

**Fines and Penalties Table Overview**

<b>ASPECT OF PRIVACY</b>	<b>LEGISLATION/ REGULATIONS</b>	<b>SUMMARY</b>	<b>ENTITIES COVERED</b>	<b>ENFORCEMENT AGENCY</b>	<b>PENALTIES</b>
<p>Personal Health Information --HIPAA</p>	<p>Health Insurance Portability and Accountability Act of 1996 (“HIPAA”);                      Pub. L. No. 104-191, 110 Stat. 1936 (1996), 42 U.S.C. § 1320d;                      Privacy Rule Regulations: 45 C.F.R. § 160 and 164 (2002);                      Security Rule Regulations: 45 C.F.R. § 160, 162 and 164 (2003);                      Electronic Transactions Standards Rule Regulations: 45 C.F.R. § 160 and 162 (2000).</p>	<p>Requires that “covered entities” (hospitals, doctors, health plans) use and disclose individually identifiable health information according to numerous privacy standards, and that covered entities implement physical, procedural and technological security measures to protect the individually identifiable health information.</p> <p>The law also requires that certain health care transactions be conducted electronically employing standardized codes, called Electronic Data Interchange (“EDI”).</p>	<p>Health plans;                      Health care clearinghouses;                      Health care providers that engage in certain electronic billing-related transactions.</p>	<p>Department of Health and Human Services’ Office for Civil Rights (civil);                      Department of Justice and U.S. Attorney’s Office (criminal).</p>	<p>Agency civil penalties: up to \$100 for each violation, except that total amount imposed for violations of identical requirement or prohibition per year may not exceed \$25,000 per category of violation (there are eight categories so far).</p> <p>Criminal penalties: individual who knowingly obtains and discloses personal health information can be fined up to \$50,000, imprisoned up to 1 year, or both; and, if offense committed under false pretences, fined up to \$100,000, imprisoned up to 5 years, or both; and, if offense committed with intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain, or malicious harm, fined up to \$250,000, imprisoned up to 10 years, or both.</p>
<p>URLs OF AUTHORITY</p>			<p><a href="http://www.hhs.gov/ocr/hipaa/">http://www.hhs.gov/ocr/hipaa/</a>  <a href="http://www.cms.hhs.gov/hipaa/">http://www.cms.hhs.gov/hipaa/</a></p>		

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<p>Personal Financial Information--GLBA</p>	<p>The Financial Modernization Act of 1999, also known as the “Gramm-Leach-Bliley Act” or GLB Act;</p> <p>Public Law 106-102, Title V; 15 U.S.C, Subchapter I, § 6801-6827.</p> <p>Subtitle A: Disclosure of Non-public Personal Information: 15 U.S.C. § 6801-6810;</p> <p>Subtitle B: Fraudulent Access to Financial Information: 15 U.S.C. § 6821-6827;</p> <p>Financial Privacy Rule Regs:16 C.F.R. Part 313;</p> <p>Safeguards Rule Regs 16 C.F.R. Part 314.</p>	<p>Protect consumers’ personal financial information held by financial institutions.</p> <p>Three sets of privacy requirements: (1) Financial Privacy Rule; (2) Safeguards Rule; and (3) pretexting provisions.</p> <p>Financial Privacy Rule governs collection and disclosure of customers’ personal financial information by financial institutions.</p> <p>Safeguards Rule requires all financial institutions to design, implement and maintain safeguards to protect customer information.</p> <p>Pretexting provisions protect consumers from individuals and companies that obtain their personal financial information under false pretences, a practice known as “pretexting.”</p>	<p>Any “financial institution,” regardless of size, that is significantly engaged in providing financial products or services to individual consumers.</p>	<p>Federal Trade Commission and seven other federal agencies along with the states.</p>	<p>Agency civil penalties: up to \$11,000, each day of continuing violation constituting separate violation.</p> <p>Anyone who does not comply with an FTC order is subject to a civil penalty of up to \$11,000, with each day of a continuing violation constituting a separate violation.<sup>(1)</sup> 15 U.S.C. § 45(l). Likewise, anyone who knowingly violates an FTC rule is liable for \$11,000 for each violation. 15 U.S.C. § 45(m). Enforcement actions can be brought by either the Department of Justice, or if it declines by the FTC. 15 U.S.C. § 56.</p> <p>Under GLBA section, 523(a) states that “whoever knowingly and intentionally violates, or knowingly and intentionally attempts to violate, section 521 (Privacy Protection for Customer Information of Financial Institutions) shall be fined in accordance with title 18, United States Code, or imprisoned for not more than 5 years, or both.</p> <p>Section 523(b) provides for enhanced penalties for aggravated cases where “ whoever violates section 521</p>

