
SENATE BILL 5449

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By Senators Prentice, Long, Winsley, Gardner, Franklin, Costa, Rasmussen and Kohl-Welles; by request of Attorney General

Read first time 01/23/2001. Referred to Committee on Labor, Commerce & Financial Institutions.

1 AN ACT Relating to identity theft; amending RCW 19.16.250,
2 9.35.010, 9.35.020, and 9.35.030; adding new sections to chapter
3 9.35 RCW; creating a new section; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.35 RCW
6 to read as follows:

7 DEFINITIONS. The definitions in this section apply throughout
8 this chapter unless the context clearly requires otherwise.

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

13 (a) Account numbers and balances;

14 (b) Transactional information concerning an account; and

15 (c) Codes, passwords, social security numbers, tax
16 identification numbers, driver's license or permit numbers, state
17 identicard numbers issued by the department of licensing, and

1 other information held for the purpose of account access or
2 transaction initiation.

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

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

19 (4) "Person" means a person as defined in RCW 9A.04.110.

20 (5) "Victim" means a person whose means of identification or
21 financial information has been used or transferred with the intent
22 to commit, or to aid or abet, any unlawful activity.

23 NEW SECTION. **Sec. 2.** A new section is added to chapter 9.35 RCW
24 to read as follows:

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

35 (2) Before providing the information required under subsection
36 (1) of this section, the provider may require the victim to
37 provide positive identification of their identity and a copy of a

1 police report evidencing the victim's claim. The provider may
2 require reasonable compensation for the reasonable cost of
3 providing the information requested.

4 (3) No person, financial information repository, merchant,
5 corporation, trust, partnership, or unincorporated association may
6 be held liable for an action voluntarily taken in good faith to
7 provide information regarding potential or actual violations of
8 this chapter to other financial information repositories,
9 merchants, law enforcement authorities, the victim, or any person
10 alleging to be a victim who provides positive identification and a
11 copy of a police report evidencing the alleged victim's claim for
12 the purpose of identification and prosecution of violators of this
13 chapter, or to assist a victim in recovery of fines, restitution,
14 rehabilitation of the victim's credit, or such other relief as may
15 be appropriate.

16 **Sec. 3.** RCW 19.16.250 and 1983 c 107 s 1 are each amended to read
17 as follows:

18 No licensee or employee of a licensee shall:

19 (1) Directly or indirectly aid or abet any unlicensed person to
20 engage in business as a collection agency in this state or receive
21 compensation from such unlicensed person: PROVIDED, That nothing in
22 this chapter shall prevent a licensee from accepting, as
23 forwarder, claims for collection from a collection agency or
24 attorney whose place of business is outside the state.

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

28 (3) Publish or post or cause to be published or posted, any
29 list of debtors commonly known as "bad debt lists" or threaten to
30 do so. For purposes of this chapter, a "bad debt list" means any
31 list of natural persons alleged to fail to honor their lawful
32 debts. However, nothing herein shall be construed to prohibit a
33 licensee from communicating to its customers or clients by means
34 of a coded list, the existence of a check dishonored because of
35 insufficient funds, not sufficient funds or closed account by the
36 financial institution servicing the debtor's checking account:
37 PROVIDED, That the debtor's identity is not readily apparent:

1 PROVIDED FURTHER, That the licensee complies with the requirements
2 of subsection (9)(e) of this section.

3 (4) Have in his possession or make use of any badge, use a
4 uniform of any law enforcement agency or any simulation thereof,
5 or make any statements which might be construed as indicating an
6 official connection with any federal, state, county, or city law
7 enforcement agency, or any other governmental agency, while
8 engaged in collection agency business.

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

11 (6) Advertise for sale or threaten to advertise for sale any
12 claim as a means of endeavoring to enforce payment thereof or
13 agreeing to do so for the purpose of soliciting claims, except
14 where the licensee has acquired claims as an assignee for the
15 benefit of creditors or where the licensee is acting under court
16 order.

