

2 SSB 5718 - CONF REPT
3 By Conference Committee

4

5 Strike everything after the enacting clause and insert the
6 following:

7 NEW SECTION. **Sec. 1.** This chapter may be cited as the Uniform
8 Motor Vehicle and Driver Records Disclosure Act.

9 NEW SECTION. **Sec. 2.** The purpose of this chapter is to implement
10 the federal Driver's Privacy Protection Act of 1994 (Title XXX P.L.
11 103-322). The legislature finds that the people of the state of
12 Washington recognize the public benefit derived from motor vehicle
13 registration and titling, driver licensing, and the issuance of
14 identification documentation, and that the people recognize the need to
15 provide personal information to the state of Washington and its
16 agencies in order to properly maintain records on these activities.

17 The legislature further finds that the people have a right to
18 expect that personal information maintained in motor vehicle and driver
19 records will be used only for purposes relating to the ownership or
20 operation of a motor vehicle, for purposes of public safety, and as
21 otherwise expressly required or permitted by law.

22 It is the intent of this act to protect the interests of
23 individuals in their personal privacy by prohibiting the disclosure and
24 use of personal information contained in their motor vehicle and driver
25 records, except as authorized by those individuals or by law.

26 NEW SECTION. **Sec. 3.** The definitions in this section apply
27 throughout this chapter unless the context clearly requires otherwise.

28 (1) "Disclose" means to engage in any practice or conduct to make
29 available and make known personal information contained in a motor
30 vehicle or driver record about a person to any other person,
31 organization, or entity, by any means of communication.

32 (2) "Individual record" is a motor vehicle or driver record
33 containing personal information about a designated person who is the
34 subject of the record as identified in a request.

1 (3) "Motor vehicle or driver record" means any record that pertains
2 to a motor vehicle operator's or driver's license or permit, motor
3 vehicle registration, motor vehicle title, or identification document
4 issued by the department of licensing, or other state or local agency
5 authorized to issue any of such forms of credentials.

6 (4) "Person" means an individual, organization, or entity, but does
7 not include the state of Washington or an agency thereof.

8 (5) "Personal information" means information that identifies a
9 person, including an individual's photograph or computerized image,
10 social security number, driver identification number, name, address
11 (but not the five-digit zip code), telephone number, and medical or
12 disability information, but does not include information on vehicular
13 accidents, driving or equipment-related violations, and driver's
14 license or registration status.

15 (6) "Record" includes all books, papers, photographs, photostats,
16 cards, films, tapes, recordings, electronic data, printouts, or other
17 documentary materials regardless of physical form or characteristics.

18 NEW SECTION. **Sec. 4.** Notwithstanding chapter 42.17 RCW to the
19 contrary, except as provided in section 5, 6, or 7 of this act, the
20 department and any officer, employee, agent, or contractor thereof
21 shall not disclose personal information about any person obtained by
22 the department in connection with a motor vehicle or driver record.

23 NEW SECTION. **Sec. 5.** Personal information referred to in section
24 4 of this act shall be disclosed for use in connection with matters of
25 motor vehicle or driver safety and theft, motor vehicle emissions,
26 motor vehicle product alterations, recalls, or advisories, performance
27 monitoring of motor vehicles and dealers by motor vehicle
28 manufacturers, and removal of nonowner records from the original owner
29 records of motor vehicle manufacturers to carry out the purposes of the
30 Federal Automobile Information Disclosure Act, 15 U.S.C. Sec. 1231 et
31 seq., the Motor Vehicle Information and Cost Saving Act, 15 U.S.C. Sec.
32 1901 et seq., the National Traffic and Motor Vehicle Safety Act of
33 1966, 15 U.S.C. Sec. 1381 et seq., the Anti-Car Theft Act of 1992, 15
34 U.S.C. Sec. 2021 et seq., and the Clean Air Act, 42 U.S.C. Sec. 7401 et
35 seq.

1 NEW SECTION. **Sec. 6.** Nothing in this chapter prevents the
2 disclosure of personal information referred to in section 4 of this act
3 to a requesting person if the person demonstrates, in a form and manner
4 prescribed by the department, that the person has obtained the written
5 consent of the person who is the subject of the information.

6 NEW SECTION. **Sec. 7.** Personal information referred to in section
7 4 of this act may be disclosed as otherwise permitted by law to any
8 person by the department, its officers, employees, or contractors, on
9 proof of the identity of the person requesting a record or records and
10 representation by such person that the use of the personal information
11 will be strictly limited to one or more of the following described
12 uses:

13 (1) For use by any government agency, including any court or law
14 enforcement agency, in carrying out its functions, or any private
15 person or entity acting on behalf of a government agency in carrying
16 out its functions, subject to a disclosure agreement with the releasing
17 agency;

18 (2) For use in connection with matters of motor vehicle or driver
19 safety and theft; motor vehicle emissions; motor vehicle product
20 alterations, recalls, or advisories; performance monitoring of motor
21 vehicles, motor vehicle parts, and dealers; motor vehicle market
22 research activities, including survey research; and removal of nonowner
23 records from the original owner records of motor vehicle manufacturers;

24 (3) For use in the normal course of business by a legitimate
25 business or its agents, employees, or contractors, but only:

26 (a) To verify the accuracy of personal information submitted by the
27 individual to the business or its agents, employees, or contractors;
28 and

29 (b) If such information as so submitted is not correct or is no
30 longer correct, to obtain the correct information, but only for the
31 purposes of preventing fraud by, pursuing legal remedies against, or
32 recovering on a debt or security interest against, the individual;

33 (4) For use in connection with any civil, criminal, administrative,
34 or arbitral proceeding in any court or government agency or before any
35 self-regulatory body, including the service of process, investigation
36 in anticipation of litigation, and the execution or enforcement of
37 judgments and orders, or pursuant to an order of any court;

1 (5) For use in research activities, and for use in producing
2 statistical reports, so long as the personal information is not
3 published, redisclosed, or used to contact individuals;

4 (6) For use by any insurer or insurance support organization, or by
5 a self-insured entity, or its agents, employees, or contractors, in
6 connection with claims investigation activities, anti-fraud activities,
7 rating, or underwriting;

8 (7) For use in providing notice to the legal and registered owners
9 of towed or impounded vehicles;

10 (8) For use by any licensed private investigative agency or
11 licensed security service for any purpose permitted under this section;

12 (9) For use by an employer or its agent or insurer to obtain or
13 verify information relating to a holder of a commercial driver's
14 license that is required under the Commercial Motor Vehicle Safety Act
15 of 1986 (49 U.S.C. App. 2710 et seq.);

16 (10) For use in connection with the operation of private toll
17 transportation facilities;

18 (11) For use in connection with matters of public interest where
19 the use is related to operation of a motor vehicle or to public safety,
20 including disclosure to the news media for public dissemination. For
21 purposes of this subsection, the use of personal information is related
22 to public safety if it concerns the physical safety or security of
23 citizens as drivers, passengers, or pedestrians and their vehicles or
24 property; and

25 (12) For any other use specifically authorized by law that is
26 related to the operation of a motor vehicle or public safety.

27 NEW SECTION. **Sec. 8.** Disclosure of personal information required
28 or permitted under sections 5 through 7 of this act shall be subject to
29 payment by the requesting person to the department of all fees for the
30 information required by statute, regulation, administrative practice,
31 or the terms of any contract with the requesting person, on such terms
32 for payment as may be required or agreed, or as may be determined by
33 the department within the constraints of law.

34 NEW SECTION. **Sec. 9.** In addition to provisions for payment of
35 applicable fees, the department may, prior to the disclosure of
36 personal information as permitted under sections 5 through 7 of this
37 act, require the meeting of conditions by the requesting person for the

1 purposes of obtaining reasonable assurance concerning the identity of
2 such requesting person, and, to the extent required, that the use will
3 be only as authorized, or the consent of the person who is the subject
4 of the information has been obtained. Such conditions may include, but
5 need not be limited to, the making and filing of a written application
6 in such form and containing such information and certification
7 requirements as the department may prescribe.

8 NEW SECTION. **Sec. 10.** An authorized recipient of personal
9 information may resell or redisclose the information for any use
10 permitted under section 7 of this act if such resale or redisclosure is
11 otherwise permitted by law, and subject to any applicable agreement
12 with the department.

13 NEW SECTION. **Sec. 11.** Any social security number obtained from a
14 person applying for or renewing a noncommercial driver's license shall
15 be used solely for the purpose of verifying the validity of the number
16 with the social security administration, as required by the federal
17 illegal immigration act, P.L. 104-208. Once the validity of the number
18 has been established, all record of the number shall be destroyed and
19 no record of the number shall be maintained by the department of
20 licensing or its contractors or agents.

21 NEW SECTION. **Sec. 12.** The department is authorized to adopt rules
22 to carry out the purposes of this chapter.

23 NEW SECTION. **Sec. 13.** Any person requesting the disclosure of
24 personal information from department records who knowingly
25 misrepresents his or her identity or knowingly makes a false statement
26 to the department on any application required to be submitted pursuant
27 to this chapter shall be guilty of false swearing, a gross misdemeanor,
28 under RCW 9A.72.040.

29 **Sec. 14.** RCW 42.17.310 and 1996 c 305 s 2, 1996 c 253 s 302, 1996
30 c 191 s 88, and 1996 c 80 s 1 are each reenacted and amended to read as
31 follows:

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

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

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

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

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

18 (e) Information revealing the identity of persons who are witnesses
19 to or victims of crime or who file complaints with investigative, law
20 enforcement, or penology agencies, other than the public disclosure
21 commission, if disclosure would endanger any person's life, physical
22 safety, or property. If at the time a complaint is filed the
23 complainant, victim or witness indicates a desire for disclosure or
24 nondisclosure, such desire shall govern. However, all complaints filed
25 with the public disclosure commission about any elected official or
26 candidate for public office must be made in writing and signed by the
27 complainant under oath.

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

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

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

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

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

9 (k) Records, maps, or other information identifying the location of
10 archaeological sites in order to avoid the looting or depredation of
11 such sites.

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

15 (m) Financial information supplied by or on behalf of a person,
16 firm, or corporation for the purpose of qualifying to submit a bid or
17 proposal for (i) a ferry system construction or repair contract as
18 required by RCW 47.60.680 through 47.60.750 or (ii) highway
19 construction or improvement as required by RCW 47.28.070.

20 (n) Railroad company contracts filed prior to July 28, 1991, with
21 the utilities and transportation commission under RCW 81.34.070, except
22 that the summaries of the contracts are open to public inspection and
23 copying as otherwise provided by this chapter.

24 (o) Financial and commercial information and records supplied by
25 private persons pertaining to export services provided pursuant to
26 chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to
27 export projects pursuant to RCW 43.23.035.

28 (p) Financial disclosures filed by private vocational schools under
29 chapters 28B.85 and 28C.10 RCW.

