

2 SSB 6513 - S AMD - 166

3 By Senators Prentice, Hale, Winsley, Gardner and Shin

4 ADOPTED 2/15/00

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

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
20 intends to ensure that entities and consumers work cooperatively to
21 protect consumer information and enforce sanctions when violations
22 occur.

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

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

35 (4) The legislature finds that the flow of less sensitive personal
36 information has resulted in a number of increased market efficiencies

1 that are beneficial to consumers. These include more rapid credit
2 transactions and check verifications, as well as an increased number of
3 choices for products and services. The legislature finds that these
4 benefits can be maintained by giving consumers the opportunity to
5 choose whether their less sensitive information will be shared. The
6 legislature finds that giving consumers this choice best balances the
7 benefits and harms of disclosure of such information.

8 (5) The legislature finds that the incidence of identity theft is
9 rapidly growing, and that victims of identity theft need further
10 assistance in obtaining the information necessary to the prosecution of
11 their cases. The legislature finds that requiring additional
12 information sharing by merchants with victims will result in greater
13 protections for consumers and deter potential perpetrators.

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

17 (1) "Affiliate" means an entity that controls, is controlled by, or
18 is under common control or common ownership with another entity.
19 Companies that form alliances as a financial services group for
20 purposes of marketing their services and are located at a common
21 address, have personnel and payroll functions administered through a
22 central office, jointly sponsor one combined employee savings and
23 profit sharing plan, and have centralized data processing, mail
24 service, communications, and procurement are considered under common
25 control and affiliated with each other.

26 (2) "Consumer" or "customer" means a natural person or his or her
27 legal representative, who is a resident of the state of Washington and
28 who purchases, leases, or otherwise contracts for products, goods, or
29 services within the state of Washington or from an entity located in
30 the state of Washington, that are primarily used for personal, family,
31 or household purposes on or after the effective date of this act and
32 who continues to be a resident of the state of Washington.

33 (3) "Consumer-requested purpose" means for the purpose of
34 establishing or maintaining a business relationship, completing a
35 transaction, or providing a product, good, or service requested by the
36 consumer.

37 (4) "De minimus cost method" means any method, such as a toll-free
38 telephone number, a post office box or address for accepting first-

1 class mail, or any similar, convenient, low-cost method, which does not
2 exceed the cost of a first-class postage stamp for the consumer. If
3 other de minimus cost methods are offered, accepting e-mail or online
4 messages from consumers shall be considered a de minimus cost method.

5 (5) "Financial institution" means (a) a financial institution as
6 defined in section 527(4) of the Gramm-Leach-Bliley Act, P.L. 106-102
7 and its implementing regulations; or (b) a bank holding company or
8 financial holding company, as defined in sections 2(a) and 2(p) of the
9 Bank Holding Company Act, as amended, or any subsidiary thereof as
10 defined in section 2(d) of the Bank Holding Company Act, as amended.

11 (6) "Functional business purpose" means use or disclosure of
12 sensitive or personal information by an information custodian to
13 another entity or person to perform services or functions on behalf of
14 the information custodian as part of the information custodian's
15 provision of its products, goods, or services to its customers;

16 (7) "Information custodian" means all nonpublic commercial entities
17 that maintain data containing personal information or sensitive
18 information about consumers they know reside in Washington and that
19 sell, share, or otherwise transfer the information to others, including
20 affiliates or nonaffiliates, for purposes other than consumer-requested
21 purposes or functional business purposes. An "information custodian"
22 does not include a consumer reporting agency, as defined in the federal
23 Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.), to the extent
24 its activities are directly related to assembling or evaluating
25 consumer credit information or other information on consumers for the
26 purpose of furnishing consumer reports to third parties, and to the
27 extent that the activities are regulated by the federal Fair Credit
28 Reporting Act (15 U.S.C. Sec. 1681 et seq.). "Information custodian"
29 does not include an "agent," "broker," or "solicitor" as defined in
30 chapter 48.17 RCW, to the extent their activities include the sharing,
31 selling, or transferring of personal or sensitive information between
32 an insurer as defined in chapter 48.01 RCW, and its contractually bound
33 agents, brokers, and solicitors, and their activities that are directly
34 related to soliciting applications on behalf of an insurer,
35 effectuating insurance contracts, or collecting premiums on insurances
36 so applied for or effectuated.

37 (8) "Marketer" means a nonpublic, commercial entity that maintains
38 data containing personal information or sensitive information about

1 consumers it knows reside in Washington and uses the information to
2 engage in marketing.

