
ENGROSSED SUBSTITUTE SENATE BILL 6513

State of Washington

56th Legislature

2000 Regular Session

By Senate Committee on Commerce, Trade, Housing & Financial Institutions (originally sponsored by Senators Prentice, McCaslin, Kline, Gardner, Winsley, Kohl-Welles, Spanel and Costa; by request of Attorney General)

Read first time 02/04/2000.

1 AN ACT Relating to the privacy of personal information in
2 commercial transactions involving financial institutions and others who
3 maintain and transfer information; amending RCW 19.16.250, 9.35.010,
4 and 9.35.020; adding new sections to chapter 9.35 RCW; adding a new
5 chapter to Title 19 RCW; creating a new section; prescribing penalties;
6 and providing an effective date.

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

8 NEW SECTION. **Sec. 1.** INTENT. (1) The legislature finds that
9 every entity has an affirmative and continuing obligation to respect
10 the privacy of its consumers and to protect the security and
11 confidentiality of consumers. The legislature finds that Washington's
12 citizens have a right to privacy and a reasonable expectation that the
13 personal information that they provide in commercial transactions with
14 financial institutions and others who maintain and transfer information
15 will be kept private and confidential. The legislature finds that
16 there is no existing uniform law that creates an appropriate standard
17 of conduct for disclosure of consumers' personal information and that
18 Washington's citizens need additional statutory protection from fraud,
19 deception, nuisance, invasion of privacy, and breach of confidentiality

1 related to the disclosure of personal information. The legislature
2 intends to ensure that entities and consumers work cooperatively to
3 protect consumer information and enforce sanctions when violations
4 occur.

5 (2) The legislature finds that the disclosure of personal
6 information has caused specific significant harms to Washington
7 consumers, including the appearance of unauthorized charges or debits
8 on consumers' accounts, misappropriation of sensitive information for
9 the purpose of assuming a consumer's identity, the unwanted and
10 unintended dissemination of personal and sensitive information, and the
11 invasion of privacy.

12 (3) The legislature finds that the dissemination of certain
13 sensitive information causes a great risk of harm to the consumer, that
14 it should be given a greater level of protection under the law, and
15 that requiring consumer authorization to disseminate such sensitive
16 information best balances the benefits and harms of disclosure.

17 (4) The legislature finds that the flow of less sensitive personal
18 information has resulted in a number of increased market efficiencies
19 that are beneficial to consumers. These include more rapid credit
20 transactions and check verifications, as well as an increased number of
21 choices for products and services. The legislature finds that these
22 benefits can be maintained by giving consumers the opportunity to
23 choose whether their less sensitive information will be shared. The
24 legislature finds that giving consumers this choice best balances the
25 benefits and harms of disclosure of such information.

26 (5) The legislature finds that the incidence of identity theft is
27 rapidly growing, and that victims of identity theft need further
28 assistance in obtaining the information necessary to the prosecution of
29 their cases. The legislature finds that requiring additional
30 information sharing by merchants with victims will result in greater
31 protections for consumers and deter potential perpetrators.

32 NEW SECTION. **Sec. 2.** DEFINITIONS. Unless the context clearly
33 requires otherwise, the definitions in this section apply throughout
34 this chapter.

35 (1) "Affiliate" means an entity that controls, is controlled by, or
36 is under common control or common ownership with another entity.
37 Companies that form alliances as a financial services group for
38 purposes of marketing their services and are located at a common

1 address, have personnel and payroll functions administered through a
2 central office, jointly sponsor one combined employee savings and
3 profit sharing plan, and have centralized data processing, mail
4 service, communications, and procurement are considered under common
5 control and affiliated with each other.

6 (2) "Consumer" or "customer" means a natural person or his or her
7 legal representative, who is a resident of the state of Washington and
8 who purchases, leases, or otherwise contracts for products, goods, or
9 services within the state of Washington or from an entity located in
10 the state of Washington, that are primarily used for personal, family,
11 or household purposes on or after the effective date of this act and
12 who continues to be a resident of the state of Washington.

13 (3) "Consumer-requested purpose" means for the purpose of
14 establishing or maintaining a business relationship, completing a
15 transaction, or providing a product, good, or service requested by the
16 consumer.

17 (4) "De minimus cost method" means any method, such as a toll-free
18 telephone number, a post office box or address for accepting first-
19 class mail, or any similar, convenient, low-cost method, which does not
20 exceed the cost of a first-class postage stamp for the consumer. If
21 other de minimus cost methods are offered, accepting e-mail or online
22 messages from consumers shall be considered a de minimus cost method.

23 (5) "Financial institution" means (a) a financial institution as
24 defined in section 527(4) of the Gramm-Leach-Bliley Act, P.L. 106-102
25 and its implementing regulations; or (b) a bank holding company or
26 financial holding company, as defined in sections 2(a) and 2(p) of the
27 Bank Holding Company Act, as amended, or any subsidiary thereof as
28 defined in section 2(d) of the Bank Holding Company Act, as amended.

