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LoCosta Rickford
Operator's Signature

10/16/63
Date

2003 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1478

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Salvatore Riccardi
Operator's Signature

10/16/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1478

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 2/4/03

Tape Number	Side A	Side B	Meter #
3	x		13.2-49.6
Committee Clerk Signature <i>Maithu Hammer</i>			

Minutes: **Chairman Keiser** opened the hearing on HB 1478.

Rep. Kasper, District 46, introduced the bill and walked the committee through it. This deals with financial institutions and privacy laws. The intent of this bill is to clear up ambiguities within the law and add a few items of new information. We will continue the opt in financial privacy protection but clarify that banks will not be impeded in their course of business. Part 3 is the major part of the bill and pertains to those institutions operating within our state only, not branches that might be located outside our state borders.

Marilyn Foss, general counsel for North Dakota Bankers Association, testified in support of HB 1478 (See attachment #1)

Joel Gilbertson, representing Independent Community Banks of North Dakota, testified in support of HB 1478. (See attachment #2)

Earl Jarolimek, Community First Bank, testified in support of HB 1478. (See attachment #3)

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LoCosta Richard
Operator's Signature

10/16/03
Date

Page 2
House Industry, Business and Labor Committee
Bill/Resolution Number HB 1478
Hearing Date 2/4/03

Greg Tschider, representing the North Dakota Credit Union League, testified in support of HB 1478. (See attachment #4). He stated that his organization can live with the "joint marketing" language. The private right of action is somewhat of a drawback.

As there was no one present who wished to testify in opposition to HB 1478, the hearing was closed.

Chairman Keiser appointed **Rep. Froseth** to chair a subcommittee comprised of **Representatives Ruby, Dosch and Ekstrom** to explore and determine how HB 1478 and HB 1038 can be combined into one piece of legislation.

Chairman Keiser appointed **Rep. Severson** to chair a subcommittee comprised of **Representatives Ruby, Tieleman and Boe** to combine HB 1477, 1179 and 1485 into a single piece of legislation.

Rep. Kasper will serve as advisory chair for both subcommittees.

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1478

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date February 11, 2003

Tape Number	Side A	Side B	Meter #
1	X		832-1636
Committee Clerk Signature <i>Bern Leier</i>			

Minutes: **Chair Kelser:** Opened discussion on HB 1478

Rep. Kasper: The amendment from Marilyn Foss puts the bill in compliance with Gramm-Leach-Bliley (handout). Need the amendment to make the bill final.

Rep. Kasper moved to adopt amendment. Seconded by Rep. Klein.

Rep. Thorpe: Who are we specifying with the "opt-out"? Rep. Kasper said no one is specified.

Rep. Kelser: Is joint marketing out? Rep. Kasper said that it is in Section 3 of 1478.

Rep. Ruby: The banks and credit unions liked 1478 better than HB 1038.

Voice vote on amendment. Amendment carries.

Rep. Ekstrom: Would like consistency between this and the insurance bills.

Rep. Kasper: Insurance concern is not joint marketing. The concern is whether or not the agent has multiple licenses.

Rep. Ruby moved DP as amended. Seconded by Rep. Tieman.

Vote: 14 Yes 0 No 0 Absent and not voting **Carrier:** Tieman

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1478

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 2/17/03

Tape Number	Side A	Side B	Meter #
1	x		0.0-6.2
Committee Clerk Signature <i>Judith Hammer</i>			

Minutes: **Chairman Kelser** opened the hearing on HB 1478 in order that the IBL committee be able to reconsider actions taken on 2/11/03.

Rep. Froseth moved to reconsider HB 1478.

Rep. Johnson seconded the motion. A voice vote carried the move to reconsider.

During further discussion on the motion, **Rep. Froseth** walked the committee through the new language drafted for the amendments. Amendment .0305 was drafted with input from a subcommittee: Jennifer Clark, Marilyn Foss, Tim Karsky, Joel Gilbertson and Greg Tschider.

Rep. Froseth thanked them for their participation. Eight exemptions are outlined in 502e. Lines 26 through 31 are removed on p. 3. After #12, insert "a disclosure of customer information under section 502(e) of the federal Financial Services Modernization Act of 1999[Pub. L. 106-102; 113 Stat. 1436; 15 U.S.C. 6802(e)]. A disclosure under this subsection must comply with the rules adopted under section 4 of this Act.". On the last page, remove 1-8, section 3 remains and section 4 is added after line 15: "SECTION 4. A new section to chapter 6-08.1 of the North Dakota

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Richard
Operator's Signature

10/16/03
Date

Page 2

House Industry, Business and Labor Committee

Bill/Resolution Number HB 1478

Hearing Date 2/17/03

Century Code is created and enacted as follows: (See attached). The intent of these amendments is to specify the 8 opt out exemptions under Gramm-Leach-Bliley 505(e) that are needed for ND banking institutions to disclose customer information to non affiliated third parties. It allows the rules adopted by the bank board and the state credit unions to implement subsection 12.

Rep. Klein moved to adopt the amendments. **Rep. Severson** seconded the motion.

Rep. Kasper: The way I interpret this, what it is does, is it says that the banking and credit union boards will adopt the rules that presume that someone has chosen the opt out election, which means, they don't want their information shared. It makes it much easier for them to adopt the rules because the clear intent of this that the customer must do an opt in. I agree with the amendment.

Chairman Keiser: The original amendment was confusing. This clarifies the intent of the bill, it doesn't change the intent of the committee, but also it further clarifies that as rules are adopted, the rules can be more restrictive but cannot liberalize the opt in option. A voice vote carried the motion to adopt amendment .0305.

Rep. Severson moved a Do Pass As Amended. **Rep. Tieman** seconded the motion. The results of the roll call vote were 11-0-3.

Rep. Tieman will carry this on the floor.

30118.0305
Title.0400

Prepared by the Legislative Council staff for
Representative Froseth
February 17, 2003

VR
2/17/03

HOUSE AMENDMENTS TO HOUSE BILL NO. 1478 IBL 2-17-03

Page 1, line 1, replace "a" with "two" and replace "section" with "sections"

HOUSE AMENDMENTS TO HB 1478 IBL 2-17-03

Page 3, line 26, replace "If the financial institution has provided the customer with a clear notice of the" with "A disclosure of customer information under section 502(e) of the federal Financial Services Modernization Act of 1999 [Pub. L. 106-102; 113 Stat. 1436; 15 U.S.C. 6802(e)]. A disclosure under this subsection must comply with the rules adopted under section 4 of this Act."

