
SECOND 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 new sections; 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 and
6 sensitive information has caused specific significant harms to
7 Washington consumers, including the appearance of unauthorized charges
8 or debits on consumers' accounts, misappropriation of sensitive
9 information for the purpose of assuming a consumer's identity, the
10 unwanted and unintended dissemination of personal and sensitive
11 information, and the invasion of privacy.

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

21 (4) The legislature finds that the incidence of identity theft is
22 rapidly growing, and that victims of identity theft need further
23 assistance in obtaining the information necessary to the prosecution of
24 their cases. The legislature finds that requiring additional
25 information sharing by merchants with victims will result in greater
26 protections for consumers and deter potential perpetrators.

27 NEW SECTION. **Sec. 2.** DEFINITIONS. Unless the context clearly
28 requires otherwise, the definitions in this section apply throughout
29 this chapter.

30 (1) "Affiliate" means an entity that controls, is controlled by, or
31 is under common control or common ownership with another entity.
32 Companies that form alliances as a financial services group for
33 purposes of marketing their services and are located at a common
34 address, have personnel and payroll functions administered through a
35 central office, jointly sponsor one combined employee savings and
36 profit sharing plan, and have centralized data processing, mail
37 service, communications, and procurement are considered under common
38 control and affiliated with each other.

1 (2) "Consumer" or "customer" means a natural person or his or her
2 legal representative, who is a resident of the state of Washington, who
3 has been disclosed to be a resident of the state of Washington, and who
4 purchases, leases, or otherwise contracts for products, goods, or
5 services within the state of Washington or from an entity at its
6 location in the state of Washington, that are primarily used for
7 personal, family, or household purposes on or after the effective date
8 of this section and who continues to be a resident of the state of
9 Washington.

10 (3) "Control" means (a) ownership, control, or power to vote
11 twenty-five percent or more of the outstanding shares of any class of
12 voting security of the company, directly or indirectly, or acting
13 through one or more other persons, if the company is shareholder-owned;
14 (b) control in any manner over the election of a majority of the
15 directors, trustees, or general partners (or individuals exercising
16 similar functions) of the company; and (c) the power to exercise,
17 directly or indirectly, a controlling influence over the management or
18 policies of the company.

19 (4) "Consumer-requested purpose" means for the purpose of
20 establishing or maintaining a business relationship, completing a
21 transaction, or providing a product, good, or service requested by the
22 consumer if the personal or sensitive information that is sold, shared,
23 or transferred is subject to section 9(1) of this act.

24 (5) "De minimus cost method" means any method, such as a toll-free
25 telephone number, a post office box or address for accepting first-
26 class mail, or any similar, convenient, low-cost method, which does not
27 exceed the cost of a first-class postage stamp for the consumer. If
28 other de minimus cost methods are offered, accepting e-mail or online
29 messages from consumers shall be considered a de minimus cost method.

30 (6) "Financial institution" means (a) a financial institution as
31 defined in section 527(4) of the Gramm-Leach-Bliley Act, P.L. 106-102;
32 or (b) a bank holding company or financial holding company, as defined
33 in sections 2(a) and 2(p) of the Bank Holding Company Act, as amended,
34 or any subsidiary thereof as defined in section 2(d) of the Bank
35 Holding Company Act, as amended.

36 (7) "Functional business purpose" means use or disclosure of
37 sensitive or personal information between an information custodian and
38 another entity or person to perform services or functions on behalf of
39 the information custodian as part of the information custodian's

1 provision of its products, goods, or services to its customers, or to
2 assist in the maintenance or analysis of its relationships with
3 customers, if the personal or sensitive information that is sold,
4 shared, or transferred is subject to section 9 of this act;

5 (8) "Information custodian" means all nonpublic commercial entities
6 that maintain data containing personal information or sensitive
7 information about consumers they actually know reside in Washington and
8 that sell, share, or otherwise transfer the information to
9 nonaffiliates for purposes other than consumer-requested purposes,
10 functional business purposes, or under the circumstances described in
11 section 5(3) or 7(3) of this act. An "information custodian" does not
12 include a consumer reporting agency, as defined in the federal Fair
13 Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.), to the extent its
14 activities are directly related to assembling or evaluating consumer
15 credit information or other information on consumers for the purpose of
16 furnishing consumer reports to third parties, and to the extent that
17 the activities are regulated by the federal Fair Credit Reporting Act
18 (15 U.S.C. Sec. 1681 et seq.). "Information custodian" does not
19 include an agent or other entity (a) who obtains personal or sensitive
20 information from a consumer or an information custodian; and (b) who
21 has contracted, in writing, with the information custodian to provide
22 products, goods, or services on behalf of the information custodian,
23 that are part of or integral to the provision of the information
24 custodian's own products, goods, or services to the consumer; and (c)
25 who does not make an independent use, including marketing use, of the
26 personal or sensitive information, apart from providing the products,
27 goods, or services described in subsection (8)(b) of this section; and
28 (d) who is subject to section 9 of this act. "Information custodian"
29 does not include an entity that sells, shares, or transfers personal or
30 sensitive information exclusively for consumer-requested purposes,
31 functional business purposes, or under the circumstances described in
32 section 5(3) or 7(3) of this act.

