

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1445

Chapter 197, Laws of 2007

60th Legislature
2007 Regular Session

PUBLIC RECORDS

EFFECTIVE DATE: 07/22/07 - Except section 4, which becomes effective 6/30/08

Passed by the House February 23, 2007
Yeas 94 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 13, 2007
Yeas 48 Nays 0

BRAD OWEN

President of the Senate

Approved April 27, 2007, 1:41 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1445** as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

Chief Clerk

FILED

April 30, 2007

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1445

Passed Legislature - 2007 Regular Session

State of Washington 60th Legislature 2007 Regular Session

By House Committee on State Government & Tribal Affairs (originally sponsored by Representatives Kessler, Rodne, Chandler, Hunt, Upthegrove and Miloscia; by request of Attorney General)

READ FIRST TIME 02/08/07.

1 AN ACT Relating to making adjustments to the recodification of the
2 public records act; amending RCW 42.56.010, 42.56.030, 42.56.330, and
3 42.56.590; reenacting and amending RCW 42.56.270, 42.56.270, 42.56.400,
4 and 42.56.570; adding a new section to chapter 42.56 RCW; providing an
5 effective date; and providing an expiration date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 42.56.010 and 2005 c 274 s 101 are each amended to
8 read as follows:

9 The definitions in ((RCW 42.17.020)) this section apply throughout
10 this chapter unless the context clearly requires otherwise.

11 (1) "Agency" includes all state agencies and all local agencies.
12 "State agency" includes every state office, department, division,
13 bureau, board, commission, or other state agency. "Local agency"
14 includes every county, city, town, municipal corporation, quasi-
15 municipal corporation, or special purpose district, or any office,
16 department, division, bureau, board, commission, or agency thereof, or
17 other local public agency.

18 (2) "Public record" includes any writing containing information
19 relating to the conduct of government or the performance of any

1 governmental or proprietary function prepared, owned, used, or retained
2 by any state or local agency regardless of physical form or
3 characteristics. For the office of the secretary of the senate and the
4 office of the chief clerk of the house of representatives, public
5 records means legislative records as defined in RCW 40.14.100 and also
6 means the following: All budget and financial records; personnel
7 leave, travel, and payroll records; records of legislative sessions;
8 reports submitted to the legislature; and any other record designated
9 a public record by any official action of the senate or the house of
10 representatives.

11 (3) "Writing" means handwriting, typewriting, printing,
12 photostating, photographing, and every other means of recording any
13 form of communication or representation including, but not limited to,
14 letters, words, pictures, sounds, or symbols, or combination thereof,
15 and all papers, maps, magnetic or paper tapes, photographic films and
16 prints, motion picture, film and video recordings, magnetic or punched
17 cards, discs, drums, diskettes, sound recordings, and other documents
18 including existing data compilations from which information may be
19 obtained or translated.

20 **Sec. 2.** RCW 42.56.030 and 2005 c 274 s 283 are each amended to
21 read as follows:

22 The people of this state do not yield their sovereignty to the
23 agencies that serve them. The people, in delegating authority, do not
24 give their public servants the right to decide what is good for the
25 people to know and what is not good for them to know. The people
26 insist on remaining informed so that they may maintain control over the
27 instruments that they have created. This chapter shall be liberally
28 construed and its exemptions narrowly construed to promote this public
29 policy and to assure that the public interest will be fully protected.
30 In the event of conflict between the provisions of this chapter and any
31 other act, the provisions of this chapter shall govern.

32 **Sec. 3.** RCW 42.56.270 and 2006 c 369 s 2, 2006 c 341 s 6, 2006 c
33 338 s 5, 2006 c 302 s 12, 2006 c 209 s 7, 2006 c 183 s 37, and 2006 c
34 171 s 8 are each reenacted and amended to read as follows:

35 The following financial, commercial, and proprietary information is
36 exempt from disclosure under this chapter:

1 (1) Valuable formulae, designs, drawings, computer source code or
2 object code, and research data obtained by any agency within five years
3 of the request for disclosure when disclosure would produce private
4 gain and public loss;

5 (2) Financial information supplied by or on behalf of a person,
6 firm, or corporation for the purpose of qualifying to submit a bid or
7 proposal for (a) a ferry system construction or repair contract as
8 required by RCW 47.60.680 through 47.60.750 or (b) highway construction
9 or improvement as required by RCW 47.28.070;

