2015 Legislative Report, First Regular Session
Washington State Department of Financial Institutions

HB 1047, Chapter 61, Laws of 2016, Concerning state agencies continuity of operating planning requirements, Effective July 24th 2015.

- The Washington Military Department, under the direction of the Adjutant General, administers the state's comprehensive program of emergency management. Under the new law the Adjutant General is responsible to the Governor for helping to develop and manage a program for interagency coordination and prioritization of continuity of operations planning by state agencies (includes elected officials who are not covered by executive orders).

- "Continuity of operations planning" is the internal effort of an organization to assure that the capability exists to continue essential functions and services in response to a comprehensive array of potential emergencies or disasters.

- The legislation requires each state agency to develop a continuity of operations plan that is updated and exercised annually.

See: HB 1047 Session Law

ESHB 1078, Chapter 64, Laws of 2015, Enhancing the protection of consumer financial information, Effective July 24, 2015.

- Current state security breach laws require any person, business, or state agency to notify Washington residents when security is breached and unencrypted personal information is (or is reasonably believed to have been) acquired by an unauthorized person.

- A breach of security means an unauthorized acquisition of data that compromises the security, confidentiality, or integrity of personal information held by the person, business, or state agency. Under the bill a breach of security includes paper and computerized data.

- The new law makes changes about when notice of a security breach has to be given by persons and businesses to Washington consumers. Notice is not required if the breach is not reasonably likely to subject consumers to a risk of harm.

- The term ‘secured” now means encrypted in a manner that meets or exceeds the National Institute of Standards and Technology (NIST) standard or is otherwise modified so that the personal information is rendered unreadable, unusable, or undecipherable by an unauthorized person.

- The breach of personal information must be disclosed if the information acquired and accessed is not secured during a security breach or if the confidential process, encryption key, or other means to decipher the secured information was acquired by an unauthorized person.
- If required, notice must meet the following minimum requirements: is written and in plain language; includes the name and contact information of the reporting person or business or agency; lists the type of personal information breached; and includes toll-free telephone numbers to major credit reporting agencies if the breach exposed personal information.

- For the purposes of the new law, personal information means an individual's first name or first initial and last name in combination with any one or more of the following data elements: social security number, driver's license number or Washington state identification number, or account number or credit/debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

- If a breach results in notification to more than 500 Washington residents, the person or business that is required to issue a notification must also electronically submit a copy of the security breach notification to the Attorney General along with the number of Washington consumers affected by the breach, or an estimate if the exact number is not known. Notification of a breach of personal information to affected consumers must be provided no more than 45 days after the breach was discovered, unless an exception applies.

- The Attorney General may bring an action in the name of the state, or as parens patriae on behalf of persons residing in the state, to enforce this law. For such actions, the practices covered by this law are matters vitally affecting the public interest for the purpose of applying the Consumer Protection Act (CPA). Any consumer injured by a violation of this law may institute a civil action to recover damages.

- Persons, businesses, and agencies that are covered under Health Insurance Portability and Accountability Act (HIPAA) and are in compliance with HIPAA notification requirements are exempt from notification requirements. Financial institutions regulated by the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Federal Reserve System that are in compliance with notification requirements under the Gramm-Leach Bliley Act (GLBA) are also exempt from notification requirements.

- Federal interagency rules under GLBA require financial institutions to notify customers about incidents of unauthorized access to information that could result in substantial harm or inconvenience to the customer. Financial institutions need to conduct a reasonable investigation to promptly determine the likelihood the information has been or will be misused. If the organization determines that misuse has occurred or is reasonably possible, it needs to notify the customer as soon as possible. This notification can be delayed if the appropriate law enforcement agency determines such notification will interfere with a criminal investigation.

- Under state law if more than 500 residents are affected by the breach, persons, businesses that qualify for a HIPAA exemption and financial institutions that qualify for the GLBA exemption must report the breach to the Attorney General.

See: ESHB 1078 Session Law

HB 1090, Chapter 65, Laws of 2015, Concerning the financial fraud and identity theft crimes investigation and prosecution program, Effective July 1, 2015.

- The legislature created the Financial Fraud and Identity Theft Crimes Investigation and Prosecution Program (Program) within the Department of Commerce in 2008. The Program expires July 1, 2015.

- The Program consists of two regional financial fraud and identity theft crime task forces: the Central Puget Sound Task Force that includes King and Pierce counties, and the Spokane County Task Force.