Page 3, remove lines 27 through 31

HOUSE AMENDMENTS TO HB 1478 IBL 2-17-03

Page 4, remove lines 1 through 8

Page 4, after line 15, insert:

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

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

Renumber accordingly

Date: 2/1/03
Roll Call Vote #: |

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1478

House INDUSTRY BUSINESS & LABOR Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DPas amended

Motion Made By Ruby Seconded By Tieman

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Boe	✓	
Vice-Chair Severson	✓		Ekstrom	✓	
Dosch	✓		Thorpe	✓	
Froseth	✓		Zaiser	✓	
Johnson	✓				
Kasper	✓				
Klein	✓				
Nottestad	✓				
Ruby	✓				
Tieman	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Tieman

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

Date: 2/17/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1478

House INDUSTRY BUSINESS & LABOR

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Do Pass As Amended

Motion Made By

Swenson

Seconded By

Tieman

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Boe		
Vice-Chair Severson	✓		Ekstrom	✓	
Dosch	✓		Thorpe		
Froseth	✓		Zaiser	✓	
Johnson	✓				
Kasper	✓				
Klein	✓				
Nottestad	✓				
Ruby					
Tieman	✓				

Total (Yes)

12

No

0

Absent

3

Floor Assignment

Tieman

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

REPORT OF STANDING COMMITTEE (410)
February 17, 2003 2:13 p.m.

Module No: HR-30-2936
Carrier: Tleman
Insert LC: 30118.0305 Title: .0400

REPORT OF STANDING COMMITTEE

HB 1478: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). HB 1478 was placed
on the Sixth order on the calendar.

Page 1, line 1, replace "a" with "two" and replace "section" with "sections"

Page 3, line 26, replace "If the financial institution has provided the customer with a clear
notice of the" with "A disclosure of customer information under section 502(e) of the
federal Financial Services Modernization Act of 1999 (Pub. L. 106-102; 113 Stat. 1436;
15 U.S.C. 6802(e)). A disclosure under this subsection must comply with the rules
adopted under section 4 of this Act."

Page 3, remove lines 27 through 31

Page 4, remove lines 1 through 8

Page 4, after line 15, insert:

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

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

Renumber accordingly

2003 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1478

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Alonso Rickford
Operator's Signature

10/16/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1478

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 03-12-03

Tape Number	Side A	Side B	Meter #
1		xxx	3100-end
2	xxxx		0-950
Committee Clerk Signature <i>Jessalyn Burkum</i>			

Minutes: Chairman Mutch opened the hearing on HB 1478. All Senators were present.

HB 1478 relates to disclosure of financial information.

Testimony in support of HB 1478

Representative Kasper introduced the bill. See handouts.

Senator Nething: Why on page two, line 12 do you take out the definition of "persons"? We refer to it on line 9 page 1.

Representative Kasper: A person is generally defined term in the whole code, meaning everybody and is covered in the code, so it is just a repeat.

Senator Espegard: Section 3, which deals with sharing personal information with affiliates, that's all it is, right?

Rep. Kasper: If it is a nonaffiliated arrangement the customer has to opt-in. If it is affiliate, then it can be shared.

Page 2

Senate Industry, Business and Labor Committee

Bill/Resolution Number 1478

Hearing Date 03-12-03

Marilyn Foss, ND Bankers Assoc., spoke in support of the bill. See written testimony. Marilyn also handed out testimony from Earl Jarolimek, Vice President of Community First Bankshares, who was not present at the hearing. See attached. She stated that during this process, banks have had two major focuses. One is to have the statute be clear that North Dakota's law applies to North Dakota banks in North Dakota when they are doing business with North Dakotans. But it does not apply when the bank is doing business with other states with customers who are residents or companies in other states. In most cases where we are doing business out of North Dakota the law of the other state will govern information sharing by the North Dakota bank. This is the issue of export that we talked about last session. The second thing is being sure that our law includes appropriate exceptions so that our North Dakota banks can offer customers modern financial products and services as they continue to develop. And to conduct normal banking operations without running afoul of some provision of our law on the disclosure of customer information.

Senator Espgaard: If a bank is domiciled out of state and wants to do business with someone in North Dakota, they follow the rules of that state, right?

Marilyn: That's correct.

Senator Espgaard: So it's just North Dakota banks that are restricted?

Marilyn: That's correct.

(Begin tape 2, side A, Meter 0)

Greg Tschider, ND Credit Union League, spoke in support of the bill. See attached.

Senator Espgaard: When you are referring to the old law, you are talking about the one that has been on the books since 1984, right?

Page 3

Senate Industry, Business and Labor Committee

Bill/Resolution Number 1478

Hearing Date 03-12-03

Greg: Yes, that's correct.

Senator Krebsbach: We just heard from Marilyn Foss that banks across the country all operate under the Gramm-Leach Bliley Act, are credit unions doing that as well?

Greg: We handle things exactly the way the banks do.

Senator Klein: Are we on track to meet those GLB requirements?

Greg: The people said they want opt-in, so we are working with that mandate and we are going to live with that.

Joel Gilberston, Independent Banks of North Dakota, stated for the record that they support the bill. We think this bill will allow the credit unions and bank to do business as usual and still protect the customer.

There was no opposition.

Hearing was closed.

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Joel Costa Richardson
Operator's signature

10/16/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1478

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 03-24-03

Tape Number	Side A	Side B	Meter #
1		xxx	140-292
Committee Clerk Signature <i>Lisa Van Berkum</i>			

Minutes: Chairman Mutch opened the discussion on HB 1478. All Senators were present.

HB 1478 relates to financial institution customer privacy definitions and exceptions.

There was no discussion from the committee.

Senator Espegard moved a DO PASS. Senator Klein seconded.

Roll Call Vote: 7 yes. 0 no. 0 absent.

Carrier: Senator Espegard

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La Costa Richard
Operator's Signature

10/16/03
Date

Date: 3-24-03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate 1478 Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken _____

Motion Made By Espegard Seconded By Klein

Senators	Yes	No	Senators	Yes	No
Senator Mutch	X				
Senator Klein	X				
Senator Krebsbach	X				
Senator Nething	X				
Senator Heitkamp	X				
Senator Every	X				
Senator Espegard	X				

Total (Yes) ~~unrecorded~~ 7 No ~~unrecorded~~ 0

Absent 2 0

Floor Assignment ~~unrecorded~~ Espegard

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

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Yolanda Richardson
Operator's Signature

10/16/03
Date

REPORT OF STANDING COMMITTEE (410)
March 24, 2003 1:01 p.m.

