

SENATE BILL NO. 2156

Introduced by

Industry, Business and Labor Committee

(At the request of the Attorney General)

1 A BILL for an Act to provide for privacy of an individual's personal financial information; and to
2 provide a penalty.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. Definitions.** As used in this Act:

- 5 1. "Consumer" means an individual who has requested or obtained any kind of
6 goods, services, or employment and is the subject of personal financial
7 information.
- 8 2. "Custodian" means a person who possesses personal financial information which
9 is subject to the restrictions in this Act.
- 10 3. "Exploit" means to sell, transfer, exchange, share, release, disclose, or otherwise
11 reveal in any way a consumer's personal financial information, whether oral or
12 recorded, to a third party in exchange for anything of value, except as permitted in
13 this Act or with the prior written consent of the consumer or the consumer's legal
14 representative.
- 15 4. "Legal representative" includes legal custodian and a parent of a minor child.
- 16 5. "Personal financial information" means one or more of the following items of
17 information that are provided by a consumer or are obtained or generated in a
18 commercial context and that identify the consumer: credit or debit card numbers,
19 bank or brokerage account numbers, access codes or passwords, social security
20 numbers, tax identification numbers, driver's license or permit numbers, current or
21 historical account balances, the amount or condition of assets, liabilities, or
22 financial transactions, purchasing history, buying preferences, business
23 relationships, account existence or status, demographic information, home

1 address, telephone number, electronic mail address, or electronically captured
2 signature.

3 6. "Third party" means any custodian, including affiliates, to whom personal financial
4 information is properly disclosed under this Act other than the custodian who
5 originally obtained the information from the consumer or generated the information
6 in response to the consumer's request for goods or services.

7 **SECTION 2. Right to privacy in financial information.** Every individual in this state
8 has a right to privacy in the individual's personal financial information. It is unlawful for any
9 person within the jurisdiction of this state to exploit a consumer's personal financial information.

10 **SECTION 3. Form of written consent.** A consumer's written consent to disclosure of
11 the consumer's personal financial information is valid only if expressed in a separate written
12 release that is signed and dated by the consumer or the consumer's legal representative. The
13 release must contain a general description of the personal financial information to be disclosed,
14 the reason for the disclosure, the custodian who will be disclosing the information, and the
15 person to whom the information will be disclosed. The release also must identify the exclusive
16 uses that may be made of the information. A release is binding on any third party to whom the
17 information is disclosed. The release must also state the length of time the consent is valid, not
18 to exceed three years, and state that the release may be revoked at any time by written
19 communication to the custodian. If the release is not prepared by the consumer, the release
20 must be written in an easily understood manner and contain a prominent notice in substantially
21 the following form:

22 Your signature on this document authorizes the disclosure of the listed items of
23 your personal financial information to the listed persons. Any use of your personal
24 financial information other than the uses listed in this document or specifically
25 authorized by law is prohibited. This release expires three years from the date it is
26 signed, unless an earlier date is specified in this document. You may revoke this
27 release in writing at any time.

28 **SECTION 4. Permitted disclosures of personal financial information without**
29 **consent.** This Act does not prohibit the following disclosures of personal financial information
30 to third parties without prior written consent of the consumer:

- 1 1. Disclosure to a third party which is not made in exchange for anything of value,
2 except as prohibited in section 8 of this Act.
- 3 2. Disclosure to the extent necessary to provide the goods or services requested by
4 the consumer, or to enforce a financial obligation of the consumer arising out of the
5 consumer's request for goods or services, including disclosures that are incident to
6 a court proceeding to obtain payment for the goods or services.
- 7 3. Disclosure to credit reporting agencies, and subsequent disclosure of the
8 information by credit reporting agencies, to the extent disclosure is related to
9 assembling or evaluating consumer credit information or other information on
10 consumers for the purpose of furnishing consumer reports to third parties but only
11 to the extent the activities are regulated by federal law.
- 12 4. Disclosure that is necessary to protect the consumer against fraud, unauthorized
13 transactions, claims, or other liability.
- 14 5. Disclosure to a federal, state, or local government agency in response to a court
15 order or a subpoena issued by a court or a government agency.
- 16 6. Disclosure to a third party as part of the custodian's provision of goods or services
17 to the consumer, or to assist in the custodian's maintenance or analysis of its
18 relationships with its consumers.
- 19 7. Disclosure in the regular course of business for extending credit to the consumer.
- 20 8. Disclosure that is incidental to the sale of the custodian's business.
- 21 9. Disclosure for research or statistical purposes which does not identify the
22 consumer and which could not reasonably lead to the consumer's identification.
- 23 10. Any other disclosure required by federal or state law or regulation.

24 **SECTION 5. Third-party recipients of personal financial information.** Any third
25 party to whom personal financial information is properly disclosed under this Act is subject to
26 this Act and may not further disclose the information except as authorized in this Act or with a
27 proper written release that has been independently obtained from the consumer or the
28 consumer's legal representative.

29 **SECTION 6. Right to access.** Any third party to whom personal financial information
30 is properly disclosed under this Act and who has used the information to deny the consumer's
31 request for goods or services must give the consumer the opportunity to correct any

1 inaccuracies in the information. The third party also must notify the consumer of the personal
2 financial information that was used to deny the request, from whom the information was
3 obtained, and of the right to correct any inaccuracies. A notice provided in compliance with the
4 Fair Credit Reporting Act [15 U.S.C. 1681 et seq.] is sufficient to satisfy the requirements in this
5 section.

6 **SECTION 7. Public records exemption.** Personal financial information in the
7 possession or control of a public entity is an exempt record as defined in section 44-04-17.1
8 unless made confidential under any other law.

9 **SECTION 8. Restriction on obtaining financial information.** A provider of goods or
10 services may not require a consumer to provide more personal financial information than is
11 reasonably necessary to respond to the consumer's request for goods or services, collect or
12 service a debt, protect against fraud or unauthorized transactions, or comply with applicable
13 law. Any additional personal financial information that is requested must be specified as
14 optional, the consumer must be given the option not to provide it, and the person must inform
15 the consumer of the purpose for which the information may be used. A consumer who chooses
16 not to provide optional information may not be denied goods or services as a result of that
17 refusal.

18 **SECTION 9. Restrictions based on consumer request.** Upon request by a
19 consumer, a custodian shall refrain from using the consumer's personal financial information to
20 contact the consumer once the requested goods or services have been provided and payment
21 for the goods or services has been received. This section does not apply to warnings or notices
22 of deficiencies in the goods or services provided. Upon request by a consumer, a custodian
23 shall refrain from disclosing the information to a third party.

24 **SECTION 10. Safeguards.** A custodian shall use reasonable care to protect the
25 confidentiality of personal financial information and to safeguard the information from loss,
26 misuse, theft, unauthorized access, disclosure, defacement, or alteration.

27 **SECTION 11. Violations - Penalty.**

28 1. A violation of this Act or any duty imposed by this Act may be investigated and
29 enforced under chapter 51-15.

- 1 2. A violation of this Act by a custodian who is licensed by the state to engage in a
2 profession, occupation, or service, is grounds for the appropriate licensing authority
3 in this state to take disciplinary action against the custodian.
- 4 3. In addition to other legal remedies, a consumer whose personal financial
5 information is exploited or disclosed in violation of this Act is entitled to recover five
6 hundred dollars or the amount of any actual damages to the consumer, whichever
7 is greater, in a civil action in any court of competent jurisdiction. A consumer who
8 brings a successful action for a violation of this Act is entitled to recover court costs
9 and reasonable attorney's fees incurred in the action.

10 **SECTION 12. More restrictive laws.** Nothing in this Act authorizes disclosure of
11 personal financial information which is prohibited by any other federal or state law or regulation.