10 (3) Financial and commercial information and records supplied by
11 private persons pertaining to export services provided under chapters
12 43.163 and 53.31 RCW, and by persons pertaining to export projects
13 under RCW 43.23.035;

14 (4) Financial and commercial information and records supplied by
15 businesses or individuals during application for loans or program
16 services provided by chapters 15.110, 43.163, 43.160, 43.330, and
17 43.168 RCW, or during application for economic development loans or
18 program services provided by any local agency;

19 (5) Financial information, business plans, examination reports, and
20 any information produced or obtained in evaluating or examining a
21 business and industrial development corporation organized or seeking
22 certification under chapter 31.24 RCW;

23 (6) Financial and commercial information supplied to the state
24 investment board by any person when the information relates to the
25 investment of public trust or retirement funds and when disclosure
26 would result in loss to such funds or in private loss to the providers
27 of this information;

28 (7) Financial and valuable trade information under RCW 51.36.120;

29 (8) Financial, commercial, operations, and technical and research
30 information and data submitted to or obtained by the clean Washington
31 center in applications for, or delivery of, program services under
32 chapter 70.95H RCW;

33 (9) Financial and commercial information requested by the public
34 stadium authority from any person or organization that leases or uses
35 the stadium and exhibition center as defined in RCW 36.102.010;

36 (10)(a) Financial information, including but not limited to account
37 numbers and values, and other identification numbers supplied by or on
38 behalf of a person, firm, corporation, limited liability company,

1 partnership, or other entity related to an application for a horse
2 racing license submitted pursuant to RCW 67.16.260(1)(b), liquor
3 license, gambling license, or lottery retail license;

4 (b) Financial or proprietary information supplied to the liquor
5 control board including the amount of beer or wine sold by a domestic
6 winery, brewery, microbrewery, or certificate of approval holder under
7 RCW 66.24.206(1) or 66.24.270(2)(a) and including the amount of beer or
8 wine purchased by a retail licensee in connection with a retail
9 licensee's obligation under RCW 66.24.210 or 66.24.290, for receipt of
10 shipments of beer or wine.

11 (11) Proprietary data, trade secrets, or other information that
12 relates to: (a) A vendor's unique methods of conducting business; (b)
13 data unique to the product or services of the vendor; or (c)
14 determining prices or rates to be charged for services, submitted by
15 any vendor to the department of social and health services for purposes
16 of the development, acquisition, or implementation of state purchased
17 health care as defined in RCW 41.05.011;

18 (12)(a) When supplied to and in the records of the department of
19 community, trade, and economic development:

20 (i) Financial and proprietary information collected from any person
21 and provided to the department of community, trade, and economic
22 development pursuant to RCW 43.330.050(8) and 43.330.080(4); and

23 (ii) Financial or proprietary information collected from any person
24 and provided to the department of community, trade, and economic
25 development or the office of the governor in connection with the
26 siting, recruitment, expansion, retention, or relocation of that
27 person's business and until a siting decision is made, identifying
28 information of any person supplying information under this subsection
29 and the locations being considered for siting, relocation, or expansion
30 of a business;

31 (b) When developed by the department of community, trade, and
32 economic development based on information as described in (a)(i) of
33 this subsection, any work product is not exempt from disclosure;

34 (c) For the purposes of this subsection, "siting decision" means
35 the decision to acquire or not to acquire a site;

36 (d) If there is no written contact for a period of sixty days to
37 the department of community, trade, and economic development from a

1 person connected with siting, recruitment, expansion, retention, or
2 relocation of that person's business, information described in (a)(ii)
3 of this subsection will be available to the public under this chapter;

4 (13) Financial and proprietary information submitted to or obtained
5 by the department of ecology or the authority created under chapter
6 70.95N RCW to implement chapter 70.95N RCW;

7 (14) Financial, commercial, operations, and technical and research
8 information and data submitted to or obtained by the life sciences
9 discovery fund authority in applications for, or delivery of, grants
10 under chapter 43.350 RCW, to the extent that such information, if
11 revealed, would reasonably be expected to result in private loss to the
12 providers of this information;

13 (15) Financial and commercial information provided as evidence to
14 the department of licensing as required by RCW 19.112.110 or
15 19.112.120, except information disclosed in aggregate form that does
16 not permit the identification of information related to individual fuel
17 licensees;

18 (16) Any production records, mineral assessments, and trade secrets
19 submitted by a permit holder, mine operator, or landowner to the
20 department of natural resources under RCW 78.44.085; ~~((and))~~

21 (17)(a) Farm plans developed by conservation districts, unless
22 permission to release the farm plan is granted by the landowner or
23 operator who requested the plan, or the farm plan is used for the
24 application or issuance of a permit~~((-))~~;

25 (b) Farm plans developed under chapter 90.48 RCW and not under the
26 federal clean water act, 33 U.S.C. Sec. 1251 are subject to RCW
27 42.56.610 and 90.64.190; and

28 (18) Information gathered under chapter 19.85 RCW or RCW 34.05.328
29 that can be identified to a particular business.