Module No: SR-45-5546
Carrier: Espegard
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1478, as engrossed: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1478 was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-45-5546

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Salvatore Riccardi
Operator's Signature

10/16/03
Date

2003 TESTIMONY

HB 1478

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Yolanda Richardson
Operator's Signature

10/16/03
Date

PROPOSED AMENDMENTS TO HB 1478

Page 4, after line 8 insert

"13. A disclosure of customer information under section 502(e) of the federal Financial Services Modernization Act of 1999 [Pub.L. 106-102; 113 Stat. 1436; 15 U.S.C. 6802(e)]. The state banking board and state credit union board must adopt rules to implement this section. The rules must provide for a customer authorization for a financial institution to share customer information under circumstances that require an opt out election under the federal Act."

Renumber accordingly

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Salvatore Riccardi
Operator's Signature

10/16/03
Date

GLBA SECTION 502 "NO OPT OUT" EXCEPTIONS (15 USC 6802)

Section 502(b)(2): Financial Institution Joint Marketing. This subsection permits information sharing with a nonaffiliated third party to perform services for or functions on behalf of the financial institution, including marketing of the financial institution's own products or services, or financial products or services offered pursuant to joint agreements between two or more financial institutions if the financial institution fully discloses the providing of such information and enters into a contractual agreement with the third party that requires the third party to maintain the confidentiality of such information.

Section 502(e): General Exceptions (Which Apply Even If A Customer Has Opted Out).

(1) as necessary to effect, administer, or enforce a transaction requested or authorized by the consumer, or in connection with-

- (A) servicing or processing a financial product or service requested or authorized by the consumer;
- (B) maintaining or servicing the consumer's account with the financial institution, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or
- (C) a proposed or actual securitization, secondary market sale (including sale of servicing rights), or similar transaction related to a transaction of the consumer;

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

(3) (A) to protect the confidentiality or security of the financial institution's records pertaining to the consumer, the service or product, or the transaction therein; (B) to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability; (C) for required institutional risk control, or for resolving customer disputes or inquiries; (D) to persons holding a legal or beneficial interest relating to the consumer; (E) to persons acting in a fiduciary or representative capacity on behalf of the consumer;

(4) to provide information to insurance rate advisory organizations, guaranty funds or agencies, applicable rating agencies of the financial institution, persons assessing the institution's compliance with industry standards, and the institution's attorneys, accountants, and auditors;

(5) to the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978, to law enforcement agencies (including a Federal functional regulator, the Secretary of the Treasury with respect to subchapter II of chapter 53 of title 31, United States Code, and chapter 2 of title I of Public Law 91-508 (12 U.S.C. 1951-1959), a State insurance authority, or the Federal Trade Commission), self-regulatory organizations, or for an investigation on a matter related to public safety;

(6) (A) to a consumer reporting agency in accordance with the Fair Credit Reporting Act, or (B) from a consumer report reported by a consumer reporting agency;

(7) in connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure concerns solely consumers of such business or unit; or

(8) to comply with Federal, State, or local laws, rules, and other applicable legal requirements; to comply with a properly authorized civil, criminal, or regulatory investigation or subpoena or summons by Federal, State, or local authorities; or to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes as authorized by law.

John Costa *Richard*
Operator's Signature

10/16/03
Date

TESTIMONY OF MARILYN FOSS (NDBA) ON HB 1478

Mr. Chairman, members of the committee, I am Marilyn Foss, general counsel for the North Dakota Bankers Association.

HB 1478 is another effort to address privacy of customer information in the context of the banking industry. At the outset I want to note that the remarks I made yesterday on HB 1038 apply virtually across the board to HB 1478. The only variance is that yesterday I recommended amendments to HB 1038 to address our concerns about "export".

Amendments on this point aren't needed for HB 1478. This bill addresses the question of export by making it clear that North Dakota law applies to North Dakota located financial institutions when they are doing business with North Dakota residents and North Dakota domiciled entities. Our member banks tell us they can live with this as it makes the export situation clear in a way that does not harm our banks as they do business in other states, while respecting the results of the referral vote.

The additional exemptions of HB 1478 are so substantially similar to those in HB 1038 that NDBA would support either bill on this point. While lawyers (including myself) might note that adding any qualifications to a statute increases the opportunities for disputes, our bankers simply aren't concerned that HB 1478 qualifies the additional exceptions by adding the word "necessary" to each one. Our banks know they aren't unnecessarily disclosing information as they carry out, process and service customer transactions.

HB 1478 does include a provision on joint marketing. As things stand now, North Dakota law as it relates to joint marketing provision does place North Dakota banks and credit unions under different rules than apply to the insurance and securities industries as they operate in North Dakota with North Dakota residents. (As I noted yesterday joint

marketing is one area where current law and several bills which are before this legislature treat insurance and securities industries more favorably for information sharing purposes than does the banking law.) We don't see the public policy rationale for these distinctions and we would urge the committee to address this issue across the board in the legislation which covers insurance and securities.

I do want to note that Representative Kasper did provide us with copies of the bill as it was being drafted and that HB 1478 does incorporate changes which we suggested in order to make the bill acceptable.

With that I'd close my testimony and be pleased to respond to any committee questions. Thank you.

La Costa Richard
Operator's Signature

10/16/03
Date

TESTIMONY IN SUPPORT OF HOUSE BILL NO. 1478

GREG TSCHIDER, ND CREDIT UNION LEAGUE

Mr. Chairman and Members of the House Industry, Business, and Labor Committee, I am Greg Tschider and I represent the North Dakota Credit Union League.

It is submitted that House Bill 1038 should be considered by the Committee at the same time that the Committee considers House Bill 1478 since both bills address the same issues.

There are three significant parts to House Bill 1478. The first part on page 1 relates to the exporting issue or how the law defines "customer". The Credit Unions support the definition of "customer" as provided in House Bill 1478.

The second part of House Bill No. 1478 (see page 3, starting at line 26) relates to exemptions which will permit financial institutions to perform necessary operating functions to provide financial services to its members.

