

2 SHB 1250 - S COMM AMD

3 By Committee on Commerce, Trade, Housing & Financial Institutions

4 ADOPTED 4/14/99

5 Strike everything after the enacting clause and insert the
6 following:

7 NEW SECTION. **Sec. 1.** INTENT. The legislature finds that
8 financial information is personal and sensitive information that if
9 unlawfully obtained by others may do significant harm to a person's
10 privacy, financial security, and other interests. The legislature
11 finds that unscrupulous persons find ever more clever ways, including
12 identity theft, to improperly obtain and use financial information.
13 The legislature intends to penalize unscrupulous people for improperly
14 obtaining financial information.

15 NEW SECTION. **Sec. 2.** PROHIBITING ATTEMPTS TO IMPROPERLY OBTAIN
16 FINANCIAL INFORMATION. (1) No person may obtain or attempt to obtain,
17 or cause to be disclosed or attempt to cause to be disclosed to any
18 person, financial information from a financial information repository:

19 (a) By knowingly making a false, fictitious, or fraudulent
20 statement or representation to an officer, employee, or agent of a
21 financial information repository with the intent to deceive the
22 officer, employee, or agent into relying on that statement or
23 representation for purposes of releasing the financial information;

24 (b) By knowingly making a false, fictitious, or fraudulent
25 statement or representation to a customer of a financial information
26 repository with the intent to deceive the customer into releasing
27 financial information or authorizing the release of such information;

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

34 (2) No person may request another person to obtain financial
35 information from a financial information repository and knows or should

1 have known that the person will obtain or attempt to obtain the
2 information from the financial institution repository in any manner
3 described in subsection (1) of this section.

4 (3) As used in this section, unless the context clearly requires
5 otherwise:

6 (a) "Financial information" means, to the extent it is nonpublic,
7 any of the following information identifiable to the individual that
8 concerns the amount and conditions of an individual's assets,
9 liabilities, or credit:

10 (i) Account numbers and balances;

11 (ii) Transactional information concerning any account; and

12 (iii) Codes, passwords, social security numbers, tax identification
13 numbers, driver's license or permit numbers, state identicard numbers
14 issued by the department of licensing, and other information held for
15 the purpose of account access or transaction initiation.

16 (b) "Financial information repository" means any person engaged in
17 the business of providing services to customers who have a credit,
18 deposit, trust, stock, or other financial account or relationship with
19 the person.

20 (c) "Person" means an individual, partnership, corporation, or
21 association.

22 (4) No provision of this section shall be construed so as to
23 prevent any action by a law enforcement agency, or any officer,
24 employee, or agent of such agency, or any action of an agent of the
25 financial information repository when working in conjunction with a law
26 enforcement agency.

27 (5) This section does not apply to:

28 (a) Efforts by the financial information repository to test
29 security procedures or systems of the financial institution repository
30 for maintaining the confidentiality of customer information;

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

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

35 (6) Violation of this section is a class C felony.

36 (7) A person that violates this section is liable for five hundred
37 dollars or actual damages, whichever is greater, and reasonable
38 attorneys' fees. If the person violating this section is a business

1 that repeatedly violates this section, that person also violates the
2 consumer protection act, chapter 19.86 RCW.

3 NEW SECTION. **Sec. 3.** PROHIBITING IDENTITY THEFT. (1) No person
4 may knowingly use or knowingly transfer a means of identification of
5 another person with the intent to commit, or to aid or abet, any
6 unlawful activity harming or intending to harm the person whose
7 identity is used, or for committing any felony.

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

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

21 (4) A person that violates this section is liable for five hundred
22 dollars or actual damages, including costs to repair the person's
23 credit record, whichever is greater, and reasonable attorneys' fees.
24 If the person violating this section is a business that repeatedly
25 violates this section, that person also violates the consumer
26 protection act, chapter 19.86 RCW.

27 **Sec. 4.** RCW 9A.82.010 and 1995 c 285 s 34 and 1995 c 92 s 5 are
28 each reenacted and amended to read as follows:

29 Unless the context requires the contrary, the definitions in this
30 section apply throughout this chapter.

31 (1) "Creditor" means a person making an extension of credit or a
32 person claiming by, under, or through a person making an extension of
33 credit.

34 (2) "Debtor" means a person to whom an extension of credit is made
35 or a person who guarantees the repayment of an extension of credit or
36 in any manner undertakes to indemnify the creditor against loss

1 resulting from the failure of a person to whom an extension is made to
2 repay the same.

3 (3) "Extortionate extension of credit" means an extension of credit
4 with respect to which it is the understanding of the creditor and the
5 debtor at the time the extension is made that delay in making repayment
6 or failure to make repayment could result in the use of violence or
7 other criminal means to cause harm to the person, reputation, or
8 property of any person.

9 (4) "Extortionate means" means the use, or an express or implicit
10 threat of use, of violence or other criminal means to cause harm to the
11 person, reputation, or property of any person.

