

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 735

AN ACT Relating to the privacy of financial, medical, and other personal information; 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. FINDINGS. The citizens of the state of Washington find and declare that:

(1) Individuals should have control over their personal information and should have the power to decide about the collection, use, and disclosure of information about them. This information may reflect the individual's intimate life, including financial and medical conditions, spending and travel habits, lifestyles, associations, work practices, and political and religious interests.

(2) Despite the strong concern individuals have in preserving the confidentiality of their personal information, transactional data and other information from different sources are often collected in a single place, compiled in dossier form, and routinely sold or otherwise made available to insurance companies, prospective employers, lenders, and others, including private investigators. These computerized profiles may contain the most sensitive personal information such as birth date, social security number, credit header information, unlisted phone number, medical data, bank account numbers, PIN numbers, mother's maiden name, long distance and cell phone records, credit card purchases, driver license information, credit history, Internet browsing and purchasing habits, and employment information.

(3) The rapid evolution of technology enables many individuals and entities to gain access to private, personally identifiable information without the knowledge or consent of the individual to whom the information relates. As a result, there has been a dramatic proliferation of large electronic data bases containing an array of sensitive details about Washington residents. The existence of these data bases and the disclosure of confidential information has led to numerous adverse consequences including: (a) The rapid increase in identity fraud crimes; (b) the proliferation of fraudulent, misleading, intrusive, and deceptive telephone, direct mail, or Internet solicitations; (c) undue embarrassment for individuals who have had information revealed without their consent; and (d) the dissemination

of incorrect information that has led to the denial or refusal of housing, employment, insurance, and other goods and services.

(4) Washington's citizens have a right to privacy and a reasonable expectation that the personal information that they provide in commercial transactions will be kept private and confidential. Every business has an affirmative and continuing obligation to respect the privacy of its consumers and to protect the security and confidentiality of consumer information.

(5) No uniform law exists that creates a standard of conduct for businesses to collect, use, and disclose personal information, and it is in the public's and state's interest to establish protections for Washington citizens.

{+ NEW SECTION. +} Sec. 2. COLLECTION OF PERSONAL INFORMATION.

(1) Except as required or expressly permitted by federal or state law, a business may collect personal information only with permission from the individual to whom the information relates.

(2) For the function of performing a consumer-related request, a business:

(a) May require the consumer to provide only personal information reasonably necessary to process the request and must clearly state that any additional information is optional;

(b) May require disclosure of the consumer's social security account number only after providing the consumer, in writing, the citation and text of the statutory authority that requires providing the number, and a description of how the number will be used;

(c) May not deny goods, services, or discounts to the consumer for refusal to provide optional information or to authorize nonessential uses or disclosures.

(3) A business is responsible for the integrity, confidentiality, and security of personal information in its possession or custody, including information it has disclosed to an affiliate or nonaffiliated third party.

{+ NEW SECTION. +} Sec. 3. USE AND DISCLOSURE OF PERSONAL INFORMATION.

(1) Except as required or expressly permitted by federal or state law, a business may use personal information or disclose the information to an affiliate or nonaffiliated third party only for the purposes for which it was originally collected, unless the business obtains permission from the individual to whom the information relates.

(2) For the function of fulfilling a consumer-requested purpose, a business may disclose personal information to an affiliate or nonaffiliated third party only for the purposes for which it was originally collected, and if the affiliate or nonaffiliated third party agrees not to use or redisclose the information for any purpose other than that originally authorized or as required by law.

(3) Nothing in this chapter prohibits the disclosure of applicable information:

(a) That is not personally identifiable to the individual, or is public information;

(b) To the consumer upon his or her request and upon presentation of appropriate identification, or to an individual who is legally empowered by the consumer to obtain the information;

(c) To another individual if the person demonstrates that he or she has obtained the permission of the individual who is the subject of the information;

(d) To a governmental, regulatory, or self-regulatory authority, or consumer reporting agency, as required by federal or state law, for use

solely in accordance with that law;

(e) To a court of competent jurisdiction, or under a search warrant, court order, or subpoena, including an administrative subpoena;

(f) In the case of a claim or litigation between the individual and a company, to a counsel or other individual involved in the resolution of the dispute; or

(g) To a person who needs the information because of an emergency that threatens the life or health of the individual to whom the information relates.

(4) Nothing in this chapter restricts the use, disclosure, or retention of personal information by a nonprofit organization or a not for profit organization for the purposes of membership contact or solicitation of contributions. A nonprofit organization or a not for profit organization is an entity as defined in chapter 24.03 RCW or that has been granted tax-exempt status under 26 U.S.C. Sec. 501.

