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HOUSE BILL 1867

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State of Washington                      56th Legislature                      1999 Regular Session

By Representatives Bush, Benson and Grant

Read first time 02/09/1999. Referred to Committee on Judiciary.

1            AN ACT Relating to insurer self audits; and amending RCW 7.88.005,  
2 7.88.010, 7.88.020, and 7.88.030.

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

4            **Sec. 1.** RCW 7.88.005 and 1997 c 435 s 1 are each amended to read  
5 as follows:

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

15            **Sec. 2.** RCW 7.88.010 and 1997 c 435 s 2 are each amended to read  
16 as follows:

17            The definitions in this section apply throughout this chapter  
18 unless the context clearly requires otherwise.

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

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

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

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

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

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

37 (7) "Insurer" means the same as defined in RCW 48.01.050.

38 (8) "Person" means an individual, group, committee, partnership,  
39 firm, association, corporation, limited liability company, or other

1 entity, including a financial institution or affiliate and its agents,  
2 employees, legal counsel, auditors, and consultants.

3 **Sec. 3.** RCW 7.88.020 and 1997 c 435 s 3 are each amended to read  
4 as follows:

5 Except as provided in RCW 7.88.030:

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

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

14 **Sec. 4.** RCW 7.88.030 and 1997 c 435 s 4 are each amended to read  
15 as follows:

16 RCW 7.88.020 does not:

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

19 (2) Limit the discovery or admissibility of the testimony as to the  
20 identity of relevant witnesses or the identification of any relevant  
21 documents other than compliance review documents;

22 (3) Apply if the financial institution, insurer, or affiliate  
23 expressly waives the privilege in writing;

24 (4) Apply if a compliance review document or matters learned in  
25 connection with a compliance review are voluntarily disclosed, but only  
26 to the extent of that disclosure, to a nonaffiliated third party other  
27 than a federal or state regulatory agency or legal counsel for or  
28 independent auditors of the financial institution, insurer, or  
29 affiliate; or

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

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