29 (6) "Functional business purpose" means use or disclosure of
30 sensitive or personal information by an information custodian to
31 another entity or person to perform services or functions on behalf of
32 the information custodian as part of the information custodian's
33 provision of its products, goods, or services to its customers;

34 (7) "Information custodian" means all nonpublic commercial entities
35 that maintain data containing personal information or sensitive
36 information about consumers they know reside in Washington and that
37 sell, share, or otherwise transfer the information to others, including
38 affiliates or nonaffiliates, for purposes other than consumer-requested
39 purposes or functional business purposes. An "information custodian"

1 does not include a consumer reporting agency, as defined in the federal
2 Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.), to the extent
3 its activities are directly related to assembling or evaluating
4 consumer credit information or other information on consumers for the
5 purpose of furnishing consumer reports to third parties, and to the
6 extent that the activities are regulated by the federal Fair Credit
7 Reporting Act (15 U.S.C. Sec. 1681 et seq.). "Information custodian"
8 does not include an "agent," "broker," or "solicitor" as defined in
9 chapter 48.17 RCW, to the extent their activities include the sharing,
10 selling, or transferring of personal or sensitive information between
11 an insurer as defined in chapter 48.01 RCW, and its contractually bound
12 agents, brokers, and solicitors, and their activities that are directly
13 related to soliciting applications on behalf of an insurer,
14 effectuating insurance contracts, or collecting premiums on insurances
15 so applied for or effectuated.

16 (8) "Marketer" means a nonpublic, commercial entity that maintains
17 data containing personal information or sensitive information about
18 consumers it knows reside in Washington and uses the information to
19 engage in marketing.

20 (9) "Marketing" or "marketing information" means a promotion,
21 solicitation, or advertisement that specifically references the sale or
22 lease of products, goods, or services made through written, telephonic,
23 electronic, or other means, that is directed to a specific named
24 consumer, but shall not include any promotion, solicitation, or
25 advertisement (a) included with a billing or statement, (b) directed to
26 the public, or (c) made to such consumer while present at the
27 marketer's place of business or during any other contact with the
28 marketer initiated by or at the request of the consumer.

29 (10) "Personal information" means information that is provided by
30 the consumer in a commercial context, and is identifiable to the
31 individual consumer, that concerns the amount or condition of the
32 consumer's assets, liabilities, financial transactions, purchasing
33 history, buying preferences, business relationships, customer status,
34 demographic information, name, address, telephone number, electronic
35 mail address, or that reflects current or historical deposit or credit
36 card account balances or purchase amounts.

37 (11) "Sensitive information" means information maintained in a
38 commercial context that is identifiable with an individual consumer or
39 a specific account and may be held for the purpose of transaction

1 initiation, account access or identity verification, and includes
2 account numbers, access codes or passwords, social security numbers,
3 tax identification numbers, driver's license or permit numbers, state
4 identicard numbers issued by the department of licensing, and credit
5 card numbers or expiration dates, and electronically captured
6 signatures.

7 NEW SECTION. **Sec. 3.** RESTRICTION ON CONSUMER INFORMATION.

8 Information custodians and marketers shall, in performing a transaction
9 with a consumer, providing a service for a consumer, or establishing a
10 business relationship with a consumer, require only that the consumer
11 provide information reasonably necessary to perform the transaction,
12 establish the relationship, administer or maintain the business
13 relationship, collect or service a debt, protect against fraud or
14 unauthorized transactions, or comply with applicable law. Any optional
15 information must be specified as such, and the consumer must be given
16 the option not to provide it.

17 NEW SECTION. **Sec. 4.** CONSUMER PRIVACY POLICIES. (1) An

18 information custodian must have a consumer privacy policy that
19 discloses to existing and prospective consumers the policies and
20 practices of the information custodian regarding the use of consumer
21 personal information and sensitive information acquired or possessed by
22 the information custodian. Entities that maintain data containing
23 personal information or sensitive information but do not sell, share,
24 or otherwise transfer the data, are not required to have a privacy
25 policy.

26 (2) The consumer privacy policy, at a minimum, must summarize the
27 information custodian's responsibilities under this chapter and
28 describe the consumer's rights and remedies under it, and generally
29 describe with whom the consumer's personal and sensitive information
30 will be shared or to whom it will be sold or transferred.

31 (3) The consumer privacy policy must also provide a reasonable
32 means for consumers to access their personal and sensitive information
33 that the information custodian shares, sells, or transfers for
34 marketing purposes.

35 (4) An information custodian must disclose its consumer privacy
36 policy at least once no later than:

1 (a) The effective date of this act to existing customers about whom
2 the information custodian has names and addresses or other means of
3 contact, or within a reasonable period of time after the information
4 custodian obtains the consumers' names and addresses or other means of
5 contact. For the purposes of this subsection, "existing customer"
6 means a customer whose personal or sensitive information has been sold,
7 shared, or transferred within the twelve-month period preceding the
8 effective date of this act;

9 (b) Thirty days after a prospective customer's initial request for
10 the policy, following the effective date of this act; and

11 (c) At the time when a new customer enters into a business
12 relationship with the information custodian.

13 (5) An information custodian must disclose its consumer privacy
14 policy on an annual basis to existing customers after the initial
15 disclosure described in subsection (4) of this section, and, when
16 material changes are made to the policy, the information custodian must
17 notify the consumer, clearly and conspicuously in writing, in plain
18 language, of the material changes and describe the consumer's rights
19 under sections 5(1) and 7 (1) and (2) of this act, including the
20 consumer's right to withdraw any consent given by the consumer under
21 section 7(2) of this act.

22 (6) The disclosure of the consumer privacy policy must be clearly
23 and conspicuously made in writing, in a document separate from or
24 attached as the first item of other documents or pages that are
25 provided to the consumer by the information custodian.

26 (7) The consumer privacy policy must be clearly and conspicuously
27 posted on the information custodian's website, if a website exists, and
28 must be readily available for review at the information custodian's
29 place of business.