30 **Sec. 4.** RCW 42.56.270 and 2006 c 369 s 2, 2006 c 341 s 6, 2006 c
31 338 s 5, 2006 c 209 s 7, 2006 c 183 s 37, and 2006 c 171 s 8 are each
32 reenacted and amended to read as follows:

33 The following financial, commercial, and proprietary information is
34 exempt from disclosure under this chapter:

35 (1) Valuable formulae, designs, drawings, computer source code or
36 object code, and research data obtained by any agency within five years

1 of the request for disclosure when disclosure would produce private
2 gain and public loss;

3 (2) Financial information supplied by or on behalf of a person,
4 firm, or corporation for the purpose of qualifying to submit a bid or
5 proposal for (a) a ferry system construction or repair contract as
6 required by RCW 47.60.680 through 47.60.750 or (b) highway construction
7 or improvement as required by RCW 47.28.070;

8 (3) Financial and commercial information and records supplied by
9 private persons pertaining to export services provided under chapters
10 43.163 and 53.31 RCW, and by persons pertaining to export projects
11 under RCW 43.23.035;

12 (4) Financial and commercial information and records supplied by
13 businesses or individuals during application for loans or program
14 services provided by chapters 15.110, 43.163, 43.160, 43.330, and
15 43.168 RCW, or during application for economic development loans or
16 program services provided by any local agency;

17 (5) Financial information, business plans, examination reports, and
18 any information produced or obtained in evaluating or examining a
19 business and industrial development corporation organized or seeking
20 certification under chapter 31.24 RCW;

21 (6) Financial and commercial information supplied to the state
22 investment board by any person when the information relates to the
23 investment of public trust or retirement funds and when disclosure
24 would result in loss to such funds or in private loss to the providers
25 of this information;

26 (7) Financial and valuable trade information under RCW 51.36.120;

27 (8) Financial, commercial, operations, and technical and research
28 information and data submitted to or obtained by the clean Washington
29 center in applications for, or delivery of, program services under
30 chapter 70.95H RCW;

31 (9) Financial and commercial information requested by the public
32 stadium authority from any person or organization that leases or uses
33 the stadium and exhibition center as defined in RCW 36.102.010;

34 (10) Financial information, including but not limited to account
35 numbers and values, and other identification numbers supplied by or on
36 behalf of a person, firm, corporation, limited liability company,
37 partnership, or other entity related to an application for a horse

1 racing license submitted pursuant to RCW 67.16.260(1)(b), liquor
2 license, gambling license, or lottery retail license;

3 (11) Proprietary data, trade secrets, or other information that
4 relates to: (a) A vendor's unique methods of conducting business; (b)
5 data unique to the product or services of the vendor; or (c)
6 determining prices or rates to be charged for services, submitted by
7 any vendor to the department of social and health services for purposes
8 of the development, acquisition, or implementation of state purchased
9 health care as defined in RCW 41.05.011;

10 (12)(a) When supplied to and in the records of the department of
11 community, trade, and economic development:

12 (i) Financial and proprietary information collected from any person
13 and provided to the department of community, trade, and economic
14 development pursuant to RCW 43.330.050(8) and 43.330.080(4); and

15 (ii) Financial or proprietary information collected from any person
16 and provided to the department of community, trade, and economic
17 development or the office of the governor in connection with the
18 siting, recruitment, expansion, retention, or relocation of that
19 person's business and until a siting decision is made, identifying
20 information of any person supplying information under this subsection
21 and the locations being considered for siting, relocation, or expansion
22 of a business;

23 (b) When developed by the department of community, trade, and
24 economic development based on information as described in (a)(i) of
25 this subsection, any work product is not exempt from disclosure;

26 (c) For the purposes of this subsection, "siting decision" means
27 the decision to acquire or not to acquire a site;

28 (d) If there is no written contact for a period of sixty days to
29 the department of community, trade, and economic development from a
30 person connected with siting, recruitment, expansion, retention, or
31 relocation of that person's business, information described in (a)(ii)
32 of this subsection will be available to the public under this chapter;

