of this subtitle." It specifies that these rulemakings be undertaken in accordance with the Administrative Procedures Act, and that they be issued in final form not less than six months after the date of enactment.

The Act also requires that the several agencies and departments engaging in rulemaking "consult and coordinate" with each other to assure "to the extent possible, that the regulations prescribed by each such agency and authority are consistent and comparable with the regulations prescribed by other agencies and authorities."

G. Enforcement
Sec. 505 (pp. 103-104), Sec. 506 (pp. 104-105)

The GLB Act provides that the privacy provisions of the Act will be enforced by the Federal functional regulators, the state insurance authorities, and the FTC with respect to financial institutions and "other persons" subject to their jurisdiction. It also amends the FCR

Act to clarify that the federal banking agencies have the authority to issue regulations "as necessary" to detect and enforce privacy violations that may occur during the transfer of, and process of correcting information given by banks to reporting agencies.

H. Relation to State Privacy Laws

Sec. 507 (p. 105)

The GLB Act provides that the privacy provisions of the Act shall not preempt, alter or affect any state law or regulation, except to the extent such laws or regulations are inconsistent with the provisions of the Act and then only to the extent of the inconsistency.

Section 507 (b) further explicitly states that state law will not be considered to be inconsistent with federal law for these purposes if the protection such state –

"statute, regulation, order, or interpretation affords any person is greater than the protection provided under this subtitle...as determined by the Federal Trade Commission, after consultation with the agency or authority with jurisdiction under section 505(a) of either the person that initiated the complaint or that is the subject of the complaint, on its own motion or upon the petition of any interested party."

This provision was adopted in Conference with the support of consumer groups and privacy advocates. It may effectively undermine the force of Title V as a national standard, and cause the privacy debate to resume in various state capitals. This was the stated intention of its supporters, and state attorney generals may examine ways to correct what they perceive as the inadequacies of the federal law.

However, an obscure provision of the Fair Credit Reporting Act ("FCR Act") could prove to be an obstacle to state action on the privacy issue with respect to information sharing among affiliated institutions. Section 1681 of the FCR Act states "no requirement or prohibition may be imposed under the laws of any State with respect to the exchange of information among persons affiliated by common ownership or common corporate control." It is not clear whether this provision, which has not been tested in court, will impede efforts by the states to legislate in this area.

I. Study of Information Sharing Among Financial Affiliates

Sec. 508 (pp. 105-106)

In lieu of any restrictions on information sharing among affiliates of FHCs, the GLB Act directs the Treasury, in conjunction with the federal functional financial regulatory agencies and the FTC, to conduct a comprehensive study of current information sharing practices among financial institutions and their affiliates and unaffiliated third parties, and to report to Congress with its findings and recommendations for legislative or administrative action by January 1, 2002. In conducting this study, the Treasury is directed to consult with representatives of the state insurance authorities, etc. However, in his statement at the signing of the bill, President Clinton announced that he was directing the National Economic Council to work with Treasury and Office of Management and Budget to complete the study and recommendations next year.

J. Definitions
Sec. 509 (pp. 106-108)

1. "Financial Institution"

The definitions make clear that these provisions are intended to be applied to all institutions participating in the delivery of financial services to customers. The term "financial institution" is defined to be "any institution the business of which is engaging in financial activities as described in new Section 4(k) of the Bank Holding Company Act of 1956." Specifically excluded from the definition of "financial institution" are persons or entities subject to the jurisdiction of the CFTC, the Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971.

2. "Consumer"

It defines a "consumer" as "an individual who obtains, from a financial institution, financial products or services which are to be used primarily for personal, family, or household purposes, and also means the legal representative of such an individual." The definition makes explicit that Section 502 and 503 privacy notice provisions apply only to retail transactions with individuals, and do not apply to corporate or business data or business customers.

K. Pretext Calling
Sec. 521-527 (pp. 109-113)

Subtitle B of Title V incorporates the provisions protecting consumers from the "identity fraud" that had been added to the Senate bill by Senator Sarbanes. The Act provides civil and criminal penalties for those who obtain personal information by fraud or deception from either an individual or a financial institution. The Act also grants new enforcement authority to the FTC.

The Act specifically prohibits any person from obtaining or attempting to obtain customer information relating to another person by making a "false, fictitious, or fraudulent statement or representation" to an employee or agent of a financial institution, a customer of an institution, or through the use of a forged or false document to such an institution. Moreover, requesting another person to obtain personal financial information in a manner that violates this section is also a violation under the Act. The Act excepts law enforcement agencies and insurance institutions investigating insurance fraud from the reach of these provisions, and provides exceptions for financial institutions in certain circumstances including testing security procedures, investigating allegations of misconduct on the part of an employee and recovering customer information of the institution which was obtained or received by another person.

The Act provides that the identity fraud provisions will be enforced by the FTC "in the same manner and with the same power and authority as the Commission has under the Fair Debt Collection Practices Act." Sec. 522(a) The federal banking regulators are also authorized to enforce compliance by institutions under their respective jurisdictions.

Section 523 of the Act provides for criminal penalties for knowing and intentional violations, and permits authorities to double fines for violations involving more than \$100,000 in a twelve-month period.

Like the other privacy provisions in Title V, the pretext calling provisions in Section 524 will be preempted by state laws that afford greater protection as determined by the FTC and the agency with jurisdiction over the complaint.

Each federal financial institution regulator is required to review its regulations and guidelines to determine whether revisions are necessary to protect against identity theft. Moreover, the Act requires the GAO, in consultation with the federal financial service regulators to report to Congress within 18 months of the date of enactment on the efficacy and adequacy of the remedies provided, including recommendations for change. Each of the federal financial service regulators must also report to Congress annually on the number and disposition of all enforcement actions related to identity theft.