3 (9) "Marketing" or "marketing information" means a promotion,
4 solicitation, or advertisement that specifically references the sale or
5 lease of products, goods, or services made through written, telephonic,
6 electronic, or other means, that is directed to a specific named
7 consumer, but shall not include any promotion, solicitation, or
8 advertisement (a) included with a billing or statement, (b) directed to
9 the public, or (c) made to such consumer while present at the
10 marketer's place of business or during any other contact with the
11 marketer initiated by or at the request of the consumer.

12 (10) "Personal information" means information that is provided by
13 the consumer in a commercial context, and is identifiable to the
14 individual consumer, that concerns the amount or condition of the
15 consumer's assets, liabilities, financial transactions, purchasing
16 history, buying preferences, business relationships, customer status,
17 demographic information, name, address, telephone number, electronic
18 mail address, or that reflects current or historical deposit or credit
19 card account balances or purchase amounts.

20 (11) "Sensitive information" means information maintained in a
21 commercial context that is identifiable with an individual consumer or
22 a specific account and may be held for the purpose of transaction
23 initiation, account access or identity verification, and includes
24 account numbers, access codes or passwords, social security numbers,
25 tax identification numbers, driver's license or permit numbers, state
26 identicard numbers issued by the department of licensing, and credit
27 card numbers or expiration dates, and electronically captured
28 signatures.

29 NEW SECTION. **Sec. 3.** RESTRICTION ON CONSUMER INFORMATION.
30 Information custodians and marketers shall, in performing a transaction
31 with a consumer, providing a service for a consumer, or establishing a
32 business relationship with a consumer, require only that the consumer
33 provide information reasonably necessary to perform the transaction,
34 establish the relationship, administer or maintain the business
35 relationship, collect or service a debt, protect against fraud or
36 unauthorized transactions, or comply with applicable law. Any optional
37 information must be specified as such, and the consumer must be given
38 the option not to provide it.

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

2 information custodian must have a consumer privacy policy that
3 discloses to existing and prospective consumers the policies and
4 practices of the information custodian regarding the use of consumer
5 personal information and sensitive information acquired or possessed by
6 the information custodian. Entities that maintain data containing
7 personal information or sensitive information but do not sell, share,
8 or otherwise transfer the data, are not required to have a privacy
9 policy.

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

15 (3) The consumer privacy policy must also provide a reasonable
16 means for consumers to access their personal and sensitive information
17 that the information custodian shares, sells, or transfers for
18 marketing purposes.

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

21 (a) The effective date of this act to existing customers about whom
22 the information custodian has names and addresses or other means of
23 contact, or within a reasonable period of time after the information
24 custodian obtains the consumers' names and addresses or other means of
25 contact. For the purposes of this subsection, "existing customer"
26 means a customer whose personal or sensitive information has been sold,
27 shared, or transferred within the twelve-month period preceding the
28 effective date of this act;

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

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

33 (5) An information custodian must disclose its consumer privacy
34 policy on an annual basis to existing customers after the initial
35 disclosure described in subsection (4) of this section, and, when
36 material changes are made to the policy, the information custodian must
37 notify the consumer, clearly and conspicuously in writing, in plain
38 language, of the material changes and describe the consumer's rights
39 under sections 5(1) and 7 (1) and (2) of this act, including the

1 consumer's right to withdraw any consent given by the consumer under
2 section 7(2) of this act.

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

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

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

16 NEW SECTION. **Sec. 5.** PERSONAL INFORMATION--CONSUMER CONTROL. (1)
17 An information custodian may share, sell, or otherwise transfer
18 personal information for purposes other than consumer-requested
19 purposes or functional business purposes, only if it has clearly and
20 conspicuously disclosed to the consumer the following information in
21 plain language:

22 (a) That the consumer has the right to choose not to have his or
23 her personal information shared, sold, or otherwise transferred for
24 purposes other than consumer-requested purposes or functional business
25 purposes. The disclosure must be made at the time the consumer privacy
26 policy is provided to the customer under section 4 of this act.

27 (b) That the consumer may choose not to have his or her personal
28 information shared, sold, or transferred for other than consumer-
29 requested purposes or functional business purposes, by exercising his
30 or her choice through a de minimus cost method the information
31 custodian has established.

