



Vermont . . .

Department of Banking, Insurance,
Securities and Health Care Administration

Consumer Complaints/Assistance only
Insurance: 1-800-964-1778
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November 21, 2001

DEC 4 2001

Timothy J. Muris, Chairman
Federal Trade Commission
600 Pennsylvania Ave NW
Washington, DC 20580

OFFICE OF THE CHAIRMAN

RE: Request For Commission Determination That Vermont Law Offers
Greater Protections To Consumers Than GLB Privacy Title

Dear Chairman Muris:

I am the Commissioner of the Vermont Department of Banking, Insurance, Securities and Health Care Administration. The Department has recently adopted three privacy rules that apply to the banking, insurance and securities industries. The rules incorporate various requirements of the Gramm-Leach-Bliley Financial Modernization Act of 1999 but recognize existing privacy protections available under Vermont state law. As Commissioner, I am an interested party and authorized to petition the Federal Trade Commission for a determination under section 507 of GLB, 15 U.S.C. § 6807, that the rules and the underlying Vermont state law afford greater protection than is provided under the GLB privacy title and associated federal regulations. A favorable determination from the Commission would mean the Vermont laws and rules are not preempted under 15 U.S.C. § 6807. For your convenience, I have enclosed copies of the rules for the banking, insurance and securities divisions of the Department as well as Vermont's financial privacy law.¹ We recognize that the Vermont law and rules do not apply to every entity covered by GLB's privacy title. Our request for a determination is with respect to the law and rules to the extent they are applicable to institutions engaging in activities described in 12 U.S.C. § 1843(k).

The Vermont financial privacy law was first enacted in 1994 with an effective date of January 1, 1995.² That law establishes state policy on the privacy rights of Vermont consumers in that it prohibits a person subject to its provisions from disclosing personal

¹ The rules are entitled "Privacy Of Consumer Financial And Health Information (Regulation)" and are numbered B-2001-01 (banking), IH-2001-01 (insurance) and S-2001-01 (securities). The financial privacy law is contained at 8 V.S.A. § 10201 *et seq.*

² The Vermont financial privacy law was recodified in 2000 in Act No. 153, 1999 (Adj. Sess.). In the recodification, former section 1024 (11) (now section 10204 (11)) was changed to delete the exception for disclosures that are permitted by federal or state law. The exception for disclosures required under federal or state law has been retained.

Timothy J. Muris, Chairman
November 21, 2001
Page 2 of 2

financial information of a customer, outside the exceptions set forth in section 10204, without the customer's consent. *See*, 8 V.S.A. § 10204 (2)

The Department's three new privacy rules were adopted November 2, 2001 and became effective November 17, 2001. I direct your attention to the following sections in each rule:

1. Sections 8 and 11 require consumer consent to the disclosure of nonpublic personal information to nonaffiliated third parties, with exceptions enumerated in sections 14, 15, 16 and 17 of the rule.
2. Sections 5, 6 and 7 of each rule require that consumers be notified that a financial institution must obtain the consumer's consent to disclosure to nonaffiliated third parties, if the disclosure is outside the exceptions.
3. The consent requirements for affiliate sharing of "other information" under the Federal and Vermont Fair Credit Reporting Acts are undisturbed by the rules. *See*, sections 5, 6, 7, 9 and 12 of each rule.
4. Section 13 prohibits the disclosure of account numbers, whether or not in encrypted form, for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.
5. Section 14 limits the information that may be disclosed in a joint marketing arrangement to name, contact, and "own transaction and experience information" within the meaning of the federal Fair Credit Reporting Act, 15 U.S.C. §1681a(d)(2)(A)(i) and the Vermont Fair Credit Reporting Act, 9 V.S.A. §2480a(2)(A).
6. For health information, sections 17, 18 and 19 of each rule require authorization forms that provide a general description of the health information to be disclosed, the purposes of the disclosure, how the information will be used and to whom the information will be disclosed. Further re-disclosure is not permitted (unless it is permitted under one of the exceptions.)
7. Section 20 of each of the rules limits the use of health information for marketing that is otherwise permitted under 45 C.F.R. § 164.514 (e)(2) of the federal Health and Human Services rules implementing the privacy requirements of the Health Insurance Portability and Availability Act, unless consumer consent is obtained.