30 (8) Compliance by a financial institution with the timing of
31 disclosures under section 503 of Public Law 106-102 (the Gramm-Leach-
32 Bliley Act of 1999) and its implementing regulations constitutes
33 compliance with the disclosure deadline requirements of subsection (4)
34 of this section and section 5(1)(a) of this act for existing customers.

35 NEW SECTION. **Sec. 5.** PERSONAL INFORMATION--CONSUMER CONTROL. (1)
36 An information custodian may share, sell, or otherwise transfer
37 personal information for purposes other than consumer-requested
38 purposes or functional business purposes, only if it has clearly and

1 conspicuously disclosed to the consumer the following information in
2 plain language:

3 (a) That the consumer has the right to choose not to have his or
4 her personal information shared, sold, or otherwise transferred for
5 purposes other than consumer-requested purposes or functional business
6 purposes. The disclosure must be made at the time the consumer privacy
7 policy is provided to the customer under section 4 of this act.

8 (b) That the consumer may choose not to have his or her personal
9 information shared, sold, or transferred for other than consumer-
10 requested purposes or functional business purposes, by exercising his
11 or her choice through a de minimus cost method the information
12 custodian has established.

13 (2) If, under this section, a consumer chooses not to have his or
14 her personal information shared, sold, or otherwise transferred under
15 subsection (1) of this section, the information custodian must stop
16 sharing, selling, or otherwise transferring the consumer's personal
17 information for purposes other than consumer-requested purposes or
18 functional business purposes, within ninety days of receiving the
19 consumer's notice. Once a consumer has chosen not to have his or her
20 personal information shared, sold, or otherwise transferred, an
21 information custodian may not share, sell, or otherwise transfer the
22 information for purposes other than consumer-requested purposes or
23 functional business purposes until the consumer notifies the entity
24 that he or she has chosen to have his or her personal information
25 shared, sold, or otherwise transferred under subsection (1) of this
26 section.

27 (3) This section does not apply to disclosure of personal
28 information under the following circumstances. However, the recipient
29 of the information is subject to section 8 of this act:

30 (a) Disclosure to or at the direction or with the consent of the
31 consumer upon his or her request and upon proper identification;

32 (b) Disclosure required by federal, state, or local law or
33 regulation, rules, and other applicable legal requirements;

34 (c) Disclosure made in the course of a properly authorized civil,
35 criminal, or regulatory examination or investigation or under a search
36 warrant, court order, or subpoena, including an administrative subpoena
37 or other legal process;

38 (d) Disclosure to a third party or an affiliate for the purpose of
39 collecting a debt or dishonored item;

- 1 (e) Disclosure to protect the confidentiality or security of the
2 information custodian's records;
- 3 (f) Disclosure to protect against, investigate, or prevent actual
4 or potential fraud, unauthorized transactions, claims, or other
5 liability;
- 6 (g) Disclosure as part of a risk control program required by or
7 subject to examination by regulators;
- 8 (h) Disclosure by or to a consumer reporting agency as specifically
9 permitted under the federal Fair Credit Reporting Act (15 U.S.C. Sec.
10 1681 et seq.);
- 11 (i) Disclosure of consumer report information between affiliates as
12 specifically permitted under the federal Fair Credit Reporting Act (15
13 U.S.C. Sec. 1681 et seq.);
- 14 (j) Disclosure for purposes of a proposed or actual securitization,
15 secondary market sale (including sales of service rights), or similar
16 transaction related to a consumer-requested purpose;
- 17 (k) Disclosure to persons holding a legal or beneficial interest
18 relating to the consumer;
- 19 (l) Disclosure in order to provide information to insurance rate
20 advisory organizations, guaranty funds or agencies, applicable rating
21 agencies of the information custodian, persons assessing the
22 information custodian's compliance with industry standards, and the
23 information custodian's attorneys, accountants, and auditors;
- 24 (m) Disclosure in connection with a proposed or actual sale,
25 merger, transfer, or exchange of all or a portion of a business or
26 operating unit of an information custodian if the disclosure of
27 information concerns solely consumers of the business or unit;
- 28 (n) Disclosure to a federal, state, or local agency as required by
29 that agency to fulfill its legal obligations on behalf of a consumer;
- 30 (o) Disclosure of health care information in compliance with state
31 and federal law; or
- 32 (p) Disclosure between licensees or franchisees and their licensors
33 or franchisors, when (i) such licensees or franchisees market, sell, or
34 lease products, goods, or services in a retail setting at a common
35 physical address with the licensor or franchisor; (ii) have common data
36 processing functions with the licensor or franchisor; and (iii)
37 advertise, market, or sell products, goods, or services marked or
38 otherwise directly identified with the franchisor's or licensor's name
39 or distinctive brand.

1 NEW SECTION. **Sec. 6.** MARKETING-CONSUMER CONTROL. (1) A marketer
2 may use personal or sensitive information for marketing purposes only
3 if it has clearly and conspicuously disclosed in plain language to the
4 consumer:

5 (a) That the consumer has the right to choose not to receive
6 marketing information. This disclosure must be made in all marketing
7 information, in whatever medium the marketing information is sent or,
8 if the marketer is an information custodian, in the privacy policy
9 provided to the customer under section 4 of this act. If the marketer
10 is not an information custodian, it may choose as an option to provide
11 the disclosure in a privacy policy provided to the customer under
12 section 4 of this act instead of disclosing it in all marketing
13 information;

14 (b) That the consumer may choose not to receive marketing
15 information by exercising his or her choice through a de minimus cost
16 method provided by the marketer. This disclosure must be made in all
17 marketing information in whatever medium the marketing information is
18 sent, or, if the marketer is an information custodian, in the privacy
19 policy provided to the customer under section 4 of this act. The
20 marketer shall maintain adequate and reasonable access for consumers to
21 the de minimus cost method it has established. If the marketer is not
22 an information custodian, it may choose as an option to provide the
23 disclosure in a privacy policy provided to the customer under section
24 4 of this act instead of disclosing it in all marketing information.

