

SENATE BILL REPORT

SB 6546

As Reported By Senate Committee On:
Financial Services, Insurance & Housing, February 2, 2004

Title: An act relating to the confidentiality of compliance review documents and release of records by nonbank financial service companies.

Brief Description: Establishing confidentiality for certain compliance review documents of nonbank financial services companies.

Sponsors: Senators Prentice and Benton.

Brief History:

Committee Activity: Financial Services, Insurance & Housing: 2/2/04 [DP].

SENATE COMMITTEE ON FINANCIAL SERVICES, INSURANCE & HOUSING

Majority Report: Do pass.

Signed by Senators Benton, Chair; Berkey, Murray, Prentice and Roach.

Staff: Joanne Conrad (786-7472)

Background: The Department of Financial Institutions (DFI) is responsible for overseeing the legal compliance of many types of financial services, including "nonbank" financial services such as consumer loan companies, payday lenders, money transmitters, mortgage brokers, escrow agents, securities brokers and investment advisors. Oversight of nonbank financial services includes compliance reviews, which can involve voluntary submission of nonpublic information.

"Traditional" financial services, such as banks, are already protected from discoverability and potential civil liability, when they disclose information to DFI as part of a compliance review. Since enactment of the U.S. Patriot Act, substantially more information is required by the government from virtually all types of financial services businesses. Nonbank financial services are concerned that they may not be as adequately protected from discovery and liability as traditional banking services are, and this may have a chilling effect on their willingness to voluntarily disclose information.

Summary of Bill: A new chapter is added to Title 19 RCW, providing that nonbank financial services that comply voluntarily with state and federal regulatory disclosure are protected against compliance review document discovery, and against liability for release of information (for example, information about consumers) to law enforcement agencies.

Safeguards are established, such as judicial in camera review of the compliance information. In some instances, DFI personnel are protected from having to testify regarding information obtained during a compliance review of a nonbank.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: Public policy should encourage voluntary disclosure in compliance reviews. Companies making such disclosures now have potential liability. Protection that banks enjoy should be extended to nonbanks.

Testimony Against: Compliance reviews should not provide "blanket protection." Consumers need ability to private right of action. DFI should not be included in this bill. Protection afforded to banks is different due to GLB Act compliance. Under this bill, companies would control the privilege against disclosure and shield themselves from legitimate public scrutiny.

Testified: Jerry Farley, Financial Service Centers (pro); Chuck Cross, DFI (con); Larry Shannon, WA State Trial Lawyers Assn. (con); Roland Thompson, Newspapers (con).