
SENATE BILL 5693

State of Washington

55th Legislature

1997 Regular Session

By Senators Roach, Heavey, Zarelli, Morton, Stevens, Swecker,
Hochstatter and Finkbeiner

Read first time 02/07/97. Referred to Committee on Law & Justice.

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 paramount and fundamental and may not
16 be subordinated to other interests in the absence of extraordinary
17 circumstances. This information should only be disclosed when there
18 has been fully informed, uncoerced consent, or when the person or body
19 seeking disclosure has discharged the burden of showing conclusively

1 that the interest justifying an invasion of personal privacy in the
2 specific circumstances in which disclosure is sought is compelling and
3 cannot reasonably be satisfied in any other way. In every case in
4 which disclosure of health information is sought by a private or
5 governmental individual or entity and sections 1 through 7 of this act
6 do not provide a rule that specifically addresses the facts of that
7 case, the purposes and policy declared in this section must control the
8 decision of that case.

9 NEW SECTION. **Sec. 2.** The definitions in this section apply
10 throughout sections 1 through 7 of this act unless the context clearly
11 requires otherwise.

12 (1) "Health care provider" includes a person, or an associate,
13 employee, or agent of such a person, who is consulted by a patient or
14 prospective patient for the purpose of obtaining health care or advice,
15 or offers to diagnose, treat, or advise with respect to, or does in
16 fact diagnose, treat, or advise in any way with respect to a physical
17 or mental condition, complaint, symptom, or concern.

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

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

28 (4) "Person" means an individual, corporation, organization,
29 partnership, institution, hospital, nursing home, governmental body,
30 governmental official, governmental contractor, employee or agent, or
31 other entity.

32 NEW SECTION. **Sec. 3.** Except as otherwise specifically provided in
33 sections 1 through 7 of this act, no person with access to health
34 information may disclose that information without the written consent
35 described in this section.

36 (1) A patient's consent to the release or disclosure of health
37 information has no effect unless the patient is fully informed in

1 writing signed by him or her of the precise information to be
2 disclosed, the specific individuals, identified by name or job
3 description, to whom, and the circumstances in which, the disclosure
4 will be made. The writing may consist of no more than two pages, must
5 contain letters of no less than fourteen-point type, margins on the
6 left and right of at least one and one-half inches, spacing of at least
7 two points between lines, and must generally be formatted to be easily
8 and comfortably reviewed by the patient. The writing must be entitled
9 "Consent to Waiver of Health Care Privacy Rights," and be set forth in
10 bold-faced type of a size no less than twenty points. The writing may
11 be contained in an application for insurance if it otherwise meets the
12 requirements of this subsection.

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

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

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

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

24 NEW SECTION. **Sec. 6.** An individual aggrieved by a violation of
25 sections 1 through 7 of this act, including a health care provider, has
26 a cause of action for damages resulting from physical, monetary,
27 property, or emotional injuries suffered, or ten thousand dollars,
28 whichever is greater, or for injunctive or other equitable relief, or
29 both, together with reasonable attorneys' fees and all reasonable costs
30 of suit, including expert witness fees. In any such action, it is
31 presumed that the disclosure of or the attempt to disclose health
32 information has resulted in compensable emotional injury irrespective
33 of the existence or nonexistence of specific mental, emotional, or
34 physical symptoms. With respect to a claim for damages, an individual
35 defendant who did not know or could not reasonably be expected to know
36 that his or her acts or omissions violated or contributed to a
37 violation of the prohibitions of sections 1 through 7 of this act has

1 a complete defense to the claim and is entitled to an expedited
2 determination of the validity of any pleading of this defense either by
3 summary judgment, where justified by the evidence presented, or by some
4 other proceeding that the court deems consistent with the efficient and
5 just determination of the cause, provided that all parties are afforded
6 sufficient time for discovery as to the facts relating to this defense.
7 A decision sustaining or rejecting such a defense may be appealed
8 immediately to the court of appeals, which must decide the appeal
9 within four months of the date the notice of appeal is filed. No
10 further appeal of the decision relating to the defense may be made
11 unless the decision in the court of appeals affirms a decision
12 sustaining the defense, the court of appeals itself sustains the
13 defense, or the case is accepted for review by the supreme court at any
14 time after the entry of an appealable decision entered at a later time
15 on some other ground in the superior court.

16 NEW SECTION. **Sec. 7.** Nothing in sections 1 through 7 of this act
17 may be construed to prevent an insurer from requiring an applicant for
18 insurance or an insured to consent to the release of health information
19 necessary to verify representations concerning the patient's health or
20 need for care, provided that the confidentiality of the information
21 must otherwise be strictly maintained and that no disclosure may be
22 made that is not strictly necessary to the need for verification.

23 NEW SECTION. **Sec. 8.** If any provision of this act or its
24 application to any person or circumstance is held invalid, the
25 remainder of the act or the application of the provision to other
26 persons or circumstances is not affected.

27 NEW SECTION. **Sec. 9.** Sections 1 through 7 of this act are each
28 added to chapter 9.73 RCW.

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