33 (9) "Marketer" means a nonpublic, commercial entity that maintains
34 data containing personal information or sensitive information about
35 consumers it knows reside in Washington and uses the information to
36 engage in marketing.

37 (10) "Marketing" or "marketing information" means a promotion,
38 solicitation, or advertisement that specifically references the sale or
39 lease of products, goods, or services made through written, telephonic,

1 electronic, or other means, that is directed to a specific named
2 consumer, but shall not include any promotion, solicitation, or
3 advertisement (a) included with a billing or statement, (b) directed to
4 the public, or (c) made to such consumer while present at the
5 marketer's place of business or during any other contact with the
6 marketer initiated by or at the request of the consumer.

7 (11) "Personal information" means information that is provided by
8 the consumer in a commercial context, and is correlated to a specific
9 individual consumer, that concerns the amount or condition of the
10 consumer's assets, liabilities, financial transactions, purchasing
11 history, buying preferences, business relationships, customer status,
12 demographic information, name, address, telephone number, electronic
13 mail address, or that reflects current or historical deposit or credit
14 card account balances or purchase amounts.

15 (12) "Sensitive information" means information maintained in a
16 commercial context that is correlated to a specific individual consumer
17 or a specific account and customarily held or used for the purpose of
18 the consumer's transaction initiation, account access or identity
19 verification, and includes account numbers, access codes or passwords,
20 social security numbers, consumer tax identification numbers, driver's
21 license or permit numbers, state identicaid numbers issued by the
22 department of licensing, and credit card numbers or expiration dates,
23 and electronically captured signatures.

24 NEW SECTION. **Sec. 3.** RESTRICTION ON CONSUMER INFORMATION.
25 Information custodians and marketers shall, in performing a transaction
26 with a consumer, providing a service for a consumer, or establishing a
27 business relationship with a consumer, require only that the consumer
28 provide information reasonably necessary to perform the transaction,
29 establish the relationship, administer or maintain the business
30 relationship, collect or service a debt, protect against fraud or
31 unauthorized transactions, or comply with applicable law. Any optional
32 information must be specified as such, and the consumer must be given
33 the option not to provide it.

34 NEW SECTION. **Sec. 4.** CONSUMER PRIVACY POLICIES. (1) An
35 information custodian must have a consumer privacy policy that
36 discloses to existing and prospective consumers the policies and
37 practices of the information custodian regarding the use of consumer

1 personal information and sensitive information acquired or possessed by
2 the information custodian. Entities that maintain data containing
3 personal information or sensitive information but do not sell, share,
4 or otherwise transfer the data, are not required to have a privacy
5 policy.

6 (2) The consumer privacy policy, at a minimum, must summarize the
7 information custodian's responsibilities under this chapter and
8 describe the consumer's rights and remedies under it, and generally
9 describe with whom the consumer's personal and sensitive information
10 will be shared or to whom it will be sold or transferred. This general
11 description must disclose either the names of those with which the
12 information is shared, sold, or transferred or a reasonable description
13 of the nature of each entity's business, with which information is
14 shared, sold, or transferred.

15 (3) The consumer privacy policy must also provide a reasonable
16 means for consumers to review their personal information that the
17 information custodian shares, sells, or transfers to nonaffiliates for
18 marketing purposes and that is retrievable in the ordinary course of
19 business. The policy must also provide a reasonable process for
20 consumers to dispute the accuracy or completeness of the information.

21 (4) An information custodian must provide a disclosure of its
22 consumer privacy policy to customers about whom it has names and
23 addresses or other means of contact:

24 (a) Within a reasonable period of time after the information
25 custodian obtains the names and addresses or other means of contact;

26 (b) Not less than annually after that to a customer whose personal
27 or sensitive information the information custodian, within the twelve-
28 month period before the date of the provision of the policy, has sold,
29 shared, or transferred to a nonaffiliate other than under the
30 circumstances described in section 5(3) or 7(3) of this act, for a
31 customer requested purpose, or for a functional business purpose; and

32 (c) Not less than thirty days after a prospective customer's
33 initial request for the policy.

34 (5) An information custodian that is not a financial institution
35 must disclose its consumer privacy policy, and any material changes
36 that are made to the policy or the information custodian's business
37 structure, clearly and conspicuously in writing, through means
38 reasonably calculated to inform new customers of the policy's

1 provisions or material changes that are made to the policy or the
2 information custodian's business structure.

3 (6) If the information custodian sells or offers products, goods,
4 or services online, the privacy policy must be disclosed on the
5 effective date of this section, on a continuing basis, clearly and
6 conspicuously, on a web page that is directly and prominently linked to
7 the information custodian's website.

