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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2007

A N A C T

RELATING TO CRIMINAL OFFENSES -- IDENTITY THEFT PROTECTION

Introduced By: Representatives Gemma, Petrarca, Picard, Mattiello, and Ucci

Date Introduced: January 18, 2007

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 11-49.2-4 and 11-49.2-7 of the General Laws in Chapter 11-49.2  
2 entitled "Identity Theft Protection" are hereby repealed in their entirety:

3 ~~11-49.2-4. Notification of breach -- Consultation with law enforcement. [Effective~~  
4 ~~March 1, 2006.]-- Notification of a breach is not required if, after an appropriate investigation or~~  
5 ~~after consultation with relevant federal, state, or local law enforcement agencies, a determination~~  
6 ~~is made that the breach has not and will not likely result in a significant risk of identity theft to the~~  
7 ~~individuals whose personal information has been acquired.~~

8 ~~11-49.2-7. Agencies with security breach procedures. [Effective March 1, 2006.]--~~  
9 ~~Any state agency or person that maintains its own security breach procedures as part of an~~  
10 ~~information security policy for the treatment of personal information and otherwise complies with~~  
11 ~~the timing requirements of section 11-49.2-3, shall be deemed to be in compliance with the~~  
12 ~~security breach notification requirements of section 11-49.2-3, provided such person notifies~~  
13 ~~subject persons in accordance with such person's policies in the event of a breach of security. Any~~  
14 ~~person that maintains such a security breach procedure pursuant to the rules, regulations,~~  
15 ~~procedures or guidelines established by the primary or functional regulator, as defined in 15 USC~~  
16 ~~6809(2), shall be deemed to be in compliance with the security breach notification requirements~~  
17 ~~of this section, provided such person notifies subject persons in accordance with the policies or~~  
18 ~~the rules, regulations, procedures or guidelines established by the primary or functional regulator~~  
19 ~~in the event of a breach of security of the system. A financial institution, trust company, credit~~

~~union or its affiliates that is subject to and examined for, and found in compliance with the Federal Interagency Guidelines on Response Programs for Unauthorized Access to Customer Information and Customer Notice shall be deemed in compliance with this chapter. A provider of health care, health care service plan, health insurer, or a covered entity governed by the medical privacy and security rules issued by the federal Department of Health and Human Services, Parts 160 and 164 of Title 45 of the Code of Federal Regulations, established pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) shall be deemed in compliance with this chapter.~~

SECTION 2. Sections 11-49.2-2, 11-49.2-3, 11-49.2-5 and 11-49.2-6 of the General Laws in Chapter 11-49.2 entitled "Identity Theft Protection" are hereby amended to read as follows:

**11-49.2-2. Legislative findings. [Effective March 1, 2006.]** -- It is hereby found and declared as follows:

(1) There is a growing concern regarding the possible theft of an individual's identity and a resulting need for measures to protect the privacy of personal information. It is the intent of the general assembly to ensure that personal information about Rhode Island residents is protected. To that end, the purpose of this chapter is to require businesses that own or license personal information about Rhode Islanders to provide reasonable security for that information. For the purpose of this chapter, the phrase "owns or licenses" is intended to include, but is not limited to, personal information that a business retains as part of the business' internal customer account or for the purpose of using that information in transactions with the person to whom the information relates.

(2) A business that owns or licenses ~~computerized unencrypted~~ personal information about a Rhode Island resident shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure.

(3) A business that discloses ~~computerized unencrypted~~ personal information about a Rhode Island resident pursuant to a contract with a nonaffiliated third-party shall require by contract that the third-party implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure.

