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SECOND SUBSTITUTE HOUSE BILL 1273

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State of Washington

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2008 Regular Session

**By** House Insurance, Financial Services & Consumer Protection  
(originally sponsored by Representatives Roach, Ericks, Hurst, Kirby,  
Strow, Newhouse, Simpson, Williams, Haler, O'Brien, Moeller, Pearson,  
VanDeWege, McCune, Kenney, Rolfes, and Morrell)

READ FIRST TIME 02/06/08.

1 AN ACT Relating to financial fraud; and adding a new chapter to  
2 Title 19 RCW.

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

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

17 The legislature intends to enable financial institutions and  
18 merchants, to the extent permitted by federal law, to exchange

1 information to prevent, detect, deter, and assist in the prosecution of  
2 financial fraud, bank robbery, money laundering, identity theft, and  
3 other financial crimes.

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

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

9 (2) "Electronic posting" means the use of a web site or other form  
10 of electronic communication used to display information gathered in  
11 connection with a fraud alert network.

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

36 (4) "Financial institution" means: (a) Any person doing business  
37 under the laws of any state or the United States relating to commercial

1 banks, bank holding companies, financial holding companies, savings  
2 banks, savings and loan associations, trust companies, or credit  
3 unions; (b) any office of an international banking corporation, branch  
4 of a foreign bank, or corporation organized pursuant to the Bank  
5 Service Corporation Act (12 U.S.C. Sec. 1861-1867) or a corporation  
6 organized under the Edge Act (12 U.S.C. Sec. 611-633); (c)  
7 subsidiaries, affiliates, service corporations of the persons in (a)  
8 and (b) of this subsection; (d) third-party service providers that  
9 provide servicing, processing, account maintenance, or security for the  
10 persons in (a), (b), and (c) of this subsection; or (e) any group,  
11 organization, or association consisting primarily of the persons in (a)  
12 through (c) of this subsection including, without limitation, the  
13 Washington bankers association, the American bankers association, and  
14 other associations of banks, savings institutions, and/or credit  
15 unions, whether inside or outside the state of Washington. However, a  
16 group or association in this subsection (4)(e) that obtains access to  
17 a fraud alert network may provide access to that network or to  
18 information received from that network only to persons described in (a)  
19 through (d) of this subsection.

20 (5) "Fraud alert network" means a program established by and among  
21 financial institutions and/or merchants to prevent, detect, deter, and  
22 assist in the prosecution of financial crimes, including a program in  
23 which information is shared by means of electronic posting.

24 (6) "Merchant" means a person engaged in the business of selling,  
25 leasing, or distributing goods or services and has an existing  
26 contractual relationship or contract with a financial institution.

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

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

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

36 (b) The sole purpose of the fraud alert network is to share

1 information among financial institutions, merchants, and law  
2 enforcement agencies to prevent, detect, deter, and assist in the  
3 prosecution of financial crimes;

4 (c) Information furnished to the fraud alert network consists of:

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

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

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

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

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

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

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

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

32 (3) Any financial institution or merchant that makes a voluntary  
33 disclosure of any possible violation of law or regulation to a federal,  
34 state, or local government or agency in connection with information  
35 obtained from a fraud alert network is immune from civil liability for  
36 such disclosure or for any failure to provide notice of such disclosure  
37 to the person who is the subject of or identified in the disclosure,  
38 under the laws and rules of the state of Washington and its political

1 subdivisions and, to the extent the conflicts of law rules of any other  
2 jurisdiction refer to the law of the state of Washington, under the  
3 laws and rules of such other jurisdiction and its political  
4 subdivisions, and under any contract or other legally enforceable  
5 agreement.

6 NEW SECTION. **Sec. 4.** The immunity under section 3 of this act  
7 does not apply to any participant that:

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

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

17 (3) Fails to maintain procedures to ensure that information  
18 obtained from the fraud alert network is provided only to employees,  
19 attorneys, or agents who have job-related duties relevant to the use of  
20 such information;

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

24 (5) Uses information for a purpose other than preventing,  
25 detecting, deterring, and assisting in the prosecution of financial  
26 crimes;

27 (6) Uses, reproduces, distributes, publishes, forwards, shares,  
28 sells, or communicates any information obtained from the fraud alert  
29 network for a commercial purpose, such as for advertising or marketing;  
30 or

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

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

35 (2) A fraud alert network is intended to protect against or prevent

1 actual or potential fraud and unauthorized transactions, claims, or  
2 other liability, and is intended to be exempt from the privacy  
3 disclosure requirements of the Gramm-Leach-Bliley Act of 1999.

4 (3) It is intended that so long as the participants comply with  
5 this chapter, the provisions of the Washington fair credit reporting  
6 act, chapter 19.182 RCW, do not apply to the fraud alert network.  
7 However, if it is determined that the federal fair credit reporting act  
8 applies to a fraud alert network, the Washington fair credit reporting  
9 act also applies.

10 NEW SECTION. **Sec. 6.** This chapter shall be construed to encourage  
11 the sharing of information by financial institutions, merchants, and  
12 law enforcement for the prevention and prosecution of financial fraud.

13 NEW SECTION. **Sec. 7.** This chapter may be known and cited as the  
14 financial fraud alert act.

15 NEW SECTION. **Sec. 8.** If any part of this act is found to be in  
16 conflict with federal requirements that are a prescribed condition to  
17 the allocation of federal funds to the state, the conflicting part of  
18 this act is inoperative solely to the extent of the conflict and with  
19 respect to the agencies directly affected, and this finding does not  
20 affect the operation of the remainder of this act in its application to  
21 the agencies concerned.

22 NEW SECTION. **Sec. 9.** Sections 1 through 8 of this act constitute  
23 a new chapter in Title 19 RCW.

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