33 (13) Financial and proprietary information submitted to or obtained
34 by the department of ecology or the authority created under chapter
35 70.95N RCW to implement chapter 70.95N RCW;

36 (14) Financial, commercial, operations, and technical and research
37 information and data submitted to or obtained by the life sciences
38 discovery fund authority in applications for, or delivery of, grants

1 under chapter 43.350 RCW, to the extent that such information, if
2 revealed, would reasonably be expected to result in private loss to the
3 providers of this information;

4 (15) Financial and commercial information provided as evidence to
5 the department of licensing as required by RCW 19.112.110 or
6 19.112.120, except information disclosed in aggregate form that does
7 not permit the identification of information related to individual fuel
8 licensees;

9 (16) Any production records, mineral assessments, and trade secrets
10 submitted by a permit holder, mine operator, or landowner to the
11 department of natural resources under RCW 78.44.085; ~~((and))~~

12 (17)(a) Farm plans developed by conservation districts, unless
13 permission to release the farm plan is granted by the landowner or
14 operator who requested the plan, or the farm plan is used for the
15 application or issuance of a permit~~((-))~~;

16 (b) Farm plans developed under chapter 90.48 RCW and not under the
17 federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to
18 RCW 42.56.610 and 90.64.190; and

19 (18) Information gathered under chapter 19.85 RCW or RCW 34.05.328
20 that can be identified to a particular business.

21 **Sec. 5.** RCW 42.56.330 and 2006 c 209 s 8 are each amended to read
22 as follows:

23 The following information relating to public utilities and
24 transportation is exempt from disclosure under this chapter:

25 (1) Records filed with the utilities and transportation commission
26 or attorney general under RCW 80.04.095 that a court has determined are
27 confidential under RCW 80.04.095;

28 (2) The residential addresses and residential telephone numbers of
29 the customers of a public utility contained in the records or lists
30 held by the public utility of which they are customers, except that
31 this information may be released to the division of child support or
32 the agency or firm providing child support enforcement for another
33 state under Title IV-D of the federal social security act, for the
34 establishment, enforcement, or modification of a support order;

35 (3) The names, residential addresses, residential telephone
36 numbers, and other individually identifiable records held by an agency
37 in relation to a vanpool, carpool, or other ride-sharing program or

1 service; however, these records may be disclosed to other persons who
2 apply for ride-matching services and who need that information in order
3 to identify potential riders or drivers with whom to share rides;

4 (4) The personally identifying information of current or former
5 participants or applicants in a paratransit or other transit service
6 operated for the benefit of persons with disabilities or elderly
7 persons;

8 (5) The personally identifying information of persons who acquire
9 and use transit passes and other fare payment media including, but not
10 limited to, stored value smart cards and magnetic strip cards, except
11 that an agency may disclose this information to a person, employer,
12 educational institution, or other entity that is responsible, in whole
13 or in part, for payment of the cost of acquiring or using a transit
14 pass or other fare payment media, or to the news media when reporting
15 on public transportation or public safety. This information may also
16 be disclosed at the agency's discretion to governmental agencies or
17 groups concerned with public transportation or public safety;

18 ~~((Records of any person that belong to a public utility
19 district or a municipally owned electrical utility, unless the law
20 enforcement authority provides the public utility district or
21 municipally owned electrical utility with a written statement in which
22 the authority states that it suspects that the particular person to
23 whom the records pertain has committed a crime and the authority has a
24 reasonable belief that the records could determine or help determine
25 whether the suspicion might be true. Information obtained in violation
26 of this subsection is inadmissible in any criminal proceeding;~~

27 ~~(7))~~ Any information obtained by governmental agencies that is
28 collected by the use of a motor carrier intelligent transportation
29 system or any comparable information equipment attached to a truck,
30 tractor, or trailer; however, the information may be given to other
31 governmental agencies or the owners of the truck, tractor, or trailer
32 from which the information is obtained. As used in this subsection,
33 "motor carrier" has the same definition as provided in RCW 81.80.010;
34 and

35 ~~((8))~~ (7) The personally identifying information of persons who
36 acquire and use transponders or other technology to facilitate payment
37 of tolls. This information may be disclosed in aggregate form as long
38 as the data does not contain any personally identifying information.

