

By Representative Schual-Berke

1 **SSB 5715** - H COMM AMD
2 By Committee on Financial Institutions & Insurance

3 Strike everything after the enacting clause and insert the
4 following:

5 NEW SECTION. **Sec. 1.** The legislature finds that financial
6 fraud and crimes against financial institutions and merchants are
7 increasing exponentially in Washington state. Until recently,
8 these crimes cost businesses and consumers thousands of dollars in
9 losses. They now cost millions of dollars. The legislature
10 further finds that noncredit losses to financial institutions, and
11 credit card, debit card, and check fraud against merchants impose
12 danger to consumers and their financial privacy, and burden law
13 enforcement and public prosecutors with crimes that are difficult
14 to detect and prosecute. The growth in financial fraud also
15 provides opportunities for organized crime and terrorist
16 organizations, and undermines the stability and reliability of
17 financial and other businesses upon which commerce and the economy
18 rely.

19 The legislature intends to enable financial institutions and
20 merchants, to the extent permitted by federal law, to exchange
21 information to prevent, detect, deter, and assist in the
22 prosecution of financial fraud, bank robbery, money laundering, and
23 other financial crimes.

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

27 (1) "Designated employees" means security personnel of a
28 financial institution or merchant designated by it to participate
29 in a fraud alert network.

1 (2) "Financial crimes" means any act, including any
2 anticipatory or completed offense, committed for financial gain,
3 that is chargeable or indictable, regardless of whether the act is
4 actually charged or indicted, as a violation of a state or federal
5 criminal law prohibiting false representation, frauds and swindles
6 in violation of chapter 9.45 RCW, forgery, obtaining a signature by
7 deception or duress, criminal impersonation, false certification,
8 unlawful issuance of checks, drafts, funds transfers and payment
9 instructions, identity theft, improperly obtaining financial
10 information, robbery, bank robbery, theft, scams, tax evasion,
11 embezzlement, money laundering, use of proceeds of criminal
12 profiteering, false representation concerning credit, false
13 statement by deposit account applicant, false representation
14 concerning title, forgery of a digital signature or other violation
15 of RCW 9.38.060, burglary when it involves entering the premises of
16 a financial institution or retail establishment, unlawful
17 possession of payment instruments, unlawful production of payment
18 instruments, unlawful possession of a personal identification
19 device, unlawful possession of fictitious identification, unlawful
20 possession of instruments of financial fraud, possession of
21 another's identification, display or possession of a fraudulently
22 issued driver's license or identicard, display or representation as
23 one's own the driver's license or identicard of another person,
24 unlawful factoring of a credit card or payment card transaction, or
25 other state or federal law prohibiting a financial related crime.

26 (3) "Financial institution" means: (a) Any person doing
27 business under the laws of any state or the United States relating
28 to commercial banks, bank holding companies, financial holding
29 companies, savings banks, savings and loan associations, trust
30 companies, or credit unions; (b) any office of an international
31 banking corporation, branch of a foreign bank, or corporation
32 organized pursuant to the Bank Service Corporation Act (12 U.S.C.
33 Sec. 1861-1867) or a corporation organized under the Edge Act (12
34 U.S.C. Sec. 611-633); (c) subsidiaries, affiliates, service
35 corporations of the persons in (a) and (b) of this subsection; (d)
36 third-party service providers that provide servicing, processing,
37 account maintenance, or security for the persons in (a), (b), and
38 (c) of this subsection; or (e) any group, organization, or
39 association consisting primarily of the persons in (a) through (c)

1 of this subsection, including, without limitation, the Washington
2 bankers association, the American bankers association, and other
3 associations of banks, savings institutions, and/or credit unions,
4 whether inside or outside the state of Washington. However, a
5 group or association in this subsection (3)(e) that obtains access
6 to a fraud alert network may provide access to that network or to
7 information received from that network only to persons described in
8 (a) through (d) of this subsection.