(4) The provisions of this chapter do not apply to any of the following:

(i) A provider of health care, health care service plan, or a covered entity governed by the medical privacy and security rules issued by the federal Department of Health and Human

1 [Services, Parts 160 and 164 of Title 45 of the Code of Federal Regulations, established pursuant](#)  
2 [to the Health Insurance Portability and Availability Act of 1996 \(HIPAA\).](#)

3 [\(ii\) A business that is regulated by state or federal law providing greater protection to](#)  
4 [personal information than that provided by this chapter in regard to the subjects addressed by this](#)  
5 [chapter. Compliance with that state or federal law shall be deemed to be in compliance with this](#)  
6 [chapter with regard to those subjects. The provisions of this subdivision shall not relieve a](#)  
7 [business from a duty to comply with any other requirements of other state and federal law](#)  
8 [regarding the protection and privacy of personal information.](#)

9 **11-49.2-3. Notification of breach. [Effective March 1, 2006.]** -- (a) Any ~~state agency or~~  
10 person [or business](#) that [conducts business in the state](#) owns, ~~maintains~~ or licenses computerized  
11 data that includes personal information, shall disclose any breach of the security of the system  
12 ~~which poses a significant risk of identity theft~~ following discovery or notification of the breach in  
13 the security of the data to any resident of Rhode Island whose unencrypted personal information  
14 was, or is reasonably believed to have been, acquired by an unauthorized person ~~or a person~~  
15 ~~without authority, to acquire said information.~~ The disclosure shall be made in the most expedient  
16 time possible and without unreasonable delay, consistent with the legitimate needs of law  
17 enforcement, as provided in subdivision (c), or any measures necessary to determine the scope of  
18 the breach and restore the reasonable integrity of the data system.

19 (b) Any ~~state agency or~~ person [or business](#) that maintains computerized ~~unencrypted~~ data  
20 that includes personal information that the ~~state agency or~~ person [or business](#) does not own shall  
21 notify the owner or licensee of the information of any breach of the security of the data ~~which~~  
22 ~~poses a significant risk of identity theft~~ immediately; following discovery, if the personal  
23 information was, or is reasonably believed to have been, acquired by an unauthorized person.

24 (c) The notification required by this section may be delayed if a law enforcement agency  
25 determines that the notification will impede a criminal investigation. The notification required by  
26 this section shall be made after the law enforcement agency determines that it will not  
27 compromise the investigation.

28 ~~(d) The notification must be prompt and reasonable following the determination of the~~  
29 ~~breach unless otherwise provided in this section. Any state agency or person required to make~~  
30 ~~notification under this section and who fails to do so promptly following the determination of a~~  
31 ~~breach or receipt of notice from law enforcement as provided for in subsection (c) is liable for a~~  
32 ~~fine as set forth in section 11-49.2-6.~~

33 [\(d\) For purposes of this chapter, "personal information" does not include publicly](#)  
34 [available information that is lawfully made available to the general public from federal, state, or](#)

1 [local government records.](#)

2 **11-49.2-5. Definitions. [Effective March 1, 2006.]** -- The following definitions apply to  
3 this ~~section~~ [chapter](#):

4 ~~(a) "Person" shall include any individual, partnership, association, corporation or joint~~  
5 ~~venture.~~

6 ~~(b)~~ (a) For purposes for this ~~section~~ [chapter](#), "breach of the security of the system"  
7 means unauthorized acquisition of unencrypted computerized data that compromises the security,  
8 confidentiality, or integrity of personal information maintained by the state agency or person.  
9 Good faith acquisition of personal information by an employee or agent of the agency for the  
10 purposes of the agency is not a breach of the security of the system; provided, that the personal  
11 information is not used or subject to further unauthorized disclosure.

12 ~~(c) For purposes of this section, "personal information" means an individual's first name~~  
13 ~~or first initial and last name in combination with any one or more of the following data elements,~~  
14 ~~when either the name or the data elements are not encrypted:~~

15 ~~(1) Social security number;~~

16 ~~(2) Driver's license number or Rhode Island Identification Card number;~~

17 ~~(3) Account number, credit or debit card number, in combination with any required~~  
18 ~~security code, access code, or password that would permit access to an individual's financial~~  
19 ~~account.~~

20 [\(b\) "Business" means a sole proprietorship, partnership, corporation, association, or other](#)  
21 [group, however, organized and whether or not organized to operate at a profit, including a](#)  
22 [financial institution organized, chartered, or holding a license or authorization certificate under](#)  
23 [the law of this state, any other state, the United States, or of any other country, or the parent or the](#)  
24 [subsidiary of a financial institution. The term includes an entity that destroys records.](#)

25 [\(c\) "Customer" means an individual who provides personal information to a business for](#)  
26 [the purpose of purchasing or leasing a product or obtaining a service from the business.](#)

