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HOUSE BILL 1511

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State of Washington

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By Representatives Anderson, Silver, Pruitt, Winsley, Leonard, Riley, Beck, H. Myers, R. King, Wynne, Van Luven, Ludwig, Orr, Brekke, Roland and Brough.

Read first time January 31, 1991. Referred to Committee on State Government.

1 AN ACT Relating to the disclosure of information from public  
2 records by state and local agencies; amending RCW 29.36.013, 42.17.310,  
3 and 42.17.311; adding a new section to chapter 29.04 RCW; adding a new  
4 section to chapter 42.17 RCW; adding a new chapter to Title 40 RCW;  
5 prescribing penalties; and declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** INTENT. The legislature finds that persons  
8 attempting to escape from actual or threatened domestic violence  
9 frequently establish new addresses in order to prevent their assailants  
10 or probable assailants from finding them. The purpose of this chapter  
11 is to aid such persons by enabling them to participate in a state  
12 program which will restrict the circumstances under which public  
13 records containing their new addresses may be disclosed.

1        NEW SECTION.    **Sec. 2.**    DEFINITIONS.    Unless the context clearly  
2 requires otherwise, the definitions in this section apply throughout  
3 this chapter.

4        (1) "Address" includes a residential address, school address, or  
5 work address.    However, it does not include the work address of an  
6 agency employee.

7        (2) "Agency" means a state agency and a local government.

8        (3) "Protected record" means address information that is in a  
9 public record in the custody of an agency and that is subject to  
10 disclosure restrictions under section 5 of this act.

11       (4) "Public record" has the definition in RCW 42.17.020.

12       NEW SECTION.    **Sec. 3.**    APPLICATION FOR CERTIFICATE AUTHORIZING  
13 PROTECTED RECORD STATUS.    An adult person, a parent or guardian acting  
14 on behalf of a minor, or a guardian acting on behalf of an  
15 incapacitated person, as defined in RCW 11.88.010, may apply to the  
16 secretary of state for a certificate authorizing the person to obtain  
17 the restrictions on public records disclosure specified in this  
18 chapter.    The secretary of state shall approve an application if it is  
19 filed in the manner and on the form prescribed by the secretary of  
20 state and if it contains:

21       (1) A designation of the address or addresses for which  
22 authorization to obtain restrictions on disclosure is being requested;

23       (2) A sworn statement by the applicant that the applicant has good  
24 reasons to believe (a) that the applicant, or the minor or  
25 incapacitated person on whose behalf the application is made, is under  
26 serious threat of becoming a victim of domestic violence as defined in  
27 RCW 10.99.020; (b) that the restrictions on disclosure provided under  
28 this chapter would reduce the risk of such victimization; and (c) that  
29 the address or addresses designated in subsection (1) of this section

1 have been established, or will be established, at least in part to  
2 avoid detection and victimization;

3 (3) A designation of the secretary of state as agent for purposes  
4 of service of process; and

5 (4) The signature of the applicant and of any individual or  
6 representative of any office designated in writing under section 11 of  
7 this act who assisted in the preparation of the application.

8 NEW SECTION. **Sec. 4.** ISSUANCE OF CERTIFICATE AUTHORIZING  
9 PROTECTED RECORD STATUS--DURATION. (1) Upon approval of an application  
10 under section 3 of this act, the secretary of state shall issue a  
11 certificate to the applicant granting to the applicant authority to  
12 obtain disclosure restrictions on the address or addresses specified in  
13 the application. The certificate shall contain the name of the person  
14 issued the certificate; the name of the person for whom it is issued,  
15 if different than the person to whom it is issued; and each address to  
16 which the certificate applies.

17 (2) A certificate is effective for a period of four years following  
18 its issuance, except under the following circumstances:

19 (a) The certificate will become ineffective if, and as of the time  
20 that, the person for whom the certificate is granted obtains a change  
21 of name; and

22 (b) A change in any address listed on the certificate will render  
23 the certificate ineffective with respect to that address as of the time  
24 of change.