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					while violating another law or has a pattern of any illegal activity involving more than \$100,000 in a 12-month period shall be fined twice the title 18 amount, imprisoned for up to 10 years or both.”
URLs OF AUTHORITY			<a href="http://www.ftc.gov/privacy/glbact/index.html">http://www.ftc.gov/privacy/glbact/index.html</a>		

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Consumer credit reports, including employee/applicant background checks done by third party agencies	<p>Fair Credit Reporting Act (“FCRA”);</p> <p>Additionally FACTA, which is modifies FCRA adds additional obligations and liabilities.</p> <p>15 U.S.C. § 1681 et seq.</p> <p>Regulations: 16 C.F.R. Part 600 et seq.</p>	<p>Purpose is to require “consumer reporting agencies” to adopt reasonable procedures for providing consumer report information to credit grantors, insurers, employers and others in manner fair and equitable to consumer (including applicant or employee consumer) with regard to confidentiality, accuracy, and proper use of such information.</p>	<p>Consumer reporting agencies; users of consumer reports (including employers who procure background checks on employees/applicants from third party agencies); furnishers of information to consumer reporting agencies.</p>	<p>Federal Trade Commission (“FTC”).</p>	<p>FTC may sue violators to recover civil penalty of up to \$2,500 per knowing violation.</p> <p>Individuals or state attorney general (on behalf of resident) may bring lawsuit to recover damages. One who wilfully fails to comply liable to that consumer for actual damages, punitive damages, and attorney’s fees. One who negligently fails to comply liable to that consumer for actual damages and attorney’s fees.</p> <p>Any person who knowingly and wilfully obtains information on a consumer from a consumer-reporting agency under false pretences is subject to a fine, imprisonment for not more than 2 years, or both.</p>
URLs OF AUTHORITY			<p><a href="http://www.ftc.gov/os/statutes/fcra.htm#616">http://www.ftc.gov/os/statutes/fcra.htm#616</a>  <a href="http://www.ftc.gov/os/statutes/fcrajump.htm">http://www.ftc.gov/os/statutes/fcrajump.htm</a>  <a href="http://www.ftc.gov/os/statutes/fcra/index.htm">http://www.ftc.gov/os/statutes/fcra/index.htm</a></p>		