L. Effective Date

Sec. 504(a)(3) (p. 103), Sec. 510 (p. 108)

The Act specifies that final rules must be issued no later than six months following enactment (May 12, 2000). The privacy provisions of this GLB Act take effect six months after the date that the federal functional regulators, the Treasury and the FTC promulgate the rules required under Section 504(b).

XVII. COMMUNITY REINVESTMENT ACT

The CRA provisions of the Act were the most contentious and were the last major provision to be agreed to. The CRA issues had been highly contentious since 1998. Senator Phil Gramm blocked the passage on the Senate floor of H.R. 10 because of his objections to provisions that he believed expanded the reach of CRA. (Gramm did not become Chairman of the Senate Banking Committee until January 1999). On the other side of the aisle, the Administration and Congressional Democrats and various community groups vowed to defeat any bill that "rolled back" CRA.

A. Overview

The CRA provisions ultimately agreed to include four key features:

- **CRA compliance as a prerequisite for financial affiliations.** The final bill dropped a requirement in the House bill that FHC's "maintain" a satisfactory CRA rating to remain a FHC.
- **CRA sunshine provisions.** The Act requires full disclosure of certain "CRA agreements" between a nongovernmental person or entity and an insured DI. It further imposes detailed annual reporting requirements concerning funds received in connection with such agreements.

WELLS FARGO PRIVACY POLICY

A Guide to How We Use and Protect Customer Information

Our Pledge To You

At Wells Fargo, we value the trust you have placed in us... and we intend to continue to earn your trust each day. That's why we welcome the opportunity to describe our privacy policies and the steps we take to protect your customer information. In this brochure, you'll find details about these policies and procedures, as well as the opportunity to choose how your customer information may be shared. You'll also receive updates in the future, so you can continue to stay informed about this important issue.

This disclosure applies to consumers who have a credit card relationship with Wells Fargo Bank Nevada, N.A.

The practices and policies contained in this disclosure are subject to change, but we will communicate any material changes to you when required by applicable laws. The practices and policies contained in this disclosure replace all previous notices or statements with respect to the same subject matter.

This Is Our Pledge To You

- We are committed to protecting your privacy at all times.
- We do not share customer information with outside companies for purposes of selling their products and services to you, unless you have been given the opportunity in advance to decline this option.
- We do not share medical information provided as part of insurance applications or claims, except for the purposes you have authorized.
- We are committed to bringing you the services you need to succeed financially. If we do not offer a financial service, such as some insurance products, we may establish a joint marketing program with an outside company to offer that service to you. These programs include confidentiality agreements to protect customer information.
- We maintain security standards and procedures designed to protect customer information. We will continue to test and update our technology to improve the protection of our information about you.

Behind this pledge is a simple idea. We want you to know that you can count on us - to protect the privacy and security of your customer information, and to provide you with the responsive, professional service you deserve. The Wells Fargo name has been a trusted symbol of service and reliability for nearly 150 years. We are committed to continuing this proud tradition in the years to come, and to earning your trust - and your business - every day.

Our Policies Regarding The Collection, Use and Disclosure of Customer Information

At Wells Fargo, our goal is to provide you with all the services you will need to succeed financially. Along the way, we are committed to providing you with responsive, personalized service, and keeping you informed about new services that may be of immediate interest to you, or new benefits that can help you derive the greatest value from your Wells Fargo relationship. Customer information is at the heart of our ability to provide superior service to you. In the sections that follow, we describe the types of information that are collected, and how and why that information may be shared with others.

Please refer to the Glossary for the definitions of some important terms we use throughout this brochure.

Information Collection

The primary reason that we collect and maintain customer information is to serve you and administer your other

relationship. This information may be collected from a variety of sources, such as the following:

- Information you provide to us on applications or forms, like your income and accounts.
- Information we receive from an outside company, such as a credit bureau, providing your credit history or employment verification, or
- Information about your transactions or experiences with companies within the Wells Fargo family.

Information Use and Disclosure

Within the Wells Fargo Family

We use and share customer information within the Wells Fargo family of banks and companies for a variety of reasons, including the following:

- To protect you. The information we maintain about your customer relationship helps us identify you and helps prevent unauthorized persons from accessing your information, or your accounts or services.
 - To provide superior service. Your customer information allows us to respond quickly and efficiently to your needs - from obtaining cash through ATMs, to fast approval of your loan application.
 - To tell you about new or enhanced financial services. By understanding your relationship, we can better meet your needs and determine your eligibility for other Wells Fargo services that could be of value to you. For example, if we know that you own your own home, we might offer you a home equity loan rather than an installment loan because of the potential tax benefits.
 - To improve and develop our products and services. Every product or service we offer is designed to reflect the ways our customers actually use their accounts. This is the reason why we collect and analyze information about customer activity and history, and how we tailor new types of loans, checking, and other accounts to meet your needs.
- Within the Wells Fargo family, we may share the customer information we collect (described in the Information Collection section) with:
- Wells Fargo companies providing financial and other services, such as consumer bankers, mortgage lenders, consumer lenders, securities broker-dealers, insurance agencies, and real estate brokerage companies; and
 - Administrative and service units that perform functions such as servicing your accounts or preparing your account statements.

(continued inside)

In addition, information about trust accounts (where a Wells Fargo bank or company is a trustee or fiduciary) is subject to special protection within our affiliated family of banks and companies. This information is considered extremely confidential and is not shared for marketing or solicitation purposes without your specific consent.

With Outside Companies or Parties

When it comes to sharing information outside the Wells Fargo family, we do so only for specific purposes. We may disclose customer information to the following types of outside companies or parties:

- Financial service providers such as insurance companies or institutions that extend credit under a joint program with us, and which typically offer financial services that are different than those we provide to you. You may choose to opt out of this type of sharing by replying as instructed in this brochure;
- Non-financial companies, including companies that perform services on our behalf, such as check printers, companies that prepare account statements, or companies that help us market our own products to you; and
- Independent contractors, such as technical system consultants who program our software to help us administer our products or market our own products to you.

