

1 information including all information relating to a patient's health care history, diagnosis
2 condition, treatment, or evaluation obtained from a health care provider who has treated the
3 patient which explicitly or by implication identifies a particular patient.

4 (4) "Record" means any material, regardless of the physical form, on which personal
5 information is recorded or preserved by any means, including written or spoken words,
6 graphically depicted, printed, or electromagnetically transmitted. Record does not include
7 publicly available directories containing information an individual has voluntarily consented to
8 have publicly disseminated or listed, such as name, address, or telephone number.

9 **6-52-2. Safe destruction of documents.** – A business shall take reasonable steps to
10 destroy or arrange for the destruction of a customer's personal information within its custody and
11 control that is no longer to be retained by the business by shredding, erasing, or otherwise
12 destroying and/or modifying the personal information in those records to make it unreadable or
13 indecipherable through any means for the purpose of:

14 (1) Ensuring the security and confidentiality of customer personal information;

15 (2) Protecting against any reasonably foreseeable threats or hazards to the security or
16 integrity of customer personal information; and

17 (3) Protecting against unauthorized access to or use of customer personal information that
18 could result in substantial harm or inconvenience to any customer.

19 **6-52-3. Violations.** – A business that does not take the reasonable steps when disposing
20 of a customer's personal information set out in section 6-52-2 is in violation of this chapter. For
21 the purposes of this chapter, each record unreasonably disposed of constitutes an individual
22 violation of this chapter.

23 (1) A customer who incurs actual damages due to a violation of this chapter may bring a
24 civil action in superior court.

25 (2) Whenever the attorney general has reason to believe that a violation of this chapter
26 has occurred and that proceedings would be in the public interest, the attorney general may bring
27 an action in the name of the state against the business in violation. The business who violates this
28 chapter may be liable in a suit by the attorney general for actual damages of the aggrieved
29 customer and a civil penalty of five hundred dollars (\$500) for each violation, not to exceed fifty
30 thousand dollars (\$50,000).

31 **6-52-4. Exemptions.** – This chapter does not apply to any of the following:

32 (1) Any bank, credit union, or financial institution as defined under the federal Gramm
33 Leach Bliley Law that is subject to the regulation of the Office of the Comptroller of Currency,
34 the Federal Reserve, the National Credit Union Administration, the Securities and Exchange

1 Commission, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the
2 Office of Thrift Supervision and the U.S. Department of the Treasury, or the Department of
3 Business Regulation and is subject to the privacy and security provisions of the Gramm Leach
4 Bliley Act, 15 U.S.C. section 6801 et seq;

5 (2) Any health insurer, non profit hospital or medical service corporation as defined in
6 chapters 27-19 and 27-20, and any health care facility that is subject to the standards for privacy
7 of individually identifiable health information and the security standards for the protection of
8 electronic health information of the Health Insurance Portability and Accountability Act of 1996;

9 (3) Any consumer report agency that is subject to and in compliance with the Federal
10 Credit Reporting Act. 15 U.S. C. section 1681 et seq., as amended.

11 (4) Any business that enters into a contractual agreement with another business to
12 complete the destruction of a customer's personal information and has physical evidence of that
13 contractual agreement.

14 SECTION 2. This act shall take effect on January 1, 2010.

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LC01782/SUB A/2
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO COMMERCIAL LAW - GENERAL REGULATORY PROVISIONS

1 This act would create a new chapter regarding the safe destruction of documents
2 containing personal information by business entities. Aggrieved customers would have a civil
3 action in superior court to recover actual damages. Further, the attorney general may bring suit
4 against the business in violation if it is in the public interest. This act would exempts banks,
5 financial institutions and certain other regulated institutions.

6 This act would take effect on January 1, 2010.

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