Most credit unions are small institutions without the expertise or facilities to perform such functions as data processing, home banking, check processing, and ATM equipment. Third party vendors perform those functions. The existing law does not specifically grant that authority. In order to erase those concerns and questions and to avoid potential future litigation, the exemption language is necessary.

The exemption language in House Bill 1478 is identical to House Bill 1038.

House Bill 1478 has a third part which prohibits joint marketing agreements. The North Dakota Credit Union League is not opposed to the joint marketing language, however, the North Dakota Credit Union League is concerned that the joint marketing prohibition also applies to the insurance and securities industry in order to provide the consumer the same privacy protection regardless of the industry involved.

In summation, the North Dakota Credit Union League:

- a. Supports the export (definitions) language in House Bill 1478.
- b. Supports the exemption language in both House Bills 1038 and 1478.
- c. Has no objection to the joint marketing language in House Bill 1478

with the caveat that the joint marketing prohibition also apply to insurance and securities companies.

RESPECTFULLY SUBMITTED.

LP

H.B. 1478
Testimony of Joel Gilbertson

Mr. Chairman and members of the Industry, Business & Labor Committee, I am Joel Gilbertson of the Vogel Law Firm in Bismarck and Fargo. I am appearing here on behalf of the Independent Community Banks of North Dakota.

Yes, we have spent hundreds of hours over the past couple of years debating privacy. My message to this committee this afternoon, however, is that this is a true testament of the professionalism and character of the North Dakota legislative and political process. We debated and worked and strategized against the other side. We had moments of anger, disappointment and perhaps disbelief. We worked through the last legislative session and, ultimately, the referral process, with a special session thrown in for good measure. Through it all, it has been and continues to be, a very emotional and complex issue. Through it all, a core group was on one side and a core group was on the other.

Despite the bitter battles, and through it all, we continued to talk -- we continued to meet. We continued as well to forge agreement in this murky and controversial area. My hat is off to Rep. Kasper, who met with us often, and who worked with us on crafting something that hopefully could avoid the emotional, neverending debates of the past. We think we have accomplished much. We think we have come a long way in terms of reaching agreement and compromise in the drafting stage long before this bill ever reached its final form. Many, many issues have been debated, discussed and resolved before this bill was ever tossed in the 2003 legislative hopper. That is why we support it as amended and that is why we know that a bill in some form should be adopted by this legislature.

Oh, lest you think everything is agreeable and there are no issues yet to discuss -- let's talk. You know it cannot be that easy.

There really are only two variables in the bank privacy bills in this session.

One item that really is not a variable is opt-in. There is no debate and no problem. The voters clearly have chimed in on this issue. As far as we are concerned, it is moot -- we are opting to opt-in, just as we have done in the past.

One variable is the export issue -- Should we export? Can we export? I think we have agreement here. I think everyone agrees that the approach of H.B. 1478 is the way to resolve that problematic issue in a way that protects the companies that are here and does not discourage others from coming here if they would like to do so.

The second issue or variable is the joint marketing exception. The historical perspective and the work done by Congress gives support to our position that we cannot agree to waiving that exception. It was originally meant to give some competitive equality to small banks (and, for that matter, small insurance companies) that do not own securities firms or other similar companies. This bill would exclude that exception, however, and that is where we must part our ways.

I have outlined the work, the hours and the compromises on all of the issues affecting privacy over the past couple of years. Our community bankers are anxious to put these debates and this issue behind us. However, we cannot go on record supporting exclusion of the joint marketing exception. It is too important to our North Dakota community banks and it is too important to community banks everywhere to allow them to continue to compete with big regional, national and, in some cases, international financial conglomerates. As the fight to thrive and, in some cases, survive, becomes more and more difficult, our community banks need to be able to partner with non-affiliated companies to effectively compete.

We ask for a DO PASS AS AMENDED recommendation on H.B. 1478, after deleting section 3 and then sending this bill on its way to statutory memorialization and enactment. Thank you.

third parties or if you prefer that we not share that information with companies in our corporate family, you may opt out, that is, you may direct us not to share that information. If you indicate a preference that we do not share that information, please understand that you will not receive offers for products and services provided by other companies that could help you lower your costs, maximize your financial resources and manage your finances.

To indicate your preferences, call us at 1-800-225-5202 or write to us at Discover Card, P.O. Box 30961, Salt Lake City, UT 84130-0961. If you have previously notified us about your privacy preferences, it is not necessary to do so again unless you decide to change your preferences. Your written request should include your name, address, telephone number and Account number(s) and should not be sent with any other correspondence. In order to process your request, we require that the request be provided by you directly and not through a third party. You will need to provide us with your preferences for each credit card account you have with us.

You may notify us about your preferences at any time. Your request will remain in effect until you notify us otherwise. We will honor your request and not share the information we collect about you, except as permitted by law. For example, federal law permits us to share information about you with consumer reporting agencies, service providers and marketing partners. It also permits us to share information about our experiences and transactions with you, such as your Account balance and payment history, with other members of our corporate family. If you are a new Cardmember, we will not share any information about you, except as permitted by law, for thirty days after we provide this Policy to you in order to give you an opportunity to inform us about your preferences. If you are an existing Cardmember, please understand that you

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may continue to receive marketing offers directly from other companies that were already in production prior to the processing of your request.

This Privacy Policy is provided to the primary Cardmember listed on the Account. However, any joint Cardmember has the right to notify us about preferences and we will treat that request as applying to the entire Account. We do not share information about former customers, except as permitted by law.

• • • • •
This Privacy Policy is provided to you by Discover Bank and its subsidiaries, which currently include GTC Insurance Agency, Inc. It applies to the Discover Platinum, Discover Gold, Discover Classic, Discover Private IssueSM and Discover Titanium Cards, and the products and services offered in connection with those cards, including The RegisterSM card registration service (with the exception of any information registered in connection with the service, which will not be shared). It is part of your Cardmember Agreement and provides a further explanation of how we collect and share information. You may have other rights under state laws that apply to this information. Please note that you will also receive privacy notices for other credit card accounts you have with us, as well as other financial products and services provided to you by us and our affiliates. You will need to indicate your preferences for each of these separately as disclosed in the notice.