25 (3) A certificate obtained through false information is void.

26 NEW SECTION. **Sec. 5.** USE OF CERTIFICATE TO OBTAIN PROTECTED  
27 RECORD STATUS--RESTRICTIONS ON DISCLOSURE. (1) An agency that is  
28 presented with a certificate in accordance with the rules specified in

1 this section may not, after the effective date and time specified in  
2 subsection (3) of this section, disclose an address of a person listed  
3 on the certificate. An agency that violates this subsection is subject  
4 to liability under section 9 of this act. This section does not apply  
5 to the extent that the certificate is ineffective under section 4 of  
6 this act; if disclosure is provided in compliance with section 6, 7, or  
7 8 of this act; or if this chapter does not apply under section 13 of  
8 this act.

9 (2) A person issued a certificate may create a protected record by  
10 filing the certificate with the agency that will have custody of the  
11 new address information for which protected record status is desired  
12 and requesting the agency to restrict access to that address  
13 information. With respect to local governments, the certificate may be  
14 filed with the local government unit, if any, that is required by state  
15 law to have custody of the record, such as the county auditor with  
16 respect to voter registration records. For types of public records for  
17 which state law does not require a particular local unit to have  
18 custody, the legislative authority of a local government that is a  
19 county, city, or town and the governing body of any other local  
20 government, may adopt a list specifying the appropriate unit or units  
21 within the local government where certificates must be filed. In any  
22 instance where a local government does not have such a list identifying  
23 the appropriate unit, then a certificate may be filed with any unit of  
24 the local government.

25 (3) The secretary of state shall adopt rules requiring agency  
26 acknowledgement of certificate presentation and prescribing the date on  
27 and time at which the filed certificate will be effective in creating  
28 the protected record. As determined by the secretary, such date and  
29 time may vary for different agencies or types of public records.

1 (4) A certificate may not be used to transform an existing public  
2 record into a protected record. A certificate may only be used to  
3 create protected record status with respect to a person's address if  
4 that address with the name of that person as addressee, is not, at the  
5 time of presentation of the certificate, included in a public record of  
6 the state agency or appropriate local government division, department,  
7 or unit which is presented with the certificate.

8 NEW SECTION. **Sec. 6.** WHEN DISCLOSURE RESTRICTIONS ARE  
9 INAPPLICABLE. The restrictions on disclosure of address information  
10 specified in a certificate issued under this chapter do not apply to:

11 (1) Disclosure to another agency when provided in compliance with  
12 section 7 of this act;

13 (2) Disclosure to a business when provided in compliance with  
14 section 8 of this act;

15 (3) Disclosure authorized in writing by the person to whom or for  
16 whom a certificate is issued;

17 (4) Disclosure of information contained in:

18 (a) Criminal history reports produced or provided under chapter  
19 43.43 RCW;

20 (b) Notifications to crime victims provided under chapters 7.68,  
21 9.94A, and 10.97 RCW;

22 (c) Registrations of sexual offenders under RCW 9A.44.130 or any  
23 other law;

24 (d) Voter registration records, except for absentee voter address  
25 records as provided under section 16 of this act; and

26 (e) Campaign finance reports filed under chapter 42.17 RCW.

27 NEW SECTION. **Sec. 7.** RULES FOR INTERAGENCY DISCLOSURE OF  
28 PROTECTED RECORDS. An agency that provides protected record

1 information to another agency shall notify the receiving agency at the  
2 time of providing the information that the records are protected. The  
3 agency provided this notice shall restrict access to the protected  
4 records to the same extent as the agency providing the notice. Any  
5 agency that violates this section is subject to liability under section  
6 9 of this act.