- The current law funds the Prosecution Program through surcharges on filings with the Uniform Commercial Code (UCC) Program within the Department of Licensing. The UCC Program files financing statements and other documents evidencing liens against personal property.

- The surcharges are $8 for paper filings and $3 for electronic filings. The UCC Program deposits revenues from these surcharges into the Financial Fraud and Identity Theft Investigation and Prosecution Program Account, which may be used only to support the activities of the task forces and the expenses of the Department of Commerce in administering the Program.

- The legislation extends the expiration date for the Program until July 1, 2020. The new law expands the Central Puget Sound Task Force to include Snohomish County.

- Surcharges on UCC Program filings are increased from $8 to $10 for paper filings and from $3 to $10 for electronic filings.

See: HB 1090 Session Law

SHB 1283, Chapter 167, Laws of 2015, Concerning nonprofit organizations engaged in debt adjusting, Effective date July 24, 2015.

- RCW 18.28 regulates debt adjusters. The statute defines debt adjusting as managing counseling, settling, adjusting, pro-rating, or liquidating a debtor's debts, or receiving funds for distribution among creditors in payment of a debtor's obligation.

- RCW 18.28 allows debt adjusters covered by the act (there are exemptions) to charge a reasonable fee for services. The statute limits total fees (including third party fees) to fifteen percent of the total debt listed. In addition, the fee for one payment may not exceed 15 percent of the payment. The RCW applies to all debt adjusters that practice in Washington, and who are not specifically exempted from the Debt Adjusters Act (DAA).

- The new law allows nonprofit debt adjusters to receive fair share. Fair share is defined as creditor contributions made to nonprofit debt adjusters by the creditors whose consumers receive debt adjusting services from nonprofit debt adjusters and pay down their debt accordingly.

- Fees for debt adjusters are clarified to explicitly exclude fair share. The fee for one payment may not exceed 15 percent of the payment, but this excludes fair share contributions made to nonprofit debt adjusters.

- All nonprofit debt adjusters must submit a report to the Department of Financial Institutions (DFI) each year for two years. For information for the year 2015, the report must be submitted by June 30, 2016, and for 2016 the report must be submitted by June 30, 2017.

- The report must contain the following information: the number and percentage of debtor clients who terminated or otherwise became inactive in debt adjusting services and what percentage of his or her debt each debtor settled; the total fees collected from Washington debtors; and the total fair share collected.

- The report must also contain the following information for each debtor client: the date of contracting; the number of debts included in the contract the principal amount of each debt at the time the contract was signed; the source of each debtor's obligations (e.g., credit card, student loan, medical debt); whether each debt is active, terminated, or settled; the settlement amount of the debt, if any; the total fees charged to the debtor; and the organization's Form 990 submitted to the Internal Revenue Service or a statement of the organization's compensation provided to high-earning employees.

- The DFI is required to summarize the information received, make the summary report public, and submit it to the Legislature December 2016 and December 2017.

See: SHB 1283 Session Law

HB 1636, Chapter 204, Laws of 2015, Requiring disability employment reporting by state agencies, Effective July 24th 2015.

- The bill requires state agencies with 100 or more employees to submit an annual report to the Office of Financial Management regarding information on the number of persons with disabilities employed.

- Each agency must submit its report to the Office of Financial Management human resource director, with copies sent to the Division of Vocational Rehabilitation and the Governor's Disability Employment Task Force by January 31 of each year.

See: HB 1636 Session Law

SHB 1730, Chapter 51, Laws of 2015, Concerning the handling of earnest money, Effective July 24, 2015.

- Earnest money is a form of security deposit made in a real estate transaction to demonstrate that the potential buyer is serious and willing to demonstrate good faith intent to complete the transaction. The buyer signs a purchase and sale agreement and pays a sum of money called an earnest money. If the seller accepts the offer, the earnest money is held in trust or escrow, typically with an escrow agent, a real estate firm, or a title insurance agent.

- When the transaction is settled, the earnest money deposit is usually applied to the buyer's portion of the remaining costs. In most transactions, if a buyer defaults on the purchase agreement and does not go through with the sale, the seller may elect to retain the earnest money as liquidated damages, seek actual damages, or enforce the agreement.