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<p>Example of State Based GLBA Regulation.</p> <p>Pennsylvania</p>	<p>Department's general rulemaking authority of sections 205, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412).</p> <p>Likewise, the adoption of this final-form rulemaking is under the Department's rulemaking authority under the Unfair Insurance Practices Act (40 P. S. §§ 1171.1--1171.14) (act) (as such authority is further explained in PALU v. Insurance Department, 371 A.2d 564 (Pa. Cmwlth. 1977)), because the Commissioner has determined that the improper disclosure or marketing, or both, of non-public personal financial information by members of the insurance industry constitutes an unfair method of competition and an unfair or deceptive act or practice.</p> <p>Unfair Trade Practices and Consumer Protection Act (73 P.S. § 201-1 - § 201-9.2)</p>	<p>Purpose is to implement state based GLBA regulations mandated by federal law.</p> <p>Licensees can be impacted 4 ways:</p> <ol style="list-style-type: none"> <li>1. Administrative penalty including loss of licence.</li> <li>2. Injunction.</li> <li>3. Civil Fines</li> <li>4. Customer Lawsuits</li> </ol>	<p>Any person and/or firm that is licensed by the Department of Insurance.</p>	<p>Department of Insurance under the Unfair Insurance Practices Act.</p> <p>State Attorney General, Local District Attorney, and consumers/customers under state's Unfair Trade Practices Act.</p>	<p>Violations of §§ 146c.3 and 146c.4 (relating to information security program; and objectives of information security program) are deemed and defined by the Commissioner to be an unfair method of competition and an unfair or deceptive act or practice and shall be subject to any applicable penalties or remedies contained in the Unfair Insurance Practices Act (40 P. S. §§ 1171.1--1171.15).</p> <p>40P.S.§1171.9.  <b>Administrative penalty</b>  Upon a determination by hearing that this act has been violated, the Commissioner may issue an order requiring the person to cease and desist from engaging in such violation or, if such violation is a method of competition, act or practice defined in section 5 of this act, the Commissioner may suspend or revoke the person's License.</p> <p>40 P.S.§1171.10. Injunction  If the alleged violator fails to comply with an order of the Commissioner following hearing to cease and desist from unfair methods of competition or an unfair or deceptive act or practice, the</p>

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					<p>Commissioner may cause an action for injunction to be filed in the Commonwealth Court or the Court of Common Pleas of the county in which the violation occurred.</p> <p><b>40 P.S. §1171.11. Civil penalties</b>  In addition to any penalties imposed pursuant to this act, the court may, in an action filed by the Commissioner, impose the following civil penalties:</p> <p>(1) For each method of competition, act or practice defined in section 5 of this act and in violation of this act which the person knew or reasonably should have known was such a violation, a penalty of not more than five thousand dollars (\$5,000) for each violation but not to exceed and aggregate penalty of fifty thousand dollars (\$50,000) in any six month period;</p> <p>(2) For each method of competition, act or practice defined in section 5 of this act and in violation of this act which the person did not know nor reasonably should have known was such a violation, a penalty of not more than one thousand dollars (\$1,000) for each</p>

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					<p>violation but not to exceed an aggregate penalty of ten thousand dollars (\$10,000) in any six month period; and  (3) For each violation of an order issued by the Commissioner pursuant to section 9 of this act, while such order is in effect, a penalty of not more than ten thousand dollars (\$10,000).</p> <p><b><u>Unfair Trade Practices Act Fines and Penalties</u></b></p> <p><b>201-4. Restraining prohibited acts.</b>  Whenever the Attorney General or a District Attorney has reason to believe that any person is using or is about to use any method, act or practice declared by section 3 of this act to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the Commonwealth against such person to restrain by temporary or permanent injunction the use of such method, act or practice.</p> <p><b>§ 201-4.1. Payment of costs and restitution.</b>  Whenever any court issues a permanent injunction to restrain and prevent violations of this act as</p>

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					<p>authorized in section 4 above, the court may in its discretion direct that the defendant or defendants restore to any person in interest any moneys or property, real or personal, which may have been acquired by means of any violation of this act, under terms and conditions to be established by the court.</p> <p>§ 201-5. Assurance of voluntary compliance.</p> <p>In the administration of this act, the Attorney General may accept an assurance of voluntary compliance with respect to any method, act or practice deemed to be violative of the act from any person who has engaged or was about to engage in such method, act or practice. Such assurance may include a stipulation for voluntary payment by the alleged violator providing for the restitution by the alleged violator to consumers, of money, property or other things received from them in connection with a violation of this act. Any such assurance shall be in writing and be filed with the court. Such assurance of voluntary compliance shall not be considered an admission of violation for any purpose. Matters thus closed may at any time be reopened by the</p>

