

1 **ESSB 6513** - H AMD

2 By Representative Sullivan

3 Strike everything after the enacting clause and insert the
4 following:

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

20 (2) The legislature finds that the disclosure of personal
21 information has caused specific significant harms to Washington
22 consumers, including the appearance of unauthorized charges or debits
23 on consumers' accounts, misappropriation of information for the purpose
24 of assuming a consumer's identity, the unwanted and unintended
25 dissemination of personal information, and the invasion of privacy.

26 (3) The legislature finds that the flow of some personal
27 information has resulted in a number of increased market efficiencies
28 that are beneficial to consumers. These include more rapid credit
29 transactions and check verifications, as well as an increased number of
30 choices for products and services. The legislature finds that these
31 benefits can be maintained by giving consumers the choice to allow
32 their personal information to be shared. The legislature finds that
33 giving consumers this choice best balances the benefits and harms of
34 disclosure of such information.

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

4 (1) "Affiliate" means an entity that controls, is controlled by,
5 or is under common control or common ownership with another entity.
6 Companies that form alliances as a financial services group for
7 purposes of marketing their services and are located at a common
8 address, have personnel and payroll functions administered through a
9 central office, jointly sponsor one combined employee savings and
10 profit sharing plan, and have centralized data processing, mail
11 service, communications, and procurement are considered under common
12 control and affiliated with each other.

13 (2) "Consumer" or "customer" means a natural person or his or her
14 legal representative, who is a resident of the state of Washington and
15 who purchases, leases, or otherwise contracts for financial products or
16 services within the state of Washington. Consumer shall be interpreted
17 to include a marital community.

18 (3) "Consumer-requested purpose" means for the purpose of
19 establishing or maintaining a business relationship, completing a
20 transaction, or providing a product or service requested by the
21 consumer.

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

30 (5) "Functional business purpose" means use or disclosure of
31 personal information by a financial institution to another entity or
32 person to perform services or functions on behalf of the financial
33 institution as part of the financial institution's provision of its
34 products or services to its customers;

35 (6) "Personal information" means information that is provided by
36 the consumer and is identifiable to the individual consumer, that
37 concerns the amount or condition of the consumer's assets, liabilities,
38 financial transactions, purchasing history, buying preferences, or that

1 reflects current or historical deposit or credit card account balances
2 or purchase amounts, or which may be held for the purpose of
3 transaction initiation, account access or identity verification, and
4 includes account numbers, access codes or passwords, social security
5 numbers, tax identification numbers, driver's license or permit
6 numbers, state identicard numbers issued by the department of
7 licensing, and credit card numbers or expiration dates, and
8 electronically captured signatures.

9 NEW SECTION. **Sec. 3.** RESTRICTION ON CONSUMER INFORMATION.
10 Financial institutions shall, in performing a transaction with a
11 consumer, providing a service for a consumer, or establishing a
12 business relationship with a consumer, require only that the consumer
13 provide information reasonably necessary to perform the transaction,
14 establish the relationship, administer or maintain the business
15 relationship, collect or service a debt, protect against fraud or
16 unauthorized transactions, or comply with applicable law. Any optional
17 information must be specified as such, and the consumer must be given
18 the option not to provide it.

19 NEW SECTION. **Sec. 4.** CONSUMER PRIVACY POLICIES. (1) The
20 attorney general shall draft a model consumer privacy policy. The model
21 consumer privacy policy shall not preclude any financial institution
22 from adopting a privacy policy as provided in this section. Financial
23 institutions shall have the right to adopt the attorney general's model
24 consumer privacy policy in lieu of providing their own policy. The
25 attorney general shall adopt the model consumer privacy policy by the
26 effective date of this act.

27 (2) A financial institution that chooses not to adopt the attorney
28 general's model consumer privacy policy must have a consumer privacy
29 policy that discloses to existing and prospective consumers the
30 policies and practices of the financial institution regarding the use
31 of consumer personal information acquired or possessed by the financial
32 institution.

33 (3) A consumer privacy policy, at a minimum, must summarize the
34 financial institution's responsibilities under this chapter and
35 describe the consumer's rights and remedies under it, and generally

1 describe with whom the consumer's personal information will be shared
2 or to whom it will be sold or transferred.

3 (4) A consumer privacy policy must also provide a reasonable means
4 for consumers to access their personal information that the financial
5 institution shares, sells, or transfers for marketing purposes.

6 (5) A financial institution that does not adopt the attorney
7 general's model consumer privacy policy must disclose its consumer
8 privacy policy at least once no later than:

9 (a) The effective date of this act to existing customers. For the
10 purposes of this subsection, "existing customer" means a customer whose
11 personal information has been sold, shared, or transferred within the
12 twelve-month period preceding the effective date of this act;

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

15 (c) At the time when a new customer enters into a business
16 relationship with the financial institution.

17 (6) A financial institution not adopting the attorney general's
18 model consumer privacy policy must disclose its consumer privacy policy
19 on an annual basis to existing customers after the initial disclosure
20 described in subsection (4) of this section, and, when material changes
21 are made to the policy, the financial institution must notify the
22 consumer, clearly and conspicuously in writing, in plain language, of
23 the material changes and describe the consumer's rights under section
24 5 of this act, including the consumer's right to withdraw any consent
25 given by the consumer under section 5 of this act.

