
SENATE BILL 5503

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By Senators Prentice, Kastama, Costa, Fairley, Thibaudeau, Franklin, Shin, Kline, Gardner, Hargrove and Kohl-Welles

Read first time 01/24/2001. Referred to Committee on Labor, Commerce & Financial Institutions.

1 AN ACT Relating to privacy of personal financial information;
2 and adding a new chapter to Title 19 RCW.

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

4 NEW SECTION. **Sec. 1.** It is the policy of the state of
5 Washington that each financial institution operating in this state
6 has an affirmative and continuing obligation to respect the
7 privacy of its customers, to provide its customers with control
8 over the dissemination of their nonpublic personal information,
9 and to protect the security and confidentiality of those
10 customers' nonpublic personal information.

11 NEW SECTION. **Sec. 2.** The definitions set forth in this section
12 apply throughout this chapter.

13 (1) "Financial institution" means an institution, the business
14 of which is engaging in financial activities as described in
15 section 4(k) of the Bank Holding Company Act, 12 U.S.C. 1843(k).

16 (2) "Nonpublic personal information" means:

1 (a) Personally identifiable financial information, including a
2 social security number:

3 (i) Provided by a consumer to a financial institution in an
4 application or otherwise, to obtain a financial product or service
5 from the financial institution;

6 (ii) Resulting from any transaction between a financial
7 institution and a consumer involving a financial product or
8 service; or

9 (iii) Obtained by the financial institution about a consumer in
10 connection with providing a financial product or service to that
11 consumer, other than publicly available information; and

12 (b) A list, description, or other grouping of one or more
13 consumers of the financial institution and publicly available
14 information pertaining to them.

15 (3) "Nonaffiliated third party" means an entity that is not an
16 affiliate of, or related by common ownership or affiliated by
17 corporate control with, the financial institution, but does not
18 include a joint employee of the institution.

19 (4) "Affiliate" means a company that controls, is controlled
20 by, or is under common control with another company.

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

25 (6) "Customer relationship" means, in the case of a financial
26 institution engaged in extending credit directly to consumers to
27 finance the purchase of goods or services, the time of
28 establishing the credit relationship with the consumer. In other
29 cases it will be defined by rules adopted under section 11 of this
30 act.

31 NEW SECTION. **Sec. 3.** Except as otherwise provided in this
32 chapter, a financial institution may not disclose nonpublic
33 personal information to an affiliate or a nonaffiliated third
34 party unless the financial institution:

35 (1) Has provided to the consumer who is the subject of the
36 personal information a clear and conspicuous notice, in writing,

1 electronic form, or other form permitted by the rules adopted to
2 implement this chapter, of the categories of information that may
3 be disclosed to the affiliate or nonaffiliated third party;

4 (2) Has given the consumer an opportunity, before the time that
5 the information is initially disclosed, to direct that the
6 information not be disclosed to the affiliate or nonaffiliated
7 third party; and

8 (3) Has given the consumer the ability to exercise that
9 nondisclosure option through the same method of communication by
10 which the consumer received the notice described in subsection (1)
11 of this section, or another method at least as convenient to the
12 consumer, and an explanation of how the consumer can exercise that
13 option.

14 This section does not prevent a financial institution from
15 providing nonpublic personal information to an affiliate or
16 nonaffiliated third party to perform services for or functions on
17 behalf of the financial institution, including marketing of the
18 financial institution's own products or services, or financial
19 products or services offered under joint agreements between two or
20 more financial institutions that comply with requirements imposed
21 by rules adopted under section 11 of this act, if the financial
22 institution fully discloses the providing of the information and
23 enters into a contractual agreement with the third party that
24 requires the third party to maintain the confidentiality of the
25 information.

26 NEW SECTION. **Sec. 4.** (1) If a financial institution provides a
27 service to a consumer through which the consumer makes or receives
28 payments or transfers by check, debit card, credit card, or other
29 similar instrument, the financial institution shall not transfer
30 to an affiliate or a nonaffiliated third party:

31 (a) An individualized list of that consumer's transactions or
32 an individualized description of that consumer's interests,
33 preferences, or other characteristics; or

34 (b) A list or description constructed in response to an inquiry
35 about a specific named individual
36 if the list or description is derived from information collected
37 in the course of providing that service.

