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SENATE BILL 5715

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State of Washington

58th Legislature

2003 Regular Session

By Senators Benton, Prentice, Winsley and Oke

Read first time 02/07/2003. Referred to Committee on Financial Services, Insurance & Housing.

1 AN ACT Relating to the financial fraud alert act; adding a new  
2 chapter to Title 30 RCW; and declaring an emergency.

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 for the purpose of preventing, detecting, deterring, and  
2 assisting in the prosecution of financial fraud, bank robbery, money  
3 laundering, and 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) "Financial crimes" means fraud, false representation, scams,  
10 swindles, forgery, unlawful issuance of checks, drafts, funds  
11 transfers, and payment instructions, identity theft, robbery, theft,  
12 tax evasion, embezzlement, money laundering, and other financial  
13 related crimes.

14 (3) "Financial institution" means: (a) Any person doing business  
15 under the laws of any state or the United States relating to commercial  
16 banks, bank holding companies, financial holding companies, savings  
17 banks, savings and loan associations, trust companies, or credit  
18 unions; (b) any office of an international banking corporation, branch  
19 of a foreign bank, or corporation organized pursuant to the Bank  
20 Service Corporation Act (12 U.S.C. Sec. 1861-1867) or a corporation  
21 organized under the Edge Act (12 U.S.C. Sec. 611-633); (c)  
22 subsidiaries, affiliates, service corporations of the persons in (a)  
23 and (b) of this subsection; (d) third-party service providers that  
24 provide servicing, processing, account maintenance, or security for the  
25 persons in (a), (b), and (c) of this subsection; or (e) any group,  
26 organization, or association of the persons in (a) through (c) of this  
27 subsection, including, without limitation, the Washington bankers  
28 association, the American bankers association, and other associations  
29 of banks, savings institutions, and/or credit unions, whether inside or  
30 outside the state of Washington.

31 (4) "Fraud alert network" means a program established by and among  
32 financial institutions and/or merchants for the purpose of preventing,  
33 detecting, deterring, and assisting in the prosecution of financial  
34 crimes, including a program in which information is shared by means of  
35 electronic posting.

36 (5) "Electronic posting" means the use of a web site or other form

1 of electronic communication used to display information gathered in  
2 connection with a fraud alert network.

3 (6) "Merchant" means a person engaged in the business of selling,  
4 leasing, or distributing goods or services, or an association or  
5 cooperative organization of such persons.

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

8 NEW SECTION. **Sec. 3.** (1) This chapter provides immunity from  
9 liability for financial institutions and merchants who participate in  
10 a fraud alert network and who comply with the provisions of this  
11 chapter and the standards of use set forth in this subsection, as  
12 follows:

13 (a) Access to the fraud alert network is private, and limited to  
14 financial institutions and/or merchants;

15 (b) The sole purpose of the fraud alert network is to share  
16 information among financial institutions, merchants, and/or law  
17 enforcement for the preventing, detecting, deterring, and assisting in  
18 the prosecution of financial crimes;

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

20 (i) Descriptions of recent actual or suspected financial crimes  
21 perpetrated against or coming to the attention of the participant  
22 furnishing the information; (ii) descriptions, photographs, images,  
23 reproductions, fingerprints, identifying features, traits, habits,  
24 background, or other data related to identifying the person, persons,  
25 or groups suspected of committing, aiding, or abetting financial  
26 crimes; (iii) identifying information regarding methods of operation,  
27 devices, tricks, or schemes used by persons suspected of financial  
28 crimes; (iv) descriptions, photographs, images, or reproductions of  
29 writings, communications, checks, and personal identification used in  
30 connection with suspected financial crimes; (v) descriptions,  
31 photographs, images, or reproductions of vehicles, license plates,  
32 weapons, devices, or other things used in connection with suspected  
33 financial crimes; (vi) cautionary statements regarding suspects, for  
34 example a statement that a suspect is armed and dangerous; and (vii)  
35 other information that will allow participants to identify financial  
36 crimes, to identify persons suspected in connection with financial

1 crimes, or to assist in the apprehension of persons suspected of  
2 financial crimes;