(5) For the purposes of this section, the sale for profit of state records containing personal information is a commercial activity.

(6) Except to the extent otherwise provided by law, the restrictions upon the disclosure of personal information as provided in this chapter ceases upon the death of the person to whom it refers, and if disclosure of the information does not contain personal information about another individual.

{+ NEW SECTION. +} Sec. 4. FURTHER PROTECTIONS FOR FINANCIAL AND MEDICAL INFORMATION. (1) Except as required or expressly permitted by federal or state law, a business may use financial or medical information or disclose the information only for the purposes for which it was originally collected, unless the business has obtained signed permission from the individual to whom the information relates.

(2) A business may obtain signed permission for additional use of financial or medical information or additional disclosure of financial or medical information to an affiliate or nonaffiliated third party, only if:

(a) The business supplies the individual with a written notification of the following:

(i) The information to be used or disclosed;

(ii) The new use of the information or the purpose for which the new disclosure of information will be made;

(iii) The entity or entities authorized to receive the disclosure of information; and

(iv) The expiration date for authorization for use of the information, which date is no more than one year from the signing date of the permission;

(b) The entity or entities to whom the information is transferred or disclosed is aware of its legal obligation and is subject to a contractual obligation not to use or redisclose the information for any purpose other than that stated in the notification;

(c) The individual has the opportunity to withdraw permission at any time, subject to legal or contractual restrictions and thirty days' notification.

(3) Except as required by law or court order, a business that fulfills a request for financial or medical information under section 3(3) (c) through (g) of this act about a specific individual shall send a written notice to the individual that the disclosure was made. The written notification must contain the name of the person and entity who requested access to the individual's information, the date of the request, and a description of the information provided. Upon request

by the individual, the business shall also provide a copy of the information provided.

(4) A business shall establish reasonable safeguards to ensure the confidentiality and safety of financial or medical information and to protect it from loss, misuse, theft, and unauthorized access, disclosure, destruction, or alteration.

(5) A business that sells, leases, shares, transfers, exchanges, or otherwise discloses financial or medical information shall keep for a period of three years, records identifying each entity that receives information, the type of information disclosed, the authorized purpose for which the information was to be used, and the identity of the individual about whom the information relates and shall make the records available to the individual upon request.

(6) This section does not prevent the use of information in research activities, and for use in producing statistical reports, so long as the personal identifiers have been deleted and any personal information is not published, redisclosed, or used to contact the individual. Additionally, for the purpose of medical research, signed permission for use of personally identifiable information must be obtained for information that is collected after the effective date of this act, and the expiration for authorization must be no more than five years from the signing date of the permission.

{+ NEW SECTION. +} Sec. 5. ACCURACY OF FINANCIAL AND MEDICAL INFORMATION. (1) Financial and medical information should be as accurate, complete, and up-to-date as warranted by the use and sensitive nature of the information. Upon request by an individual and upon presentation of appropriate identification, a business in possession of financial or medical information about the individual shall:

(a) Provide to the individual the personal information about him or her maintained by the business;

(b) Permit the individual to verify any information about him or her maintained by the company;

(c) Permit the individual to correct any error in his or her information, and in case of dispute provide the individual with a reasonable resolution process;

(d) Permit the individual to delete or destroy his or her information, subject to legal or contractual restrictions;

(e) Disclose to the individual the use or uses of his or her information and the names of any affiliates, nonaffiliated third parties, or internal divisions that have access to the information;

(f) Acknowledge, in writing, the request within ten days, and process the request within thirty days; and

(g) Provide the consumer-requested information free of charge annually and provide additional copies at a fee not to exceed eight dollars per report.

(2) A business in possession of financial or medical information shall make readily available to individuals free of charge its specific privacy policies and practices relating to the management of personal information and the requirements of this chapter.

{+ NEW SECTION. +} Sec. 6. PERSONAL INFORMATION RETENTION. (1) Except as required by federal or state law, personal information may be retained only as long as necessary for the fulfillment of the consumer-requested purposes. Personal information that is no longer required to fulfill these purposes must be destroyed, erased, or made anonymous unless permission from the consumer is first obtained.

(2) Personal information that has been used to make a decision about an individual must be retained long enough to allow the individual access to the information after the decision has been made.

(3) A business that currently maintains personal information on a national basis, without permission from the individual to whom the information relates shall obtain permission, or in the alternative destroy, erase, or make anonymous the information within sixty days after the effective date of this act.