9 (4) "Fraud alert network" means a program established by and
10 among financial institutions and/or merchants to prevent, detect,
11 deter, and assist in the prosecution of financial crimes, including
12 a program in which information is shared by means of electronic
13 posting.

14 (5) "Electronic posting" means the use of a web site or other
15 form of electronic communication used to display information
16 gathered in connection with a fraud alert network.

17 (6) "Merchant" means a person engaged in the business of
18 selling, leasing, or distributing goods or services and has an
19 existing contractual relationship or contract with a financial
20 institution, and: (a) Has a physical presence in the state that
21 consumers may patronize to make purchases of goods or services; (b)
22 is physically located in the state and sells goods or services to
23 residents of the state via the internet; or (c) is an association
24 or cooperative organization of persons in (a) and (b) of this
25 subsection.

26 (7) "Participant" means a financial institution or merchant
27 that participates in a fraud alert network.

28 NEW SECTION. **Sec. 3.** (1) This chapter provides immunity from
29 liability for financial institutions and merchants who participate
30 in a fraud alert network and who comply with the provisions of this
31 chapter and the standards of use set forth in this subsection, as
32 follows:

33 (a) Access to the fraud alert network is private, and limited
34 to financial institutions, merchants, and law enforcement agencies;

35 (b) The sole purpose of the fraud alert network is to share
36 information among financial institutions, merchants, and law
37 enforcement agencies to prevent, detect, deter, and assist in the
38 prosecution of financial crimes;

1 (c) Information furnished to the fraud alert network consists
2 of: (i) Descriptions of recent actual or suspected financial
3 crimes perpetrated against or coming to the attention of the
4 participant furnishing the information; (ii) descriptions,
5 photographs, images, reproductions, fingerprints, identifying
6 features, traits, habits, background, or other data related to
7 identifying the person, persons, or groups suspected of committing,
8 aiding, or abetting financial crimes; (iii) identifying information
9 regarding methods of operation, devices, tricks, or schemes used by
10 persons suspected of financial crimes; (iv) descriptions,
11 photographs, images, or reproductions of writings, communications,
12 checks, and personal identification used in connection with
13 suspected financial crimes; (v) descriptions, photographs, images,
14 or reproductions of vehicles, license plates, weapons, devices, or
15 other things used in connection with suspected financial crimes;
16 (vi) cautionary statements regarding suspects, for example a
17 statement that a suspect is armed and dangerous; and (vii) other
18 information that allows participants to identify financial crimes,
19 to identify persons suspected in connection with financial crimes,
20 to assist in the apprehension of persons suspected of financial
21 crimes, or to contact others for further information;

22 (d) Information furnished to the fraud alert network may not
23 consist of delinquent payment information, nor may it consist of
24 other, similar evidence of a person's credit history, except in the
25 exceptional instance where such evidence is an integral part of
26 information provided under (c) of this subsection and is reasonably
27 believed to be related to a financial crime;

28 (e) Information posted shall be accessible only to designated
29 employees, and the distribution of information is limited to those
30 employees, attorneys, and agents of participants who have job-
31 related duties relevant to the use of such information in
32 connection with preventing, detecting, deterring, or assisting in
33 the prosecution of financial crimes;

34 (f) The fraud alert network has procedures reasonably
35 calculated to ensure the security of the information obtained;

36 (g) Users of the fraud alert network are informed that the
37 information obtained from the fraud alert network may not be used
38 to evaluate and make decisions about applications for loans, lines
39 of credit, and credit cards;

1 (h) Information furnished pursuant to the fraud alert network
2 is limited to statements of fact that the person furnishing the
3 information reasonably believes to be true. However, in exigent
4 circumstances, information may be furnished without such reasonable
5 belief if the circumstances creating an emergency are described,
6 and cautionary advice is provided regarding the limited knowledge
7 of the person furnishing the information; and

8 (i) The fraud alert network has an operator that: (A) Employs
9 procedures to promptly correct and erase information that the
10 operator learns is erroneous or was submitted or posted to the
11 fraud alert network not in compliance with this section; (B) takes
12 reasonable steps to limit access to the fraud alert network to
13 financial institutions, merchants, and law enforcement agencies;
14 and (C) denies access to the fraud alert network to persons who are
15 not financial institutions, merchants, or law enforcement agencies
16 or who do not abide by the provisions of this chapter.