We do not share customer information with outside companies for the purpose of marketing non-financial products or services of those companies, unless you have been given the opportunity in advance to decline this option.

Some state laws impose separate requirements before we can disclose particular types of information about customers in those states to outside parties for certain marketing programs or other purposes.

Information Disclosed to Outside Financial Service Providers

As we stated in our Pledge to you, we do not share information with outside companies for the purpose of selling their products and services to you without giving you the opportunity in advance to decline this option (that is, to "opt out" of this type of sharing). As permitted by law, we arrange programs with outside financial service providers to offer you the benefits of "one-stop shopping" or other conveniences. In these cases, unless you exercise your choice to opt out of this type of sharing, we sometimes disclose the following categories of limited customer information with outside financial institutions with which we have joint marketing agreements:

- Information we receive from you on applications or forms, which may include information such as your name, address, and social security number;

- Information about your transactions or experiences with banks and companies within the Wells Fargo family, which may include information such as account balance, payment history, parties to transactions, and credit card usage.

We disclose information only when we believe that this information is important for the offer, or necessary to provide you with a premium or rate quote. Our joint agreements with these companies are subject to confidentiality provisions and restrictions on using the information for any other purpose.

Information Disclosed to Outside Non-financial Companies and Independent Contractors

When outside parties perform services on our behalf, in some instances we may disclose some or all of the information that we collect, as described in the Information Collection section. This information may be provided to certain non-financial companies and independent contractors for the purposes of servicing your account or to perform marketing or similar services on our behalf with respect to products or services we provide. These companies and contractors are subject to confidentiality provisions and restrictions that prohibit using the information beyond the performance of the specified services on our behalf.

Information Disclosed to Outside Parties in Other Situations

We also disclose certain customer information to government agencies, consumer reporting agencies, and other outside parties as permitted or required by the Federal Privacy Act and other applicable laws. These disclosures are made for specific, limited purposes, such as to verify individuals' identities (reducing fraud and identity theft), to meet customer service expectations (connecting to national ATM networks for ATM card access), to verify information for prompt credit approvals (meeting customers' immediate financial needs), or to make certain information a matter of public record (recording mortgages to let prospective buyers, title insurers, and others know about property liens).

Our Policies Regarding the Collection, Use and Disclosure of Information about Former Customers

Our policies and practices regarding the collection and disclosure of information about former customers are the same as those regarding the collection and disclosure about existing customers (see the section titled Our Policies Regarding the Collection, Use and Disclosure of Customer Information) for a period of time after a customer relationship ends. Our information about former customers, however, is used less and less over time after the relationship ends and eventually is removed from our records.

Information Confidentiality and Security Information Confidentiality and Protection Practices

As we described in our Pledge to you, Wells Fargo is committed to preventing others from unauthorized access to your customer information, and we maintain procedures and technology designed for this purpose. We take several steps to protect the customer information we have about you, including the following:

- We update and test our technology on a regular basis in order to improve the protection of customer information.
- We require outside companies and independent contractors to whom we provide customer information for marketing, servicing or processing purposes to enter into a confidentiality agreement that restricts the use of the information to those purposes and prohibits independent use of the information.
- We have internal procedures that limit access to customer information, such as procedures that require an employee to have a business need to access customer information. We maintain policies about the proper physical security of workplaces and records. Our physical, electronic, and procedural safeguards comply with federal regulations regarding the protection of customer information.

Information Integrity Measures

At Wells Fargo, we work hard to ensure that the customer information we maintain is complete and accurate. We have procedures and processes for updating our customer information as well as removing old information.

We protect the integrity of customer information about you through measures such as maintaining backup copies of account data in the event of power outages or other business interruptions, using computer virus detection and eradication software on systems containing customer data, installing computer hardware and software, and employing other technical means (known as "firewalls") to protect against unauthorized computer entry into systems containing customer information.

Customer Choices Regarding Information Sharing

As described in this brochure, we are committed to protecting customer information, and to using or sharing it in ways that will improve or expand upon the services we provide to you. We also want you to know that — as a Wells Fargo customer — you have choices about how your customer information may be shared.

Please be assured that you may exercise these choices at any time. In addition, if you have opted out of information sharing previously, it is not necessary to do so again.

With Outside Companies (Option 1)

As described earlier, we may share limited customer information under special agreements with outside financial service providers in order to offer you financial products that we typically do not offer ourselves. Some of this information helps to ensure that you will receive those communications that are most likely to match your needs or situation.

If you prefer that we not share this information about you with these outside financial service providers for these purposes, you may choose to opt out. This means that you may direct us at any time not to disclose this information to these outside providers for marketing purposes. *If you wish to opt out of this type of sharing, simply notify us as described and your request will be honored.*

Within the Wells Fargo Family (Option 2)

As we have described, the banks and companies within the Wells Fargo family share some information about you among themselves to determine your eligibility for products and services to be offered to you. This helps us meet your financial needs and offer the right products and services to you.

If you prefer that we don't share your personal and credit-related information with other banks and companies within the Wells Fargo family for these purposes, you may choose to opt out. You may direct us not to disclose this information to other Wells Fargo financial institutions to determine your eligibility for their products and services. *If you wish to opt out of this type of sharing, simply notify us as described in this brochure at any time and your request will be honored by all banks and companies within the Wells Fargo family.*

In accordance with the Fair Credit Reporting Act, whether or not you have opted out, we may share identifying information and information about your transactions and experiences within the Wells Fargo family.

Additional Information About These Choices

We are committed to meeting your financial needs. We want you to know that, regardless of any opt out choice you make, there may be occasions when we will ask you if you wish your information to be shared. For example, if we are unable to offer you a particular Wells Fargo product that you applied for, we may offer you the opportunity to have us forward your application and related information to another Wells Fargo financial institution for a similar product.