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

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

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

26 (b) The name of the original creditor to whom the debtor owed
27 the claim if such name is known to the licensee or employee:

28 PROVIDED, That upon written request of the debtor, the licensee
29 shall make a reasonable effort to obtain the name of such person
30 and provide this name to the debtor;

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

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

38 (ii) Interest or service charge, collection costs, or late

1 payment charges, if any, added to the original obligation by the
2 original creditor, customer or assignor before it was received by
3 the licensee for collection, if such information is known by the
4 licensee or employee: PROVIDED, That upon written request of the
5 debtor, the licensee shall make a reasonable effort to obtain
6 information on such items and provide this information to the
7 debtor;

8 (iii) Interest or service charge, if any, added by the licensee
9 or customer or assignor after the obligation was received by the
10 licensee for collection;

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

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

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

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

24 (a) A licensee or employee of a licensee may inform a credit
25 reporting bureau of the existence of a claim: PROVIDED, That if the
26 licensee or employee of a licensee reports a claim to a credit
27 reporting bureau, the licensee shall upon receipt of written
28 notice from the debtor that any part of the claim is disputed,
29 forward a copy of such written notice to the credit reporting
30 bureau;

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

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

37 (i) The licensee or employee has notified or attempted to
38 notify the debtor in writing at his last known address or place of

1 employment concerning the claim and the debtor after a reasonable
2 time has failed to pay the claim or has failed to agree to make
3 payments on the claim in a manner acceptable to the licensee, and

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

9 (d) A licensee may for the purpose of locating the debtor or
10 locating assets of the debtor communicate the existence of a claim
11 to any person who might reasonably be expected to have knowledge
12 of the whereabouts of a debtor or the location of assets of the
13 debtor if the claim is reduced to judgment, or if not reduced to
14 judgment, when:

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

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

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

26 (i) The licensee has notified or attempted to notify the debtor
27 in writing at his last known address or last known place of
28 employment concerning the claim and the debtor after a reasonable
29 time has failed to pay the claim or has failed to agree to make
30 payments on the claim in a manner acceptable to the licensee, and

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

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

35 (11) Communicate with the debtor after notification in writing
36 from an attorney representing such debtor that all further
37 communications relative to a claim should be addressed to the
38 attorney: PROVIDED, That if a licensee requests in writing

1 information from an attorney regarding such claim and the attorney
2 does not respond within a reasonable time, the licensee may
3 communicate directly with the debtor until he or it again receives
4 notification in writing that an attorney is representing the
5 debtor.

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

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

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

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

19 (13) Communicate with the debtor through use of forms or
20 instruments that simulate the form or appearance of judicial
21 process, the form or appearance of government documents, or the
22 simulation of a form or appearance of a telegraphic or emergency
23 message.

24 (14) Communicate with the debtor and represent or imply that
25 the existing obligation of the debtor may be or has been increased
26 by the addition of attorney fees, investigation fees, service
27 fees, or any other fees or charges when in fact such fees or
28 charges may not legally be added to the existing obligation of
29 such debtor.

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

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

37 (17) In any manner convey the impression that the licensee is

1 vouched for, bonded to or by, or is an instrumentality of the
2 state of Washington or any agency or department thereof.

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

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

12 (20) Upon notification by a debtor that the debtor disputes all
13 debts arising from a series of dishonored checks or other
14 preprinted written instruments, initiate oral contact with a
15 debtor more than one time in an attempt to collect from the debtor
16 debts arising from the identified series of dishonored checks or
17 other preprinted written instruments when (a) within the previous
18 one hundred eighty days, in response to the licensee's attempt to
19 collect the initial debt assigned to the licensee and arising from
20 the identified series of dishonored checks or other preprinted
21 written instruments, the debtor in writing notified the licensee
22 that the debtor's checkbook or other series of preprinted written
23 instruments was stolen or fraudulently created; (b) the licensee
24 has received from the debtor a certified copy of a police report
25 referencing the theft or fraudulent creation of the checkbook or
26 series of preprinted written instruments; (c) in the written
27 notification to the licensee or in the police report, the debtor
28 identified the financial institution where the account was
29 maintained, the account number, and the check numbers of the
30 stolen checks or other preprinted written instruments, which check
31 numbers included the number of the check that is the subject of
32 the licensee's collection efforts; (d) the debtor provides, or
33 within the previous one hundred eighty days provided, to the
34 licensee a legible copy of a government-issued photo
35 identification which contains the debtor's signature and which was
36 issued prior to the date of the theft or fraud identified in the
37 police report; and (e) the debtor advised the licensee that the

1 subject debt is disputed because the identified check or other
2 preprinted written instrument underlying the debt is a stolen or
3 fraudulently created check or instrument.