27 [\(d\) "Individual" means a natural person.](#)

28 [\(e\) "Medical information" means any individually identifiable information, in electronic](#)  
29 [or physical form, regarding the individual's medical history or medical treatment or diagnosis by](#)  
30 [a health care professional.](#)

31 ~~(d)~~ (f) For purposes of this ~~section~~ [chapter](#), "notice" may be provided by one of the  
32 following methods:

33 (1) Written notice;

34 (2) Electronic notice, if the notice provided is consistent with the provisions regarding

1 electronic records and signatures set forth in Section 7001 of Title 15 of the United States Code;

2 (3) Substitute notice, if the state agency or person demonstrates that the cost of providing  
3 notice would exceed twenty-five thousand dollars (\$25,000), or that the affected class of subject  
4 persons to be notified exceeds fifty thousand (\$50,000), or the state agency or person does not  
5 have sufficient contact information. Substitute notice shall consist of all of the following:

6 (A) E-mail notice when the state agency or person has an e-mail address for the subject  
7 persons;

8 (B) Conspicuous posting of the notice on the state agency's or person's website page, if  
9 the state agency or person maintains one;

10 (C) Notification to major statewide media.

11 (g) "Person" shall include any individual, partnership, association, corporation, or joint  
12 venture.

13 (h) "Personal information" means any information that identifies, relates to, describes, or  
14 is capable of being associated with, a particular individual, including, but not limited to, his or her  
15 name, signature, social security number, physical characteristics or description, address,  
16 telephone number, passport number, driver's license or state identification card number, insurance  
17 policy number, education, employment, employment history, bank account number, credit card  
18 number, debit card number, or any other financial information. "Personal information" does not  
19 include publicly available information that is lawfully made available to the general public from  
20 federal, state, or local government records.

21 (i) "Records" means any material, regardless of the physical form, on which information  
22 is recorded or preserved by any means, including in written or spoken words, graphically  
23 depicted, printed, or electromagnetically transmitted. "Records" does not include publicly  
24 available directories containing information an individual has voluntarily consented to have  
25 publicly disseminated or listed, such as name, address, or telephone number.

26 (j) Notwithstanding the provisions of subdivision (f) of this section, a person or business  
27 that maintains its own notification procedures as part of an information security policy for the  
28 treatment of personal information and is otherwise consistent with the timing requirements of this  
29 part, shall be deemed to be in compliance with the notification requirements of this chapter if the  
30 person or business notifies individual persons in accordance with its policies in the event of a  
31 breach of security of the system.

32 **11-49.2-6. Penalties for violation. [Effective March 1, 2006.] --** ~~(a) Each violation of~~  
33 ~~this chapter is a civil violation for which a penalty of not more than a hundred dollars (\$100) per~~  
34 ~~occurrence and not more than twenty five thousand dollars (\$25,000) may be adjudged against a~~

1 ~~defendant.~~

2 ~~(b)~~ (a) No Waiver of Notification. - Any waiver of a provision of this section is contrary  
3 to public policy and is void and unenforceable.

4 (b) Any customer injured by a violation of this title may institute a civil action to recover  
5 damages.

6 (c) In addition, for a willful, intentional, or reckless violation of this chapter, a customer  
7 may recover a civil penalty not to exceed three thousand dollars (\$3,000) per violation; otherwise,  
8 the customer may recover a civil penalty of up to five hundred dollars (\$500) per violation for a  
9 violation of this chapter.

10 (d) Unless the violation is willful, intentional, or reckless, a business that is alleged to  
11 have not provided all the information required or to have provided inaccurate information, as  
12 required by this chapter, may assert as a complete defense in any action in law or equity that it  
13 thereafter provided regarding the information that was alleged to be untimely, all the information,  
14 or accurate information, to all customers who were provided incomplete or inaccurate  
15 information, respectively, within ninety (90) days of the date the business knew that it had failed  
16 to provide the information, timely information, all the information, or the accurate information,  
17 respectively.

18 (e) Any business that violates, proposes to violate, or has violated this title may be  
19 enjoined.