8 (7) The consumer privacy policy must be readily available for
9 review at the information custodian's place of business.

10 (8) An information custodian that is a financial institution is
11 deemed to have complied with the requirements of this section and
12 section 5(1)(a) of this act if it provides the disclosures required by
13 subsections (1), (2), and (3) of this section and section 5(1)(a) of
14 this act together with the disclosures provided in compliance with
15 section 503 of Public Law 106-102 (the Gramm-Leach-Bliley Act).

16 (9) If an information custodian's business relationship is with
17 multiple parties who are named in a common account or insurance policy,
18 the information custodian satisfies the requirements of this section by
19 making the required disclosures to the first-named account holder or
20 legal representative on the signature card, contract, or other evidence
21 of the account, or the first-named insured on the insurance policy,
22 binder, or other evidence of insurance.

23 NEW SECTION. **Sec. 5. PERSONAL INFORMATION--CONSUMER CONTROL.** (1)
24 An information custodian may share, sell, or otherwise transfer
25 personal information to a nonaffiliate for purposes other than
26 consumer-requested purposes, functional business purposes, or under the
27 circumstances described in section 5(3) or 7(3) of this act, only if it
28 has clearly and conspicuously disclosed to the consumer the following
29 information in plain language:

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

37 (b) That the consumer may choose not to have his or her personal
38 information shared, sold, or transferred to a nonaffiliate for other

1 than consumer-requested purposes, functional business purposes, or
2 under the circumstances described in section 5(3) or 7(3) of this act,
3 by exercising his or her choice through a de minimus cost method the
4 information custodian has established.

5 (2) If, under this section, a consumer chooses not to have his or
6 her personal information shared, sold, or otherwise transferred under
7 subsection (1) of this section, the information custodian must stop
8 sharing, selling, or otherwise transferring the consumer's personal
9 information to a nonaffiliate as directed by the consumer within ninety
10 days of receiving the consumer's notice. Once a consumer has exercised
11 his or her right under this section, an information custodian may not
12 share, sell, or otherwise transfer the information to a nonaffiliate
13 for purposes other than consumer-requested purposes, functional
14 business purposes, or under the circumstances described in section 5(3)
15 or 7(3) of this act, until the consumer notifies the entity that he or
16 she has chosen to have his or her personal information shared, sold, or
17 otherwise transferred under subsection (1) of this section.

18 (3) This section does not apply to disclosure of personal
19 information under the following circumstances:

20 (a) Disclosure to or at the direction or with the consent of the
21 consumer upon his or her request. Proper identification may be
22 required;

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

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

29 (d) Disclosure to a nonaffiliate for the purpose of collecting a
30 debt or dishonored item. However, the recipient of the information is
31 subject to section 9 of this act;

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

34 (f) Disclosure to protect against, investigate, or prevent actual
35 or potential fraud, unauthorized transactions, claims, or other
36 liability or to verify information provided by a consumer in connection
37 with a claim or application for services or benefits;

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

1 (h) Disclosure by or to a consumer reporting agency as specifically
2 permitted under the federal Fair Credit Reporting Act (15 U.S.C. Sec.
3 1681 et seq.). However, the information custodian shall inform the
4 recipient that the information is subject to section 9 of this act;

5 (i) Disclosure for purposes of a proposed or actual securitization,
6 secondary market sale (including sales of service rights), or similar
7 transaction;

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

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

16 (l) Disclosure in connection with a proposed or actual sale,
17 merger, transfer, or exchange of all or a portion of a business or
18 operating unit or an insurance agent's book of business or interest in
19 real property if the disclosure of information concerns solely
20 consumers of the business or unit or consumers with a right to occupy
21 the real property;

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

24 (n) Disclosure of health care information in compliance with state
25 and federal law;

26 (o) Disclosure between licensees or franchisees and their licensors
27 or franchisors, when (i) such licensees or franchisees market, sell, or
28 lease products, goods, or services in a retail setting at a common
29 physical address with the licensor or franchisor; (ii) have common data
30 processing functions with the licensor or franchisor; and (iii)
31 advertise, market, or sell products, goods, or services marked or
32 otherwise directly identified with the franchisor's or licensor's name
33 or distinctive brand. However, the recipient of the information is
34 subject to section 9 of this act;

35 (p) Disclosure of information between entities of a reciprocal
36 insurer as defined in RCW 48.10.010 and 48.10.020;

37 (q) Disclosure to maintain or service a consumer's private label or
38 affinity credit card account. However, the recipient of the
39 information is subject to section 9 of this act;

1 (r) Disclosure by an entity or person to the public related to the
2 gathering, publishing, disseminating, or circulating of news or matters
3 of public interest or concern;

4 (s) Disclosure to or by a multiple listing service, real estate
5 licensee, or real estate appraiser as defined in chapters 18.85 and
6 18.140 RCW for the purposes of comparative market analyses, price
7 opinions, or appraisals.

