

# HOUSE BILL ANALYSIS

## SB 5874

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**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:** Senators Hale and Winsley.

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### HOUSE COMMITTEE ON LAW & JUSTICE

**Staff:** Edie Adams (786-7180).

**Background:** The judiciary has inherent power to compel the discovery of evidence or the testimony of a witness in judicial proceedings so that the court will receive all relevant information. However, the common law and statutory law recognize exceptions to compelled testimony and discovery in some circumstances, including "privileges." A privilege is recognized when a communication or information is deemed of such importance that it is to be protected.

Examination reports and information obtained by the Department of Financial Institutions in the process of conducting bank examinations is generally confidential and not subject to public disclosure. This information is discoverable in a civil action to the extent the information is relevant and otherwise unobtainable by the requesting party. There is no specific protection of confidentiality for internal reports or examinations conducted by a financial institution.

In 1996, the U.S. Congress passed legislation creating a privilege for a report or result of a self-test conducted by a creditor or a financial institution to determine the level or effectiveness of compliance with the federal Equal Credit Opportunity Act and the federal Fair Housing Act, which generally prohibit discriminatory acts in credit transactions. The privilege only applies if the creditor has identified a possible violation of one of the acts 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 one of the acts is alleged or in an examination or investigation of compliance with the provisions of these acts.

**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.

**Fiscal Note:** Not requested.

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

Office of Program Research