

2010 Legislative Report

Washington State Department of Financial Institutions

E2SHB 1149 (Chapter 151, Laws of 2010) Protecting Consumers from Breaches of Security

Effective Date: July 1, 2010

The bill modifies the state security breach law. It provides a cause of action for a financial institution if account information is compromised by a lack of reasonable care by a business, processor, or vendor. The bill states that businesses that process more than six million credit and debit card transactions and processors are liable to a financial institution for a failure to exercise reasonable care through encryption of account information when such failure is the proximate cause of a breach of security. Vendors are liable to a financial institution to the extent that the damages are due to a defect in the vendor's software or equipment related to the encryption. A claim against a vendor may be limited or forestalled by another provision of law or by a contract with the financial institution.

The bill allows a financial institution to recover reasonable actual costs for issuing new credit cards and debit cards to its account holders that live in Washington. The new law provides immunity for a business, processor, or vendor if the breached account information was encrypted; or the business, processor, or vendor was certified compliant with security standards adopted by the Payment Card Industry Security Standards Council. The compliance must have been established by an annual security assessment that occurred less than 12 months prior to breach of security.

2SHB 2603 (Chapter 194, Laws of 2010) Requiring Agencies to Give Small Businesses an Opportunity to Comply with a State Law or Agency Rule before Imposing a Penalty

Effective Date: June 10, 2010

The new law states that agencies must provide a small business with a copy of the state law or agency rule being violated and must allow a period of at least two business days for the small business to correct the violation before the agency imposes a fine, a civil penalty, or an administrative sanction. The act defines small business as a business with a gross revenue of less than \$7 million annually as well as a business with 250 or fewer employees. If no correction is possible, or if an agency is acting in response to a complaint made by a third party who would be disadvantaged by correction of the violation, then no correction is required.

There are several exceptions to the new law: a determination that the effect of the violation or waiver presents a direct danger to the public health, results in a loss of income or benefits to an employee, poses a potentially significant threat to human health or the environment, or causes serious harm to the public interest; the violation involves a small business that knowingly or willfully engaged in conduct that may result in a felony conviction; the requirement for a notification or waiver conflicts with federal law or program requirements, federal requirements that are a prescribed condition to the allocation of federal funds, or requirements for eligibility of employers in this state for federal unemployment tax credits; the small business committing the violation previously violated the same or a similar law or agency rule; or the owner or operator of the small business previously violated the same or similar law or rule under a different small business.

ESHB 2564 (Chapter 34, Laws of 2010) Regarding Escrow Agents

Effective Date: June 10, 2010

The exemption from escrow agent licensure for those licensed to practice law is limited. The exemption only applies when no separate compensation or gain is received for escrow services, and the service is provided by the same legal entity as the law practice. Applicants for an escrow license must undergo a fingerprint-based background check. The bill also mandates that owners and corporate officers of escrow companies must have bonds that cover their own malfeasance. There are provisions for Department of Financial Institutions (DFI) to wind up an escrow business. In addition, DFI has the authority to require escrow companies to pay restitution to injured consumers. A licensed escrow agent may not employ a person who handles escrow transactions who has been convicted of, or pled guilty or nolo contendere to, a felony or gross misdemeanor involving dishonesty within the previous seven years; or receives money for trust accounts, disburses funds, or acts as a signatory on trust accounts if the person has shown a disregard in the management of his or her financial condition in the last three years.

HB 2608 (Chapter 35, Laws of 2010) Concerning the Regulation and Licensing of Residential Mortgage Loan Servicers and Third Party Loan Modification Service Providers

Effective Date: July 1, 2010

The law requires licensure of residential loan servicers and clarifies licensure of third party loan modification service providers. The law creates prohibited practices for loan servicers, and a licensing regime for loan servicers under the Consumer Loan Act. It also limits third party loan modification service providers to an up front fee of \$750.00, and requires that they give consumers a written disclosure summary of the material terms of their services. Modification service providers may not charge total fees in

excess of what is usual and customary or that are not unreasonable in light of the services provided. Modification providers must immediately inform the borrower in writing if additional information is needed or if it becomes apparent that a residential loan modification is not possible; and not require or encourage a borrower to: (1) waive legal rights or notices, (2) pay charges that are not in the written contract, or (3) cease communication with the lender, investor or loan servicer. Provisions related to mortgage fraud are expanded to include persons modifying a residential mortgage loan.