8 NEW SECTION. **Sec. 6.** MARKETING-CONSUMER CONTROL. (1)(a) A
9 marketer may use personal or sensitive information for marketing
10 purposes only if it has clearly and conspicuously disclosed in plain
11 language to the consumer that the consumer has the right to choose not
12 to receive marketing information from the marketer or its affiliates
13 with which it has shared information and may choose not to receive
14 marketing information by exercising his or her choice through a de
15 minimus cost method provided by the marketer. These disclosures must
16 be made in at least one of the following manners:

17 (i) In all marketing information, in whatever medium the marketing
18 information is sent;

19 (ii) In the privacy policy provided to the consumer under section
20 4 of this act, if the marketer is an information custodian;

21 (iii) In a separate disclosure document or page, provided to the
22 consumer with the first marketing information sent to the consumer, and
23 thereafter annually. If the disclosure is made on a web page, it must
24 be made clearly and conspicuously on the same page as the marketing
25 information or on a separate page that is directly and prominently
26 linked to the marketing information;

27 (iv) In each of its places of retail business, if the marketer is
28 a retailer whose primary sale or lease of products, goods, or services
29 is from its places of retail business, and the disclosure must be
30 posted clearly and conspicuously, in plain language.

31 (b) The marketer must maintain adequate and reasonable access to
32 the de minimus cost method it has established for consumers who choose
33 not to receive marketing information.

34 (2) If, under this section, a consumer chooses not to receive
35 marketing information, the marketer and its affiliates with which it
36 shares personal or sensitive information must stop marketing to the
37 consumer within ninety days of receiving the consumer's notice. Once
38 a consumer has chosen not to receive marketing information, a marketer

1 and its affiliates with which it shares personal or sensitive
2 information may not market to the consumer until the consumer notifies
3 the marketer that he or she has chosen to receive marketing
4 information.

5 (3) A small business, as defined in RCW 19.85.020, that is not an
6 information custodian, that markets solely to its existing customers or
7 that markets to consumers whose personal information was obtained from
8 an information custodian, is not subject to subsection (1) of this
9 section.

10 (4) A marketer may disclose personal information to another entity
11 to perform services or functions on behalf of the marketer, as part of
12 the marketer's marketing of its own products, goods, or services.
13 However, the personal information that is disclosed is subject to
14 section 9 of this act.

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

16 (1) An information custodian may not disclose sensitive information to
17 a nonaffiliate for purposes other than consumer-requested purposes,
18 functional business purposes, or under the circumstances described in
19 section 5(3) or 7(3) of this act unless the consumer has received
20 written notification of the following:

21 (a) The information to be disclosed;

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

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

26 (2) An information custodian may not disclose sensitive information
27 to a nonaffiliate for purposes other than consumer-requested purposes,
28 functional business purposes, or under circumstances described in
29 section 5(3) or 7(3) of this act unless the consumer, upon notice as
30 provided in this section and affirmative consent, authorizes the
31 disclosure of the sensitive information sought to be disclosed, in a
32 written statement dated and expressly accepted by the consumer that is
33 separate and distinct from any other document, and that contains a
34 description of the information sought to be disclosed and the purpose
35 for which the information will be disclosed. If the written statement
36 is made online, it must be on a separate web page.

37 (3) This section does not apply to disclosure of sensitive
38 information under the following circumstances:

- 1 (a) Disclosure to or at the direction or with the consent of the
2 consumer upon his or her request. Proper identification may be
3 required;
- 4 (b) Disclosure required by federal, state, or local law or
5 regulation, rules, and other applicable legal requirements;
- 6 (c) Disclosure made in the course of a properly authorized civil,
7 criminal, or regulatory examination or investigation or under a search
8 warrant, court order, or subpoena, including an administrative subpoena
9 or other legal process;
- 10 (d) Disclosure to a nonaffiliate for the purpose of collecting a
11 debt or a dishonored item. However, the recipient of the information
12 is subject to section 9 of this act;
- 13 (e) Disclosure to protect the confidentiality or security of the
14 information custodian's records;
- 15 (f) Disclosure to protect against, investigate, or prevent actual
16 or potential fraud or unauthorized transactions, claims, or other
17 liability or to verify information provided by a consumer in connection
18 with a claim or application for services or benefits;
- 19 (g) Disclosure as part of a risk control program required by or
20 subject to examination by regulators;
- 21 (h) Disclosure by or to a consumer reporting agency as specifically
22 permitted under the federal Fair Credit Reporting Act (15 U.S.C. Sec.
23 1681 et seq.). However, the information custodian shall inform the
24 recipient that the information is subject to section 9 of this act;
- 25 (i) Disclosure of sensitive information which is prohibited from
26 disclosure by section 502(d) of Public Law 106-102 (the Gramm-Leach-
27 Bliley Act of 1999);
- 28 (j) Disclosure for purposes of a proposed or actual securitization,
29 secondary market sale (including sales service rights), or similar
30 transactions related to a consumer-requested purpose;
- 31 (k) Disclosure to persons holding a legal or beneficial interest
32 relating to the consumer;
- 33 (l) Disclosure in order to provide information to insurance rate,
34 claim, or underwriting advisory organizations, guaranty funds or
35 agencies, applicable rating agencies of the information custodian,
36 persons assessing the information custodian's compliance with industry
37 standards, and the information custodian's attorneys, accountants, and
38 auditors;