20 (f) A prevailing plaintiff in any action commenced under this chapter shall also be  
21 entitled to recover his or her reasonable attorneys' fees and costs.

22 (g) The rights and remedies available under this section are cumulative to each other and  
23 to any other rights and remedies available under law.

24 SECTION 3. Chapter 11-49.2 of the General Laws entitled "Identity Theft Protection" is  
25 hereby amended by adding thereto the following sections:

26 **11-49.2-3.1 Destruction of records. --** A business shall take all reasonable steps to  
27 destroy, or arrange for the destruction of a customer's records within its custody or control  
28 containing personal information which is no longer to be retained by the business by: (1)  
29 shredding; (2) erasing; or (3) otherwise modifying the personal information in those records to  
30 make it unreadable or undecipherable through any means.

31 **11-49.2-3.2 Record of disclosure. --** Each agency shall keep an accurate accounting of  
32 the date, nature, and purpose of each disclosure of a record made. The accounting shall include  
33 the name, title, and business address of the person or agency to whom the disclosure was made.  
34 For the purpose of an accounting of a disclosure, it shall be sufficient for a law enforcement or

1 regulatory agency to record the date of disclosure, the law enforcement or regulatory agency  
2 requesting the disclosure, and whether the purpose of the disclosure is for an investigation of  
3 unlawful activity under the jurisdiction of the requesting agency, or for licensing, certification, or  
4 regulatory purposes by that agency.

5 **11-49.2-3.3. Time period to maintain records of disclosure.** -- Each agency shall retain  
6 the accounting made for at least three (3) years after the disclosure for which the accounting is  
7 made, or until the record is destroyed, whichever is shorter.

8 Nothing in this section shall be construed to require retention of the original documents  
9 for a three (3) year period, providing that the agency can otherwise comply with the requirements  
10 of this chapter.

11 **11-49.2-.3.4. Sale of information.** -- With respect to the sale of information concerning  
12 the registration of any vehicle or the sale of information from the files of drivers' licenses, the  
13 Department of Motor Vehicles shall, by regulation, establish administrative procedures under  
14 which any person making a request for information shall be required to identify himself or herself  
15 and state the reason for making the request. These procedures shall provide for the verification of  
16 the name and address of the person making a request for the information and the department may  
17 require the person to produce the information as it determines is necessary in order to ensure that  
18 the name and address of the person are his or her true name and address. These procedures may  
19 provide for a ten (10) day delay in the release of the requested information. These procedures  
20 shall also provide for notification to the person to whom the information primarily relates, as to  
21 what information was provided and to whom it was provided. The department shall, by  
22 regulation, establish a reasonable period of time for which a record of all the foregoing shall be  
23 maintained.

24 The procedures required by this subdivision do not apply to any governmental entity, any  
25 person who has applied for and has been issued a requester code by the department, or any court  
26 of competent jurisdiction.

27 **11-49.2-3.5. Disclosure of information.** -- (a) Except as otherwise provided in  
28 subdivision (d), if a business has an established business relationship with a customer and has  
29 within the immediately preceding calendar year disclosed personal information that corresponds  
30 to any of the categories of personal information set forth in paragraph (6) of subdivision (e) to  
31 third-parties, and if the business knows or reasonably should know that the third-parties used the  
32 personal information for the third-parties' direct marketing purposes, that business shall, after the  
33 receipt of a written or electronic mail request, or, if the business chooses to receive requests by  
34 toll-free telephone or facsimile numbers, a telephone or facsimile request from the customer,

1 provide all of the following information to the customer free of charge:

2 (1) In writing or by electronic mail, a list of the categories set forth in paragraph (6) of  
3 subdivision (e) that correspond to the personal information disclosed by the business to third-  
4 parties for the third-parties' direct marketing purposes during the immediately preceding calendar  
5 year.

6 (2) In writing or by electronic mail, the names and addresses of all of the third-parties  
7 that received personal information from the business for the third-parties' direct marketing  
8 purposes during the preceding calendar year and, if the nature of the third-parties' business cannot  
9 reasonably be determined from the third-parties' name, examples of the products or services  
10 marketed, if known to the business, sufficient to give the customer a reasonable indication of the  
11 nature of the third-parties' business.