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How To Notify Us

If you wish to opt out, please indicate your choice(s) as described and write in your name, address, and Social Security Number or individual Tax Identification Number. Then detach this response form and mail it to us at the following address:

Wells Fargo Operations Center, P.O. Box 5277,
Sioux Falls, SD 57117-5277.

You may also call us at 1-888-528-8460.

Account holder A

Name _____ (Please Print)

Address _____

City _____

State _____ Zip _____

Social Security Number/
Tax Identification Number _____

(Required to Process)

Account holder B

Name _____ (Please Print)

Address _____

City _____

State _____ Zip _____

Social Security Number/
Tax Identification Number _____

(Required to Process)

If you have a joint account, each account holder may select either or both options by checking the box(es) below. Any account holder can opt out on behalf of the other joint account holders. If you have previously communicated an opt out choice to us, you do not have to provide it again.

Account holder

A B

☐ ☐ Option 1: Please do not share information with outside companies for marketing purposes as described in this brochure. I understand that I will not receive information, available through special agreement between the outside company and Wells Fargo, about financial services that are not available through Wells Fargo.

☐ ☐ Option 2: Please do not share information within the Wells Fargo family, as described in this brochure. I understand that I won't receive information about new services or special offers for which I may be eligible.

Tips to Help You Protect

Your Customer Information

Assistance to Victims of Identity Theft

If you suspect that someone has had unauthorized access to your account with us, or access to your personal identifying information such as your Social Security number or credit card information, please notify your Wells Fargo service representative immediately so we can take action to protect you. In addition, you should also report the crime to your local law enforcement agency and to the Federal Trade Commission (FTC). To speak with a trained FTC telephone counselor, call toll-free at 1-877-IDENTHEFT (1-877-438-4338). Or to enter information about your complaint into a secure FTC online database, sign onto <http://www.consumer.gov/idtheft>. The site also provides links to numerous consumer education materials.

Ways to Limit Direct Marketing

You May Receive From Outside Sources

At Wells Fargo, please be assured that we will honor your opt out choice as described above. However, there are outside agencies and companies, including national consumer credit reporting agencies, which are in the business of compiling mailing lists for purchase by marketers. You may wish to have your name removed from many of these lists by following the procedures outlined below:

Direct Marketing Association and Member Companies

To remove your name from direct mail or telemarketing lists of members of the Direct Marketing Association, send a written request with your name, address, and Social Security number (if it was included in the mailing you received) to the Direct Marketing Association. The Direct Marketing Association is responsible for notifying its members (i.e., the agencies and companies that compile mailing lists) that you want your name removed from the lists they sell. Your name and address remains in their consumer exclusion files for five years.

You must register your own name and address with these organizations because they cannot process any requests from us. Be sure to include any variations of your name, address and other information that have appeared in mailings or telephone calls that you have received.

Mail Preference Service Assoc.

c/o Direct Marketing Association

P.O. Box 9008

Farmingdale, NY 11735-9008

Telephone Preference Service

c/o Direct Marketing Association

P.O. Box 9014

Farmingdale, NY 11735-9014

National Consumer Credit Reporting Agencies (Credit Bureaus)

In addition to sharing information with member companies for credit verification and fraud control purposes, national consumer credit reporting agencies may also sell or share your name and certain other information to various outside companies for marketing purposes. You may direct these agencies not to sell or share this information about you for marketing purposes -- but your financial institution may not make that request on your behalf. If you wish to direct these agencies not to sell or share this information about you for these marketing purposes, call their toll-free telephone number at 1-800-353-0809 to communicate your request.

Glossary

1. "We," "us" and "our" mean the Wells Fargo banks and companies listed on the front panel.
2. "Federal Privacy Act" means the privacy provisions in Title V of the Gramm-Leach-Bliley Act and also includes the applicable federal privacy regulations issued under that Act.
3. "Customer Information" means our personally identifiable financial information about a consumer that is considered "non-public personal information" within the meaning of the Federal Privacy Act.
4. "Wells Fargo Family" means the financial institutions, companies, and other entities that are considered affiliates of Wells Fargo & Company within the meaning of the Federal Privacy Act. This definition is broader than the Wells Fargo banks and companies referred to as "we," "us" and "our" above.
5. "Outside Parties" or "Outside Companies" means third parties that are not within the Wells Fargo family, except for joint employees and others who are defined as non-affiliated third parties under the Federal Privacy Act.
6. "Financial Products and Services" means those products and services defined as a financial product or service under the Federal Privacy Act and applicable regulations and interpretations issued under that Act.
7. "Consumer" means an individual who obtains or has obtained a financial product or service from us that is to be used primarily for personal, family, or household purposes (or that individual's legal representative) within the meaning of the Federal Privacy Act.

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NOTICE OF PRIVACY PRACTICES

UnumProvident Corporation and its subsidiaries

**UNUM Life Insurance Company of America
First UNUM Life Insurance Company
Provident Life & Accident Insurance Company
Provident Life & Casualty Insurance Company
Colonial Life & Accident Insurance Company
Paul Revere Life Insurance Company
Paul Revere Protective Life Insurance Company
Paul Revere Variable Life Insurance Company**

Congress recently passed the Gramm-Leach-Bliley (GLB) Act, which deals in part with how financial institutions treat nonpublic personal financial information. UnumProvident Corporation and its insuring subsidiaries have always been committed to maintaining customer confidentiality. We appreciate this opportunity to clarify our privacy practices for you as a result of this new law.

- As part of our insurance business, we obtain certain "nonpublic personal financial information" about you, which for ease of reading we will refer to as "information" in this notice. This information includes information we receive from you on applications or other forms, information about your transactions with us, our affiliates or others, and information we receive from a consumer reporting agency.
- We restrict access to the information to authorized individuals who need to know this information to provide service and products to you.
- We maintain physical, electronic, and procedural safeguards that protect your information.
- We do not disclose this information about you or any former customers to anyone, except as permitted by law.
- Employees share this information outside the company only as authorized by you or for a specific business purpose.
- The law permits us to share this information with our affiliates, including insurance companies and insurance service providers.
- The law also permits us to share this information with companies that perform marketing services for us, or other financial institutions that have joint marketing agreements with us.

