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‘THE TIP OF THE ICEBERG’

Latest Data Breach Causing Significant Harm to Washington’s Consumers, some Financial Institutions

A credit union-written bill now before the state legislature encourages all financial institutions to take extraordinary measures to protect consumers from identity theft and fraud.

FEDERAL WAY, WASH—The state’s credit unions have been prepared for tough times on behalf of their members for more than 75 years, but the latest whammy leveled on them may cause as much harm to some as the current national financial meltdown.

Last Tuesday’s revelation by third-party credit and debit card processing company and Princeton N.J.-based Heartland Payment Systems, a company that completes about 100 million transactions per month on behalf of more than 250,000 merchants, disclosed that it had begun to receive fraudulent activity alerts last year from MasterCard and VISA. According to reports, all of the unauthorized transactions were applied to cards that rely on Heartland to process payments.

Heartland still does not know how long the breach occurred prior to its discovery and refuses to release the names of the merchants that contract with them, which deprives consumers who patronize those merchants the ability to be more vigilant in monitoring their credit and debit card accounts.

Some of the Washington’s financial institutions have reported that more than half of their card base has been affected by the breach. Most credit union leaders believe that the effect during the initial days is just the “tip of the iceberg,” and have already begun to notify members, block accounts, reissue cards and numbers and provide ongoing fraud monitoring.

According to some industry insiders, fraudulent activity alerts began to arrive in mid-November, however because of liability reasons the alerts did not mention where the breach occurred. At least one has confirmed that counterfeit cards have been created from the stolen information and so far used in Florida and Mexico.

“The state’s credit union community is appalled, but unfortunately not very shocked by the immense size of the Heartland data breach,” said Washington Credit Union League President/CEO John Annaloro. “In far too many cases, negligent data breachers do business as if they were immunized from liability when they fail to protect their customers’ personal information. In our view, if someone’s careless actions result in a financial loss to others, they should have to pay for it.”

In the past, it has been standard operating procedure following a data breach for credit unions to block accounts, reissue cards and numbers and provide ongoing fraud monitoring. However, taking those aggressive steps to protect members from financial fraud and identity theft is becoming cost prohibitive because the frequency and size of data breaches is skyrocketing and costs the financial institution around

\$20 per card, depending on the extent of the action taken. This number does not include costs associated with staff time, which can be as much as 30 minutes per card, or the negative reputational impact on the financial institution.

“While there are processes that are supposed to provide some reimbursement for fraud losses, the truth is that these processes only recoup pennies on the dollar,” said Stacy Augustine, the Washington Credit Union League Senior Vice President in charge of government relations. “More importantly, the costs that are recouped don’t pay anything toward costs associated with a financial institution’s proactive steps to protect consumers from fraud and identity theft.”

Because of this, Washington’s credit unions have once again introduced legislation aimed at encouraging financial institutions to take extraordinary proactive steps to protect the state’s consumers from identity theft and financial fraud following a data breach. Receiving its first Full House Financial Institutions and Insurance Committee hearing yesterday, HB 1149 is sponsored by State Representatives Brendan Williams (D-22), Dan Roach (R-31), Geoff Simpson (D-47), Steve Kirby (D-29), Hans Dunshee (D-44), Sharon Nelson (D-34) and Timm Ormsby (D-33).

Like last year’s proposed bill, HB 1149 encourages financial institutions to take proactive measures to protect consumers by allowing them to sue negligent data breachers for the cost of aggressively protecting Washingtonians’ personal and private information.

Representative Williams, the bill’s prime sponsor, stated in a letter to colleagues last year that financial institutions---as opposed to negligent actors who breach their customers’ security---end up footing the bill after a data breach is reported. He also explained that there should be some sanction for gross negligence that compromises credit and debit card information.

Much like 2008 when the data breach bill died after it failed to even come up for a vote in the Senate Financial Institutions and Insurance Committee despite apparent broad member support, it is being aggressively opposed by a number of industries.

During its final Senate committee hearing on Feb. 26, no fewer than 18 of the state’s most influential businesses and trade associations opposed the legislation. Included on this who’s-who list were Microsoft, Wal-Mart, AT&T, Comcast, Verizon, CenturyTel, America Online, the Washington Independent Telephone Association, Broadband Cable Association, Washington Restaurant Association, Washington Retail Association, National Federation of Independent Business, Northwest Grocery Association, Washington Food Industry Association, Consumer Data Industry Association, Bank of America, Washington Bankers Association, and the Community Bankers Association of Washington.

Continue to fight for this important consumer protection legislation, credit unions once again stand alone as the sole industry that is willing to put ordinary people ahead of profit and live by the ideals that enabled them to thrive in Washington state for more than 75 years.

Businesses and organizations opposing HB 1149 at yesterday’s House Committee hearing were Bank of America, Wal-Mart, Comcast, 7-Eleven, the Washington Restaurant Association, Northwest Grocery Association, Washington Technology Industry Association, Washington Retail Association, Association of Washington Business, Property Casualty Insurers Association and the Washington Food Industry Association.

“Credit unions hope that our for-profit banker counterparts will take a pro-consumer position on this new legislation,” said Annaloro. “I have no doubt that had this consumer protection legislation made it to a vote on the floor of the Senate, the state’s financial institutions would be aggressively and proactively protecting all of our state’s consumers from financial fraud and identity theft in the wake of the Heartland data breach.”

Credit unions vowed last year to continue to fight for this important consumer protection legislation on behalf of all Washingtonians. And, with most of the banker community so far remaining neutral on the 2009 legislation, supporters are optimistic about its chances for survival and eventual passage.

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Celebrating its 75th year serving the state's credit union community, the Washington Credit Union League is the state trade association for the 127 financial cooperatives that serve more than 2.5 million Washingtonians. Since 1934 the League has played an important role in ensuring the health and vitality of the state's credit unions and is part of a nationwide support network that includes the Credit Union National Association (CUNA), CUNA Mutual Group, the US Central Network and the World Council of Credit Unions.