

---

**SUBSTITUTE SENATE BILL 5693**

---

**State of Washington**

**55th Legislature**

**1997 Regular Session**

**By** Senate Committee on Law & Justice (originally sponsored by Senators Roach, Heavey, Zarelli, Morton, Stevens, Swecker, Hochstatter and Finkbeiner)

Read first time 03/05/97.

1 AN ACT Relating to the privacy of personal information; and adding  
2 new sections to chapter 9.73 RCW.

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

4 NEW SECTION. **Sec. 1.** The legislature finds that there is a  
5 continuing and alarming erosion of the privacy of individuals who have  
6 received, are receiving, or are seeking health care. Conflicts between  
7 the privacy of these individuals and the purported needs of other  
8 persons, groups, institutions, hospitals, and governmental departments  
9 and agencies, all of whom have superior access to legislative and  
10 regulatory bodies, regularly appear to be resolved without according  
11 the fundamental values of individual autonomy, dignity, and liberty  
12 that underlie the interest in privacy the weight which they demand in  
13 a free society. It is declared that the interest of individuals in the  
14 privacy of personal information concerning a physical or mental  
15 condition, health, or history is fundamental and may not be  
16 subordinated to other interests in the absence of extraordinary  
17 circumstances. It is the intent of the legislature that this chapter  
18 be construed liberally in order to effectuate this end.

1        NEW SECTION.    **Sec. 2.**    The definitions in this section apply  
2 throughout sections 1 through 9 of this act unless the context clearly  
3 requires otherwise.

4        (1) "Health care provider" includes a person, or an associate,  
5 employee, or agent of such a person, who is licensed, certified,  
6 registered, or otherwise authorized by the laws of this state to  
7 provide health care in the ordinary course of business or practice of  
8 a profession, and who is consulted by a patient or prospective patient  
9 for the purpose of obtaining health care or advice, or offers to  
10 diagnose, treat, or advise with respect to, or does in fact diagnose,  
11 treat, or advise in any way with respect to a physical or mental  
12 condition, complaint, symptom, or concern.

13        (2) "Health information" means information about, or that tends to  
14 imply, the physical or mental health or condition or the personal  
15 history of an individual that was divulged in the course of seeking or  
16 receiving, or was otherwise related to the provision of, health care  
17 that has not previously been made public by a patient's voluntary,  
18 fully informed act of disclosure under circumstances in which the  
19 maintenance of confidentiality could not reasonably be relied upon.

20        (3) "Patient" means a patient, client, customer, patron, or other  
21 person who is seeking, has in the past sought or received, or is  
22 receiving health care from a health care provider.

23        (4) "Person" means an individual, corporation, organization,  
24 partnership, institution, hospital, nursing home, governmental body,  
25 governmental official, governmental contractor, employee or agent, or  
26 other entity.

27        NEW SECTION.    **Sec. 3.**    Except as otherwise specifically provided in  
28 sections 1 through 9 of this act, no person with access to health  
29 information may disclose that information to anyone other than another  
30 health care provider without the written consent described in this  
31 section.

32        (1) A patient's consent to the release or disclosure of health  
33 information has no effect unless the patient is fully informed in  
34 writing signed by him or her of the precise information to be  
35 disclosed, the specific individuals, identified by name or job  
36 description, to whom, and the circumstances in which, the disclosure  
37 will be made. The writing may be contained in an application for  
38 insurance if it otherwise meets the requirements of this subsection.

1 (2) A patient's consent has no effect if it is coerced, or made a  
2 condition of treatment by, a health care provider, unless: (a) The  
3 particular disclosure is, in the good faith judgment of the health care  
4 provider offering or rendering the care, an integral feature of the  
5 particular treatment or therapy being offered; (b) the health care is  
6 being provided pursuant to the order of a court or administrative body  
7 acting under valid legal authority to decree or order legal or  
8 regulatory remedies or sanctions; or (c) the particular disclosure is  
9 essential to the operation of the health care provider's practice and  
10 the disclosure is strictly limited to the need that justifies it. In  
11 the event that any of these conditions are satisfied, the consent shall  
12 nevertheless have no effect unless the patient is fully apprised, in a  
13 written statement in the form described in subsection (1) of this  
14 section, of the grounds on which disclosure is being made a condition  
15 of treatment and the patient signs the statement.

16 (3) A person who applies for any benefits, including health or  
17 disability benefits, or files a claim for compensation for injuries in  
18 the workplace or in the course of employment is considered to have  
19 consented to the disclosure of his or her health information to those  
20 persons necessary for the proper processing, investigation,  
21 adjudication, or disposition of the application or claim, or the  
22 exercise of any other authority under Title 51 RCW. The person or  
23 persons, including the employees of a governmental agency, with access  
24 to the health information shall hold that information in the strictest  
25 confidence, and its use shall be strictly limited to the need that  
26 justifies it.

