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**SUBSTITUTE SENATE BILL 5715**

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**State of Washington**

**58th Legislature**

**2003 Regular Session**

**By** Senate Committee on Financial Services, Insurance & Housing  
(originally sponsored by Senators Benton, Prentice, Winsley and Oke)

READ FIRST TIME 03/03/03.

1       AN ACT Relating to the financial fraud alert act; adding a new  
2 section to chapter 42.17 RCW; adding a new chapter to Title 30 RCW; and  
3 declaring an emergency.

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

5       NEW SECTION. **Sec. 1.** The legislature finds that financial fraud  
6 and crimes against financial institutions and merchants are increasing  
7 exponentially in Washington state. Until recently, these crimes cost  
8 businesses and consumers thousands of dollars in losses. They now cost  
9 millions of dollars. The legislature further finds that noncredit  
10 losses to financial institutions, and credit card, debit card, and  
11 check fraud against merchants impose danger to consumers and their  
12 financial privacy, and burden law enforcement and public prosecutors  
13 with crimes that are difficult to detect and prosecute. The growth in  
14 financial fraud also provides opportunities for organized crime and  
15 terrorist organizations, and undermines the stability and reliability  
16 of financial and other businesses upon which commerce and the economy  
17 rely.

18       The legislature intends to enable financial institutions and  
19 merchants, to the extent permitted by federal law, to exchange

1 information to prevent, detect, deter, and assist in the prosecution of  
2 financial fraud, bank robbery, money laundering, and other financial  
3 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 any act, including any anticipatory or  
10 completed offense, committed for financial gain, that is chargeable or  
11 indictable, regardless of whether the act is actually charged or  
12 indicted, as a violation of a state or federal criminal law prohibiting  
13 false representation, frauds and swindles in violation of chapter 9.45  
14 RCW, forgery, obtaining a signature by deception or duress, criminal  
15 impersonation, false certification, unlawful issuance of checks,  
16 drafts, funds transfers and payment instructions, identity theft,  
17 improperly obtaining financial information, robbery, bank robbery,  
18 theft, scams, tax evasion, embezzlement, money laundering, use of  
19 proceeds of criminal profiteering, false representation concerning  
20 credit, false statement by deposit account applicant, false  
21 representation concerning title, forgery of a digital signature or  
22 other violation of RCW 9.38.060, burglary when it involves entering the  
23 premises of a financial institution or retail establishment, unlawful  
24 possession of payment instruments, unlawful production of payment  
25 instruments, unlawful possession of a personal identification device,  
26 unlawful possession of fictitious identification, unlawful possession  
27 of instruments of financial fraud, possession of another's  
28 identification, display or possession of a fraudulently issued driver's  
29 license or identicard, display or representation as one's own the  
30 driver's license or identicard of another person, unlawful factoring of  
31 a credit card or payment card transaction, or other state or federal  
32 law prohibiting a financial related crime.

33 (3) "Financial institution" means: (a) Any person doing business  
34 under the laws of any state or the United States relating to commercial  
35 banks, bank holding companies, financial holding companies, savings  
36 banks, savings and loan associations, trust companies, or credit  
37 unions; (b) any office of an international banking corporation, branch

1 of a foreign bank, or corporation organized pursuant to the Bank  
2 Service Corporation Act (12 U.S.C. Sec. 1861-1867) or a corporation  
3 organized under the Edge Act (12 U.S.C. Sec. 611-633); (c)  
4 subsidiaries, affiliates, service corporations of the persons in (a)  
5 and (b) of this subsection; (d) third-party service providers that  
6 provide servicing, processing, account maintenance, or security for the  
7 persons in (a), (b), and (c) of this subsection; or (e) any group,  
8 organization, or association consisting primarily of the persons in (a)  
9 through (c) of this subsection, including, without limitation, the  
10 Washington bankers association, the American bankers association, and  
11 other associations of banks, savings institutions, and/or credit  
12 unions, whether inside or outside the state of Washington. However, a  
13 group or association in this subsection (3)(e) that obtains access to  
14 a fraud alert network may provide access to that network or to  
15 information received from that network only to persons described in (a)  
16 through (d) of this subsection.