12 (5) "To collect an extension of credit" means to induce in any way
13 a person to make repayment thereof.

14 (6) "To extend credit" means to make or renew a loan or to enter
15 into an agreement, tacit or express, whereby the repayment or
16 satisfaction of a debt or claim, whether acknowledged or disputed,
17 valid or invalid, and however arising, may or shall be deferred.

18 (7) "Repayment of an extension of credit" means the repayment,
19 satisfaction, or discharge in whole or in part of a debt or claim,
20 acknowledged or disputed, valid or invalid, resulting from or in
21 connection with that extension of credit.

22 (8) "Dealer in property" means a person who buys and sells property
23 as a business.

24 (9) "Stolen property" means property that has been obtained by
25 theft, robbery, or extortion.

26 (10) "Traffic" means to sell, transfer, distribute, dispense, or
27 otherwise dispose of stolen property to another person, or to buy,
28 receive, possess, or obtain control of stolen property, with intent to
29 sell, transfer, distribute, dispense, or otherwise dispose of the
30 property to another person.

31 (11) "Control" means the possession of a sufficient interest to
32 permit substantial direction over the affairs of an enterprise.

33 (12) "Enterprise" includes any individual, sole proprietorship,
34 partnership, corporation, business trust, or other profit or nonprofit
35 legal entity, and includes any union, association, or group of
36 individuals associated in fact although not a legal entity, and both
37 illicit and licit enterprises and governmental and nongovernmental
38 entities.

1 (13) "Financial institution" means any bank, trust company, savings
2 and loan association, savings bank, mutual savings bank, credit union,
3 or loan company under the jurisdiction of the state or an agency of the
4 United States.

5 (14) "Criminal profiteering" means any act, including any
6 anticipatory or completed offense, committed for financial gain, that
7 is chargeable or indictable under the laws of the state in which the
8 act occurred and, if the act occurred in a state other than this state,
9 would be chargeable or indictable under the laws of this state had the
10 act occurred in this state and punishable as a felony and by
11 imprisonment for more than one year, regardless of whether the act is
12 charged or indicted, as any of the following:

13 (a) Murder, as defined in RCW 9A.32.030 and 9A.32.050;

14 (b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;

15 (c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;

16 (d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;

17 (e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060, and
18 9A.56.080;

19 (f) Unlawful sale of subscription television services, as defined
20 in RCW 9A.56.230;

21 (g) Theft of telecommunication services or unlawful manufacture of
22 a telecommunication device, as defined in RCW 9A.56.262 and 9A.56.264;

23 (h) Child selling or child buying, as defined in RCW 9A.64.030;

24 (i) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and
25 9A.68.050;

26 (j) Gambling, as defined in RCW 9.46.220 and 9.46.215 and 9.46.217;

27 (k) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;

28 (l) Extortionate extension of credit, as defined in RCW 9A.82.020;

29 (m) Advancing money for use in an extortionate extension of credit,
30 as defined in RCW 9A.82.030;

31 (n) Collection of an extortionate extension of credit, as defined
32 in RCW 9A.82.040;

33 (o) Collection of an unlawful debt, as defined in RCW 9A.82.045;

34 (p) Delivery or manufacture of controlled substances or possession
35 with intent to deliver or manufacture controlled substances under
36 chapter 69.50 RCW;

37 (q) Trafficking in stolen property, as defined in RCW 9A.82.050;

38 (r) Leading organized crime, as defined in RCW 9A.82.060;

39 (s) Money laundering, as defined in RCW 9A.83.020;

1 (t) Obstructing criminal investigations or prosecutions in
2 violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130,
3 9A.76.070, or 9A.76.180;

4 (u) Fraud in the purchase or sale of securities, as defined in RCW
5 21.20.010;

6 (v) Promoting pornography, as defined in RCW 9.68.140;

7 (w) Sexual exploitation of children, as defined in RCW 9.68A.040,
8 9.68A.050, and 9.68A.060;

9 (x) Promoting prostitution, as defined in RCW 9A.88.070 and
10 9A.88.080;

11 (y) Arson, as defined in RCW 9A.48.020 and 9A.48.030;

12 (z) Assault, as defined in RCW 9A.36.011 and 9A.36.021;

13 (aa) Assault of a child, as defined in RCW 9A.36.120 and 9A.36.130;

14 (bb) A pattern of equity skimming, as defined in RCW 61.34.020;

15 (cc) Commercial telephone solicitation in violation of RCW
16 19.158.040(1);

17 (dd) Trafficking in insurance claims, as defined in RCW 48.30A.015;

18 (ee) Unlawful practice of law, as defined in RCW 2.48.180;

19 (ff) Commercial bribery, as defined in RCW 9A.68.060;

20 (gg) Health care false claims, as defined in RCW 48.80.030; (~~or~~)

21 (hh) Unlicensed practice of a profession or business, as defined in
22 RCW 18.130.190(7); or

23 (ii) Identity, theft as defined in section 3 of this act.