1 (2) Notwithstanding subsection (1) of this section, a financial
2 institution may transfer the described information if the
3 financial institution has clearly and conspicuously requested in
4 writing or electronic form or other form permitted by the rules
5 adopted to implement this chapter, that the consumer affirmatively
6 consents to the transfer and use of that type of information, and
7 the consent has not been withdrawn.

8 NEW SECTION. **Sec. 5.** A financial institution shall not
9 disclose, other than to a consumer reporting agency, an account
10 number or access code for a credit card account, deposit account,
11 or transaction account of a consumer to an affiliate or
12 nonaffiliated third party for use in telemarketing, direct mail
13 marketing, or other marketing through electronic mail to the
14 consumer.

15 NEW SECTION. **Sec. 6.** (1) An affiliate or nonaffiliated third
16 party that receives nonpublic personal information from a
17 financial institution shall not disclose the information to
18 another person unless the disclosure would be lawful if made
19 directly to the other person by the financial institution.

20 (2) Notwithstanding subsection (1) of this section, a person
21 who receives nonpublic personal information from a financial
22 institution in accordance with one of the general exceptions in
23 section 10 of this act may use or transfer the information only
24 (a) as permitted under that general exception, or (b) under
25 another general exception in section 10 of this act, if necessary
26 to carry out the purpose for which the information was disclosed
27 by the financial institution.

28 NEW SECTION. **Sec. 7.** Upon the request of a consumer, a
29 financial institution shall make available to the consumer
30 information about the consumer that is under the control of and
31 reasonably available to the financial institution. However, a
32 financial institution may not be required to:

33 (1) Disclose to a consumer confidential commercial information,
34 such as an algorithm used to derive credit scores or other risk
35 scores or predictors;

1 (2) Create new records in order to comply with the consumer's
2 request;

3 (3) Disclose to a consumer information assembled by the
4 financial institution, in a particular matter, as part of the
5 financial institution's efforts to comply with laws preventing
6 fraud, money laundering, or other unlawful conduct; and

7 (4) Disclose information required to be kept confidential by
8 federal law.

9 NEW SECTION. **Sec. 8.** A financial institution shall provide a
10 consumer the opportunity to dispute the accuracy of information
11 disclosed to the consumer under section 7 of this act, and to
12 present evidence on the accuracy of the information. A financial
13 institution shall correct or delete material information
14 identified by a consumer that is materially incomplete or
15 inaccurate.

16 NEW SECTION. **Sec. 9.** (1) A financial institution shall
17 provide a disclosure that complies with subsection (2) of this
18 section to an individual upon request, as part of an application
19 for a financial product or service from the financial institution,
20 and to a consumer, before establishing a customer relationship
21 with the consumer and not less than annually during the
22 continuation of the relationship.

23 (2) The disclosure required by subsection (1) of this section
24 must be a clear and conspicuous notice, in writing or in
25 electronic form or other form permitted by the rules implementing
26 this chapter, and must include the financial institution's
27 policies and practices with respect to:

28 (a) Disclosing nonpublic personal information to affiliates and
29 nonaffiliated third parties in compliance with section 2 of this
30 act, including the categories of information that may be
31 disclosed;

32 (b) Disclosing nonpublic personal information of persons who
33 have ceased to be customers of the financial institution; and

34 (c) Protecting the nonpublic personal information of consumers.
35

1 NEW SECTION. **Sec. 10.** Sections 3, 4, 5, and 6 of this act do not
2 prohibit the disclosure of nonpublic personal information:

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

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

8 (b) Maintaining or servicing the customer's account with the
9 financial institution, or with another entity as part of a private
10 label credit card program or other extension of credit on behalf
11 of the entity;

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

15 (d) Performing services for or functions solely on behalf of
16 the financial institution with respect to the financial
17 institution's own customers, including marketing of the financial
18 institution's own products or services to the financial
19 institution's customers;