25 (2) If, under this section, a consumer chooses not to receive
26 marketing information, the marketer must stop marketing to the consumer
27 within ninety days of receiving the consumer's notice. Once a consumer
28 has chosen not to receive marketing information, a marketer may not
29 market to the consumer until the consumer notifies the marketer that he
30 or she has chosen to receive marketing information.

31 NEW SECTION. **Sec. 7.** SENSITIVE INFORMATION--CONSUMER CONTROL.

32 (1) An information custodian may not disclose sensitive information to
33 a third party or affiliate for purposes other than consumer-requested
34 purposes or functional business purposes unless the consumer has
35 received written notification of the following:

36 (a) The information to be disclosed;

37 (b) The entity or entities authorized to receive the disclosure of
38 information; and

1 (c) A specific description of the purpose for which the disclosure
2 of information will be made.

3 (2) An information custodian may not disclose sensitive information
4 to a third party or affiliate for purposes other than consumer-
5 requested purposes or functional business purposes unless the consumer,
6 upon notice as provided in this section and affirmative consent,
7 authorizes the disclosure of the sensitive information sought to be
8 disclosed, in a written statement dated and accepted by the consumer
9 that is separate and distinct from any other document, and that
10 contains a description of the information sought to be disclosed and
11 the purpose for which the information will be disclosed.

12 (3) This section does not apply to disclosure of sensitive
13 information under the following circumstances. However, the recipient
14 of the information is subject to section 8 of this act:

15 (a) Disclosure to or at the direction or with the consent of the
16 consumer upon his or her request and upon proper identification;

17 (b) Disclosure required by federal, state, or local law or
18 regulation, rules, and other applicable legal requirements;

19 (c) Disclosure made in the course of a properly authorized civil,
20 criminal, or regulatory examination or investigation or under a search
21 warrant, court order, or subpoena, including an administrative subpoena
22 or other legal process;

23 (d) Disclosure to a third party or an affiliate for the purpose of
24 collecting a debt or a dishonored item;

25 (e) Disclosure to protect the confidentiality or security of the
26 information custodian's records;

27 (f) Disclosure to protect against, investigate, or prevent actual
28 or potential fraud or unauthorized transactions, claims, or other
29 liability;

30 (g) Disclosure as part of a risk control program required by or
31 subject to examination by regulators;

32 (h) Disclosure by or to a consumer reporting agency as specifically
33 permitted under the federal Fair Credit Reporting Act (15 U.S.C. Sec.
34 1681 et seq.);

35 (i) Disclosure of consumer report information between affiliates as
36 specifically permitted under the federal Fair Credit Reporting Act (15
37 U.S.C. Sec. 1681 et seq.);

1 (j) Disclosure of sensitive information which is prohibited from
2 disclosure by section 502(d) of Public Law 106-102 (the Gramm-Leach-
3 Bliley Act of 1999);

4 (k) Disclosure for purposes of a proposed or actual securitization,
5 secondary market sale (including sales service rights), or similar
6 transactions related to a consumer-requested purpose;

7 (l) Disclosure to persons holding a legal or beneficial interest
8 relating to the consumer;

9 (m) Disclosure in order to provide information to insurance rate
10 advisory organizations, guaranty funds or agencies, applicable rating
11 agencies of the information custodian, persons assessing the
12 information custodian's compliance with industry standards, and the
13 information custodian's attorneys, accountants, and auditors;

14 (n) Disclosure in connection with a proposed or actual sale,
15 merger, transfer, or exchange of all or a portion of a business or
16 operating unit of an information custodian if the disclosure of
17 information concerns solely consumers of the business or unit;

18 (o) Disclosure of health care information in compliance with state
19 and federal law;

20 (p) Disclosure to a federal, state, or local agency as required by
21 that agency to fulfill its legal obligations on behalf of a consumer;
22 or

23 (q) Disclosure between licensees or franchisees and their licensors
24 or franchisors, when (i) such licensees or franchisees market, sell, or
25 lease products, goods, or services in a retail setting at a common
26 physical address with the licensor or franchisor; (ii) have common data
27 processing functions with the licensor or franchisor; and (iii)
28 advertise, market, or sell products, goods, or services marked or
29 otherwise directly identified with the franchisor's or licensor's name
30 or distinctive brand.

31 NEW SECTION. **Sec. 8.** CONFIDENTIALITY AND SECURITY OF INFORMATION.

32 (1) Third parties or affiliates that obtain personal information or
33 sensitive information from information custodians may not sell, share,
34 or otherwise transfer the information for any reason other than the
35 original purpose for which the information was sold, shared, or
36 transferred to the third party or affiliate.

37 (2) An information custodian, before sharing, selling, or otherwise
38 transferring personal information or sensitive information, must obtain

1 a written agreement from the third party or affiliate providing for the
2 following:

3 (a) To keep the information confidential;

4 (b) To use the information only for the original purpose for which
5 it has been shared, sold, or provided; and

6 (c) To safeguard the information from loss, misuse, theft,
7 unauthorized access, disclosure, defacement, or alteration.