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

33 (r) Financial and commercial information and records supplied by
34 businesses or individuals during application for loans or program
35 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,
36 or during application for economic development loans or program
37 services provided by any local agency.

38 (s) Membership lists or lists of members or owners of interests of
39 units in timeshare projects, subdivisions, camping resorts,

1 condominiums, land developments, or common-interest communities
2 affiliated with such projects, regulated by the department of
3 licensing, in the files or possession of the department.

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

7 (u) The residential addresses and residential telephone numbers of
8 employees or volunteers of a public agency which are held by the agency
9 in personnel records, employment or volunteer rosters, or mailing lists
10 of employees or volunteers.

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

14 (w)(i) The federal social security number of individuals governed
15 under chapter 18.130 RCW maintained in the files of the department of
16 health, except this exemption does not apply to requests made directly
17 to the department from federal, state, and local agencies of
18 government, and national and state licensing, credentialing,
19 investigatory, disciplinary, and examination organizations; (ii) the
20 current residential address and current residential telephone number of
21 a health care provider governed under chapter 18.130 RCW maintained in
22 the files of the department, if the provider requests that this
23 information be withheld from public inspection and copying, and
24 provides to the department an accurate alternate or business address
25 and business telephone number. On or after January 1, 1995, the
26 current residential address and residential telephone number of a
27 health care provider governed under RCW 18.130.140 maintained in the
28 files of the department shall automatically be withheld from public
29 inspection and copying unless the provider specifically requests the
30 information be released, and except as provided for under RCW
31 42.17.260(9).

32 (x) Information obtained by the board of pharmacy as provided in
33 RCW 69.45.090.

34 (y) Information obtained by the board of pharmacy or the department
35 of health and its representatives as provided in RCW 69.41.044,
36 69.41.280, and 18.64.420.

37 (z) Financial information, business plans, examination reports, and
38 any information produced or obtained in evaluating or examining a

1 business and industrial development corporation organized or seeking
2 certification under chapter 31.24 RCW.

3 (aa) Financial and commercial information supplied to the state
4 investment board by any person when the information relates to the
5 investment of public trust or retirement funds and when disclosure
6 would result in loss to such funds or in private loss to the providers
7 of this information.

8 (bb) Financial and valuable trade information under RCW 51.36.120.

9 (cc) Client records maintained by an agency that is a domestic
10 violence program as defined in RCW 70.123.020 or 70.123.075 or a rape
11 crisis center as defined in RCW 70.125.030.

12 (dd) Information that identifies a person who, while an agency
13 employee: (i) Seeks advice, under an informal process established by
14 the employing agency, in order to ascertain his or her rights in
15 connection with a possible unfair practice under chapter 49.60 RCW
16 against the person; and (ii) requests his or her identity or any
17 identifying information not be disclosed.

18 (ee) Investigative records compiled by an employing agency
19 conducting a current investigation of a possible unfair practice under
20 chapter 49.60 RCW or of a possible violation of other federal, state,
21 or local laws prohibiting discrimination in employment.

22 (ff) Business related information protected from public inspection
23 and copying under RCW 15.86.110.

24 (gg) Financial, commercial, operations, and technical and research
25 information and data submitted to or obtained by the clean Washington
26 center in applications for, or delivery of, program services under
27 chapter 70.95H RCW.

28 (hh) Information and documents created specifically for, and
29 collected and maintained by a quality improvement committee pursuant to
30 RCW 43.70.510, regardless of which agency is in possession of the
31 information and documents.

32 (ii) Personal information in files maintained in a data base
33 created under RCW 43.07.360.

34 (jj) Personal information maintained by the department of licensing
35 in connection with motor vehicle or driver records, as provided in
36 section 4 of this act.

37 (kk) Records before and during the course of any collective
38 bargaining, labor negotiations, or grievance or mediation proceedings
39 that would reveal the strategy or position being taken by an agency.

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

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

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

19 **Sec. 15.** RCW 46.12.370 and 1982 c 215 s 1 are each amended to read
20 as follows:

21 In addition to any other authority which it may have, and subject
22 to section 4 of this act, the department of licensing may furnish lists
23 of registered and legal owners of motor vehicles only for the purposes
24 specified in this section to:

25 (1) The manufacturers of motor vehicles, or their authorized
26 agents, to be used to enable those manufacturers to carry out the
27 provisions of the Federal Automobile Information Disclosure Act (15
28 U.S.C. Sec. 1231 et seq.), the Motor Vehicle Information and Cost
29 Saving Act (15 U.S.C. Sec. 1901 et seq.), the National Traffic and
30 Motor Vehicle Safety Act of 1966 (15 U.S.C. Sec. ((1382-1418)) 1381 et
31 seq.), the Anti-Car Theft Act of 1992 (15 U.S.C. Sec. 2021 et seq.),
32 and the Clean Air Act (42 U.S.C. Sec. 7401 et seq.), including
33 amendments or additions thereto, respecting safety-related defects in
34 motor vehicles;

35 (2) Any governmental agency of the United States or Canada, or
36 political subdivisions thereof, to be used by it or by its authorized
37 commercial agents or contractors only in connection with the
38 enforcement of motor vehicle or traffic laws by, or programs related to

1 traffic safety of, that government agency. Only such parts of the list
2 as are required for completion of the work required of the agent or
3 contractor shall be provided to such agent or contractor; or

4 (3) Any business regularly making loans to other persons to finance
5 the purchase of motor vehicles, to be used to assist the person
6 requesting the list to determine ownership of specific vehicles for the
7 purpose of determining whether or not to provide such financing. In
8 the event a list of registered and legal owners of motor vehicles is
9 used for any purpose other than that authorized in subsections (1), (2)
10 and (3) of this section, the manufacturer, governmental agency,
11 financial institution or their authorized agents or contractors
12 responsible for the unauthorized disclosure or use will be denied
13 further access to such information by the department of licensing.

14 **Sec. 16.** RCW 46.12.380 and 1995 c 254 s 10 are each amended to
15 read as follows:

16 (1) Notwithstanding the provisions of chapter 42.17 RCW, the name
17 or address of an individual vehicle owner shall not be released by the
18 department, county auditor, or agency or firm authorized by the
19 department except as provided in section 5, 6, or 7 of this act and
20 under the following circumstances:

21 (a) The requesting party is a business entity that requests the
22 information for use in the course of business;

23 (b) The request is a written request that is signed by the person
24 requesting disclosure that contains the full legal name and address of
25 the requesting party, that specifies the purpose for which the
26 information will be used; and

27 (c) The requesting party enters into a disclosure agreement with
28 the department in which the party promises that the party will use the
29 information only for the purpose stated in the request for the
30 information; and that the party does not intend to use, or facilitate
31 the use of, the information for the purpose of making any unsolicited
32 business contact with a person named in the disclosed information. The
33 term "unsolicited business contact" means a contact that is intended to
34 result in, or promote, the sale of any goods or services to a person
35 named in the disclosed information. The term does not apply to
36 situations where the requesting party and such person have been
37 involved in a business transaction prior to the date of the disclosure

1 request and where the request is made in connection with the
2 transaction.

3 (2) The disclosing entity shall retain the request for disclosure
4 for three years.

5 (3) Whenever the disclosing entity grants a request for information
6 under this section by an attorney or private investigator, the
7 disclosing entity shall provide notice to the vehicle owner, to whom
8 the information applies, that the request has been granted. The notice
9 also shall contain the name and address of the requesting party.

10 (4) Any person who is furnished vehicle owner information under
11 this section shall be responsible for assuring that the information
12 furnished is not used for a purpose contrary to the agreement between
13 the person and the department.

14 (5) This section shall not apply to requests for information by
15 governmental entities or requests that may be granted under any other
16 provision of this title expressly authorizing the disclosure of the
17 names or addresses of vehicle owners. Governmental entities that are
18 exempt from the prohibition on receiving the name or address of an
19 individual vehicle owner under this subsection, may disclose such
20 information to any person, as defined under section 3 of this act,
21 based on information demonstrating a reasonable suspicion of serious
22 threat to person or property in relation to any person's operation of
23 a motor vehicle or public safety.

24 (6) This section shall not apply to title history information under
25 RCW 19.118.170.

26 **Sec. 17.** RCW 46.52.060 and 1979 c 158 s 161 are each amended to
27 read as follows:

28 It shall be the duty of the chief of the Washington state patrol to
29 file, tabulate, and analyze all accident reports and to publish
30 annually, immediately following the close of each fiscal year, and
31 monthly during the course of the year, statistical information based
32 thereon showing the number of accidents, the location, the frequency
33 and circumstances thereof and other statistical information which may
34 prove of assistance in determining the cause of vehicular accidents.

35 Such accident reports and analysis or reports thereof shall be
36 available to the director of licensing, the department of
37 transportation, the utilities and transportation commission, or their
38 duly authorized representatives, for further tabulation and analysis

1 for pertinent data relating to the regulation of highway traffic,
2 highway construction, vehicle operators and all other purposes, and to
3 publish information so derived as may be deemed of publication value,
4 within the constraints of section 4 of this act.

5 **Sec. 18.** RCW 46.52.120 and 1993 c 501 s 12 are each amended to
6 read as follows:

7 (1) The director shall keep a case record on every motor vehicle
8 driver licensed under the laws of this state, together with information
9 on each driver, showing all the convictions and findings of traffic
10 infractions certified by the courts, together with an index cross-
11 reference record of each accident reported relating to such individual
12 with a brief statement of the cause of the accident. The chief of the
13 Washington state patrol shall furnish the index cross-reference record
14 to the director, with reference to each driver involved in the reported
15 accidents.

16 (2) The records shall be for the confidential use of the director,
17 the chief of the Washington state patrol, the director of the
18 Washington traffic safety commission, and for such police officers or
19 other cognizant public officials as may be designated by law, and shall
20 not be disclosed except as permitted under section 5, 6, or 7 of this
21 act and as otherwise permitted by law. Such case records shall not be
22 offered as evidence in any court except in case appeal is taken from
23 the order of the director, suspending, revoking, canceling, or refusing
24 a vehicle driver's license.

25 (3) The director shall tabulate and analyze vehicle driver's case
26 records and suspend, revoke, cancel, or refuse a vehicle driver's
27 license to a person when it is deemed from facts contained in the case
28 record of such person that it is for the best interest of public safety
29 that such person be denied the privilege of operating a motor vehicle.
30 Whenever the director orders the vehicle driver's license of any such
31 person suspended, revoked, or canceled, or refuses the issuance of a
32 vehicle driver's license, such suspension, revocation, cancellation, or
33 refusal is final and effective unless appeal from the decision of the
34 director is taken as provided by law.

