

CERTIFICATION OF ENROLLMENT
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1149

61st Legislature
2010 Regular Session

Passed by the House March 6, 2010
Yeas 65 Nays 30

Speaker of the House of Representatives

Passed by the Senate March 2, 2010
Yeas 45 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1149** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1149

AS AMENDED BY THE SENATE

Passed Legislature - 2010 Regular Session

State of Washington 61st Legislature 2010 Regular Session

By House Financial Institutions & Insurance (originally sponsored by Representatives Williams, Roach, Simpson, Kirby, Dunshee, Nelson, and Ormsby)

READ FIRST TIME 01/21/10.

1 AN ACT Relating to protecting consumers from breaches of security;
2 adding a new section to chapter 19.255 RCW; creating new sections; and
3 providing an effective date.

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

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

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

18 (1) For purposes of this section:

1 (a) "Account information" means: (i) The full, unencrypted
2 magnetic stripe of a credit card or debit card; (ii) the full,
3 unencrypted account information contained on an identification device
4 as defined under RCW 19.300.010; or (iii) the unencrypted primary
5 account number on a credit card or debit card or identification device,
6 plus any of the following if not encrypted: Cardholder name,
7 expiration date, or service code.

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

10 (c) "Business" means an individual, partnership, corporation,
11 association, organization, government entity, or any other legal or
12 commercial entity that processes more than six million credit card and
13 debit card transactions annually, and who provides, offers, or sells
14 goods or services to persons who are residents of Washington.

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

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

18 (f) "Encrypted" means enciphered or encoded using standards
19 reasonable for the breached business or processor taking into account
20 the business or processor's size and the number of transactions
21 processed annually.

22 (g) "Financial institution" has the same meaning as in RCW
23 30.22.040.

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

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

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

37 (2) Processors, businesses, and vendors are not liable under this
38 section if (a) the account information was encrypted at the time of the

1 breach, or (b) the processor, business, or vendor was certified
2 compliant with the payment card industry data security standards
3 adopted by the payment card industry security standards council, and in
4 force at the time of the breach. A processor, business, or vendor will
5 be considered compliant, if its payment card industry data security
6 compliance was validated by an annual security assessment, and if this
7 assessment took place no more than one year prior to the time of the
8 breach. For the purposes of this subsection (2), a processor,
9 business, or vendor's security assessment of compliance is
10 nonrevocable. The nonrevocability of a processor, business, or
11 vendor's security assessment of compliance is only for the purpose of
12 determining a processor, business, or vendor's liability under this
13 subsection (2).

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

28 (b) A vendor, instead of a processor or business, is liable to a
29 financial institution for the damages described in (a) of this
30 subsection to the extent that the damages were proximately caused by
31 the vendor's negligence and if the claim is not limited or foreclosed
32 by another provision of law or by a contract to which the financial
33 institution is a party.

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

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

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

8 (7) The remedies under this section are cumulative and do not
9 restrict any other right or remedy otherwise available under law,
10 however a trier of fact may reduce damages awarded to a financial
11 institution by any amount the financial institution recovers from a
12 credit card company in connection with the breach, for costs associated
13 with access card reissuance.

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

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

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