32 (2) If, under this section, a consumer chooses not to have his or
33 her personal information shared, sold, or otherwise transferred under
34 subsection (1) of this section, the information custodian must stop
35 sharing, selling, or otherwise transferring the consumer's personal
36 information for purposes other than consumer-requested purposes or
37 functional business purposes, within ninety days of receiving the
38 consumer's notice. Once a consumer has chosen not to have his or her

1 personal information shared, sold, or otherwise transferred, an
2 information custodian may not share, sell, or otherwise transfer the
3 information for purposes other than consumer-requested purposes or
4 functional business purposes until the consumer notifies the entity
5 that he or she has chosen to have his or her personal information
6 shared, sold, or otherwise transferred under subsection (1) of this
7 section.

8 (3) This section does not apply to disclosure of personal
9 information under the following circumstances. However, the recipient
10 of the information is subject to section 8 of this act:

11 (a) Disclosure to or at the direction or with the consent of the
12 consumer upon his or her request and upon proper identification;

13 (b) Disclosure required by federal, state, or local law or
14 regulation, rules, and other applicable legal requirements;

15 (c) Disclosure made in the course of a properly authorized civil,
16 criminal, or regulatory examination or investigation or under a search
17 warrant, court order, or subpoena, including an administrative subpoena
18 or other legal process;

19 (d) Disclosure to a third party or an affiliate for the purpose of
20 collecting a debt or dishonored item;

21 (e) Disclosure to protect the confidentiality or security of the
22 information custodian's records;

23 (f) Disclosure to protect against, investigate, or prevent actual
24 or potential fraud, unauthorized transactions, claims, or other
25 liability;

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

28 (h) Disclosure by or to a consumer reporting agency as specifically
29 permitted under the federal Fair Credit Reporting Act (15 U.S.C. Sec.
30 1681 et seq.);

31 (i) Disclosure of consumer report information between affiliates as
32 specifically permitted under the federal Fair Credit Reporting Act (15
33 U.S.C. Sec. 1681 et seq.);

34 (j) Disclosure for purposes of a proposed or actual securitization,
35 secondary market sale (including sales of service rights), or similar
36 transaction related to a consumer-requested purpose;

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

1 (l) Disclosure in order to provide information to insurance rate
2 advisory organizations, guaranty funds or agencies, applicable rating
3 agencies of the information custodian, persons assessing the
4 information custodian's compliance with industry standards, and the
5 information custodian's attorneys, accountants, and auditors;

6 (m) Disclosure in connection with a proposed or actual sale,
7 merger, transfer, or exchange of all or a portion of a business or
8 operating unit of an information custodian if the disclosure of
9 information concerns solely consumers of the business or unit;

10 (n) Disclosure to a federal, state, or local agency as required by
11 that agency to fulfill its legal obligations on behalf of a consumer;

12 (o) Disclosure of health care information in compliance with state
13 and federal law; or

14 (p) Disclosure between licensees or franchisees and their licensors
15 or franchisors, when (i) such licensees or franchisees market, sell, or
16 lease products, goods, or services in a retail setting at a common
17 physical address with the licensor or franchisor; (ii) have common data
18 processing functions with the licensor or franchisor; and (iii)
19 advertise, market, or sell products, goods, or services marked or
20 otherwise directly identified with the franchisor's or licensor's name
21 or distinctive brand.

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

26 (a) That the consumer has the right to choose not to receive
27 marketing information. This disclosure must be made in all marketing
28 information, in whatever medium the marketing information is sent or,
29 if the marketer is an information custodian, in the privacy policy
30 provided to the customer under section 4 of this act. If the marketer
31 is not an information custodian, it may choose as an option to provide
32 the disclosure in a privacy policy provided to the customer under
33 section 4 of this act instead of disclosing it in all marketing
34 information;

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

1 sent, or, if the marketer is an information custodian, in the privacy
2 policy provided to the customer under section 4 of this act. The
3 marketer shall maintain adequate and reasonable access for consumers to
4 the de minimus cost method it has established. If the marketer is not
5 an information custodian, it may choose as an option to provide the
6 disclosure in a privacy policy provided to the customer under section
7 4 of this act instead of disclosing it in all marketing information.