35 **Sec. 19.** RCW 46.52.130 and 1996 c 307 s 4 and 1996 c 183 s 2 are
36 each reenacted and amended to read as follows:

1 A certified abstract of the driving record shall be furnished only
2 to the individual named in the abstract, an employer or prospective
3 employer or an agent acting on behalf of an employer or prospective
4 employer if the named individual's employment involves the operation of
5 a motor vehicle, the insurance carrier that has insurance in effect
6 covering the employer or a prospective employer, the insurance carrier
7 that has insurance in effect covering the named individual, the
8 insurance carrier to which the named individual has applied, an
9 alcohol/drug assessment or treatment agency approved by the department
10 of social and health services, to which the named individual has
11 applied or been assigned for evaluation or treatment, or city and
12 county prosecuting attorneys. For purposes of section 7(11) of this
13 act, the disclosure of personal information contained in the abstract
14 of the driving record to an alcohol/drug assessment or treatment agency
15 shall be authorized for purposes of public safety. City attorneys and
16 county prosecuting attorneys may provide the driving record to alcohol/
17 drug assessment or treatment agencies approved by the department of
18 social and health services to which the named individual has applied or
19 been assigned for evaluation or treatment. The director, upon proper
20 request, shall furnish a certified abstract covering the period of not
21 more than the last three years to insurance companies. Upon proper
22 request, the director shall furnish a certified abstract covering a
23 period of not more than the last five years to state approved alcohol/
24 drug assessment or treatment agencies, except that the certified
25 abstract shall also include records of alcohol-related offenses as
26 defined in RCW 46.01.260(2) covering a period of not more than the last
27 ten years. Upon proper request, a certified abstract of the full
28 driving record maintained by the department shall be furnished to a
29 city or county prosecuting attorney, to the individual named in the
30 abstract or to an employer or prospective employer or an agent acting
31 on behalf of an employer or prospective employer of the named
32 individual. The abstract, whenever possible, shall include an
33 enumeration of motor vehicle accidents in which the person was driving;
34 the total number of vehicles involved; whether the vehicles were
35 legally parked or moving; whether the vehicles were occupied at the
36 time of the accident; any reported convictions, forfeitures of bail, or
37 findings that an infraction was committed based upon a violation of any
38 motor vehicle law; and the status of the person's driving privilege in
39 this state. The enumeration shall include any reports of failure to

1 appear in response to a traffic citation or failure to respond to a
2 notice of infraction served upon the named individual by an arresting
3 officer. Certified abstracts furnished to prosecutors and alcohol/drug
4 assessment or treatment agencies shall also indicate whether a recorded
5 violation is an alcohol-related offense as defined in RCW 46.01.260(2)
6 that was originally charged as one of the alcohol-related offenses
7 designated in RCW 46.01.260(2)((+a)(i)) (b)(i).

8 The abstract provided to the insurance company shall exclude any
9 information, except that related to the commission of misdemeanors or
10 felonies by the individual, pertaining to law enforcement officers or
11 fire fighters as defined in RCW 41.26.030, or any officer of the
12 Washington state patrol, while driving official vehicles in the
13 performance of occupational duty. The abstract provided to the
14 insurance company shall include convictions for RCW 46.61.525 (1) and
15 (2) except that the abstract shall report them only as negligent
16 driving without reference to whether they are for first or second
17 degree negligent driving. The abstract provided to the insurance
18 company shall exclude any deferred prosecution under RCW 10.05.060,
19 except that if a person is removed from a deferred prosecution under
20 RCW 10.05.090, the abstract shall show the deferred prosecution as well
21 as the removal.

22 The director shall collect for each abstract the sum of four
23 dollars and fifty cents which shall be deposited in the highway safety
24 fund.

25 Any insurance company or its agent receiving the certified abstract
26 shall use it exclusively for its own underwriting purposes and shall
27 not divulge any of the information contained in it to a third party.
28 No policy of insurance may be canceled, nonrenewed, denied, or have the
29 rate increased on the basis of such information unless the policyholder
30 was determined to be at fault. No insurance company or its agent for
31 underwriting purposes relating to the operation of commercial motor
32 vehicles may use any information contained in the abstract relative to
33 any person's operation of motor vehicles while not engaged in such
34 employment, nor may any insurance company or its agent for underwriting
35 purposes relating to the operation of noncommercial motor vehicles use
36 any information contained in the abstract relative to any person's
37 operation of commercial motor vehicles.

38 Any employer or prospective employer or an agent acting on behalf
39 of an employer or prospective employer receiving the certified abstract

1 shall use it exclusively for his or her own purpose to determine
2 whether the licensee should be permitted to operate a commercial
3 vehicle or school bus upon the public highways of this state and shall
4 not divulge any information contained in it to a third party.

5 Any alcohol/drug assessment or treatment agency approved by the
6 department of social and health services receiving the certified
7 abstract shall use it exclusively for the purpose of assisting its
8 employees in making a determination as to what level of treatment, if
9 any, is appropriate. The agency, or any of its employees, shall not
10 divulge any information contained in the abstract to a third party.

11 Release of a certified abstract of the driving record of an
12 employee or prospective employee requires a statement signed by: (1)
13 The employee or prospective employee that authorizes the release of the
14 record, and (2) the employer attesting that the information is
15 necessary to determine whether the licensee should be employed to
16 operate a commercial vehicle or school bus upon the public highways of
17 this state. If the employer or prospective employer authorizes an
18 agent to obtain this information on their behalf, this must be noted in
19 the statement.

20 Any violation of this section is a gross misdemeanor.

21 **Sec. 20.** RCW 46.63.020 and 1996 c 307 s 6, 1996 c 287 s 7, 1996 c
22 93 s 3, 1996 c 87 s 21, and 1996 c 31 s 3 are each reenacted and
23 amended to read as follows:

24 Failure to perform any act required or the performance of any act
25 prohibited by this title or an equivalent administrative regulation or
26 local law, ordinance, regulation, or resolution relating to traffic
27 including parking, standing, stopping, and pedestrian offenses, is
28 designated as a traffic infraction and may not be classified as a
29 criminal offense, except for an offense contained in the following
30 provisions of this title or a violation of an equivalent administrative
31 regulation or local law, ordinance, regulation, or resolution:

32 (1) Section 13 of this act relating to misrepresentation of
33 identity or making a false statement to the department on an
34 application for personal information;

35 (2) RCW 46.09.120(2) relating to the operation of a nonhighway
36 vehicle while under the influence of intoxicating liquor or a
37 controlled substance;

1 ~~((2))~~ (3) RCW 46.09.130 relating to operation of nonhighway
2 vehicles;

3 ~~((3))~~ (4) RCW 46.10.090(2) relating to the operation of a
4 snowmobile while under the influence of intoxicating liquor or
5 narcotics or habit-forming drugs or in a manner endangering the person
6 of another;

7 ~~((4))~~ (5) RCW 46.10.130 relating to the operation of snowmobiles;

8 ~~((5))~~ (6) Chapter 46.12 RCW relating to certificates of ownership
9 and registration and markings indicating that a vehicle has been
10 destroyed or declared a total loss;

11 ~~((6))~~ (7) RCW 46.16.010 relating to initial registration of motor
12 vehicles;

13 ~~((7))~~ (8) RCW 46.16.011 relating to permitting unauthorized
14 persons to drive;

15 ~~((8))~~ (9) RCW 46.16.160 relating to vehicle trip permits;

16 ~~((9))~~ (10) RCW 46.16.381 (6) or (9) relating to unauthorized use
17 or acquisition of a special placard or license plate for disabled
18 persons' parking;

19 ~~((10))~~ (11) RCW 46.20.021 relating to driving without a valid
20 driver's license, unless the person cited for the violation provided
21 the citing officer with an expired driver's license or other valid
22 identifying documentation under RCW 46.20.035 at the time of the stop
23 and was not in violation of RCW 46.20.342(1) or 46.20.420, in which
24 case the violation is an infraction;

25 ~~((11))~~ (12) RCW 46.20.091 relating to false statements regarding
26 a driver's license or instruction permit;

27 ~~((12))~~ (13) RCW 46.20.336 relating to the unlawful possession and
28 use of a driver's license;

29 ~~((13))~~ (14) RCW 46.20.342 relating to driving with a suspended or
30 revoked license or status;

31 ~~((14))~~ (15) RCW 46.20.410 relating to the violation of
32 restrictions of an occupational driver's license;

33 ~~((15))~~ (16) RCW 46.20.420 relating to the operation of a motor
34 vehicle with a suspended or revoked license;

35 ~~((16))~~ (17) RCW 46.20.750 relating to assisting another person to
36 start a vehicle equipped with an ignition interlock device;

37 ~~((17))~~ (18) RCW 46.25.170 relating to commercial driver's
38 licenses;

1 (~~(18)~~) (19) Chapter 46.29 RCW relating to financial
2 responsibility;

3 (~~(19)~~) (20) RCW 46.30.040 relating to providing false evidence of
4 financial responsibility;

5 (~~(20)~~) (21) RCW 46.37.435 relating to wrongful installation of
6 sunscreening material;

7 (~~(21)~~) (22) RCW 46.44.180 relating to operation of mobile home
8 pilot vehicles;

9 (~~(22)~~) (23) RCW 46.48.175 relating to the transportation of
10 dangerous articles;

11 (~~(23)~~) (24) RCW 46.52.010 relating to duty on striking an
12 unattended car or other property;

13 (~~(24)~~) (25) RCW 46.52.020 relating to duty in case of injury to
14 or death of a person or damage to an attended vehicle;

15 (~~(25)~~) (26) RCW 46.52.090 relating to reports by repairmen,
16 storagemen, and appraisers;

17 (~~(26)~~) (27) RCW 46.52.100 relating to driving under the influence
18 of liquor or drugs;

19 (~~(27)~~) (28) RCW 46.52.130 relating to confidentiality of the
20 driving record to be furnished to an insurance company, an employer,
21 and an alcohol/drug assessment or treatment agency;

22 (~~(28)~~) (29) RCW 46.55.020 relating to engaging in the activities
23 of a registered tow truck operator without a registration certificate;

24 (~~(29)~~) (30) RCW 46.55.035 relating to prohibited practices by tow
25 truck operators;

26 (~~(30)~~) (31) RCW 46.61.015 relating to obedience to police
27 officers, flagmen, or fire fighters;

28 (~~(31)~~) (32) RCW 46.61.020 relating to refusal to give information
29 to or cooperate with an officer;

30 (~~(32)~~) (33) RCW 46.61.022 relating to failure to stop and give
31 identification to an officer;

32 (~~(33)~~) (34) RCW 46.61.024 relating to attempting to elude
33 pursuing police vehicles;

34 (~~(34)~~) (35) RCW 46.61.500 relating to reckless driving;

35 (~~(35)~~) (36) RCW 46.61.502 and 46.61.504 relating to persons under
36 the influence of intoxicating liquor or drugs;