12 (b)(1) A business required to comply with this chapter shall designate a mailing address,  
13 electronic mail address, or, if the business chooses to receive requests by telephone or facsimile, a  
14 toll-free telephone or facsimile number, to which customers may deliver requests pursuant to  
15 subdivision (a). A business required to comply with this chapter shall, at its election, do at least  
16 one of the following:

17 (A) Notify all agents and managers who directly supervise employees who regularly have  
18 contact with customers of the designated addresses or numbers or the means to obtain those  
19 addresses or numbers and instruct those employees that customers who inquire about the  
20 business' privacy practices or the business' compliance with this chapter shall be informed of the  
21 designated addresses or numbers or the means to obtain the addresses or numbers.

22 (B) Add to the home page of its website, a link either to a page titled "Your Privacy  
23 Rights" or to add the words "Your Privacy Rights," to the home page's link or to the business'  
24 privacy policy. If the business elects to add the words "Your Privacy Rights" to the link to the  
25 business' privacy policy, the words "Your Privacy Rights" shall be in the same style and size of  
26 the link to the business' privacy policy. If the business does not display a link to its privacy  
27 policy on the home page of its website, or does not have a privacy policy, the words "Your  
28 Privacy Rights" shall be written in larger type than the surrounding text, or in contrasting type,  
29 font, or color to the surrounding text of the same size, or set off from the surrounding text of the  
30 same size by symbols or other marks that call attention to the language. The first page of the link  
31 shall describe a customer's rights pursuant to this chapter and shall provide the designated mailing  
32 address, electronic mail address, as required, or toll-free tele phone number or facsimile number,  
33 as appropriate. If the business elects to add the words "Your Rhode Island Privacy Rights" to the  
34 home page's link to the business' privacy policy in a manner that complies with this section, and



1 the first page of the link describes a customer's rights pursuant to this chapter, and provides the  
2 designated mailing address, electronic mailing address, as required, or toll-free telephone or  
3 facsimile number, as appropriate, the business need not respond to requests that are not received  
4 at one of the designated addresses or numbers.

5 (C) Make the designated addresses or numbers, or means to obtain the designated  
6 addresses or numbers, readily available upon request of a customer at every place of business in  
7 Rhode Island where the business or its agents regularly have contact with customers.

8 The response to a request pursuant to this chapter received at one of the designated  
9 addresses or numbers shall be provided within thirty (30) days. Requests received by the  
10 business at other than one of the designated addresses or numbers shall be provided within a  
11 reasonable period, in light of the circumstances related to how the request was received, but not to  
12 exceed one hundred fifty (150) days from the date received.

13 (2) A business that is required to comply with this chapter and Section 6803 of Title 15 of  
14 the United States Code may comply with this section by providing the customer the disclosure  
15 required by Section 6803 of Title 15 of the United States Code, but only if the disclosure also  
16 complies with this chapter.

17 (3) A business that is required to comply with this chapter is not obligated to provide  
18 information associated with specific individuals and may provide the information required by this  
19 chapter in standardized format.

20 (c)(1) A business that is required to comply with this chapter is not obligated to do so in  
21 response to a request from a customer more than once during the course of any calendar year. A  
22 business with fewer than twenty (20) full-time or part-time employees is exempt from the  
23 requirements of this chapter.

24 (2) If a business that is required to comply with this chapter adopts and discloses to the  
25 public, in its privacy policy, a policy of not disclosing personal information of customers to third-  
26 parties for the third-parties' direct marketing purposes unless the customer first affirmatively  
27 agrees to that disclosure, or of not disclosing the personal information of customers to third-  
28 parties for the third-parties' direct marketing purposes if the customer has exercised an option that  
29 prevents that information from being disclosed to third-parties for those purposes, as long as the  
30 business maintains and discloses the policies, the business may comply with subdivision (a) by  
31 notifying the customer of his or her right to prevent disclosure of personal information, and  
32 providing the customer with a cost-free means to exercise that right.

