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**SUBSTITUTE HOUSE BILL 2838**

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**State of Washington                      60th Legislature                      2008 Regular Session**

**By** House Insurance, Financial Services & Consumer Protection  
(originally sponsored by Representatives Williams, Roach, Kirby,  
Simpson, Ericks, and Haler)

READ FIRST TIME 02/05/08.

1            AN ACT Relating to personal information associated with debit and  
2 credit cards issued by financial institutions; and adding a new section  
3 to chapter 19.255 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            NEW SECTION.    **Sec. 1.** A new section is added to chapter 19.255 RCW  
6 to read as follows:

7            (1) Notwithstanding any other provision of law or contract, and in  
8 addition to other remedies provided by law, any person or business that  
9 is required to disclose a breach of the security of the system under  
10 RCW 19.255.010, if that breach was comprised of five thousand or more  
11 unencrypted individual names or account numbers, shall be liable to a  
12 financial institution in negligence for actions reasonably undertaken  
13 in order to protect consumers including, but not limited to, any costs  
14 incurred in connection with:

15            (a) The cancellation or reissuance of an access device affected by  
16 the breach;

17            (b) The closing of a deposit, transaction, checking, share draft,  
18 or other account affected by the breach and any action to stop payment  
19 or block a transaction with respect to the account;

1 (c) The opening or reopening of a deposit, transaction, checking,  
2 share draft, or other account affected by the breach;

3 (d) A refund or credit made to an account holder to cover the cost  
4 of any unauthorized transaction related to the breach;

5 (e) The notification of account holders affected by the breach;

6 (f) Credit monitoring services on accounts affected by the breach  
7 for a period of one year from the time the issuer of the access device  
8 is notified of the breach; and

9 (g) Reasonable attorneys' fees and costs associated with the  
10 action.

11 (2) A person or business will not be liable under this section if  
12 the person or business providing the data breach notice met industry  
13 standards for the handling, processing, and storage of personal  
14 information, maintained a policy on the treatment of personal  
15 information, and consistently provided training to staff on this policy  
16 at the time of the data breach.

17 (3) In an action under this section, a financial institution that  
18 provided or approved equipment used to process payment transactions, to  
19 a person or business, will be precluded from recovering under this  
20 section against the person or business, provided that the breach of the  
21 security of the system was directly related to the equipment provided  
22 or approved by the financial institution, and the equipment was being  
23 used in the manner recommended by the financial institution.

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

26 (a) "Access device" has the same meaning as in RCW 9A.56.010.

27 (b) "Breach of the security of the system" has the same meaning as  
28 in RCW 19.255.010.

29 (c) "Financial institution" has the same meaning as in RCW  
30 30.22.040.

31 (d) "Unencrypted" means that the personal information was not  
32 transformed using an algorithm making the information unreadable to  
33 anyone except those possessing a key, using standards appropriate for  
34 the industry at the time of the breach of the security of the system.

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