7 NEW SECTION. **Sec. 8.** RULES FOR BUSINESS USE OF PROTECTED  
8 RECORDS. (1) An agency may enter into an agreement with a business  
9 involved in the transfer, sale, or purchase of real property and under  
10 which the agency will provide protected records to the business. An  
11 agency may only enter into such an agreement if the agency finds that  
12 the following requirements are satisfied:

13 (a) The agreement specifies the proprietary purpose or purposes for  
14 which the protected records are requested and contains provisions  
15 designed to assure that protected record will be used for no other  
16 purpose or purposes;

17 (b) The purpose or purposes for which the protected records are  
18 requested are not contrary to the purpose of this chapter and  
19 preserving the confidentiality of address information;

20 (c) The business is authorized to conduct business in this state  
21 and the protected records requested are in a category of records that  
22 the business can be expected to need for purpose of conducting its real  
23 property-related business activities;

24 (d) The agreement contains adequate safeguards to assure that the  
25 business will use the protected records only for the purpose or  
26 purposes specified in the agreement and will not disclose the protected  
27 records except as expressly authorized under the agreement;

28 (e) The agreement contains a promise by the business that the  
29 business will not disclose protected record information received under

1 the agreement to any person or entity not named in the agreement  
2 without first securing written permission from the person to whom the  
3 certificate is issued;

4 (f) The agreement contains a promise by the business that it will  
5 allow and cooperate with any investigation by the agency to determine  
6 whether the business has complied with the agreement; and

7 (g) The agreement contains the signature, full legal name, and  
8 address of the authorized representative of the business entering into  
9 the information-sharing agreement.

10 (2) The agency may conduct a background check on a business  
11 requesting an agreement under this section, and verify the accuracy of  
12 all information provided by the business and relating to the business's  
13 request for the agreement.

14 (3) An agency disclosing protected records under an agreement shall  
15 maintain a file containing the agreement and showing each protected  
16 record disclosed under the agreement. The agency shall maintain the  
17 file for a period of five years following the termination of the  
18 agreement and for whatever additional period of time is required under  
19 laws governing retention of public records.

20 (4) Any business that makes representations that it knows to be  
21 false in order to secure an agreement under this section or to obtain  
22 protected records from an agency under this section or that violates  
23 any provision of its agreement is in violation of this chapter and  
24 subject to subsection (5) of this section and to liability under  
25 section 9 of this act.

26 (5) Whenever an agency finds that a business that has entered into  
27 an agreement under this section has violated this chapter, the agency  
28 may revoke the agreement. Also, it may suspend the agreement and/or  
29 restrict or prevent future protected record access under the agreement

1 until the agency is satisfied that corrective action has been taken to  
2 ensure compliance with this chapter.

3 (6) The legislative authority of a local government that is a  
4 county, city, or town, and the governing body of any other local  
5 government, shall specify the appropriate unit or units of the local  
6 government that may contract under this section on behalf of the local  
7 government.

8 NEW SECTION. **Sec. 9.** LIABILITY FOR VIOLATION OF CHAPTER. (1)

9 Any person who sustains any damages that result from a disclosure of  
10 address information in violation of this chapter may bring an action in  
11 superior court against the violator to recover the damages. In any  
12 such action, the court also may award to the person civil penalties not  
13 exceeding five hundred thousand dollars and the cost of the suit,  
14 including reasonable investigative and attorneys' fees.

15 (2) An action may be filed by the aggrieved person or by the  
16 attorney general or county prosecuting attorney, on behalf of the  
17 person.

18 NEW SECTION. **Sec. 10.** PENALTY FOR FALSE APPLICATIONS. Any person  
19 who files or prepares an application under section 3 of this act,  
20 knowing that the application is false, is punishable under RCW  
21 40.16.030 or other applicable statutes.

22 NEW SECTION. **Sec. 11.** CHAPTER ADMINISTERED BY SECRETARY OF  
23 STATE--AGREEMENTS FOR ASSISTING APPLICANTS. (1) The secretary of  
24 state shall administer this chapter and adopt rules for its effective  
25 administration.

26 (2) Through interlocal or other agreements, the secretary of state  
27 may designate and authorize state and local agencies and nonprofit

1 entities that provide counseling and shelter services to victims of  
2 domestic violence to assist applicants for a certificate under this  
3 chapter. Any assistance and counseling rendered by the office of the  
4 secretary of state or its designees to applicants shall in no way be  
5 construed as legal advice.

