

HOUSE BILL REPORT

HB 2861

As Amended by the Senate

Title: An act relating to health care information.

Brief Description: Modifying the definition of health care information.

Sponsors: Representatives O'Brien, Cody, Miloscia, Parlette, Ballasiotes, Morris, Alexander, Anderson, Santos, Edmonds, Murray, Kastama, Schual-Berke, Scott, Thomas, Barlean, Quall, Dickerson, Mitchell, Delvin, Kenney, Edwards, Rockefeller and McIntire.

Brief History:

Committee Activity:

Health Care: 2/3/00, 2/4/00 [DP].

Floor Activity:

Passed House: 2/11/00, 96-0.

Senate Amended.

Passed Senate: 3/1/00, 44-0.

<h3>Brief Summary of Bill</h3>

<p>· Personally identified DNA is considered health care information of a patient, and protected from disclosure without the patient's consent under state law.</p>

HOUSE COMMITTEE ON HEALTH CARE

Majority Report: Do pass. Signed by 12 members: Representatives Cody, Democratic Co-Chair; Parlette, Republican Co-Chair; Pflug, Republican Vice Chair; Schual-Berke, Democratic Vice Chair; Alexander; Campbell; Conway; Edmonds; Edwards; Mulliken; Pennington and Ruderman.

Staff: John Welsh (786-7133).

Background:

The health information of a patient is confidential under state law and cannot be disclosed without the consent of the patient, except under specified conditions. Health care information includes any information, oral or recorded, in any form or medium, that identifies or can be associated with a patient and directly relates to a person's health care.

A person's identified DNA is not specifically referenced in the definition of "health care information" in the law protecting the confidentiality of a person's health information.

Summary of Bill:

The definition of "health care information" is clarified to include a person's identified DNA, which is treated as confidential information that cannot be disclosed without the consent of a patient, except under the express conditions specified in state law.

EFFECT OF SENATE AMENDMENT(S): Genetic test information in a person's DNA and a person's DNA is considered health care information of a patient that is protected from disclosure without a person's consent pursuant to law.

Isolating a person's DNA in a form that personally identifies it requires the informed consent of the person. Informed consent includes an explanation of the purpose; identification of the testing entity; disclosure with whom the information is shared; duration of the kept information; description of the foreseeable risks or harm; explanation of how the information is maintained, stored or destroyed; expected benefits; statement describing confidentiality; identification of individual contact; provisions on whether the information can be expunged; exclusion of exculpatory provisions against liability; disclosure that testing is voluntary; and compliance with more restrictive federal confidentiality requirements.

Informed consent is not required in criminal investigations and trials or pursuant to law; in emergency medical care; testing mandated by law; from deceased person for purposes benefitting the public health, safety and welfare; if testing is done by a health provider subject to the requirements of informed consent; if the testing does not identify the person; if done by institutional review board pursuant to federal law; or when identifying deceased persons.

An insurer may not screen in any insurance transaction a person's individually identified DNA.

An employer is prohibited from screening a person's DNA.

The Board of Health must adopt rules protecting a person's confidentiality of genetic information.

There is a legislative declaration that the DNA testing has potential benefits in health care, scientific research, and criminal justice, but there are concerns about legitimate privacy rights.

A DNA commission of 24 members is established representing the legislature, health providers, geneticists, researchers, and privacy advocates to develop a state-wide strategy for evaluating and recommending public policies relating to the use and abuses of DNA testing, and to report by July 1, 2001 to the legislature. The commission's duties terminate on June 30, 2005, and its authority is repealed on June 30, 2006.

It is a violation of the law to cause an unauthorized communication of confidential sexually transmitted disease information by fax, punishable by a fine of \$1000 or actual damages whichever is greater.

Health providers must affirmatively delete outdated and incorrect fax transmissions or telephone numbers from computers, fax or other data bases.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This bill clarifies the principle that personally identified DNA is included in the definition of health care information that is confidential and protected from unauthorized disclosure pursuant to state law.

Testimony Against: None.

Testified: Representative Al O'Brien, prime sponsor; Enid Layes, Washington Biotechnology and Biomedical Association; Cliff Webster, Pharmaceutical Research and Manufacturers of America; Jackie Der, University of Washington Academic Medical Center; Ken Bertrand, Group Health; and Carl Nelson, Washington State Medical Association.