37 (~~(36)~~) (37) RCW 46.61.503 relating to a person under age twenty-
38 one driving a motor vehicle after consuming alcohol;

1 (~~(37)~~) (38) RCW 46.61.520 relating to vehicular homicide by motor
2 vehicle;

3 (~~(38)~~) (39) RCW 46.61.522 relating to vehicular assault;

4 (~~(39)~~) (40) RCW 46.61.525(1) relating to first degree negligent
5 driving;

6 (~~(40)~~) (41) RCW 46.61.527(4) relating to reckless endangerment of
7 roadway workers;

8 (~~(41)~~) (42) RCW 46.61.530 relating to racing of vehicles on
9 highways;

10 (~~(42)~~) (43) RCW 46.61.685 relating to leaving children in an
11 unattended vehicle with the motor running;

12 (~~(43)~~) (44) RCW 46.64.010 relating to unlawful cancellation of or
13 attempt to cancel a traffic citation;

14 (~~(44)~~) (45) RCW 46.64.048 relating to attempting, aiding,
15 abetting, coercing, and committing crimes;

16 (~~(45)~~) (46) Chapter 46.65 RCW relating to habitual traffic
17 offenders;

18 (~~(46)~~) (47) RCW 46.68.010 relating to false statements made to
19 obtain a refund;

20 (~~(47)~~) (48) Chapter 46.70 RCW relating to unfair motor vehicle
21 business practices, except where that chapter provides for the
22 assessment of monetary penalties of a civil nature;

23 (~~(48)~~) (49) Chapter 46.72 RCW relating to the transportation of
24 passengers in for hire vehicles;

25 (~~(49)~~) (50) RCW 46.--.-- (section 9, chapter 87, Laws of 1996)
26 relating to limousine carrier insurance;

27 (~~(50)~~) (51) RCW 46.--.-- (section 10, chapter 87, Laws of 1996)
28 relating to operation of a limousine without a vehicle certificate;

29 (~~(51)~~) (52) RCW 46.--.-- (section 11, chapter 87, Laws of 1996)
30 relating to false advertising by a limousine carrier;

31 (~~(52)~~) (53) Chapter 46.80 RCW relating to motor vehicle wreckers;

32 (~~(53)~~) (54) Chapter 46.82 RCW relating to driver's training
33 schools;

34 (~~(54)~~) (55) RCW 46.87.260 relating to alteration or forgery of a
35 cab card, letter of authority, or other temporary authority issued
36 under chapter 46.87 RCW;

37 (~~(55)~~) (56) RCW 46.87.290 relating to operation of an
38 unregistered or unlicensed vehicle under chapter 46.87 RCW.

1 NEW SECTION. **Sec. 21.** A new section is added to Title 46 RCW to
2 read as follows:

3 (1) In order to ensure the integrity of the driver license and
4 identicard to enhance motorist privacy in the personal information
5 contained in driver records, by February 1, 1998, the department shall
6 enter into a contract for the procurement of a new driver's license and
7 identicard. The new driver's license and identicard shall only
8 incorporate the following security features designed to protect against
9 fraudulent access to personal information:

10 (a) A central issuance system that requires issuance of permanent
11 licenses and identicards from one central, secure location. Upon
12 verification of eligibility, the license or identicard will be mailed
13 to the resident;

14 (b) A digital imaging system that permits a person's photograph and
15 signature to be stored and displayed by computer, which allows for
16 improved file management, flexibility, responsiveness, and fraud
17 protection;

18 (c) Machine-readable technologies, including a one-dimensional bar
19 code, two-dimensional bar code, and a magnetic stripe to provide for
20 rapid and accurate verification that the license or identicard is
21 genuine. Through encryption, both the magnetic stripe and two-
22 dimensional bar code offer additional levels of security against
23 alteration and counterfeiting; and

24 (d) An optical variable device that is not readily available to the
25 general public. The image or color change of the optical variable
26 device must prevent fraudulent duplication by making attempts at
27 alteration apparent by distortion or destruction of the license or
28 identicard. The optical variable device must prevent the license or
29 identicard from being accurately copied by color photography or a color
30 copier. The optical variable device must utilize the most secure
31 technology available to prevent tampering, fraudulent duplication,
32 separation, and alteration. Additionally, the department may provide
33 for a second picture of the card holder printed on the license or
34 identicard in ultraviolet ink. The digital printing must enable the
35 applicant's ultraviolet picture to be added to the license or
36 identicard at the time of issuance for presentation of information that
37 is uniquely tied to the card holder.

1 (2)(a) Upon issuance of an identicard under this section, there is
2 imposed a six dollar fee in addition to the fee imposed under RCW
3 46.20.117.

4 (b) Upon issuance of a driver's license under this section, there
5 is imposed a six dollar fee in addition to the fee imposed under RCW
6 46.20.161.

7 (c) Upon issuance of a renewed driver's license under this section,
8 there is imposed a six dollar fee in addition to the fee under RCW
9 46.20.181.

10 **Sec. 22.** RCW 46.70.180 and 1997 c ... (HB 1198) s 1 are each
11 amended to read as follows:

12 Each of the following acts or practices is unlawful:

13 (1) To cause or permit to be advertised, printed, displayed,
14 published, distributed, broadcasted, televised, or disseminated in any
15 manner whatsoever, any statement or representation with regard to the
16 sale or financing of a vehicle which is false, deceptive, or
17 misleading, including but not limited to the following:

18 (a) That no down payment is required in connection with the sale of
19 a vehicle when a down payment is in fact required, or that a vehicle
20 may be purchased for a smaller down payment than is actually required;

21 (b) That a certain percentage of the sale price of a vehicle may be
22 financed when such financing is not offered in a single document
23 evidencing the entire security transaction;

24 (c) That a certain percentage is the amount of the service charge
25 to be charged for financing, without stating whether this percentage
26 charge is a monthly amount or an amount to be charged per year;

27 (d) That a new vehicle will be sold for a certain amount above or
28 below cost without computing cost as the exact amount of the factory
29 invoice on the specific vehicle to be sold;

30 (e) That a vehicle will be sold upon a monthly payment of a certain
31 amount, without including in the statement the number of payments of
32 that same amount which are required to liquidate the unpaid purchase
33 price.

34 (2) To incorporate within the terms of any purchase and sale
35 agreement any statement or representation with regard to the sale or
36 financing of a vehicle which is false, deceptive, or misleading,
37 including but not limited to terms that include as an added cost to the
38 selling price of a vehicle an amount for licensing or transfer of title

1 of that vehicle which is not actually due to the state, unless such
2 amount has in fact been paid by the dealer prior to such sale.

3 (3) To set up, promote, or aid in the promotion of a plan by which
4 vehicles are to be sold to a person for a consideration and upon
5 further consideration that the purchaser agrees to secure one or more
6 persons to participate in the plan by respectively making a similar
7 purchase and in turn agreeing to secure one or more persons likewise to
8 join in said plan, each purchaser being given the right to secure
9 money, credits, goods, or something of value, depending upon the number
10 of persons joining the plan.

11 (4) To commit, allow, or ratify any act of "bushing" which is
12 defined as follows: Taking from a prospective buyer of a vehicle a
13 written order or offer to purchase, or a contract document signed by
14 the buyer, which:

15 (a) Is subject to the dealer's, or his or her authorized
16 representative's future acceptance, and the dealer fails or refuses
17 within three calendar days, exclusive of Saturday, Sunday, or legal
18 holiday, and prior to any further negotiations with said buyer, either
19 (i) to deliver to the buyer the dealer's signed acceptance, or (ii) to
20 void the order, offer, or contract document and tender the return of
21 any initial payment or security made or given by the buyer, including
22 but not limited to money, check, promissory note, vehicle keys, a
23 trade-in, or certificate of title to a trade-in; or

24 (b) Permits the dealer to renegotiate a dollar amount specified as
25 trade-in allowance on a vehicle delivered or to be delivered by the
26 buyer as part of the purchase price, for any reason except:

27 (i) Failure to disclose that the vehicle's certificate of ownership
28 has been branded for any reason, including, but not limited to, status
29 as a rebuilt vehicle as provided in RCW 46.12.050 and 46.12.075; or

30 (ii) Substantial physical damage or latent mechanical defect
31 occurring before the dealer took possession of the vehicle and which
32 could not have been reasonably discoverable at the time of the taking
33 of the order, offer, or contract; or

34 (iii) Excessive additional miles or a discrepancy in the mileage.
35 "Excessive additional miles" means the addition of five hundred miles
36 or more, as reflected on the vehicle's odometer, between the time the
37 vehicle was first valued by the dealer for purposes of determining its
38 trade-in value and the time of actual delivery of the vehicle to the
39 dealer. "A discrepancy in the mileage" means (A) at the time of

1 signing the odometer statement, a discrepancy of five hundred miles or
2 more between the mileage reflected on the vehicle's odometer and the
3 stated mileage on the signed odometer statement; or (B) a discrepancy
4 between the mileage stated on the signed odometer statement and the
5 actual mileage on the vehicle; or

6 (c) Fails to comply with the obligation of any written warranty or
7 guarantee given by the dealer requiring the furnishing of services or
8 repairs within a reasonable time.

9 (5) To commit any offense relating to odometers, as such offenses
10 are defined in RCW 46.37.540, 46.37.550, 46.37.560, and 46.37.570. A
11 violation of this subsection is a class C felony punishable under
12 chapter 9A.20 RCW.

13 (6) For any vehicle dealer or vehicle salesperson to refuse to
14 furnish, upon request of a prospective purchaser, for vehicles
15 previously registered to a business or governmental entity, the name
16 and address of the business or governmental entity.

17 (7) To commit any other offense under RCW 46.37.423, 46.37.424, or
18 46.37.425.

19 (8) To commit any offense relating to a dealer's temporary license
20 permit, including but not limited to failure to properly complete each
21 such permit, or the issuance of more than one such permit on any one
22 vehicle. However, a dealer may issue a second temporary permit on a
23 vehicle if the following conditions are met:

24 (a) The lienholder fails to deliver the vehicle title to the dealer
25 within the required time period;

26 (b) The dealer has satisfied the lien; and

27 (c) The dealer has proof that payment of the lien was made within
28 two calendar days, exclusive of Saturday, Sunday, or a legal holiday,
29 after the sales contract has been executed by all parties and all
30 conditions and contingencies in the sales contract have been met or
31 otherwise satisfied.

