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**SUBSTITUTE HOUSE BILL 2278**

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**State of Washington**

**65th Legislature**

**2018 Regular Session**

**By** House Transportation (originally sponsored by Representatives Morris, Hudgins, Smith, Slatter, Tharinger, Macri, Young, Kloba, and Appleton)

READ FIRST TIME 02/06/18.

1 AN ACT Relating to enhancing personal information privacy  
2 protections in government entities; amending RCW 46.52.130,  
3 42.56.120, and 42.56.420; adding a new section to chapter 19.215 RCW;  
4 and adding a new chapter to Title 40 RCW.

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

6 NEW SECTION. **Sec. 1.** (1) Each department or other agency of the  
7 state government must designate an agency privacy officer. In  
8 coordination with the state office of privacy and data protection,  
9 the agency privacy officer must:

10 (a) Develop an agency personal information minimization policy to  
11 reduce the use and retention of personal information wherever  
12 possible;

13 (b) Create a work plan that uses a Gantt chart or similar project  
14 planning tool for the following, including the estimated costs of  
15 execution:

16 (i) An inventory of all personal information prepared, owned,  
17 used, or retained by the agency, that would include the specific type  
18 of information, the purpose for its collection, and the extent to  
19 which the information is protected from unauthorized access; and

1 (ii) A map of the physical or digital location of all personal  
2 information collected by the agency, that would be indexed to the  
3 inventory created in (b)(i) of this subsection; and

4 (c) Report the work plan created under (b) of this subsection to  
5 the state office of privacy and data protection no later than  
6 December 15, 2018.

7 (2) Agency privacy officers designated under subsection (1) of  
8 this section must complete a training course provided by the state  
9 office of privacy and data protection on privacy best practices. The  
10 training course must be completed no later than sixty days after  
11 assuming responsibilities as an agency privacy officer, and at  
12 intervals of no more than four years as long as they maintain the  
13 designation.

14 (3) Any inventory or data map records created under subsection  
15 (1)(b) of this section that reveal the location of personal  
16 information or the extent to which it is protected may not be  
17 disclosed under the public records act, chapter 42.56 RCW.

18 (4) On December 1st of each odd-numbered year, the department of  
19 licensing must report to the legislature on the implementation and  
20 maintenance of this section, including best practices and  
21 recommendations for developing and implementing the department's  
22 policy and plan under this section.

23 (5) For purposes of this section, "personal information" has the  
24 same meaning as in RCW 42.56.590(5).

25 NEW SECTION. **Sec. 2.** A new section is added to chapter 19.215  
26 RCW to read as follows:

27 A governmental entity is prohibited from furnishing without  
28 charge or selling, or charging for:

29 (1) Personal financial and health information, except information  
30 furnished in an abstract driving record, pursuant to RCW 46.52.130;  
31 and

32 (2) Personal identification numbers issued by a government  
33 entity.

34 **Sec. 3.** RCW 46.52.130 and 2017 c 43 s 2 are each amended to read  
35 as follows:

36 Upon a proper request, the department may furnish an abstract of  
37 a person's driving record as permitted under this section.

1           (1) **Contents of abstract of driving record.** An abstract of a  
2 person's driving record, whenever possible, must include:

3           (a) An enumeration of motor vehicle accidents in which the person  
4 was driving, including:

5           (i) The total number of vehicles involved;

6           (ii) Whether the vehicles were legally parked or moving;

7           (iii) Whether the vehicles were occupied at the time of the  
8 accident; and

9           (iv) Whether the accident resulted in a fatality;

10          (b) Any reported convictions, forfeitures of bail, or findings  
11 that an infraction was committed based upon a violation of any motor  
12 vehicle law;

13          (c) The status of the person's driving privilege in this state;  
14 and

15          (d) Any reports of failure to appear in response to a traffic  
16 citation or failure to respond to a notice of infraction served upon  
17 the named individual by an arresting officer.

