

---

SENATE BILL 6822

---

State of Washington

56th Legislature

2000 Regular Session

By Senators Prentice and Gardner

Read first time 02/01/2000. Referred to Committee on Commerce, Trade, Housing & Financial Institutions.

1 AN ACT Relating to the privacy of personal information in  
2 commercial transactions involving information custodians other than  
3 financial institutions who maintain and transfer information; adding a  
4 new chapter to Title 19 RCW; creating a new section; prescribing  
5 penalties; and providing an 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) "Information custodian" means a nonpublic, commercial entity  
37 other than a financial institution that maintains data containing  
38 personal information or sensitive information about consumers it knows

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

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

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

23 (7) "Personal information" means information that is provided by  
24 the consumer in a commercial context, and is identifiable to the  
25 individual consumer, that concerns the amount or condition of the  
26 consumer's assets, liabilities, financial transactions, purchasing  
27 history, buying preferences, business relationships, account existence  
28 or status, customer status, demographic information, name, address,  
29 telephone number, or electronic mail address or that reflects current  
30 or historical balances or purchase amounts.

31 (8) "Sensitive information" means information maintained in a  
32 commercial context that is held for the purpose of transaction  
33 initiation, account access, or identity verification, and includes  
34 account numbers, access codes or passwords, tax identification numbers,  
35 driver's license or permit numbers, state identicard numbers issued by  
36 the department of licensing, and credit card numbers or expiration  
37 dates.

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

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

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

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

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

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

28        (4) An information custodian must disclose its consumer privacy  
29 policy at least once to each consumer no later than:

30        (a) For existing customers on the effective date of this act about  
31 whom the information custodian has maintained personal information that  
32 includes the consumer's name and address or other means of contact or  
33 identification, within sixty days after the effective date of this act  
34 or when the consumer's name and address or other means of contact or  
35 identification is obtained and maintained by the information custodian;

36        (b) For prospective customers after the effective date of this act,  
37 within thirty days after the consumer's initial request for the policy;  
38 and

1 (c) For all new customers after the effective date of this act, at  
2 the time the customer enters into a business relationship with the  
3 information custodian that involves recording and maintaining of  
4 personal or sensitive information.

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

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

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

22 NEW SECTION. Sec. 5. PERSONAL INFORMATION--CONSUMER CONTROL. (1)  
23 An information custodian may share, sell, or otherwise transfer  
24 personal information for purposes other than consumer-requested  
25 purposes, only if it has clearly and conspicuously disclosed to the  
26 consumer the following information in plain language:

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

32 (b) That the consumer may choose not to receive marketing  
33 information or have his or her personal information shared, sold, or  
34 transferred for other than consumer-requested purposes, by exercising  
35 his or her choice through a cost-free method provided by the  
36 information custodian. Disclosure of the existence of the cost-free  
37 method must be made at the time the consumer privacy policy is provided  
38 to the customer under section 4 of this act. The information custodian

1 shall maintain adequate and reasonable access for consumers to the  
2 cost-free method it has established.

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

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

17 (a) Disclosure to the consumer upon his or her request and upon  
18 presentation of proper identification;

19 (b) Disclosure required by federal, state, or local law or  
20 regulation;

21 (c) Disclosure made under a search warrant, court order, or  
22 subpoena, including an administrative subpoena;

23 (d) Use or disclosure of personal information by an information  
24 custodian to perform services or functions on behalf of the information  
25 custodian as part of the information custodian's provision of services  
26 or products to a consumer in connection with a consumer-requested  
27 purpose;

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

31 (f) Disclosure to protect against or prevent actual or potential  
32 fraud or unauthorized transactions;

33 (g) Disclosure by or to a consumer reporting agency as defined by  
34 the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.) and  
35 as specifically permitted by that act;

36 (h) Disclosure of credit report information between affiliates as  
37 defined in the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681  
38 et seq.) and as specifically permitted by that act;

1 (i) Disclosure for purposes of a proposed or actual securitization,  
2 secondary market sale (including sales of service rights), or similar  
3 transaction related to a consumer-requested purpose;

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

6 (k) Disclosure to persons acting in a fiduciary or lawful  
7 representative capacity on behalf of the consumer; or

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

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

17 (a) That the consumer has the right to choose not to receive  
18 marketing information. This disclosure must be made in all marketing  
19 information, in whatever medium the marketing information is sent or,  
20 if the marketer is an information custodian, in the privacy policy  
21 provided to the customer under section 4 of this act.

