
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; adding a new chapter to Title 19
4 RCW; creating a new section; prescribing penalties; and providing an
5 effective date.

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

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

1 intends to ensure that entities and consumers work cooperatively to
2 protect consumer information and enforce sanctions when violations
3 occur.

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

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

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

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

28 (1) "Affiliate" means an entity that controls, is controlled by, or
29 is under common control or common ownership with another entity.

30 (2) "Consumer" or "customer" means a natural person who purchases,
31 leases, or otherwise contracts for goods or services that are primarily
32 used for personal, family, or household purposes.

33 (3) "Consumer-requested purpose" means that the consumer has
34 requested the information custodian to establish or maintain a business
35 relationship, complete a transaction, or provide a product or service.

36 (4) "De minimus cost method" means a method in connection with
37 which the consumer does not incur a cost greater than the cost of an
38 envelope and first-class postage for a one-ounce letter.

1 (5) "Financial institution" means a financial institution as
2 defined in section 527(4) of the Gramm-Leach-Bliley Act, P.L. 106-102.

3 (6) "Information custodian" means a financial institution that
4 maintains data containing personal information or sensitive information
5 about consumers it knows reside in Washington and that sells, shares,
6 or otherwise transfers the information to others, including affiliates
7 or nonaffiliates, for purposes other than customer-requested purposes.
8 An "information custodian" does not include a consumer reporting
9 agency, as defined in the federal Fair Credit Reporting Act (15 U.S.C.
10 Sec. 1681 et seq.), to the extent its activities are directly related
11 to assembling or evaluating consumer credit information or other
12 information on consumers for the purpose of furnishing consumer reports
13 to third parties, and to the extent that the activities are regulated
14 by the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.).

15 (7) "Marketer" means a nonpublic, commercial entity that maintains
16 data containing personal information or sensitive information about
17 consumers it knows reside in Washington, that does not sell, share, or
18 otherwise transfer the information to others, either affiliates or
19 nonaffiliates, but that uses the information to engage in marketing.

20 (8) "Marketing" or "marketing information" means a promotion,
21 solicitation, or advertisement made by a commercial entity through
22 written, telephonic, electronic, or other means, offering goods or
23 services, that is directed to a specific named individual, and that is
24 separate from a billing, or a promotion, solicitation, or advertisement
25 directed to the general public for sale of the marketer's own goods or
26 services.

27 (9) "Personal information" means information that is provided by
28 the consumer in a commercial context, and is identifiable to the
29 individual consumer, that concerns the amount or condition of the
30 consumer's assets, liabilities, financial transactions, purchasing
31 history, buying preferences, business relationships, account existence,
32 customer status, demographic information, name, address, telephone
33 number, or electronic mail address.

34 (10) "Sensitive information" means information maintained in a
35 commercial context that is held for the purpose of transaction
36 initiation, account access or identity verification, or that reflects
37 current or historical deposit or credit card account balances or
38 purchase amounts, and includes account numbers, access codes or
39 passwords, tax identification numbers, driver's license or permit

1 numbers, state identicard numbers issued by the department of
2 licensing, and credit card numbers or expiration dates.

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

4 Information custodians and marketers shall, in performing a transaction
5 with a consumer, providing a service for a consumer, or establishing a
6 business relationship with a consumer, require only that the consumer
7 provide information reasonably necessary to perform the transaction,
8 establish the relationship, or administer or maintain the business
9 relationship. Any optional information must be specified as such, and
10 the consumer must be given the option not to provide it.

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

12 information custodian must have a consumer privacy policy that
13 discloses to existing and prospective consumers the policies and
14 practices of the information custodian regarding the use of consumer
15 personal information and sensitive information acquired or possessed by
16 the information custodian. Entities that maintain data containing
17 personal information or sensitive information but do not sell, share,
18 or otherwise transfer the data, are not required to have a privacy
19 policy.

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

25 (3) The consumer privacy policy must also provide a reasonable
26 means for consumers to access their personal and sensitive information
27 that the information custodian shares, sells, or transfers for
28 marketing purposes. The policy must also provide a reasonable process
29 to correct inaccurate or incomplete information.

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

32 (a) The effective date of this act to existing customers about whom
33 the information custodian has names and addresses or other means of
34 contact, or within a reasonable period of time after the information
35 custodian obtains the consumers' names and addresses or other means of
36 contact;

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

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

5 (5) An information custodian must disclose its consumer privacy
6 policy on an annual basis to existing customers after the initial
7 disclosure described in subsection (4) of this section, and, when
8 material changes are made to the policy, the information custodian must
9 notify the consumer, clearly and conspicuously in writing, in plain
10 language, of the material changes and describe the consumer's rights
11 under sections 5(1) and 7 (1) and (2) of this act.

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

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

20 (8) Compliance by a financial institution with the disclosure
21 deadline requirements of section 503 of Public Law 106-103 (the Gramm-
22 Leach-Bliley Act of 1999) constitutes compliance with the disclosure
23 deadline requirements of subsection (4) of this section for existing
24 customers.