6 (3) The secretary of state shall serve as the agent for service of  
7 process on each person whose address or addresses are specified in a  
8 certificate and who is subject to disclosure restrictions under this  
9 chapter.

10 NEW SECTION. **Sec. 12.** ADDRESS INFORMATION IN APPLICATIONS NOT TO  
11 BE DISCLOSED. Public records containing the address or addresses of  
12 an applicant or person for whom an application is filed under section  
13 3 of this act shall not be available for public inspection and copying.

14 NEW SECTION. **Sec. 13.** USE OF ADDRESS INFORMATION BY AN AGENCY--  
15 CHAPTER INAPPLICABLE WHEN DISCLOSURE PROHIBITED BY ANOTHER LAW--  
16 LIABILITY. This chapter does not apply to prevent an agency from using  
17 the address specified on a certificate where that use is required for  
18 the administration of agency responsibilities or the statutory duties  
19 of the agency. This chapter does not apply to address information  
20 contained in a public record if the agency is prohibited from  
21 disclosing that information under any other law. However, such an  
22 agency shall be liable for all damages caused by domestic violence and  
23 resulting from the agency's disclosure of that information in violation  
24 of that law.

25 NEW SECTION. **Sec. 14.** CAPTIONS NOT LAW. Section headings as used  
26 in this chapter do not constitute any part of the law.

1       **Sec. 15.** RCW 29.36.013 and 1987 c 346 s 10 are each amended to  
2 read as follows:

3       Any disabled voter (~~(or)~~), any voter over the age of sixty-five, or  
4 any voter whose address or addresses are protected records under  
5 section 16 of this act may apply, in writing, for status as an ongoing  
6 absentee voter. Each such voter shall be granted that status by his or  
7 her county auditor and shall automatically receive an absentee ballot  
8 for each ensuing election for which he or she is entitled to vote and  
9 need not submit a separate application for each election. Ballots  
10 received from ongoing absentee voters shall be validated, processed,  
11 and tabulated in the same manner as other absentee ballots.

12       Status as an ongoing absentee voter shall be terminated upon any of  
13 the following events:

- 14       (1) The written request of the voter;
- 15       (2) The death or disqualification of the voter;
- 16       (3) The cancellation of the voter's registration record;
- 17       (4) The return of an ongoing absentee ballot as undeliverable; or
- 18       (5) January 1st of each odd-numbered year.

19       NEW SECTION. **Sec. 16.** A new section is added to chapter 29.04 RCW  
20 to read as follows:

21       IDENTIFICATION OF ABSENTEE VOTER RECORDS TREATED AS PROTECTED  
22 RECORDS. The county auditor shall not include in any list provided  
23 under RCW 29.04.100, 29.04.110, 29.07.151(2), 29.07.170, 29.07.220, or  
24 29.36.097 the address of any voter who has status as an ongoing  
25 absentee voter under RCW 29.36.013 and whose absentee voter mailing  
26 address is a protected record under chapter 40.--- RCW (sections 1  
27 through 14 of this act).

1       **Sec. 17.** RCW 42.17.310 and 1990 2nd ex.s. c 1 s 1103 are each  
2 amended to read as follows:

3       (1) The following are exempt from public inspection and copying:

4       (a) Personal information in any files maintained for students in  
5 public schools, patients or clients of public institutions or public  
6 health agencies, or welfare recipients.

7       (b) Personal information in files maintained for employees,  
8 appointees, or elected officials of any public agency to the extent  
9 that disclosure would violate their right to privacy.

10       (c) Information required of any taxpayer in connection with the  
11 assessment or collection of any tax if the disclosure of the  
12 information to other persons would (i) be prohibited to such persons by  
13 RCW 82.32.330 or (ii) violate the taxpayer's right to privacy or result  
14 in unfair competitive disadvantage to the taxpayer.

