
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1149

State of Washington

61st Legislature

2010 Regular Session

By House Financial Institutions & Insurance (originally sponsored by Representatives Williams, Roach, Simpson, Kirby, Dunshee, Nelson, and Ormsby)

READ FIRST TIME 01/21/10.

1 AN ACT Relating to protecting consumers from breaches of security;
2 adding a new section to chapter 19.255 RCW; creating new sections; and
3 providing an effective date.

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

5 NEW SECTION. **Sec. 1.** The legislature recognizes that data
6 breaches of credit and debit card information contribute to identity
7 theft and fraud and can be costly to consumers. The legislature also
8 recognizes that when a breach occurs, remedial measures such as
9 reissuance of credit or debit cards affected by the breach can help to
10 reduce the incidence of identity theft and associated costs to
11 consumers. Accordingly, the legislature intends to encourage financial
12 institutions to reissue credit and debit cards to consumers when
13 appropriate, and to permit financial institutions to recoup data breach
14 costs associated with the reissuance from large businesses and card
15 processors who are negligent in maintaining or transmitting card data.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 19.255 RCW
17 to read as follows:

18 (1) For purposes of this section:

1 (a) "Access device" has the same meaning as in RCW 9A.56.010.

2 (b) "Account information" means: (i) The full, unencrypted
3 magnetic stripe of an access device; (ii) the full, unencrypted account
4 information contained on an identification device as defined under RCW
5 19.300.010; or (iii) the unencrypted primary account number on an
6 access device or identification device, plus any of the following if
7 not encrypted: Cardholder name, expiration date, or service code.

8 (c) "Breach" has the same meaning as "breach of the security of the
9 system" in RCW 19.255.010.

10 (d) "Business" means an individual, partnership, corporation,
11 association, organization, government entity, or any other legal or
12 commercial entity that processes more than six million access device
13 transactions annually, and who offers or sells goods or services to
14 persons who are residents of Washington.

15 (e) "Encrypted" means enciphered or encoded using standards
16 reasonable for the breached business or processor taking into account
17 the business or processor's size and the number of transactions
18 processed annually.

19 (f) "Financial institution" has the same meaning as in RCW
20 30.22.040.

21 (g) "Processor" means an individual, partnership, corporation,
22 association, organization, government entity, or any other legal or
23 commercial entity, other than a business as defined under this section,
24 that directly processes or transmits account information for or on
25 behalf of another person as part of a payment processing service.

26 (h) "Service code" means the three or four digit number in the
27 magnetic stripe or on an access device that is used to specify
28 acceptance requirements or to validate the card.

29 (i) "Vendor" means an individual, partnership, corporation,
30 association, organization, government entity, or any other legal or
31 commercial entity that manufactures and sells software or equipment
32 that is designed to process, transmit, or store account information.

33 (2) Processors, businesses, and vendors are not liable under this
34 section if (a) the account information was encrypted during storage and
35 transmittal at the time of the breach, or (b) the processor, business,
36 or vendor was certified compliant with the payment card industry data
37 security standards adopted by the payment card industry security
38 standards council, and in force at the time of the breach. A

1 processor, business, or vendor will be considered compliant with
2 payment card industry data security standards, if its compliance was
3 validated on all system components where cardholder data is stored,
4 processed, or transmitted at the time of its last annual security
5 assessment, and if this assessment took place no more than one year
6 prior to the time of the breach.

7 (3)(a) If a processor or business fails to take reasonable care to
8 guard against unauthorized access to account information that is in the
9 possession or under the control of the business or processor, and the
10 failure is found to be the proximate cause of a breach, the processor
11 or business is liable to a financial institution for reimbursement of
12 reasonable actual costs related to the reissuance of access devices
13 that are incurred by the financial institution to mitigate potential
14 current or future damages to its access device account holders that
15 reside in the state of Washington as a consequence of the breach, even
16 if the financial institution has not suffered a physical injury in
17 connection with the breach. In any legal action brought pursuant to
18 this subsection, the prevailing party is entitled to recover its
19 reasonable attorneys' fees and costs incurred in connection with the
20 legal action.

21 (b) A vendor, instead of a processor or business, is liable to a
22 financial institution for the damages described in (a) of this
23 subsection to the extent that the damages were proximately caused by
24 the vendor's negligence and if the claim is not limited or foreclosed
25 by another provision of law or by a contract to which the financial
26 institution is a party.

27 (4) Nothing in this section may be construed as preventing or
28 foreclosing any entity responsible for handling account information on
29 behalf of a business or processor from being made a party to an action
30 under this section.

31 (5) Nothing in this section may be construed as preventing or
32 foreclosing a processor, business, or vendor from asserting any defense
33 otherwise available to it in an action including, but not limited to,
34 defenses of contract, or of contributory or comparative negligence.

35 (6) In cases to which this section applies, the trier of fact shall
36 determine the percentage of the total fault which is attributable to
37 every entity which was the proximate cause of the claimant's damages.

1 (7) The remedies under this section are cumulative and do not
2 restrict any other right or remedy otherwise available under law,
3 however a trier of fact may reduce damages awarded to a financial
4 institution by any amount the financial institution recovers from a
5 credit card company in connection with the breach, for costs associated
6 with access card reissuance.

7 NEW SECTION. **Sec. 3.** This act takes effect July 1, 2010.

8 NEW SECTION. **Sec. 4.** This act applies prospectively only. This
9 act applies to any breach occurring on or after the effective date of
10 this section.

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