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**SUBSTITUTE HOUSE BILL 3208**

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**State of Washington**

**59th Legislature**

**2006 Regular Session**

**By** House Committee on Technology, Energy & Communications (originally sponsored by Representatives P. Sullivan, Simpson, Wallace and Ericks)

READ FIRST TIME 02/03/06.

1       AN ACT Relating to protecting customer proprietary network  
2 information; reenacting and amending RCW 9A.82.010; adding a new  
3 section to chapter 9.26A RCW; 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 9.26A RCW  
6 to read as follows:

7       (1) A person is guilty of the unauthorized sale or procurement of  
8 telephone records if the person:

9       (a) Intentionally sells the telephone record of any resident of  
10 this state without the authorization of the customer to whom the record  
11 pertains;

12       (b) By fraudulent, deceptive, or false means obtains the telephone  
13 record of any resident of this state to whom the record pertains;

14       (c) Knowingly purchases the telephone record of any resident of  
15 this state without the authorization of the customer to whom the record  
16 pertains; or

17       (d) Knowingly receives the telephone record of any resident of this  
18 state without the authorization of the customer to whom the record  
19 pertains.

1 (2) This section does not apply to:

2 (a) Any action by a government agency, or any officer, employee, or  
3 agent of such agency, to obtain telephone records in connection with  
4 the performance of the official duties of the agency;

5 (b) A telecommunications company that obtains, uses, discloses, or  
6 permits access to any telephone record, either directly or indirectly  
7 through its agents, that is:

8 (i) With the lawful consent of the customer or subscriber;

9 (ii) Authorized by law; or

10 (iii) Necessarily incident to the rendition of the service or to  
11 the protection of the rights or property of the provider of that  
12 service, or to protect users of those services and other carriers from  
13 fraudulent, abusive, or unlawful use of, or subscription to, such  
14 services.

15 (3) A violation of subsection (1)(a), (b), or (c) of this section  
16 is a class C felony. A violation of subsection (1)(d) of this section  
17 is a gross misdemeanor.

18 (4) A person who violates this section is subject to legal action  
19 for injunctive relief and either actual damages, including mental pain  
20 and suffering, or liquidated damages of five thousand dollars per  
21 violation, whichever is greater. Reasonable attorneys' fees and other  
22 costs of litigation are also recoverable.

23 (5) The definitions in this subsection apply throughout this  
24 section unless the context clearly requires otherwise.

25 (a) "Telecommunications company" has the meaning provided in RCW  
26 9.26A.100 and includes "radio communications service companies" as  
27 defined in RCW 80.04.010.

28 (b) "Telephone record" means information retained by a  
29 telecommunications company that relates to the telephone number dialed  
30 by the customer or the incoming number or call directed to a customer,  
31 or other data related to such calls typically contained on a customer  
32 telephone bill such as the time the call started and ended, the  
33 duration of the call, the time of day the call was made, and any  
34 charges applied. "Telephone record" does not include any information  
35 collected and retained by customers using caller identification or  
36 other similar technologies.

37 (c) "Procure" means to obtain by any means, whether electronically,  
38 in writing, or in oral form, with or without consideration.

1       **Sec. 2.** RCW 9A.82.010 and 2003 c 119 s 6, 2003 c 113 s 3, and 2003  
2 c 53 s 85 are each reenacted and amended to read as follows:

3       Unless the context requires the contrary, the definitions in this  
4 section apply throughout this chapter.

5       (1)(a) "Beneficial interest" means:

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

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

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

15       (b) "Beneficial interest" does not include the interest of a  
16 stockholder in a corporation or the interest of a partner in a general  
17 partnership or limited partnership.

18       (c) A beneficial interest is considered to be located where the  
19 real property owned by the trustee is located.

20       (2) "Control" means the possession of a sufficient interest to  
21 permit substantial direction over the affairs of an enterprise.

22       (3) "Creditor" means a person making an extension of credit or a  
23 person claiming by, under, or through a person making an extension of  
24 credit.