1 For these purposes aggregate data may include the census tract of the
2 account holder as long as any individual personally identifying
3 information is not released. Personally identifying information may be
4 released to law enforcement agencies only for toll enforcement
5 purposes. Personally identifying information may be released to law
6 enforcement agencies for other purposes only if the request is
7 accompanied by a court order.

8 NEW SECTION. **Sec. 6.** A new section is added to chapter 42.56 RCW
9 to read as follows:

10 A law enforcement authority may not request inspection or copying
11 of records of any person who belongs to a public utility district or a
12 municipally owned electrical utility unless the authority provides the
13 public utility district or municipally owned electrical utility with a
14 written statement in which the authority states that it suspects that
15 the particular person to whom the records pertain has committed a crime
16 and the authority has a reasonable belief that the records could
17 determine or help determine whether the suspicion might be true.
18 Information obtained in violation of this section is inadmissible in
19 any criminal proceeding.

20 **Sec. 7.** RCW 42.56.400 and 2006 c 284 s 17 and 2006 c 8 s 210 are
21 each reenacted and amended to read as follows:

22 The following information relating to insurance and financial
23 institutions is exempt from disclosure under this chapter:

24 (1) Records maintained by the board of industrial insurance appeals
25 that are related to appeals of crime victims' compensation claims filed
26 with the board under RCW 7.68.110;

27 (2) Information obtained and exempted or withheld from public
28 inspection by the health care authority under RCW 41.05.026, whether
29 retained by the authority, transferred to another state purchased
30 health care program by the authority, or transferred by the authority
31 to a technical review committee created to facilitate the development,
32 acquisition, or implementation of state purchased health care under
33 chapter 41.05 RCW;

34 (3) The names and individual identification data of all viators
35 regulated by the insurance commissioner under chapter 48.102 RCW;

36 (4) Information provided under RCW 48.30A.045 through 48.30A.060;

1 (5) Information provided under RCW 48.05.510 through 48.05.535,
2 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600
3 through 48.46.625;

4 ~~((Information gathered under chapter 19.85 RCW or RCW 34.05.328
5 that can be identified to a particular business;~~

6 ~~(7))~~ Examination reports and information obtained by the
7 department of financial institutions from banks under RCW 30.04.075,
8 from savings banks under RCW 32.04.220, from savings and loan
9 associations under RCW 33.04.110, from credit unions under RCW
10 31.12.565, from check cashers and sellers under RCW 31.45.030(3), and
11 from securities brokers and investment advisers under RCW 21.20.100,
12 all of which is confidential and privileged information;

13 ~~((8))~~ (7) Information provided to the insurance commissioner
14 under RCW 48.110.040(3);

15 ~~((9))~~ (8) Documents, materials, or information obtained by the
16 insurance commissioner under RCW 48.02.065, all of which are
17 confidential and privileged;

18 ~~((10))~~ (9) Confidential proprietary and trade secret information
19 provided to the commissioner under RCW 48.31C.020 through 48.31C.050
20 and 48.31C.070;

21 ~~((11))~~ (10) Data filed under RCW 48.140.020, 48.140.030,
22 48.140.050, and 7.70.140 that, alone or in combination with any other
23 data, may reveal the identity of a claimant, health care provider,
24 health care facility, insuring entity, or self-insurer involved in a
25 particular claim or a collection of claims. For the purposes of this
26 subsection:

27 (a) "Claimant" has the same meaning as in RCW 48.140.010(2).

28 (b) "Health care facility" has the same meaning as in RCW
29 48.140.010(6).

30 (c) "Health care provider" has the same meaning as in RCW
31 48.140.010(7).

32 (d) "Insuring entity" has the same meaning as in RCW 48.140.010(8).

33 (e) "Self-insurer" has the same meaning as in RCW 48.140.010(11);

34 and

35 ~~((12))~~ (11) Documents, materials, or information obtained by the
36 insurance commissioner under RCW 48.135.060.

1 **Sec. 8.** RCW 42.56.570 and 2005 c 483 s 4 and 2005 c 274 s 290 are
2 each reenacted and amended to read as follows:

3 (1) The attorney general's office shall publish, and update when
4 appropriate, a pamphlet, written in plain language, explaining this
5 chapter.

6 (2) The attorney general, by February 1, 2006, shall adopt by rule
7 an advisory model rule for state and local agencies, as defined in RCW
8 (~~42.17.020~~) 42.56.010, addressing the following subjects:

9 (a) Providing fullest assistance to requestors;

10 (b) Fulfilling large requests in the most efficient manner;

11 (c) Fulfilling requests for electronic records; and

12 (d) Any other issues pertaining to public disclosure as determined
13 by the attorney general.

