

SENATE BILL REPORT

SB 5870

As Reported By Senate Committee On:
Judiciary, February 28, 2007

Title: An act relating to records in a criminal case.

Brief Description: Concerning records in a criminal case.

Sponsors: Senators Kline, Hargrove, Eide and Marr.

Brief History:

Committee Activity: Judiciary: 2/13/07, 2/28/07 [DPS].

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5870 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Tom, Vice Chair; McCaslin, Ranking Minority Member; Carrell, Hargrove, Murray, Roach and Weinstein.

Staff: Lidia Mori (786-7755)

Background: Businesses, associations, and organizations that provide goods and services in Washington, and therefore affect Washington residents, often operate nationally or globally. These business, associations, and organizations frequently maintain their business records outside of the state of Washington. When such a business, association, or organization has engaged in a transaction that is believed to have involved or resulted in a crime in Washington, the business records of the organization are often needed as evidence. Currently, in order to obtain and use the out-of-state records of the organization, record custodians must be produced to authenticate the records so that they may be used in court.

There is concern that the need to secure the presence of the record custodian to authenticate the records represents a cost to businesses, associations and organizations due to lost productivity when their employee is away, and a cost to taxpayers who must ultimately pay for transporting, housing, and feeding witnesses who are needed for criminal trials. Federal law and several other states permit business records to be self-authenticated thereby facilitating their admission in court without requiring the presence of the record custodian.

Summary of Bill: Foreign corporations are required to respond to a search warrant or legal process issued by a judge of the superior court in a criminal matter as though it were issued in their home state. The court or the person who sought the search warrant or legal process may request that the recipient of the process verify the authenticity of the records it produces

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through submission of an affidavit, declaration, or certification. Records which are produced and authenticated by this procedure are admissible as evidence in the criminal proceeding. Either party may request the court to require production of the record custodian or other witness to testify regarding the records. A person who responds to criminal process and produces the requested records is immune from civil liability for complying with the process.

EFFECT OF CHANGES MADE BY RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Judiciary): (1) Limits the affect of the bill by defining "recipient" as a person or business that has conducted business or engaged in transactions occurring at least in part in this state; (2) If a court has reason to suspect that failure to produce records within twenty business days would cause an adverse result, the criminal process may require production of records within less than twenty business days; (3) The purpose of the bill, to render business records admissible into evidence without the need for testimony of a record custodian, is clarified; (4) A recipient of process under this act, and any other person that responds to such process, is immune from civil and criminal liability for complying with the process.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Identity theft is growing extremely fast in Washington. It's a serious crime, affecting the victims financially, emotionally, and physically. These crimes can't be prosecuted without the documents to verify the transaction records. Prosecutors can resort to using the procedures under RCW 10.55 but it is far from ideal and takes hours and hours of prosecutor and law enforcement time. It should not be necessary to resort to using RCW 10.55 with businesses doing business in the state. The record custodian's testimony is not substantive so no right of confrontation is lost. Also, either party can contest the process in the bill and ask for the custodian to be present. In a routine \$19,000 embezzlement case, it is necessary to fly in four band record custodians and that will cost the taxpayers of Clark County thousands of dollars.

Persons Testifying: PRO: Susan Storey, Law Enforcement Group Against Identity Theft (LEGIT); Jim David, Clark County Prosecuting Attorney; Terry Kohl, Washington Credit Union League; Mark Johnson, Washington Retail Association.