18          (2) **Release of abstract of driving record.** An abstract of a  
19 person's driving record may be furnished to the following persons or  
20 entities:

21          (a) **Named individuals.** (i) An abstract of the full driving record  
22 maintained by the department may be furnished to the individual named  
23 in the abstract.

24           (ii) Nothing in this section prevents a court from providing a  
25 copy of the driver's abstract to the individual named in the abstract  
26 or that named individual's attorney, provided that the named  
27 individual has a pending or open infraction or criminal case in that  
28 court. A pending case includes criminal cases that have not reached a  
29 disposition by plea, stipulation, trial, or amended charge. An open  
30 infraction or criminal case includes cases on probation, payment  
31 agreement or subject to, or in collections. Courts may charge a  
32 reasonable fee for the production and copying of the abstract for the  
33 individual.

34          (b) **Employers or prospective employers.** (i)(A) An abstract of the  
35 full driving record maintained by the department may be furnished to  
36 an employer or prospective employer or an agent acting on behalf of  
37 an employer or prospective employer of the named individual for  
38 purposes related to driving by the individual as a condition of  
39 employment or otherwise at the direction of the employer.

1 (B) Release of an abstract of the driving record of an employee  
2 or prospective employee requires a statement signed by: (I) The  
3 employee or prospective employee that authorizes the release of the  
4 record; and (II) the employer attesting that the information is  
5 necessary for employment purposes related to driving by the  
6 individual as a condition of employment or otherwise at the direction  
7 of the employer. If the employer or prospective employer authorizes  
8 an agent to obtain this information on their behalf, this must be  
9 noted in the statement. The statement must also note that any  
10 information contained in the abstract related to an adjudication that  
11 is subject to a court order sealing the juvenile record of an  
12 employee or prospective employee may not be used by the employer or  
13 prospective employer, or an agent authorized to obtain this  
14 information on their behalf, unless required by federal regulation or  
15 law. The employer or prospective employer must afford the employee or  
16 prospective employee an opportunity to demonstrate that an  
17 adjudication contained in the abstract is subject to a court order  
18 sealing the juvenile record.

19 (C) Upon request of the person named in the abstract provided  
20 under this subsection, and upon that same person furnishing copies of  
21 court records ruling that the person was not at fault in a motor  
22 vehicle accident, the department must indicate on any abstract  
23 provided under this subsection that the person was not at fault in  
24 the motor vehicle accident.

25 (D) No employer or prospective employer, nor any agent of an  
26 employer or prospective employer, may use information contained in  
27 the abstract related to an adjudication that is subject to a court  
28 order sealing the juvenile record of an employee or prospective  
29 employee for any purpose unless required by federal regulation or  
30 law. The employee or prospective employee must furnish a copy of the  
31 court order sealing the juvenile record to the employer or  
32 prospective employer, or the agent of the employer or prospective  
33 employer, as may be required to ensure the application of this  
34 subsection.

35 (ii) In addition to the methods described in (b)(i) of this  
36 subsection, the director may enter into a contractual agreement with  
37 an employer or its agent for the purpose of reviewing the driving  
38 records of existing employees for changes to the record during  
39 specified periods of time. The department shall establish a fee for  
40 this service, which must be deposited in the highway safety fund. The

1 fee for this service must be set at a level that will not result in a  
2 net revenue loss to the state. Any information provided under this  
3 subsection must be treated in the same manner and is subject to the  
4 same restrictions as driving record abstracts.

5 (c) **Volunteer organizations.** (i) An abstract of the full driving  
6 record maintained by the department may be furnished to a volunteer  
7 organization or an agent for a volunteer organization for which the  
8 named individual has submitted an application for a position that  
9 would require driving by the individual at the direction of the  
10 volunteer organization.