32 (9) For a dealer, salesman, or mobile home manufacturer, having
33 taken an instrument or cash "on deposit" from a purchaser prior to the
34 delivery of the bargained-for vehicle, to commingle the "on deposit"
35 funds with assets of the dealer, salesman, or mobile home manufacturer
36 instead of holding the "on deposit" funds as trustee in a separate
37 trust account until the purchaser has taken delivery of the bargained-
38 for vehicle. Delivery of a manufactured home shall be deemed to occur
39 in accordance with RCW 46.70.135(5). Failure, immediately upon

1 receipt, to endorse "on deposit" instruments to such a trust account,
2 or to set aside "on deposit" cash for deposit in such trust account,
3 and failure to deposit such instruments or cash in such trust account
4 by the close of banking hours on the day following receipt thereof,
5 shall be evidence of intent to commit this unlawful practice:
6 PROVIDED, HOWEVER, That a motor vehicle dealer may keep a separate
7 trust account which equals his or her customary total customer deposits
8 for vehicles for future delivery. For purposes of this section, "on
9 deposit" funds received from a purchaser of a manufactured home means
10 those funds that a seller requires a purchaser to advance before
11 ordering the manufactured home, but does not include any loan proceeds
12 or moneys that might have been paid on an installment contract.

13 (10) For a dealer or manufacturer to fail to comply with the
14 obligations of any written warranty or guarantee given by the dealer or
15 manufacturer requiring the furnishing of goods and services or repairs
16 within a reasonable period of time, or to fail to furnish to a
17 purchaser, all parts which attach to the manufactured unit including
18 but not limited to the undercarriage, and all items specified in the
19 terms of a sales agreement signed by the seller and buyer.

20 (11) For a vehicle dealer to pay to or receive from any person,
21 firm, partnership, association, or corporation acting, either directly
22 or through a subsidiary, as a buyer's agent for consumers, any
23 compensation, fee, purchase moneys or funds that have been deposited
24 into or withdrawn out of any account controlled or used by any buyer's
25 agent, gratuity, or reward in connection with the purchase or sale of
26 a new motor vehicle.

27 (12) For a buyer's agent, acting directly or through a subsidiary,
28 to pay to or to receive from any motor vehicle dealer any compensation,
29 fee, gratuity, or reward in connection with the purchase or sale of a
30 new motor vehicle. In addition, it is unlawful for any buyer's agent
31 to engage in any of the following acts on behalf of or in the name of
32 the consumer:

33 (a) Receiving or paying any purchase moneys or funds into or out of
34 any account controlled or used by any buyer's agent;

35 (b) Signing any vehicle purchase orders, sales contract, odometer
36 statements, or title documents, or having the name of the buyer's agent
37 appear on the vehicle purchase order, sales contract, or title; or

38 (c) Signing any other documentation relating to the purchase, sale,
39 or transfer of any new motor vehicle.

1 It is unlawful for a buyer's agent to use a power of attorney
2 obtained from the consumer to accomplish or effect the purchase, sale,
3 or transfer of ownership documents of any new motor vehicle by any
4 means which would otherwise be prohibited under (a) through (c) of this
5 subsection. However, the buyer's agent may use a power of attorney for
6 physical delivery of motor vehicle license plates to the consumer.

7 Further, it is unlawful for a buyer's agent to engage in any false,
8 deceptive, or misleading advertising, disseminated in any manner
9 whatsoever, including but not limited to making any claim or statement
10 that the buyer's agent offers, obtains, or guarantees the lowest price
11 on any motor vehicle or words to similar effect.

12 (13) For a buyer's agent to arrange for or to negotiate the
13 purchase, or both, of a new motor vehicle through an out-of-state
14 dealer without disclosing in writing to the customer that the new
15 vehicle would not be subject to chapter 19.118 RCW. In addition, it is
16 unlawful for any buyer's agent to fail to have a written agreement with
17 the customer that: (a) Sets forth the terms of the parties' agreement;
18 (b) discloses to the customer the total amount of any fees or other
19 compensation being paid by the customer to the buyer's agent for the
20 agent's services; and (c) further discloses whether the fee or any
21 portion of the fee is refundable. The department of licensing shall by
22 December 31, 1996, in rule, adopt standard disclosure language for
23 buyer's agent agreements under RCW 46.70.011, 46.70.070, and this
24 section.

25 (14) Being a manufacturer, other than a motorcycle manufacturer
26 governed by chapter 46.94 RCW, to:

27 (a) Coerce or attempt to coerce any vehicle dealer to order or
28 accept delivery of any vehicle or vehicles, parts or accessories, or
29 any other commodities which have not been voluntarily ordered by the
30 vehicle dealer: PROVIDED, That recommendation, endorsement,
31 exposition, persuasion, urging, or argument are not deemed to
32 constitute coercion;

33 (b) Cancel or fail to renew the franchise or selling agreement of
34 any vehicle dealer doing business in this state without fairly
35 compensating the dealer at a fair going business value for his or her
36 capital investment which shall include but not be limited to tools,
37 equipment, and parts inventory possessed by the dealer on the day he or
38 she is notified of such cancellation or termination and which are still
39 within the dealer's possession on the day the cancellation or

1 termination is effective, if: (i) The capital investment has been
2 entered into with reasonable and prudent business judgment for the
3 purpose of fulfilling the franchise; and (ii) the cancellation or
4 nonrenewal was not done in good faith. Good faith is defined as the
5 duty of each party to any franchise to act in a fair and equitable
6 manner towards each other, so as to guarantee one party freedom from
7 coercion, intimidation, or threats of coercion or intimidation from the
8 other party: PROVIDED, That recommendation, endorsement, exposition,
9 persuasion, urging, or argument are not deemed to constitute a lack of
10 good faith.

11 (c) Encourage, aid, abet, or teach a vehicle dealer to sell
12 vehicles through any false, deceptive, or misleading sales or financing
13 practices including but not limited to those practices declared
14 unlawful in this section;

15 (d) Coerce or attempt to coerce a vehicle dealer to engage in any
16 practice forbidden in this section by either threats of actual
17 cancellation or failure to renew the dealer's franchise agreement;

18 (e) Refuse to deliver any vehicle publicly advertised for immediate
19 delivery to any duly licensed vehicle dealer having a franchise or
20 contractual agreement for the retail sale of new and unused vehicles
21 sold or distributed by such manufacturer within sixty days after such
22 dealer's order has been received in writing unless caused by inability
23 to deliver because of shortage or curtailment of material, labor,
24 transportation, or utility services, or by any labor or production
25 difficulty, or by any cause beyond the reasonable control of the
26 manufacturer;

27 (f) To provide under the terms of any warranty that a purchaser of
28 any new or unused vehicle that has been sold, distributed for sale, or
29 transferred into this state for resale by the vehicle manufacturer may
30 only make any warranty claim on any item included as an integral part
31 of the vehicle against the manufacturer of that item.

32 Nothing in this section may be construed to impair the obligations
33 of a contract or to prevent a manufacturer, distributor,
34 representative, or any other person, whether or not licensed under this
35 chapter, from requiring performance of a written contract entered into
36 with any licensee hereunder, nor does the requirement of such
37 performance constitute a violation of any of the provisions of this
38 section if any such contract or the terms thereof requiring
39 performance, have been freely entered into and executed between the

1 contracting parties. This paragraph and subsection (14)(b) of this
2 section do not apply to new motor vehicle manufacturers governed by
3 chapter 46.96 RCW.

4 (15) Unlawful transfer of an ownership interest in a motor vehicle
5 as defined in RCW 19.116.050.

6 NEW SECTION. **Sec. 23.** For the purposes of sections 24 through 30
7 of this act, it is the intent of the legislature to delineate between
8 legitimate business use of public records and inappropriate commercial
9 use. It is also the intent of the legislature to protect the privacy
10 of citizens from inappropriate commercial use of public records by
11 providing disincentives for such use. Furthermore, the legislature
12 seeks to encourage public-private cooperation in ways that further the
13 public mission of the state and to maintain and enhance public access
14 to public records for the purpose of encouraging public oversight and
15 facilitating other desirable social and economic benefits.

16 **Sec. 24.** RCW 42.17.020 and 1995 c 397 s 1 are each amended to read
17 as follows:

18 (1) "Agency" includes all state agencies and all local agencies.
19 "State agency" includes every state office, department, division,
20 bureau, board, commission, or other state agency. "Local agency"
21 includes every county, city, town, municipal corporation, quasi-
22 municipal corporation, or special purpose district, or any office,
23 department, division, bureau, board, commission, or agency thereof, or
24 other local public agency.

25 (2) "Authorized committee" means the political committee authorized
26 by a candidate, or by the public official against whom recall charges
27 have been filed, to accept contributions or make expenditures on behalf
28 of the candidate or public official.

29 (3) "Ballot proposition" means any "measure" as defined by RCW
30 29.01.110, or any initiative, recall, or referendum proposition
31 proposed to be submitted to the voters of the state or any municipal
32 corporation, political subdivision, or other voting constituency from
33 and after the time when the proposition has been initially filed with
34 the appropriate election officer of that constituency prior to its
35 circulation for signatures.

1 (4) "Benefit" means a commercial, proprietary, financial, economic,
2 or monetary advantage, or the avoidance of a commercial, proprietary,
3 financial, economic, or monetary disadvantage.

4 (5) "Bona fide political party" means:

5 (a) An organization that has filed a valid certificate of
6 nomination with the secretary of state under chapter 29.24 RCW;

7 (b) The governing body of the state organization of a major
8 political party, as defined in RCW 29.01.090, that is the body
9 authorized by the charter or bylaws of the party to exercise authority
10 on behalf of the state party; or

11 (c) The county central committee or legislative district committee
12 of a major political party. There may be only one legislative district
13 committee for each party in each legislative district.

14 (6) "Business use" or "business purpose" means use of public
15 records that contain personally identifiable information, which use is
16 for the purpose of meeting statutory or regulatory requirements,
17 conducting business in a safe and lawful manner, or validating
18 information provided by a third party, and which use does not result in
19 unsolicited commercial contact to persons identified in such records.

20 (7) "Depository" means a bank designated by a candidate or
21 political committee pursuant to RCW 42.17.050.

22 ~~((+7))~~ (8) "Treasurer" and "deputy treasurer" mean the individuals
23 appointed by a candidate or political committee, pursuant to RCW
24 42.17.050, to perform the duties specified in that section.

25 ~~((+8))~~ (9) "Candidate" means any individual who seeks nomination
26 for election or election to public office. An individual seeks
27 nomination or election when he or she first:

28 (a) Receives contributions or makes expenditures or reserves space
29 or facilities with intent to promote his or her candidacy for office;

30 (b) Announces publicly or files for office;

31 (c) Purchases commercial advertising space or broadcast time to
32 promote his or her candidacy; or

33 (d) Gives his or her consent to another person to take on behalf of
34 the individual any of the actions in (a) or (c) of this subsection.

35 ~~((+9))~~ (10) "Caucus political committee" means a political
36 committee organized and maintained by the members of a major political
37 party in the state senate or state house of representatives.

