

CERTIFICATION OF ENROLLMENT

SENATE BILL 5602

67th Legislature
2022 Regular Session

Passed by the Senate January 28, 2022
Yeas 44 Nays 0

President of the Senate

Passed by the House March 2, 2022
Yeas 97 Nays 0

**Speaker of the House of
Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5602** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SENATE BILL 5602

Passed Legislature - 2022 Regular Session

State of Washington

67th Legislature

2022 Regular Session

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

Prefiled 12/28/21. Read first time 01/10/22. Referred to Committee on Business, Financial Services & Trade.

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

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

5 NEW SECTION. **Sec. 1.** DEFINITIONS. The definitions in this
6 section apply throughout this section and sections 2 through 7 of
7 this act unless the context clearly requires otherwise.

8 (1) "Covered financial institution" means a bank as defined in
9 section 3 of the federal deposit insurance act, 12 U.S.C. Sec.
10 1813(a), and includes those financial institutions supervised and
11 regulated by the director under Titles 30A, 32, and 33 RCW, including
12 any subsidiary or affiliate of any applicable covered financial
13 institution under the bank service company act, 12 U.S.C. Sec.
14 1861(b) (2).

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

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

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

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

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

12 NEW SECTION. **Sec. 2.** EXAMINATION OF SERVICE PROVIDERS. (1) A
13 service provider that provides a covered service, by contract or
14 otherwise, to a covered financial institution, is subject to
15 examination by the director to the same extent as if the covered
16 service was performed by the covered financial institution itself.

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

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

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

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

32 NEW SECTION. **Sec. 3.** ACCEPTANCE OF REPORTS OF EXAMINATION FROM
33 OTHER REGULATORS. The director may, in the director's discretion,
34 accept service provider reports of examination, which are made by any
35 other state or federal agency, in lieu of any examination authorized
36 under the laws of this state.

1 NEW SECTION. **Sec. 4.** CONFIDENTIALITY OF SERVICE PROVIDER
2 REPORTS OF EXAMINATION. A service provider report of examination
3 written or obtained by the director is confidential and subject to
4 the applicable state and federal bank confidentiality laws including,
5 but not limited to, RCW 30A.04.075, 31.12.565, 32.04.220, and
6 33.04.110, provided that:

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

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

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

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

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

23 (a) The examined service provider;

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

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

28 NEW SECTION. **Sec. 5.** AGREEMENTS WITH STATE AND FEDERAL
29 AGENCIES. The director may enter into examination and information
30 sharing agreements with any state or federal agency that has joint or
31 concurrent jurisdiction over a service provider.

32 NEW SECTION. **Sec. 6.** ENFORCEMENT. (1) The director may take
33 enforcement actions against a service provider for planning,
34 attempting, or currently violating any state or federal law, or
35 engaging in any unsafe or unsound practice, to the same extent, and
36 as if, the covered service was performed by the covered financial
37 institution itself, pursuant to Titles 30A, 32, and 33 RCW.

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

4 NEW SECTION. **Sec. 7.** DIRECTOR—BROAD ADMINISTRATIVE DISCRETION—
5 RULE MAKING. The director has the power, and broad administrative
6 discretion, to administer and interpret sections 1 through 6 of this
7 act. The director may adopt all rules necessary to administer
8 sections 1 through 6 of this act.

9 **Sec. 8.** RCW 31.12.565 and 2010 c 87 s 6 are each amended to read
10 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 NEW SECTION. **Sec. 9.** Sections 1 through 7 of this act are each
12 added to chapter 43.320 RCW.

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