- An interpleader action is a lawsuit in which the holder of a sum of money or other property may deposit the money or property with the court and name as defendants the parties who assert rival claims to the money or property. The court then determines the ownership of the money or property, and the original holder is absolved of responsibility.

- The bill clarifies a new process for the handling of an earnest money. A holder who receives a written demand from a party to a transaction for all or part of the earnest money must, within 15 days of the written demand notify all other parties to the transaction in writing; release the earnest money to one or more parties; or
commence an interpleader action.

- The bill also authorizes notice and service of the interpleader court action to be made by first class mail.

See: SHB 1730 Session Law

HB 2040, Chapter 57, Laws of 2015, Initiating a campaign to increase veteran employment, Effective July 24, 2015.

- The Department of Veterans Affairs, Employment Security Department, and Department of Commerce are required to consult local chambers of commerce, associate development organizations, and businesses to initiate a demonstration campaign to increase veteran employment in Washington.

- Businesses may share information about veteran employment with local chambers of commerce, who may provide this information to the Department of Veterans Affairs. "Veteran" is defined as any veteran discharged under honorable conditions.

- All participants in the campaign are encouraged to work with the Washington State Military Transition Council and veterans' advisory boards. Funds used for the campaign must be from existing resources.

See: HB 2040 Session Law

SSB 5030, Chapter 188, Laws of 2015, Addressing the Limited Liability Company Act, Effective January 1, 2016.

- The new law permits a Limited Liability Company (LLC) to define its business structure and define the legal duties and rights of the company, its managers, and its members in an oral, written, or implied LLC agreement.

- There are now legally-required missing elements in statutory presumptions if an LLC agreement does not include all legally-required elements.

- The legislation requires LLCs to provide records upon a member's reasonable request, to allocate and distribute profits and losses according to specific requirements, and prohibits distributions from the LLC to its members if the LLC is insolvent.

- There are new provisions that authorize an LLC to be managed by its members or by designated managers who owe fiduciary duties of loyalty and care to the LLC.

See: SSB 5030 Session Law

SB 5032, Chapter 107, Laws of 2015, Specifying when a transaction in the form of a lease does not create a security interest for purposes of the Uniform Commercial Code, Effective July 24, 2015.

- One type of commercial lease term allows rental payments to change based on the sale amount when the leasing company sells the equipment. These leases are commonly called terminal rental adjustment, or TRAC leases.

- Under the new law, a transaction in lease form does not create a security interest merely because it contains a Terminal Rental Adjustment Clause provision.

- This is a clarification needed since the rewrite of the UCC provisions three years ago left out the TRAC lease provisions inadvertently.

See: SB 5032 Session Law

SSB 5059, Chapter 108. Laws of 2015, Creating the patent troll prevention act, Effective July 24, 2015.

- A new chapter is added to the general business laws called the Patient Troll Prevention Act. This legislation establishes that a person may not make assertions of patent infringement in bad faith.

- An assertion of patent infringement is when a person sends a demand threatening a target with litigation while asserting that the target infringed a patent or that the target should obtain a license in order to avoid litigation in a lawsuit.

- The Act provides that a violation is an unfair or deceptive act in trade or commerce under the Consumer Protection Act (CPA), and authorizes the Attorney General to bring an action under CPA in the name of the state, or on behalf of persons residing in the state to enforce the provisions.

See: SSB 5059 Session Law

SSB 5202, Chapter 112, Laws of 2015, Regarding the Financial Education Public Private Partnership, Effective July 24, 2015.

- The Financial Education Public-Private Partnership (FEPPP) is composed of members representing the legislature, government agencies, educators, and private organizations.

- The mission of the FEPPP is to provide Washington children with the skills they need to become financially capable adults. FEPPP reviews and recommends financial education curricula for school districts and trains teachers to teach personal finance.

- The new law adds the State Treasurer or the State Treasurer's designee as a member of the FEPPP.

- Online instructional materials and resources are added to the financial education curriculum that the FEPPP reviews on an ongoing basis.

- The FEPPP must now work with Office of the Superintendent of Public Instruction (OSPI) to integrate financial education skills and content knowledge into the state learning standards and standards in K–12 personal finance education developed by a national coalition for personal financial literacy.

- After consulting with the partnership, OSPI must make available to all districts a list of materials that align with the financial standards integrated into the state learning standards.

- The new law also states that school districts must provide high school students the opportunity to access the financial education materials and publicize the availability of these opportunities to students and their families.