38 ~~((+10))~~ (11) "Commercial advertiser" means any person who sells
39 the service of communicating messages or producing printed material for

1 broadcast or distribution to the general public or segments of the
2 general public whether through the use of newspapers, magazines,
3 television and radio stations, billboard companies, direct mail
4 advertising companies, printing companies, or otherwise.

5 ~~((11))~~ (12) "Commission" means the agency established under RCW
6 42.17.350.

7 ~~((12))~~ (13) "Compensation" unless the context requires a narrower
8 meaning, includes payment in any form for real or personal property or
9 services of any kind(~~(:—PROVIDED, That)~~). However, for the purpose of
10 compliance with RCW 42.17.241, the term "compensation" shall not
11 include per diem allowances or other payments made by a governmental
12 entity to reimburse a public official for expenses incurred while the
13 official is engaged in the official business of the governmental
14 entity.

15 ~~((13))~~ (14) "Continuing political committee" means a political
16 committee that is an organization of continuing existence not
17 established in anticipation of any particular election campaign.

18 ~~((14))~~ (15)(a) "Contribution" includes:

19 (i) A loan, gift, deposit, subscription, forgiveness of
20 indebtedness, donation, advance, pledge, payment, transfer of funds
21 between political committees, or anything of value, including personal
22 and professional services for less than full consideration;

23 (ii) An expenditure made by a person in cooperation, consultation,
24 or concert with, or at the request or suggestion of, a candidate, a
25 political committee, or their agents;

26 (iii) The financing by a person of the dissemination, distribution,
27 or republication, in whole or in part, of broadcast, written, graphic,
28 or other form of political advertising prepared by a candidate, a
29 political committee, or its authorized agent;

30 (iv) Sums paid for tickets to fund-raising events such as dinners
31 and parties, except for the actual cost of the consumables furnished at
32 the event.

33 (b) "Contribution" does not include:

34 (i) Standard interest on money deposited in a political committee's
35 account;

36 (ii) Ordinary home hospitality;

37 (iii) A contribution received by a candidate or political committee
38 that is returned to the contributor within five business days of the
39 date on which it is received by the candidate or political committee;

1 (iv) A news item, feature, commentary, or editorial in a regularly
2 scheduled news medium that is of primary interest to the general
3 public, that is in a news medium controlled by a person whose business
4 is that news medium, and that is not controlled by a candidate or a
5 political committee;

6 (v) An internal political communication primarily limited to the
7 members of or contributors to a political party organization or
8 political committee, or to the officers, management staff, or
9 stockholders of a corporation or similar enterprise, or to the members
10 of a labor organization or other membership organization;

11 (vi) The rendering of personal services of the sort commonly
12 performed by volunteer campaign workers, or incidental expenses
13 personally incurred by volunteer campaign workers not in excess of
14 fifty dollars personally paid for by the worker. "Volunteer services,"
15 for the purposes of this section, means services or labor for which the
16 individual is not compensated by any person;

17 (vii) Messages in the form of reader boards, banners, or yard or
18 window signs displayed on a person's own property or property occupied
19 by a person. However, a facility used for such political advertising
20 for which a rental charge is normally made must be reported as an in-
21 kind contribution and counts towards any applicable contribution limit
22 of the person providing the facility;

23 (viii) Legal or accounting services rendered to or on behalf of:

24 (A) A political party or caucus political committee if the person
25 paying for the services is the regular employer of the person rendering
26 such services; or

27 (B) A candidate or an authorized committee if the person paying for
28 the services is the regular employer of the individual rendering the
29 services and if the services are solely for the purpose of ensuring
30 compliance with state election or public disclosure laws.

31 (c) Contributions other than money or its equivalent are deemed to
32 have a monetary value equivalent to the fair market value of the
33 contribution. Services or property or rights furnished at less than
34 their fair market value for the purpose of assisting any candidate or
35 political committee are deemed a contribution. Such a contribution
36 must be reported as an in-kind contribution at its fair market value
37 and counts towards any applicable contribution limit of the provider.

1 (~~(15)~~) (16) "Elected official" means any person elected at a
2 general or special election to any public office, and any person
3 appointed to fill a vacancy in any such office.

4 (~~(16)~~) (17) "Election" includes any primary, general, or special
5 election for public office and any election in which a ballot
6 proposition is submitted to the voters: PROVIDED, That an election in
7 which the qualifications for voting include other than those
8 requirements set forth in Article VI, section 1 (Amendment 63) of the
9 Constitution of the state of Washington shall not be considered an
10 election for purposes of this chapter.

11 (~~(17)~~) (18) "Election campaign" means any campaign in support of
12 or in opposition to a candidate for election to public office and any
13 campaign in support of, or in opposition to, a ballot proposition.

14 (~~(18)~~) (19) "Election cycle" means the period beginning on the
15 first day of December after the date of the last previous general
16 election for the office that the candidate seeks and ending on November
17 30th after the next election for the office. In the case of a special
18 election to fill a vacancy in an office, "election cycle" means the
19 period beginning on the day the vacancy occurs and ending on November
20 30th after the special election.

21 (~~(19)~~) (20) "Expenditure" includes a payment, contribution,
22 subscription, distribution, loan, advance, deposit, or gift of money or
23 anything of value, and includes a contract, promise, or agreement,
24 whether or not legally enforceable, to make an expenditure. The term
25 "expenditure" also includes a promise to pay, a payment, or a transfer
26 of anything of value in exchange for goods, services, property,
27 facilities, or anything of value for the purpose of assisting,
28 benefiting, or honoring any public official or candidate, or assisting
29 in furthering or opposing any election campaign. For the purposes of
30 this chapter, agreements to make expenditures, contracts, and promises
31 to pay may be reported as estimated obligations until actual payment is
32 made. The term "expenditure" shall not include the partial or complete
33 repayment by a candidate or political committee of the principal of a
34 loan, the receipt of which loan has been properly reported.

35 (~~(20)~~) (21) "Final report" means the report described as a final
36 report in RCW 42.17.080(2).

37 (~~(21)~~) (22) "General election" means the election that results in
38 the election of a person to a state office. It does not include a
39 primary.

1 (~~(22)~~) (23) "Gift," is as defined in RCW 42.52.010.

2 (~~(23)~~) (24) "Immediate family" includes the spouse, dependent
3 children, and other dependent relatives, if living in the household.
4 For the purposes of RCW 42.17.640 through 42.17.790, "immediate family"
5 means an individual's spouse, and child, stepchild, grandchild, parent,
6 stepparent, grandparent, brother, half brother, sister, or half sister
7 of the individual and the spouse of any such person and a child,
8 stepchild, grandchild, parent, stepparent, grandparent, brother, half
9 brother, sister, or half sister of the individual's spouse and the
10 spouse of any such person.

11 (~~(24)~~) (25) "Independent expenditure" means an expenditure that
12 has each of the following elements:

13 (a) It is made in support of or in opposition to a candidate for
14 office by a person who is not (i) a candidate for that office, (ii) an
15 authorized committee of that candidate for that office, (iii) a person
16 who has received the candidate's encouragement or approval to make the
17 expenditure, if the expenditure pays in whole or in part for political
18 advertising supporting that candidate or promoting the defeat of any
19 other candidate or candidates for that office, or (iv) a person with
20 whom the candidate has collaborated for the purpose of making the
21 expenditure, if the expenditure pays in whole or in part for political
22 advertising supporting that candidate or promoting the defeat of any
23 other candidate or candidates for that office;

24 (b) The expenditure pays in whole or in part for political
25 advertising that either specifically names the candidate supported or
26 opposed, or clearly and beyond any doubt identifies the candidate
27 without using the candidate's name; and

28 (c) The expenditure, alone or in conjunction with another
29 expenditure or other expenditures of the same person in support of or
30 opposition to that candidate, has a value of five hundred dollars or
31 more. A series of expenditures, each of which is under five hundred
32 dollars, constitutes one independent expenditure if their cumulative
33 value is five hundred dollars or more.

34 (~~(25)~~) (26)(a) "Intermediary" means an individual who transmits
35 a contribution to a candidate or committee from another person unless
36 the contribution is from the individual's employer, immediate family as
37 defined for purposes of RCW 42.17.640 through 42.17.790, or an
38 association to which the individual belongs.

1 (b) A treasurer or a candidate is not an intermediary for purposes
2 of the committee that the treasurer or candidate serves.

3 (c) A professional fund-raiser is not an intermediary if the fund-
4 raiser is compensated for fund-raising services at the usual and
5 customary rate.

6 (d) A volunteer hosting a fund-raising event at the individual's
7 home is not an intermediary for purposes of that event.

8 (~~(26)~~) (27) "Legislation" means bills, resolutions, motions,
9 amendments, nominations, and other matters pending or proposed in
10 either house of the state legislature, and includes any other matter
11 that may be the subject of action by either house or any committee of
12 the legislature and all bills and resolutions that, having passed both
13 houses, are pending approval by the governor.

14 (~~(27)~~) (28) "Lobby" and "lobbying" each mean attempting to
15 influence the passage or defeat of any legislation by the legislature
16 of the state of Washington, or the adoption or rejection of any rule,
17 standard, rate, or other legislative enactment of any state agency
18 under the state Administrative Procedure Act, chapter 34.05 RCW.
19 Neither "lobby" nor "lobbying" includes an association's or other
20 organization's act of communicating with the members of that
21 association or organization.

22 (~~(28)~~) (29) "Lobbyist" includes any person who lobbies either in
23 his or her own or another's behalf.

24 (~~(29)~~) (30) "Lobbyist's employer" means the person or persons by
25 whom a lobbyist is employed and all persons by whom he or she is
26 compensated for acting as a lobbyist.

27 (~~(30)~~) (31) "Person" includes an individual, partnership, joint
28 venture, public or private corporation, association, federal, state, or
29 local governmental entity or agency however constituted, candidate,
30 committee, political committee, political party, executive committee
31 thereof, or any other organization or group of persons, however
32 organized.

33 (~~(31)~~) (32) "Person in interest" means the person who is the
34 subject of a record or any representative designated by that person,
35 except that if that person is under a legal disability, the term
36 "person in interest" means and includes the parent or duly appointed
37 legal representative.

38 (~~(32)~~) (33) "Personally identifiable information" means
39 information provided by an individual as a prerequisite to the receipt

1 of a license, approval, award, product, or service from a government
2 agency, which may include name, address, telephone number, social
3 security number, photographs, fingerprints, or computerized images
4 thereof.

5 (34) "Political advertising" includes any advertising displays,
6 newspaper ads, billboards, signs, brochures, articles, tabloids,
7 flyers, letters, radio or television presentations, or other means of
8 mass communication, used for the purpose of appealing, directly or
9 indirectly, for votes or for financial or other support in any election
10 campaign.

11 (~~(33)~~) (35) "Political committee" means any person (except a
12 candidate or an individual dealing with his or her own funds or
13 property) having the expectation of receiving contributions or making
14 expenditures in support of, or opposition to, any candidate or any
15 ballot proposition.