1 (m) Disclosure in connection with a proposed or actual sale,
2 merger, transfer, or exchange of all or a portion of a business or
3 operating unit or an insurance agent's book of business or interest in
4 real property if the disclosure of information concerns solely
5 consumers of the business or unit or consumers with the right to occupy
6 the real property;

7 (n) Disclosure of health care information in compliance with state
8 and federal law;

9 (o) Disclosure to a federal, state, or local agency as required by
10 that agency to fulfill its legal obligations on behalf of a consumer;

11 (p) Disclosure between licensees or franchisees and their licensors
12 or franchisors, when (i) such licensees or franchisees market, sell, or
13 lease products, goods, or services in a retail setting at a common
14 physical address with the licensor or franchisor; (ii) have common data
15 processing functions with the licensor or franchisor; and (iii)
16 advertise, market, or sell products, goods, or services marked or
17 otherwise directly identified with the franchisor's or licensor's name
18 or distinctive brand. However, the recipient of the information is
19 subject to section 9 of this act;

20 (q) Disclosure of information between entities of a reciprocal
21 insurer as defined in RCW 48.10.010 and 48.10.020;

22 (r) Disclosure to maintain or service a consumer's private label or
23 affinity credit card account. However, the recipient of the
24 information is subject to section 9 of this act;

25 (s) Disclosure by an entity or person to the public related to the
26 gathering, publishing, disseminating, or circulating of news or matters
27 of public interest or concern.

28 NEW SECTION. **Sec. 8.** An information custodian shall not disclose,
29 to a nonaffiliate, other than for a functional business purpose or a
30 consumer-requested purpose, sensitive information for use in marketing
31 to the consumer.

32 NEW SECTION. **Sec. 9.** CONFIDENTIALITY AND SECURITY OF INFORMATION.

33 (1) Nonaffiliates that obtain personal information or sensitive
34 information from information custodians, other than those who receive
35 driver's license numbers in connection with the offering or maintenance
36 of an insurance policy, must: (a) Not sell, share, or otherwise
37 transfer the information for any reason other than the allowed purposes

1 for which the information was sold, shared, or transferred by the
2 information custodian or under circumstances described in those
3 subsections of sections 5(3) or 7(3) of this act to which this section
4 is not expressly subject; (b) keep the information confidential; and
5 (c) safeguard the information from loss, misuse, theft, unauthorized
6 access, disclosure, defacement, or alteration.

7 (2) An information custodian, before sharing, selling, or otherwise
8 transferring personal information or sensitive information, must obtain
9 an agreement from the intended recipient providing for the following:

10 (a) To keep the information confidential;

11 (b) To use the information only for the allowed purposes for which
12 it has been shared, sold, or provided, or under circumstances described
13 in those subsections of sections 5(3) or 7(3) of this act to which this
14 section is not expressly subject; and

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

17 (3) Every information custodian must establish reasonable
18 safeguards to ensure the confidentiality and safety of personal
19 information and sensitive information and to protect them from loss,
20 misuse, theft, unauthorized access, disclosure, defacement, or
21 alteration.

22 NEW SECTION. **Sec. 10.** ACTIONS OR TRANSACTIONS BY COMPETITIVE
23 TELECOMMUNICATIONS COMPANIES. The actions or transactions of
24 information custodians or marketers who are classified as competitive
25 telecommunications companies under RCW 80.36.320 or who are
26 telecommunications companies providing competitive telecommunications
27 services are subject to this chapter and the Consumer Protection Act.

28 NEW SECTION. **Sec. 11.** VIOLATION AN UNFAIR OR DECEPTIVE ACT. (1)
29 Unfair and deceptive invasion of privacy rights is not reasonable in
30 relation to the development and preservation of business. The
31 legislature finds that the practices covered by this chapter are
32 matters vitally affecting the public interest for the purpose of
33 applying the Consumer Protection Act, chapter 19.86 RCW. A violation
34 of this chapter is an unfair or deceptive act in trade or commerce for
35 the purpose of applying the Consumer Protection Act, chapter 19.86 RCW.

36 (2) In any action for a violation of this chapter, with the
37 exception of section 7 of this act, an information custodian or

1 marketer may raise as a defense that the violation was not intentional
2 and was the result of a bona fide error. This defense must be proved
3 by a preponderance of the evidence. Examples of a bona fide error
4 include clerical, calculation, computer malfunction and programming,
5 and printing errors.