14 (3) The attorney general, in his or her discretion, may from time
15 to time revise the model rule.

16 **Sec. 9.** RCW 42.56.590 and 2005 c 368 s 1 are each amended to read
17 as follows:

18 (1)(a) Any agency that owns or licenses computerized data that
19 includes personal information shall disclose any breach of the security
20 of the system following discovery or notification of the breach in the
21 security of the data to any resident of this state whose unencrypted
22 personal information was, or is reasonably believed to have been,
23 acquired by an unauthorized person. The disclosure shall be made in
24 the most expedient time possible and without unreasonable delay,
25 consistent with the legitimate needs of law enforcement, as provided in
26 subsection (3) of this section, or any measures necessary to determine
27 the scope of the breach and restore the reasonable integrity of the
28 data system.

29 (b) For purposes of this section, "agency" means the same as in RCW
30 (~~42.17.020~~) 42.56.010.

31 (2) Any agency that maintains computerized data that includes
32 personal information that the agency does not own shall notify the
33 owner or licensee of the information of any breach of the security of
34 the data immediately following discovery, if the personal information
35 was, or is reasonably believed to have been, acquired by an
36 unauthorized person.

1 (3) The notification required by this section may be delayed if a
2 law enforcement agency determines that the notification will impede a
3 criminal investigation. The notification required by this section
4 shall be made after the law enforcement agency determines that it will
5 not compromise the investigation.

6 (4) For purposes of this section, "breach of the security of the
7 system" means unauthorized acquisition of computerized data that
8 compromises the security, confidentiality, or integrity of personal
9 information maintained by the agency. Good faith acquisition of
10 personal information by an employee or agent of the agency for the
11 purposes of the agency is not a breach of the security of the system
12 when the personal information is not used or subject to further
13 unauthorized disclosure.

14 (5) For purposes of this section, "personal information" means an
15 individual's first name or first initial and last name in combination
16 with any one or more of the following data elements, when either the
17 name or the data elements are not encrypted:

18 (a) Social security number;

19 (b) Driver's license number or Washington identification card
20 number; or

21 (c) Account number or credit or debit card number, in combination
22 with any required security code, access code, or password that would
23 permit access to an individual's financial account.

24 (6) For purposes of this section, "personal information" does not
25 include publicly available information that is lawfully made available
26 to the general public from federal, state, or local government records.

27 (7) For purposes of this section and except under subsection (8) of
28 this section, notice may be provided by one of the following methods:

29 (a) Written notice;

30 (b) Electronic notice, if the notice provided is consistent with
31 the provisions regarding electronic records and signatures set forth in
32 15 U.S.C. Sec. 7001; or

33 (c) Substitute notice, if the agency demonstrates that the cost of
34 providing notice would exceed two hundred fifty thousand dollars, or
35 that the affected class of subject persons to be notified exceeds five
36 hundred thousand, or the agency does not have sufficient contact
37 information. Substitute notice shall consist of all of the following:

1 (i) E-mail notice when the agency has an e-mail address for the
2 subject persons;

3 (ii) Conspicuous posting of the notice on the agency's web site
4 page, if the agency maintains one; and

5 (iii) Notification to major statewide media.

6 (8) An agency that maintains its own notification procedures as
7 part of an information security policy for the treatment of personal
8 information and is otherwise consistent with the timing requirements of
9 this section is in compliance with the notification requirements of
10 this section if it notifies subject persons in accordance with its
11 policies in the event of a breach of security of the system.

12 (9) Any waiver of the provisions of this section is contrary to
13 public policy, and is void and unenforceable.

14 (10)(a) Any customer injured by a violation of this section may
15 institute a civil action to recover damages.

16 (b) Any business that violates, proposes to violate, or has
17 violated this section may be enjoined.

18 (c) The rights and remedies available under this section are
19 cumulative to each other and to any other rights and remedies available
20 under law.

21 (d) An agency shall not be required to disclose a technical breach
22 of the security system that does not seem reasonably likely to subject
23 customers to a risk of criminal activity.

24 NEW SECTION. **Sec. 10.** Section 3 of this act expires June 30,
25 2008.

26 NEW SECTION. **Sec. 11.** Section 4 of this act takes effect June 30,
27 2008.

Passed by the House February 23, 2007.
Passed by the Senate April 13, 2007.
Approved by the Governor April 27, 2007.
Filed in Office of Secretary of State April 30, 2007.