33 (d) The following are among the disclosures not deemed to be disclosures of personal  
34 information by a business for a third-parties' direct marketing purposes for purposes of this

1 section:

2 (1) Disclosures between a business and a third-party pursuant to contracts or  
3 arrangements pertaining to any of the following:

4 (A) The processing, storage, management, or organization of personal information, or the  
5 performance of services on behalf of the business during which personal information is disclosed,  
6 if the third-party that processes, stores, manages, or organizes the personal information does not  
7 use the information for a third-party's direct marketing purposes and does not disclose the  
8 information to additional third-parties for their direct marketing purposes.

9 (B) Marketing products or services to customers with whom the business has an  
10 established business relationship where, as a part of the marketing, the business does not disclose  
11 personal information to third-parties for the third-parties' direct marketing purposes.

12 (C) Maintaining or servicing accounts, including credit accounts and disclosures  
13 pertaining to the denial of applications for credit or the status of applications for credit and  
14 processing bills or insurance claims for payment.

15 (D) Public record information relating to the right, title, or interest in real property or  
16 information relating to property characteristics, as defined in Section 408.3 of the Revenue and  
17 Taxation Code, obtained from a governmental agency or entity or from a multiple listing service,  
18 as defined in Section 1087, and not provided directly by the customer to a business in the course  
19 of an established business relationship.

20 (E) Jointly offering a product or service pursuant to a written agreement with the third-  
21 party that receives the personal information, provided that all of the following requirements are  
22 met:

23 (i) The product or service offered is a product or service of, and is provided by, at least  
24 one of the businesses that is a party to the written agreement.

25 (ii) The product or service is jointly offered, endorsed, or sponsored by, and clearly and  
26 conspicuously identifies for the customer, the businesses that disclose and receive the disclosed  
27 personal information.

28 (iii) The written agreement provides that the third-party that receives the personal  
29 information is required to maintain the confidentiality of the information and is prohibited from  
30 discbsing or using the information other than to carry out the joint offering or servicing of a  
31 product or service that is the subject of the written agreement.

32 (2) Disclosures to or from a consumer reporting agency of a customer's payment history  
33 or other information pertaining to transactions or experiences between the business and a  
34 customer if that information is to be reported in, or used to generate, a consumer report as defined

1 in subdivision (d) of Section 1681a of Title 15 of the United States Code, and use of that  
2 information is limited by the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.).

3 (3) Disclosures of personal information by a business to a third-party financial institution  
4 solely for the purpose of the business obtaining payment for a transaction in which the customer  
5 paid the business for goods or services with a check, credit card, charge card, or debit card, if the  
6 customer seeks the information required by subdivision (a) from the business obtaining payment,  
7 whether or not the business obtaining payment knows or reasonably should know that the third-  
8 party financial institution has used the personal information for its direct marketing purposes.

9 (4) Disclosures of personal information between a licensed agent and its principal, if the  
10 personal information disclosed is necessary to complete, effectuate, administer, or enforce  
11 transactions between the principal and the agent, whether or not the licensed agent or principal  
12 also uses the personal information for direct marketing purposes, if that personal information is  
13 used by each of them solely to market products and services directly to customers with whom  
14 both have established business relationships as a result of the principal and agent relationship.

15 (5) Disclosures of personal information between a financial institution and a business that  
16 has a private label credit card, affinity card, retail installment contract, or cobranded card program  
17 with the financial institution, if the personal information disclosed is necessary for the financial  
18 institution to maintain or service accounts on behalf of the business with which it has a private  
19 label credit card, affinity card, retail installment contract, or branded card program, or to  
20 complete, effectuate, administer, or enforce customer transactions or transactions between the  
21 institution and the business, whether or not the institution or the business also uses the personal  
22 information for direct marketing purposes, if that personal information is used solely to market  
23 products and services directly to customers with whom both the business and the financial  
24 institution have established business relationships as a result of the private label credit card,  
25 affinity card, retail installment contract, or cobranded card program.

26 (e) For purposes of this chapter:

27 (1) "Customer" means an individual who is a resident of Rhode Island who provides  
28 personal information to a business during the creation of, or throughout the duration of, an  
29 established business relationship if the business relationship is primarily for personal, family, or  
30 household purposes.

