# CHAPTER 6-08.1
# DISCLOSURE OF CUSTOMER INFORMATION

**6-08.1-01. Definitions.**

As used in this chapter:

1. "Customer" means any person that is a resident of or is domiciled in this state and which has transacted or is transacting business with or has used or is using the services of a financial institution, or for which 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.
   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.

**6-08.1-02. Exemptions.**

This chapter does not apply to any of the following:

1. The disclosure of necessary customer information in 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 in the examination of such necessary information by an accountant engaged by the financial institution to perform an audit.
2. The disclosure of necessary customer information in 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 if 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 necessary 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 the following:
   a. The name of any person who has obtained approval for direct or indirect financing or security, including a loan guarantee or a letter of credit, through the Bank of North Dakota primarily for purposes other than personal, family, or household purposes.

b. The amount of any financing or security referenced in subdivision a.
c. The amount of any net writeoff or loan forgiveness associated with the financing or security referenced in subdivision a which the industrial commission determines is uncollectible.
d. The program under which any financing or security referenced in subdivision a was made.
e. Recipient reports and grantor reports as required under chapter 54-60.1.

8. The disclosure of customer information in the 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 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.
12. 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 6-08.1-10.
13. A disclosure made to the disciplinary board of the North Dakota supreme court or another state's authority with responsibility for enforcing rules of professional conduct for lawyers regarding dishonor of an instrument issued against any trust account maintained by an attorney or law firm, as these terms are defined in section 6-08-16.2.

**6-08.1-03. Duty of confidentiality.**

A financial institution may not disclose customer information to a 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 agriculture commissioner a financial institution has notified a customer of the availability of the North Dakota 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 an eligible adult as defined by section 12.1-31-07. This subsection may not be construed to impose a duty on a financial institution to investigate an alleged or suspected exploitation of an eligible adult or to make a report to a governmental agency or law enforcement agency.
8. For purposes of reporting suspected financial exploitation of an eligible adult under chapter 6-08.5 to a law enforcement agency or the department of human services. This subsection may not be construed to impose a duty on a financial institution to investigate a suspected financial exploitation of an eligible adult or to make a report to the department of human services or law enforcement agency.

**6-08.1-03.1. Agricultural and commercial accounts.**
Disapproved by R.M. June 11, 2002, S.L. 2003, ch. 575.

**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.

**6-08.1-09. Joint marketing agreements - Consent.**

A financial institution must have a customer's consent before the financial institution may disclose the customer's information to a nonaffiliated third party under a joint marketing agreement as provided under section 502(b)(2) of the federal Financial Services Modernization Act of 1999 [Pub. L. 106-102; 113 Stat. 1437; 15 U.S.C. 6802(b)(2)].

**6-08.1-10. 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 in which 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].