E2SHB 2617 (Chapter 7, 2010 Laws First Special Session) Eliminating Certain Boards and Commissions; Reducing Travel Allowance for Others

Effective Date: For Mortgage Broker Commission June 30, 2010, for Escrow Commission July 1, 2010

Forty-five statutory boards, commissions, committees, or councils are eliminated. Those boards, commission, councils, or committees eliminated as of June 30, 2010, include the Mortgage Broker Commission. Beginning July 1, 2010, through June 30, 2011, some boards, commissions, councils, or committees funded by sources other than the State General Fund are encouraged to reduce travel, lodging, and other costs including using other meeting forums that do not require travel. This includes the Escrow Commission.

EHB 2830 (Chapter 87, Laws of 2010) Addressing Credit Unions Regulatory Enforcement Powers

Effective Date: March 17, 2010

The new law adds tools to permit stronger regulatory oversight and earlier enforcement over troubled credit unions. The law allows earlier intervention when a credit union becomes undercapitalized. The Department of Financial Institutions (DFI) has the authority to intervene in a credit union's business before the credit union has completely depleted its value, so as to enable the potential rehabilitation of the credit union. The legislation provides the Department with an improved ability to suspend credit union directors for harmful activities. In addition, the Department can fine credit unions for material violations of the credit union act or rules.

**SHB 2831 (Chapter 88, Laws of 2010)
Regulating State Chartered Commercial Banks, Trust Companies,
Savings Banks, and their Holding Companies**

Effective Date: March 17, 2010

The new law gives the Department of Financial Institutions (DFI) enforcement authority over bank holding companies. It also improves the enforcement authority of DFI with regard to institutions that are less than well capitalized. The law brings DFI enforcement authority in line with federal standards of prompt corrective action for institutions that are less than well capitalized. The factors that are used by DFI in closing a bank that is in an unsafe and unsound condition are clarified.

**SSB 6202 (Chapter 133, Laws of 2010)
Expanding Provisions Relating to Vulnerable Adults**

Effective Date: June 10, 2010

A financial institution, including broker-dealers or investment advisors, which reasonably believes that financial exploitation of a vulnerable adult has occurred may, but is not required to, refuse a transaction pending investigation by the financial institution, Department of Social and Health Services (DSHS), or law enforcement. The financial institution and its employees are immune from civil liability for making this determination in good faith. The financial institution must provide notice to all interested persons if the financial institution has contact information, and notify law enforcement and DSHS. The hold of a transaction must expire after five business days, or ten business days if the transaction involves a sale of securities, unless extended by court order. Financial institutions must ensure that existing employees who have contact with customers and account information receive training concerning the financial exploitation of vulnerable adults.

**SB 6219 (Chapter 139, Laws of 2010)
Funding Sources for Time Certificates of Deposit**

Effective Date: June 10, 2010

Under the new law Local Government Investment Pool funds are eligible to be deposited into the Time Certificate of Deposit Program (TCD) for investment in public depositories. The State Treasurer may choose to deposit part of the funds that are certified as eligible for deposit into the TCD program, rather than having to deposit all of them.

**SSB 6298 (Chapter 36, Laws of 2010)
Authorizing Limited Deposits of Public Funds with Credit Unions**

Effective Date: July 1, 2011

The new law allows state chartered credit unions to accept public deposits that total, for each public depositor, up to the lesser of \$100,000 or the maximum deposit insured by the federal deposit insurance program.

**SSB 6367 (Chapter 69, Laws of 2010)
Allowing Agencies to Direct Requesters to their Website for Public Records Requests**

Effective Date: June 10, 2010

An agency may provide an Internet address and link on the agency's website to in response to a public records request. If the requester informs the agency that he or she cannot access records through the Internet, the agency must provide hard copies or allow the requester to view copies on the agency computer.

**SSB 6371 (Chapter 73, Laws of 2010)
Concerning Money Transmitters**

Effective Date: June 10, 2010

The law clarifies that the activities of money transmitters regarding open-loop stored value devices are subject to regulation by the Department of Financial Institutions (DFI). DFI's annual assessments on licensed money transmitters are now based on the dollar volume of transactions rather than on the number of physical locations where each money transmitter does business.