See: SSB 5202 Session Law

SSB 5299, Chapter 229, Laws of 2015, Residential Mortgage Lending and Mortgage Fraud, Effective July 24, 2015.

- The bill covers mortgage lending and mortgage fraud. Changes are made to the Mortgage Lending and Homeownership Act (RCW 19.144), and the Escrow Agent Registration Act (18.44) Consumer Loan Act (RCW 31.04) and Mortgage Brokers Practices Act (RCW 19.146).

- The new law makes changes to the Mortgage Broker Practices Act and Consumer Loan Act to enhance and strengthen enforcement authority and makes technical changes needed to modernize the statute.

- The bill tightens the statute to make sure that it applies to those who should be licensed under the Acts, as well as those who hold a license. The violations sections of the MBPA are strengthened to include current practices that hurt consumers. These include originating loans from offices that are not licensed by DFI, and engaging in foreclosure rescue scam transactions.

- Both acts are amended to allow DFI more flexibility in enforcement. The director is given an additional authority to “condition” a license. There are provisions that allow the director to issue orders requiring licensees to not only require bad actors to cease and desist, but also to take such affirmative action as is necessary to comply with the chapter and protect consumers.

- Currently DFI regulates loan servicers as consumer loan companies under the CLA. A loan servicer is a financial institution which collects the consumers’ monthly payment, charges penalties on late payments, releases liens, pays insurance and taxes, negotiates loan modifications and may initiate foreclosure proceedings for loans in default. The bills create liquidity and operational reserves and a tangible net worth requirement for loan servicers. This will help assure that servicers can make consumers whole in the event of a default.

- The new law makes changes to the mortgage fraud statute, and clarifies that mortgage fraud includes any deceptive or misleading acts in the mortgage lending process. In a criminal case where there has been a conviction for mortgage fraud, the sentencing court may issue any orders that are necessary to correct a public record that contains false information resulting from the criminal offense.

See: SSB 5299 Session Law

SB 5300, Chapter 114, Laws of 2015, Credit Union Enforcement, Effective July 24, 2015.

- Generally, this bill updates the department of financial institutions' regulatory enforcement powers regarding credit unions and organizations providing services to credit unions.

- The new law updates the credit union parity date. Thus a state-chartered credit union has the powers and authorities that a federally chartered credit union has on the effective date of this act.

- In addition to other investment options, a credit union may invest capital in debt or equity issued by an organization owned by the Northwest Credit Union Association or its successor association and in products relating to employee benefits.

- The bill makes clear that no person or entity may hold itself out as a credit union or use the term in communications unless it is actually a state-chartered or federally chartered credit union, or an out-of state or foreign credit union.

- For the designation of low-income credit union, a low-income member means a member whose family income is not more than 80 percent of the median family income for the metropolitan statistical area or national metropolitan area where the member lives, whichever is greater, or a member or potential member who earns not more than 80 percent of the total median earnings for individuals for the metropolitan statistical area or national metropolitan area where the member lives, whichever is greater.

- The Department now has the power to take action against any entity holding itself out as a credit union and is not a credit union.

- The Department may examine an electronic data processing provider to a credit union service organization. In addition, the Department has authority to issue a temporary cease and desist order against a credit union or credit union service organization if a violation or practice is likely to cause an unsafe or unsound condition at the credit union or organization, or a substantial public injury.

See: SB5300 Session Law

SB 5302, Chapter 115, Laws of 2015, Addressing Washington State Trust Laws, Effective July 24, 2015.

- This legislation addresses three components of Washington's trust laws in order to modernize the statutes and make them more aligned with other states.

- The new law modifies the trustee's duties for investing and requires the trustee to invest, as a prudent investor would, using reasonable care and requires investment decisions to be evaluated as part of an overall investment strategy with risk and return objectives reasonably suited to the trust. This standard for investment of trust assets comports with the prudent investor standard under the Uniform Prudent Investor Act.

- Under current law, a trustee has many powers provided in statute. In exercising these powers, the trustee may employ other persons (a delegate) to advise or assist the trustee or to perform any act. The trustee may not delegate all of the trustee's duties and responsibilities; must use reasonable care in selecting and retaining the delegate; and is not relieved from liability for the delegate's acts. The new statute will allow a trustee to delegate duties and powers; if the trustee delegates with reasonable care, the trustee is not liable for the delegate's actions.

