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**SENATE BILL 5602**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Senators Mullet and Hasegawa; by request of Department of Financial Institutions

AN ACT Relating to service providers working with state-regulated financial institutions; amending RCW 31.12.565; and adding new sections to chapter 43.320 RCW.

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

NEW SECTION. **Sec.**  DEFINITIONS. The definitions in this section apply throughout this section and sections 2 through 7 of this act unless the context clearly requires otherwise.

(1) "Covered financial institution" means a bank as defined in section 3 of the federal deposit insurance act, 12 U.S.C. Sec. 1813(a), and includes those financial institutions supervised and regulated by the director under Titles 30A, 32, and 33 RCW, including any subsidiary or affiliate of any applicable covered financial institution under the bank service company act, 12 U.S.C. Sec. 1861(b)(2).

(2) "Covered service" means any service subject to examination under the bank service company act, 12 U.S.C. Sec. 1867 (c) as of the effective date of this section, or such subsequent date as may be provided by the department by rule consistent with the purposes of this act.

(3) "Department" means the state department of financial institutions.

(4) "Director" means the director of financial institutions, or the director's duly authorized representative.

(5) "Federal agency" includes the federal deposit insurance corporation, federal reserve, national credit union administration, consumer financial protection bureau, and office of the comptroller of the currency, or any successor federal agencies.

(6) "Service provider" means any person, company, corporation, or other legal entity that provides a covered service to a covered financial institution; the term service provider also includes "service companies" as defined under the bank service company act, 12 U.S.C. Sec. 1861(b)(2).

NEW SECTION. **Sec.**  EXAMINATION OF SERVICE PROVIDERS. (1) A service provider that provides a covered service, by contract or otherwise, to a covered financial institution, is subject to examination by the director to the same extent as if the covered service was performed by the covered financial institution itself.

(2) The director may, in the director's discretion, examine any service provider under sections 1 through 7 of this act; provided that prior to any state-only examination, the director must find that:

(a) The information sought cannot be otherwise accessed or verified by the records of the covered financial institution without direct examination of the records of the service provider;

(b) The service provider manages an application, process, or system for the benefit of the covered financial institution, the integrity of which cannot be evaluated without direct examination; or

(c) An act or omission of the service provider sought to be examined has resulted in a significant heightened risk, is committing an unsafe and unsound practice, operating in an unsafe or unsound manner, or is otherwise violating a provision of Title 30A, 32, or 33 RCW, or other applicable law.

NEW SECTION. **Sec.**  ACCEPTANCE OF REPORTS OF EXAMINATION FROM OTHER REGULATORS. The director may, in the director's discretion, accept service provider reports of examination, which are made by any other state or federal agency, in lieu of any examination authorized under the laws of this state.

NEW SECTION. **Sec.**  CONFIDENTIALITY OF SERVICE PROVIDER REPORTS OF EXAMINATION. A service provider report of examination written or obtained by the director is confidential and subject to the applicable state and federal bank confidentiality laws including, but not limited to, RCW 30A.04.075, 31.12.565, 32.04.220, and 33.04.110, provided that:

(1) For any joint service provider report of examination performed by the director with any other state or federal agency, a copy may be furnished to:

(a) The examined service provider or the covered financial institutions serviced by the service provider in accordance with the bank service company act, 12 U.S.C. chapter 18, and the attendant rules, regulations, policies, and guidance applicable to service provider examinations;

(b) Outside parties with written consent of all state and federal agencies that participated in the examination; or

(c) Outside parties if compelled in response to a valid legal process; however, the department must provide a written notice of disclosure and reasonable opportunity to object to all state and federal agencies that participated in the examination.

(2) For any state-only service provider report of examination performed solely by the director, a copy may be furnished to:

(a) The examined service provider;

(b) Any Washington state-chartered or Washington state-licensed financial institution serviced by the service provider; or

(c) Outside parties if compelled in response to a valid legal process with reasonable opportunity for the department to object.

NEW SECTION. **Sec.**  AGREEMENTS WITH STATE AND FEDERAL AGENCIES. The director may enter into examination and information sharing agreements with any state or federal agency that has joint or concurrent jurisdiction over a service provider.