17 (4) "Fraud alert network" means a program established by and among  
18 financial institutions and/or merchants to prevent, detect, deter, and  
19 assist in the prosecution of financial crimes, including a program in  
20 which information is shared by means of electronic posting.

21 (5) "Electronic posting" means the use of a web site or other form  
22 of electronic communication used to display information gathered in  
23 connection with a fraud alert network.

24 (6) "Merchant" means a person engaged in the business of selling,  
25 leasing, or distributing goods or services and has an existing  
26 contractual relationship or contract with a financial institution, and:  
27 (a) Has a physical presence in the state that consumers may patronize  
28 to make purchases of goods or services; (b) is physically located in  
29 the state and sells goods or services to residents of the state via the  
30 internet; or (c) is an association or cooperative organization of  
31 persons in (a) and (b) of this subsection.

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

34 NEW SECTION. **Sec. 3.** (1) This chapter provides immunity from  
35 liability for financial institutions and merchants who participate in  
36 a fraud alert network and who comply with the provisions of this

1 chapter and the standards of use set forth in this subsection, as  
2 follows:

3 (a) Access to the fraud alert network is private, and limited to  
4 financial institutions, merchants, and law enforcement agencies;

5 (b) The sole purpose of the fraud alert network is to share  
6 information among financial institutions, merchants, and law  
7 enforcement agencies to prevent, detect, deter, and assist in the  
8 prosecution of financial crimes;

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

10 (i) Descriptions of recent actual or suspected financial crimes  
11 perpetrated against or coming to the attention of the participant  
12 furnishing the information; (ii) descriptions, photographs, images,  
13 reproductions, fingerprints, identifying features, traits, habits,  
14 background, or other data related to identifying the person, persons,  
15 or groups suspected of committing, aiding, or abetting financial  
16 crimes; (iii) identifying information regarding methods of operation,  
17 devices, tricks, or schemes used by persons suspected of financial  
18 crimes; (iv) descriptions, photographs, images, or reproductions of  
19 writings, communications, checks, and personal identification used in  
20 connection with suspected financial crimes; (v) descriptions,  
21 photographs, images, or reproductions of vehicles, license plates,  
22 weapons, devices, or other things used in connection with suspected  
23 financial crimes; (vi) cautionary statements regarding suspects, for  
24 example a statement that a suspect is armed and dangerous; and (vii)  
25 other information that allows participants to identify financial  
26 crimes, to identify persons suspected in connection with financial  
27 crimes, to assist in the apprehension of persons suspected of financial  
28 crimes, or to contact others for further information;

29 (d) Information furnished to the fraud alert network may not  
30 consist of delinquent payment information, nor may it consist of other,  
31 similar evidence of a person's credit history, except in the  
32 exceptional instance where such evidence is an integral part of  
33 information provided under (c) of this subsection and is reasonably  
34 believed to be related to a financial crime;

35 (e) Information posted shall be accessible only to designated  
36 employees, and the distribution of information is limited to those  
37 employees, attorneys, and agents of participants who have job-related

1 duties relevant to the use of such information in connection with  
2 preventing, detecting, deterring, or assisting in the prosecution of  
3 financial crimes;

4 (f) The fraud alert network has procedures reasonably calculated to  
5 ensure the security of the information obtained;

6 (g) Users of the fraud alert network are informed that the  
7 information obtained from the fraud alert network may not be used to  
8 evaluate and make decisions about applications for loans, lines of  
9 credit, and credit cards;

10 (h) Information furnished pursuant to the fraud alert network is  
11 limited to statements of fact that the person furnishing the  
12 information reasonably believes to be true. However, in exigent  
13 circumstances, information may be furnished without such reasonable  
14 belief if the circumstances creating an emergency are described, and  
15 cautionary advice is provided regarding the limited knowledge of the  
16 person furnishing the information; and

17 (i) The fraud alert network has an operator that: (A) Employs  
18 procedures to promptly correct and erase information that the operator  
19 learns is erroneous or was submitted or posted to the fraud alert  
20 network not in compliance with this section; (B) takes reasonable steps  
21 to limit access to the fraud alert network to financial institutions,  
22 merchants, and law enforcement agencies; and (C) denies access to the  
23 fraud alert network to persons who are not financial institutions,  
24 merchants, or law enforcement agencies or who do not abide by the  
25 provisions of this chapter.

