

---

**SENATE BILL 5602**

---

**State of Washington**

**67th Legislature**

**2022 Regular Session**

**By** Senators Mullet and Hasegawa; by request of Department of Financial Institutions

Prefiled 12/28/21. Read first time 01/10/22. Referred to Committee on Business, Financial Services & Trade.

1 AN ACT Relating to service providers working with state-regulated  
2 financial institutions; amending RCW 31.12.565; and adding new  
3 sections to chapter 43.320 RCW.

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

5 NEW SECTION. **Sec. 1.** DEFINITIONS. The definitions in this  
6 section apply throughout this section and sections 2 through 7 of  
7 this act unless the context clearly requires otherwise.

8 (1) "Covered financial institution" means a bank as defined in  
9 section 3 of the federal deposit insurance act, 12 U.S.C. Sec.  
10 1813(a), and includes those financial institutions supervised and  
11 regulated by the director under Titles 30A, 32, and 33 RCW, including  
12 any subsidiary or affiliate of any applicable covered financial  
13 institution under the bank service company act, 12 U.S.C. Sec.  
14 1861(b) (2).

15 (2) "Covered service" means any service subject to examination  
16 under the bank service company act, 12 U.S.C. Sec. 1867 (c) as of the  
17 effective date of this section, or such subsequent date as may be  
18 provided by the department by rule consistent with the purposes of  
19 this act.

20 (3) "Department" means the state department of financial  
21 institutions.

1 (4) "Director" means the director of financial institutions, or  
2 the director's duly authorized representative.

3 (5) "Federal agency" includes the federal deposit insurance  
4 corporation, federal reserve, national credit union administration,  
5 consumer financial protection bureau, and office of the comptroller  
6 of the currency, or any successor federal agencies.

7 (6) "Service provider" means any person, company, corporation, or  
8 other legal entity that provides a covered service to a covered  
9 financial institution; the term service provider also includes  
10 "service companies" as defined under the bank service company act, 12  
11 U.S.C. Sec. 1861(b)(2).

12 NEW SECTION. **Sec. 2.** EXAMINATION OF SERVICE PROVIDERS. (1) A  
13 service provider that provides a covered service, by contract or  
14 otherwise, to a covered financial institution, is subject to  
15 examination by the director to the same extent as if the covered  
16 service was performed by the covered financial institution itself.

17 (2) The director may, in the director's discretion, examine any  
18 service provider under sections 1 through 7 of this act; provided  
19 that prior to any state-only examination, the director must find  
20 that:

21 (a) The information sought cannot be otherwise accessed or  
22 verified by the records of the covered financial institution without  
23 direct examination of the records of the service provider;

24 (b) The service provider manages an application, process, or  
25 system for the benefit of the covered financial institution, the  
26 integrity of which cannot be evaluated without direct examination; or

27 (c) An act or omission of the service provider sought to be  
28 examined has resulted in a significant heightened risk, is committing  
29 an unsafe and unsound practice, operating in an unsafe or unsound  
30 manner, or is otherwise violating a provision of Title 30A, 32, or 33  
31 RCW, or other applicable law.

32 NEW SECTION. **Sec. 3.** ACCEPTANCE OF REPORTS OF EXAMINATION FROM  
33 OTHER REGULATORS. The director may, in the director's discretion,  
34 accept service provider reports of examination, which are made by any  
35 other state or federal agency, in lieu of any examination authorized  
36 under the laws of this state.

1        NEW SECTION.        **Sec. 4.**        CONFIDENTIALITY OF SERVICE PROVIDER  
2        REPORTS OF EXAMINATION. A service provider report of examination  
3        written or obtained by the director is confidential and subject to  
4        the applicable state and federal bank confidentiality laws including,  
5        but not limited to, RCW 30A.04.075, 31.12.565, 32.04.220, and  
6        33.04.110, provided that:

7        (1) For any joint service provider report of examination  
8        performed by the director with any other state or federal agency, a  
9        copy may be furnished to:

10        (a) The examined service provider or the covered financial  
11        institutions serviced by the service provider in accordance with the  
12        bank service company act, 12 U.S.C. chapter 18, and the attendant  
13        rules, regulations, policies, and guidance applicable to service  
14        provider examinations;

15        (b) Outside parties with written consent of all state and federal  
16        agencies that participated in the examination; or

17        (c) Outside parties if compelled in response to a valid legal  
18        process; however, the department must provide a written notice of  
19        disclosure and reasonable opportunity to object to all state and  
20        federal agencies that participated in the examination.

21        (2) For any state-only service provider report of examination  
22        performed solely by the director, a copy may be furnished to:

23        (a) The examined service provider;

24        (b) Any Washington state-chartered or Washington state-licensed  
25        financial institution serviced by the service provider; or

26        (c) Outside parties if compelled in response to a valid legal  
27        process with reasonable opportunity for the department to object.

28        NEW SECTION.        **Sec. 5.**        AGREEMENTS WITH STATE AND FEDERAL  
29        AGENCIES. The director may enter into examination and information  
30        sharing agreements with any state or federal agency that has joint or  
31        concurrent jurisdiction over a service provider.

