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**SUBSTITUTE SENATE BILL 5098**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Senate State Government & Elections (originally sponsored by Senator Hunt; by request of Public Records Exemptions Accountability Committee)

AN ACT Relating to recommendations of the public records exemptions accountability committee; amending RCW 10.27.090, 10.27.160, 21.20.480, 27.53.070, 43.22.290, 43.41.100, 46.52.065, 46.52.080, 46.52.120, and 72.05.130; reenacting and amending RCW 4.24.250; and repealing RCW 18.46.090, 24.06.480, and 26.12.080.

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

**Sec.**  RCW 4.24.250 and 2005 c 291 s 1 and 2005 c 33 s 5 are each reenacted and amended to read as follows:

(1) Any health care provider as defined in RCW 7.70.020 (1) and (2) who, in good faith, files charges or presents evidence against another member of their profession based on the claimed incompetency or gross misconduct of such person before a regularly constituted review committee or board of a professional society or hospital whose duty it is to evaluate the competency and qualifications of members of the profession, including limiting the extent of practice of such person in a hospital or similar institution, or before a regularly constituted committee or board of a hospital whose duty it is to review and evaluate the quality of patient care and any person or entity who, in good faith, shares any information or documents with one or more other committees, boards, or programs under subsection (2) of this section, shall be immune from civil action for damages arising out of such activities. For the purposes of this section, sharing information is presumed to be in good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading. ((~~The proceedings, reports, and written records of such committees or boards, or of a member, employee, staff person, or investigator of such a committee or board,~~)) Information and documents created by or specifically for, and collected and maintained by such committees or boards are not subject to review or disclosure, or subpoena or discovery proceedings in any civil action, except actions arising out of the recommendations of such committees or boards involving the restriction or revocation of the clinical or staff privileges of a health care provider as defined in RCW 7.70.020 (1) and (2).

(2) A coordinated quality improvement program maintained in accordance with RCW 43.70.510 or 70.41.200, a quality assurance committee maintained in accordance with RCW 18.20.390 or 74.42.640, or any committee or board under subsection (1) of this section may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a coordinated quality improvement committee or committees or boards under subsection (1) of this section, with one or more other coordinated quality improvement programs or committees or boards under subsection (1) of this section for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program or committee or board under subsection (1) of this section to another coordinated quality improvement program or committee or board under subsection (1) of this section and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (1) of this section and by RCW 43.70.510(4), 70.41.200(3), 18.20.390 (6) and (8), and 74.42.640 (7) and (9).

**Sec.**  RCW 10.27.090 and 2010 c 8 s 1021 are each amended to read as follows:

(1) Every member of the grand jury shall keep secret whatever he, she, or any other grand juror has said, and how he, she, or any other grand juror has voted, except for disclosure of indictments, if any, as provided in RCW 10.27.150.

(2) No grand juror shall be permitted to state or testify in any court how he, she, or any other grand juror voted on any question before them or what opinion was expressed by himself, herself, or any other grand juror regarding such question.

(3) No grand juror, public or private attorney, city attorney or corporation counsel, reporter, interpreter or public servant who held a witness in custody before a grand jury or special inquiry judge, or witness, principal or other person shall disclose the testimony of a witness examined before the grand jury or special inquiry judge or other evidence received by it, ((~~except when required by the court to disclose the testimony of the witness examined before the grand jury or special inquiry judge for the purpose of ascertaining whether it is consistent with that of the witness given before the court, or to disclose his or her testimony given before the grand jury or special inquiry judge by any person upon a charge against such person for perjury in giving his or her testimony or upon trial therefor, or when permitted by the court in furtherance of justice~~)) when such disclosure is prohibited by the court.

(4) The public attorney shall have access to all grand jury and special inquiry judge evidence and may introduce such evidence before any other grand jury or any trial in which the same may be relevant.

(5) The court upon a showing of good cause may make any or all grand jury or special inquiry judge evidence available to any other public attorney, prosecuting attorney, city attorney or corporation counsel upon proper application and with the concurrence of the public attorney attending such grand jury. Any witness' testimony, given before a grand jury or a special inquiry judge and relevant to any subsequent proceeding against the witness, shall be made available to the witness upon proper application to the court. The court may also, upon proper application and upon a showing of good cause, make available to a defendant in a subsequent criminal proceeding other testimony or evidence:

(a) When given or presented before a special inquiry judge, if doing so is in the furtherance of justice; or

(b) When given or presented before a grand jury, if the court finds that doing so is necessary to prevent an injustice and that there is no reason to believe that doing so would endanger the life or safety of any witness or his or her family. The cost of any such transcript made available shall be borne by the applicant.

**Sec.**  RCW 10.27.160 and 1971 ex.s. c 67 s 16 are each amended to read as follows:

The grand jury may prepare its conclusions, recommendations, and suggestions in the form of a grand jury report. Such report shall be released to the public only upon a determination by a majority of the judges of the superior court of the county court that (1) the findings in the report deal with matters of broad public policy affecting the public interest ((~~and do not identify or criticize any individual~~)); (2) the release of the report would be consistent with the public interest and further the ends of justice; and (3) release of the report would not prejudice any pending criminal investigation or trial.