16 (~~(34)~~) (36) "Primary" means the procedure for nominating a
17 candidate to state office under chapter 29.18 or 29.21 RCW or any other
18 primary for an election that uses, in large measure, the procedures
19 established in chapter 29.18 or 29.21 RCW.

20 (~~(35)~~) (37) "Public office" means any federal, state, county,
21 city, town, school district, port district, special district, or other
22 state political subdivision elective office.

23 (~~(36)~~) (38) "Public record" includes any writing containing
24 information relating to the conduct of government or the performance of
25 any governmental or proprietary function prepared, owned, used, or
26 retained by any state or local agency regardless of physical form or
27 characteristics. For the office of the secretary of the senate and the
28 office of the chief clerk of the house of representatives, public
29 records means legislative records as defined in RCW 40.14.100 and also
30 means the following: All budget and financial records; personnel
31 leave, travel, and payroll records; records of legislative sessions;
32 reports submitted to the legislature; and any other record designated
33 a public record by any official action of the senate or the house of
34 representatives.

35 (~~(37)~~) (39) "Recall campaign" means the period of time beginning
36 on the date of the filing of recall charges under RCW 29.82.015 and
37 ending thirty days after the recall election.

1 (~~(38)~~) (40) "State legislative office" means the office of a
2 member of the state house of representatives or the office of a member
3 of the state senate.

4 (~~(39)~~) (41) "State office" means state legislative office or the
5 office of governor, lieutenant governor, secretary of state, attorney
6 general, commissioner of public lands, insurance commissioner,
7 superintendent of public instruction, state auditor, or state
8 treasurer.

9 (~~(40)~~) (42) "State official" means a person who holds a state
10 office.

11 (~~(41)~~) (43) "Surplus funds" mean, in the case of a political
12 committee or candidate, the balance of contributions that remain in the
13 possession or control of that committee or candidate subsequent to the
14 election for which the contributions were received, and that are in
15 excess of the amount necessary to pay remaining debts incurred by the
16 committee or candidate prior to that election. In the case of a
17 continuing political committee, "surplus funds" mean those
18 contributions remaining in the possession or control of the committee
19 that are in excess of the amount necessary to pay all remaining debts
20 when it makes its final report under RCW 42.17.065.

21 (~~(42)~~) (44) "Writing" means handwriting, typewriting, printing,
22 photostating, photographing, and every other means of recording any
23 form of communication or representation, including, but not limited to,
24 letters, words, pictures, sounds, or symbols, or combination thereof,
25 and all papers, maps, magnetic or paper tapes, photographic films and
26 prints, motion picture, film and video recordings, magnetic or punched
27 cards, discs, drums, diskettes, sound recordings, and other documents
28 including existing data compilations from which information may be
29 obtained or translated.

30 As used in this chapter, the singular shall take the plural and any
31 gender, the other, as the context requires.

32 **Sec. 25.** RCW 42.17.260 and 1995 c 397 s 11 and 1995 c 341 s 1 are
33 each reenacted and amended to read as follows:

34 (1) Each agency, in accordance with published rules, shall make
35 available for public inspection and copying all public records, unless
36 the record falls within the specific exemptions of subsection (6) of
37 this section, RCW 42.17.310, 42.17.315, or other statute which exempts
38 or prohibits disclosure of specific information or records. To the

1 extent required to prevent an unreasonable invasion of personal privacy
2 interests protected by RCW 42.17.310 and 42.17.315, an agency shall
3 delete identifying details in a manner consistent with RCW 42.17.310
4 and 42.17.315 when it makes available or publishes any public record;
5 however, in each case, the justification for the deletion shall be
6 explained fully in writing.

7 (2) For informational purposes, each agency shall publish and
8 maintain a current list containing every law, other than those listed
9 in this chapter, that the agency believes exempts or prohibits
10 disclosure of specific information or records of the agency. An
11 agency's failure to list an exemption shall not affect the efficacy of
12 any exemption.

13 (3) Each local agency shall maintain and make available for public
14 inspection and copying a current index providing identifying
15 information as to the following records issued, adopted, or promulgated
16 after January 1, 1973:

17 (a) Final opinions, including concurring and dissenting opinions,
18 as well as orders, made in the adjudication of cases;

19 (b) Those statements of policy and interpretations of policy,
20 statute, and the Constitution which have been adopted by the agency;

21 (c) Administrative staff manuals and instructions to staff that
22 affect a member of the public;

23 (d) Planning policies and goals, and interim and final planning
24 decisions;

25 (e) Factual staff reports and studies, factual consultant's reports
26 and studies, scientific reports and studies, and any other factual
27 information derived from tests, studies, reports, or surveys, whether
28 conducted by public employees or others; and

29 (f) Correspondence, and materials referred to therein, by and with
30 the agency relating to any regulatory, supervisory, or enforcement
31 responsibilities of the agency, whereby the agency determines, or
32 opines upon, or is asked to determine or opine upon, the rights of the
33 state, the public, a subdivision of state government, or of any private
34 party.

35 (4) A local agency need not maintain such an index, if to do so
36 would be unduly burdensome, but it shall in that event:

37 (a) Issue and publish a formal order specifying the reasons why and
38 the extent to which compliance would unduly burden or interfere with
39 agency operations; and

1 (b) Make available for public inspection and copying all indexes
2 maintained for agency use.

3 (5) Each state agency shall, by rule, establish and implement a
4 system of indexing for the identification and location of the following
5 records:

6 (a) All records issued before July 1, 1990, for which the agency
7 has maintained an index;

8 (b) Final orders entered after June 30, 1990, that are issued in
9 adjudicative proceedings as defined in RCW 34.05.010(1) and that
10 contain an analysis or decision of substantial importance to the agency
11 in carrying out its duties;

12 (c) Declaratory orders entered after June 30, 1990, that are issued
13 pursuant to RCW 34.05.240 and that contain an analysis or decision of
14 substantial importance to the agency in carrying out its duties;

15 (d) Interpretive statements as defined in RCW 34.05.010(8) that
16 were entered after June 30, 1990; and

17 (e) Policy statements as defined in RCW 34.05.010(14) that were
18 entered after June 30, 1990.

19 Rules establishing systems of indexing shall include, but not be
20 limited to, requirements for the form and content of the index, its
21 location and availability to the public, and the schedule for revising
22 or updating the index. State agencies that have maintained indexes for
23 records issued before July 1, 1990, shall continue to make such indexes
24 available for public inspection and copying. Information in such
25 indexes may be incorporated into indexes prepared pursuant to this
26 subsection. State agencies may satisfy the requirements of this
27 subsection by making available to the public indexes prepared by other
28 parties but actually used by the agency in its operations. State
29 agencies shall make indexes available for public inspection and
30 copying. State agencies may charge a fee to cover the actual costs of
31 providing individual mailed copies of indexes.

32 (6) A public record may be relied on, used, or cited as precedent
33 by an agency against a party other than an agency and it may be invoked
34 by the agency for any other purpose only if(~~(←)~~):

35 (a) It has been indexed in an index available to the public; or

36 (b) Parties affected have timely notice (actual or constructive) of
37 the terms thereof.

38 (7) Each agency shall establish, maintain, and make available for
39 public inspection and copying a statement of the actual per page cost

1 or other costs, if any, that it charges for providing photocopies of
2 public records and a statement of the factors and manner used to
3 determine the actual per page cost or other costs, if any.

4 (a) In determining the actual per page cost for providing
5 photocopies of public records, an agency may include all costs directly
6 incident to copying such public records including the actual cost of
7 the paper and the per page cost for use of agency copying equipment.
8 In determining other actual costs for providing photocopies of public
9 records, an agency may include all costs directly incident to shipping
10 such public records, including the cost of postage or delivery charges
11 and the cost of any container or envelope used.

12 (b) In determining the actual per page cost or other costs for
13 providing copies of public records, an agency may not include staff
14 salaries, benefits, or other general administrative or overhead
15 charges, unless those costs are directly related to the actual cost of
16 copying the public records. Staff time to copy and mail the requested
17 public records may be included in an agency's costs.

18 (8) An agency need not calculate the actual per page cost or other
19 costs it charges for providing photocopies of public records if to do
20 so would be unduly burdensome, but in that event: The agency may not
21 charge in excess of fifteen cents per page for photocopies of public
22 records or for the use of agency equipment to photocopy public records
23 and the actual postage or delivery charge and the cost of any container
24 or envelope used to mail the public records to the requestor.

25 (9) Except under an agreement for business use in RCW 42.17.300,
26 this chapter shall not be construed as giving authority to any agency,
27 the office of the secretary of the senate, or the office of the chief
28 clerk of the house of representatives to give, sell or provide access
29 to lists of individuals requested for commercial purposes, and
30 agencies, the office of the secretary of the senate, and the office of
31 the chief clerk of the house of representatives shall not do so unless
32 specifically authorized or directed by law: PROVIDED, HOWEVER, That
33 lists of applicants for professional licenses and of professional
34 licensees shall be made available to those professional associations or
35 educational organizations recognized by their professional licensing or
36 examination board, upon payment of a reasonable charge ((therefor)), in
37 compliance with RCW 42.17.300(2): PROVIDED FURTHER, That such
38 recognition may be refused only for a good cause pursuant to a hearing

1 under the provisions of chapter 34.05 RCW, the Administrative Procedure
2 Act.

3 **Sec. 26.** RCW 42.17.300 and 1995 c 397 s 14 and 1995 c 341 s 2 are
4 each reenacted and amended to read as follows:

5 (1) No fee shall be charged for the inspection of public records.
6 No fee shall be charged for locating public documents and making them
7 available for copying. A reasonable charge may be imposed for
8 providing copies of public records and for the use by any person of
9 agency equipment or equipment of the office of the secretary of the
10 senate or the office of the chief clerk of the house of representatives
11 to copy public records, which charges shall not exceed the amount
12 necessary to reimburse the agency, the office of the secretary of the
13 senate, or the office of the chief clerk of the house of
14 representatives for its actual costs directly incident to such copying.
15 Agency charges for photocopies shall be imposed in accordance with the
16 actual per page cost or other costs established and published by the
17 agency. In no event may an agency charge a per page cost greater than
18 the actual per page cost as established and published by the agency.
19 To the extent the agency has not determined the actual per page cost
20 for photocopies of public records, the agency may not charge in excess
21 of fifteen cents per page.

22 (2) An agency may provide information for business use of public
23 records for which disclosure is otherwise permitted by law, and may
24 enter into agreements for access to public information for business use
25 as provided in subsection (3) of this section. The agency may charge
26 a fee reasonably designed to recover the actual cost of providing the
27 information.