Timothy J. Muris, Chairman

November 21, 2001

Page 3 of 3

8. Section 23 prohibits a financial institution from discriminating against a consumer or customer because that person has not given his or her consent to third party disclosures.

I look forward to your response. If you have any questions or need additional information, please contact the Department's General Counsel, Jacqueline A. Hughes at (802) 828-4869.

Sincerely,



Elizabeth R. Costle
Commissioner

Encl.

cc: William E. Kovacic, General Counsel

VERMONT STATUTES ANNOTATED
TITLE EIGHT. Banking and Insurance
CHAPTER 200. Consumer Protection
SUBCHAPTER 2. Financial Privacy

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Current through end of 1999 Adjourned Session (2000 Regular Session)

§ 10201 Statement of policy on financial privacy

It is the policy of this state to protect the privacy of customers of financial institutions without unduly inhibiting the free flow of commerce or legitimate law enforcement activities.

Added 1999, No. 153 (Adj. Sess.), § 2, eff. Jan. 1, 2001.

§ 10202 Definitions

As used in this subchapter:

(1) "Account verification service" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of:

(A) assembling information on the frequency and location of depository account openings or attempted openings by a consumer, or forced closings by a depository institution of accounts of a consumer; or

(B) authenticating or validating Social Security numbers or addresses for the purpose of reporting to third parties for use in fraud prevention. Mailing such information to a customer to the address provided by such customer shall not be prohibited by this subchapter.

(2) "Credit reporting agency" means any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of reporting to third parties on the credit rating or creditworthiness of any consumer.

(3) "Customer" means, for purposes of this subchapter, any person who deposits, borrows or invests with a financial institution, including a surety or a guarantor on a loan.

(4) "Financial information" means an original or copy of, or information derived from:

(A) a document that grants signature authority over a deposit or share account;

(B) a statement, ledger card or other record of a deposit or share account that shows transactions in or with respect to that deposit or account;

(C) a check, clear draft or money order that is drawn on a financial institution or issued and payable by or through a financial institution;

(D) any item, other than an institutional or periodic charge, that is made under an agreement between a financial institution and another person's deposit or share account;

(E) any information that relates to a loan account or an application for a loan; or

(F) evidence of a transaction conducted by electronic or telephonic means.

(5) "Financial institution" means a financial institution as defined in subdivision 11101(32) of this title, and a credit union, financial institution subsidiary, licensed lender, mortgage broker or sales finance company organized or regulated under the laws of this state, the United States or any other state or territory.

(6) "Mercantile agency" means any person, which for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating business credit information or other information on businesses for the purpose of reporting to third parties on the credit rating or creditworthiness of any business.

Added 1999, No. 153 (Adj. Sess.), § 2, eff. Jan. 1, 2001.

§ 10203 Disclosure of financial records prohibited

Except as otherwise expressly provided in this subchapter, a financial institution, its officers, employees, agents and directors shall not disclose to any person any financial information relating to a customer. Financial institutions shall adopt reasonable procedures to assure compliance with this subchapter.

Added 1999, No. 153 (Adj. Sess.), § 2, eff. Jan. 1, 2001.

§ 10204 Exceptions

This subchapter does not prohibit any of the activities listed in this section. This section shall not be construed to require any financial institution to make any disclosure not otherwise required by law. This section shall not be construed to require or encourage any financial institution to alter any procedures or practices not inconsistent with this subchapter. This section shall not be construed to expand or create any authority in any person or entity other than a financial institution.

(1) Disclosure of information to the customer after proper identification.

(2) Disclosure authorized by the customer, provided the disclosure is limited to the scope and purpose that the customer authorizes.

(3) Disclosure of information sought by the office of child support services pursuant to its authority and obligations under section 115 and chapter 41 of Title 33, or by an agency of similar function of another state, pursuant to similar authority.

(4) Disclosure of information sought by the department of social welfare pursuant to its authority and obligations under 33 V.S.A. § 112.