11 (ii) Release of an abstract of the driving record of a  
12 prospective volunteer requires a statement signed by: (A) The  
13 prospective volunteer that authorizes the release of the record; and  
14 (B) the volunteer organization attesting that the information is  
15 necessary for purposes related to driving by the individual at the  
16 direction of the volunteer organization. If the volunteer  
17 organization authorizes an agent to obtain this information on their  
18 behalf, this must be noted in the statement.

19 (d) **Transit authorities.** An abstract of the full driving record  
20 maintained by the department may be furnished to an employee or agent  
21 of a transit authority checking prospective volunteer vanpool drivers  
22 for insurance and risk management needs.

23 (e) **Insurance carriers.** (i) An abstract of the driving record  
24 maintained by the department covering the period of not more than the  
25 last three years may be furnished to an insurance company or its  
26 agent:

27 (A) That has motor vehicle or life insurance in effect covering  
28 the named individual;

29 (B) To which the named individual has applied; or

30 (C) That has insurance in effect covering the employer or a  
31 prospective employer of the named individual.

32 (ii) The abstract provided to the insurance company must:

33 (A) Not contain any information related to actions committed by  
34 law enforcement officers or firefighters, as both terms are defined  
35 in RCW 41.26.030, or by Washington state patrol officers, while  
36 driving official vehicles in the performance of their occupational  
37 duty, or by registered tow truck operators as defined in RCW  
38 46.55.010 in the performance of their occupational duties while at  
39 the scene of a roadside impound or recovery so long as they are not

1 issued a citation. This does not apply to any situation where the  
2 vehicle was used in the commission of a misdemeanor or felony;

3 (B) Include convictions under RCW 46.61.5249 and 46.61.525,  
4 except that the abstract must report the convictions only as  
5 negligent driving without reference to whether they are for first or  
6 second degree negligent driving; and

7 (C) Exclude any deferred prosecution under RCW 10.05.060, except  
8 that if a person is removed from a deferred prosecution under RCW  
9 10.05.090, the abstract must show the deferred prosecution as well as  
10 the removal.

11 (iii) Any policy of insurance may not be canceled, nonrenewed,  
12 denied, or have the rate increased on the basis of information  
13 regarding an accident included in the abstract of a driving record,  
14 unless the policyholder was determined to be at fault.

15 (iv) Any insurance company or its agent, for underwriting  
16 purposes relating to the operation of commercial motor vehicles, may  
17 not use any information contained in the abstract relative to any  
18 person's operation of motor vehicles while not engaged in such  
19 employment. Any insurance company or its agent, for underwriting  
20 purposes relating to the operation of noncommercial motor vehicles,  
21 may not use any information contained in the abstract relative to any  
22 person's operation of commercial motor vehicles.

23 (v) The director may enter into a contractual agreement with an  
24 insurance company or its agent for the limited purpose of reviewing  
25 the driving records of existing policyholders for changes to the  
26 record during specified periods of time. The department shall  
27 establish a fee for this service, which must be deposited in the  
28 highway safety fund. The fee for this service must be set at a level  
29 that will not result in a net revenue loss to the state. Any  
30 information provided under this subsection must be treated in the  
31 same manner and is subject to the same restrictions as driving record  
32 abstracts.

33 (f) **Alcohol/drug assessment or treatment agencies.** An abstract of  
34 the driving record maintained by the department covering the period  
35 of not more than the last five years may be furnished to an alcohol/  
36 drug assessment or treatment agency approved by the department of  
37 social and health services to which the named individual has applied  
38 or been assigned for evaluation or treatment, for purposes of  
39 assisting employees in making a determination as to what level of  
40 treatment, if any, is appropriate, except that the abstract must:

1 (i) Also include records of alcohol-related offenses, as defined  
2 in RCW 46.01.260(2), covering a period of not more than the last ten  
3 years; and

4 (ii) Indicate whether an alcohol-related offense was originally  
5 charged as a violation of either RCW 46.61.502 or 46.61.504.