25 NEW SECTION. **Sec. 5.** PERSONAL INFORMATION--CONSUMER CONTROL. (1)
26 An information custodian may share, sell, or otherwise transfer
27 personal information for purposes other than consumer-requested
28 purposes, only if it has clearly and conspicuously disclosed to the
29 consumer the following 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 for
32 purposes other than consumer-requested purposes. The disclosure must
33 be made at the time the consumer privacy policy is provided to the
34 customer under section 4 of this act.

35 (b) That the consumer may choose not to receive marketing
36 information or have his or her personal information shared, sold, or
37 transferred for other than consumer-requested purposes, by exercising
38 his or her choice through a cost-free method provided by the

1 information custodian. Disclosure of the existence of the cost-free
2 method must be made at the time the consumer privacy policy is provided
3 to the customer under section 4 of this act. The information custodian
4 shall maintain adequate and reasonable access for consumers to the
5 cost-free method it has established.

6 (2) If, under this section, a consumer chooses not to have his or
7 her personal information shared, sold, or otherwise transferred under
8 subsection (1) of this section, the information custodian must stop
9 sharing, selling, or otherwise transferring the consumer's personal
10 information for purposes other than consumer-requested purposes, within
11 ninety days of receiving the consumer's notice. Once a consumer has
12 chosen not to have his or her personal information shared, sold, or
13 otherwise transferred, an information custodian may not share, sell, or
14 otherwise transfer the information for purposes other than consumer-
15 requested purposes 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. However, the recipient
20 of the information is subject to section 8 of this act:

21 (a) Disclosure to or at the direction of the consumer upon his or
22 her request and upon proper identification;

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
28 subpoena;

29 (d) Use or disclosure of personal information by an information
30 custodian to another entity to perform services or functions on behalf
31 of the information custodian as part of the information custodian's
32 provision of its services or products to its consumers if the entity
33 agrees in writing to keep the information confidential;

34 (e) Disclosure to a third party in the business of debt collection
35 where necessary to collect a debt or check returned for insufficient
36 funds;

37 (f) Disclosure to protect the confidentiality or security of the
38 information custodian's records;

1 (g) Disclosure to protect against or prevent actual or potential
2 fraud, unauthorized transactions, claims, or other liability;

3 (h) Disclosure as part of a risk control program required by
4 regulators, or for resolving customer disputes or inquiries;

5 (i) Disclosure by or to a consumer reporting agency as defined by
6 the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.),
7 and as specifically permitted by that act;

8 (j) Disclosure of credit report information between affiliates as
9 defined in the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681
10 et seq.), and as specifically permitted by that act;

11 (k) Disclosure for purposes of a proposed or actual securitization,
12 secondary market sale (including sales of service rights), or similar
13 transaction related to a consumer-requested purpose;

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

16 (m) Disclosure to persons acting in a fiduciary or lawful
17 representative capacity on behalf of the consumer;

18 (n) Disclosure in order to provide information to insurance rate
19 advisory organizations, guaranty funds or agencies, applicable rating
20 agencies of the information custodian, persons assessing the
21 information custodian's compliance with industry standards, and the
22 information custodian's attorneys, accountants, and auditors; or

23 (o) Disclosure in connection with a proposed or actual sale,
24 merger, transfer, or exchange of all or a portion of a business or
25 operating unit of an information custodian if the disclosure of
26 information concerns solely consumers of the business or unit.

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

31 (a) That the consumer has the right to choose not to receive
32 marketing information. This disclosure must be made in all marketing
33 information, in whatever medium the marketing information is sent or,
34 if the marketer is an information custodian, in the privacy policy
35 provided to the customer under section 4 of this act;

36 (b) That the consumer may choose not to receive marketing
37 information by exercising his or her choice through a de minimus cost
38 method provided by the marketer. This disclosure must be made in all

1 marketing information in whatever medium the marketing information is
2 sent, or, if the marketer is an information custodian, in the privacy
3 policy provided to the customer under section 4 of this act. The
4 marketer shall maintain adequate and reasonable access for consumers to
5 the de minimus cost method it has established.

6 (2) If, under this section, a consumer chooses not to receive
7 marketing information, the marketer must stop marketing to the consumer
8 within ninety days of receiving the consumer's notice. Once a consumer
9 has chosen not to receive marketing information, a marketer may not
10 market to the consumer until the consumer notifies the marketer that he
11 or she has chosen to receive marketing information.

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

13 (1) An information custodian may not disclose sensitive information to
14 a third party or affiliate for purposes other than consumer-requested
15 purposes unless the consumer has received written notification of the
16 following:

17 (a) The information to be disclosed;

18 (b) The entity or entities authorized to receive the disclosure of
19 information;

20 (c) A specific description of the purpose for which the disclosure
21 of information will be made;

22 (d) The expiration date for authorization for use of the
23 information, which date is no more than one year from the date of
24 execution.

