

2 **HB 2861** - S COMM AMD (S4976.2 amd by S5041.1)
3 By Committee on Human Services & Corrections

4 ADOPTED AS AMENDED 3/1/00

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

7 **"Sec. 1.** RCW 70.02.010 and 1993 c 448 s 1 are each amended to read
8 as follows:

9 ~~((As used in this chapter, unless the context otherwise requires:))~~
10 The definitions in this section apply throughout this chapter unless
11 the context clearly requires otherwise.

12 (1) "Audit" means an assessment, evaluation, determination, or
13 investigation of a health care provider by a person not employed by or
14 affiliated with the provider to determine compliance with:

15 (a) Statutory, regulatory, fiscal, medical, or scientific
16 standards;

17 (b) A private or public program of payments to a health care
18 provider; or

19 (c) Requirements for licensing, accreditation, or certification.

20 (2) "Directory information" means information disclosing the
21 presence, and for the purpose of identification, the name, residence,
22 sex, and the general health condition of a particular patient who is a
23 patient in a health care facility or who is currently receiving
24 emergency health care in a health care facility.

25 (3) "General health condition" means the patient's health status
26 described in terms of "critical," "poor," "fair," "good," "excellent,"
27 or terms denoting similar conditions.

28 (4) "Health care" means any care, service, or procedure provided by
29 a health care provider:

30 (a) To diagnose, treat, or maintain a patient's physical or mental
31 condition; or

32 (b) That affects the structure or any function of the human body.

33 (5) "Health care facility" means a hospital, clinic, nursing home,
34 laboratory, office, or similar place where a health care provider
35 provides health care to patients.

1 (6) "Health care information" means any information, whether oral
2 or recorded in any form or medium, that identifies or can readily be
3 associated with the identity of a patient and directly relates to the
4 patient's health care. The term includes any record of disclosures of
5 health care information. The term includes genetic test information in
6 a person's DNA and a person's DNA.

7 (7) "Health care provider" means a person who is licensed,
8 certified, registered, or otherwise authorized by the law of this state
9 to provide health care in the ordinary course of business or practice
10 of a profession.

11 (8) "Institutional review board" means any board, committee, or
12 other group formally designated by an institution, or authorized under
13 federal or state law, to review, approve the initiation of, or conduct
14 periodic review of research programs to assure the protection of the
15 rights and welfare of human research subjects.

16 (9) "Maintain," as related to health care information, means to
17 hold, possess, preserve, retain, store, or control that information.

18 (10) "Patient" means an individual who receives or has received
19 health care. The term includes a deceased individual who has received
20 health care.

21 (11) "Person" means an individual, corporation, business trust,
22 estate, trust, partnership, association, joint venture, government,
23 governmental subdivision or agency, or any other legal or commercial
24 entity.

25 (12) "Reasonable fee" means the charges for duplicating or
26 searching the record, but shall not exceed sixty-five cents per page
27 for the first thirty pages and fifty cents per page for all other
28 pages. In addition, a clerical fee for searching and handling may be
29 charged not to exceed fifteen dollars. These amounts shall be adjusted
30 biennially in accordance with changes in the consumer price index, all
31 consumers, for Seattle-Tacoma metropolitan statistical area as
32 determined by the secretary of health. However, where editing of
33 records by a health care provider is required by statute and is done by
34 the provider personally, the fee may be the usual and customary charge
35 for a basic office visit.

36 (13) "Third-party payor" means an insurer regulated under Title 48
37 RCW authorized to transact business in this state or other
38 jurisdiction, including a health care service contractor, and health

1 maintenance organization; or an employee welfare benefit plan; or a
2 state or federal health benefit program.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 70.02 RCW
4 to read as follows:

5 Genetic information in the form of deoxyribonucleic acid is health
6 care information subject to the following provisions:

7 (1) Any entity, including any person, isolating a person's
8 deoxyribonucleic acid in a form that identifies an individual person
9 for purposes of genetic testing must have the person's informed
10 consent.