{+ NEW SECTION. +} Sec. 7. DEFINITIONS. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Affiliate" means a business that controls, is controlled by, or is under common control or common ownership with another entity.

(2) "Business" means an individual, partnership, corporation, or other nonpublic entity engaged in commercial activities that involve the electronic data base storage of personal information regarding a Washington resident, but excluding an activity solely for journalistic, artistic, or literary purposes.

(3) "Consumer" means a natural person who purchases, leases, or otherwise contracts for goods or services that are primarily used for personal, family, or household purposes, and also means the legal representative of such an individual.

(4) "Consumer-requested purpose" means for the explicitly specified, and legitimate purpose of completing a transaction, establishing a business relationship, or providing a product or service, requested by the consumer.

(5) "Disclose" means to engage in a practice or conduct to make available and known personal information contained in a record about a person to another person, organization, or entity.

(6) "Financial information" means information identifiable to an individual that concerns the amount and conditions of an individual's assets, liabilities, or credit, including but not limited to account numbers and balances, transactional information concerning an account, codes, passwords, mother's maiden name, social security numbers, tax identification numbers, driver's license or permit numbers, state identicard numbers issued by the department of licensing, purchasing habits, and other information held for the purpose of account access or transaction initiation.

(7) "Medical information" means information that is personally identifiable to an individual or that can be associated with the identity of an individual and directly relates to an individual's medical status or condition. The term includes a record of disclosures of medical information.

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

(9) "Permission" means with the knowledge and affirmative consent by an individual before the collection, storage, use, or disclosure of the information.

(10) "Personal information" means information that can be associated with a particular individual through one or more identifiers or other information or circumstances but is not public information. Personal information does not include records containing information listed in a local phone directory plus city, state, and zip code unless additional identifiers are also included in the record.

(11) "Public information" means information about or relating to an

individual that has been obtained originally from the records of a federal, state, or local government entity that are open for public inspection.

(12) "Signed permission" means a dated statement freely signed by an individual giving permission and is separate and distinct from any other document, and that contains a description of the information sought to be used or disclosed. If a consumer elects to supply an electronic signature, signature validation must comply with chapter 19.34 RCW, the Electronic Authentication Act.

{+ NEW SECTION. +} Sec. 8. VIOLATION AN UNFAIR OR DECEPTIVE ACT.

(1) Unfair or deceptive invasion of privacy rights is not reasonable in relation to the development and preservation of business. The people find that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the Consumer Protection Act, chapter 19.86 RCW. A violation of this chapter is an unfair or deceptive act in trade or commerce for the purpose of applying the Consumer Protection Act, chapter 19.86 RCW.

(2) A violation of this chapter, other than section 4 of this act, is punishable by a fine up to five hundred dollars per violation.

(3) A willful violation of section 4 of this act is a misdemeanor punishable by a fine up to three thousand dollars per violation and possible forfeiture of all income resulting from the violation.

(4) Damages to a person who has been the victim of a violation of this chapter, other than section 4 of this act, are liquidated damages of five hundred dollars per violation, or actual damages, whichever is greater. A court may increase the award of damages in an amount not more than three times the actual damages sustained, or one thousand five hundred dollars per violation, whichever is greater, upon a demonstration that a violation of the chapter was willful.

(5) Damages to a person who has been the victim of a violation of section 4 of this act are liquidated damages of one thousand dollars per violation, or actual damages, whichever is greater. A court may increase the award of damages in an amount not more than three times the actual damages sustained, or three thousand dollars per violation, whichever is greater, upon a demonstration that a violation of the section was willful.

(6) In addition to the remedies provided otherwise in this section, a person whose rights have been violated under this chapter may enjoin future violations and shall recover the reasonable attorneys' fees and other litigation costs reasonably incurred and other equitable relief as the court may order.

{+ NEW SECTION. +} Sec. 9. INTERPRETATION. The provisions of this chapter must be construed liberally for the accomplishment of the purposes of this chapter. Nothing contained in this chapter repeals other state law relating to privacy or the dissemination of private information. Nothing contained in this chapter may be construed to deny the right of a person to institute an action or pursue a civil or criminal remedy based upon an alleged violation of his or her common law rights or federal or state statutory rights.

{+ NEW SECTION. +} Sec. 10. SEVERABILITY. 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. 11. CAPTIONS NOT LAW. Section captions

used in this chapter are not part of the law.

{+ NEW SECTION. +} Sec. 12. CODIFICATION. Sections 1 through 11 of this act constitute a new chapter in Title 19 RCW.

{+ NEW SECTION. +} Sec. 13. EFFECTIVE DATE. This act takes effect July 4, 2001.

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