We may also share other types of information with our affiliates, including insurance companies and insurance service providers. This information may be financial or other personal information such as employment history and it may not be directly related to our transaction with you. Consistent with the Fair Credit Reporting Act, our standard authorizations permit us to share this information with our affiliates.

You do not need to call, or do anything as a result of this notice. It is meant to inform you of how we safeguard your nonpublic personal financial information. You may wish to file this notice with your insurance papers.

If you want to learn more about the GLB Act, please visit our web sites at www.unum.com or www.unum.com/colonial, or contact your insurance professional.

We value our relationship with you and strive to earn your continued trust.

UnumProvident Corporation Complies With NAIC Privacy Regulation

During the past year, UnumProvident employees have been working diligently to ensure compliance with the federal Gramm-Leach-Bliley Act of 1999 (GLB) and a new model privacy regulation adopted by the National Association of Insurance Commissioners (NAIC). GLB requires financial institutions, including insurance companies, to adopt various privacy practices to protect the confidentiality of customers' nonpublic personal information. In September 2000, the NAIC adopted a regulation that provides state insurance regulators with a model by which to implement the privacy provisions of GLB.

The NAIC Model Regulation ("Privacy of Consumer Financial and Health Information Regulation") regulates the disclosure of nonpublic personal financial and health information. The Model Regulation requires insurers to provide initial and annual notices to customers about nonpublic personal financial information the insurer collects and discloses. Insurers must provide customers with an opportunity to opt-out of disclosures where financial information is disclosed to nonaffiliated third parties for purposes unrelated to insurance functions. The Model Regulation also requires insurers to obtain authorizations from customers prior to disclosing nonpublic personal health information for other than insurance-related purposes.

In an effort to comply with the NAIC Model, UnumProvident Corporation has drafted a "Notice of Privacy Practices." This notice will be mailed to existing customers of UnumProvident's insurance companies prior to July 1, 2001, the compliance deadline adopted by many states. In addition, the privacy notice will be available to all interested parties via www.unum.com. A copy is also printed on the opposite side of this page for your convenience. UnumProvident Corporation will not provide an opt-out to customers because it does not disclose financial information to nonaffiliated third parties for purposes unrelated to insurance functions.

Because we value your relationship with the UnumProvident companies, including Colonial, we wanted you to be aware of UnumProvident Corporation's "Notice of Privacy Practices" before it is mailed to our customers. If you have any questions regarding the privacy notice, please contact your local UnumProvident Corporation representative, or refer to the "Frequently Asked Questions" information in the Producers section of the Unum web site at: www.unum.com, or the Colonial producer's web site at: www.unum.com/colonialproducers.



JOSEPH TESTA
DIRECTOR, STATE RELATIONS
jtesta@acfi.com

VIA FAX 701/328-1997 (copy to follow via regular mail)

The Honorable Rick Berg, Chair
Committee on Industry, Business and Labor
North Dakota House of Representatives
600 East Boulevard Avenue
Bismarck, ND 58505

RE: HOUSE BILL 1447 (PRIVACY OF FINANCIAL INFORMATION)

Dear Representative Berg:

I am writing on behalf of the American Council of Life Insurers (ACLI), the nation's largest life insurance trade association, whose 426 member companies account for 80 percent of all the life insurance premiums in the United States and 85 percent of premiums in North Dakota. On behalf of our member companies, thank you for the opportunity to comment on HB 1447, legislation relating to privacy of nonpublic personal information in financial institution records.

Our member companies have always considered the use of personal information they obtain from their customers to be worthy of the strongest protections. They believe that the NAIC Privacy of Consumer Financial and Health Information Model Regulation, which the ACLI supports in its entirety, embodies those protections by providing necessary limits on use and disclosure of consumers' financial information to third parties while maintaining consistency with the regulatory structure set out for federally regulated institutions pursuant to the Gramm-Leach-Bliley Financial Services Modernization Act (GLBA).

A bill before your committee, HB 1447, would undermine the important consumer protections and nationwide uniformity provided under the NAIC Model Regulation pursuant to GLBA. As HB 1447 has been targeted for change under proposed amendments, this letter will address our members' objections to both the introduced version of HB 1447 and the proposed amendments.

HB 1447 AS INTRODUCED

The introduced version of HB 1447 (document number 10308 0300) departs significantly from GLBA in certain areas, which we note as follows:

1. Section 2 of the original bill misapplies the term "affiliates" as defined under GLBA.
 2. Section 2(1) would prohibit disclosure of nonpublic personal information by a financial institution unless the disclosure complies with section 502(b) of GLBA and not section 502 in its entirety.
 3. Section 3 would distort the notion of consent and likely would create substantial liability exposure to financial institutions operating under a normal course of business.
 4. Section 4 would impose unreasonable compliance burdens on insurers. Similar standards are not imposed, much less contemplated, by any existing regulation effectuating GLBA privacy requirements.
- The penalties proposed in section 5 may not be consonant with existing North Dakota law, particularly with

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the enforcement scheme of the state Unfair Trade Practices Act.

PROPOSED AMENDMENTS TO HB 1447

The proposed amendments to HB 1447 (document number 10308.0301) also depart from GLBA in at least three areas:

1. Section 1(6) of the proposed amendments would alter the definition of "nonpublic personal information" under GLBA to include a consumer's social security number and other information. Such inclusion would supercede the intent of the federal law and the effectuating federal and NAIC Model regulations.
2. Section 2(2) would restrict disclosure of nonpublic personal information by financial institutions to "any affiliate or nonaffiliated third party." This language would undermine GLBA Section 506 and its express deference to the Fair Credit Reporting Act (FCRA).
3. The reference to GLBA section 502(b)(2) in section 2(2) of the proposed amendments is contrary to the intent of GLBA. Section 502(b)(2) of GLBA expressly exempts disclosure of nonpublic personal information to nonaffiliated third parties that perform services or functions on behalf of an insurer, as well as pursuant to joint agreements among financial institutions.

