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HOUSE BILL 2489

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State of Washington

56th Legislature

2000 Regular Session

By Representatives Kastama, Koster, Dickerson, Lambert, Lovick, Sullivan, Hurst, Keiser, Dunshee, Morris, Conway, Romero, Thomas, Ogden, Ruderman, Boldt, Stensen, Haigh, Veloria, Tokuda, Eickmeyer, Lantz, Edmonds and O'Brien

Read first time 01/14/2000. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to protecting the privacy of personal information  
2 held by financial institutions; adding a new chapter to Title 19 RCW;  
3 prescribing penalties; and providing an effective date.

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

5 NEW SECTION. **Sec. 1.** Every financial institution has an  
6 affirmative and continuing obligation to respect the privacy of its  
7 customers and to protect the security and confidentiality of those  
8 customers' personal information, including:

9 (1) To insure the security and confidentiality of customer records  
10 and information;

11 (2) To protect against any anticipated threats or hazards to the  
12 security or integrity of these records; and

13 (3) To protect against unauthorized access to or use of customer  
14 records or information which could result in substantial harm or  
15 inconvenience to any customer.

16 NEW SECTION. **Sec. 2.** (1) Except as provided in section 3 of this  
17 act, no financial institution shall make available any personal  
18 information to any affiliate or other person that is not an employee or

1 agent of the institution, unless the consumer to whom the information  
2 pertains:

3 (a) Has affirmatively consented in writing to the transfer of such  
4 information; and

5 (b) Has not withdrawn the consent.

6 (2) A financial institution shall, in complying with subsection (1)  
7 of this section, present the opportunity to consent in a clear and  
8 conspicuous manner that permits the consumer to consent:

9 (a)(i) With respect to both affiliates and nonaffiliated persons;

10 (ii) Separately with respect to affiliates generally and  
11 nonaffiliated persons generally; or

12 (iii) Separately with respect to specified affiliates and  
13 nonaffiliated persons; and

14 (b) Separately with respect to specified financial and nonfinancial  
15 products and services that may be offered to the consumer.

16 (3) No financial institution shall deny any consumer a financial  
17 product or a financial service for the refusal by the consumer to grant  
18 the consent required by subsection (1) of this section.

19 (4) Every financial institution that makes available personal  
20 information collected by the financial institution to any person or  
21 entity other than an employee or agent of the institution shall provide  
22 that consumer:

23 (a) The opportunity to examine, upon request, all personal  
24 information that was made available; and

25 (b) The opportunity to dispute the accuracy of any of the  
26 information, and to present evidence thereon.

27 (5) A financial institution shall not disclose an account number or  
28 similar form of access number or access code for a credit card account,  
29 deposit account, or transaction account of a consumer to any affiliate  
30 or any nonaffiliated third party for use in telemarketing, direct mail  
31 marketing, or other marketing through electronic mail or other  
32 electronic means to the consumer.

33 (6) Except as otherwise provided in this chapter, an affiliate or  
34 a nonaffiliated third party that receives from a financial institution  
35 personal information shall not, directly or through an affiliate of the  
36 receiving third party, disclose the information to any other person  
37 that is an affiliate or a nonaffiliated third party of both the  
38 financial institution and the receiving third party, unless the

1 disclosure would be lawful if made directly to the other person by the  
2 financial institution.

3 NEW SECTION. **Sec. 3.** (1) Personal information may be disclosed  
4 only:

5 (a) As necessary to effect, administer, or enforce a transaction  
6 requested or authorized by the consumer, or in connection with:

7 (i) Servicing or processing a financial product or service  
8 requested or authorized by the consumer;

9 (ii) Maintaining or servicing the consumer's account with the  
10 financial institution; or

11 (iii) A proposed or actual securitization, secondary market sale  
12 including sales of servicing rights, or similar transaction related to  
13 a transaction of the consumer;

14 (b) With the consent or at the direction of the consumer;