NEW SECTION. **Sec.**  RCW 18.46.090 (Information confidential) and 2000 c 93 s 36 & 1951 c 168 s 10 are each repealed.

**Sec.**  RCW 21.20.480 and 1979 ex.s. c 68 s 35 are each amended to read as follows:

It is unlawful for the director or any of the director's officers or employees to use for personal benefit any information which is filed with or obtained by the director and which is not made public. ((~~The director or any of the director's officers or employees shall not disclose any such information or the fact that any investigation is being made except among themselves or when necessary or appropriate in a proceeding or investigation under this chapter.~~)) No provision of this chapter either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the director or any of the director's officers or employees.

NEW SECTION. **Sec.**  RCW 24.06.480 (Confidential nature of information disclosed by interrogatories) and 1982 c 35 s 158 & 1969 ex.s. c 120 s 96 are each repealed.

NEW SECTION. **Sec.**  RCW 26.12.080 (Protection of privacy of parties) and 1989 c 375 s 22 & 1949 c 50 s 8 are each repealed.

**Sec.**  RCW 27.53.070 and 2011 c 219 s 2 are each amended to read as follows:

(1) It is the declared intention of the legislature that field investigations on privately owned lands should be conducted by professional archaeologists in accordance with both the provisions and spirit of this chapter. Persons having knowledge of the location of archaeological sites or resources are encouraged to communicate such information to the department. Such information shall ((~~not constitute a public record which requires~~)) be exempt from disclosure pursuant to the exception authorized in ((~~chapter 42.56 RCW to avoid site depredation~~)) RCW 42.56.300.

(2) Nothing in this chapter shall be interpreted to allow trespassing on private property.

**Sec.**  RCW 43.22.290 and 2011 c 96 s 28 are each amended to read as follows:

Every owner, operator, or manager of a factory, workshop, mill, mine, or other establishment where labor is employed, shall make to the department, upon blanks furnished by it, such reports and returns as the department may require, for the purpose of compiling such labor statistics as are authorized by this chapter, and the owner or business manager shall make such reports and returns within the time prescribed therefor by the director, and shall certify to the correctness thereof.

In the reports of the department no use shall be made of the names of individuals, firms, or corporations supplying the information called for by this section, such information being deemed confidential((~~, and not for the purpose of disclosing personal affairs, and any officer, agent, or employee of the department violating this provision shall be fined a sum not exceeding five hundred dollars, or be imprisoned for up to three hundred sixty-four days~~)).

**Sec.**  RCW 43.41.100 and 2009 c 549 s 5119 are each amended to read as follows:

The director of financial management shall:

(1) Supervise and administer the activities of the office of financial management.

(2) Exercise all the powers and perform all the duties prescribed by law with respect to the administration of the state budget and accounting system.

(3) Advise the governor and the legislature with respect to matters affecting program management and planning.

(4) Make efficiency surveys of all state departments and institutions, and the administrative and business methods pursued therein, examine into the physical needs and industrial activities thereof, and make ((~~confidential~~)) reports to the governor, recommending necessary betterments, repairs, and the installation of improved and more economical administrative methods, and advising such action as will result in a greater measure of self-support and remedies for inefficient functioning.

The director may enter into contracts on behalf of the state to carry out the purposes of this chapter; he or she may act for the state in the initiation of or participation in any multi-governmental agency program relative to the purposes of this chapter; and he or she may accept gifts and grants, whether such grants be of federal or other funds.

**Sec.**  RCW 46.52.065 and 1977 ex.s. c 50 s 1 are each amended to read as follows:

Every coroner or other official performing like functions shall submit to the state toxicologist a blood sample taken from all drivers and all pedestrians who are killed in any traffic accident where the death occurred within four hours after the accident. Blood samples shall be taken and submitted in the manner prescribed by the state toxicologist. The state toxicologist shall analyze these blood samples to determine the concentration of alcohol and, where feasible, the presence of drugs or other toxic substances. The reports and records of the state toxicologist relating to analyses made pursuant to this section shall be ((~~confidential: PROVIDED, That the results of these analyses shall be~~)) reported to the state patrol and made available to the prosecuting attorney or law enforcement agency having jurisdiction((~~: PROVIDED FURTHER, That the~~)). The results of these analyses may be admitted in evidence in any civil or criminal action where relevant and shall be made available to the parties to any such litigation ((~~on application to the court~~)).