11 (2) Informed consent requires:

12 (a) An explanation of the purpose for which the deoxyribonucleic
13 acid is being obtained, and whether it will be converted into a
14 computerized individual sequence of chemical base pairs or other form
15 for interpretation;

16 (b) Identification of the entity obtaining the deoxyribonucleic
17 acid and individual sequence;

18 (c) Disclosure of any entity with whom the deoxyribonucleic acid
19 and individual sequence may be shared, including disclosure that the
20 deoxyribonucleic acid or individual sequence may be shared in the
21 future with an unknown entity;

22 (d) A statement of the expected duration that the deoxyribonucleic
23 acid and individual sequence may be kept;

24 (e) A description of reasonably foreseeable risks or harm
25 associated with providing the deoxyribonucleic acid and individual
26 sequence;

27 (f) An explanation of how the deoxyribonucleic acid will be
28 maintained, whether the physical sample will be destroyed or stored,
29 including how and where it will be stored, and how the individual
30 sequence information will be destroyed or stored, including how and
31 where it will be stored;

32 (g) A statement describing any reasonably expected benefits or
33 advantages associated with providing the deoxyribonucleic acid and
34 individual sequence;

35 (h) A statement describing any confidentiality or privacy
36 protections for the deoxyribonucleic acid and individual sequence;

1 (i) Identification of an individual contact and contact information
2 from whom further information may be obtained or reported relative to
3 the deoxyribonucleic acid and individual sequence;

4 (j) Provisions explaining whether the deoxyribonucleic acid and the
5 individual sequence can be expunged or removed from the entity that
6 obtained it and the method to do it;

7 (k) The exclusion of any exculpatory provisions from liability
8 against the entity obtaining the deoxyribonucleic acid and individual
9 sequence;

10 (l) A disclosure that providing deoxyribonucleic acid and an
11 individual sequence is voluntary; and

12 (m) Compliance with the federal informed consent requirements, when
13 applicable, which are more protective of individual privacy.

14 (3) A person's informed consent is not required:

15 (a) In criminal matters if the deoxyribonucleic acid is obtained or
16 used during a criminal investigation, trial, appeal, or pursuant to
17 specific common law or statutory authority, or a lawfully issued court
18 order. Once a criminal conviction is final, a report that was not
19 admitted into evidence, identifying a specific person by analysis of
20 DNA obtained in the course of an investigation, shall be destroyed if
21 the person is found to be uninvolved in the commission of the criminal
22 act or acts;

23 (b) In situations where the person requires emergency medical care
24 as long as the person, or his or her representative in death cases, is
25 informed in a timely manner after the emergency that the
26 deoxyribonucleic acid was obtained;

27 (c) In situations where a person's bodily fluids are obtained
28 without consent pursuant to specific statutory requirement mandating
29 testing;

30 (d) In situations where the individual is deceased and the entity
31 requesting the deoxyribonucleic acid establishes in a court of law that
32 obtaining individually identifiable deoxyribonucleic acid for genetic
33 testing purposes benefits public health, safety, and welfare, and
34 outweighs the harm to individual privacy interests, or the person
35 requesting the deoxyribonucleic acid is a next of kin requesting the
36 deoxyribonucleic acid for purposes of health care or other purpose that
37 outweighs the harm to the individual's privacy interests, or the entity
38 requesting the deoxyribonucleic acid has been authorized by an

1 institutional review board to use the deoxyribonucleic acid pursuant to
2 an approved protocol;

3 (e) Pursuant to the provisions of this section, if the entity or
4 person is a health care provider or facility under chapter 70.02 RCW
5 who is acting according to the provisions of that chapter, and who is
6 subject to the provisions of chapter 7.70 RCW;

7 (f) Pursuant to provisions of this section, if the entity or person
8 obtains an individual's deoxyribonucleic acid, or computerized
9 information that provides the sequence of that individual's
10 deoxyribonucleic acid, in a form that does not identify that
11 individual;

12 (g) Pursuant to provisions of this section, if the entity or person
13 who obtains deoxyribonucleic acid, or computerized information that
14 provides the sequence of that deoxyribonucleic acid, is acting
15 according to the provisions of an institutional review board
16 established under federal law; and

17 (h) In death investigations for purposes of identifying the
18 decedent.

19 NEW SECTION. **Sec. 3.** A new section is added to chapter 48.01 RCW
20 to read as follows:

21 A person's individual health care information in the form of
22 deoxyribonucleic acid shall not be screened in any insurance
23 transaction. For purposes of this section, "screened" means obtaining
24 a person's deoxyribonucleic acid and identifying the sequence of
25 chemical base pairs. This section must not be interpreted to deny
26 payment of claims.