26 (7) The disclosure of the consumer privacy policy, of a financial
27 institution not adopting the attorney general's consumer privacy
28 policy, must be clearly and conspicuously made in writing, in a
29 document separate from or attached as the first item of other documents
30 or pages that are provided to the consumer by the information
31 custodian.

32 (8) All consumer privacy policies must be clearly and
33 conspicuously posted on the financial institution's website, if a
34 website exists, and must be readily available for review at the
35 financial institution's place of business.

36 (9) Any financial institution adopting the attorney general's
37 model consumer privacy policy must disclose the privacy policy as
38 follows:

1 (a) Disclosure of the model consumer privacy policy must be made
2 clearly and conspicuously on the financial institution's website, if a
3 website exists, and must be readily available for review at the
4 financial institution's place of business.

5 (b) The model consumer privacy policy must be disclosed annually
6 as part of the financial institutions regular correspondence with their
7 customers.

8 (c) A copy of the model consumer privacy policy must be provided
9 within 30 days of a request from a current or prospective customer.

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

15 NEW SECTION. **Sec. 5. PERSONAL INFORMATION--CONSUMER CONTROL.** (1)
16 A financial institution may not disclose personal information to a
17 third party or affiliate for purposes other than consumer-requested
18 purposes or functional business purposes unless the consumer has
19 received written notification of the following:

20 (a) The information to be disclosed;

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

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

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

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

36 (a) Disclosure to or at the direction or with the consent of the
37 consumer upon his or 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 subpoena
6 or other legal process;

7 (d) Disclosure to a third party or an affiliate for the purpose of
8 collecting a debt or a dishonored item, although the recipient of the
9 information must comply with section 6 of this act;

10 (e) Disclosure to protect the confidentiality or security of the
11 financial institution's records;

12 (f) Disclosure to protect against, investigate, or prevent actual
13 or potential fraud or unauthorized transactions, claims, or other
14 liability;

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

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

20 (i) Disclosure of consumer report information between affiliates
21 as specifically permitted under the federal Fair Credit Reporting Act
22 (15 U.S.C. Sec. 1681 et seq.), although the recipient of the
23 information must comply with section 6 of this act;

24 (j) Disclosure of personal information which is prohibited from
25 disclosure by section 502(d) of Public Law 106-102 (the Gramm-Leach-
26 Bliley Act of 1999);

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

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

32 (m) Disclosure in connection with a proposed or actual sale,
33 merger, transfer, or exchange of all or a portion of a business or
34 operating unit of a financial institution if the disclosure of
35 information concerns solely consumers of the business or unit;

36 (n) Disclosure of health care information in compliance with state
37 and federal law; or

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

3 NEW SECTION. **Sec. 6.** CONFIDENTIALITY AND SECURITY OF
4 INFORMATION. (1) Third parties or affiliates that obtain personal
5 information from a financial institution may not sell, share, or
6 otherwise transfer the information for any reason other than the
7 original purpose for which the information was sold, shared, or
8 transferred to the third party or affiliate.

9 (2) A financial institution, before sharing, selling, or otherwise
10 transferring personal information, must obtain a written agreement from
11 the third party or affiliate providing for the following:

12 (a) To keep the information confidential;

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

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

17 (3) Every financial institution 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. 7.** VIOLATION AN UNFAIR OR DECEPTIVE ACT. (1)
23 Unfair and deceptive invasion of privacy rights is not reasonable in
24 relation to the development and preservation of business. The
25 legislature finds that the practices covered by this chapter are
26 matters vitally affecting the public interest for the purpose of
27 applying the consumer protection act, chapter 19.86 RCW. A violation
28 of this chapter is an unfair or deceptive act in trade or commerce for
29 the purpose of applying the consumer protection act, chapter 19.86 RCW.

30 (2) Damages to a person who has been the victim of a violation of
31 this chapter are five hundred dollars, or actual damages plus
32 reasonable attorney's fees, whichever is greater. A court may increase
33 the award of damages in an amount not more than three times the actual
34 damages sustained, or one thousand five hundred dollars, whichever is
35 greater, upon a demonstration that a violation of the chapter was
36 willful.

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

14 NEW SECTION. **Sec. 9.** Sections 1 through 8 of this act constitute
15 a new chapter in Title 19 RCW.

16 NEW SECTION. **Sec. 10.** Section captions used in sections 1
17 through 8 of this act are not part of the law.

18 NEW SECTION. **Sec. 11.** If any provision of this act or its
19 application to any person or circumstance is held invalid, the
20 remainder of the act or the application of the provision to other
21 persons or circumstances is not affected.

22 NEW SECTION. **Sec. 12.** This act takes effect June 1, 2001.-
23 Correct the title.

EFFECT: Applies the act to only financial institutions. Combines
sensitive- and personal- information and provides an opt-in
requirement to selling, sharing, or transferring personal
information except for customer-requested or functional business
purposes and safe harbors. The Attorney General must adopt a
model consumer privacy policy. If a financial institution uses
the AG model rather than its own privacy policy, its disclosure
requirements are less. Damages are modified.