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

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

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

19 (a) The information to be disclosed;

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

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

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

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

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;

9 (e) Disclosure to protect the confidentiality or security of the
10 information custodian's records;

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

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

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

19 (i) Disclosure of consumer report information between affiliates as
20 specifically permitted under the federal Fair Credit Reporting Act (15
21 U.S.C. Sec. 1681 et seq.);

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

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

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

30 (m) Disclosure in order to provide information to insurance rate
31 advisory organizations, guaranty funds or agencies, applicable rating
32 agencies of the information custodian, persons assessing the
33 information custodian's compliance with industry standards, and the
34 information custodian's attorneys, accountants, and auditors;

35 (n) Disclosure in connection with a proposed or actual sale,
36 merger, transfer, or exchange of all or a portion of a business or
37 operating unit of an information custodian if the disclosure of
38 information concerns solely consumers of the business or unit;

1 (o) Disclosure of health care information in compliance with state
2 and federal law;

3 (p) Disclosure to a federal, state, or local agency as required by
4 that agency to fulfill its legal obligations on behalf of a consumer;
5 or

6 (q) Disclosure between licensees or franchisees and their licensors
7 or franchisors, when (i) such licensees or franchisees market, sell, or
8 lease products, goods, or services in a retail setting at a common
9 physical address with the licensor or franchisor; (ii) have common data
10 processing functions with the licensor or franchisor; and (iii)
11 advertise, market, or sell products, goods, or services marked or
12 otherwise directly identified with the franchisor's or licensor's name
13 or distinctive brand.

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

15 (1) Third parties or affiliates that obtain personal information or
16 sensitive information from information custodians may not sell, share,
17 or otherwise transfer the information for any reason other than the
18 original purpose for which the information was sold, shared, or
19 transferred to the third party or affiliate.

20 (2) An information custodian, before sharing, selling, or otherwise
21 transferring personal information or sensitive information, must obtain
22 a written agreement from the third party or affiliate providing for the
23 following:

24 (a) To keep the information confidential;

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

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

29 (3) Every information custodian must establish reasonable
30 safeguards to ensure the confidentiality and safety of personal
31 information and sensitive information and to protect them from loss,
32 misuse, theft, unauthorized access, disclosure, defacement, or
33 alteration.

34 NEW SECTION. **Sec. 9.** ACTIONS OR TRANSACTIONS BY COMPETITIVE
35 TELECOMMUNICATIONS COMPANIES. For purposes of this chapter, and the
36 consumer protection act, chapter 19.86 RCW, actions or transactions by
37 information custodians or marketers who, pursuant to RCW 80.36.320 are

1 competitive telecommunications companies, or actions or transactions
2 associated with competitive telecommunications services are not
3 otherwise permitted, prohibited, or regulated by the utilities and
4 transportation commission.

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

13 (2) A consumer may not bring an action for an alleged violation of
14 this chapter, other than an alleged violation of section 7 or 8 of this
15 act or a willful violation of section 3, 4, or 5 of this act, unless,
16 within seven years before the alleged violation, he or she has notified
17 the defendant of a violation of the section, in writing at an address
18 specified in the defendant's privacy policy if the defendant is an
19 information custodian or at an address provided by the defendant upon
20 the consumer's request if the defendant is a marketer, and the
21 defendant has again committed the violation more than ninety days after
22 having received the notification.

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

29 NEW SECTION. **Sec. 11.** FEDERAL INVALIDITY--ANTITRUST LAWS. If the
30 responsible federal chartering authority, under applicable federal law,
31 or if a court of competent jurisdiction declares that any provision of
32 this chapter is invalid with respect to any financial institution, the
33 provision is also invalid, to the same extent, with respect to
34 financial institutions chartered under the laws of the state of
35 Washington and to host branches of out-of-state banks. The director of
36 the department of financial institutions may, from time to time,
37 publish provisions of state laws that have been found invalidated under

1 federal law and procedures. This section does not impair in any manner
2 the authority of the state attorney general to enforce antitrust laws
3 applicable to financial institutions or their affiliates.

4 NEW SECTION. **Sec. 12.** A new section is added to chapter 9.35 RCW
5 to read as follows:

6 DEFINITIONS. As used in this chapter, unless the context clearly
7 requires otherwise:

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

12 (a) Account numbers and balances;

13 (b) Transactional information concerning any account; and

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

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

22 (3) "Means of identification" means any information or item that is
23 not describing finances or credit but is personal to or identifiable
24 with any individual or other person, including any current or former
25 name of the person, telephone number, and electronic address or
26 identifier of the individual or any member of his or her family,
27 including the ancestor of such person; any information relating to a
28 change in name, address, telephone number, or electronic address or
29 identifier of the individual or his or her family; any social security,
30 driver's license, or tax identification number of the individual or any
31 member of his or her family; and other information which could be used
32 to identify the person, including unique biometric data.

33 (4) "Person" means an individual, partnership, corporation, or
34 association.