6 (3) Damages to a person who has been the victim of a violation of
7 sections 5, 7, 8, or 9(1) of this act are five hundred dollars, or
8 actual damages, whichever is greater. A court may increase the award
9 of damages in an amount not more than three times the actual damages
10 sustained, or one thousand five hundred dollars, whichever is greater,
11 upon a showing by a preponderance of the evidence that a violation of
12 the chapter was willful.

13 (4) Damages to a person who has been the victim of a violation of
14 section 3, 4, 6, or 9 (2) or (3) of this act are actual damages.
15 However, a court may increase the award up to five hundred dollars upon
16 a showing that the violation was willful, intentional, or part of a
17 pattern of repeated violations.

18 (5) In the case of a class action for a violation of this act, the
19 total recovery of statutory damages in any class action arising out of
20 the same failure to comply may not be more than the lesser of one
21 million dollars or one percent of the net worth of the defendant.
22 There is no limit on the recovery of actual damages.

23 (6) Nothing in this section limits the authority of the attorney
24 general to enforce this chapter, or seek full recovery of both
25 statutory and actual damages.

26 (7) The remedies provided for a violation of this chapter are
27 exclusive of the remedies provided for a violation of chapter 9.35 RCW.
28 No violation of this chapter is an unlawful activity under RCW
29 9.35.020(2) or under RCW 9.35.010.

30 NEW SECTION. **Sec. 12.** FILING ACTION--CONSEQUENCES. Filing an
31 action for a violation of this chapter constitutes a certificate that
32 to the best of the plaintiff's knowledge, information, and belief,
33 formed after reasonable inquiry, it is well grounded in fact and is
34 warranted by existing law or a good faith extension or reversal of
35 existing law, and that it is not brought for any improper purpose, such
36 as to harass or create a nuisance. If an action is filed in violation
37 of this section, the court, upon motion or upon its own initiative, may
38 impose upon the plaintiff an appropriate sanction, that may include an

1 order to pay to the other party or parties the amount of the reasonable
2 expenses incurred because of the filing of the action, including a
3 reasonable attorney's fee.

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

17 NEW SECTION. **Sec. 14.** REMEDIES NONEXCLUSIVE. Nothing in this
18 chapter in any way limits, replaces, or diminishes the protections and
19 remedies afforded by the Domestic Violence Prevention Act, chapter
20 26.50 RCW, or any other act intended to protect the privacy and safety
21 of residents of this state.

22 NEW SECTION. **Sec. 15.** A new section is added to chapter 9.35 RCW
23 to read as follows:

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

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

30 (a) Account numbers and balances;

31 (b) Transactional information concerning an account; and

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

1 (2) "Financial information repository" means a person engaged in
2 the business of providing services to customers who have a credit,
3 deposit, trust, stock, or other financial account or relationship with
4 the person.

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

16 (4) "Person" means an individual, partnership, corporation, or
17 association.

18 (5) "Victim" means a person whose means of identification has been
19 used or transferred with the intent to commit, or to aid or abet, an
20 unlawful activity harming or intending to harm the person whose
21 identity is used, or to commit a felony.

22 NEW SECTION. **Sec. 16.** A new section is added to chapter 9.35 RCW
23 to read as follows:

24 INFORMATION AVAILABLE TO VICTIM. (1) A person, financial
25 information repository, corporation, trust, partnership, or
26 unincorporated association possessing information relating to an actual
27 or potential violation of this chapter, and who may have entered into
28 a transaction, provided credit, products, goods, or services, accepted
29 payment, or otherwise done business with a person who has used the
30 victim's means of identification, must, upon request of the victim,
31 provide copies of all information relevant to the potential or actual
32 violation of this chapter.

33 (2) Before providing the information required under subsection (1)
34 of this section, the provider may require the victim to provide
35 positive identification of the victim and a copy of a police report
36 evidencing the victim's claim. The provider may require reasonable
37 compensation for the reasonable cost of providing the information
38 requested.

1 (3) No person, financial information repository, corporation,
2 trust, partnership, or unincorporated association may be held liable
3 for an action voluntarily taken in good faith to provide information
4 regarding potential or actual violations of this chapter to other
5 financial information repositories, merchants, law enforcement
6 authorities, the victim, or any person alleging to be a victim who
7 provides positive identification and a copy of a police report
8 evidencing the alleged victim's claim for the purpose of identification
9 and prosecution of violators of this chapter, or to assist a victim in
10 recovery of fines, restitution, rehabilitation of the victim's credit,
11 or such other relief as may be appropriate.

12 **Sec. 17.** RCW 19.16.250 and 1983 c 107 s 1 are each amended to read
13 as follows:

14 No licensee or employee of a licensee shall:

15 (1) Directly or indirectly aid or abet any unlicensed person to
16 engage in business as a collection agency in this state or receive
17 compensation from such unlicensed person: PROVIDED, That nothing in
18 this chapter shall prevent a licensee from accepting, as forwarder,
19 claims for collection from a collection agency or attorney whose place
20 of business is outside the state.