31 (2) "Direct marketing purposes" means the use of personal information to solicit or  
32 induce a purchase, rental, lease, or exchange of products, goods, property, or services directly to  
33 individuals by means of the mail, telephone, or electronic mail for their personal, family, or  
34 household purposes. The sale, rental, exchange, or lease of personal information for

1 consideration to businesses is a direct marketing purpose of the business that sells, rents,  
2 exchanges, or obtains consideration for the personal information. "Direct marketing purposes"  
3 does not include the use of personal information: (A) by bona fide tax exempt charitable or  
4 religious organizations to solicit charitable contributions; (B) to raise funds from and  
5 communicate with individuals regarding politics and government; (C) by a third-party when the  
6 third-party receives personal information solely as a consequence of having obtained for  
7 consideration permanent ownership of accounts that might contain personal information; or (D)  
8 by a third-party when the third-party receives personal information solely as a consequence of a  
9 single transaction where, as a part of the transaction, personal information had to be disclosed in  
10 order to effectuate the transaction.

11 (3) "Disclose" means to disclose, release, transfer, disseminate, or otherwise  
12 communicate orally, in writing, or by electronic mail or any other means to any third-party.

13 (4) "Employees who regularly have contact with customers" means employees whose  
14 contact with customers is not incidental to their primary employment duties, and whose duties do  
15 not predominantly involve ensuring the safety or health of the businesses customers. It includes,  
16 but is not limited to, employees whose primary employment duties are as cashier, clerk, customer  
17 service, sales, or promotion. It does not, by way of example, include employees whose primary  
18 employment duties consist of food or beverage preparation or service, maintenance and repair of  
19 the business' facilities or equipment, direct involvement in the operation of a motor vehicle,  
20 aircraft, watercraft, amusement ride, heavy machinery or similar equipment, security, or  
21 participation in a theatrical, literary, musical, artistic, or athletic performance or contest.

22 (5) "Established business relationship" means a relationship formed by a voluntary, two-  
23 way communication between a business and a customer, with or without an exchange of  
24 consideration, for the purpose of purchasing, renting, or leasing real or personal property, or any  
25 interest therein, or obtaining a product or service from the business, if the relationship is ongoing  
26 and has not been expressly terminated by the business or the customer, or if the relationship is not  
27 ongoing, but is solely established by the purchase, rental, or lease of real or personal property  
28 from a business, or the purchase of a product or service, no more than eighteen (18) months have  
29 elapsed from the date of the purchase, rental, or lease.

30 (6)(A) The categories of personal information required to be disclosed pursuant to  
31 paragraph (1) of subdivision (a) are all of the following:

32 (i) Name and address.

33 (ii) Electronic mail address.

34 (iii) Age or date of birth.

- 1           (iv) Names of children.
- 2           (v) Electronic mail or other addresses of children.
- 3           (vi) Number of children.
- 4           (vii) The age or gender of children.
- 5           (viii) Height.
- 6           (ix) Weight.
- 7           (x) Race.
- 8           (xi) Religion.
- 9           (xii) Occupation.
- 10          (xiii) Telephone number.
- 11          (xiv) Education.
- 12          (xv) Political party affiliation.
- 13          (xvi) Medical condition.
- 14          (xvii) Drugs, therapies, or medical products or equipment used.
- 15          (xviii) The kind of product the customer purchased, leased, or rented.
- 16          (xix) Real property purchased, leased, or rented.
- 17          (xx) The kind of service provided.
- 18          (xxi) Social security number.
- 19          (xxii) Bank account number.
- 20          (xxiii) Credit card number.
- 21          (xxiv) Debit card number.
- 22          (xxv) Bank or investment account, debit card, or credit card balance.
- 23          (xxvi) Payment history.
- 24          (xxvii) Information pertaining to the customer's creditworthiness, assets, income, or
- 25 liabilities.
- 26          (B) If a list, description, or grouping of customer names or addresses is derived using any
- 27 of these categories, and is disclosed to a third-party for direct marketing purposes in a manner
- 28 that permits the third-party to identify, determine, or extrapolate any other personal information
- 29 from which the list was derived, and that personal information when it was disclosed identified,
- 30 described, or was associated with an individual, the categories set forth in this section that
- 31 correspond to the personal information used to derive the list, description, or grouping shall be
- 32 considered personal information for purposes of this chapter.
- 33          (7) "Personal information" as used in this chapter means any information that when it was
- 34 disclosed, identified, described, or was able to be associated with an individual and includes all of

1 the following:

2 (A) An individual's name and address.