35 (5) "Personal information" means information that is provided by
36 the consumer in a commercial context, and is identifiable to the
37 individual consumer, that concerns the amount or condition of the
38 consumer's assets, liabilities, financial transactions, purchasing

1 history, buying preferences, business relationships, customer status,
2 demographic information, name, address, telephone number, or electronic
3 mail address.

4 (6) "Sensitive information" means information maintained in a
5 commercial context that is identifiable with an individual consumer or
6 a specific account and is held for the purpose of transaction
7 initiation, account access or identity verification, or that reflects
8 current or historical deposit or credit card account balances or
9 purchase amounts, and includes account numbers, access codes or
10 passwords, social security numbers, tax identification numbers,
11 driver's license or permit numbers, state identicard numbers issued by
12 the department of licensing, and credit card numbers or expiration
13 dates.

14 (7) "Victim" means a person whose means of identification, personal
15 information, or sensitive information has been used or transferred
16 without authorization with the intent to commit, or to aid or abet, an
17 unlawful activity harming or intending to harm the person whose
18 identity is used, or to commit a felony.

19 NEW SECTION. **Sec. 13.** A new section is added to chapter 9.35 RCW
20 to read as follows:

21 INFORMATION AVAILABLE TO VICTIM. (1) A person, financial
22 information repository, corporation, trust, partnership, or
23 unincorporated association possessing information relating to an actual
24 or potential violation of this chapter, and who may have entered into
25 a transaction, provided credit, products, goods, or services, accepted
26 payment, or otherwise done business with a person who has used the
27 victim's means of identification, must, upon request of the victim,
28 provide copies of all information relevant to the potential or actual
29 violation of this chapter.

30 (2) Prior to providing the information required under subsection
31 (1) of this section, the provider may require the victim to provide
32 positive identification of the victim and a copy of a police report
33 evidencing the victim's claim. The provider may also seek reasonable
34 compensation for the actual cost of providing the information
35 requested.

36 (3) No person, financial information repository, corporation,
37 trust, partnership, or unincorporated association may be held liable
38 for an action voluntarily taken in good faith to provide information

1 regarding potential or actual violations of this chapter to other
2 financial information repositories, merchants, law enforcement
3 authorities, or to the victim, for the purpose of identification and
4 prosecution of violators of this chapter.

5 **Sec. 14.** RCW 19.16.250 and 1983 c 107 s 1 are each amended to read
6 as follows:

7 No licensee or employee of a licensee shall:

8 (1) Directly or indirectly aid or abet any unlicensed person to
9 engage in business as a collection agency in this state or receive
10 compensation from such unlicensed person: PROVIDED, That nothing in
11 this chapter shall prevent a licensee from accepting, as forwarder,
12 claims for collection from a collection agency or attorney whose place
13 of business is outside the state.

14 (2) Collect or attempt to collect a claim by the use of any means
15 contrary to the postal laws and regulations of the United States postal
16 department.

17 (3) Publish or post or cause to be published or posted, any list of
18 debtors commonly known as "bad debt lists" or threaten to do so. For
19 purposes of this chapter, a "bad debt list" means any list of natural
20 persons alleged to fail to honor their lawful debts. However, nothing
21 herein shall be construed to prohibit a licensee from communicating to
22 its customers or clients by means of a coded list, the existence of a
23 check dishonored because of insufficient funds, not sufficient funds or
24 closed account by the financial institution servicing the debtor's
25 checking account: PROVIDED, That the debtor's identity is not readily
26 apparent: PROVIDED FURTHER, That the licensee complies with the
27 requirements of subsection (9)(e) of this section.

28 (4) Have in his possession or make use of any badge, use a uniform
29 of any law enforcement agency or any simulation thereof, or make any
30 statements which might be construed as indicating an official
31 connection with any federal, state, county, or city law enforcement
32 agency, or any other governmental agency, while engaged in collection
33 agency business.

34 (5) Perform any act or acts, either directly or indirectly,
35 constituting the practice of law.

36 (6) Advertise for sale or threaten to advertise for sale any claim
37 as a means of endeavoring to enforce payment thereof or agreeing to do
38 so for the purpose of soliciting claims, except where the licensee has

1 acquired claims as an assignee for the benefit of creditors or where
2 the licensee is acting under court order.

3 (7) Use any name while engaged in the making of a demand for any
4 claim other than the name set forth on his or its current license
5 issued hereunder.