28 (3) The agreements for access to public records for business
29 purposes shall substantially conform to the following conditions and
30 limitations:

31 (a) The contractor agrees to use the information provided by the
32 agency only for the purpose for which the information was initially
33 sought;

34 (b) The contractor agrees not to disclose information received
35 under the agreement to anyone, except as provided under the terms and
36 conditions of the agreement;

37 (c) The contractor, or any employee or agent of the contractor,
38 shall not furnish in any form, to any person, corporation, partnership,

1 association, or organization, a copy of any information, in whole or in
2 part, provided by the agency, without the express written consent of
3 the agency for the provision of the information for a purpose
4 consistent with the agreement;

5 (d) The contractor shall adhere to any current or subsequently
6 amended statutory or administrative rules regulating privacy or
7 confidentiality relating to the information provided by the agency;

8 (e) No name or address of any individual furnished by the agency to
9 the contractor shall be published or otherwise disclosed by the
10 contractor in any manner not otherwise approved by the agency;

11 (f) The contractor, or any officer, employee, or agent of the
12 contractor, shall not furnish in any form, to any person, corporation,
13 partnership, association, or organization, any of the individual's
14 personally identifiable information provided by the agency under the
15 agreement for the purpose of making unsolicited commercial contact with
16 the individuals named or otherwise identified, unless specifically
17 authorized or directed by law;

18 (g) The contractor agrees that the agency may provide "control" or
19 "salted" data as a portion of provided information as a means to ensure
20 that any personally identifiable information is utilized only for the
21 specific purposes allowed under the terms of the agreement;

22 (h) The contractor shall not gain any proprietary right to or
23 interest in any information provided by the agency and shall not assign
24 its interest in the agreement or any portion thereof to any person,
25 corporation, partnership, association, or organization of any kind;

26 (i) The contractor accepts full responsibility and liability for
27 any violations of the agreement by the contractor or any officer,
28 employee, or agent of the contractor and any such violation shall
29 result in immediate termination by the agency of all information
30 provided to the contractor or any officer, employee, or agent of the
31 contractor in any form and immediate forfeiture to the agency of any
32 agency-provided information, in any form, held by the contractor or any
33 officer, employee, or agent of the contractor; and

34 (j) The agency reserves the right to seek or impose all other
35 lawful remedies and penalties for any violation of this agreement by
36 the contractor, or any officer, employee, or agent of the contractor.

37 **NEW SECTION. Sec. 27.** A new section is added to chapter 42.17 RCW
38 to read as follows:

1 A person who knowingly uses or discloses personally identifiable
2 information in violation of an agreement under RCW 42.17.300(2) is
3 subject to a civil penalty not to exceed ten thousand dollars for each
4 violation or one dollar per name used, whichever is greater, and loss
5 of access to public records for business purposes for up to five years.

6 This section shall be enforced under the applicable provisions of
7 RCW 42.17.400.

8 **Sec. 28.** RCW 42.17.310 and 1996 c 305 s 2, 1996 c 253 s 302, 1996
9 c 191 s 88, and 1996 c 80 s 1 are each reenacted and amended to read as
10 follows:

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

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

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

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

23 (d) Specific intelligence information and specific investigative
24 records compiled by investigative, law enforcement, and penology
25 agencies, and state agencies vested with the responsibility to
26 discipline members of any profession, the nondisclosure of which is
27 essential to effective law enforcement or for the protection of any
28 person's right to privacy.

29 (e) Information revealing the identity of persons who are witnesses
30 to or victims of crime or who file complaints with investigative, law
31 enforcement, or penology agencies, other than the public disclosure
32 commission, if disclosure would endanger any person's life, physical
33 safety, or property. If at the time a complaint is filed the
34 complainant, victim or witness indicates a desire for disclosure or
35 nondisclosure, such desire shall govern. However, all complaints filed
36 with the public disclosure commission about any elected official or
37 candidate for public office must be made in writing and signed by the
38 complainant under oath.

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

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

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

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

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

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

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

27 (m) Financial information supplied by or on behalf of a person,
28 firm, or corporation for the purpose of qualifying to submit a bid or
29 proposal for (i) a ferry system construction or repair contract as
30 required by RCW 47.60.680 through 47.60.750 or (ii) highway
31 construction or improvement as required by RCW 47.28.070.

32 (n) Railroad company contracts filed prior to July 28, 1991, with
33 the utilities and transportation commission under RCW 81.34.070, except
34 that the summaries of the contracts are open to public inspection and
35 copying as otherwise provided by this chapter.

36 (o) Financial and commercial information and records supplied by
37 private persons pertaining to export services provided pursuant to
38 chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to
39 export projects pursuant to RCW 43.23.035.

1 (p) Financial disclosures filed by private vocational schools under
2 chapters 28B.85 and 28C.10 RCW.

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

6 (r) Financial and commercial information and records supplied by
7 businesses or individuals during application for loans or program
8 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,
9 or during application for economic development loans or program
10 services provided by any local agency.

11 (s) Membership lists or lists of members or owners of interests of
12 units in timeshare projects, subdivisions, camping resorts,
13 condominiums, land developments, or common-interest communities
14 affiliated with such projects, regulated by the department of
15 licensing, in the files or possession of the department.

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

19 (u) The residential addresses and residential telephone numbers of
20 employees or volunteers of a public agency which are held by the agency
21 in personnel records, employment or volunteer rosters, or mailing lists
22 of employees or volunteers.

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

26 (w)(i) The federal social security number of individuals governed
27 under chapter 18.130 RCW maintained in the files of the department of
28 health, except this exemption does not apply to requests made directly
29 to the department from federal, state, and local agencies of
30 government, and national and state licensing, credentialing,
31 investigatory, disciplinary, and examination organizations; (ii) the
32 current residential address and current residential telephone number of
33 a health care provider governed under chapter 18.130 RCW maintained in
34 the files of the department, if the provider requests that this
35 information be withheld from public inspection and copying, and
36 provides to the department an accurate alternate or business address
37 and business telephone number. On or after January 1, 1995, the
38 current residential address and residential telephone number of a
39 health care provider governed under RCW 18.130.140 maintained in the

1 files of the department shall automatically be withheld from public
2 inspection and copying unless the provider specifically requests the
3 information be released, and except as provided for under RCW
4 42.17.260(9).

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

7 (y) Information obtained by the board of pharmacy or the department
8 of health and its representatives as provided in RCW 69.41.044,
9 69.41.280, and 18.64.420.

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

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

19 (bb) Financial and valuable trade information under RCW 51.36.120.

20 (cc) Client records maintained by an agency that is a domestic
21 violence program as defined in RCW 70.123.020 or 70.123.075 or a rape
22 crisis center as defined in RCW 70.125.030.

23 (dd) Information that identifies a person who, while an agency
24 employee: (i) Seeks advice, under an informal process established by
25 the employing agency, in order to ascertain his or her rights in
26 connection with a possible unfair practice under chapter 49.60 RCW
27 against the person; and (ii) requests his or her identity or any
28 identifying information not be disclosed.

29 (ee) Investigative records compiled by an employing agency
30 conducting a current investigation of a possible unfair practice under
31 chapter 49.60 RCW or of a possible violation of other federal, state,
32 or local laws prohibiting discrimination in employment.

33 (ff) Business related information protected from public inspection
34 and copying under RCW 15.86.110.

35 (gg) Financial, commercial, operations, and technical and research
36 information and data submitted to or obtained by the clean Washington
37 center in applications for, or delivery of, program services under
38 chapter 70.95H RCW.

1 (hh) Information and documents created specifically for, and
2 collected and maintained by a quality improvement committee pursuant to
3 RCW 43.70.510, regardless of which agency is in possession of the
4 information and documents.

5 (ii) Personal information in files maintained in a data base
6 created under RCW 43.07.360.

7 (jj) Computer programs and software developed by agencies alone or
8 in partnership with other public and private entities. For the
9 purposes of this chapter, software is the programming source codes or
10 object codes developed by an agency or developed by a private
11 contractor for an agency. However, information contained in or
12 accessible through those computer programs and software that is
13 disclosable under state law is not exempt from disclosure and those
14 computer programs and software may be used to search or inspect such
15 information under this subsection (1)(jj).

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

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

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

34 **Sec. 29.** RCW 43.105.310 and 1996 c 171 s 15 are each amended to
35 read as follows:

36 (1) State agencies and local governments that collect and enter
37 information concerning individuals into electronic records and
38 information systems that will be widely accessible by the public under

1 RCW 42.17.020 shall ensure the accuracy of this information to the
2 extent possible. To the extent possible, information must be collected
3 directly from, and with the consent of, the individual who is the
4 subject of the data. Agencies shall establish procedures for
5 correcting inaccurate information, including establishing mechanisms
6 for individuals to review information about themselves and recommend
7 changes in information they believe to be inaccurate. The inclusion of
8 personal information in electronic public records that is widely
9 available to the public should include information on the date when the
10 data base was created or most recently updated. If personally
11 identifiable information is included in electronic public records that
12 are made widely available to the public, agencies must follow retention
13 and archival schedules in accordance with chapter 40.14 RCW, retaining
14 personally identifiable information only as long as needed to carry out
15 the purpose for which it was collected.

16 (2) State agencies and local governments that collect personally
17 identifiable information that is subject to disclosure under chapter
18 42.17 RCW or other law shall, to the extent practicable, post or
19 publish public notice that the information gathered may be disclosable
20 as a public record. The agency-specific public notice will reflect the
21 common uses of such records. Upon request, state agencies and local
22 governments shall provide a written statement regarding the
23 circumstances under which specific personally identifiable information
24 may be disclosed to the public or for business purposes.

25 NEW SECTION. Sec. 30. A new section is added to chapter 42.17 RCW
26 to read as follows:

27 The provisions of 18 U.S.C. Sec. 2721 and sections 1 through 20,
28 chapter . . ., Laws of 1997 (sections 1 through 20 of this act) prevail
29 over any conflicting provisions of sections 24 through 29, chapter
30 . . ., Laws of 1997 (sections 24 through 29 of this act).

31 NEW SECTION. Sec. 31. Sections 1 through 13 of this act
32 constitute a new chapter in Title 46 RCW, to be codified between
33 chapters 46.04 and 46.08 RCW.

34 NEW SECTION. Sec. 32. Sections 1 through 21 of this act take
35 effect September 13, 1997."

1 **SSB 5718** - CONF REPT
2 By Conference Committee

3

4 On page 1, line 2 of the title, after "records;" strike the
5 remainder of the title and insert "amending RCW 46.12.370, 46.12.380,
6 46.52.060, 46.52.120, 46.70.180, 42.17.020, and 43.105.310; reenacting
7 and amending RCW 42.17.310, 46.52.130, 46.63.020, 42.17.260, 42.17.300,
8 and 42.17.310; adding a new section to Title 46 RCW; adding new
9 sections to chapter 42.17 RCW; adding a new chapter to Title 46 RCW;
10 creating a new section; and providing an effective date."

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