26 (2) Washington law governs the operation of a fraud alert network.  
27 A participant or law enforcement agency that participates in a fraud  
28 alert network in accordance with subsection (1) of this section,  
29 whether through furnishing, posting, communicating, or using  
30 information in connection thereto, shall receive immunity from civil  
31 liability under the laws of the state of Washington and its political  
32 subdivisions and, to the extent the conflicts of law rules of any other  
33 jurisdiction refer to the law of the state of Washington, under the  
34 laws and rules of such other jurisdiction and its political  
35 subdivisions. However, this immunity does not apply to statutory  
36 violations.

37 (3) Any financial institution or merchant that makes a voluntary  
38 disclosure of any possible violation of law or regulation to a federal,

1 state, or local government or agency in connection with information  
2 obtained from a fraud alert network is immune from civil liability for  
3 such disclosure or for any failure to provide notice of such disclosure  
4 to the person who is the subject of or identified in the disclosure,  
5 under the laws and rules of the state of Washington and its political  
6 subdivisions and, to the extent the conflicts of law rules of any other  
7 jurisdiction refer to the law of the state of Washington, under the  
8 laws and rules of such other jurisdiction and its political  
9 subdivisions, and under any contract or other legally enforceable  
10 agreement.

11 NEW SECTION. **Sec. 4.** The immunity of section 3 of this act shall  
12 not apply to any participant that:

13 (1) Provides false information to the fraud alert network that the  
14 participant does not reasonably believe to be true. However, in  
15 exigent circumstances, information may be furnished without such  
16 reasonable belief if the circumstances creating an emergency are  
17 described, and cautionary advice is provided regarding the limited  
18 knowledge of the person furnishing the information;

19 (2) Fails to maintain review procedures to remove or correct false,  
20 outdated, incomplete, or erroneous information furnished by it to the  
21 fraud alert network;

22 (3) Fails to maintain procedures to ensure that information  
23 obtained from the fraud alert network will be provided only to  
24 employees, attorneys, or agents who have job-related duties relevant to  
25 the use of such information;

26 (4) Uses information obtained from the fraud alert network to  
27 evaluate and make decisions about applications for loans, lines of  
28 credit, and credit cards;

29 (5) Uses information for a purpose other than preventing,  
30 detecting, deterring, and assisting in the prosecution of financial  
31 crimes;

32 (6) Uses, reproduces, distributes, publishes, forwards, shares,  
33 sells, or communicates any information obtained from the fraud alert  
34 network for a commercial purpose, such as for advertising or marketing;  
35 or

36 (7) Provides, sells, or resells access to the fraud alert network  
37 to a person who is not a participant.

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

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

7        (3) It is intended that so long as the participants comply with  
8 this chapter, the provisions of the Washington fair credit reporting  
9 act, chapter 19.182 RCW, do not apply to that fraud alert network.  
10 However, if it is determined that the federal fair credit reporting act  
11 applies to a fraud alert network, the Washington fair credit reporting  
12 act shall likewise be applicable.

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

16        NEW SECTION.    **Sec. 7.** A new section is added to chapter 42.17 RCW  
17 to read as follows:

18        Information shared pursuant to a fraud alert network under chapter  
19 30.-- RCW (sections 1 through 6 and 8 through 10 of this act) is exempt  
20 from public disclosure by law enforcement agencies under this chapter.

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

23        NEW SECTION.    **Sec. 9.** If any part of this act is found to be in  
24 conflict with federal requirements that are a prescribed condition to  
25 the allocation of federal funds to the state, the conflicting part of  
26 this act is inoperative solely to the extent of the conflict and with  
27 respect to the agencies directly affected, and this finding does not  
28 affect the operation of the remainder of this act in its application to  
29 the agencies concerned.

30        NEW SECTION.    **Sec. 10.** This act is necessary for the immediate  
31 preservation of the public peace, health, or safety, or support of the  
32 state government and its existing public institutions, and takes effect  
33 immediately.

1        NEW SECTION.   **Sec. 11.**   Sections 1 through 6 and 8 through 10 of  
2        this act constitute a new chapter in Title 30 RCW.

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