• • • • •
Vermont and North Dakota Residents—Your state laws require financial institutions to obtain your consent prior to sharing information about you with others. Except as permitted by law, we will not share information we collect about you with non-affiliated third parties or, if you are a Vermont resident, with companies in our corporate family unless you call us at 1-800-DISCOVER and authorize us to do so.

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DISCOVER[®] CARD

PRIVACY POLICY

We are required by federal law to provide you with a copy of our Privacy Policy each year. If you have previously notified us about your privacy preferences, as described in Section 4, it is not necessary to do so again unless you decide to change your preferences.

We Respect Your Privacy

Our mission is to provide you with superior products and services, along with the peace of mind knowing that your privacy is secure. We understand your concerns about guarding information about you and your Account. We want to assure you that we have taken steps, and will continue to take steps, to safeguard that information.

This Privacy Policy describes our efforts to meet these objectives. It includes a summary of the following important information:

- A listing of the personal information we collect
- The circumstances in which we may share information with others
- The ways we safeguard the confidentiality and security of information
- The steps you may take to limit our sharing of such information with others. See Section 4 for complete details.

Please read our Privacy Policy carefully. It will help you understand how we collect and share information.

1

1. What Personal Information Do We Collect?

To serve you better and manage our business, it is important that we collect and maintain accurate personal information about you. We obtain this information from applications and other forms you submit to us, from your dealings with us and others, from consumer reporting agencies and from other sources, such as our Web sites. For example:

- We may obtain information such as your name, address and date of birth from applications and other forms you submit to us.
- We may obtain information such as Account balances, payment history, your use of your Account and the types of services you prefer from your transactions and other dealings with us and others.
- We may obtain information such as the balances of your loans with other lenders and your payment history with others from consumer reporting agencies.
- We may obtain information such as your Internet service provider, your domain name, your computer's operating system and Web browser, your Web site use and your product and service preferences from your visits to our Web sites.

2. Is Personal Information Shared with Others?

We limit the sharing of information with others. Many of the offers you receive for products and services are provided directly to you from us. For example, a retailer that accepts the Discover® Card may come to us with a special offer for Cardmembers, such as a discount certificate or product upgrade. After careful consideration of the nature of the offer and the company, we will create a list of Cardmembers who may be interested in the offer based on certain characteristics. We will send the offer directly to those Cardmembers on behalf of the retailer by, for example, including an insert in their monthly billing statement or mailing the offer ourselves. We control the information used

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to make the offer; we do not share the list or any information about our Cardmembers with the retailer. However, please understand that if you do receive this type of offer from us and choose to take advantage of it, the retailer may then learn information about you because only Cardmembers with certain characteristics received the offer.

There are, however, circumstances in which we may share the information we collect about you, as described in Section 1, with other companies in order to provide you with access to products and services and to service your Account effectively, as detailed below. We require these companies to adhere to our privacy standards and to use this information only for the limited purpose for which it was shared. We do not allow them to disclose it to others without our prior approval.

a. Sharing Personal Information with Our Corporate Family

We are part of the Morgan Stanley family of companies. Our corporate family offers a wide variety of products and services that can help you manage your finances. In order to provide you with access to these products and services, we may share the information we collect about you, as described in Section 1, with other members of our corporate family. These companies include financial service providers that offer mortgage lending services, securities and asset management services, investment opportunities and mutual funds, and may include non-financial service providers in the future as our corporate family continues to grow.

b. Sharing Personal Information with Non-Affiliated Parties for Marketing Purposes

We may share the information we collect about you, as described in Section 1, with non-affiliated third parties, including those that accept the Discover Card, in order to provide you with access to products and services offered directly by these companies that may be of value to you. These companies include financial service providers, such as

3

insurance companies, and non-financial companies, such as retailers.

c. Sharing Personal Information with Others

We may share the information we collect about you, as described in Section 1, with companies that perform support or marketing services on our behalf, such as mailing, market research and data processing; other financial institutions with which we have joint marketing agreements; or companies that are our partners for cobrand credit card programs or reward programs. We may also share such information as permitted by law.

3. How Do We Protect the Confidentiality, Security and Integrity of Information about You?

We maintain physical, electronic and procedural safeguards to protect the information we collect about you. Access to such information is restricted to individuals who need it in order to service your Account or provide products and services to you, and who are trained in the proper handling of such information. Employees who violate these confidentiality requirements are subject to our disciplinary process. Where third parties provide support services, we require them to conform to our privacy standards.

It is important that the information we maintain about you is accurate and complete. If you see information in your monthly billing statements or elsewhere which suggests that our information is incomplete or inaccurate, please write to us at Discover Card, P.O. Box 30943, Salt Lake City, UT 84130-0943 so that we can update this information.

4. How Can You Limit Sharing of Information about You?

We respect your privacy and offer you choices as to whether we may share information about you with others. If you prefer that we not share the information we collect about you, as described in Section 1, with non-affiliated

4

22(e)
summary)

- (1) • Disclosures *necessary to effect, administer, or enforce a transaction* that a consumer requests or authorizes (see section 313.14(b)); or
- Disclosures made in connection with:
 - (1)(A) • Servicing or processing a financial product or service that a consumer requests or authorizes
 - (1)(B) • Maintaining or servicing a consumer's account
 - (1)(C) • A proposed or actual securitization, secondary market sale (including the sale of servicing rights) or similar transactions
- (2) • With consumer consent
- (3)(A) • To protect the confidentiality or security of records
- (3)(B) • To protect against or prevent actual or potential fraud
- (3)(C) • For required institutional risk control or for resolving consumer disputes or inquires
- (3)(D) • To persons holding a legal or beneficial interest relating to the consumer
- (3)(E) • To persons acting in a fiduciary or representative capacity on behalf of the consumer (i.e., the consumer's attorney)
- (4) • To provide information to insurance rate advisory organizations, persons assessing compliance with industry standards, the financial institution's attorneys, accountants or auditors
- (5) • To law enforcement entities or self-regulatory groups (to the extent permitted or required by law)
- (8) • To comply with Federal, State, or local laws
- (8) • To comply with subpoena or other judicial process
- (8) • To respond to summons or other requests from authorized government authorities
- (A)(B) • Pursuant to the Fair Credit Reporting Act, to a consumer reporting agency or from a consumer report reported by consumer reporting agency
- (7) • In connection with a proposed or actual sale, merger, transfer or exchange of all or a portion of a business or operating unit

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.