6 (8) Give or send to any debtor or cause to be given or sent to any
7 debtor, any notice, letter, message, or form which represents or
8 implies that a claim exists unless it shall indicate in clear and
9 legible type:

10 (a) The name of the licensee and the city, street, and number at
11 which he is licensed to do business;

12 (b) The name of the original creditor to whom the debtor owed the
13 claim if such name is known to the licensee or employee: PROVIDED,
14 That upon written request of the debtor, the licensee shall make a
15 reasonable effort to obtain the name of such person and provide this
16 name to the debtor;

17 (c) If the notice, letter, message, or form is the first notice to
18 the debtor or if the licensee is attempting to collect a different
19 amount than indicated in his or its first notice to the debtor, an
20 itemization of the claim asserted must be made including:

21 (i) Amount owing on the original obligation at the time it was
22 received by the licensee for collection or by assignment;

23 (ii) Interest or service charge, collection costs, or late payment
24 charges, if any, added to the original obligation by the original
25 creditor, customer or assignor before it was received by the licensee
26 for collection, if such information is known by the licensee or
27 employee: PROVIDED, That upon written request of the debtor, the
28 licensee shall make a reasonable effort to obtain information on such
29 items and provide this information to the debtor;

30 (iii) Interest or service charge, if any, added by the licensee or
31 customer or assignor after the obligation was received by the licensee
32 for collection;

33 (iv) Collection costs, if any, that the licensee is attempting to
34 collect;

35 (v) Attorneys' fees, if any, that the licensee is attempting to
36 collect on his or its behalf or on the behalf of a customer or
37 assignor;

1 (vi) Any other charge or fee that the licensee is attempting to
2 collect on his or its own behalf or on the behalf of a customer or
3 assignor.

4 (9) Communicate or threaten to communicate, the existence of a
5 claim to a person other than one who might be reasonably expected to be
6 liable on the claim in any manner other than through proper legal
7 action, process, or proceedings except under the following conditions:

8 (a) A licensee or employee of a licensee may inform a credit
9 reporting bureau of the existence of a claim: PROVIDED, That if the
10 licensee or employee of a licensee reports a claim to a credit
11 reporting bureau, the licensee shall upon receipt of written notice
12 from the debtor that any part of the claim is disputed, forward a copy
13 of such written notice to the credit reporting bureau;

14 (b) A licensee or employee in collecting or attempting to collect
15 a claim may communicate the existence of a claim to a debtor's employer
16 if the claim has been reduced to a judgment;

17 (c) A licensee or employee in collecting or attempting to collect
18 a claim that has not been reduced to judgment, may communicate the
19 existence of a claim to a debtor's employer if:

20 (i) The licensee or employee has notified or attempted to notify
21 the debtor in writing at his last known address or place of employment
22 concerning the claim and the debtor after a reasonable time has failed
23 to pay the claim or has failed to agree to make payments on the claim
24 in a manner acceptable to the licensee, and

25 (ii) The debtor has not in writing to the licensee disputed any
26 part of the claim: PROVIDED, That the licensee or employee may only
27 communicate the existence of a claim which has not been reduced to
28 judgment to the debtor's employer once unless the debtor's employer has
29 agreed to additional communications.

30 (d) A licensee may for the purpose of locating the debtor or
31 locating assets of the debtor communicate the existence of a claim to
32 any person who might reasonably be expected to have knowledge of the
33 whereabouts of a debtor or the location of assets of the debtor if the
34 claim is reduced to judgment, or if not reduced to judgment, when:

35 (i) The licensee or employee has notified or attempted to notify
36 the debtor in writing at his last known address or last known place of
37 employment concerning the claim and the debtor after a reasonable time
38 has failed to pay the claim or has failed to agree to make payments on
39 the claim in a manner acceptable to the licensee, and

1 (ii) The debtor has not in writing disputed any part of the claim.

2 (e) A licensee may communicate the existence of a claim to its
3 customers or clients if the claim is reduced to judgment, or if not
4 reduced to judgment, when:

5 (i) The licensee has notified or attempted to notify the debtor in
6 writing at his last known address or last known place of employment
7 concerning the claim and the debtor after a reasonable time has failed
8 to pay the claim or has failed to agree to make payments on the claim
9 in a manner acceptable to the licensee, and

10 (ii) The debtor has not in writing disputed any part of the claim.

11 (10) Threaten the debtor with impairment of his credit rating if a
12 claim is not paid.

13 (11) Communicate with the debtor after notification in writing from
14 an attorney representing such debtor that all further communications
15 relative to a claim should be addressed to the attorney: PROVIDED,
16 That if a licensee requests in writing information from an attorney
17 regarding such claim and the attorney does not respond within a
18 reasonable time, the licensee may communicate directly with the debtor
19 until he or it again receives notification in writing that an attorney
20 is representing the debtor.

