

2016 Legislative Report

First Regular Session and First Special Session

2ESBHB 1553, Chapter 81, Laws of 2016, Encouraging certificates of restoration of opportunity, Effective June 9, 2016.

- The new law creates a process where a person with a criminal record may be granted a Certificate of Restoration of Opportunity through the superior courts in Washington.
- If an applicant for employment has a Certificate of Restoration of Opportunity state and local governments may not disqualify the applicant for a license, certificate, or other qualification to engage in certain professions or businesses solely based on the applicant's criminal history.

See: [2ESBHB 1553](#)

ESHB 2323, Chapter 39, Laws of 2016, Creating the Washington achieving a better life experience program, Effective June 9, 2016.

- Congress passed the Achieving a Better Life Experience (ABLE) Act in 2014. The law amended the Internal Revenue Code to exempt from taxation qualified ABLE savings programs established by states. Under certain circumstances, individuals can contribute to these savings accounts if their disability originated before age 26.
- Last year, a new law required the State Treasurer to convene a workgroup to develop recommendations regarding implementation of the ABLE Act in Washington. This work group published a report in November 2015. Generally, the report makes the following recommendations:
 - Washington should create and run its own ABLE program instead of contracting with another state or collaborating with other states.
 - The Washington ABLE program should be overseen by a seven-member governing board with certain membership and authority.
 - The ABLE board should be co-located with the Endowment Trust and hosted by the Department of Commerce.
 - The State Investment Board should handle investments for the ABLE program.

- The recently passed law establishes an Achieving a Better Life Experience governing board that must design and implement an Achieving a Better Life Experience savings and investment program for eligible individuals with disabilities by July 1, 2017.

See: [ESHB 2323](#)

E2SHB 2375, Chapter 164, Laws of 2016, Concerning cybercrime, Effective June 9, 2016.

- Cybercrime refers to different types of high-tech crimes committed through the use of electronic devices, including fraud, scams, theft, extortion, hacking, trespass, identity theft, espionage, terrorism, preying upon the elderly and children, and other crimes. As technology changes and advances through time and individuals rely more on technology there are increased opportunities for cybercrime. The current laws needed to be updated and changed to reflect modern technology, and the possible crimes that may impact individuals, governments, and businesses.
- The new law changes the existing crime of Computer Trespass in the first degree, and creates several new crimes which reflect the changing threats caused by cyber criminals. The crime of Electronic Data Interference, Electronic Data Theft, Spoofing, and Electronic Data Tampering are created to address these new threats.

See: [E2SHB 2375](#)

HB 2741, Addressing state and local government fiscal agents, Chapter 105, Laws of 2016, Effective June 9, 2016.

- By statute, the Treasurer or the treasurer of a local government may contract with a bank or trust company to serve as the fiscal agent of the state or local government for the purposes of registering and processing the debt payments on state and local bonds and other instruments of indebtedness. Qualified banks and trust companies must have paid-up capital and surplus of at least \$5 million.
- Under current law, the State Finance Committee must publish notice of the designation of a fiscal agent in a financial newspaper of general circulation. If no fiscal agent is willing to perform these services, the state or local treasurer may act as the fiscal agent.
- The new law changes the statutes governing the registration and payment of state and local bonds and instruments of indebtedness, and the designation of

banks and trust companies as fiscal agents. It modernizes current law by correcting out-of-date and obsolete references, requirements, and procedures. The minimum qualifying assets requirement and the newspaper publication requirement are removed.

- The State Finance Committee must adopt rules including rules relating to the responsibilities of state fiscal agents and the responsibilities of the state and local governments with respect to fiscal agents.

See: [HB 2741](#)

SHB 2859, Concerning credit report security freezes for minors and incapacitated persons, Chapter 135, Laws of 2016, Effective January 1, 2017.

- Under current law any consumer in Washington may request that a consumer reporting agency place a security freeze on the consumer's credit report.
- The new legislation allows an authorized representative to request a security freeze on behalf of a protected consumer by submitting a request to a consumer reporting agency at the address or other point of contact specified by the agency.
- To request a security freeze on behalf of a protected consumer, the representative must provide proof of identity for both the representative and the protected consumer, sufficient proof of authority to act on behalf of the protected consumer, and a fee not to exceed \$10.
- If the consumer reporting agency does not have a credit file on the protected consumer at the time of the request, the agency must create a special record for the purpose of the freeze. The freeze must take effect within 30 days of the agency's receiving the request.

See: [SHB 2859](#)

SHB 2875, Establishing the office of data privacy, protection, and access equity, Chapter 195, Laws of 2016, Effective June 9, 2016.

- The new law establishes the Office of Privacy and Data Collection within the Office of the Chief Information Officer.
- The new Office of Privacy and Data Collection must conduct an annual privacy review, conduct annual privacy training for state agencies, articulate privacy principles and best practices for state agencies, coordinate data protection, and

participate in review of major state agencies projects involving personally identifiable information.

