

SENATE BILL REPORT

EHB 1891

As Reported By Senate Committee On:
Government Operations, April 4, 1997

Title: An act relating to the commercial and business uses of government records in electronic form.

Brief Description: Authorizing the distribution of certain governmental lists of public information to private companies for use by federal, state or local governments and certain business entities.

Sponsors: Representatives Dyer and Wolfe.

Brief History:

Committee Activity: Government Operations: 4/1/97, 4/4/97 [DP].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS

Majority Report: Do pass.

Signed by Senators McCaslin, Chair; Hale, Vice Chair; Anderson, Haugen, Horn, Patterson and Swanson.

Staff: Diane Smith (786-7410)

Background: The open public records law requires that all public records of state agencies and local governments are open to public inspection and copying unless expressly excluded. Among other express exclusions, the following public records are not available for inspection and copying by the public: (1) personal information in files the disclosure of which would violate the right to privacy; (2) certain taxpayer information; (3) preliminary drafts or notes; (4) library records that disclose the identity of the library user; (5) certain financial and commercial information supplied by individuals applying for various programs; and (6) valuable formulae or designs.

The open public records law does not authorize the use of lists of individuals for commercial purposes unless specifically authorized by law.

Federal law prohibits the disclosure of Social Security numbers, except in certain limited instances.

Summary of Bill: Business Uses of Public Records. A variety of changes is made concerning access to public records for business uses. Access to public records for business uses is defined to be the use of public records, including personally identifiable information, in government data bases to meet regulatory requirements, conduct business in a safe and legal manner, or validate information provided to a party, that does not result in an unsolicited commercial contact with the persons identified in the records.

State agencies may only allow access to public records for business uses under a contractual agreement between the agency and entity requesting the access. An agreement for such access must include certain minimal requirements, including:

- The information is only used in connection with the use identified by the entity that was approved by the agency;
- The contractor agrees to protect the confidentiality of the information and to not furnish copies of the information to others without the agency's consent;
- No name or address of any individual may be published or disclosed by the entity unless the use or disclosure is approved by the agency;
- The contractor must not furnish personally identifiable information to others for the purpose of making unsolicited commercial contact with the individual unless the agency approves;
- Controlled or salted– data may be provided to ensure that personally identifiable information is utilized only for the specifically authorized purposes;
- No proprietary right or interest inures to the entity; and
- The entity accepts full responsibility and liability for any violations of the agreement and may be subject to additional unrestricted financial remedies for any violation of the agreement.

A state agency or local government may provide information for business use, if disclosure is authorized by law, in a requested form or means and may charge fees for this information only if the information is not otherwise maintained or accessible by the agency or local government in that form. The fee must be based upon the recovery cost of providing enhanced electronic access for business purposes, but only to the extent that the enhanced electronic access was not developed or maintained by the agency for its own internal use or the provision of general public access to public records. Fee revenue must be dedicated to the development, maintenance, and refurbishment of electronic information systems and the support of such systems.

Prohibition on Disclosure of Computer Programs and Software. Computer programs and software developed by state agencies and local governments are not disclosable under the open public records law.

Personally Identifiable Information Submitted to a Government Agency. Personally identifiable information that is submitted to a government agency by a person must be used by that agency for the purposes for which it was submitted. This information may be disclosed to any other governmental agency in carrying out its functions, may be disclosed to any authorized agent acting on behalf of the government in carrying out its functions, and may be disclosed for business use and any purpose otherwise provided by law.

Posting and Publishing Notice. State agencies and local governments that collect personally identifiable information that is subject to disclosure must post or publish public notice that the information gathered may be disclosable as a public record.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: This bill creates a distinction between prohibited commercial use and permitted commercial uses that serve public purposes. The state's software is protected.

Testimony Against: None.

Testified: Sharon Foster, Commercial Information Systems (pro); Don Whiting, Secretary of State's office (pro); Scott Sigmon, WA Health Care Assn. (pro w/amend.).