8 (3) Every information custodian must establish reasonable
9 safeguards to ensure the confidentiality and safety of personal
10 information and sensitive information and to protect them from loss,
11 misuse, theft, unauthorized access, disclosure, defacement, or
12 alteration.

13 NEW SECTION. **Sec. 9.** ACTIONS OR TRANSACTIONS BY COMPETITIVE
14 TELECOMMUNICATIONS COMPANIES. For purposes of this chapter, and the
15 consumer protection act, chapter 19.86 RCW, actions or transactions by
16 information custodians or marketers who, pursuant to RCW 80.36.320 are
17 competitive telecommunications companies, or actions or transactions
18 associated with competitive telecommunications services are not
19 otherwise permitted, prohibited, or regulated by the utilities and
20 transportation commission.

21 NEW SECTION. **Sec. 10.** VIOLATION AN UNFAIR OR DECEPTIVE ACT. (1)
22 Unfair and deceptive invasion of privacy rights is not reasonable in
23 relation to the development and preservation of business. The
24 legislature finds that the practices covered by this chapter are
25 matters vitally affecting the public interest for the purpose of
26 applying the consumer protection act, chapter 19.86 RCW. A violation
27 of this chapter is an unfair or deceptive act in trade or commerce for
28 the purpose of applying the consumer protection act, chapter 19.86 RCW.

29 (2) A consumer may not bring an action for an alleged violation of
30 this chapter, other than an alleged violation of section 7 or 8 of this
31 act or a willful violation of section 3, 4, or 5 of this act, unless,
32 within seven years before the alleged violation, he or she has notified
33 the defendant of a violation of the section, in writing at an address
34 specified in the defendant's privacy policy if the defendant is an
35 information custodian or at an address provided by the defendant upon
36 the consumer's request if the defendant is a marketer, and the

1 defendant has again committed the violation more than ninety days after
2 having received the notification.

3 (3) Damages to a person who has been the victim of a violation of
4 this chapter are five hundred dollars, or actual damages, whichever is
5 greater. A court may increase the award of damages in an amount not
6 more than three times the actual damages sustained, or one thousand
7 five hundred dollars, whichever is greater, upon a demonstration that
8 a violation of the chapter was willful.

9 NEW SECTION. **Sec. 11.** FEDERAL INVALIDITY--ANTITRUST LAWS. If the
10 responsible federal chartering authority, under applicable federal law,
11 or if a court of competent jurisdiction declares that any provision of
12 this chapter is invalid with respect to any financial institution, the
13 provision is also invalid, to the same extent, with respect to
14 financial institutions chartered under the laws of the state of
15 Washington and to host branches of out-of-state banks. The director of
16 the department of financial institutions may, from time to time,
17 publish provisions of state laws that have been found invalidated under
18 federal law and procedures. This section does not impair in any manner
19 the authority of the state attorney general to enforce antitrust laws
20 applicable to financial institutions or their affiliates.

21 NEW SECTION. **Sec. 12.** A new section is added to chapter 9.35 RCW
22 to read as follows:

23 DEFINITIONS. As used in this chapter, unless the context clearly
24 requires otherwise:

25 (1) "Financial information" means, to the extent it is nonpublic,
26 any of the following information identifiable to the individual that
27 concerns the amount and conditions of an individual's assets,
28 liabilities, or credit:

29 (a) Account numbers and balances;

30 (b) Transactional information concerning any account; and

31 (c) Codes, passwords, social security numbers, tax identification
32 numbers, driver's license or permit numbers, state identicard numbers
33 issued by the department of licensing, and other information held for
34 the purpose of account access or transaction initiation.

35 (2) "Financial information repository" means any person engaged in
36 the business of providing services to customers who have a credit,

1 deposit, trust, stock, or other financial account or relationship with
2 the person.

3 (3) "Means of identification" means any information or item that is
4 not describing finances or credit but is personal to or identifiable
5 with any individual or other person, including any current or former
6 name of the person, telephone number, and electronic address or
7 identifier of the individual or any member of his or her family,
8 including the ancestor of such person; any information relating to a
9 change in name, address, telephone number, or electronic address or
10 identifier of the individual or his or her family; any social security,
11 driver's license, or tax identification number of the individual or any
12 member of his or her family; and other information which could be used
13 to identify the person, including unique biometric data.

14 (4) "Person" means an individual, partnership, corporation, or
15 association.

16 (5) "Personal information" means information that is provided by
17 the consumer in a commercial context, and is identifiable to the
18 individual consumer, that concerns the amount or condition of the
19 consumer's assets, liabilities, financial transactions, purchasing
20 history, buying preferences, business relationships, customer status,
21 demographic information, name, address, telephone number, or electronic
22 mail address.

23 (6) "Sensitive information" means information maintained in a
24 commercial context that is identifiable with an individual consumer or
25 a specific account and is held for the purpose of transaction
26 initiation, account access or identity verification, or that reflects
27 current or historical deposit or credit card account balances or
28 purchase amounts, and includes account numbers, access codes or
29 passwords, social security numbers, tax identification numbers,
30 driver's license or permit numbers, state identicard numbers issued by
31 the department of licensing, and credit card numbers or expiration
32 dates.

33 (7) "Victim" means a person whose means of identification, personal
34 information, or sensitive information has been used or transferred
35 without authorization with the intent to commit, or to aid or abet, an
36 unlawful activity harming or intending to harm the person whose
37 identity is used, or to commit a felony.