15       (d) Specific intelligence information and specific investigative  
16 records compiled by investigative, law enforcement, and penology  
17 agencies, and state agencies vested with the responsibility to  
18 discipline members of any profession, the nondisclosure of which is  
19 essential to effective law enforcement or for the protection of any  
20 person's right to privacy.

21       (e) Information revealing the identity of persons who file  
22 complaints with investigative, law enforcement, or penology agencies,  
23 other than the public disclosure commission, if disclosure would  
24 endanger any person's life, physical safety, or property. If at the  
25 time the complaint is filed the complainant indicates a desire for  
26 disclosure or nondisclosure, such desire shall govern. However, all  
27 complaints filed with the public disclosure commission about any

1 elected official or candidate for public office must be made in writing  
2 and signed by the complainant under oath.

3 (f) Test questions, scoring keys, and other examination data used  
4 to administer a license, employment, or academic examination.

5 (g) Except as provided by chapter 8.26 RCW, the contents of real  
6 estate appraisals, made for or by any agency relative to the  
7 acquisition or sale of property, until the project or prospective sale  
8 is abandoned or until such time as all of the property has been  
9 acquired or the property to which the sale appraisal relates is sold,  
10 but in no event shall disclosure be denied for more than three years  
11 after the appraisal.

12 (h) Valuable formulae, designs, drawings, and research data  
13 obtained by any agency within five years of the request for disclosure  
14 when disclosure would produce private gain and public loss.

15 (i) Preliminary drafts, notes, recommendations, and intra-agency  
16 memorandums in which opinions are expressed or policies formulated or  
17 recommended except that a specific record shall not be exempt when  
18 publicly cited by an agency in connection with any agency action.

19 (j) Records which are relevant to a controversy to which an agency  
20 is a party but which records would not be available to another party  
21 under the rules of pretrial discovery for causes pending in the  
22 superior courts.

23 (k) Records, maps, or other information identifying the location of  
24 archaeological sites in order to avoid the looting or depredation of  
25 such sites.

26 (l) Any library record, the primary purpose of which is to maintain  
27 control of library materials, or to gain access to information, which  
28 discloses or could be used to disclose the identity of a library user.

29 (m) Financial information supplied by or on behalf of a person,  
30 firm, or corporation for the purpose of qualifying to submit a bid or

1 proposal for (a) a ferry system construction or repair contract as  
2 required by RCW 47.60.680 through 47.60.750 or (b) highway construction  
3 or improvement as required by RCW 47.28.070.

4 (n) Railroad company contracts filed with the utilities and  
5 transportation commission under RCW 81.34.070, except that the  
6 summaries of the contracts are open to public inspection and copying as  
7 otherwise provided by this chapter.

8 (o) Financial and commercial information and records supplied by  
9 private persons pertaining to export services provided pursuant to  
10 chapter 43.163 RCW and chapter 53.31 RCW.

11 (p) Financial disclosures filed by private vocational schools under  
12 chapter 28C.10 RCW.

13 (q) Records filed with the utilities and transportation commission  
14 or attorney general under RCW 80.04.095 that a court has determined are  
15 confidential under RCW 80.04.095.

16 (r) Financial and commercial information and records supplied by  
17 businesses during application for loans or program services provided by  
18 chapter 43.163 RCW and chapters 43.31, 43.63A, and 43.168 RCW.

19 (s) Membership lists or lists of members or owners of interests of  
20 units in timeshare projects, subdivisions, camping resorts,  
21 condominiums, land developments, or common-interest communities  
22 affiliated with such projects, regulated by the department of  
23 licensing, in the files or possession of the department.

24 (t) All applications for public employment, including the names of  
25 applicants, resumes, and other related materials submitted with respect  
26 to an applicant.

27 (u) The residential addresses and residential telephone numbers of  
28 employees or volunteers of a public agency which are held by the agency  
29 in personnel records, employment or volunteer rosters, or mailing lists  
30 of employees or volunteers.

1 (v) The residential addresses and residential telephone numbers of  
2 the customers of a public utility contained in the records or lists  
3 held by the public utility of which they are customers.