(5) Disclosure sought by the Vermont student assistance corporation pursuant to its authority and obligations under 16 V.S.A. chapter 87.

(6) The preparation, examination, handling or maintenance of financial records by any officer, employee, or agent of a financial institution that has custody of the records.

(7) The examination of financial records by a certified public accountant while engaged by the financial institution to perform an independent audit.

(8) The disclosure of information to a collection agency, its employees or agents, or to any person engaged by the financial institution to assist in recovering an amount owed to the financial institution, if such disclosure is made in the furtherance of recovering such amount.

(9) The examination of financial records by, or the disclosure of financial records to, any officer, employee or agent of a regulatory agency for use only in the exercise of that person's duties as an officer, employee or agent.

(10) The publication of information derived from financial records if the information cannot be identified to any

particular customer, deposit or account.

- (11) The making of reports, disclosures or returns required by federal or state law.
- (12) The disclosure of any information permitted to be disclosed under the laws governing dishonor of negotiable instruments.
- (13) The exchange, in the regular course of business, of credit information between a financial institution and a credit reporting agency, provided such exchange is in compliance with the Vermont Fair Credit Reporting Act, 9 V.S.A. chapter 63, subchapter 3, and the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq.
- (14) The exchange, in the regular course of business, of information between a financial institution and an account verification service, provided such exchange is in compliance with the Vermont Fair Credit Reporting Act, 9 V.S.A. chapter 63, subchapter 3, and the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq.
- (15) The exchange, in the regular course of business, of information between a financial institution and a mercantile agency, provided such exchange is solely for the purpose of reporting to third parties on the credit rating or creditworthiness of any business, and is in compliance with the Vermont Fair Credit Reporting Act, 9 V.S.A. chapter 63, subchapter 3, and the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq.
- (16) The exchange of loan information that specifically affects a sale, foreclosure or loan closing, provided such exchange is for the purpose of accomplishing such sale, foreclosure or loan closing.
- (17) The disclosure to civil or criminal law enforcement authorities for use in the exercise of such authority's duties, or the sharing of information, within an industry network, of suspected criminal activities.
- (18) Disclosures requested pursuant to a summons for trustee process under Rule 4.2 of the Vermont Rules of Civil Procedure.
- (19) Disclosure requested pursuant to subpoena, provided that no disclosure shall be made until ten days after the financial institution has notified the customer that financial information has been requested by subpoena. Such notice shall be served by first class mail to the customer at the most recent address known to the financial institution. The provisions of this subdivision shall not apply where the subpoena is issued by or on behalf of a regulatory, criminal or civil law enforcement agency.
- (20) Disclosure required by order of court.
- (21) Disclosure of customer financial information among directors, officers, employees or agents of affiliated financial institutions, provided that such disclosure is limited to information necessary or appropriate to the fulfillment of any such persons' duties and responsibilities to the financial institution or institutions, and provided further that such disclosure is made in compliance with the Vermont Fair Credit Reporting Act, 9 V.S.A. chapter 63, subchapter 3, and the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq.
- (22) Disclosure of customer financial information of one financial institution to another financial institution in connection with a proposed merger, consolidation, acquisition or other reorganization transaction involving such institution, provided that no further disclosure is made except in compliance with this subchapter, and provided further that such disclosure is made in compliance with the Vermont Fair Credit Reporting Act, 9 V.S.A. chapter 63, subchapter 3, and the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq.
- (23) Disclosure in accordance with rules adopted by the commissioner, provided that the commissioner may permit disclosure by temporary order, until such time as rules under this subdivision are adopted.
- (24) Disclosure sought by the department of taxes of this state pursuant to its authority and obligations under Title 32.

Added 1999, No. 153 (Adj. Sess.), § 2, eff. Jan. 1, 2001.

§ 10205 Penalties

In addition to the authority provided under sections 11601, 11602 and 11603 of this title, the commissioner may impose an administrative penalty of not more than \$1,000.00 for each violation of this subchapter resulting from willful conduct, or from a failure by a financial institution to provide reasonable supervision of its employees to prevent violations of this subchapter.

Added 1999, No. 153 (Adj. Sess.), § 2, eff. Jan. 1, 2001.