4 The licensee is not in violation of this subsection if the
5 licensee initiates oral contact with the debtor more than one time
6 in an attempt to collect debts arising from the identified series
7 of dishonored checks or other preprinted written instruments
8 when: (i) The licensee acted in good faith and relied on their
9 established practices and procedures for batching or packeting
10 debtor accounts, and the licensee inadvertently initiates oral
11 contact with the debtor in an attempt to collect debts in the
12 identified series subsequent to the initial debt assigned to the
13 licensee; or (ii) the licensee is following up on collection of a
14 debt assigned to the licensee, and the debtor has previously
15 requested more information from the licensee regarding the subject
16 debt; or (iii) the debtor has notified the licensee that the
17 debtor disputes only some, but not all the debts arising from the
18 identified series of dishonored checks or other preprinted written
19 instruments, in which case the licensee shall be allowed to
20 initiate oral contact with the debtor one time for each debt
21 arising from the series of identified checks or written
22 instruments and may initiate additional oral contact for those
23 debts that the debtor acknowledges do not arise from stolen or
24 fraudulently created checks or written instruments; or (iv) the
25 oral contact is in the context of a judicial, administrative,
26 arbitration, mediation, or similar proceeding.

27 NEW SECTION. Sec. 4. A new section is added to chapter 9.35 RCW
28 to read as follows:

29 BLOCK OF INFORMATION APPEARING AS A RESULT OF IDENTITY
30 THEFT. (1) If a consumer submits to a consumer reporting agency a
31 certified copy of a police report setting forth facts establishing
32 probable cause of a violation of this chapter, the consumer
33 reporting agency shall promptly and permanently block reporting
34 any information that the consumer identifies on his or her credit
35 report is a result of a violation of this chapter, so that the
36 information cannot be reported. The consumer reporting agency shall

1 promptly notify the furnisher of the information that the
2 information has been so blocked.

3 (2) Furnishers of information and consumer reporting agencies
4 may rescind any block of credit information if:

5 (a) The information was blocked due to a material
6 misrepresentation of fact by the consumer;

7 (b) The consumer agrees that the blocked information or
8 portions of the blocked information were blocked in error; or

9 (c) The consumer knowingly obtained possession of goods,
10 services, or moneys as a result of the blocked transaction or
11 transactions or the consumer should have known that he or she
12 obtained possession of goods, services, or moneys as a result of
13 the blocked transaction or transactions.

14 (3) If the block of information is rescinded under this
15 section, the consumer shall be promptly notified in the same
16 manner as consumers are notified of the reinsertion of information
17 pursuant to section 611 of the fair credit reporting act, 15
18 U.S.C. Sec. 1681I, as amended. The prior presence of the blocked
19 information in the consumer reporting agency's file on the
20 consumer is not evidence of whether the consumer knew or should
21 have known that he or she obtained possession of any goods,
22 services, or moneys.

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

25 The legislature finds that the practices covered by this
26 chapter are matters vitally affecting the public interest for the
27 purpose of applying the consumer protection act, chapter 19.86
28 RCW. Violations of this chapter are not reasonable in relation to
29 the development and preservation of business. A violation of this
30 chapter is an unfair or deceptive act in trade or commerce and an
31 unfair method of competition for the purpose of applying the
32 consumer protection act, chapter 19.86 RCW.