6 (g) **Attorneys—City attorneys, county prosecuting attorneys, and**  
7 **named individual's attorney of record.** An abstract of the full  
8 driving record maintained by the department, including whether a  
9 recorded violation is an alcohol-related offense, as defined in RCW  
10 46.01.260(2), that was originally charged as a violation of either  
11 RCW 46.61.502 or 46.61.504, may be furnished to city attorneys,  
12 county prosecuting attorneys, or the named individual's attorney of  
13 record. City attorneys, county prosecuting attorneys, or the named  
14 individual's attorney of record may provide the driving record to  
15 alcohol/drug assessment or treatment agencies approved by the  
16 department of social and health services to which the named  
17 individual has applied or been assigned for evaluation or treatment.

18 (h) **State colleges, universities, or agencies, or units of local**  
19 **government.** An abstract of the full driving record maintained by the  
20 department may be furnished to (i) state colleges, universities, or  
21 agencies for employment and risk management purposes or (ii) units of  
22 local government authorized to self-insure under RCW 48.62.031 for  
23 employment and risk management purposes.

24 (i) **Superintendent of public instruction.** An abstract of the full  
25 driving record maintained by the department may be furnished to the  
26 superintendent of public instruction for review of public school bus  
27 driver records. The superintendent or superintendent's designee may  
28 discuss information on the driving record with an authorized  
29 representative of the employing school district for employment and  
30 risk management purposes.

31 (3) **Release to third parties, or for commercial purposes,**  
32 **prohibited.** (a) Any person or entity receiving an abstract of a  
33 person's driving record under subsection (2)(b) through (i) of this  
34 section shall use the abstract exclusively for his, her, or its own  
35 purposes or as otherwise expressly permitted under this section, and  
36 shall not divulge any information contained in the abstract to a  
37 third party.

38 (b) The department may not release the abstract of a person's  
39 driving record to any person or entity to be used for a commercial  
40 purpose.

1 (4) **Fee.** The director shall collect a (~~thirteen-dollar~~) fee for  
2 each abstract of a person's driving record furnished by the  
3 department. The fee must include:

4 (a) Thirteen dollars for each abstract, fifty percent of (~~the~~  
5 fee) which must be deposited in the highway safety fund, and fifty  
6 percent of (~~the-fee~~) which must be deposited according to RCW  
7 46.68.038; and

8 (b) An additional amount for each abstract, as determined by the  
9 director, up to the amount necessary to fund:

10 (i) The department's privacy officer position and duties, as  
11 required under section 1 of this act;

12 (ii) The office of the chief information officer in:

13 (A) Providing assistance with the implementation and ongoing  
14 operation of section 1 of this act, including the designation and  
15 training of a privacy officer;

16 (B) Identifying the amount of work and time as needed to create  
17 and maintain the inventory and location map of personal information  
18 collected by the department; and

19 (iii) The preparation and submission of the biennial report  
20 required under section 1(4) of this act.

21 (5) **Violation.** (a) Any negligent violation of this section is a  
22 gross misdemeanor.

23 (b) Any intentional violation of this section is a class C  
24 felony.

25 (6) Effective July 1, 2019, the contents of a driving abstract  
26 pursuant to this section shall not include any information related to  
27 sealed juvenile records unless that information is required by  
28 federal law or regulation.

29 **Sec. 4.** RCW 42.56.120 and 2017 c 304 s 3 are each amended to  
30 read as follows:

31 (1) No fee shall be charged for the inspection of public records  
32 or locating public documents and making them available for copying,  
33 except as provided in RCW 42.56.240(14) and subsection (3) of this  
34 section. A reasonable charge may be imposed for providing copies of  
35 public records and for the use by any person of agency equipment or  
36 equipment of the office of the secretary of the senate or the office  
37 of the chief clerk of the house of representatives to copy public  
38 records, which charges shall not exceed the amount necessary to  
39 reimburse the agency, the office of the secretary of the senate, or



1 the office of the chief clerk of the house of representatives for its  
2 actual costs directly incident to such copying. When calculating any  
3 fees authorized under this section, an agency shall use the most  
4 reasonable cost-efficient method available to the agency as part of  
5 its normal operations. If any agency translates a record into an  
6 alternative electronic format at the request of a requestor, the copy  
7 created does not constitute a new public record for purposes of this  
8 chapter. Scanning paper records to make electronic copies of such  
9 records is a method of copying paper records and does not amount to  
10 the creation of a new public record.