**Sec.**  RCW 46.52.080 and 1979 c 158 s 162 are each amended to read as follows:

All required accident reports and supplemental reports and copies thereof shall be without prejudice to the individual so reporting and shall be for the confidential use of the county prosecuting attorney and chief of police or county sheriff, as the case may be, and the director of licensing and the chief of the Washington state patrol, and other officer or commission as authorized by law, except that any such officer shall disclose the names and addresses of persons reported as involved in an accident or as witnesses thereto, the vehicle license plate numbers and descriptions of vehicles involved, and the date, time and location of an accident, to any person who may have a proper interest therein, including the driver or drivers involved, or the legal guardian thereof, the parent of a minor driver, any person injured therein, the owner of vehicles or property damaged thereby, or any authorized representative of such an interested party, or the attorney or insurer thereof. No such accident report or copy thereof shall be used as evidence in any trial, civil or criminal, arising out of an accident, except that any officer above named for receiving accident reports shall furnish, upon demand of any person who has, or who claims to have, made such a report, or, upon demand of any court, a certificate showing that a specified accident report has or has not been made to the chief of the Washington state patrol solely to prove a compliance or a failure to comply with the requirement that such a report be made in the manner required by law: PROVIDED, That the reports may be used as evidence when necessary to prosecute charges filed in connection with a violation of RCW 46.52.088. However, accident reports and supplemental reports may be disclosed pursuant to chapter 42.56 RCW upon redaction of all information identifying the persons involved in the accident, including names, addresses, phone numbers, email addresses, license plate numbers, driver's license numbers, vehicle identification numbers, social security numbers, and photos of such persons.

**Sec.**  RCW 46.52.120 and 2017 c 147 s 9 are each amended to read as follows:

(1) The director shall keep a case record on every motor vehicle driver licensed under the laws of this state, together with information on each driver, showing all the convictions and findings of traffic infractions certified by the courts, together with an index cross-reference record of each accident reported relating to such individual with a brief statement of the cause of the accident and whether or not the accident resulted in any fatality.

(2) The records shall be for the ((~~confidential~~)) use of the director, the chief of the Washington state patrol, the director of the Washington traffic safety commission, and for such police officers or other cognizant public officials as may be designated by law. Such case records shall not be admitted into evidence in any court, except where relevant to the prosecution or defense of a criminal charge, or in case appeal is taken from the order of the director, suspending, revoking, canceling, or refusing a vehicle driver's license.

(3) The director shall tabulate and analyze vehicle driver's case records and suspend, revoke, cancel, or refuse a vehicle driver's license to a person when it is deemed from facts contained in the case record of such person that it is for the best interest of public safety that such person be denied the privilege of operating a motor vehicle. The director shall also suspend a person's driver's license if the person fails to attend or complete a driver improvement interview or fails to abide by conditions of probation under RCW 46.20.335. Whenever the director orders the vehicle driver's license of any such person suspended, revoked, or canceled, or refuses the issuance of a vehicle driver's license, such suspension, revocation, cancellation, or refusal is final and effective unless appeal from the decision of the director is taken as provided by law.

**Sec.**  RCW 72.05.130 and 2020 c 274 s 55 are each amended to read as follows:

The department of social and health services and the department of children, youth, and families shall establish, maintain, operate and administer a comprehensive program for the custody, care, education, treatment, instruction, guidance, control, and rehabilitation of all persons who may be committed or admitted to institutions, schools, or other facilities, placed under the control of each, except for the programs of education provided pursuant to RCW 28A.190.030 through 28A.190.050 which shall be established, operated, and administered by the school district conducting the program, and in order to accomplish these purposes, the powers and duties of the secretary of the department of social and health services and the secretary of the department of children, youth, and families for the institutions placed under the respective department shall include the following:

(1) The assembling, analyzing, tabulating, and reproduction in report form, of statistics and other data with respect to children with behavior problems in the state of Washington, including, but not limited to, the extent, kind, and causes of such behavior problems in the different areas and population centers of the state. ((~~Such reports shall not be open to public inspection, but shall be open to the inspection of the governor and to the superior court judges of the state of Washington.~~))

(2) The establishment and supervision of diagnostic facilities and services in connection with the custody, care, and treatment of persons with disabilities, and behavior problem children who may be committed or admitted to any of the institutions, schools, or facilities controlled and operated by the department, or who may be referred for such diagnosis and treatment by any superior court of this state. Such diagnostic services may be established in connection with, or apart from, any other state institution under the supervision and direction of the secretary of the department of social and health services or the secretary of the department of children, youth, and families. Such diagnostic services shall be available to the superior courts of the state for persons referred for such services by them prior to commitment, or admission to, any school, institution, or other facility. Such diagnostic services shall also be available to other departments of the state. When the secretary of the department of social and health services or the secretary of the department of children, youth, and families determines it necessary, the secretary of the department of social and health services or the secretary of the department of children, youth, and families may create waiting lists and set priorities for use of diagnostic services for juvenile offenders on the basis of those most severely in need.

(3) The supervision of all persons committed or admitted to any institution, school, or other facility operated by the department of social and health services or the department of children, youth, and families, and the transfer of such persons from any such institution, school, or facility to any other such school, institution, or facility: PROVIDED, That where a person has been committed to a minimum security institution, school, or facility by any of the superior courts of this state, a transfer to a close security institution shall be made only with the consent and approval of such court.

(4) The supervision of parole, discharge, or other release, and the post-institutional placement of all persons committed to Green Hill school, or such as may be assigned, paroled, or transferred therefrom to other facilities operated by the department. Green Hill school is hereby designated as a "close security" institution to which shall be given the custody of children with the most serious behavior problems.

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