- The Office of Privacy and Data Collection must serve as a resource for local governments and the public. It must develop and promote best practices, conduct training, and educate consumers about personal information security on mobile and digital networks
- The Office also must submit a report to the Legislature at least once every four years containing information on broadband deployment and broadband access inequalities.

See: [SHB 2875](#)

SHB 2876, Addressing the foreclosure of deeds of trust, Chapter 196, Laws of 2016, Effective July 1, 2016.

- In 2011 the Legislature enacted the Foreclosure Fairness Act (FFA) making changes to the process related to the nonjudicial foreclosure of deeds of trust. The FFA is designed to help homeowners and their lenders explore possible alternatives to foreclosure and reach a resolution when possible. Lenders must notify borrowers prior to initiating a foreclosure of the availability of foreclosure counseling and the potential for foreclosure mediation.
- The FFA also created the Foreclosure Fairness Account to provide funding for free homeownership counseling, attorneys to prosecute violations of the Washington Consumer Protection Act, and foreclosure prevention outreach. The account is funded through fees paid by trust deed beneficiaries based on the number of notices of default issued in the last quarter for owner-occupied residential properties. Federally insured beneficiaries conducting more than 250 foreclosures in Washington State in the previous year pay \$250 for each notice of default issued.
- The program and account are administered by the Department of Commerce. Each quarter, a trust deed beneficiary must report to the Department the number of notices of default issued on owner-occupied residential properties in the previous quarter and pay \$250 per notice to the Department to be deposited in the FFA.
- The new law passed in 2016 amends the criteria for determining how lenders pay fees into the Foreclosure Fairness Account: (1) fees will now be based on the number of recorded notices of trustee's sale rather than the number of notices of default issued; (2) residential property being foreclosed need not be owner occupied in order to trigger a fee and may include property with up to four

dwelling units; (3) a lender that records fewer than 50 notices of trustee sale in the preceding year is not required to pay a fee.

- The distribution formula for the Foreclosure Fairness Account to maintain funding for the program is adjusted and the Department of Financial Institutions no longer receives monies from the Foreclosure Fairness Account. The monies are now distributed among homeowner counseling services, the Consumer Protection Division of the Attorney General's Office, The Office of Civil Legal Aid, and administrative services through the Department of Commerce.

See: [SHB 2876](#)

ESSB 5029, Concerning the revised uniform fiduciary access to digital assets act, Chapter 140, Laws of 2016, Effective June 9, 2016.

- The Uniform Fiduciary Access to Digital Assets Act (UFADAA) is a model law drafted and approved by the Uniform Laws Commission (ULC) in 2014. The UFADAA sets standards for access to electronic information held by internet providers when a fiduciary, acting on behalf of the information owner, needs the information to carry out fiduciary duties.
- Digital assets consist of any content or media, in any form, maintained and accessed electronically. Examples of digital assets include electronic information in online banking, investment accounts, photos, emails, and social media accounts.
- The ULC developed the UFADAA because widespread internet use is changing how electronic information is used and stored for routine business matters and social media. Internet service providers maintain custody of digital assets and keep the electronic information secure according to a terms-of-service-agreement with the owner of the digital assets. Fiduciaries often need access to digital assets on the owner's behalf to manage tangible and digital assets when the owner dies, gives a power of attorney, or loses the capacity to manage the owner's own property. The UFADAA facilitates the fiduciary's access but also preserves privacy rights for the owner of the assets.
- The new law sets uniform standards for custodians of digital records to follow when a fiduciary requests disclosure of the assets. It creates protections for the content of information from unauthorized disclosure consistent with federal laws. The law defers to the digital assets owners' instructions for disclosure to fiduciaries and provides default rules if the owners' instructions are insufficient to authorize disclosures.

See: [ESSB 5029](#)

SB 5265, Allowing a public depository to arrange for reciprocal deposits of public funds, Chapter 2, First Special Session 2016, Effective June 28, 2016.

- The Public Deposit Protection Commission (Commission) is comprised of the State Treasurer, Governor, and Lieutenant Governor. The Commission administers a program to ensure public funds deposited in banks and thrifts are protected if a financial Institution becomes insolvent. The Commission approves which banks and thrifts can hold state and local government deposits and monitors collateral to secure uninsured public deposits when deposits exceed the amount insured by the Federal Deposit Insurance Corporation (FDIC). The standard insurance amount through the FDIC is \$250,000 per depositor, per insured bank.
- Current state law generally prohibits the deposit of public funds outside of the state. The new law adds an exception to the list of instances when public funds may be deposited outside the state. Public funds may be deposited outside of Washington State if the following conditions are met:
 - the funds are initially deposited in a public depository located in the state;
 - the selected in-state depository arranges for the funds to be deposited in one or more federally insured banks or savings and loan associations;
 - the full amount of the principal and any accrued interest is insured by an agency of the federal government;
 - the in-state public depository will act as custodian with respect to the out-of-state deposits; and
 - on the same day the funds are deposited, the in-state public depository receives deposits from customers or other financial institutions in an amount equal to or greater than the amount of funds initially deposited by the state or local government.