(e) (Text) → 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

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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;

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Operator's Signature

10/6/03
Date

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

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Operator's Signature

10/16/03
Date

1 judicial process or government regulatory authorities
2 having jurisdiction over the financial institution for
3 examination, compliance, or other purposes as au-
4 thorized by law.

5 **SEC. 503. DISCLOSURE OF INSTITUTION PRIVACY POLICY.**

6 (a) **DISCLOSURE REQUIRED.**—At the time of estab-
7 lishing a customer relationship with a consumer and not
8 less than annually during the continuation of such rela-
9 tionship, a financial institution shall provide a clear and
10 conspicuous disclosure to such consumer, in writing or in
11 electronic form or other form permitted by the regulations
12 prescribed under section 504, of such financial institu-
13 tion's policies and practices with respect to—

14 (1) disclosing nonpublic personal information to
15 affiliates and nonaffiliated third parties, consistent
16 with section 502, including the categories of infor-
17 mation that may be disclosed;

18 (2) disclosing nonpublic personal information of
19 persons who have ceased to be customers of the fi-
20 nancial institution; and

21 (3) protecting the nonpublic personal informa-
22 tion of consumers.

23 Such disclosures shall be made in accordance with the reg-
24 ulations prescribed under section 504.

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Operator's Signature

Richard Costa

Date

10/6/03

Senate Banking Committee

**Conference Report and Text of
Gramm-Leach-Bliley Bill**

**Text of the Conference Report
Released November 1, 1999**

In html Format

**Text of the Gramm-Leach-Bliley Bill
Released November 1, 1999 -- in Adobe .pdf Format**

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<http://www.senate.gov/%7Ebanking/conf/conf rpt.htm>

07/24/2001

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Operator's Signature

10/6/03
Date

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

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

6 [REDACTED]—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 [REDACTED]
10 [REDACTED]

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-

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Salvatore Riccardi
Operator's Signature

10/16/03
Date

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 [REDACTED]

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

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La Costa Rickford
Operator's Signature

10/16/03
Date

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

*OPT-OUT
Exceptions*

4 ~~_____~~ 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

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Richard Costa
Operator's Signature

10/16/03
Date

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 ~~REDACTED~~ 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~~

*SERVICING
EXCEPTIONS*

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La Costa Richard
Operator's Signature

10/16/03
Date

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; Exceptions to OPT-OUT

9 [REDACTED] to protect the confidentiality or security, *OTHER*
10 of the financial institution's records pertaining to *Allowable*
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 [REDACTED] 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;

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Lo Costa Richard
Operator's Signature

10/16/03
Date

Exception # OUT-OUT H.L.C.
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1 [redacted] 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 [redacted] 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 [redacted] 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 [redacted] 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

*Fair Credit
Reporting Act
Exception*

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Jo Costa Richardson
Operator's Signature

10/16/03
Date

1 judicial process or government regulatory authorities
2 having jurisdiction over the financial institution for
3 examination, compliance, or other purposes as au-
4 thorized by law.

5 **SEC. 503. DISCLOSURE OF INSTITUTION PRIVACY POLICY.**

6 [REDACTED]—At the time of estab-
7 lishing a customer relationship with a consumer and not
8 less than annually during the continuation of such rela-
9 tionship, a financial institution shall provide a clear and
10 conspicuous disclosure to such consumer, in writing or in
11 electronic form or other form permitted by the regulations
12 prescribed under section 504, of such financial institu-
13 tion's policies and practices with respect to—

14 (1) disclosing nonpublic personal information to
15 affiliates and nonaffiliated third parties, consistent
16 with section 502, including the categories of infor-
17 mation that may be disclosed;

18 (2) disclosing nonpublic personal information of
19 persons who have ceased to be customers of the fi-
20 nancial institution; and

21 (3) protecting the nonpublic personal informa-
22 tion of consumers.

23 Such disclosures shall be made in accordance with the reg-
24 ulations prescribed under section 504.

*Privacy
Notice*

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Salvatore Riccardi
Operator's Signature

10/16/03
Date

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

Section

- 6-08.1-01. Definitions.
- 6-08.1-02. Exemptions.
- 6-08.1-03. Duty of confidentiality.
- 6-08.1-03.1. Agricultural and commercial accounts.
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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 financial institutions.

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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.

Source: S.L. 1985, ch. 129, § 1; 1993, ch. 54, § 106; 2001, ch. 88, § 25; 2001, ch. 97, § 1; R.M. disapproved June 11, 2002, S.L. 2003, ch. - .

Effective Date: The 2001 amendment of this section by section 25 of chapter 88, S.L. 2001 became effective August 1, 2001.

The 2001 amendment of this section by section 1 of chapter 97, S.L. 2001 became effective July 1, 2001, pursuant to section 4 of chapter 97, S.L. 2001. However, these amendments were disapproved by R.M. June 11, 2002.

Note: Section 6-08.1-01 was amended twice by the 2001 Legislative Assembly. Pursuant to section 1-02-09.1, the section is printed above to harmonize and give effect to the changes made in section 25 of chapter 88, S.L. 2001, and section 1 of chapter 97, S.L. 2001.

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 that person's 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

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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 agriculture commissioner that it has given a customer notice of the availability of the North Dakota agricultural mediation service.

11. The disclosure by a financial institution to any financial institution or other entity that controls, is controlled by, or is under common control with the financial institution if the financial institution or other entity receiving the information complies with section 6-08.1-03.

Source: S.L. 1985, ch. 129, § 1; 1987, ch. 122, § 1; 1989, ch. 109, § 1; 1997, ch. 91, § 1; 2001, ch. 97, § 2; R.M. disapproved June 11, 2002, S.L. 2003, ch. - .

Effective Date: The 2001 amendment of this section by section 2 of chapter 97, S.L. 2001 became effective July 1, 2001, pursuant to section 4 of chapter 97, S.L. 2001. However, this amendment was disapproved by R.M. June 11, 2002.

The 1997 amendment for this section by section 1 of chapter 91, S.L. 1997 became effective August 1, 1997.

The 1989 amendment of this section became effective April 11, 1989.

The 2001 amendment of this section by S.L. 2001, ch. 97, § 2, was disapproved by R.M. June 11, 2002.

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

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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.

7. For purposes of reporting suspected exploitation of a disabled adult or vulnerable elderly adult as defined by section 12.1-31-07. Nothing in this subsection may be construed to impose upon a financial institution a duty to investigate an alleged or suspected exploitation of a disabled adult or vulnerable elderly adult or to make any report to a government agency or law enforcement agency.