- The bill also creates the Washington Directed Trust Act which allows a trustor to provide for a "statutory trust advisor" (advisor) who has the power or duty to direct, consent to, or disapprove an action and a "directed trustee" who must follow the advisor's direction or get the advisor's consent with respect to a particular duty or function.

See: SB 5302 Session Law

SB 5757, Chapter 123, Laws of 2015, Credit Union Corporate Governance and Investments, Effective July 24, 2015.

- Generally this new law changes and removes statutory provisions affecting credit union corporate governance.

- State-chartered credit unions are governed by a board of directors and a supervisory committee, which monitors the financial condition of the credit union and the decisions of the board. Per state law, some duties may be delegated to a committee, officer, or employee with appropriate reporting to the board. Other duties may not be delegated. The bill adjusts the duties of the board that may or may not be delegated. The board must establish policies governing the operation of the credit union. The board may delegate the rate of dividends on shares and authorize the payment of dividends on shares.

- The bill clarifies that credit union supervisory committee members may receive nominal gifts, insurance coverage, and expense reimbursement, regardless of whether they receive other compensation.

- Currently, a credit union may invest in any of a variety of investments, including key person insurance policies, up to 5 percent of the capital in debt or equity issued by an organization owned by the Washington Credit Union League; and 1 percent in organizations whose purpose is to provide services to the credit union industry.

- Under the bill credit unions may invest capital in debt or equity issued by an organization owned by the Northwest Credit Union Association or its successor. Additionally, credit unions

may invest in products relating to employee benefits. The amount of its assets a credit union may invest in or loan to credit union service organizations is increased to 5 percent.

See: SB 5757 Session Law

SB 5810, Chapter 72, Laws of 2015, Promoting the use, acceptance, and removal of barriers to the use and acceptance of electronic signatures, Effective July 24, 2015.

- Unless otherwise provided by law or agency rule, state agencies may accept electronic signatures with the same force and effect as that of a signature affixed by hand.
- Each state agency may determine whether and to what extent it will create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.
- A state agency is not required to send or accept electronic records or electronic signatures for an agency transaction.
- The state Chief Information Officer (CIO) must establish standards, policies, or guidance for electronic submissions and signatures. The CIO's standards, policies, or guidance must take into account reasonable access and reliability for persons participating in governmental affairs and transactions.
- A state agency's policy or rule on electronic submissions and signatures must be consistent with policies established by the CIO. The CIO must establish a website that maintains, or links to, an agency's rules and policies for electronic records and signatures.

See: SB 5810 Session Law

ESSB 5826, Chapter 296, Laws of 2015, Small Business Retirement Marketplace, Effective Date July 24, 2015.

- The new law creates the Washington Small Business Retirement Marketplace (Marketplace), which provides self-employed individuals and employers with fewer than 100 employees the opportunity to participate in retirement plans.
- The Department of Commerce (Commerce) must contract with private sector entities to establish the Marketplace and establish protocols for participation.
- The Marketplace will offer all private firms and plans that meet the requirements of the bill to participate. The Marketplace will provide a range of investment options to meet the needs of investors with various levels of risk tolerance and various ages.
- The Director of Commerce will report to the Legislature every two years on the effectiveness and efficiency of the program.

See: ESSB 5826 Session Law

ESSB 5550, Chapter 236, Laws of 2015, Regulating providers of commercial transportation services, Effective July 24, 2015.

- State law currently provides for the regulation of certain private transportation providers, such as operators of aeroporters, limousines, for-hire vehicles, taxicabs, and charter and excursion buses. These regulations include various insurance requirements.

- The current law does not specifically provide for the regulation of what are commonly known as ridesharing companies, i.e. companies that use a digital network or software application to connect passengers to drivers for the purpose of providing a prearranged ride, often by use of the driver's personal vehicle.

- The new law requires liability insurance coverage for commercial transportation services providers, which are certain vehicle operators that use a digital network or software application to connect passengers to drivers for the purpose of providing prearranged rides.

- These providers must obtain a primary automobile insurance policy covering every personal vehicle used to provide commercial transportation services, described as follows: before a driver accepts a requested ride: $50,000 per person; $100,000 per accident; and $30,000 for property damage; and after a driver accepts a requested ride: a combined single limit liability coverage of $1,000,000; and underinsured motorist coverage of $1,000,000.

See: ESSB 5550 Session Law