See: [SB 5265](#)

ESSB 5635, Enacting the uniform power of attorney act, Chapter 209, Laws of 2016, Effective January 1, 2017.

- The new law repeals Washington's power of attorney act in favor of the Uniform Power of Attorney Act (UPOAA), but with some differences from the UPOAA.
- A power of attorney must be signed, dated, and either notarized or witnessed by a non-relative who is someone other than the principal's caregiver. A power of attorney is assumed to terminate when the principal is incapacitated, so it is not assumed to be durable unless specific language in the document expressly provides that it survives the incapacity of the principal.

- The attorney-in-fact's fiduciary duties are listed. The agent is empowered to give informed consent for the principal under a power of attorney for health care decisions. The authority to give informed consent must be specifically stated in the power of attorney. The principal may designate an agent to make health care decisions for the principal's minor children. The agent has access to all of the health care information that the principal would have under the Health Insurance Portability and Accountability Act (HIPAA).
- Some powers are assumed to be granted under a general power of attorney unless specifically excluded. Other powers are not assumed, but must be specifically called out in the document in order for the agent to exercise them. The principal may provide liability protection in the case of negligence or gross negligence on the agent's part if an agent hires someone to perform some of the agent's tasks. The agent is not held liable for discretionary acts of the hired person. Judicial review of an agent's proposed action is broadly available. An attorney-in-fact may give specified notice and resign as the agent.
- Third parties may be held liable for wrongfully rejecting a power of attorney. A third party can protect their interests from someone using an invalid power of attorney by asking the agent to certify the power of attorney's validity. The certification must state that a power of attorney granted to a spouse or a domestic partner terminates upon filing for dissolution from the spouse or domestic partnership.

See: [ESSB 5635](#)

SB 6282, Addressing the expiration date of the mortgage lending fraud prosecution account, Chapter 7, Laws of 2016, Effective June 9, 2016.

- In 2003, legislation was enacted creating the Mortgage Lending Fraud Prosecution Account (Account), a specific fund to aid in the prosecution of consumer fraud in the mortgage lending process. The Account is administered by the Department of Financial Institutions (DFI). Funds for the Account are generated by a \$1 surcharge, assessed at the recording of a deed of trust.
- The DFI may use the Account to reimburse county prosecutors and/or the Office of the Attorney General (AG) for costs related to the investigation and prosecution of mortgage fraud cases. The Account and the surcharge created in 2003 were originally set to expire on June 30, 2006, but the expiration date has been extended twice. The new law extends the expiration date for the mortgage lending fraud prosecution account from June 30, 2016 to June 30, 2021.

See: [SB 6282](#)

SB 6283, Addressing the securities act of Washington, Chapter 61, Laws of 2016, Effective June 9, 2016.

- The new law makes several technical corrections to the Securities Act of Washington:
 - The time period for appealing the entry of an order by DFI is changed from 15 days to 20 days, to be consistent with the Administrative Procedures Act.
 - Statutory references in the chapter listing exemptions have been updated to include the exemption for crowdfunding adopted in 2014.
 - The director's authority to deny, revoke, or condition an exemption as it pertains to a security is extended to the crowdfunding exemption.
 - The registration renewal deadline for securities professionals is changed from December 31 of each year to the deadline specified in the registration depositories managed by the Financial Industry Regulatory Authority.
 - The statute outlining criminal penalties for violation of the Securities Act is reenacted to eliminate duplicate statutes passed in a previous session.
 - There are also various other technical, spelling, and grammatical corrections to the statute.

See: [SB 6283](#)

ESB 6349, Concerning public funds and deposits, Chapter 152, Laws of 2016, Effective June 9, 2016.

- The Public Deposit Protection Commission (Commission) is comprised of the State Treasurer, Governor, and Lieutenant Governor. The Commission administers a program to ensure public funds deposited in banks and thrifts are protected if a financial institution becomes insolvent. The Commission approves which banks and thrifts can hold state and local government deposits and monitors collateral to secure uninsured public deposits when deposits exceed the amount insured by the Federal Deposit Insurance Corporation (FDIC). The standard insurance amount through the FDIC is \$250,000 per depositor, per insured bank.
- The bill provides that letters of credit qualify as eligible collateral for public deposits. The new law clarifies when letters of credit are to be held by third parties and when they may need to be held instead by the commission

administrator at the State Treasurer's office. It also clarifies that investment deposits do not include time deposits represented by a transferable or negotiable certificate, instrument, passbook, or statement, or by book entry or otherwise.

- The bill also amends chapter 39.59 RCW pertaining to authorized investments of public funds. The new law modernizes public investment statutes to reflect current practices. It also provides state governments, local governments, and higher education institutions with their own independent statutory authority to invest their operating treasurer funds. These authorities were commingled across several different RCW statutes.

See: [ESB 6349](#)