25       (4) "Criminal profiteering" means any act, including any  
26 anticipatory or completed offense, committed for financial gain, that  
27 is chargeable or indictable under the laws of the state in which the  
28 act occurred and, if the act occurred in a state other than this state,  
29 would be chargeable or indictable under the laws of this state had the  
30 act occurred in this state and punishable as a felony and by  
31 imprisonment for more than one year, regardless of whether the act is  
32 charged or indicted, as any of the following:

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

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

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

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

37       (e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060,  
38 9A.56.080, and 9A.56.083;

- 1 (f) Unlawful sale of subscription television services, as defined  
2 in RCW 9A.56.230;
- 3 (g) Theft of telecommunication services or unlawful manufacture of  
4 a telecommunication device, as defined in RCW 9A.56.262 and 9A.56.264;
- 5 (h) Child selling or child buying, as defined in RCW 9A.64.030;
- 6 (i) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and  
7 9A.68.050;
- 8 (j) Gambling, as defined in RCW 9.46.220 and 9.46.215 and 9.46.217;
- 9 (k) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;
- 10 (l) Unlawful production of payment instruments, unlawful possession  
11 of payment instruments, unlawful possession of a personal  
12 identification device, unlawful possession of fictitious  
13 identification, or unlawful possession of instruments of financial  
14 fraud, as defined in RCW 9A.56.320;
- 15 (m) Extortionate extension of credit, as defined in RCW 9A.82.020;
- 16 (n) Advancing money for use in an extortionate extension of credit,  
17 as defined in RCW 9A.82.030;
- 18 (o) Collection of an extortionate extension of credit, as defined  
19 in RCW 9A.82.040;
- 20 (p) Collection of an unlawful debt, as defined in RCW 9A.82.045;
- 21 (q) Delivery or manufacture of controlled substances or possession  
22 with intent to deliver or manufacture controlled substances under  
23 chapter 69.50 RCW;
- 24 (r) Trafficking in stolen property, as defined in RCW 9A.82.050;
- 25 (s) Leading organized crime, as defined in RCW 9A.82.060;
- 26 (t) Money laundering, as defined in RCW 9A.83.020;
- 27 (u) Obstructing criminal investigations or prosecutions in  
28 violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130,  
29 9A.76.070, or 9A.76.180;
- 30 (v) Fraud in the purchase or sale of securities, as defined in RCW  
31 21.20.010;
- 32 (w) Promoting pornography, as defined in RCW 9.68.140;
- 33 (x) Sexual exploitation of children, as defined in RCW 9.68A.040,  
34 9.68A.050, and 9.68A.060;
- 35 (y) Promoting prostitution, as defined in RCW 9A.88.070 and  
36 9A.88.080;
- 37 (z) Arson, as defined in RCW 9A.48.020 and 9A.48.030;
- 38 (aa) Assault, as defined in RCW 9A.36.011 and 9A.36.021;

1 (bb) Assault of a child, as defined in RCW 9A.36.120 and 9A.36.130;  
2 (cc) A pattern of equity skimming, as defined in RCW 61.34.020;  
3 (dd) Commercial telephone solicitation in violation of RCW  
4 19.158.040(1);  
5 (ee) Trafficking in insurance claims, as defined in RCW 48.30A.015;  
6 (ff) Unlawful practice of law, as defined in RCW 2.48.180;  
7 (gg) Commercial bribery, as defined in RCW 9A.68.060;  
8 (hh) Health care false claims, as defined in RCW 48.80.030;  
9 (ii) Unlicensed practice of a profession or business, as defined in  
10 RCW 18.130.190(7);  
11 (jj) Improperly obtaining financial information, as defined in RCW  
12 9.35.010;  
13 (kk) Identity theft, as defined in RCW 9.35.020;  
14 (ll) Unlawful shipment of cigarettes in violation of RCW  
15 70.155.105(6) (a) or (b); (~~(e)~~)  
16 (mm) Unlawful shipment of cigarettes in violation of RCW  
17 82.24.110(2); or  
18 (nn) Unauthorized sale or procurement of telephone records in  
19 violation of section 1 of this act.  
20 (5) "Dealer in property" means a person who buys and sells property  
21 as a business.  
22 (6) "Debtor" means a person to whom an extension of credit is made  
23 or a person who guarantees the repayment of an extension of credit or  
24 in any manner undertakes to indemnify the creditor against loss  
25 resulting from the failure of a person to whom an extension is made to  
26 repay the same.  
27 (7) "Documentary material" means any book, paper, document,  
28 writing, drawing, graph, chart, photograph, phonograph record, magnetic  
29 tape, computer printout, other data compilation from which information  
30 can be obtained or from which information can be translated into usable  
31 form, or other tangible item.  
32 (8) "Enterprise" includes any individual, sole proprietorship,  
33 partnership, corporation, business trust, or other profit or nonprofit  
34 legal entity, and includes any union, association, or group of  
35 individuals associated in fact although not a legal entity, and both  
36 illicit and licit enterprises and governmental and nongovernmental  
37 entities.

