

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.

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INITIATIVE 238

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

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

{+ NEW SECTION. +} Sec. 1. PROTECTING PRIVATE AND PERSONAL INFORMATION. (1) Financial institutions and insurance companies are prohibited from disclosing, selling, and transferring private information. A violation of this act subjects the violator to civil penalties as specified in section 6 of this act, and by rule.

(2) 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, and why transfer is needed; and
- (c) Authorizes the disclosure of the personal information to be disclosed after receiving notification in accordance with (a) and (b) of this subsection.

{+ NEW SECTION. +} Sec. 2. RESTRICTIONS ON USE OF CONSUMER INFORMATION. (1) 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.

(2) An insurance company must inform a consumer and receive explicit consent in order to seek a credit report on a consumer. The insurance commissioner of the state of Washington is authorized to enact rules and impose fines relating to insurance companies' use of credit reports within the scope of this chapter.

(3) Public information is not within the scope of this chapter.

{+ NEW SECTION. +} Sec. 3. DUTIES OF FINANCIAL INSTITUTIONS AND INSURANCE COMPANIES. (1) Every financial institution and insurance company has:

(a) An affirmative and continuing obligation to protect the security and confidentiality of customer information;

(b) A duty to protect against unauthorized access to or use of customer records or information which could result in monetary harm to customers;

(c) A duty to screen third parties, affiliates, employees, and their agents who have access to consumer private and personal information as specified in this chapter.

(2) Financial institutions and insurance companies that violate the duties in subsection (1) of this section are subject to civil liability as specified in section 6 of this act, and in rule.

{+ NEW SECTION. +} Sec. 4. CONFIDENTIALITY AND SECURITY OF INFORMATION. (1) Third parties or affiliates that obtain 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 6 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 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) The attorney general of the state of Washington is authorized to enact rules, and impose fines up to two million dollars as they relate to financial institutions and insurance companies' use and transfer of private and personal information, and financial institutions and insurance companies complying with their own internal privacy policy statements.

(4) Every financial institution, insurance company, and affiliate must establish reasonable safeguards to ensure the confidentiality and safety of private and personal information.

(5) An agreement or agreements to comply with this section for an affiliate or third party must be made available to the requestor within fourteen business days of a written request or sanctions in section 6 of this act apply.

{+ NEW SECTION. +} Sec. 5. 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 which 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 financial 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, 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. Credit unions with deposits under eighteen million dollars are not covered by this chapter.

(5) "Insurance company" means an entity regulated and authorized to conduct business in the state 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) "Private information" means information such as a consumer's social security number, birthday, genetic identifiers, prescription medication usage, and home or personal phone numbers.

(8) "Personal information" means information such as internal account numbers, 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, transaction histories, significant changes in account balance or debt information, tax identification numbers, state identicaid numbers issued by the department of licensing, passwords, and personal identification numbers.

(9) "Public information" means a consumer's name, business address, business telephone numbers, residential address, e-mail address, and world wide web usage data.

{+ NEW SECTION. +} Sec. 6. CONSUMER PROTECTION RIGHT OF ACTION.

(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;

(c) A violation of any of the provisions specified in this chapter, or in rule; and

(d) Monetary damages arising from violations.

(2) A person found in violation of this chapter must pay damages equal to actual monetary damages, compensation for inconvenience and time lost to remedy the problem, and reasonable attorneys' fees.

(3) A court or jury may increase damages for consumers and members of a class action in an amount not to exceed one million dollars upon a demonstration, by a preponderance of the evidence, that a violation of this chapter was done with gross indifference to the consumer or consumers, and monetary damages resulted. Any fines levied by rule or existing legal authority do not exclude the financial privacy right of action.

{+ NEW SECTION. +} Sec. 7. Section 1 of this act does not apply to disclosure of personal information under the following circumstances:

(1) Disclosure to or at the direction or with the consent of the consumer upon his or her request and upon proper identification;

(2) Disclosure required by federal, state, or local laws, or administrative regulations or rules, or other applicable legal requirements;

(3) 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;

(4) 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 4 of this act;

(5) Disclosure to protect the confidentiality or security of the financial institution's records;

(6) Disclosure to protect against, investigate, or prevent actual or potential fraud or unauthorized transactions, claims, or other liability;

(7) Disclosure as part of a risk control program required by or subject to examination by regulators;

(8) 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.);

(9) 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 4 of this act;

(10) 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;

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

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

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

(14) Disclosure after the successful merger of companies covered by the scope of the act for functional business purposes.

{+ NEW SECTION. +} Sec. 8. 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. 9. Captions used in this act are not any part of the law.

{+ 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.

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