

FORMATTING NOTE:

In initiatives, legislative bills and other proposed measures, language that is to be deleted from current statutes is represented by a "strikethrough" character and language that is to be added is underlined. Because these special characters cannot be formatted in all Internet browsers, a different set of symbols is used for presenting these proposals on-line. The symbols are as follows:

- Text that is surrounded by (({- text here -})) is text that will be DELETED FROM the existing statute if the proposed measure is approved.
- Text that is surrounded by {+ text here +} is text that will be ADDED TO the existing statute if the proposed measure is approved.
- {+ NEW SECTION+} (found at the beginning of a section or paragraph) indicates that ALL of the text in that section will become law if the proposed measure is approved.

* * *

INITIATIVE 730

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

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

{+ NEW SECTION. +} Sec. 1. DUTIES OF FINANCIAL INSTITUTIONS AND INSURANCE COMPANIES. (1) Every financial institution and insurance company shall have an affirmative and continuing obligation to respect customer privacy and to protect the security and confidentiality of customer personal information, including:

(a) A duty to ensure the security and confidentiality of customer records and information;

(b) A duty to protect against any anticipated threats or hazards to the security or integrity of these records; and

(c) A duty to protect against unauthorized access to or use of customer records or information which could result in substantial harm or inconvenience to customers.

(2) Every financial institution and insurance company that violates one or more duties in subsection (1) of this section is subject to liability as specified in section 2 of this act.

{+ NEW SECTION. +} Sec. 2. CONSUMER PROTECTION. (1) A right of action is created for the invasion of financial privacy. The elements of this action are as follows: (a) A relationship between the consumer and the financial institution or insurance company; (b) a duty by the financial institution or insurance company to safeguard the consumer's financial privacy as specified in this chapter; and (c) a violation of the duty required by this chapter. A person in violation of any provision of this chapter must pay damages equal to seven hundred fifty dollars, or actual damages, whichever is greater, plus reasonable attorneys' fees. A court or jury may increase damages in an amount not to exceed two hundred fifty thousand dollars upon a demonstration by a preponderance of the evidence that a violation of this chapter was done with gross indifference to the consumer. Causes of action are not limited to injuries involving only personal information as defined in section 6 of this act and may include any other violations of section 1 of this act resulting in damages.

(2) The attorney general, department of financial institutions, and insurance commissioner are authorized to enact rules and levy fines as appropriate to enforce rules adopted to administer section 1 of this act.

{+ NEW SECTION. +} Sec. 3. PROTECTIONS FOR CONSUMER FINANCIAL INFORMATION. Financial institutions and insurance companies shall, in performing a transaction with a consumer, providing a service for a consumer, or establishing a business relationship with a consumer, only require the consumer to provide information reasonably necessary to perform the transaction, establish the relationship, administer or maintain the business relationship, collect or service a debt, protect against fraud or unauthorized transactions, or comply with applicable law. Any optional information must be specified as optional, and the consumer must be given the option not to provide it. An insurance company must inform a consumer and receive explicit consent in order to seek a credit report on a consumer or potential insurance customer. The insurance commissioner of the state of Washington is authorized to make rules concerning insurance companies requesting credit reports from consumers.

{+ NEW SECTION. +} Sec. 4. PERSONAL INFORMATION--CONSUMER CONTROL. (1) A financial institution or insurance company shall not disclose personal information to a third party or affiliate for purposes other than consumer-requested purposes or functional business purposes unless the consumer:

- (a) Receives notification of the information to be disclosed;
- (b) Receives notification of the entity or entities authorized to receive the disclosure of information;
- (c) Receives a specific description of the purpose for which the disclosure of information will be made; and
- (d) Authorizes the disclosure of the personal information to be disclosed after receiving notification in accordance with (a) through (c) of this subsection.

(2) This section does not apply to disclosure of personal information under the following circumstances:

- (a) Disclosure to or at the direction or with the consent of the consumer upon his or her request and upon proper identification;
- (b) Disclosure required by federal, state, or local laws, or administrative regulations or rules, or other applicable legal requirements;
- (c) Disclosure made in the course of a properly authorized civil, criminal, or regulatory examination or investigation, or under a search warrant, court order, or subpoena, including an administrative subpoena or other legal process;
- (d) Disclosure to a third party or an affiliate for the purpose of collecting a debt or a dishonored item, however, the recipient of the information must comply with section 5 of this act;
- (e) Disclosure to protect the confidentiality or security of the financial institution's records;
- (f) Disclosure to protect against, investigate, or prevent actual or potential fraud or unauthorized transactions, claims, or other liability;
- (g) Disclosure as part of a risk control program required by or subject to examination by regulators;
- (h) Disclosure by or to a consumer reporting agency as specifically permitted under the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.);