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

24 (3) Publish or post or cause to be published or posted, any list of
25 debtors commonly known as "bad debt lists" or threaten to do so. For
26 purposes of this chapter, a "bad debt list" means any list of natural
27 persons alleged to fail to honor their lawful debts. However, nothing
28 herein shall be construed to prohibit a licensee from communicating to
29 its customers or clients by means of a coded list, the existence of a
30 check dishonored because of insufficient funds, not sufficient funds or
31 closed account by the financial institution servicing the debtor's
32 checking account: PROVIDED, That the debtor's identity is not readily
33 apparent: PROVIDED FURTHER, That the licensee complies with the
34 requirements of subsection (9)(e) of this section.

35 (4) Have in his possession or make use of any badge, use a uniform
36 of any law enforcement agency or any simulation thereof, or make any
37 statements which might be construed as indicating an official
38 connection with any federal, state, county, or city law enforcement

1 agency, or any other governmental agency, while engaged in collection
2 agency business.

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

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

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

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

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

19 (b) The name of the original creditor to whom the debtor owed the
20 claim if such name is known to the licensee or employee: PROVIDED,
21 That upon written request of the debtor, the licensee shall make a
22 reasonable effort to obtain the name of such person and provide this
23 name to the debtor;

24 (c) If the notice, letter, message, or form is the first notice to
25 the debtor or if the licensee is attempting to collect a different
26 amount than indicated in his or its first notice to the debtor, an
27 itemization of the claim asserted must be made including:

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

30 (ii) Interest or service charge, collection costs, or late payment
31 charges, if any, added to the original obligation by the original
32 creditor, customer or assignor before it was received by the licensee
33 for collection, if such information is known by the licensee or
34 employee: PROVIDED, That upon written request of the debtor, the
35 licensee shall make a reasonable effort to obtain information on such
36 items and provide this information to the debtor;

37 (iii) Interest or service charge, if any, added by the licensee or
38 customer or assignor after the obligation was received by the licensee
39 for collection;

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

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

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

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

13 (a) A licensee or employee of a licensee may inform a credit
14 reporting bureau of the existence of a claim: PROVIDED, That if the
15 licensee or employee of a licensee reports a claim to a credit
16 reporting bureau, the licensee shall upon receipt of written notice
17 from the debtor that any part of the claim is disputed, forward a copy
18 of such written notice to the credit reporting bureau;

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

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

25 (i) The licensee or employee has notified or attempted to notify
26 the debtor in writing at his last known address or 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 to the licensee disputed any
31 part of the claim: PROVIDED, That the licensee or employee may only
32 communicate the existence of a claim which has not been reduced to
33 judgment to the debtor's employer once unless the debtor's employer has
34 agreed to additional communications.

35 (d) A licensee may for the purpose of locating the debtor or
36 locating assets of the debtor communicate the existence of a claim to
37 any person who might reasonably be expected to have knowledge of the
38 whereabouts of a debtor or the location of assets of the debtor if the
39 claim is reduced to judgment, or if not reduced to judgment, when:

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

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

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

10 (i) The licensee has notified or attempted to notify the debtor in
11 writing at his last known address or last known place of employment
12 concerning the claim and the debtor after a reasonable time has failed
13 to pay the claim or has failed to agree to make payments on the claim
14 in a manner acceptable to the licensee, and

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

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

18 (11) Communicate with the debtor after notification in writing from
19 an attorney representing such debtor that all further communications
20 relative to a claim should be addressed to the attorney: PROVIDED,
21 That if a licensee requests in writing information from an attorney
22 regarding such claim and the attorney does not respond within a
23 reasonable time, the licensee may communicate directly with the debtor
24 until he or it again receives notification in writing that an attorney
25 is representing the debtor.

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

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

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

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

38 (13) Communicate with the debtor through use of forms or
39 instruments that simulate the form or appearance of judicial process,

1 the form or appearance of government documents, or the simulation of a
2 form or appearance of a telegraphic or emergency message.

3 (14) Communicate with the debtor and represent or imply that the
4 existing obligation of the debtor may be or has been increased by the
5 addition of attorney fees, investigation fees, service fees, or any
6 other fees or charges when in fact such fees or charges may not legally
7 be added to the existing obligation of such debtor.

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

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

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

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

21 (19) Procure from a debtor or collect or attempt to collect on any
22 written note, contract, stipulation, promise or acknowledgment under
23 which a debtor may be required to pay any sum other than principal,
24 allowable interest, and, in the case of suit, attorney's fees and
25 taxable court costs.