4 (w) Information obtained by the board of pharmacy as provided in  
5 RCW 69.45.090.

6 (x) Information obtained by the board of pharmacy and its  
7 representatives as provided in RCW 69.41.044 and 69.41.280.

8 (y) Financial information, business plans, examination reports, and  
9 any information produced or obtained in evaluating or examining a  
10 business and industrial development corporation organized or seeking  
11 certification under chapter 31.24 RCW.

12 (z) Financial and commercial information supplied to the state  
13 investment board by any person when the information relates to the  
14 investment of public trust or retirement funds and when disclosure  
15 would result in loss to such funds or in private loss to the providers  
16 of this information.

17 (aa) Financial and valuable trade information under RCW 51.36.120.

18 ~~((bb) Effective March 1, 1991, the work and home addresses, other  
19 than the city of residence, of a person shall remain undisclosed or be  
20 omitted from all documents made available for public review if that  
21 person requests in writing, under oath, that these addresses be kept  
22 private because disclosure would endanger his or her life, physical  
23 safety, or property. This provision does not in any way restrict the  
24 sharing or collection of information by state and local governmental  
25 agencies required for the daily administration of their duties. The  
26 secretary of state shall administer this provision and establish the  
27 procedures and rules that are necessary for its operation. An agency  
28 that has not been furnished with a request for confidentiality of  
29 address information is not liable for damages resulting from its  
30 disclosure of the information. For purpose of service of process, the~~

1 secretary of state shall serve as agent for each person who submits a  
2 request under this subsection. A request shall be of no force or  
3 effect if the requester does not include a statement, along with or  
4 part of the request, designating the secretary of state as agent of the  
5 requester for purposes of service of process.))

6 (2) Except for information described in subsection (1)(c)(i) of  
7 this section and confidential income data exempted from public  
8 inspection pursuant to RCW 84.40.020, the exemptions of this section  
9 are inapplicable to the extent that information, the disclosure of  
10 which would violate personal privacy or vital governmental interests,  
11 can be deleted from the specific records sought. No exemption may be  
12 construed to permit the nondisclosure of statistical information not  
13 descriptive of any readily identifiable person or persons.

14 (3) Inspection or copying of any specific records exempt under the  
15 provisions of this section may be permitted if the superior court in  
16 the county in which the record is maintained finds, after a hearing  
17 with notice thereof to every person in interest and the agency, that  
18 the exemption of such records is clearly unnecessary to protect any  
19 individual's right of privacy or any vital governmental function.

20 (4) Agency responses refusing, in whole or in part, inspection of  
21 any public record shall include a statement of the specific exemption  
22 authorizing the withholding of the record (or part) and a brief  
23 explanation of how the exemption applies to the record withheld.

24 **Sec. 18.** RCW 42.17.311 and 1990 c 256 s 2 are each amended to read  
25 as follows:

26 Nothing in RCW 42.17.310(1) (t) through (v) and (~~(b)~~) (aa) shall  
27 affect a positive duty of an agency to disclose or a positive duty to

1 withhold information which duty to disclose or withhold is contained in  
2 any other law.

3 NEW SECTION. **Sec. 19.** A new section is added to chapter 42.17 RCW  
4 to read as follows:

5 PROTECTED RECORDS EXEMPT FROM PUBLIC DISCLOSURE ACT. Address  
6 information contained in a public record is exempt from disclosure  
7 under this chapter if the disclosure would violate chapter 40.--- RCW  
8 (sections 1 through 14 of this act).

9 NEW SECTION. **Sec. 20.** NEW CHAPTER CREATED. Sections 1 through  
10 14 of this act shall constitute a new chapter in Title 40 RCW.

11 NEW SECTION. **Sec. 21.** EMERGENCY CLAUSE. Sections 17 and 18 of  
12 this act are necessary for the immediate preservation of the public  
13 peace, health, or safety, or support of the state government and its  
14 existing public institutions, and shall take effect immediately.