17 (2) Washington law governs the operation of a fraud alert
18 network. A participant or law enforcement agency that participates
19 in a fraud alert network in accordance with subsection (1) of this
20 section, whether through furnishing, posting, communicating, or
21 using information in connection thereto, shall receive immunity
22 from civil liability under the laws of the state of Washington and
23 its political subdivisions and, to the extent the conflicts of law
24 rules of any other jurisdiction refer to the law of the state of
25 Washington, under the laws and rules of such other jurisdiction and
26 its political subdivisions. However, this immunity does not apply
27 to statutory violations.

28 (3) Any financial institution or merchant that makes a
29 voluntary disclosure of any possible violation of law or regulation
30 to a federal, state, or local government or agency in connection
31 with information obtained from a fraud alert network is immune from
32 civil liability for such disclosure or for any failure to provide
33 notice of such disclosure to the person who is the subject of or
34 identified in the disclosure, under the laws and rules of the state
35 of Washington and its political subdivisions and, to the extent the
36 conflicts of law rules of any other jurisdiction refer to the law
37 of the state of Washington, under the laws and rules of such other
38 jurisdiction and its political subdivisions, and under any contract
39 or other legally enforceable agreement.

1 NEW SECTION. **Sec. 4.** The immunity of section 3 of this act
2 shall not apply to any participant that:

3 (1) Provides false information to the fraud alert network that
4 the participant does not reasonably believe to be true. However,
5 in exigent circumstances, information may be furnished without such
6 reasonable belief if the circumstances creating an emergency are
7 described, and cautionary advice is provided regarding the limited
8 knowledge of the person furnishing the information;

9 (2) Fails to maintain review procedures to remove or correct
10 false, outdated, incomplete, or erroneous information furnished by
11 it to the fraud alert network;

12 (3) Fails to maintain procedures to ensure that information
13 obtained from the fraud alert network will be provided only to
14 employees, attorneys, or agents who have job-related duties
15 relevant to the use of such information;

16 (4) Uses information obtained from the fraud alert network to
17 evaluate and make decisions about applications for loans, lines of
18 credit, and credit cards;

19 (5) Uses information for a purpose other than preventing,
20 detecting, deterring, and assisting in the prosecution of financial
21 crimes;

22 (6) Uses, reproduces, distributes, publishes, forwards, shares,
23 sells, or communicates any information obtained from the fraud
24 alert network for a commercial purpose, such as for advertising or
25 marketing; or

26 (7) Provides, sells, or resells access to the fraud alert
27 network to a person who is not a participant.

28 NEW SECTION. **Sec. 5.** (1) It is the intent of this chapter to
29 encourage the sharing of information consistent with federal law.

30 (2) It is intended that so long as the participants comply with
31 this chapter, the provisions of the Washington fair credit
32 reporting act, chapter 19.182 RCW, do not apply to the fraud alert
33 network. However, if it is determined that the federal fair credit
34 reporting act applies to a fraud alert network, the Washington fair
35 credit reporting act shall likewise be applicable.

36 NEW SECTION. **Sec. 6.** (1) The fraud alert network and its
37 participants shall notify the public regarding the existence of the

1 fraud alert network and how it functions. Such notice shall include
2 a description of the purpose of the network, how the network shares
3 information, the types of information furnished to the network, how
4 consumer complaints may be registered, and the procedures available
5 to an individual for the correction or removal of incomplete,
6 inaccurate, or erroneous information.

