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**SENATE BILL 5874**

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**State of Washington**

**55th Legislature**

**1997 Regular Session**

**By** Senators Hale and Winsley

Read first time 02/18/97. Referred to Committee on Financial Institutions, Insurance & Housing.

1 AN ACT Relating to the confidentiality of voluntary compliance  
2 efforts by financial institutions; and adding a new chapter to Title 7  
3 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds and declares that  
6 efforts by financial institutions to comply voluntarily with state and  
7 federal statutory and regulatory requirements are vital to the public  
8 interest; that possible discovery and use in civil litigation of work  
9 produced in connection with such voluntary compliance efforts has an  
10 undesirable chilling effect on the use, scope, and effectiveness of  
11 voluntary compliance efforts by financial institutions; and that the  
12 public interest in encouraging aggressive voluntary compliance review  
13 outweighs the value of this work product in civil litigation.

14 NEW SECTION. **Sec. 2.** The definitions in this section apply  
15 throughout this chapter unless the context clearly requires otherwise.

16 (1) "Affiliate" means any person that controls, is controlled by,  
17 or is under common control with a financial institution.

1 (2) "Civil action" means a civil proceeding pending in a court or  
2 other adjudicatory tribunal with jurisdiction to issue a request or  
3 subpoena for records, including a voluntary or mandated alternative  
4 dispute resolution mechanism under which a party may compel the  
5 production of records. "Civil action" does not include an examination  
6 or enforcement proceeding initiated by a governmental agency with  
7 primary regulatory jurisdiction over a financial institution in  
8 possession of a compliance review document.

9 (3) "Compliance review personnel" means a person or persons  
10 assigned and directed by the board of directors or management of a  
11 financial institution or affiliate to conduct a compliance review, and  
12 any person engaged or assigned by compliance review personnel or by the  
13 board of directors or management to assist in a compliance review.

14 (4) "Compliance review" means a self-critical analysis conducted by  
15 compliance review personnel to test, review, or evaluate past conduct,  
16 transactions, policies, or procedures for the purpose of confidentially  
17 (a) ascertaining, monitoring, or remediating violations of applicable  
18 state and federal statutes, rules, regulations, or mandatory policies,  
19 statements, or guidelines, (b) assessing and improving loan quality,  
20 loan underwriting standards, or lending practices, or (c) assessing and  
21 improving financial reporting to federal or state regulatory agencies.

22 (5) "Compliance review document" means any record prepared or  
23 created by compliance review personnel in connection with a compliance  
24 review. "Compliance review document" includes any documents created or  
25 data generated in the course of conducting a compliance review, but  
26 does not include other underlying documents, data, or factual materials  
27 that are the subject of, or source materials for, the compliance  
28 review, including any documents in existence prior to the commencement  
29 of the compliance review that are not themselves compliance review  
30 documents related to a past compliance review.

31 (6) "Financial institution" means a bank, trust company, mutual  
32 savings bank, savings and loan association, or credit union authorized  
33 by federal or state law to accept deposits in this state.

34 (7) "Person" means an individual, group, committee, partnership,  
35 firm, association, corporation, limited liability company, or other  
36 entity, including a financial institution or affiliate and its agents,  
37 employees, legal counsel, auditors, and consultants.

38 NEW SECTION. **Sec. 3.** Except as provided in section 4 of this act:

1 (1) Compliance review documents are confidential and are not  
2 discoverable or admissible as evidence in any civil action.

3 (2) Compliance review personnel shall not be required to testify at  
4 deposition or trial in any civil action concerning the contents of or  
5 matters addressed in any compliance review or any compliance review  
6 documents, nor as to the actions or activities undertaken by or at the  
7 direction of the financial institution or affiliate in connection with  
8 a compliance review.

9 NEW SECTION. **Sec. 4.** Section 3 of this act does not:

10 (1) Limit the discovery or admissibility in any civil action of any  
11 documents that are not compliance review documents;

12 (2) Limit the discovery or admissibility of the testimony as to the  
13 identity of relevant witnesses or the identification of any relevant  
14 documents other than compliance review documents;

15 (3) Apply if the financial institution or affiliate expressly  
16 waives the privilege in writing;

17 (4) Apply if a compliance review document or matters learned in  
18 connection with a compliance review are voluntarily disclosed, but only  
19 to the extent of that disclosure, to a nonaffiliated third party other  
20 than a federal or state regulatory agency or legal counsel for or  
21 independent auditors of the financial institution or affiliate; or

22 (5) Apply to any information required by statute, rule, or federal  
23 regulation to be maintained by or provided to a governmental agency  
24 while the information is in the possession of the agency, to the extent  
25 applicable law authorizes its disclosure.

26 NEW SECTION. **Sec. 5.** In a proceeding in which the privilege  
27 provided by this chapter is asserted, a court of competent jurisdiction  
28 may determine after in camera review that the privilege does not apply  
29 to any or all of the documents for which the privilege is claimed, and  
30 if so, the court may order the materials disclosed but shall protect  
31 from disclosure any other material in or related to compliance review  
32 documents or to activities of compliance review personnel to which the  
33 privilege does apply.

34 NEW SECTION. **Sec. 6.** This chapter does not limit, waive, or  
35 abrogate the scope or nature of any other statutory or common law

1 privilege of this state or the United States, including the attorney-  
2 client privilege.

3 NEW SECTION. **Sec. 7.** Sections 1 through 6 of this act constitute  
4 a new chapter in Title 7 RCW.

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