32        NEW SECTION.        **Sec. 6.**        ENFORCEMENT. (1) The director may take  
33        enforcement actions against a service provider for planning,  
34        attempting, or currently violating any state or federal law, or  
35        engaging in any unsafe or unsound practice, to the same extent, and  
36        as if, the covered service was performed by the covered financial  
37        institution itself, pursuant to Titles 30A, 32, and 33 RCW.

1 (2) The director may enter into joint examinations or joint  
2 enforcement actions with other state or federal agencies having joint  
3 or concurrent jurisdiction over a service provider.

4 NEW SECTION. **Sec. 7.** DIRECTOR—BROAD ADMINISTRATIVE DISCRETION—  
5 RULE MAKING. The director has the power, and broad administrative  
6 discretion, to administer and interpret sections 1 through 6 of this  
7 act. The director may adopt all rules necessary to administer  
8 sections 1 through 6 of this act.

9 **Sec. 8.** RCW 31.12.565 and 2010 c 87 s 6 are each amended to read  
10 as follows:

11 (1) The following are confidential and privileged and not subject  
12 to public disclosure under chapter 42.56 RCW:

13 (a) Examination reports and information obtained by the director  
14 in conducting examinations and investigations under this chapter and  
15 chapter 31.13 RCW;

16 (b) Examination reports and related information from other  
17 financial institution regulators obtained by the director;

18 (c) Reports or parts of reports accepted in lieu of an  
19 examination under RCW 31.12.545; and

20 (d) Business plans and other proprietary information obtained by  
21 the director in connection with a credit union's application or  
22 notice to the director.

23 (2) Notwithstanding subsection (1) of this section, the director  
24 may furnish examination reports(~~(+)~~)  , work papers, final orders,  
25 or other information obtained in the conduct of an examination or  
26 investigation prepared by the director to:

27 (a) Federal agencies empowered to examine credit unions or other  
28 financial institutions;

29 (b) Officials empowered to investigate criminal charges. The  
30 director may furnish only that part of the report which is necessary  
31 and pertinent to the investigation, and only after notifying the  
32 affected credit union and members of the credit union who are named  
33 in that part of the examination report, or other person examined,  
34 that the report is being furnished to the officials, unless the  
35 officials requesting the report obtain a waiver of the notice  
36 requirement for good cause from a court of competent jurisdiction;

37 (c) The examined credit union or other person examined, solely  
38 for its confidential use;

1       (d) A department licensee or regulated entity that uses a covered  
2 service as defined in section 1 of this act, by contract or  
3 otherwise, solely for its confidential use;

4       (e) The attorney general in his or her role as legal advisor to  
5 the director;

6       ~~((e))~~ (f) Prospective merger partners or conservators,  
7 receivers, or liquidating agents of a distressed credit union;

8       ~~((f))~~ (g) Credit union regulators in other states or foreign  
9 jurisdictions regarding an out-of-state or foreign credit union  
10 conducting business in this state under this chapter, or regarding a  
11 credit union conducting business in the other state or jurisdiction;

12       ~~((g))~~ (h) A person officially connected with the credit union  
13 or other person examined, as officer, director, supervisory committee  
14 member, attorney, auditor, accountant, independent attorney,  
15 independent auditor, or independent accountant;

16       ~~((h))~~ (i) Organizations that have bonded the credit union to  
17 the extent that information is relevant to the renewal of the bond  
18 coverage or to a claim under the bond coverage;

19       ~~((i))~~ (j) Organizations insuring or guaranteeing the shares of,  
20 or deposits in, the credit union; or

21       ~~((j))~~ (k) Other persons as the director may determine necessary  
22 to protect the public interest and confidence.

23       (3) Examination reports, work papers, temporary and final orders,  
24 consent orders, and other information obtained in the conduct of an  
25 examination or investigation furnished under subsection (2) of this  
26 section remain the property of the director and no person to whom  
27 reports are furnished or any officer, director, or employee thereof  
28 may disclose or make public the reports or information contained in  
29 the reports except in published statistical information that does not  
30 disclose the affairs of a person, except that nothing prevents the  
31 use in a criminal prosecution of reports furnished under subsection  
32 (2)(b) of this section.

33       (4) In a civil action in which the reports or information are  
34 sought to be discovered or used as evidence, a party may, upon notice  
35 to the director, petition the court for an in-camera review of the  
36 reports or information. The court may permit discovery and  
37 introduction of only those portions of the report or information  
38 which are relevant and otherwise unobtainable by the requesting  
39 party. This subsection does not apply to an action brought or  
40 defended by the director.

1           (5) This section does not apply to investigation reports prepared  
2 by the director concerning an application for a new credit union or a  
3 notice of intent to establish a branch of a credit union, except that  
4 the director may adopt rules making portions of the reports  
5 confidential, if in the director's opinion the public disclosure of  
6 that portion of the report would impair the ability to obtain  
7 information the director considers necessary to fully evaluate the  
8 application.

9           (6) Any person who knowingly violates a provision of this section  
10 is guilty of a gross misdemeanor.

11           NEW SECTION.   **Sec. 9.** Sections 1 through 7 of this act are each  
12 added to chapter 43.320 RCW.

--- END ---