7 (2) The public notice required of the fraud alert network and
8 its participants under subsection (1) of this section shall, at a
9 minimum, include:

10 (a) A toll free telephone number maintained by the network that
11 may be called by individuals in order to obtain the information
12 required under subsection (1) of this section;

13 (b) An internet website maintained by the network that provides
14 the public with the information required under subsection (1) of
15 this section;

16 (c) Written pamphlets that are made conspicuously available at
17 each place of business of a network participant, and which contain
18 the information required under subsection (1) of this section as
19 well as the toll free telephone number and website address of
20 maintained by the network; and

21 (d) A conspicuously posted sign at each place of business of a
22 network participant that notifies the public of the business'
23 participation in the fraud alert network and which includes both
24 the toll free telephone number and website address required under
25 this section.

26 (3) The fraud alert network shall not begin operating until
27 such time as the public notice provisions required under this
28 section are implemented.

29
30 NEW SECTION. **Sec. 7.** (1) By January 1, 2004, and again by
31 January 1, 2005, the organizing body representing participants in
32 the fraud alert network shall provide a comprehensive written
33 report to the house financial institutions and insurance
34 committee and the senate committee on financial services,
35 insurance and housing regarding the implementation of the
36 provisions of this act.

37 (2) The written report shall include the following:

38 (a) The number of participants in the network, including the
39 name of each participating entity;

1 (b) The standards or protocols established by the network to
2 determine compliance on the part of a participant with the
3 provisions of this act;

4 (c) A detailed description of the procedures which are
5 adopted by the fraud alert network, as required under section 3
6 of this act, to ensure the security and accuracy of information
7 furnished to the network, including procedures for the removal or
8 correction of incomplete or erroneous information furnished to
9 the network;

10 (d) A detailed description of the procedures adopted by the
11 network by which an individual who has been reported to the
12 network, or who is the subject of any information furnished to
13 the network, may correct or remove inaccurate, incomplete or
14 erroneous information;

15 (e) An accounting of how many actions the network has taken
16 in the preceding year to correct or remove incomplete or
17 erroneous information from the network, including how many such
18 actions were the result of a request or complaint from an
19 individual whose information has been entered into the network;

20 (f) The number of complaints about the fraud alert network
21 received by each participant in the network, including a
22 description of each complaint and what actions, either on the
23 part of the network participant or the complainant, resulted from
24 each complaint;

25 (g) A description of any adverse action taken by the fraud
26 alert network against a network participant resulting from
27 noncompliance with the standards and procedures established by
28 the network as a condition of participation in the network; and

29 (h) The disclosure of the number of individuals whose names
30 have been placed in the network database for suspected financial
31 crimes and a description of the type of alleged illegal activity
32 that led to such individuals being placed in the network
33 database.

34 NEW SECTION. **Sec. 8.** This chapter shall be construed to
35 encourage the sharing of information by financial institutions,
36 merchants, and law enforcement for the prevention and prosecution
37 of financial fraud.

1 NEW SECTION. **Sec. 9.** This act may be known and cited as
2 the financial fraud alert act.

3 NEW SECTION. **Sec. 10.** If any part of this act is found to
4 be in conflict with federal requirements that are a prescribed
5 condition to the allocation of federal funds to the state, the
6 conflicting part of this act is inoperative solely to the extent
7 of the conflict and with respect to the agencies directly
8 affected, and this finding does not affect the operation of the
9 remainder of this act in its application to the agencies
10 concerned.

11 NEW SECTION. **Sec. 11.** Sections 1 through 10 of this act
12 constitute a new chapter in Title 30 RCW."

13 Correct the title.

- EFFECT:** The striking amendment has the following effects:
- ∅ Creates specified public notice requirements that must be followed by the network and its participants.
 - ∅ Requires that the network provide comprehensive reports to the legislature in 2004 and 2005 regarding the functioning of the network and the implementation of the act.
 - ∅ Deletes the section exempting law enforcement agencies from the requirements of the public disclosure act with respect to information received from the fraud alert network.
 - ∅ Deletes the section stating the intent to exempt the network from the privacy disclosure requirements of the Gramm-Leach-Bliley Act.
 - ∅ Deletes the emergency clause that would have made the act effective immediately upon passage by the legislature.