15 (c)(i) To protect the confidentiality or security of the financial  
16 institution's records pertaining to the consumer, the service or  
17 product, or the transaction therein; (ii) to protect against or prevent  
18 actual or potential fraud, unauthorized transactions, claims, or other  
19 liability; (iii) for required institutional risk control, or for  
20 resolving customer disputes or inquiries; (iv) to persons holding a  
21 legal or beneficial interest relating to the consumer; or (v) to  
22 persons acting in a fiduciary or representative capacity on behalf of  
23 the consumer;

24 (d) To provide information to insurance rate advisory  
25 organizations, guaranty funds or agencies, applicable rating agencies  
26 of the financial institution, and the institution's attorneys,  
27 accountants, and auditors;

28 (e) To the extent specifically permitted or required under other  
29 provisions of law and in accordance with the Right to Financial Privacy  
30 Act of 1978, to law enforcement agencies, self-regulatory  
31 organizations, or for an investigation on a matter related to public  
32 safety;

33 (f)(i) To a consumer reporting agency in accordance with the Fair  
34 Credit Reporting Act, or (ii) from a consumer report reported by a  
35 consumer reporting agency in accordance with the Fair Credit Reporting  
36 Act;

37 (g) In connection with a proposed or actual sale, merger, transfer,  
38 or exchange of all or a portion of a business or operating unit if the

1 disclosure of personal information concerns solely consumers of the  
2 business or unit; or

3 (h)(i) To comply with federal, state, or local laws, rules, and  
4 other applicable legal requirements; (ii) to comply with a properly  
5 authorized civil, criminal, or regulatory investigation or subpoena or  
6 summons by federal, state, or local authorities; or (iii) to respond to  
7 judicial process or government regulatory authorities having  
8 jurisdiction over the financial institution for examination,  
9 compliance, or other purposes as authorized by law.

10 (2) The disclosing or use of personal information shall be treated  
11 as necessary to effect or administer a transaction with a consumer  
12 under subsection (1)(a) of this section if the disclosing or use:

13 (a)(i) Is required, or is a usual, appropriate, or acceptable  
14 method, to carry out the transaction, or the product or service  
15 business of which the transaction is a part; (ii) records, services, or  
16 maintains the consumer's account in the ordinary course of providing  
17 the financial service or financial product; or (iii) is to administer  
18 or service benefits or claims relating to the transaction, or the  
19 product or service business of which it is a part, and includes:

20 (A) Providing the consumer or the consumer's agent or broker with  
21 a confirmation, statement, or other record of the transaction, or  
22 information on the status or value of the financial service or  
23 financial product; and

24 (B) The accrual or recognition of incentives or bonuses associated  
25 with the transaction that are provided by the financial institution or  
26 any other party;

27 (b) Is required, or is one of the lawful or appropriate methods, to  
28 enforce the rights of the financial institution or of other persons  
29 engaged in carrying out the financial transaction, or providing the  
30 product or service;

31 (c)(i) Is required, or is a usual, appropriate, or acceptable  
32 method, for insurance underwriting at the consumer's request or for  
33 reinsurance purposes; (ii) is for any of the following purposes as they  
34 relate to a consumer's insurance: Account administration, reporting,  
35 investigating, or preventing fraud or material misrepresentation,  
36 processing premium payments, processing insurance claims, administering  
37 insurance benefits (including utilization review activities),  
38 participating in research projects, or as otherwise required or  
39 specifically permitted by federal or state law; or

1 (d) The disclosure is required, or is a usual, appropriate, or  
2 acceptable method, in connection with:

3 (i) The authorization, settlement, billing, processing, clearing,  
4 transferring, reconciling, or collection of amounts charged, debited,  
5 or otherwise paid using a debit, credit or other payment card, check,  
6 or account number, or by other payment means;

7 (ii) The transfer of receivables, accounts, or interests therein;  
8 or

9 (iii) The audit of debit, credit, or other payment information.