22 (b) That the consumer may choose not to receive marketing  
23 information by exercising his or her choice through a cost-free method  
24 provided by the marketer. This disclosure must be made in all  
25 marketing information in whatever medium the marketing information is  
26 sent in, or, if the marketer is an information custodian, in the  
27 privacy policy provided to the customer under section 4 of this act.  
28 The marketer shall maintain adequate and reasonable access for  
29 consumers to the cost-free method it has established.

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

36 NEW SECTION. **Sec. 7.** **SENSITIVE INFORMATION--CONSUMER CONTROL.**  
37 (1) An information custodian may not disclose sensitive information to

1 a third party or affiliate for purposes other than consumer-requested  
2 purposes unless the consumer has received written notification of the  
3 following:

4 (a) The information to be disclosed;

5 (b) The entity or entities authorized to receive the disclosure of  
6 information;

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

9 (d) The expiration date for authorization for use of the  
10 information, which date is no more than one year from the date of  
11 execution.

12 (2) An information custodian may not disclose sensitive information  
13 to a third party or affiliate for purposes other than consumer-  
14 requested purposes unless the consumer, upon notice as provided in this  
15 section and affirmative consent, authorizes the disclosure of the  
16 sensitive information sought to be disclosed, in a written statement  
17 dated and accepted by the consumer that is separate and distinct from  
18 any other document, and that contains a description of the information  
19 sought to be disclosed and the purpose for which the information will  
20 be disclosed.

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

23 (a) Disclosure to the consumer upon his or her request and upon  
24 proper identification;

25 (b) Disclosure required by federal, state, or local law or  
26 regulation;

27 (c) Disclosure made under a search warrant, court order, or  
28 subpoena, including an administrative subpoena;

29 (d) Use or disclosure of sensitive information by an information  
30 custodian to perform services or functions on behalf of the information  
31 custodian as part of the information custodian's provision of services  
32 or products to a consumer in connection with a consumer-requested  
33 purpose;

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 against or prevent actual or potential  
38 fraud or unauthorized transactions;



1 (g) Disclosure by or to a consumer reporting agency as defined by  
2 the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.) and  
3 as specifically permitted by that act;

4 (h) Disclosure of credit report information between affiliates as  
5 defined in the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681  
6 et seq.) and as specifically permitted by that act;

7 (i) Disclosure of sensitive information that is prohibited from  
8 disclosure by section 502(d) of Public Law 106-103 (the Gramm-Leach-  
9 Bliley Act of 1999);

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

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

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

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

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

23 (1) Third parties or affiliates that obtain personal information or  
24 sensitive information from information custodians may not sell, share,  
25 or otherwise transfer the information for any reason other than the  
26 original purpose for which the information was sold, shared, or  
27 transferred to the third party or affiliate.

28 (2) An information custodian, before sharing, selling, or otherwise  
29 transferring personal information or sensitive information, must obtain  
30 a written agreement from the third party or affiliate providing for the  
31 following:

32 (a) To keep the information confidential;

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

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

37 (3) Every information custodian must establish reasonable  
38 safeguards to ensure the confidentiality and safety of personal

1 information and sensitive information and to protect them from loss,  
2 misuse, theft, unauthorized access, disclosure, defacement, or  
3 alteration.

4 NEW SECTION. **Sec. 9.** VIOLATION AN UNFAIR OR DECEPTIVE ACT. (1)  
5 Unfair and deceptive invasion of privacy rights is not reasonable in  
6 relation to the development and preservation of business. The  
7 legislature finds that the practices covered by this chapter are  
8 matters vitally affecting the public interest for the purpose of  
9 applying the Consumer Protection Act, chapter 19.86 RCW. A violation  
10 of this chapter is an unfair or deceptive act in trade or commerce for  
11 the purpose of applying the Consumer Protection Act, chapter 19.86 RCW.

12 (2) A person may not bring an action against a marketer for a  
13 violation of section 6(2) of this act unless he or she has notified the  
14 marketer of a violation of the section, in writing at an address  
15 provided by the marketer upon the consumer's request, and the  
16 information custodian has again violated section 6(2) of this act more  
17 than ninety days after having received the notification.

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

24 NEW SECTION. **Sec. 10.** Sections 1 through 9 of this act constitute  
25 a new chapter in Title 19 RCW.

26 NEW SECTION. **Sec. 11.** Section captions used in sections 1 through  
27 9 of this act are not part of the law.

28 NEW SECTION. **Sec. 12.** This act takes effect December 1, 2000.

--- END ---