In view of these many serious defects, we respectfully request that your committee do not pass HB 1477 in its original or amended form. We instead urge the committee to endorse Engrossed SB 2127, legislation that would authorize the Commissioner of Insurance to adopt rules on privacy that are consistent with, and not more restrictive than, GLBA in its entirety.



Joseph Testa

Cc: The Honorable Jim Poolman, Commissioner of Insurance
Mr. Patrick Ward

**CHAPTER 6-08.1
DISCLOSURE OF CUSTOMER INFORMATION**

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

1. "Customer" means any person who has transacted or is transacting business with, or has used or is using the services of, a financial institution, or for whom 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 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 banking and 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.

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

1. 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 the examination of such information by an accountant engaged by the financial institution to perform an audit.
2. 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 his duties.

3. The publication of data derived from customer information where 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 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. An 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 commissioner of agriculture 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.

6-08.1-03. Duty of confidentiality. A financial institution may not disclose customer information to any person, governmental agency, or law enforcement agency unless the disclosure is made in accordance with any of the following:

1. Pursuant to consent granted by the customer in accordance with this chapter.
2. To a person other than a governmental agency or law enforcement agency pursuant to valid legal process.
3. To a governmental agency or law enforcement agency pursuant to valid legal process in accordance with this chapter.
4. For the purpose of reporting a suspected violation of the law in accordance with this chapter.
5. For the purpose of notifying the commissioner of agriculture that a financial institution has notified a customer of the availability of the North Dakota agricultural mediation service.

6. As part of the disclosure made of deposits of public corporations with financial institutions in the security pledge schedule verified by the custodian of securities pursuant to section 21-04-09.

6-08.1-04. Consent.

1. No consent or waiver shall be required as a condition of doing business with any financial institution, and any consent or waiver obtained from a customer as a condition of doing business with a financial institution shall not be deemed a consent of the customer for the purpose of this chapter.
2. A valid consent must be in writing and signed by the customer. In consenting to disclosure of customer information, a customer may specify any of the following:
 - a. The time during which such consent will operate.
 - b. The customer information to be disclosed.
 - c. The persons, governmental agencies or law enforcement agencies to which disclosure may be made.

6-08.1-05. Government access.

1. A governmental agency or law enforcement agency may obtain customer information from a financial institution pursuant to either of the following:
 - a. The consent of the customer, in accordance with this chapter.
 - b. Valid legal process, in accordance with this section.
2. A governmental agency or law enforcement agency may obtain customer information from a financial institution pursuant to a judicial or administrative subpoena duces tecum served on the financial institution, if there is reason to believe that the customer information sought is relevant to a proper law enforcement objective or is otherwise authorized by law.
3. A governmental agency or law enforcement agency may obtain customer information from a financial institution pursuant to a search warrant if it obtains the search warrant pursuant to the rules of criminal procedure of this state. Examination of the customer information may occur as soon as it is reasonably practicable after the warrant is served on the financial institution.

6-08.1-06. Suspicion of unlawful conduct.

1. Nothing in this chapter precludes a financial institution from initiating contact with, and thereafter communicating with and disclosing customer information to, a law enforcement agency when the financial institution reasonably believes that the customer about whom such information pertains:
 - a. Is engaged in unlawful activity; or,
 - b. Is defrauding the financial institution.
2. Conviction of the customer or admission by the customer shall be conclusive of the reasonableness of the disclosure for purposes of this section.
3. The burden is on the financial institution to show that at the time the disclosure was made, the disclosure was reasonable for the purposes of this section.

6-08.1-07. Cost reimbursement. Any governmental agency, law enforcement agency, or person requiring or requesting access to customer information shall pay to the financial institution that assembles or provides the customer information a fee for reimbursement of reasonably necessary costs which have been directly incurred by the financial institution. A financial institution must deliver the customer information sought as soon as reasonably possible notwithstanding any dispute concerning the amount of reimbursement due under this section. A separate action may be maintained by the financial institution against the governmental agency, law enforcement agency, or person requesting access for recovery of reasonable reimbursement. The financial institution may not charge the state auditor for customer information requested when performing an audit; however, the financial institution may charge the entity being audited by the state auditor for the information requested.

6-08.1-08. Liability.

1. A financial institution, governmental agency, law enforcement agency, or any other person is liable to the customer for intentional violations of this chapter in an amount equal to the greater of the following:
 - a. One thousand dollars.
 - b. Actual damages caused by the disclosure of the customer information.
2. Any financial institution, governmental agency, law enforcement agency or other person that takes any action pursuant to this chapter, relying in good faith on any provision of this chapter, may not be held liable to any person for its actions.

1 **TITLE V—PRIVACY**
2 **Subtitle A—Disclosure of**
3 **Nonpublic Personal Information**

4 **SEC. 501. PROTECTION OF NONPUBLIC PERSONAL INFOR-**
5 **MATION.**

6 (a) **PRIVACY OBLIGATION POLICY.**—It is the policy
7 of the Congress that each financial institution has an af-
8 firmative and continuing obligation to respect the privacy
9 of its customers and to protect the security and confiden-
10 tiality of those customers' nonpublic personal information.

11 (b) **FINANCIAL INSTITUTIONS SAFEGUARDS.**—In fur-
12 therance of the policy in subsection (a), each agency or
13 authority described in section 505(a) shall establish appro-
14 priate standards for the financial institutions subject to
15 their jurisdiction relating to administrative, technical, and
16 physical safeguards—

17 (1) to insure the security and confidentiality of
18 customer records and information;

19 (2) to protect against any anticipated threats or
20 hazards to the security or integrity of such records;
21 and

22 (3) to protect against unauthorized access to or
23 use of such records or information which could re-

1 sult in substantial harm or inconvenience to any cus-
2 tomer.

