
SENATE BILL 6546

State of Washington

58th Legislature

2004 Regular Session

By Senators Prentice and Benton

Read first time 01/23/2004. Referred to Committee on Financial Services, Insurance & Housing.

1 AN ACT Relating to the confidentiality of compliance review
2 documents and release of records by nonbank financial service
3 companies; and adding a new chapter to Title 19 RCW.

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

5 NEW SECTION. **Sec. 1.** The legislature finds and declares that
6 efforts by nonbank financial service providers to comply voluntarily
7 with state and federal statutory and regulatory requirements are vital
8 to the public interest; and that possible discovery and use in civil
9 litigation of work produced in connection with voluntary compliance
10 efforts has an undesirable chilling effect on the use, scope, and
11 effectiveness of voluntary compliance efforts by nonbank financial
12 service providers.

13 NEW SECTION. **Sec. 2.** Unless the context clearly requires
14 otherwise, the definitions in this section apply throughout this
15 chapter.

16 (1) "Civil action" means a civil proceeding pending in a court or
17 other adjudicatory tribunal with jurisdiction to issue a request or
18 subpoena for records, including a voluntary or mandated alternative

1 dispute resolution mechanism under which a party may compel the
2 production of records. "Civil action" does not include an examination,
3 enforcement proceeding, an administrative hearing conducted under this
4 chapter, or any other hearing initiated by the director under this
5 chapter.

6 (2) "Compliance review personnel" means a person or persons
7 assigned and directed by a licensee to conduct a compliance review, and
8 any person engaged or assigned by compliance review personnel to assist
9 in a compliance review, including any agents, employees, auditors,
10 consultants, and legal counsel of the licensee.

11 (3) "Compliance review" means a self-critical analysis conducted by
12 compliance review personnel to test, review, or evaluate past conduct,
13 transactions, policies, or procedures for the purpose of confidentially
14 (a) ascertaining, monitoring, or remediating violations of applicable
15 state and federal statutes, rules, regulations, or mandatory policies,
16 statements, or guidelines, (b) assessing and improving compliance with
17 applicable federal and state laws and regulations, or (c) assessing and
18 improving financial reporting to federal or state regulatory agencies.

19 (4) "Compliance review document" means any record prepared or
20 created by compliance review personnel in connection with a compliance
21 review. "Compliance review document" includes any documents created or
22 data generated in the course of conducting a compliance review, but
23 does not include other underlying documents, data, or factual materials
24 that are the subject of or source materials for the compliance review,
25 including any documents in existence prior to the commencement of the
26 compliance review that are not themselves compliance review documents
27 related to a past compliance review.

28 (5) "Director" means the director of the department of financial
29 institutions.

30 (6) "Licensee" means an individual, corporation, business trust,
31 estate, trust, partnership, limited liability company, limited
32 liability partnership, association, joint venture; public corporation;
33 or any other legal or commercial entity that has a valid license issued
34 by the director under authority granted by chapters 18.44, 19.146,
35 19.230, 31.04, and 31.45 RCW.

36 (7) "Person" means an individual, corporation, business trust,
37 estate, trust, partnership, limited liability company, association,

1 joint venture; government, governmental subdivision, agency, or
2 instrumentality; public corporation; or any other legal or commercial
3 entity.

4 NEW SECTION. **Sec. 3.** (1) Compliance review documents are
5 confidential and are not discoverable or admissible as evidence in any
6 civil action.

7 (2) Compliance review personnel shall not be required to testify at
8 deposition or trial in any civil action concerning the contents of or
9 matters addressed in any compliance review or any compliance review
10 documents, nor as to the actions or activities undertaken by or at the
11 direction of the licensee in connection with a compliance review.

12 (3) This section does not:

13 (a) Limit the discovery or admissibility in any civil action of any
14 documents that are not compliance review documents;

15 (b) Limit the discovery or admissibility of the testimony of
16 compliance review personnel as to the identity of relevant witnesses or
17 the identification of any relevant documents other than compliance
18 review documents;

19 (c) Apply if the licensee expressly waives the privilege in
20 writing;

21 (d) Apply if a compliance review document or matters learned in
22 connection with a compliance review are voluntarily disclosed, but only
23 to the extent of that disclosure, to a nonaffiliated third party other
24 than a federal or state regulatory agency or legal counsel for or
25 independent auditors of the licensee; or

26 (e) Apply to any information required by statute, rule, or federal
27 regulation to be maintained by or provided to a governmental agency
28 while the information is in the possession of the agency, to the extent
29 applicable law authorizes its disclosure.

30 NEW SECTION. **Sec. 4.** In a proceeding in which the privilege
31 provided by this chapter is asserted, a court of competent jurisdiction
32 may determine after in camera review that the privilege does not apply
33 to any or all of the documents for which the privilege is claimed, and
34 if so, the court may order the materials disclosed but shall protect
35 from disclosure any other material in or related to compliance review

1 documents or to activities of compliance review personnel to which the
2 privilege does apply.

3 NEW SECTION. **Sec. 5.** This chapter does not limit, waive, or
4 abrogate the scope or nature of any other statutory or common law
5 privilege of this state or the United States, including the attorney-
6 client privilege.

7 NEW SECTION. **Sec. 6.** Any licensee that makes a disclosure (1) to
8 any law enforcement agency of a possible violation of any law or
9 regulation, or (2) in response to a request for records from any law
10 enforcement agency, and any director, officer, or employee of such a
11 licensee, is not liable to any person under any law or regulation for
12 the disclosure or for any failure to notify the customer, customers, or
13 any other person of the disclosure.

14 NEW SECTION. **Sec. 7.** Sections 1 through 6 of this act constitute
15 a new chapter in Title 19 RCW.

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