



STATE OF NORTH DAKOTA
DEPARTMENT OF BANKING AND FINANCIAL INSTITUTIONS

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Gary D. Preszler
COMMISSIONER

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September 12, 2000

SEP 18 2000

OFFICE OF THE CHAIRMAN

Robert Pitofsky, Chairman
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington DC 20580

Dear Mr. Pitofsky:

I hereby petition the Federal Trade Commission for a determination under 15 U.S.C. 6807 as to whether North Dakota's Disclosure of Customer Information statute affords any person greater protection than is provided under the Gramm-Leach-Bliley Financial Modernization Act.

As Commissioner for the North Dakota Department of Banking and Financial Institutions my responsibilities include supervision over the business affairs of all financial institutions placed under my jurisdiction. I must also report all non-compliance with governing laws. Therefore, as the supervisor over North Dakota state-chartered banks and credit unions, I have an interest in seeking the FTC determination as to whether state law is preempted.

I have attached a copy of North Dakota Century Code Chapter 6-08.1, Disclosure of Customer Information, which was effective in 1985. I direct your attention to several subsections of North Dakota law that are in contrast to the Modernization Act:

- (1) Section 6-08.1-03(1) provides that a financial institution may not disclose customer information unless "consent is granted by the customer" (opt-in). The disclosure of customer information by a financial institution to a

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subsidiary is exempt [§ 6-08.1.02(11)], except that the subsidiary cannot disclose information to another party without customer consent.

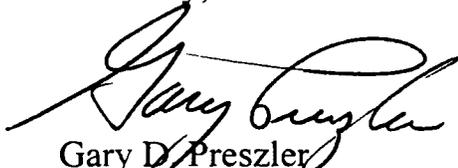
- (2) Section 6-08.1-08(1) establishes a civil penalty that may be incurred by a financial institution for violations of Chapter 6-08.1.

Again, as an interested party, I petition the FTC for a determination as to whether North Dakota law affords greater protection to any person than is provided under the Modernization Act and, therefore, is not preempted by the Act.

Additionally, some requirements exist under the Modernization Act that are not present in state law. For example, § 503 of the Modernization Act requires the disclosure of an institution privacy policy. Therefore, I am also asking you to address whether North Dakota state-chartered financial institutions must comply with the Modernization Act provisions not covered under North Dakota law and also with provisions of state law that are determined to afford any person greater protection.

Although Subtitle A of the Modernization Act is not effective until six months after federal banking agencies rules are presented, I ask for a determination at this time in case legislative amendments to state law become necessary.

Sincerely,



Gary D. Preszler
Commissioner

GDP:sr
Attachment

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
6-08.1-04	Consent
6-08.1-05	Government access
6-08.1-06	Suspicion of unlawful conduct
6-08.1-07	Cost reimbursement
6-08.1-08	Liability

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

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

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

1. The preparation, examination, handling, or maintenance of any customer information by any officer, employee, or agent of a financial institution having custody of such information or the examination of such information by an accountant engaged by the financial institution to perform an audit.
2. The examination of any customer information by, or the furnishing of customer information to, any officer, employee, or agent of a financial institution regulatory agency solely for use in the exercise of his duties.
3. The publication of data derived from customer information where the data cannot be identified to any particular customer or account.
4. Any acts required of the financial institution by the Internal Revenue Code.
5. Disclosures permitted under the Uniform Commercial Code concerning the dishonor of any negotiable instrument.
6. The exchange in the regular course of business of customer credit information between a financial institution and other financial institutions or commercial entities, directly, or through a customer reporting agency.
7. The release by the industrial commission, in its capacity as the managing body of the Bank of North Dakota, of either of the following:
 - a. The name of any person who, either directly or indirectly, has obtained financing through the Bank of North Dakota.
 - b. The amount of any financing obtained either directly or indirectly through the Bank of North Dakota.
8. An examination, handling, or maintenance of any customer information by any governmental agency or law enforcement agency for purposes of verifying information necessary in the licensing process, provided prior consent is obtained from the licensee and customer.
9. Disclosure of customer information to a law enforcement agency or governmental agency pursuant to a search warrant or subpoena duces tecum issued in accordance with applicable statutes or the North Dakota Rules of Criminal Procedure.
10. Disclosure by a financial institution to the commissioner of agriculture that it has given a customer notice of the availability of the North Dakota agricultural mediation service.
11. The disclosure by a financial institution to any financial institution or other entity that controls, is controlled by, or is under common control with the financial institution if the financial institution or other entity receiving the information complies with section 6-08.1-03.

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

1. Pursuant to consent granted by the customer in accordance with this chapter.
2. To a person other than a governmental agency or law enforcement agency pursuant to valid legal process.
3. To a governmental agency or law enforcement agency pursuant to valid legal process in accordance with this chapter.
4. For the purpose of reporting a suspected violation of the law in accordance with this chapter.

5. For the purpose of notifying the commissioner of agriculture that a financial institution has notified a customer of the availability of the North Dakota agricultural mediation service.
6. As part of the disclosure made of deposits of public corporations with financial institutions in the security pledge schedule verified by the custodian of securities pursuant to section 21-04-09.

6-08.1-04. Consent.

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

6-08.1-05. Government access.

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

6-08.1-06. Suspicion of unlawful conduct.

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

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

6-08.1-08. Liability.

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