3 **SEC. 502. OBLIGATIONS WITH RESPECT TO DISCLOSURES**
4 **OF PERSONAL INFORMATION.**

5 (a) NOTICE REQUIREMENTS.—Except as otherwise
6 provided in this subtitle, a financial institution may not,
7 directly or through any affiliate, disclose to a nonaffiliated
8 third party any nonpublic personal information, unless
9 such financial institution provides or has provided to the
10 consumer a notice that complies with section 503.

11 (b) OPT OUT.—

12 (1) IN GENERAL.—A financial institution may
13 not disclose nonpublic personal information to a
14 nonaffiliated third party unless—

15 (A) such financial institution clearly and
16 conspicuously discloses to the consumer, in
17 writing or in electronic form or other form per-
18 mitted by the regulations prescribed under sec-
19 tion 504, that such information may be dis-
20 closed to such third party;

21 (B) the consumer is given the opportunity,
22 before the time that such information is initially
23 disclosed, to direct that such information not be
24 disclosed to such third party; and

1 (C) the consumer is given an explanation
2 of how the consumer can exercise that non-
3 disclosure option.

4 (2) EXCEPTION.—This subsection shall not pre-
5 vent a financial institution from providing nonpublic
6 personal information to a nonaffiliated third party to
7 perform services for or functions on behalf of the fi-
8 nancial institution, including marketing of the finan-
9 cial institution's own products or services, or finan-
10 cial products or services offered pursuant to joint
11 agreements between two or more financial institu-
12 tions that comply with the requirements imposed by
13 the regulations prescribed under section 504, if the
14 financial institution fully discloses the providing of
15 such information and enters into a contractual
16 agreement with the third party that requires the
17 third party to maintain the confidentiality of such
18 information.

19 (c) LIMITS ON REUSE OF INFORMATION.—Except as
20 otherwise provided in this subtitle, a nonaffiliated third
21 party that receives from a financial institution nonpublic
22 personal information under this section shall not, directly
23 or through an affiliate of such receiving third party, dis-
24 close such information to any other person that is a non-
25 affiliated third party of both the financial institution and

1 such receiving third party, unless such disclosure would
2 be lawful if made directly to such other person by the fi-
3 nancial institution.

4 (d) LIMITATIONS ON THE SHARING OF ACCOUNT
5 NUMBER INFORMATION FOR MARKETING PURPOSES.—A
6 financial institution shall not disclose, other than to a con-
7 sumer reporting agency, an account number or similar
8 form of access number or access code for a credit card
9 account, deposit account, or transaction account of a con-
10 sumer to any nonaffiliated third party for use in tele-
11 marketing, direct mail marketing, or other marketing
12 through electronic mail to the consumer.

13 (e) GENERAL EXCEPTIONS.—Subsections (a) and (b)
14 shall not prohibit the disclosure of nonpublic personal
15 information—

16 (1) as necessary to effect, administer, or en-
17 force a transaction requested or authorized by the
18 consumer, or in connection with—

19 (A) servicing or processing a financial
20 product or service requested or authorized by
21 the consumer;

22 (B) maintaining or servicing the con-
23 sumer's account with the financial institution,
24 or with another entity as part of a private label

1 credit card program or other extension of credit
2 on behalf of such entity; or

3 (C) a proposed or actual securitization,
4 secondary market sale (including sales of serv-
5 icing rights), or similar transaction related to a
6 transaction of the consumer;

7 (2) with the consent or at the direction of the
8 consumer;

9 (3)(A) to protect the confidentiality or security
10 of the financial institution's records pertaining to
11 the consumer, the service or product, or the trans-
12 action therein; (B) to protect against or prevent ac-
13 tual or potential fraud, unauthorized transactions,
14 claims, or other liability; (C) for required institu-
15 tional risk control, or for resolving customer disputes
16 or inquiries; (D) to persons holding a legal or bene-
17 ficial interest relating to the consumer; or (E) to
18 persons acting in a fiduciary or representative capac-
19 ity on behalf of the consumer;

20 (4) to provide information to insurance rate ad-
21 visory organizations, guaranty funds or agencies, ap-
22 plicable rating agencies of the financial institution,
23 persons assessing the institution's compliance with
24 industry standards, and the institution's attorneys,
25 accountants, and auditors;

1 (5) to the extent specifically permitted or re-
2 quired under other provisions of law and in accord-
3 ance with the Right to Financial Privacy Act of
4 1978, to law enforcement agencies (including a Fed-
5 eral functional regulator, the Secretary of the Treas-
6 ury with respect to subchapter II of chapter 53 of
7 title 31, United States Code, and chapter 2 of title
8 I of Public Law 91-508 (12 U.S.C. 1951-1959), a
9 State insurance authority, or the Federal Trade
10 Commission), self-regulatory organizations, or for an
11 investigation on a matter related to public safety;

12 (6)(A) to a consumer reporting agency in ac-
13 cordance with the Fair Credit Reporting Act, or (B)
14 from a consumer report reported by a consumer re-
15 porting agency;

16 (7) in connection with a proposed or actual
17 sale, merger, transfer, or exchange of all or a por-
18 tion of a business or operating unit if the disclosure
19 of nonpublic personal information concerns solely
20 consumers of such business or unit; or

21 (8) to comply with Federal, State, or local laws,
22 rules, and other applicable legal requirements; to
23 comply with a properly authorized civil, criminal, or
24 regulatory investigation or subpoena or summons by
25 Federal, State, or local authorities; or to respond to

TESTIMONY FOR HOUSE BILL NO. 1447

House Industry, Business, and Labor Committee

Testimony of Gary D. Preszler, Commissioner, Department of Banking and Financial Institutions neither in support of nor in opposition to House Bill No. 1447.