11 (2)(a) Agency charges for actual costs may only be imposed in  
12 accordance with the costs established and published by the agency  
13 pursuant to RCW 42.56.070(7), and in accordance with the statement of  
14 factors and manner used to determine the actual costs. In no event  
15 may an agency charge a per page cost greater than the actual cost as  
16 established and published by the agency.

17 (b) An agency need not calculate the actual costs it charges for  
18 providing public records if it has rules or regulations declaring the  
19 reasons doing so would be unduly burdensome. To the extent the agency  
20 has not determined the actual costs of copying public records, the  
21 agency may not charge in excess of:

22 (i) Fifteen cents per page for photocopies of public records,  
23 printed copies of electronic public records when requested by the  
24 person requesting records, or for the use of agency equipment to  
25 photocopy public records;

26 (ii) Ten cents per page for public records scanned into an  
27 electronic format or for the use of agency equipment to scan the  
28 records;

29 (iii) Five cents per each four electronic files or attachment  
30 uploaded to email, cloud-based data storage service, or other means  
31 of electronic delivery; and

32 (iv) Ten cents per gigabyte for the transmission of public  
33 records in an electronic format or for the use of agency equipment to  
34 send the records electronically. The agency shall take reasonable  
35 steps to provide the records in the most efficient manner available  
36 to the agency in its normal operations; and

37 (v) The actual cost of any digital storage media or device  
38 provided by the agency, the actual cost of any container or envelope  
39 used to mail the copies to the requestor, and the actual postage or  
40 delivery charge.

1 (c) The charges in (b) of this subsection may be combined to the  
2 extent that more than one type of charge applies to copies produced  
3 in response to a particular request.

4 (d) An agency may charge a flat fee of up to two dollars for any  
5 request as an alternative to fees authorized under (a) or (b) of this  
6 subsection when the agency reasonably estimates and documents that  
7 the costs allowed under this subsection are clearly equal to or more  
8 than two dollars. An additional flat fee shall not be charged for any  
9 installment after the first installment of a request produced in  
10 installments. An agency that has elected to charge the flat fee in  
11 this subsection for an initial installment may not charge the fees  
12 authorized under (a) or (b) of this subsection on subsequent  
13 installments.

14 (e) An agency shall not impose copying charges under this section  
15 for access to or downloading of records that the agency routinely  
16 posts on its public internet web site prior to receipt of a request  
17 unless the requestor has specifically requested that the agency  
18 provide copies of such records through other means.

19 (f) A requestor may ask an agency to provide, and if requested an  
20 agency shall provide, a summary of the applicable charges before any  
21 copies are made and the requestor may revise the request to reduce  
22 the number of copies to be made and reduce the applicable charges.

23 (3)(a)(i) In addition to the charge imposed for providing copies  
24 of public records and for the use by any person of agency equipment  
25 copying costs, an agency may include a customized service charge. A  
26 customized service charge may only be imposed if the agency estimates  
27 that the request would require the use of information technology  
28 expertise to prepare data compilations, or provide customized  
29 electronic access services when such compilations and customized  
30 access services are not used by the agency for other agency purposes.

31 (ii) The customized service charge may reimburse the agency up to  
32 the actual cost of providing the services in this subsection.