Source: S.L. 1985, ch. 129, § 1; 1989, ch. 109, § 2; 1995, ch. 93, § 1; 2001, ch. 98, § 1.

Effective Date: The 2001 amendment of this section by section 1 of chapter 98, S.L. 2001 became effective August 1, 2001.

The 1995 amendment of this section by section 1 of chapter 93, S.L. 1995 became effective August 1, 1995.

The 1989 amendment of this section became effective April 11, 1989.

Collateral References.

Rights and remedies of financial institution customer in relation to subpoena duces tecum exception to general prohibitions of state right to financial privacy statute,, 43 A.L.R.4th 1157.

Bank's liability, under state law, for disclosing financial information concerning depositor or customer,, 81 A.L.R.4th 377.

6-08.1-03.1. Agricultural and commercial accounts. Disapproved by R.M. June 11, 2002, S.L. 2003, ch. - .

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

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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.

Source: S.L. 1985, ch. 129, § 1.

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.

Source: S.L. 1985, ch. 129, § 1; 1987, ch. 122, § 2.

Collateral References.

Rights and remedies of financial institution customer in relation to subpoena duces tecum exception to general prohibitions of state right to financial privacy statute,, 43 A.L.R.4th 1157.

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

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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.

Source: S.L. 1985, ch. 129, § 1.

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.

Source: S.L. 1985, ch. 129, § 1; 1987, ch. 122, § 3; 1987, ch. 123, § 1.

Note: Section 6-08.1-07 was amended twice by the 1987 Legislative Assembly. Section 3 of chapter 122, S.L. 1987, required delivery of customer information within a reasonable time despite disputes over billing. Section 1 of chapter 123, S.L. 1987, provided the financial institution could not charge the state auditor for information requested. Pursuant to section 1-02-09.1, the section is printed above to harmonize and give effect to the changes made in the two acts.

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.

Source: S.L. 1985, ch. 129, § 1.

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TESTIMONY IN SUPPORT OF ENGROSSED HOUSE BILL NO. 1478

GREG TSCHIDER, ND CREDIT UNION LEAGUE

Mr. Chairman and Members of the Senate Industry, Business, and Labor Committee, I am Greg Tschider and I represent the North Dakota Credit Union League.

There are three significant parts to House Bill 1478. The first part on page 1 relates to the exporting issue or how the law defines "customer". The Credit Unions support the definition of "customer" as provided in House Bill 1478.

The second part of House Bill No. 1478 (see page 3, starting at line 26) relates to exemptions which will permit financial institutions to perform necessary operating functions to provide financial services to its members.

Most credit unions are small institutions without the expertise or facilities to perform such functions as data processing, home banking, check processing, and ATM equipment. Third party vendors perform those functions. The existing law does not specifically grant that authority. In order to erase those concerns and questions and to avoid potential future litigation, the exemption language is necessary. The exemption provision will grant to the State Credit Union Board and the State Banking Board authority to review the various exemptions granted under the federal Gramm-Leach-Bliley Privacy Act and grant these exemptions to banks and credit unions in North Dakota.

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House Bill 1478 has a third part which prohibits joint marketing agreements. The North Dakota Credit Union League is not opposed to the joint marketing language, however, the North Dakota Credit Union League is concerned that the joint marketing prohibition also applies to the insurance and securities industry in order to provide the consumer the same privacy protection regardless of the industry involved.

Substantial time and effort has been expended by the Family Law Interim Committee and the House Industry, Business, and Labor Committee as well as the financial institutions in North Dakota to draft a bill that permits financial institutions to perform and provide those services to the consumers but at the same time maintains the "opt-in" protection North Dakota consumers desire. It is submitted that engrossed House Bill 1478 provides those protections.

RESPECTFULLY SUBMITTED.

Testimony of Earl Jarolimek
Senate IBL Committee
Support of HB 1478
March 12, 2003

→ not present
@ hearing -
distributed by Marilyn Foss

Thank you Mr. Chairman and members of the Committee.

My name is Earl Jarolimek. I'm a Vice President at Community First Bankshares, headquartered in Fargo, N.D. I am submitting written testimony to communicate our support for HB 1478.

Our overriding issue and concern with existing privacy statutes in North Dakota is the possibility of its provisions being exported to other states in which we conduct business.

I'll explain why that is such a concern, but would like to first tell you a little about Community First. Community First has a long-standing tradition of calling North Dakota its home. Community First was formed in North Dakota in 1987. Back then we chose to base our company in North Dakota over Minnesota and South Dakota, the other two states we operated in at that time. We've experienced significant growth since our beginning—leading to expansion and more jobs in North Dakota. Later, in 2001, we chose to merge 11 non-North Dakota banks into the North Dakota bank charter.

North Dakota is home to the holding company, the bank charter, our insurance affiliate, a mortgage lending affiliate, our technology and data processing center, a loan processing center, and branch offices in Fargo, Dickinson, Wahpeton, Lidgerwood, Cooperstown and

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Beach. We currently employ 644 people in this state with good paying jobs in the financial services industry.

Of the 12 states we currently operate in, only North Dakota does not follow federal privacy law or a state law that mirrors federal law. Thus, 11 of our 12 states' privacy laws differ significantly from North Dakota's privacy law.

One of the goals of HB 1478 is to clarify the coverage of North Dakota's privacy law. HB 1478's definitions of "customer" and "financial institution" make it clear that North Dakota privacy law applies to any person who is a resident of or is domiciled in North Dakota and does business at a financial institution that is physically located in the state.

It is important to clear up this problem.

As long as the scope of the North Dakota privacy law is uncertain, financial institutions do not know whether to follow federal law, North Dakota law or the law of another state in handling customer information. There are many costs associated with this uncertainty, including costs to comply with multiple and conflicting regulatory requirements, the risks of litigation or claims, expenses of developing redundant or special systems and procedures and the loss of business opportunities.

The approach taken with HB 1478 and favored by the NDBA strikes a sensible balance.

HB 1478 protects all customers who bank at financial institutions in North Dakota.

Applying North Dakota law within the state of North Dakota means all financial institutions that do business in North Dakota play by the same rules. Extending North Dakota's privacy law to branches of North Dakota banks that are located in other states, places the North

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Dakota banks at a competitive disadvantage in those states. If out-of-state offices of North Dakota banks must follow the requirements of North Dakota law in those markets, they will incur additional costs and lose opportunities to the competing banks in those markets.