27 NEW SECTION. **Sec. 4.** In the absence of the written consent  
28 described in this section, no governmental body of the state, any of  
29 its political subdivisions, or any other person, including any  
30 disciplinary body, may require health information from a health care  
31 provider or any other person in the absence of a showing of actual  
32 necessity for the information. Such a showing must establish at least  
33 that the information sought is essential to achieve a paramount  
34 regulatory or other legally authorized purpose that is compelling in  
35 the particular circumstances in which it is sought and that sufficient  
36 information for this purpose cannot be obtained without invading the  
37 privacy of patients who are not willing to consent. Where the grounds  
38 for disclosure are a suspicion or belief that a statute or rule has

1 been or is about to be violated, at a minimum disclosure may be  
2 required only if: (1) The statute or rule is valid on its face or as  
3 applied in the circumstances; (2) there is compelling evidence that  
4 such a violation has occurred or is about to occur; (3) the violation  
5 is not merely technical or de minimis; and (4) there is probable cause  
6 to believe that the health information sought will provide evidence  
7 necessary to the prosecution or prevention of the suspected violation.  
8 In the event that a sufficient showing of necessity has been made,  
9 disclosure may be required, but only if, in the absence of a bona fide  
10 emergency, the patient has been afforded notice and an opportunity to  
11 oppose the disclosure in a court of law. A health care provider may  
12 act on the patient's behalf to take all lawful action that the patient  
13 might have taken to prevent disclosure of the health information,  
14 providing that the patient authorizes the health care provider to do so  
15 in writing, signed at the time or after the health information is  
16 sought.

17 NEW SECTION. **Sec. 5.** No patient shall be required to give  
18 testimony divulging his or her health information before any court,  
19 agency, or employee of the state unless he or she has voluntarily  
20 placed that information in issue in some forum or the information is  
21 absolutely necessary to prosecute a felony or to respond to or prevent  
22 a clear, bona fide public emergency.

23 NEW SECTION. **Sec. 6.** The provision of sections 1 through 9 of  
24 this act shall not apply:

25 (1) To an emergency in which access to health information is, in  
26 the good faith judgment of a health care provider, immediately  
27 necessary in order to preserve or protect the health and safety of the  
28 patient, other persons, or the general public;

29 (2) To state or local law enforcement agencies or the state  
30 department of licensing, when enforcing or administering the laws  
31 relating to motor vehicle licensing, traffic safety, controlled  
32 substances, or chemical dependency;

33 (3) To personnel of the state department of corrections or of a  
34 local jail with respect to health information of a prisoner or inmate,  
35 when the information is necessary for security purposes, in order to  
36 provide a safe facility, or in connection with the treatment of a  
37 prisoner or inmate;

1 (4) Emergency personnel, including fire fighters, emergency medical  
2 technicians, law enforcement officers, and health care providers  
3 treating persons at the scene of an emergency;

4 (5) To the disclosure of health information concerning an  
5 unemancipated minor to the parents or legal guardian of that minor;

6 (6) To the disclosure of health information to an employer, where  
7 access to that information is demonstrated to be strictly necessary to  
8 the provision of a safe workplace, or to the preservation and  
9 protection of the health or safety of other employees or the public,  
10 and the information is not reasonably available without requiring  
11 access to health care information from an employee or applicant for  
12 employment who is otherwise unwilling to consent. However, nothing in  
13 this subsection may be construed as authorizing any employer, public or  
14 private, to violate the provisions or intent of the Americans with  
15 disabilities act.

16 NEW SECTION. **Sec. 7.** A person receiving health information under  
17 this section, including the agent, employee, or associate of the  
18 person, shall hold that information in strictest confidence, shall not  
19 disclose that information to any unauthorized person, and shall use  
20 that information only for the purpose that justifies it.

21 NEW SECTION. **Sec. 8.** An individual aggrieved by a violation of  
22 sections 1 through 9 of this act, including a health care provider, has  
23 a cause of action for damages resulting from physical, monetary,  
24 property, or emotional injuries suffered, or ten thousand dollars,  
25 whichever is greater, or for injunctive or other equitable relief, or  
26 both, together with reasonable attorneys' fees and all reasonable costs  
27 of suit, including expert witness fees. In any such action, it is  
28 presumed that the disclosure of or the attempt to disclose health  
29 information has resulted in compensable emotional injury irrespective  
30 of the existence or nonexistence of specific mental, emotional, or  
31 physical symptoms. With respect to a claim for damages, an individual  
32 defendant who did not know or could not reasonably be expected to know  
33 that his or her acts or omissions violated or contributed to a  
34 violation of the prohibitions of sections 1 through 9 of this act has  
35 a complete defense to the claim and is entitled to an expedited  
36 determination of the validity of any pleading of this defense either by  
37 summary judgment, where justified by the evidence presented, or by some

1 other proceeding that the court deems consistent with the efficient and  
2 just determination of the cause, provided that all parties are afforded  
3 sufficient time for discovery, not to exceed one hundred twenty days,  
4 as to the facts relating to this defense. A decision sustaining or  
5 rejecting such a defense may be appealed immediately to the court of  
6 appeals, which must decide the appeal within four months of the date  
7 the notice of appeal is filed. No further appeal of the decision  
8 relating to the defense may be made unless the decision in the court of  
9 appeals affirms a decision sustaining the defense, the court of appeals  
10 itself sustains the defense, or the case is accepted for review by the  
11 supreme court at any time after the entry of an appealable decision  
12 entered at a later time on some other ground in the superior court.

13 NEW SECTION. **Sec. 9.** Nothing in sections 1 through 8 of this act  
14 may be construed to prevent an insurer from requiring an applicant for  
15 insurance or an insured to consent to the release of health information  
16 necessary to verify representations concerning the patient's health or  
17 need for care, provided that the confidentiality of the information  
18 must otherwise be strictly maintained and that no disclosure may be  
19 made that is not strictly necessary to the need for verification.

20 NEW SECTION. **Sec. 10.** If any provision of this act or its  
21 application to any person or circumstance is held invalid, the  
22 remainder of the act or the application of the provision to other  
23 persons or circumstances is not affected.

24 NEW SECTION. **Sec. 11.** Sections 1 through 9 of this act are each  
25 added to chapter 9.73 RCW.

--- END ---