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

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

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

14 (12) "Pattern of criminal profiteering activity" means engaging in  
15 at least three acts of criminal profiteering, one of which occurred  
16 after July 1, 1985, and the last of which occurred within five years,  
17 excluding any period of imprisonment, after the commission of the  
18 earliest act of criminal profiteering. In order to constitute a  
19 pattern, the three acts must have the same or similar intent, results,  
20 accomplices, principals, victims, or methods of commission, or be  
21 otherwise interrelated by distinguishing characteristics including a  
22 nexus to the same enterprise, and must not be isolated events.  
23 However, in any civil proceedings brought pursuant to RCW 9A.82.100 by  
24 any person other than the attorney general or county prosecuting  
25 attorney in which one or more acts of fraud in the purchase or sale of  
26 securities are asserted as acts of criminal profiteering activity, it  
27 is a condition to civil liability under RCW 9A.82.100 that the  
28 defendant has been convicted in a criminal proceeding of fraud in the  
29 purchase or sale of securities under RCW 21.20.400 or under the laws of  
30 another state or of the United States requiring the same elements of  
31 proof, but such conviction need not relate to any act or acts asserted  
32 as acts of criminal profiteering activity in such civil action under  
33 RCW 9A.82.100.

34 (13) "Real property" means any real property or interest in real  
35 property, including but not limited to a land sale contract, lease, or  
36 mortgage of real property.

37 (14) "Records" means any book, paper, writing, record, computer  
38 program, or other material.

1 (15) "Repayment of an extension of credit" means the repayment,  
2 satisfaction, or discharge in whole or in part of a debt or claim,  
3 acknowledged or disputed, valid or invalid, resulting from or in  
4 connection with that extension of credit.

5 (16) "Stolen property" means property that has been obtained by  
6 theft, robbery, or extortion.

7 (17) "To collect an extension of credit" means to induce in any way  
8 a person to make repayment thereof.

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

13 (19) "Traffic" means to sell, transfer, distribute, dispense, or  
14 otherwise dispose of stolen property to another person, or to buy,  
15 receive, possess, or obtain control of stolen property, with intent to  
16 sell, transfer, distribute, dispense, or otherwise dispose of the  
17 property to another person.

18 (20)(a) "Trustee" means:

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

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

24 (iii) A successor trustee to a person who is a trustee under (a)(i)  
25 or (ii) of this subsection.

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

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

28 (ii) A trustee of any testamentary trust;

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

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

32 (21) "Unlawful debt" means any money or other thing of value  
33 constituting principal or interest of a debt that is legally  
34 unenforceable in the state in full or in part because the debt was  
35 incurred or contracted:

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

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

38 (ii) Chapter 9.46 RCW relating to gambling;

1           (b) In a gambling activity in violation of federal law; or  
2           (c) In connection with the business of lending money or a thing of  
3 value at a rate that is at least twice the permitted rate under the  
4 applicable state or federal law relating to usury.

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