24 (15) "Pattern of criminal profiteering activity" means engaging in
25 at least three acts of criminal profiteering, one of which occurred
26 after July 1, 1985, and the last of which occurred within five years,
27 excluding any period of imprisonment, after the commission of the
28 earliest act of criminal profiteering. In order to constitute a
29 pattern, the three acts must have the same or similar intent, results,
30 accomplices, principals, victims, or methods of commission, or be
31 otherwise interrelated by distinguishing characteristics including a
32 nexus to the same enterprise, and must not be isolated events.
33 However, in any civil proceedings brought pursuant to RCW 9A.82.100 by
34 any person other than the attorney general or county prosecuting
35 attorney in which one or more acts of fraud in the purchase or sale of
36 securities are asserted as acts of criminal profiteering activity, it
37 is a condition to civil liability under RCW 9A.82.100 that the
38 defendant has been convicted in a criminal proceeding of fraud in the
39 purchase or sale of securities under RCW 21.20.400 or under the laws of

1 another state or of the United States requiring the same elements of
2 proof, but such conviction need not relate to any act or acts asserted
3 as acts of criminal profiteering activity in such civil action under
4 RCW 9A.82.100.

5 (16) "Records" means any book, paper, writing, record, computer
6 program, or other material.

7 (17) "Documentary material" means any book, paper, document,
8 writing, drawing, graph, chart, photograph, phonograph record, magnetic
9 tape, computer printout, other data compilation from which information
10 can be obtained or from which information can be translated into usable
11 form, or other tangible item.

12 (18) "Unlawful debt" means any money or other thing of value
13 constituting principal or interest of a debt that is legally
14 unenforceable in the state in full or in part because the debt was
15 incurred or contracted:

16 (a) In violation of any one of the following:

17 (i) Chapter 67.16 RCW relating to horse racing;

18 (ii) Chapter 9.46 RCW relating to gambling;

19 (b) In a gambling activity in violation of federal law; or

20 (c) In connection with the business of lending money or a thing of
21 value at a rate that is at least twice the permitted rate under the
22 applicable state or federal law relating to usury.

23 (19)(a) "Beneficial interest" means:

24 (i) The interest of a person as a beneficiary under a trust
25 established under Title 11 RCW in which the trustee for the trust holds
26 legal or record title to real property;

27 (ii) The interest of a person as a beneficiary under any other
28 trust arrangement under which a trustee holds legal or record title to
29 real property for the benefit of the beneficiary; or

30 (iii) The interest of a person under any other form of express
31 fiduciary arrangement under which one person holds legal or record
32 title to real property for the benefit of the other person.

33 (b) "Beneficial interest" does not include the interest of a
34 stockholder in a corporation or the interest of a partner in a general
35 partnership or limited partnership.

36 (c) A beneficial interest shall be considered to be located where
37 the real property owned by the trustee is located.

1 (20) "Real property" means any real property or interest in real
2 property, including but not limited to a land sale contract, lease, or
3 mortgage of real property.

4 (21)(a) "Trustee" means:

5 (i) A person acting as a trustee under a trust established under
6 Title 11 RCW in which the trustee holds legal or record title to real
7 property;

8 (ii) A person who holds legal or record title to real property in
9 which another person has a beneficial interest; or

10 (iii) A successor trustee to a person who is a trustee under
11 subsection (21)(a)(i) or (ii) of this section.

12 (b) "Trustee" does not mean a person appointed or acting as:

13 (i) A personal representative under Title 11 RCW;

14 (ii) A trustee of any testamentary trust;

15 (iii) A trustee of any indenture of trust under which a bond is
16 issued; or

17 (iv) A trustee under a deed of trust.

18 NEW SECTION. **Sec. 5.** EFFECTIVE DATE. This act takes effect
19 January 1, 2000.

20 NEW SECTION. **Sec. 6.** CAPTIONS NOT LAW. Captions used in this
21 chapter are not part of the law.

22 NEW SECTION. **Sec. 7.** SEVERABILITY CLAUSE. If any provision of
23 this act or its application to any person or circumstance is held
24 invalid, the remainder of the act or the application of the provision
25 to other persons or circumstances is not affected.

26 NEW SECTION. **Sec. 8.** Sections 1 through 3 and 5 through 7 of this
27 act constitute a new chapter in Title 9 RCW."

28 **SHB 1250** - S COMM AMD

29 By Committee on Commerce, Trade, Housing & Financial Institutions

30 ADOPTED 4/14/99

31 On page 1, line 1 of the title, after "information;" strike the
32 remainder of the title and insert "reenacting and amending RCW

1 9A.82.010; adding a new chapter to Title 9 RCW; prescribing penalties;
2 and providing an effective date."

--- END ---