NEW SECTION. **Sec.**  ENFORCEMENT. (1) The director may take enforcement actions against a service provider for planning, attempting, or currently violating any state or federal law, or engaging in any unsafe or unsound practice, to the same extent, and as if, the covered service was performed by the covered financial institution itself, pursuant to Titles 30A, 32, and 33 RCW.

(2) The director may enter into joint examinations or joint enforcement actions with other state or federal agencies having joint or concurrent jurisdiction over a service provider.

NEW SECTION. **Sec.**  DIRECTOR—BROAD ADMINISTRATIVE DISCRETION—RULE MAKING. The director has the power, and broad administrative discretion, to administer and interpret sections 1 through 6 of this act. The director may adopt all rules necessary to administer sections 1 through 6 of this act.

**Sec.**  RCW 31.12.565 and 2010 c 87 s 6 are each amended to read as follows:

(1) The following are confidential and privileged and not subject to public disclosure under chapter 42.56 RCW:

(a) Examination reports and information obtained by the director in conducting examinations and investigations under this chapter and chapter 31.13 RCW;

(b) Examination reports and related information from other financial institution regulators obtained by the director;

(c) Reports or parts of reports accepted in lieu of an examination under RCW 31.12.545; and

(d) Business plans and other proprietary information obtained by the director in connection with a credit union's application or notice to the director.

(2) Notwithstanding subsection (1) of this section, the director may furnish examination reports((~~[,]~~)) , work papers, final orders, or other information obtained in the conduct of an examination or investigation prepared by the director to:

(a) Federal agencies empowered to examine credit unions or other financial institutions;

(b) Officials empowered to investigate criminal charges. The director may furnish only that part of the report which is necessary and pertinent to the investigation, and only after notifying the affected credit union and members of the credit union who are named in that part of the examination report, or other person examined, that the report is being furnished to the officials, unless the officials requesting the report obtain a waiver of the notice requirement for good cause from a court of competent jurisdiction;

(c) The examined credit union or other person examined, solely for its confidential use;

(d) A department licensee or regulated entity that uses a covered service as defined in section 1 of this act, by contract or otherwise, solely for its confidential use;

(e) The attorney general in his or her role as legal advisor to the director;

((~~(e)~~)) (f) Prospective merger partners or conservators, receivers, or liquidating agents of a distressed credit union;

((~~(f)~~)) (g) Credit union regulators in other states or foreign jurisdictions regarding an out-of-state or foreign credit union conducting business in this state under this chapter, or regarding a credit union conducting business in the other state or jurisdiction;

((~~(g)~~)) (h) A person officially connected with the credit union or other person examined, as officer, director, supervisory committee member, attorney, auditor, accountant, independent attorney, independent auditor, or independent accountant;

((~~(h)~~)) (i) Organizations that have bonded the credit union to the extent that information is relevant to the renewal of the bond coverage or to a claim under the bond coverage;

((~~(i)~~)) (j) Organizations insuring or guaranteeing the shares of, or deposits in, the credit union; or

((~~(j)~~)) (k) Other persons as the director may determine necessary to protect the public interest and confidence.

(3) Examination reports, work papers, temporary and final orders, consent orders, and other information obtained in the conduct of an examination or investigation furnished under subsection (2) of this section remain the property of the director and no person to whom reports are furnished or any officer, director, or employee thereof may disclose or make public the reports or information contained in the reports except in published statistical information that does not disclose the affairs of a person, except that nothing prevents the use in a criminal prosecution of reports furnished under subsection (2)(b) of this section.

(4) In a civil action in which the reports or information are sought to be discovered or used as evidence, a party may, upon notice to the director, petition the court for an in-camera review of the reports or information. The court may permit discovery and introduction of only those portions of the report or information which are relevant and otherwise unobtainable by the requesting party. This subsection does not apply to an action brought or defended by the director.

(5) This section does not apply to investigation reports prepared by the director concerning an application for a new credit union or a notice of intent to establish a branch of a credit union, except that the director may adopt rules making portions of the reports confidential, if in the director's opinion the public disclosure of that portion of the report would impair the ability to obtain information the director considers necessary to fully evaluate the application.

(6) Any person who knowingly violates a provision of this section is guilty of a gross misdemeanor.

NEW SECTION. **Sec.**  Sections 1 through 7 of this act are each added to chapter 43.320 RCW.

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