(i) Disclosure of consumer report information between affiliates as specifically permitted under the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.), however, the recipient of the information must comply with section 5 of this act;

(j) Disclosure of personal information which is prohibited from disclosure by section 502(d) of Public Law 106-102 (the Gramm-Leach-Bliley Act of 1999);

(k) Disclosure for purposes of a proposed or actual securitization, secondary market sale (including sales service rights), or similar transactions related to a consumer-requested purpose;

(l) Disclosure to persons holding a legal or beneficial interest relating to the consumer;

(m) Disclosure of health care information in compliance with state and federal law; or

(n) Disclosure to a federal, state, or local agency as required by that agency to fulfill its legal obligations on behalf of a consumer.

{+ NEW SECTION. +} Sec. 5. CONFIDENTIALITY AND SECURITY OF INFORMATION. (1) Third parties or affiliates that obtain personal information from a financial institution or insurance company may not sell, share, or otherwise transfer the information for any reason other than the original purpose for which the information was sold, shared, or transferred to the third party or affiliate. This information may be transferred back to the source of origin of the information. Any sale or transfer in violation of this chapter is subject to liability under section 2 of this act.

(2) A financial institution or insurance company, before sharing, selling, or otherwise transferring personal information, must obtain a written agreement from the third party or affiliate that requires the third party or affiliate:

(a) To keep the information confidential;

(b) To use the information only for the original purpose for which it has been shared, sold, or provided;

(c) To safeguard the information from loss, misuse, theft, unauthorized access, disclosure, defacement, or alteration; and

(d) To provide at least one million dollars of business liability coverage to protect consumers from possible errors and omissions.

(3) Every financial institution, insurance company, and affiliate must establish reasonable safeguards to ensure the confidentiality and safety of personal information and account numbers and to protect them from loss, misuse, theft, unauthorized access, disclosure, defacement, or alteration.

(4) The above agreement or agreements with the affiliate or third party must be made available to the requestor within fourteen business days of a written request or sanctions in section 2 of this act apply.

{+ NEW SECTION. +} Sec. 6. DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Affiliate" means an entity that controls, is controlled by, or is under common control or common ownership with another entity. Companies that form alliances as a financial services group for purposes of marketing their services and are located at a common address, have personnel and payroll functions administered through a central office, jointly sponsor one combined employee savings and profit sharing plan, and have centralized data processing, mail service, communications and procurement, or agency agreements are considered under common control and affiliated with each other.

(2) "Consumer" or "customer" means a natural person or his or her legal representative, who is a resident of the state of Washington and who purchases, leases, or otherwise contracts for products or services within the state of Washington. "Consumer" or "customer" includes a marital community.

(3) "Consumer-requested purpose" means establishing or maintaining a business relationship, completing a transaction, or providing a product or service requested by the consumer.

(4) "Financial institution" means (a) any company that engages in financial activities or activities that are incidental or complementary to financial activities, including banks, savings banks, credit unions, insurers, securities firms, whether chartered, licensed, or regulated by the state or the federal government, or any company regulated by the department of financial institutions; (b) a financial institution as defined in section 527(4) of the Gramm-Leach-Bliley Act (P.L. 106-102) and its implementing regulations as of the effective date of this act; or (c) a bank holding company or financial holding company, as defined in sections 2(a) and 2(p) of the Bank Holding Company Act, as amended as of the effective date of this act, or any subsidiary as defined in section 2(d) of the Bank Holding Company Act, as amended as of the effective date of this act.

(5) "Insurance company" means an entity regulated and authorized to conduct business by the office of the insurance commissioner of the state of Washington.

(6) "Functional business purpose" means the use or disclosure of personal information by a financial institution or insurance company to another entity or person to perform services or functions on behalf of the financial institution as part of the financial institution's provision of its products or services to its customers.

(7) "Personal information" means information that identifies a consumer such as a social security number, credit and debit card numbers and associated expiration dates, check, draft, and savings account numbers, the amount of the consumer's deposit account balance or balances, credit card and consumer loan account balances or purchase amounts, significant changes in account balance or debt information, tax identification numbers, state identicard numbers issued by the department of licensing, passwords, personal identification numbers, genetic identifiers, and personal telephone numbers.

{+ NEW SECTION. +} Sec. 7. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

{+ NEW SECTION. +} Sec. 8. Section captions used in this act are not part of the law.

{+ NEW SECTION. +} Sec. 9. This act takes effect March 18, 2001.

{+ NEW SECTION. +} Sec. 10. This act shall be known as "The People's Financial Privacy Act."

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

--- END ---