1 NEW SECTION. **Sec. 13.** A new section is added to chapter 9.35 RCW
2 to read as follows:

3 INFORMATION AVAILABLE TO VICTIM. (1) A person, financial
4 information repository, corporation, trust, partnership, or
5 unincorporated association possessing information relating to an actual
6 or potential violation of this chapter, and who may have entered into
7 a transaction, provided credit, products, goods, or services, accepted
8 payment, or otherwise done business with a person who has used the
9 victim's means of identification, must, upon request of the victim,
10 provide copies of all information relevant to the potential or actual
11 violation of this chapter.

12 (2) Prior to providing the information required under subsection
13 (1) of this section, the provider may require the victim to provide
14 positive identification of the victim and a copy of a police report
15 evidencing the victim's claim. The provider may also seek reasonable
16 compensation for the actual cost of providing the information
17 requested.

18 (3) No person, financial information repository, corporation,
19 trust, partnership, or unincorporated association may be held liable
20 for an action voluntarily taken in good faith to provide information
21 regarding potential or actual violations of this chapter to other
22 financial information repositories, merchants, law enforcement
23 authorities, or to the victim, for the purpose of identification and
24 prosecution of violators of this chapter.

25 **Sec. 14.** RCW 19.16.250 and 1983 c 107 s 1 are each amended to read
26 as follows:

27 No licensee or employee of a licensee shall:

28 (1) Directly or indirectly aid or abet any unlicensed person to
29 engage in business as a collection agency in this state or receive
30 compensation from such unlicensed person: PROVIDED, That nothing in
31 this chapter shall prevent a licensee from accepting, as forwarder,
32 claims for collection from a collection agency or attorney whose place
33 of business is outside the state.

34 (2) Collect or attempt to collect a claim by the use of any means
35 contrary to the postal laws and regulations of the United States postal
36 department.

37 (3) Publish or post or cause to be published or posted, any list of
38 debtors commonly known as "bad debt lists" or threaten to do so. For

1 purposes of this chapter, a "bad debt list" means any list of natural
2 persons alleged to fail to honor their lawful debts. However, nothing
3 herein shall be construed to prohibit a licensee from communicating to
4 its customers or clients by means of a coded list, the existence of a
5 check dishonored because of insufficient funds, not sufficient funds or
6 closed account by the financial institution servicing the debtor's
7 checking account: PROVIDED, That the debtor's identity is not readily
8 apparent: PROVIDED FURTHER, That the licensee complies with the
9 requirements of subsection (9)(e) of this section.

10 (4) Have in his possession or make use of any badge, use a uniform
11 of any law enforcement agency or any simulation thereof, or make any
12 statements which might be construed as indicating an official
13 connection with any federal, state, county, or city law enforcement
14 agency, or any other governmental agency, while engaged in collection
15 agency business.

16 (5) Perform any act or acts, either directly or indirectly,
17 constituting the practice of law.

18 (6) Advertise for sale or threaten to advertise for sale any claim
19 as a means of endeavoring to enforce payment thereof or agreeing to do
20 so for the purpose of soliciting claims, except where the licensee has
21 acquired claims as an assignee for the benefit of creditors or where
22 the licensee is acting under court order.

23 (7) Use any name while engaged in the making of a demand for any
24 claim other than the name set forth on his or its current license
25 issued hereunder.

26 (8) Give or send to any debtor or cause to be given or sent to any
27 debtor, any notice, letter, message, or form which represents or
28 implies that a claim exists unless it shall indicate in clear and
29 legible type:

30 (a) The name of the licensee and the city, street, and number at
31 which he is licensed to do business;

32 (b) The name of the original creditor to whom the debtor owed the
33 claim if such name is known to the licensee or employee: PROVIDED,
34 That upon written request of the debtor, the licensee shall make a
35 reasonable effort to obtain the name of such person and provide this
36 name to the debtor;

37 (c) If the notice, letter, message, or form is the first notice to
38 the debtor or if the licensee is attempting to collect a different

1 amount than indicated in his or its first notice to the debtor, an
2 itemization of the claim asserted must be made including:

3 (i) Amount owing on the original obligation at the time it was
4 received by the licensee for collection or by assignment;

5 (ii) Interest or service charge, collection costs, or late payment
6 charges, if any, added to the original obligation by the original
7 creditor, customer or assignor before it was received by the licensee
8 for collection, if such information is known by the licensee or
9 employee: PROVIDED, That upon written request of the debtor, the
10 licensee shall make a reasonable effort to obtain information on such
11 items and provide this information to the debtor;

12 (iii) Interest or service charge, if any, added by the licensee or
13 customer or assignor after the obligation was received by the licensee
14 for collection;

15 (iv) Collection costs, if any, that the licensee is attempting to
16 collect;

17 (v) Attorneys' fees, if any, that the licensee is attempting to
18 collect on his or its behalf or on the behalf of a customer or
19 assignor;

20 (vi) Any other charge or fee that the licensee is attempting to
21 collect on his or its own behalf or on the behalf of a customer or
22 assignor.

