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STATE OF NORTH DAKOTA
DEPARTMENT OF BANKING AND FINANCIAL INSTITUTIONS
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CREDIT UNIONS

FAX NO. 202-326-2558

April 23, 2001

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

Dear Mr. Pitofsky:

My September 12, 2000, letter petitioned the Federal Trade Commission for a determination 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. The North Dakota Legislature recently amended North Dakota's existing law, Chapter 6-08.1, by enacting Senate Bill No. 2191. I have attached a copy of Senate Bill No. 2191 as filed with the North Dakota Secretary of State, and ask that it be incorporated into the Commission's determination. The bill is effective on July 1, 2001.

In essence, Senate Bill No. 2191 does not repeal North Dakota's existing opt-in requirement as set forth in Section 6-08.1-03. The pertinent change made by Senate Bill No. 2191 is contained in Section 2 and provides that a North Dakota financial institution that complies with applicable federal law is created as an exception to North Dakota law. Therefore, North Dakota financial institutions will be allowed to choose between the federal law or the affirmative consent requirements under state law. Further, North Dakota financial institutions that unintentionally fail to comply with the federal law would also default to the state law affirmative consent requirement and penalty.

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My request for a Commission determination as petitioned in my September 12, 2000, letter remains unchanged, and I ask the Commission to address North Dakota law specifically in the two areas:

(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). Disclosure of customer information by a financial institution to a subsidiary (affiliate) is exempt [Section 6-08.1-02(11)], except that the subsidiary (affiliate) cannot disclose the information to another party without customer consent.

You will note that the definition of "customer" has also been narrowed by Senate Bill No. 2191 to that similar to a "consumer" under the GLB Act.

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

Sincerely,

Gary D. Preszler
Commissioner

GDP:sr
Enclosure

Fifty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 9, 2001

SENATE BILL NO. 2191
(Senators Krebsbach, Traynor)

AN ACT to create and enact a new subsection to section 6-08.1-02 and a new section to chapter 6-08.1 of the North Dakota Century Code, relating to disclosure of financial information by financial institutions and notification of privacy policies; to amend and reenact section 6-08.1-01 of the North Dakota Century Code, relating to the definition of a customer and customer information; to provide an effective date; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-08.1-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. "Customer" means, with respect to a financial institution, any ~~person who has transacted or is transacting business with, or has used or is using the services of,~~ individual or authorized representative of an individual to whom a financial institution~~, or for whom a financial institution has acted~~ provides a product or service for personal, family, or household use, including that of acting 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~~ nonpublic personal information maintained by or for a financial institution which is derived from a customer relationship between the financial institution and a customer of the financial institution and is identified with the customer.

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.

SECTION 2. A new subsection to section 6-08.1-02 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

A disclosure of customer information by a financial institution to a nonaffiliated third party, if the disclosure is subject to federal law on the date of the disclosure and the financial institution complies with applicable federal law in making the disclosure.

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

Agricultural and commercial accounts.

1. A financial institution shall notify the financial institution's agricultural and commercial customers in this state of the financial institution's privacy policies and practices relating to agricultural and commercial accounts.

2. If the financial institution discloses nonpublic information about agricultural or commercial accounts to nonaffiliated third parties, the financial institution shall annually allow agricultural and commercial customers to not agree to disclosing that information. An agricultural or commercial customer also may agree to the disclosure of nonpublic information.

3. The exceptions in section 502(b)(2) of the Gramm Leach Bliley Financial Service Modernization Act [Pub. L. 106-102; 113 Stat. 1437; 15 U.S.C. 6802] and section 6-08.1-02 apply to agricultural and commercial accounts.

SECTION 4. EFFECTIVE DATE. This Act becomes effective on July 1, 2001.

SECTION 5. EXPIRATION DATE. Section 3 of this Act is effective through July 31, 2003, and after that date is ineffective.

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-seventh Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2191 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 34 Nays 12 Absent 3

President of the Senate

Secretary of the Senate

This certifies that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 77 Nays 20 Absent 1

Speaker of the House

Chief Clerk of the House

Received by the Governor at 10:00 A M. on April 16, 2001.

Approved at 4:35 P M. on April 19, 2001.

Governor

Filed in this office this 19th day of April, 2001, at 6:03 o'clock P. M.

Secretary of State