My appearance before this Committee is to provide information to assist the Committee in making an informed decision as to the relationship of North Dakota law with the provisions of the Gramm-Leach-Bliley Bank Modernization Act of 1999 (GLBA). My testimony is not taking a position on the issue of whether opt-in or opt-out is the appropriate public policy view.

HOUSE BILL NO 1447

House Bill No. 1447 provides parity between financial services entities by requiring securities and insurance companies to get customer consent before releasing information to an unaffiliated third-party as existing law requires banks to get customer consent. Separately, you should note that SB No. 2191, does however, amend existing law by defaulting to the Opt-out requirement under the GLBA. If SB No. 2191 is enacted, HB No. 1447 needs to be reconciled with SB No. 2191.

NORTH DAKOTA PRESENT LAW

The North Dakota Disclosure of Customer Information law (Chapter 6-08.1) was enacted by the 1985 Legislative Assembly after a request by the North Dakota Bankers Association for its introduction. Attorney General's Opinions in 1985 and 1986 opined on questions related to real estate lending and judgment creditors. The last amendment to Chapter 6-08.1 occurred in 1997, when the Legislative Assembly provided that a financial institution did not need affirmative consent to disclose customer information to an entity that is controlled or owned under common control with the financial institution (affiliates). See Section 6-08.1-02(11). Proponents of the 1997 amendments included Norwest Bank, First Bank System, and the North Dakota Bankers Association.

The North Dakota Disclosure of Customer Information law provides that a "financial institution" has a duty of confidentiality and cannot disclose any customer information to any person, governmental agency, or law enforcement agency unless affirmative consent is granted (opt-in) by the customer, or unless information is obtained through a valid legal process or specifically carved out under one of the exemptions.

GRAMM-LEACH-BLILEY ACT

The GLBA governs financial institutions' disclosure of non-public consumer

information to a non-affiliated third party. GLBA exceptions include providing non-public personal information to a non-affiliated third party to perform services for functions on behalf of the financial institutions including marketing of the financial institution's own products or services. The federal banking agencies, National Credit Union Administration, the Secretary of the Treasury, Securities and Exchange Commission, and the Federal Trade Commission were required to prescribe appropriate rules to carry out the Act. The GLBA provided that a financial institution may not otherwise disclose non-public personal information to a non-affiliated third party unless the financial institution has first provided the consumer with an opportunity to opt-out of the release of the information.

Financial institutions must develop and disclose their privacy policies. Information that must be included in those policies is covered under GLBA and the agency rules.

Section 507(a) of the GLBA provides that a state's financial privacy law is preempted and then only to the extent that the states law or rules are "inconsistent" with the GLBA. Section 507(b) provides that a state law is "not inconsistent" and thus not preempted if it provides "protection ... greater than GLBA's privacy provisions under the Act as determined by the Federal Trade Commission after consultation with the federal functional regulator or 'other authority'". The

Federal Trade Commission can make a determination on a state law on its own motion or upon the petition of any "interested party".

The federal agencies all issued similar rules that are effective November 13, 2000 on a voluntary compliance basis but mandated after July 1, 2001. The rules establish the manner and method for the initial privacy policy notice, annual notice to customers thereafter, information to be included in the privacy notice, and form and content of an opt-out notice.

FEDERAL TRADE COMMISSION PETITION

On September 12, 2000, I petitioned the Federal Trade Commission for a determination under the GLBA as to whether North Dakota's disclosure of customer information statute affords any person greater protection than is provided under GLBA. The petition was requested for several reasons. First, several trade associations had informed me that they preferred the present state law. Without a determination by the FTC, on July 1, 2001, state law would have been preempted. Secondly, North Dakota financial institutions need to know the rules of the road. Without a determination, financial institutions that developed privacy policies providing for opt-out opportunities would later have to change all policies and forms if an interested party made a petition request. This burden would have been at a cost to the financial institutions. An interested party may be a financial

institution itself or even a customer of that financial institution.

My petition asks the FTC for a determination that North Dakota law is not inconsistent with the federal law in two areas. First, whether North Dakota's affirmative consent (opt-in) requirement affords greater customer protection than opt-out. Second, North Dakota law provides for a civil penalty for violations of Chapter 6-08.1, unlike GLBA that does not provide for any penalty.

Subsequent to my request the FTC General Counsel requested several interpretations on North Dakota law, which were responded to by the Attorney General's Office on behalf of the Department. In November, I provided additional written observations and information with the primary purpose to assert that state bank regulators are the "other authority" that should be consulted with by the FTC.

I have discussed the petition on a number of occasions with a FTC attorney. Based on these discussions, it is anticipated that the FTC will determine North Dakota's affirmative consent and civil penalties afford greater protection and thus is not inconsistent with the Act. Such a determination will mean that all North Dakota financial institutions will be required to comply with GLBA provisions including the federal regulatory agencies' implementing rules except that the institution will be required to provide the customer with opt-in instead of an opt-out opportunity. The same exemptions under GLBA will also apply to North

Dakota financial institutions. Therefore, North Dakota financial institutions will be required to adopt a privacy policy, must meet the initial and annual disclosure of the policies, and must provide a form for the consent by the customer or consumer. Under the GLBA all financial institutions must provide for a notice, and must provide an abbreviated opt-out form, regardless whether the financial institution intends to disclose any non-public information to an unaffiliated third party. However, for most, if not all, North Dakota financial institutions, affirmative consent would not have to be obtained from the consumer unless the financial institution intends to sell or disclose information to the non-affiliated third party.

The FTC informed me on February 12, 2001, that they plan to take the ND petition to the Commission later this week. The FTC has also informed me that they have identified 21 states that may have previously enacted laws pertaining to protection of customer information. At least 4 other states have enacted opt-in requirements.

Thank you.