10 NEW SECTION. **Sec. 4.** Every financial institution shall clearly  
11 and conspicuously disclose to the consumer at the time of establishing  
12 a customer relationship with a consumer and not less than annually  
13 during the continuation of the relationship:

14 (1) The categories of personal information that are collected by  
15 the financial institution;

16 (2) The practices and policies of the financial institution with  
17 respect to disclosing personal information, or making unrelated uses of  
18 this information, including:

19 (a) The categories of persons to whom the information is or may be  
20 disclosed or who may be permitted to make unrelated uses of this  
21 information, other than the persons to whom the information must be  
22 provided to effect, administer, or enforce the transaction; and

23 (b) The practices and policies of the institution with respect to  
24 disclosing or making unrelated uses of personal information of persons  
25 who have ceased to be customers of the financial institution;

26 (3) The policies that the institution maintains to protect the  
27 confidentiality and security of personal information;

28 (4) The practices and policies of the institution with respect to  
29 providing consumers the opportunity to examine and dispute information;  
30 and

31 (5) The right of the consumer under this section to examine, upon  
32 request, the personal information, to dispute the accuracy of any of  
33 such information, and to present evidence thereon.

34 NEW SECTION. **Sec. 5.** Unless the context clearly requires  
35 otherwise, the following definitions apply throughout this chapter:

36 (1) "Financial institution" means any company that is engaging in  
37 financial activities or activities that are incidental or complementary

1 to financial activities, including banks, savings banks, credit unions,  
2 insurers, securities firms, whether chartered, licensed, or regulated  
3 by the state or the federal government, and any company regulated by  
4 the department of financial institutions.

5 (2) "Personal information" means personally identifiable  
6 information:

7 (a) Provided by a consumer to a financial institution;

8 (b) Resulting from any transaction with the consumer or the service  
9 performed for the consumer; or

10 (c) Otherwise obtained by the financial institution.

11 (3) "Unrelated use" when used with respect to information collected  
12 by the financial institution in connection with any transaction with a  
13 consumer in any financial product or any financial service, means any  
14 use other than a use that is necessary to effect, administer, or  
15 enforce any transaction.

16 (4) "Affiliate" means any company that controls, is controlled by,  
17 or is under common control with another company.

18 (5) "Nonaffiliated third party" means any entity that is not an  
19 affiliate of, or related by common ownership or affiliated by corporate  
20 control with, the financial institution, but does not include a joint  
21 employee of the institution.

22 (6) "Consumer" means an individual who obtains, from a financial  
23 institution, financial products or services which are to be used  
24 primarily for personal, family, or household purposes, and also means  
25 the legal representative of an individual.

26 NEW SECTION. **Sec. 6.** (1) The director of the department of  
27 financial institutions and the insurance commissioner are authorized to  
28 enforce this chapter regarding the companies regulated by them, and  
29 shall make compliance with this chapter a part of their company  
30 examinations.

31 (2) A person injured by a violation of this chapter may bring an  
32 action to recover his or her actual damages, or one hundred dollars,  
33 whichever is greater. The court may, at its discretion, increase the  
34 award of damages by an amount not to exceed one thousand dollars for a  
35 willful violation of this chapter.

36 NEW SECTION. **Sec. 7.** The legislature finds that the practices  
37 covered by this chapter are matters vitally affecting the public

1 interest for the purpose of applying the consumer protection act,  
2 chapter 19.86 RCW. A violation of this chapter is not reasonable in  
3 relation to the development and preservation of business and is an  
4 unfair or deceptive act in trade or commerce and an unfair method of  
5 competition for purposes of applying the consumer protection act,  
6 chapter 19.86 RCW, particularly in violation of RCW 19.86.020.

7 NEW SECTION. **Sec. 8.** This act takes effect July 1, 2000.

8 NEW SECTION. **Sec. 9.** This act may be known and cited as the  
9 Washington state consumers' financial privacy protection act.

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

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