3 (d) Information posted shall be accessible only to designated  
4 employees, and the distribution of information shall be limited to  
5 those employees, attorneys, and agents of financial institutions or  
6 merchants who have job-related duties relevant to the use of such  
7 information in connection with preventing, detecting, deterring, and  
8 assisting in the prosecution of financial crimes;

9 (e) The fraud alert network has procedures reasonably calculated to  
10 ensure the security of the information obtained;

11 (f) Users of the fraud alert network are informed that the  
12 information obtained may not be used to evaluate and make decisions  
13 about routine applications for loans, lines of credit, and credit  
14 cards; and

15 (g) Information furnished pursuant to the fraud alert network is  
16 limited to statements of fact that the person furnishing the  
17 information reasonably believes to be true. However, in exigent  
18 circumstances, information may be furnished without such reasonable  
19 belief if the circumstances creating an emergency are described, and  
20 cautionary advice is provided regarding the limited knowledge of the  
21 person furnishing the information.

22 (2) Washington law governs the operation of a fraud alert network.  
23 Participation in the fraud alert network in accordance with subsection  
24 (1) of this section, whether through furnishing, posting, publishing,  
25 or using information in connection thereto, shall provide immunity from  
26 civil liability and from liability for criminal libel and slander under  
27 the laws and rules of the state of Washington and its political  
28 subdivisions and, to the extent the conflicts of law rules of any other  
29 jurisdiction refer to the law of the state of Washington, under the  
30 laws and rules of such other jurisdiction and its political  
31 subdivisions.

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 of section 3 of this act shall  
7 not apply to any participant that:

8 (1) Knowingly provides false information to the fraud alert  
9 network;

10 (2) Fails to maintain review procedures reasonably intended to  
11 remove or correct outdated, incomplete, or erroneous information  
12 furnished by it to the fraud alert network;

13 (3) Fails to maintain procedures reasonably intended to ensure that  
14 information obtained from the fraud alert network will be provided only  
15 to employees, attorneys, or agents who have job-related duties relevant  
16 to the use of such information;

17 (4) Uses information obtained from the fraud alert network to  
18 evaluate and make decisions about routine applications for loans, lines  
19 of credit, and credit cards;

20 (5) Uses information for a purpose other than preventing,  
21 detecting, deterring, and assisting in the prosecution of financial  
22 crimes;

23 (6) Uses, reproduces, distributes, publishes, or communicates any  
24 information obtained from the fraud alert network for a commercial  
25 purpose, such as for advertising or marketing; or

26 (7) Provides, sells, or resells access to the fraud alert network  
27 to a person not entitled to such information.

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

30 (2) A fraud alert network is intended to protect against or prevent  
31 actual or potential fraud, unauthorized transactions, claims, or other  
32 liability, and is intended to be exempt from privacy disclosure  
33 requirements of the Gramm-Leach-Bliley Act of 1999.

34 (3) It is intended that the Washington fair credit reporting act,  
35 chapter 19.182 RCW, does not apply to a fraud alert network. However,

1 if it is determined that the federal fair credit reporting act applies  
2 to a fraud alert network, the Washington fair credit reporting act  
3 shall likewise be applicable.

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

8 NEW SECTION. **Sec. 7.** Information shared pursuant to a fraud alert  
9 network is exempt from public disclosure under chapter 42.17 RCW.

10 NEW SECTION. **Sec. 8.** This act may be known and cited as the  
11 financial fraud alert act.

12 NEW SECTION. **Sec. 9.** If any part of this act is found to be in  
13 conflict with federal requirements that are a prescribed condition to  
14 the allocation of federal funds to the state, the conflicting part of  
15 this act is inoperative solely to the extent of the conflict and with  
16 respect to the agencies directly affected, and this finding does not  
17 affect the operation of the remainder of this act in its application to  
18 the agencies concerned. Rules adopted under this act must meet federal  
19 requirements that are a necessary condition to the receipt of federal  
20 funds by the state.

21 NEW SECTION. **Sec. 10.** This act is necessary for the immediate  
22 preservation of the public peace, health, or safety, or support of the  
23 state government and its existing public institutions, and takes effect  
24 immediately.

25 NEW SECTION. **Sec. 11.** Sections 1 through 10 of this act  
26 constitute a new chapter in Title 30 RCW.

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