23 (9) Communicate or threaten to communicate, the existence of a
24 claim to a person other than one who might be reasonably expected to be
25 liable on the claim in any manner other than through proper legal
26 action, process, or proceedings except under the following conditions:

27 (a) A licensee or employee of a licensee may inform a credit
28 reporting bureau of the existence of a claim: PROVIDED, That if the
29 licensee or employee of a licensee reports a claim to a credit
30 reporting bureau, the licensee shall upon receipt of written notice
31 from the debtor that any part of the claim is disputed, forward a copy
32 of such written notice to the credit reporting bureau;

33 (b) A licensee or employee in collecting or attempting to collect
34 a claim may communicate the existence of a claim to a debtor's employer
35 if the claim has been reduced to a judgment;

36 (c) A licensee or employee in collecting or attempting to collect
37 a claim that has not been reduced to judgment, may communicate the
38 existence of a claim to a debtor's employer if:

1 (i) The licensee or employee has notified or attempted to notify
2 the debtor in writing at his last known address or place of employment
3 concerning the claim and the debtor after a reasonable time has failed
4 to pay the claim or has failed to agree to make payments on the claim
5 in a manner acceptable to the licensee, and

6 (ii) The debtor has not in writing to the licensee disputed any
7 part of the claim: PROVIDED, That the licensee or employee may only
8 communicate the existence of a claim which has not been reduced to
9 judgment to the debtor's employer once unless the debtor's employer has
10 agreed to additional communications.

11 (d) A licensee may for the purpose of locating the debtor or
12 locating assets of the debtor communicate the existence of a claim to
13 any person who might reasonably be expected to have knowledge of the
14 whereabouts of a debtor or the location of assets of the debtor if the
15 claim is reduced to judgment, or if not reduced to judgment, when:

16 (i) The licensee or employee has notified or attempted to notify
17 the debtor in writing at his last known address or last known place of
18 employment concerning the claim and the debtor after a reasonable time
19 has failed to pay the claim or has failed to agree to make payments on
20 the claim in a manner acceptable to the licensee, and

21 (ii) The debtor has not in writing disputed any part of the claim.

22 (e) A licensee may communicate the existence of a claim to its
23 customers or clients if the claim is reduced to judgment, or if not
24 reduced to judgment, when:

25 (i) The licensee has notified or attempted to notify the debtor in
26 writing at his last known address or last known place of employment
27 concerning the claim and the debtor after a reasonable time has failed
28 to pay the claim or has failed to agree to make payments on the claim
29 in a manner acceptable to the licensee, and

30 (ii) The debtor has not in writing disputed any part of the claim.

31 (10) Threaten the debtor with impairment of his credit rating if a
32 claim is not paid.

33 (11) Communicate with the debtor after notification in writing from
34 an attorney representing such debtor that all further communications
35 relative to a claim should be addressed to the attorney: PROVIDED,
36 That if a licensee requests in writing information from an attorney
37 regarding such claim and the attorney does not respond within a
38 reasonable time, the licensee may communicate directly with the debtor

1 until he or it again receives notification in writing that an attorney
2 is representing the debtor.

3 (12) Communicate with a debtor or anyone else in such a manner as
4 to harass, intimidate, threaten, or embarrass a debtor, including but
5 not limited to communication at an unreasonable hour, with unreasonable
6 frequency, by threats of force or violence, by threats of criminal
7 prosecution, and by use of offensive language. A communication shall
8 be presumed to have been made for the purposes of harassment if:

9 (a) It is made with a debtor or spouse in any form, manner, or
10 place, more than three times in a single week;

11 (b) It is made with a debtor at his or her place of employment more
12 than one time in a single week;

13 (c) It is made with the debtor or spouse at his or her place of
14 residence between the hours of 9:00 p.m. and 7:30 a.m.

15 (13) Communicate with the debtor through use of forms or
16 instruments that simulate the form or appearance of judicial process,
17 the form or appearance of government documents, or the simulation of a
18 form or appearance of a telegraphic or emergency message.

19 (14) Communicate with the debtor and represent or imply that the
20 existing obligation of the debtor may be or has been increased by the
21 addition of attorney fees, investigation fees, service fees, or any
22 other fees or charges when in fact such fees or charges may not legally
23 be added to the existing obligation of such debtor.

24 (15) Threaten to take any action against the debtor which the
25 licensee cannot legally take at the time the threat is made.

26 (16) Send any telegram or make any telephone calls to a debtor or
27 concerning a debt or for the purpose of demanding payment of a claim or
28 seeking information about a debtor, for which the charges are payable
29 by the addressee or by the person to whom the call is made.

30 (17) In any manner convey the impression that the licensee is
31 vouched for, bonded to or by, or is an instrumentality of the state of
32 Washington or any agency or department thereof.

33 (18) Collect or attempt to collect in addition to the principal
34 amount of a claim any sum other than allowable interest, collection
35 costs or handling fees expressly authorized by statute, and, in the
36 case of suit, attorney's fees and taxable court costs.

37 (19) Procure from a debtor or collect or attempt to collect on any
38 written note, contract, stipulation, promise or acknowledgment under
39 which a debtor may be required to pay any sum other than principal,

1 allowable interest, and, in the case of suit, attorney's fees and
2 taxable court costs.

3 (20) Upon notification by a victim, as defined in section 12 of
4 this act, that a police report has been filed regarding the victim's
5 claim, and upon receipt of a copy of the report indicating that the
6 victim's checkbook or other series of preprinted written instruments
7 has been stolen, fail to accept one single writing from the victim that
8 identifies the numbers of the checks, the bank, and account number,
9 that disputes creditors' claims for the identified checks or written
10 instruments and that includes a copy of the victim's driver's license
11 or other document containing the victim's signature which was executed
12 prior to the date of claim identified in the police report. If more
13 than one collection agency is attempting collection on individual
14 checks or written instruments that are part of the series, each
15 collection agency may request a single writing from the victim that
16 disputes creditors' claims for the entire checkbook or series. Once a
17 single writing has been received, the collection agency must not,
18 except in the context of a judicial or administrative proceeding,
19 contact the victim orally within the one hundred eighty-day period
20 following receipt of the writing to require additional proof,
21 explanation, or evidence except in a court of law from the victim
22 disputing creditors' claims regarding the enumerated checks or other
23 written instruments in the same series or lot and must consider the
24 single writing as a dispute to all creditors' claims arising from use
25 of the enumerated checks or other series of instruments.