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					<p>Attorney General for further proceedings in the public interest, pursuant to section 4.</p> <p><b>§ 201-8. Civil penalties.</b>  (a) Any person who violates the terms of an injunction issued under section 4 of this act or any of the terms of an assurance of voluntary compliance duly filed in court under section 5 of this act shall forfeit and pay to the Commonwealth a civil penalty of not more than five thousand dollars (\$5,000) for each violation. For the purposes of this section the court issuing an injunction or in which an assurance of voluntary compliance is filed shall retain jurisdiction, and the cause shall be continued; and, in such cases, the Attorney General, or the appropriate District Attorney, acting in the name of the Commonwealth of Pennsylvania, may petition for recovery of civil penalties and any other equitable relief deemed needed or proper.  (b) In any action brought under section 4 of this act, if the court finds that a person, firm or corporation is wilfully using or has wilfully used a method, act or practice declared unlawful by section 3 of this act, the Attorney General or the</p>

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					<p>appropriate District Attorney, acting in the name of the Commonwealth of Pennsylvania, may recover, on behalf of the Commonwealth of Pennsylvania, a civil penalty of not exceeding one thousand dollars (\$1,000) per violation, which civil penalty shall be in addition to other relief which may be granted under sections 4 and 4.1 of this act. Where the victim of the wilful use of a method, act or practice declared unlawful by section 3 of this act is sixty years of age or older, the civil penalty shall not exceed three thousand dollars (\$3,000) per violation, which penalty shall be in addition to other relief which may be granted under sections 2 and 4.1 of this act.</p> <p>§ 201-9. Forfeiture of franchise or right to do business; appointment of receiver.</p> <p>Upon petition by the Attorney General, the court having jurisdiction, may, in its discretion, order the dissolution, suspension or forfeiture of the franchise or right to do business of any person, firm or corporation who violates the terms of an injunction issued under section 4 of this act. In addition, the court may appoint a receiver of the</p>

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					<p>assets of the company.</p> <p><b>§ 201-9.1. Powers of receiver.</b>  When a receiver is appointed by the court pursuant to this act, he shall have the power to sue for, collect, receive and take into his possession all the goods and chattels, rights and credits, moneys, and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes and property of every description of the person or persons for whom the receiver is appointed, received by means of any practice declared to be illegal and prohibited by this act, including property with which such property has been mingled if it cannot be identified in kind because of such commingling, and to sell, convey, and assign the same and hold and dispose of the proceeds thereof under the direction of the court.  Any person who has suffered damages as a result of the use or employment of any unlawful practices and submit proof to the satisfaction of the court that he has in fact been damaged, may participate with general creditors in the distribution of the assets to the extent he has sustained provable</p>

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					<p>losses. The court shall have jurisdiction of all questions arising in such proceedings and may make such orders and judgments therein as may be required.</p> <p><b>§ 201-9.2. Private actions.</b>  (a) Any person who purchases or leases goods or services primarily for personal, family or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by any person of a method, act or practice declared unlawful by section 3 of this act, may bring a private action to recover actual damages or one hundred dollars (\$100), whichever is greater. The court may, in its discretion, award up to three times the actual damages sustained, but not less than one hundred dollars (\$100), and may provide such additional relief as it deems necessary or proper. The court may award to the plaintiff, in addition to other relief provided in this section, costs and reasonable attorney fees.  (b) Any permanent injunction, judgment or order of the court made under section 4 of this act shall be prima facie evidence in an</p>

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					action brought under section 9.2 of this act that the defendant used or employed acts or practices declared unlawful by section 3 of this act.
URLs OF AUTHORITY:			<a href="http://members.aol.com/StatutesP8/73.Cp.1.html">http://members.aol.com/StatutesP8/73.Cp.1.html</a> <a href="http://www.nldhlaw.com/CM/Articles/2004ClaimsRefGuide.pdf">http://www.nldhlaw.com/CM/Articles/2004ClaimsRefGuide.pdf</a>		