

CERTIFICATION OF ENROLLMENT

**ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1149**

Chapter 151, Laws of 2010

61st Legislature  
2010 Regular Session

FINANCIAL INFORMATION--SECURITY BREACHES--CREDIT AND DEBIT CARDS

EFFECTIVE DATE: 07/01/10

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

FRANK CHOPP

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**Speaker of the House of Representatives**

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

BRAD OWEN

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**President of the Senate**

Approved March 22, 2010, 2:25 p.m.

CHRISTINE GREGOIRE

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**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.

BARBARA BAKER

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**Chief Clerk**

FILED

March 22, 2010

**Secretary of State  
State of Washington**

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**ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1149**

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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.

Passed by the House March 6, 2010.

Passed by the Senate March 2, 2010.

Approved by the Governor March 22, 2010.

Filed in Office of Secretary of State March 22, 2010.