Applying North Dakota privacy laws to transactions in other states places North Dakota potentially in conflict with those states, and raises the possibility that other states would apply a similar rationale to apply their laws in North Dakota. Because of the complexities of privacy laws, the requirements of one state may actually contradict the requirements of another, setting up a conflict between competing states' interests.

North Dakota citizens benefit by having locally-based financial institutions.

Several North Dakota-based financial institutions have expanded into other states. By maintaining their main offices in North Dakota, these institutions provide higher-paying jobs, sophisticated financial resources, and support many ancillary service industries. Local communities strive to attract these institutions, and in turn use the presence of these institutions to attract other businesses. Applying North Dakota privacy laws to transactions in other states merely because the main office of the financial institution is in North Dakota can only discourage financial institutions from locating their main office in North Dakota.

Thank you for your time in considering this important bill.

Lobbyist Registration: #436

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TESTIMONY OF MARILYN FOSS (NDBA) ON ENGROSSED HB 1478

Mr. Chairman, members of the committee, I am Marilyn Foss, general counsel for the North Dakota Bankers Association. Engrossed House Bill 1478 is the latest effort to craft a privacy law that will meet the reasonable needs of the banking industry in North Dakota and the expectations of North Dakotans for privacy of their financial information.

Banks have had two major focuses throughout the discussion on financial information privacy. One is to have our statutes be clear that North Dakota's law applies to North Dakota banks when they are doing business in North Dakota with North Dakotans, but that it does not apply when the bank is doing business in other states with customers who are residents of the other states. In those cases, the law of the other states would govern information sharing by a North Dakota bank. This is the issue of "export" which you may have heard about. The second focus has been on to be sure our law includes exceptions which will clearly permit North Dakota banks to offer customers modern financial products and services as they continue to develop, and to conduct normal, banking operations without running afoul of some provision of our law on disclosure of customer information. We have concluded that Engrossed House Bill 1478 addresses these points appropriately and in a manner which respects the results of the referral vote last June.

On the issue of "export" it does so by defining a customer as "a person that is a resident of or is domiciled in this state" and a covered financial institution as one that "is physically located in the state". This causes our law to clearly protect North Dakota

citizens and businesses and to clearly cover North Dakota located banks, while just as clearly excepting customers who are outside of North Dakota. Our interstate banks tell us these definitional changes are sufficiently clear that they can apply them and can adjust their systems to "sort" and categorize North Dakota customers as "opt outs", to use the parlance of last session's debate.

Engrossed House Bill 1478 also adds a new subsection 12 to NDCC 6-08.1-02 to permit the state banking board and state credit union board to adopt regulations to permit North Dakota banks and credit unions to use those exceptions of federal law which apply to allow information sharing to carry out ordinary business transactions and processing and to share information with law enforcement under other laws, even if a customer "opts out". These "no opt out" exceptions are found in section 502(e) of the federal Gramm Leach Bliley Act ("GLBA"). They are comprehensive, but not controversial. So you can see that for yourselves, I have attached a copy of them to my testimony and would be happy to discuss individual exceptions with you at any time during your consideration of this bill. The regulations which are adopted must give customers at least as much protection as occurs if a customer had opted out under federal law. The addition of the new subsection 12 will substantially improve the current law without in any way intruding on customer expectations of privacy.

Engrossed House Bill 1478 also includes specific provisions to require specific customer consent before information may be shared under a joint marketing agreement as provided in GLBA. Frankly, we think that provision hurts small banks and their ability to offer comprehensive financial services and products in competition with larger banks.

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However, we do recognize this was an issue which was debated during the referral process and that we did not successfully get our point across to the public.

Before I close, I do want to note that the committee will be considering other bills which address disclosure of nonpublic personal information (customer information) by both the securities and insurance industries. In their current form each of those other bills essentially conforms the exceptions which will apply to financial information sharing by insurance companies and securities firms. Current law imposes different and more liberal rules for insurance companies and securities firms than apply to banks. NDBA continues to believe that financial institutions and their competitors should operate under the same rules for information protection. Accordingly we favor of laws which embody that same principal.

With that, I'd be happy to respond to committee questions.

La Costa Richard
Operator's Signature

10/16/03
Date

GLBA "NO OPT OUT" EXCEPTIONS

SEC. 502. OBLIGATIONS WITH RESPECT TO DISCLOSURES OF PERSONAL INFORMATION (15 USC

GENERAL EXCEPTIONS.-Subsections (a) and (b) shall not prohibit the disclosure of non public personal information-

- (1) as necessary to effect, administer, or enforce a transaction requested or authorized by the consumer, or in connection with-
 - (A) servicing or processing a financial product or service requested or authorized by the consumer;
 - (B) maintaining or servicing the consumer's account with the financial institution, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity ; or
 - (C) a proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer;
- (2) with the consent or at the direction of the consumer;
- (3)(A) to protect the confidentiality or security of the financial institution's records pertaining to the consumer, the service or product, or the transaction therein; (B) to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability; (C) for required institutional risk control, or for resolving customer disputes or inquiries; (D) to persons holding a legal or beneficial interest relating to the consumer; or (E) to persons acting in a fiduciary or representative capacity on behalf of the consumer;
- (4) to provide information to insurance rate advisory organizations, guaranty funds or agencies, applicable rating agencies of the financial institution, persons assessing the institution's compliance with industry standards, and the institution's attorneys, accountants, and auditors;
- (5) to the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978, to law enforcement agencies (including a Federal functional regulator, the Secretary of the Treasury with respect to subchapter II of chapter 53 of title 31, United States Code, and chapter 2 of title I of Public Law 91-508 (12 U.S.C. 1951-1959), a State insurance authority, or the Federal Trade Commission), self-regulatory organizations, or for an investigation on a matter related to public safety;
- (6) (A) to a consumer reporting agency in accordance with the Fair Credit Reporting Act, or (B) from a consumer report reported by a consumer reporting agency ;
- (7) in connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit; or
- (8) to comply with Federal, State, or local laws, rules, and other applicable legal requirements; to comply with a properly authorized civil, criminal, or regulatory investigation or subpoena or summons by Federal, State, or local authorities; or to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes as authorized by law.