26 **Sec. 15.** RCW 9.35.010 and 1999 c 368 s 2 are each amended to read
27 as follows:

28 (1) No person may obtain or attempt to obtain, or cause to be
29 disclosed or attempt to cause to be disclosed to any person, financial
30 information from a financial information repository:

31 (a) By knowingly making a false, fictitious, or fraudulent
32 statement or representation to an officer, employee, or agent of a
33 financial information repository with the intent to deceive the
34 officer, employee, or agent into relying on that statement or
35 representation for purposes of releasing the financial information;

36 (b) By knowingly making a false, fictitious, or fraudulent
37 statement or representation to a customer of a financial information

1 repository with the intent to deceive the customer into releasing
2 financial information or authorizing the release of such information;

3 (c) By knowingly providing any document to an officer, employee, or
4 agent of a financial information repository, knowing that the document
5 is forged, counterfeit, lost, or stolen; was fraudulently obtained; or
6 contains a false, fictitious, or fraudulent statement or
7 representation, if the document is provided with the intent to deceive
8 the officer, employee, or agent to release the financial information.

9 (2) No person may request another person to obtain financial
10 information from a financial information repository and knows or should
11 have known that the person will obtain or attempt to obtain the
12 information from the financial institution repository in any manner
13 described in subsection (1) of this section.

14 (3) ~~((As used in this section, unless the context clearly requires
15 otherwise:~~

16 ~~(a) "Financial information" means, to the extent it is nonpublic,
17 any of the following information identifiable to the individual that
18 concerns the amount and conditions of an individual's assets,
19 liabilities, or credit:~~

20 ~~(i) Account numbers and balances;~~

21 ~~(ii) Transactional information concerning any account; and~~

22 ~~(iii) Codes, passwords, social security numbers, tax identification
23 numbers, driver's license or permit numbers, state identification numbers
24 issued by the department of licensing, and other information held for
25 the purpose of account access or transaction initiation.~~

26 ~~(b) "Financial information repository" means any person engaged in
27 the business of providing services to customers who have a credit,
28 deposit, trust, stock, or other financial account or relationship with
29 the person.~~

30 ~~(c) "Person" means an individual, partnership, corporation, or
31 association.~~

32 ~~(4))~~ No provision of this section shall be construed so as to
33 prevent any action by a law enforcement agency, or any officer,
34 employee, or agent of such agency, or any action of an agent of the
35 financial information repository when working in conjunction with a law
36 enforcement agency.

37 ~~((5))~~ (4) This section does not apply to:

1 (a) Efforts by the financial information repository to test
2 security procedures or systems of the financial institution repository
3 for maintaining the confidentiality of customer information;

4 (b) Investigation of alleged employee misconduct or negligence; or

5 (c) Efforts to recover financial or personal information of the
6 financial institution obtained or received by another person in any
7 manner described in subsection (1) or (2) of this section.

8 ~~((+6+))~~ (5) Violation of this section is a class C felony.

9 ~~((+7+))~~ (6) A person ~~((that [who]))~~ who violates this section is
10 liable for five hundred dollars or actual damages, whichever is
11 greater, and reasonable attorneys' fees. If the person violating this
12 section is a business that repeatedly violates this section, that
13 person also violates the Consumer Protection Act, chapter 19.86 RCW.

14 **Sec. 16.** RCW 9.35.020 and 1999 c 368 s 3 are each amended to read
15 as follows:

16 (1) No person may knowingly use or knowingly transfer a means of
17 identification of another person with the intent to commit, or to aid
18 or abet, any unlawful activity harming or intending to harm the person
19 whose identity is used, or for committing any felony.

20 (2) ~~((For purposes of this section, "means of identification" means
21 any information or item that is not describing finances or credit but
22 is personal to or identifiable with any individual or other person,
23 including any current or former name of the person, telephone number,
24 and electronic address or identifier of the individual or any member of
25 his or her family, including the ancestor of such person; any
26 information relating to a change in name, address, telephone number, or
27 electronic address or identifier of the individual or his or her
28 family; any social security, driver's license, or tax identification
29 number of the individual or any member of his or her family; and other
30 information which could be used to identify the person, including
31 unique biometric data.~~

32 ~~(+3+))~~ Violation of this section is a class C felony.

33 ~~((+4+))~~ (3) A person ~~((that [who]))~~ who violates this section is
34 liable for five hundred dollars or actual damages, including costs to
35 repair the person's credit record, whichever is greater, and reasonable
36 attorneys' fees. If the person violating this section is a business
37 that repeatedly violates this section, that person also violates the
38 Consumer Protection Act, chapter 19.86 RCW.

1 NEW SECTION. **Sec. 17.** Sections 1 through 11 of this act
2 constitute a new chapter in Title 19 RCW.

3 NEW SECTION. **Sec. 18.** Section captions used in sections 1 through
4 13 of this act are not part of the law.

5 NEW SECTION. **Sec. 19.** If any provision of this act or its
6 application to any person or circumstance is held invalid, the
7 remainder of the act or the application of the provision to other
8 persons or circumstances is not affected.

9 NEW SECTION. **Sec. 20.** Sections 1 through 11 and 17 through 20 of
10 this act take effect June 1, 2001.

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