33 Nothing in this chapter limits a victim's ability to receive
34 treble damages under RCW 19.86.090.

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

1 (1) No person may obtain or attempt to obtain, or disclose,
2 cause to be disclosed, or attempt to cause to be disclosed to any
3 person, financial information from a financial information
4 repository:

5 (a) By knowingly making a false, fictitious, or fraudulent
6 statement or representation to an officer, employee, or agent of a
7 financial information repository with the intent to deceive the
8 officer, employee, or agent into relying on that statement or
9 representation for purposes of releasing the financial
10 information;

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

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

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

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

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

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

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

36 (iii) ~~Codes, passwords, social security numbers, tax~~

37 ~~identification numbers, driver's license or permit numbers, state~~

1 ~~identocard numbers issued by the department of licensing, and~~
2 ~~other information held for the purpose of account access or~~
3 ~~transaction initiation.~~

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

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

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

15 ~~((5))~~ (4) This section does not apply to:

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

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

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

25 ~~((6))~~ (5) Violation of this section is a class C felony.

26 ~~((7))~~ (6) A person ~~((that [who]))~~ who violates this section
27 is liable for five hundred dollars or actual damages, whichever is
28 greater, and reasonable attorneys' fees. ~~((If the person violating~~
29 ~~this section is a business that repeatedly violates this section,~~
30 ~~that person also violates the Consumer Protection Act, chapter~~
31 ~~19.86 RCW.))~~

32 **Sec. 7.** RCW 9.35.020 and 1999 c 368 s 3 are each amended to read
33 as follows:

34 (1) No person may knowingly obtain, possess, use, or
35 ~~((knowingly))~~ transfer a means of identification or financial
36 information of another person, living or dead, with the intent to

1 commit, or to aid or abet, any unlawful activity (~~(harming or~~
2 ~~intending to harm the person whose identity is used, or for~~
3 ~~committing any felony.~~

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

17 ~~((3))~~ (2)(a) Violation of this section when the aggregate
18 total of credit, money, goods, services, or anything else of value
19 is obtained that exceeds one thousand five hundred dollars in
20 value is a class B felony.

21 (b) Violation of this section when the aggregate total of
22 credit, money, goods, services, or anything else of value is not
23 obtained, or that is obtained but does not exceed one thousand
24 five hundred dollars in value is a class C felony.

25 ~~((4))~~ (3) A person ((that {who})) who violates this section
26 is liable for civil damages or five hundred dollars or actual
27 damages, whichever is greater, including costs to repair the
28 ((person's)) victim's credit record, ((whichever is greater,)) and
29 reasonable attorneys' fees((. If the person violating this section
30 is a business that repeatedly violates this section, that person
31 also violates the Consumer Protection Act, chapter 19.86 RCW)) as
32 determined by the court.

33 (4) In a proceeding under this section, the crime will be
34 considered to have been committed in any locality where the person
35 whose means of identification or financial information was
36 appropriated resides, or in which any part of the offense took
37 place, regardless of whether the defendant was ever actually in
38 that locality.

1 (5) The provisions of this section do not apply to any person
2 who obtains another person's driver's license or other form of
3 identification for the sole purpose of misrepresenting his or her
4 age.

5 (6) In a proceeding under this section in which a person's
6 means of identification or financial information was used without
7 that person's authorization, and when there has been a conviction,
8 the sentencing court may issue such orders as are necessary to
9 correct a public record that contains false information resulting
10 from a violation of this section.

11 **Sec. 8.** RCW 9.35.030 and 2000 c 77 s 1 are each amended to read as
12 follows:

13 (1) It is unlawful for any person to knowingly use a means of
14 identification or financial information of another person to
15 solicit undesired mail with the intent to annoy, harass,
16 intimidate, torment, or embarrass that person.

17 (2) ~~((For purposes of this section, "means of identification"~~
18 ~~has the meaning provided in RCW 9.35.020.~~

19 ~~(3))~~ Violation of this section is a misdemeanor.

20 ~~((4))~~ (3) Additionally, a person who violates this section is
21 liable for civil damages of five hundred dollars or actual
22 damages, including costs to repair the person's credit record,
23 whichever is greater, and reasonable attorneys' fees as determined
24 by the court.

25 NEW SECTION. **Sec. 9.** Captions used in this act are not any part
26 of the law.

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