

# SENATE BILL REPORT

## SB 5693

---

As Reported By Senate Committee On:  
Law & Justice, March 3, 1997

**Title:** An act relating to the privacy of personal information.

**Brief Description:** Providing for the protection of private information.

**Sponsors:** Senators Roach, Heavey, Zarelli, Morton, Stevens, Swecker, Hochstatter and Finkbeiner.

**Brief History:**

**Committee Activity:** Law & Justice: 2/20/97, 3/3/97 [DPS, DNPS].

---

### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** That Substitute Senate Bill No. 5693 be substituted therefor, and the substitute bill do pass.

Signed by Senators Roach, Chair; Johnson, Vice Chair; Hargrove, McCaslin, Stevens and Zarelli.

**Minority Report:** Do not pass substitute.

Signed by Senators Fairley, Haugen and Kline.

**Staff:** Harry Steinmetz (786-7421)

**Background:** There is currently a prohibition against the unauthorized disclosure of a patient's medical records without prior written consent, and a comprehensive statutory scheme regulating the handling of such records. Those provisions apply only to health care providers and their agents, however. There is currently no blanket statutory prohibition against disclosing health information without the consent of the patient.

**Summary of Substitute Bill:** The interest of individuals in the privacy of personal health information is declared to be paramount, fundamental, and not to be subordinated to other interests in the absence of extraordinary circumstances.

With certain exceptions, no person may disclose the health information of a patient without that patient's informed, voluntary, written consent. Consent is ineffective if coerced or made a condition of treatment unless (a) the disclosure is an integral feature of the treatment; (b) the care is being provided pursuant to a court order or regulatory requirement; or (c) the disclosure is essential to the provider's practice and disclosure is strictly limited to the need that justifies it.

With certain exceptions, in the absence of written consent, no governmental body, including specifically any disciplinary body, or any other person, may require health information from a health care provider unless a showing is made that the information is essential to achieve

a paramount regulatory or other legally authorized purpose, and that sufficient information for that purpose cannot be obtained without invading the privacy of patients unwilling to consent. If minimum grounds for disclosure are found, disclosure made be made only after affording the patient or patients notice and an opportunity to oppose it.

No patient may be forced to testify about his or her health information before any court, agency or employee unless he or she has voluntarily placed that information in issue, it is essential to prosecute a felony, or a clear public emergency is involved.

A cause of action for damages, or injunctive relief, is created for unauthorized disclosure, and may be brought by any aggrieved individual, including a health care provider. Damages, including attorney fees, are allowed for physical, monetary, property or emotional injury, or \$10,000, whichever is greater. Compensable injury is presumed in any such action. Expedited procedures, including appeals, are available for defendants who did not knowingly violate the act.

Insurers may require consent to disclosure of information needed to verify representations made about the patient's health or the need for care, and must strictly maintain the confidentiality of the information obtained.

**Substitute Bill Compared to Original Bill:** The substitute removes some of the legislative findings, redefines health care provider— to include a licensing requirement, removes the description of consent forms, allows sharing of information among health care providers, provides for automatic consent when a person files a claim for benefits or compensation resulting from a disability or job related injury, provides limited exemptions for emergencies, law enforcement and emergency personnel, prison and jail personnel, parents, and employers. Persons with access to health information under any of the exemptions must hold that information in confidence.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** It is disturbing that government can access people's health records without their knowing it. This is an infringement on the fundamental right or privacy. Patient's confidentiality must be given more consideration. There is a higher standard of confidentiality for HIV and STD patients than for everybody else. The agencies should not be allowed to conduct fishing expeditions.

**Testimony Against:** The bill would hamper legitimate government functions. Patient's privacy concerns need to be addressed, but this bill is not the way to do so. Availability of medical information for necessary protection of the public must not be subject to the willingness of the patient to provide it.

**Testified:** Dr. Jonathan Wright (pro); Jerri Fredin, Citizens for Alternative Health Care (pro); Elizabeth Gentala (pro); Howard Risdon, (pro); Al Schaefer (pro); Barry Jones (pro); Rexford Schwartz, Safety Offices, Department of Transportation; (con); March Long,

Washington Hospital Association (con); Dr. Gary Franklin, Medical Director, Department of Labor and Industries (con).