

**E2SHB 1149** - S COMM AMD

By Committee on Labor, Commerce & Consumer Protection

ADOPTED 03/02/2010

1 Strike everything after the enacting clause and insert the  
2 following:

3 NEW SECTION. **Sec. 1.** The legislature recognizes that data  
4 breaches of credit and debit card information contribute to identity  
5 theft and fraud and can be costly to consumers. The legislature also  
6 recognizes that when a breach occurs, remedial measures such as  
7 reissuance of credit or debit cards affected by the breach can help to  
8 reduce the incidence of identity theft and associated costs to  
9 consumers. Accordingly, the legislature intends to encourage financial  
10 institutions to reissue credit and debit cards to consumers when  
11 appropriate, and to permit financial institutions to recoup data breach  
12 costs associated with the reissuance from large businesses and card  
13 processors who are negligent in maintaining or transmitting card data.

14 NEW SECTION. **Sec. 2.** A new section is added to chapter 19.255 RCW  
15 to read as follows:

16 (1) For purposes of this section:

17 (a) "Account information" means: (i) The full, unencrypted  
18 magnetic stripe of a credit card or debit card; (ii) the full,  
19 unencrypted account information contained on an identification device  
20 as defined under RCW 19.300.010; or (iii) the unencrypted primary  
21 account number on a credit card or debit card or identification device,  
22 plus any of the following if not encrypted: Cardholder name,  
23 expiration date, or service code.

24 (b) "Breach" has the same meaning as "breach of the security of the  
25 system" in RCW 19.255.010.

26 (c) "Business" means an individual, partnership, corporation,  
27 association, organization, government entity, or any other legal or  
28 commercial entity that processes more than six million credit card and

1 debit card transactions annually, and who provides, offers, or sells  
2 goods or services to persons who are residents of Washington.

3 (d) "Credit card" has the same meaning as in RCW 9A.56.280.

4 (e) "Debit card" has the same meaning as in RCW 9A.56.280 and for  
5 the purposes of this section, includes a payroll debit card.

6 (f) "Encrypted" means enciphered or encoded using standards  
7 reasonable for the breached business or processor taking into account  
8 the business or processor's size and the number of transactions  
9 processed annually.

10 (g) "Financial institution" has the same meaning as in RCW  
11 30.22.040.

12 (h) "Processor" means an individual, partnership, corporation,  
13 association, organization, government entity, or any other legal or  
14 commercial entity, other than a business as defined under this section,  
15 that directly processes or transmits account information for or on  
16 behalf of another person as part of a payment processing service.

17 (i) "Service code" means the three or four digit number in the  
18 magnetic stripe or on a credit card or debit card that is used to  
19 specify acceptance requirements or to validate the card.

20 (j) "Vendor" means an individual, partnership, corporation,  
21 association, organization, government entity, or any other legal or  
22 commercial entity that manufactures and sells software or equipment  
23 that is designed to process, transmit, or store account information or  
24 that maintains account information that it does not own.

25 (2) Processors, businesses, and vendors are not liable under this  
26 section if (a) the account information was encrypted at the time of the  
27 breach, or (b) the processor, business, or vendor was certified  
28 compliant with the payment card industry data security standards  
29 adopted by the payment card industry security standards council, and in  
30 force at the time of the breach. A processor, business, or vendor will  
31 be considered compliant, if its payment card industry data security  
32 compliance was validated by an annual security assessment, and if this  
33 assessment took place no more than one year prior to the time of the  
34 breach. For the purposes of this subsection (2), a processor,  
35 business, or vendor's security assessment of compliance is  
36 nonrevocable. The nonrevocability of a processor, business, or  
37 vendor's security assessment of compliance is only for the purpose of

1 determining a processor, business, or vendor's liability under this  
2 subsection (2).

3 (3)(a) If a processor or business fails to take reasonable care to  
4 guard against unauthorized access to account information that is in the  
5 possession or under the control of the business or processor, and the  
6 failure is found to be the proximate cause of a breach, the processor  
7 or business is liable to a financial institution for reimbursement of  
8 reasonable actual costs related to the reissuance of credit cards and  
9 debit cards that are incurred by the financial institution to mitigate  
10 potential current or future damages to its credit card and debit card  
11 holders that reside in the state of Washington as a consequence of the  
12 breach, even if the financial institution has not suffered a physical  
13 injury in connection with the breach. In any legal action brought  
14 pursuant to this subsection, the prevailing party is entitled to  
15 recover its reasonable attorneys' fees and costs incurred in connection  
16 with the legal action.

17 (b) A vendor, instead of a processor or business, is liable to a  
18 financial institution for the damages described in (a) of this  
19 subsection to the extent that the damages were proximately caused by  
20 the vendor's negligence and if the claim is not limited or foreclosed  
21 by another provision of law or by a contract to which the financial  
22 institution is a party.

23 (4) Nothing in this section may be construed as preventing or  
24 foreclosing any entity responsible for handling account information on  
25 behalf of a business or processor from being made a party to an action  
26 under this section.

27 (5) Nothing in this section may be construed as preventing or  
28 foreclosing a processor, business, or vendor from asserting any defense  
29 otherwise available to it in an action including, but not limited to,  
30 defenses of contract, or of contributory or comparative negligence.

31 (6) In cases to which this section applies, the trier of fact shall  
32 determine the percentage of the total fault which is attributable to  
33 every entity which was the proximate cause of the claimant's damages.

34 (7) The remedies under this section are cumulative and do not  
35 restrict any other right or remedy otherwise available under law,  
36 however a trier of fact may reduce damages awarded to a financial  
37 institution by any amount the financial institution recovers from a

1 credit card company in connection with the breach, for costs associated  
2 with access card reissuance.

3 NEW SECTION. **Sec. 3.** This act takes effect July 1, 2010.

4 NEW SECTION. **Sec. 4.** This act applies prospectively only. This  
5 act applies to any breach occurring on or after the effective date of  
6 this section."

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7 On page 1, line 1 of the title, after "security;" strike the  
8 remainder of the title and insert "adding a new section to chapter  
9 19.255 RCW; creating new sections; and providing an effective date."

**--- END ---**