21 (12) Communicate with a debtor or anyone else in such a manner as
22 to harass, intimidate, threaten, or embarrass a debtor, including but
23 not limited to communication at an unreasonable hour, with unreasonable
24 frequency, by threats of force or violence, by threats of criminal
25 prosecution, and by use of offensive language. A communication shall
26 be presumed to have been made for the purposes of harassment if:

27 (a) It is made with a debtor or spouse in any form, manner, or
28 place, more than three times in a single week;

29 (b) It is made with a debtor at his or her place of employment more
30 than one time in a single week;

31 (c) It is made with the debtor or spouse at his or her place of
32 residence between the hours of 9:00 p.m. and 7:30 a.m.

33 (13) Communicate with the debtor through use of forms or
34 instruments that simulate the form or appearance of judicial process,
35 the form or appearance of government documents, or the simulation of a
36 form or appearance of a telegraphic or emergency message.

37 (14) Communicate with the debtor and represent or imply that the
38 existing obligation of the debtor may be or has been increased by the
39 addition of attorney fees, investigation fees, service fees, or any

1 other fees or charges when in fact such fees or charges may not legally
2 be added to the existing obligation of such debtor.

3 (15) Threaten to take any action against the debtor which the
4 licensee cannot legally take at the time the threat is made.

5 (16) Send any telegram or make any telephone calls to a debtor or
6 concerning a debt or for the purpose of demanding payment of a claim or
7 seeking information about a debtor, for which the charges are payable
8 by the addressee or by the person to whom the call is made.

9 (17) In any manner convey the impression that the licensee is
10 vouched for, bonded to or by, or is an instrumentality of the state of
11 Washington or any agency or department thereof.

12 (18) Collect or attempt to collect in addition to the principal
13 amount of a claim any sum other than allowable interest, collection
14 costs or handling fees expressly authorized by statute, and, in the
15 case of suit, attorney's fees and taxable court costs.

16 (19) Procure from a debtor or collect or attempt to collect on any
17 written note, contract, stipulation, promise or acknowledgment under
18 which a debtor may be required to pay any sum other than principal,
19 allowable interest, and, in the case of suit, attorney's fees and
20 taxable court costs.

21 (20) Upon notification by a victim, as defined in section 12 of
22 this act, that a police report has been filed regarding the victim's
23 claim, and upon receipt of a copy of the report indicating that the
24 victim's checkbook or other series of preprinted written instruments
25 has been stolen, fail to accept one single writing from the victim that
26 identifies the numbers of the checks, the bank, and account number,
27 that disputes creditors' claims for the identified checks or written
28 instruments and that includes a copy of the victim's driver's license
29 or other document containing the victim's signature which was executed
30 prior to the date of claim identified in the police report. If more
31 than one collection agency is attempting collection on individual
32 checks or written instruments that are part of the series, each
33 collection agency may request a single writing from the victim that
34 disputes creditors' claims for the entire checkbook or series. Once a
35 single writing has been received, the collection agency must not,
36 except in the context of a judicial or administrative proceeding,
37 contact the victim orally within the one hundred eighty-day period
38 following receipt of the writing to require additional proof,
39 explanation, or evidence except in a court of law from the victim

1 disputing creditors' claims regarding the enumerated checks or other
2 written instruments in the same series or lot and must consider the
3 single writing as a dispute to all creditors' claims arising from use
4 of the enumerated checks or other series of instruments.

5 **Sec. 15.** RCW 9.35.010 and 1999 c 368 s 2 are each amended to read
6 as follows:

7 (1) No person may obtain or attempt to obtain, or cause to be
8 disclosed or attempt to cause to be disclosed to any person, financial
9 information from a financial information repository:

10 (a) By knowingly making a false, fictitious, or fraudulent
11 statement or representation to an officer, employee, or agent of a
12 financial information repository with the intent to deceive the
13 officer, employee, or agent into relying on that statement or
14 representation for purposes of releasing the financial information;

15 (b) By knowingly making a false, fictitious, or fraudulent
16 statement or representation to a customer of a financial information
17 repository with the intent to deceive the customer into releasing
18 financial information or authorizing the release of such information;

19 (c) By knowingly providing any document to an officer, employee, or
20 agent of a financial information repository, knowing that the document
21 is forged, counterfeit, lost, or stolen; was fraudulently obtained; or
22 contains a false, fictitious, or fraudulent statement or
23 representation, if the document is provided with the intent to deceive
24 the officer, employee, or agent to release the financial information.