20 (2) With the consent or at the direction of the consumer;

21 (3)(a) To protect the confidentiality or security of the
22 financial institution's records pertaining to the consumer, the
23 service or product, or the transaction therein; (b) to protect
24 against or prevent actual or potential fraud, unauthorized
25 transactions, claims, or other liability; (c) for required
26 institutional risk control, or for resolving customer disputes or
27 inquiries; (d) to persons holding a legal or beneficial interest
28 relating to the consumer; or (e) to persons acting in a fiduciary
29 or representative capacity on behalf of the consumer;

30 (4) To provide information to insurance rate advisory
31 organizations, guaranty funds or agencies, applicable rating
32 agencies of the financial institution, and persons assessing the
33 institution's compliance with industry standards;

34 (5) To the extent specifically permitted or required under
35 other provisions of law and in accordance with the Right to
36 Financial Privacy Act of 1978, to law enforcement agencies
37 (including a federal or state regulator, the secretary of the
38 treasury with respect to subchapter II of chapter 53 of Title 31,

1 United States Code, section 21 of the Federal Deposit Insurance
2 Act, and chapter 2 of Title I of Public Law 91-508 (12 U.S.C. 1951-
3 1959), or the Federal Trade Commission), self-regulatory
4 organizations, or for an investigation on a matter related to
5 public safety;

6 (6)(a) To a consumer reporting agency in accordance with the
7 Fair Credit Reporting Act, or (b) from a consumer report reported
8 by a consumer reporting agency;

9 (7) In connection with a proposed or actual sale, merger,
10 transfer, or exchange of all or a portion of a business or
11 operating unit if the disclosure of nonpublic personal information
12 concerns solely consumers of the business or unit;

13 (8)(a) To comply with federal, state, or local laws, rules, or
14 other applicable legal requirements; (b) to comply with a properly
15 authorized civil, criminal, or regulatory investigation or
16 subpoena or summons by federal, state, or local authorities; or
17 (c) to respond to judicial process or government regulatory
18 authorities having jurisdiction over the financial institution for
19 examination, compliance, or other purposes as authorized by law;

20 (9) In order to facilitate customer service, such as
21 maintenance and operation of consolidated customer call centers or
22 the use of consolidated customer account statements; or

23 (10) To the institution's attorneys, accountants, and auditors.

24 NEW SECTION. **Sec. 11.** The department of financial institutions
25 shall adopt rules required by this chapter to effectuate and avoid
26 circumvention of its purpose.

27 NEW SECTION. **Sec. 12.** (1) The legislature finds that the
28 practices covered by this chapter are matters vitally affecting
29 the public interest for the purpose of applying the Consumer
30 Protection Act, chapter 19.86 RCW. A violation of this chapter is
31 an unfair and deceptive act in trade or commerce for the purpose
32 of applying the Consumer Protection Act, chapter 19.86
33 RCW. Invasion of privacy rights protected by this chapter are not
34 reasonable in relation to the development and preservation of
35 business.

36 (2) In an action for a violation of this chapter, with the

1 exception of section 5 of this act, a financial institution may
2 raise the defense that the violation was not intentional and was
3 the result of bona fide error. This is an affirmative defense and
4 must be proved by a preponderance of the evidence.

5 (3) Damages to a person who is a victim of a violation of this
6 chapter are five hundred dollars, or actual damages, whichever is
7 greater. A court may increase the award of damages in an amount not
8 to exceed three times the actual damages sustained, or one
9 thousand five hundred dollars, whichever is greater, upon a
10 showing by a preponderance of the evidence that a violation was
11 willful.

12 (4) In a class action for a violation of this chapter, the
13 total recovery of statutory damages arising from the same
14 violation may not be more than the lesser of one million dollars
15 or one percent of the net worth of the defendant. There is no limit
16 on the amount awarded for actual damages.

17 NEW SECTION. **Sec. 13.** Sections 1 through 12 of this act
18 constitute a new chapter in Title 19 RCW.

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