33 (b) An agency may not assess a customized service charge unless  
34 the agency has notified the requestor of the customized service  
35 charge to be applied to the request, including an explanation of why  
36 the customized service charge applies, a description of the specific  
37 expertise, and a reasonable estimate cost of the charge. The notice  
38 also must provide the requestor the opportunity to amend his or her  
39 request in order to avoid or reduce the cost of a customized service  
40 charge.

1 (4) An agency may require a deposit in an amount not to exceed  
2 ten percent of the estimated cost of providing copies for a request,  
3 including a customized service charge. If an agency makes a request  
4 available on a partial or installment basis, the agency may charge  
5 for each part of the request as it is provided. If an installment of  
6 a records request is not claimed or reviewed, the agency is not  
7 obligated to fulfill the balance of the request. An agency may waive  
8 any charge assessed for a request pursuant to agency rules and  
9 regulations. An agency may enter into any contract, memorandum of  
10 understanding, or other agreement with a requestor that provides an  
11 alternative fee arrangement to the charges authorized in this  
12 section, or in response to a voluminous or frequently occurring  
13 request.

14 (5) No fee authorized in this section may be charged if  
15 prohibited under section 2 of this act.

16 **Sec. 5.** RCW 42.56.420 and 2017 c 149 s 1 are each amended to  
17 read as follows:

18 The following information relating to security is exempt from  
19 disclosure under this chapter:

20 (1) Those portions of records assembled, prepared, or maintained  
21 to prevent, mitigate, or respond to criminal terrorist acts, which  
22 are acts that significantly disrupt the conduct of government or of  
23 the general civilian population of the state or the United States and  
24 that manifest an extreme indifference to human life, the public  
25 disclosure of which would have a substantial likelihood of  
26 threatening public safety, consisting of:

27 (a) Specific and unique vulnerability assessments or specific and  
28 unique response or deployment plans, including compiled underlying  
29 data collected in preparation of or essential to the assessments, or  
30 to the response or deployment plans; and

31 (b) Records not subject to public disclosure under federal law  
32 that are shared by federal or international agencies, and information  
33 prepared from national security briefings provided to state or local  
34 government officials related to domestic preparedness for acts of  
35 terrorism;

36 (2) Those portions of records containing specific and unique  
37 vulnerability assessments or specific and unique emergency and escape  
38 response plans at a city, county, or state adult or juvenile  
39 correctional facility, or secure facility for persons civilly

1 confined under chapter 71.09 RCW, the public disclosure of which  
2 would have a substantial likelihood of threatening the security of a  
3 city, county, or state adult or juvenile correctional facility,  
4 secure facility for persons civilly confined under chapter 71.09 RCW,  
5 or any individual's safety;

6 (3) Information compiled by school districts or schools in the  
7 development of their comprehensive safe school plans under RCW  
8 28A.320.125, to the extent that they identify specific  
9 vulnerabilities of school districts and each individual school;

10 (4) Information regarding the public and private infrastructure  
11 and security of computer and telecommunications networks, consisting  
12 of security passwords, security access codes and programs, access  
13 codes for secure software applications, security and service recovery  
14 plans, security risk assessments, and security test results to the  
15 extent that they identify specific system vulnerabilities, and other  
16 such information the release of which may increase risk to the  
17 confidentiality, integrity, or availability of security, information  
18 technology infrastructure, or assets;

19 (5) The system security and emergency preparedness plan required  
20 under RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170,  
21 and 81.112.180; (~~and~~)

22 (6) Personally identifiable information of employees, and other  
23 security information, of a private cloud service provider that has  
24 entered into a criminal justice information services agreement as  
25 contemplated by the United States department of justice criminal  
26 justice information services security policy, as authorized by 28  
27 C.F.R. Part 20; and

28 (7) Personal information inventory or data map records created  
29 under section 1(1)(b) of this act, that reveal the location of  
30 personal information or the extent to which it is protected.

31 NEW SECTION. Sec. 6. Section 1 of this act constitutes a new  
32 chapter in Title 40 RCW.

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