25 (2) No person may request another person to obtain financial
26 information from a financial information repository and knows or should
27 have known that the person will obtain or attempt to obtain the
28 information from the financial institution repository in any manner
29 described in subsection (1) of this section.

30 (3) ~~((As used in this section, unless the context clearly requires~~
31 ~~otherwise:~~

32 ~~(a) "Financial information" means, to the extent it is nonpublic,~~
33 ~~any of the following information identifiable to the individual that~~
34 ~~concerns the amount and conditions of an individual's assets,~~
35 ~~liabilities, or credit:~~

36 ~~(i) Account numbers and balances;~~

37 ~~(ii) Transactional information concerning any account; and~~

1 ~~(iii) Codes, passwords, social security numbers, tax identification~~
2 ~~numbers, driver's license or permit numbers, state identification numbers~~
3 ~~issued by the department of licensing, and other information held for~~
4 ~~the purpose of account access or transaction initiation.~~

5 ~~(b) "Financial information repository" means any person engaged in~~
6 ~~the business of providing services to customers who have a credit,~~
7 ~~deposit, trust, stock, or other financial account or relationship with~~
8 ~~the person.~~

9 ~~(c) "Person" means an individual, partnership, corporation, or~~
10 ~~association.~~

11 ~~(4))~~) No provision of this section shall be construed so as to
12 prevent any action by a law enforcement agency, or any officer,
13 employee, or agent of such agency, or any action of an agent of the
14 financial information repository when working in conjunction with a law
15 enforcement agency.

16 ~~((5))~~) (4) This section does not apply to:

17 (a) Efforts by the financial information repository to test
18 security procedures or systems of the financial institution repository
19 for maintaining the confidentiality of customer information;

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

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

24 ~~((6))~~) (5) Violation of this section is a class C felony.

25 ~~((7))~~) (6) A person ~~((that [who]))~~ who violates this section is
26 liable for five hundred dollars or actual damages, whichever is
27 greater, and reasonable attorneys' fees. If the person violating this
28 section is a business that repeatedly violates this section, that
29 person also violates the Consumer Protection Act, chapter 19.86 RCW.

30 **Sec. 16.** RCW 9.35.020 and 1999 c 368 s 3 are each amended to read
31 as follows:

32 (1) No person may knowingly use or knowingly transfer a means of
33 identification of another person with the intent to commit, or to aid
34 or abet, any unlawful activity harming or intending to harm the person
35 whose identity is used, or for committing any felony.

36 (2) ~~((For purposes of this section, "means of identification" means~~
37 ~~any information or item that is not describing finances or credit but~~
38 ~~is personal to or identifiable with any individual or other person,~~

1 including any current or former name of the person, telephone number,
2 and electronic address or identifier of the individual or any member of
3 his or her family, including the ancestor of such person; any
4 information relating to a change in name, address, telephone number, or
5 electronic address or identifier of the individual or his or her
6 family; any social security, driver's license, or tax identification
7 number of the individual or any member of his or her family; and other
8 information which could be used to identify the person, including
9 unique biometric data.

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

11 ((4)) (3) A person ((that [who])) who violates this section is
12 liable for five hundred dollars or actual damages, including costs to
13 repair the person's credit record, whichever is greater, and reasonable
14 attorneys' fees. If the person violating this section is a business
15 that repeatedly violates this section, that person also violates the
16 Consumer Protection Act, chapter 19.86 RCW.

17 NEW SECTION. **Sec. 17.** Sections 1 through 11 of this act
18 constitute a new chapter in Title 19 RCW.

19 NEW SECTION. **Sec. 18.** Section captions used in sections 1 through
20 13 of this act are not part of the law.

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

25 NEW SECTION. **Sec. 20.** Sections 1 through 11 and 17 through 20 of
26 this act take effect June 1, 2001."

27 **SSB 6513** - S AMD - 166

28 By Senators Prentice, Hale, Winsley, Gardner and Shin

29 ADOPTED 2/15/00

30 On page 1, line 3 of the title, after "information;" strike the
31 remainder of the title and insert "amending RCW 19.16.250, 9.35.010,
32 and 9.35.020; adding new sections to chapter 9.35 RCW; adding a new

- 1 chapter to Title 19 RCW; creating a new section; prescribing penalties;
- 2 and providing an effective date."

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