25 (2) An information custodian may not disclose sensitive information
26 to a third party or affiliate for purposes other than consumer-
27 requested purposes unless the consumer, upon notice as provided in this
28 section and affirmative consent, authorizes the disclosure of the
29 sensitive information sought to be disclosed, in a written statement
30 dated and accepted by the consumer that is separate and distinct from
31 any other document, and that contains a description of the information
32 sought to be disclosed and the purpose for which the information will
33 be disclosed.

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

37 (a) Disclosure to or at the direction of the consumer upon his or
38 her request and upon proper identification;

- 1 (b) Disclosure required by federal, state, or local law or
2 regulation, rules, and other applicable legal requirements;
- 3 (c) Disclosure made in the course of a properly authorized civil,
4 criminal, or regulatory examination or investigation or under a search
5 warrant, court order, or subpoena, including an administrative
6 subpoena;
- 7 (d) Use or disclosure of sensitive information by an information
8 custodian to another entity to perform services or functions on behalf
9 of the information custodian as part of the information custodian's
10 provision of its services or products to its consumers if the entity
11 agrees in writing to keep the information confidential;
- 12 (e) Disclosure to a third party in the business of debt collection
13 where necessary to collect a debt or check returned for insufficient
14 funds;
- 15 (f) Disclosure to protect the confidentiality or security of the
16 information custodian's records;
- 17 (g) Disclosure to protect against or prevent actual or potential
18 fraud or unauthorized transactions, claims, or other liability;
- 19 (h) Disclosure as part of a risk control program required by
20 regulators, or for resolving customer disputes or inquiries;
- 21 (i) Disclosure by or to a consumer reporting agency as defined by
22 the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.),
23 and as specifically permitted by that act;
- 24 (j) Disclosure of credit report information between affiliates as
25 defined in the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681
26 et seq.), and as specifically permitted by that act;
- 27 (k) Disclosure of sensitive information which is prohibited from
28 disclosure by section 502(d) of Public Law 106-103 (the Gramm-Leach-
29 Bliley Act of 1999);
- 30 (l) Disclosure for purposes of a proposed or actual securitization,
31 secondary market sale (including sales service rights), or similar
32 transactions related to a consumer-requested purpose;
- 33 (m) Disclosure to persons holding a legal or beneficial interest
34 relating to the consumer;
- 35 (n) Disclosure to persons acting in a fiduciary or lawful
36 representative capacity on behalf of the consumer;
- 37 (o) Disclosure in order to provide information to insurance rate
38 advisory organizations, guaranty funds or agencies, applicable rating
39 agencies of the information custodian, persons assessing the

1 information custodian's compliance with industry standards, and the
2 information custodian's attorneys, accountants, and auditors; or
3 (p) Disclosure in connection with a proposed or actual sale,
4 merger, transfer, or exchange of all or a portion of a business or
5 operating unit of an information custodian if the disclosure of
6 information concerns solely consumers of the business or unit.

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

8 (1) Third parties or affiliates that obtain personal information or
9 sensitive information from information custodians may not sell, share,
10 or otherwise transfer the information for any reason other than the
11 original purpose for which the information was sold, shared, or
12 transferred to the third party or affiliate.

13 (2) An information custodian, before sharing, selling, or otherwise
14 transferring personal information or sensitive information, must obtain
15 a written agreement from the third party or affiliate providing for the
16 following:

17 (a) To keep the information confidential;

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

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

22 (3) Every information custodian must establish reasonable
23 safeguards to ensure the confidentiality and safety of personal
24 information and sensitive information and to protect them from loss,
25 misuse, theft, unauthorized access, disclosure, defacement, or
26 alteration.

27 NEW SECTION. **Sec. 9.** VIOLATION AN UNFAIR OR DECEPTIVE ACT. (1)

28 Unfair and deceptive invasion of privacy rights is not reasonable in
29 relation to the development and preservation of business. The
30 legislature finds that the practices covered by this chapter are
31 matters vitally affecting the public interest for the purpose of
32 applying the Consumer Protection Act, chapter 19.86 RCW. A violation
33 of this chapter is an unfair or deceptive act in trade or commerce for
34 the purpose of applying the Consumer Protection Act, chapter 19.86 RCW.

35 (2) A person may not bring an action for a violation of this
36 chapter, other than a violation of section 3, 5, 7, or 8 of this act or
37 a willful violation of section 4 of this act, unless, within seven

1 years before the violation, he or she has notified the defendant of a
2 violation of the section, in writing at an address specified in the
3 defendant's privacy policy if the defendant is an information custodian
4 or at an address provided by the defendant upon the consumer's request
5 if the defendant is a marketer, and the defendant has again committed
6 the violation more than ninety days after having received the
7 notification.

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

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

26 NEW SECTION. **Sec. 11.** Sections 1 through 10 of this act
27 constitute a new chapter in Title 19 RCW.

28 NEW SECTION. **Sec. 12.** Section captions used in sections 1 through
29 10 of this act are not part of the law.

30 NEW SECTION. **Sec. 13.** If any provision of this act or its
31 application to any person or circumstance is held invalid, the
32 remainder of the act or the application of the provision to other
33 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 14.** This act takes effect December 1, 2000.

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