

HOUSE BILL REPORT

HB 1819

As Amended by the Senate

Title: An act relating to the confidentiality of voluntary compliance efforts by financial institutions.

Brief Description: Establishing the confidentiality of voluntary compliance efforts by financial institutions.

Sponsors: By House Committee on Law & Justice (originally sponsored by Representatives Benson, Grant, L. Thomas and Zellinsky).

Brief History:

Committee Activity:

Law & Justice: 2/28/97, 3/5/97 [DP].

Floor Activity:

Passed House: 3/13/97, 74-22.

Senate Amended.

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass. Signed by 9 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Carrell; Lambert; Lantz; Radcliff; Sherstad and Skinner.

Minority Report: Do not pass. Signed by 4 members: Representatives Costa, Ranking Minority Member; Constantine, Assistant Ranking Minority Member; Cody and Kenney.

Staff: Edie Adams (786-7180).

Background: The federal Equal Credit Opportunity Act makes it unlawful for a creditor to discriminate against an applicant in a credit transaction (1) on the basis of race, color, religion, national origin, sex, marital status, or age; (2) because all or part of the applicant's income is from a public assistance program; or (3) because the applicant has exercised rights granted by the act. The act also imposes a number of duties on creditors relating to credit transactions.

The federal Fair Housing Act also makes it unlawful for a bank or other business that makes real estate loans to deny a loan or other financial assistance to a person

applying for a loan for the purchase, construction, or improvement of a dwelling, or to discriminate against the person in fixing the terms and conditions of the loan, on the basis of the person's race, color, religion, sex, or national origin.

In 1996, the U.S. Congress passed legislation creating a privilege for a report or result of a self-test conducted by a creditor to determine the level or effectiveness of compliance with the Equal Credit Opportunity Act. The privilege only applies if the creditor has identified a possible violation of the act and has taken appropriate corrective action to address the possible violation. In addition, the privilege may only be asserted in a proceeding in which a violation of the act is alleged or in an examination or investigation of compliance with the act. This privilege was also created for persons conducting self-tests of compliance with residential real estate related lending practices under the Fair Housing Act.

Summary of Bill: A legislative finding is made that efforts by financial institutions to voluntarily comply with state and federal requirements are vital to the public interest and that possible discovery and use of work produced in connection with voluntary compliance efforts has a chilling effect on the use and effectiveness of these efforts.

A financial institution's compliance review documents are confidential and are not discoverable or admissible as evidence in any civil action. Compliance review personnel may not be required to testify at a deposition or trial in a civil matter concerning the contents of a compliance review, compliance review documents, or the actions taken by the financial institution in connection with a compliance review.

A "compliance review" is defined as a self-critical analysis conducted to review or evaluate past conduct, transactions, policies, or procedures for the purpose of confidentially (1) ascertaining, monitoring, or remediating violations of federal or state laws, regulations, or mandatory policies, statements, or guidelines; (2) assessing and improving loan quality, loan underwriting standards, or lending practices; or (3) assessing and improving financial reporting to federal or state regulatory agencies. Compliance review personnel are those persons directed by the management of a financial institution to conduct a compliance review.

A "compliance review document" is defined as any record prepared or created in connection with a compliance review by compliance review personnel. Compliance review documents do not include underlying documents, data, or factual materials that are the subject of or source materials for the compliance review.

The privilege for documents and information relating to a compliance review does not apply (1) if the privilege has been expressly waived; (2) if documents or matters concerning the compliance review were voluntarily disclosed, but only to the extent of the disclosure; or (3) to any information required by statute or regulation to be

maintained by or provided to a governmental agency while the information is in the possession of the agency.

A court may inspect documents for which the privilege is claimed to determine whether or not the privilege applies to any or all of the documents. The court may order the disclosure of any documents the court determines are not covered by the privilege.

EFFECT OF SENATE AMENDMENT(S): The compliance review document privilege is available only to state-chartered financial institutions, rather than federal or state institutions.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: The bill will encourage financial institutions to aggressively pursue measures to determine compliance with the law and correct any violations without fear that these voluntary efforts will be used against them in civil suits. The bill is similar to federal law, but broader to allow voluntary compliance reviews with respect to all laws and rules relating to financial institutions.

Testimony Against: None.

Testified: Representative Benson, prime sponsor; and Daniel Ritter and Meara Nisbet, Washington Bankers Association (pro).