26 (20) Upon notification by a debtor, that a police report has been
27 filed indicating that the debtor's checkbook or other series of
28 preprinted written instruments has been stolen, and upon receipt of a
29 copy of the report, fail to accept one single writing from the debtor
30 that identifies the numbers of the checks, the bank, and account
31 number, that disputes creditors' claims for the identified checks or
32 written instruments and that includes a copy of the debtor's driver's
33 license or other document containing the debtor's signature that was
34 executed before the date of claim identified in the police report. If
35 more than one collection agency is attempting collection on individual
36 checks or written instruments that are part of the series, each
37 collection agency may request a single writing from the debtor that
38 disputes creditors' claims for the entire checkbook or series. Once a
39 single writing has been received, the collection agency must not,

1 except in the context of a judicial or administrative proceeding,
2 contact the debtor orally within the one hundred eighty-day period
3 after receipt of the writing to require additional proof, explanation,
4 or evidence from the debtor disputing creditors' claims regarding the
5 enumerated checks or other written instruments in the same series or
6 lot and must consider the single writing as a dispute to all creditors'
7 claims arising from use of the enumerated checks or other series of
8 instruments.

9 **Sec. 18.** RCW 9.35.010 and 1999 c 368 s 2 are each amended to read
10 as follows:

11 (1) No person may obtain or attempt to obtain, or cause to be
12 disclosed or attempt to cause to be disclosed to any person, financial
13 information from a financial information repository:

14 (a) By knowingly making a false, fictitious, or fraudulent
15 statement or representation to an officer, employee, or agent of a
16 financial information repository with the intent to deceive the
17 officer, employee, or agent into relying on that statement or
18 representation for purposes of releasing the financial information;

19 (b) By knowingly making a false, fictitious, or fraudulent
20 statement or representation to a customer of a financial information
21 repository with the intent to deceive the customer into releasing
22 financial information or authorizing the release of such information;

23 (c) By knowingly providing any document to an officer, employee, or
24 agent of a financial information repository, knowing that the document
25 is forged, counterfeit, lost, or stolen; was fraudulently obtained; or
26 contains a false, fictitious, or fraudulent statement or
27 representation, if the document is provided with the intent to deceive
28 the officer, employee, or agent to release the financial information.

29 (2) No person may request another person to obtain financial
30 information from a financial information repository and knows or should
31 have known that the person will obtain or attempt to obtain the
32 information from the financial institution repository in any manner
33 described in subsection (1) of this section.

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

36 ~~(a) "Financial information" means, to the extent it is nonpublic,~~
37 ~~any of the following information identifiable to the individual that~~

1 ~~concerns the amount and conditions of an individual's assets,~~
2 ~~liabilities, or credit:~~

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

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

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

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

13 ~~(c) "Person" means an individual, partnership, corporation, or~~
14 ~~association.~~

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

20 ~~((5))~~ (4) This section does not apply to:

21 (a) Efforts by the financial information repository to test
22 security procedures or systems of the financial institution repository
23 for maintaining the confidentiality of customer information;

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

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

28 ~~((6))~~ (5) Violation of this section is a class C felony.

29 ~~((7))~~ (6) A person ~~((that [who]))~~ who violates this section is
30 liable for five hundred dollars or actual damages, whichever is
31 greater, and reasonable attorneys' fees. If the person violating this
32 section is a business that repeatedly violates this section, that
33 person also violates the Consumer Protection Act, chapter 19.86 RCW.

34 **Sec. 19.** RCW 9.35.020 and 1999 c 368 s 3 are each amended to read
35 as follows:

36 (1) No person may knowingly use or knowingly transfer a means of
37 identification of another person with the intent to commit, or to aid

1 or abet, any unlawful activity harming or intending to harm the person
2 whose identity is used, or for committing any felony.

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

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

16 ~~((4))~~ (3) A person ~~((that [who]))~~ who violates this section is
17 liable for five hundred dollars or actual damages, including costs to
18 repair the person's credit record, whichever is greater, and reasonable
19 attorneys' fees. If the person violating this section is a business
20 that repeatedly violates this section, that person also violates the
21 Consumer Protection Act, chapter 19.86 RCW.

22 NEW SECTION. Sec. 20. (1) The attorney general, in consultation
23 with representatives from individual consumers, public interest
24 organizations, financial institutions, retailers, online services, the
25 legislature, and other interested parties shall:

26 (a) Examine information-sharing practices among information
27 custodians and their affiliates;

28 (b) Develop a model privacy policy disclosure to conform with the
29 disclosure requirements of sections 4, 5, 6, and 7 of this act;

30 (c) Present recommendations on affiliate sharing and model privacy
31 policies to the legislature at the start of the regular session held in
32 2001.

33 (2) The senate committee on commerce, trade, housing and financial
34 institutions and the house of representatives committee on financial
35 institutions and insurance shall conduct a joint review of the
36 practices of entities that collect and sell personal and sensitive
37 information obtained from the records maintained by government agencies
38 and nonprofit entities.

1 NEW SECTION. **Sec. 21.** Sections 1 through 14 of this act
2 constitute a new chapter in Title 19 RCW.

3 NEW SECTION. **Sec. 22.** Section captions used in sections 1 through
4 16 of this act are not part of the law.

5 NEW SECTION. **Sec. 23.** 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. 24.** Sections 1 through 14 of this act take
10 effect June 1, 2001.

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