3 (B) Electronic mail address.

4 (C) Age or date of birth.

5 (D) Names of children.

6 (E) Electronic mail or other addresses of children.

7 (F) Number of children.

8 (G) The age or gender of children.

9 (H) Height.

10 (I) Weight.

11 (J) Race.

12 (K) Religion.

13 (L) Occupation.

14 (M) Telephone number.

15 (N) Education.

16 (O) Political party affiliation.

17 (P) Medical condition.

18 (Q) Drugs, therapies, or medical products or equipment used.

19 (R) The kind of product the customer purchased, leased, or rented.

20 (S) Real property purchased, leased, or rented.

21 (T) The kind of service provided.

22 (U) Social security number.

23 (V) Bank account number.

24 (W) Credit card number.

25 (X) Debit card number.

26 (Y) Bank or investment account, debit card, or credit card balance.

27 (Z) Payment history.

28 (AA) Information pertaining to creditworthiness, assets, income, or liabilities.

29 (8) "Third-party" or "third-parties" means one or more of the following:

30 (A) A business that is a separate legal entity from the business that has an established  
31 business relationship with a customer.

32 (B) A business that has access to a database that is shared among businesses, if the  
33 business is authorized to use the database for direct marketing purposes, unless the use of the  
34 database is exempt from being considered a disclosure for direct marketing purposes pursuant to

1 subdivision (d).

2 (C) A business not affiliated by a common ownership or common corporate control with  
3 the business required to comply with subdivision (a).

4 (f)(1) Disclosures of personal information for direct marketing purposes between  
5 affiliated third-parties that share the same brand name are exempt from the requirements of  
6 paragraph (1) of subdivision (a) unless the personal information disclosed corresponds to one of  
7 the following categories, in which case the customer shall be informed of those categories listed  
8 in this subdivision that correspond to the categories of personal information disclosed for direct  
9 marketing purposes and the third-party recipients of personal information disclosed for direct  
10 marketing purposes pursuant to paragraph (2) of subdivision (a):

11 (A) Number of children.

12 (B) The age or gender of children.

13 (C) Electronic mail or other addresses of children.

14 (D) Height.

15 (E) Weight.

16 (F) Race.

17 (G) Religion.

18 (H) Telephone number.

19 (I) Medical condition.

20 (J) Drugs, therapies, or medical products or equipment used.

21 (K) Social security number.

22 (L) Bank account number.

23 (M) Credit card number.

24 (N) Debit card number.

25 (O) Bank or investment account, debit card, or credit card balance.

26 (2) If a list, description, or grouping of customer names or addresses is derived using any  
27 of these categories, and is disclosed to a third-party or third-parties sharing the same brand name  
28 for direct marketing purposes in a manner that permits the third-party to identify, determine, or  
29 extrapolate the personal information from which the list was derived, and that personal  
30 information when it was disclosed identified, described, or was associated with an individual, any  
31 other personal information that corresponds to the categories set forth in this subdivision used to  
32 derive the list, description, or grouping shall be considered personal information for purposes of  
33 this chapter.

34 (3) If a business discloses personal information for direct marketing purposes to affiliated

1 third-parties that share the same brand name, the business that discloses personal information for  
2 direct marketing purposes between affiliated third-parties that share the same brand name may  
3 comply with the requirements of paragraph (2) of subdivision (a) by providing the overall number  
4 of affiliated companies that share the same brand name.

5 (g) The provisions of this chapter are severable. If any provision of this chapter or its  
6 application is held invalid, that invalidity shall not affect other provisions or applications that can  
7 be given effect without the invalid provision or application.

8 SECTION 4. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO CRIMINAL OFFENSES -- IDENTITY THEFT PROTECTION

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1           This act would establish rules of disclosure of personal information about insurers, by  
2 businesses to third-parties, rules of notification to consumers of breaches in the security  
3 protecting consumer identification information as well as civil penalties and damages for  
4 violation of the disclosure and notification rules.

5           This act would take effect upon passage.

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