27 **Sec. 4.** RCW 49.60.030 and 1997 c 271 s 2 are each amended to read
28 as follows:

29 (1) The right to be free from discrimination because of race,
30 creed, color, national origin, sex, or the presence of any sensory,
31 mental, or physical disability or the use of a trained dog guide or
32 service animal by a disabled person is recognized as and declared to be
33 a civil right. This right shall include, but not be limited to:

34 (a) The right to obtain and hold employment without discrimination,
35 including the right to prohibit an employer from screening a person's
36 individual health care information in the form of deoxyribonucleic
37 acid. For purposes of this subsection, "screening" means obtaining a

1 person's deoxyribonucleic acid and identifying a sequence of chemical
2 base pairs;

3 (b) The right to the full enjoyment of any of the accommodations,
4 advantages, facilities, or privileges of any place of public resort,
5 accommodation, assemblage, or amusement;

6 (c) The right to engage in real estate transactions without
7 discrimination, including discrimination against families with
8 children;

9 (d) The right to engage in credit transactions without
10 discrimination;

11 (e) The right to engage in insurance transactions or transactions
12 with health maintenance organizations without discrimination:
13 PROVIDED, That a practice which is not unlawful under RCW 48.30.300,
14 48.44.220, or 48.46.370 does not constitute an unfair practice for the
15 purposes of this subparagraph; and

16 (f) The right to engage in commerce free from any discriminatory
17 boycotts or blacklists. Discriminatory boycotts or blacklists for
18 purposes of this section shall be defined as the formation or execution
19 of any express or implied agreement, understanding, policy or
20 contractual arrangement for economic benefit between any persons which
21 is not specifically authorized by the laws of the United States and
22 which is required or imposed, either directly or indirectly, overtly or
23 covertly, by a foreign government or foreign person in order to
24 restrict, condition, prohibit, or interfere with or in order to exclude
25 any person or persons from any business relationship on the basis of
26 race, color, creed, religion, sex, the presence of any sensory, mental,
27 or physical disability, or the use of a trained dog guide or service
28 animal by a disabled person, or national origin or lawful business
29 relationship: PROVIDED HOWEVER, That nothing herein contained shall
30 prohibit the use of boycotts as authorized by law pertaining to labor
31 disputes and unfair labor practices.

32 (2) Any person deeming himself or herself injured by any act in
33 violation of this chapter shall have a civil action in a court of
34 competent jurisdiction to enjoin further violations, or to recover the
35 actual damages sustained by the person, or both, together with the cost
36 of suit including reasonable attorneys' fees or any other appropriate
37 remedy authorized by this chapter or the United States Civil Rights Act
38 of 1964 as amended, or the Federal Fair Housing Amendments Act of 1988
39 (42 U.S.C. Sec. 3601 et seq.).

1 (3) Except for any unfair practice committed by an employer against
2 an employee or a prospective employee, or any unfair practice in a real
3 estate transaction which is the basis for relief specified in the
4 amendments to RCW 49.60.225 contained in chapter 69, Laws of 1993, any
5 unfair practice prohibited by this chapter which is committed in the
6 course of trade or commerce as defined in the Consumer Protection Act,
7 chapter 19.86 RCW, is, for the purpose of applying that chapter, a
8 matter affecting the public interest, is not reasonable in relation to
9 the development and preservation of business, and is an unfair or
10 deceptive act in trade or commerce.

11 **Sec. 5.** RCW 70.83.050 and 1967 c 82 s 5 are each amended to read
12 as follows:

13 The state board of health shall adopt rules and regulations
14 necessary to carry out the intent of this chapter. Rules adopted by
15 the state board of health must protect an individual's confidentiality
16 of his or her genetic health care information obtained under this
17 chapter.

18 NEW SECTION. **Sec. 6.** The legislature finds that:

19 (1) Deoxyribonucleic acid (DNA) is a unique form of health care
20 information;

21 (2) The technology of DNA identification is of great potential
22 benefit to the citizens of this state in many fields, including human
23 services and health care, scientific research, criminal justice, and
24 corrections;

25 (3) Technology is changing and improving at an ever-increasing
26 rate;

27 (4) DNA technology is particularly important in assisting law
28 enforcement in identifying and apprehending repeat criminal offenders
29 as well as exonerating those people convicted and incarcerated for a
30 crime they did not commit;

31 (5) There are legitimate concerns for privacy rights in the
32 creation, collection, maintenance, disclosure, identification, and use
33 of DNA;

34 (6) Protections of citizens' civil rights and individual privileges
35 necessitate policy development of protections preventing the
36 unauthorized use of DNA and the use of DNA for discriminatory purposes;
37 and

1 (7) There is a need to address the potential future uses of DNA
2 that may benefit citizens of this state, for purposes of the health,
3 safety, and welfare of its citizens.

4 NEW SECTION. **Sec. 7.** A DNA commission is established to consist
5 of twenty-four members selected as follows:

6 (1)(a) Two members of the senate, appointed by the president of the
7 senate, one from each of the two largest caucuses; and

8 (b) Two members of the house of representatives, appointed by the
9 co-speakers of the house of representatives, one from each of the two
10 largest caucuses;

11 (2) The following members shall be appointed by the governor:

12 (a) Two members representing local public health;

13 (b) One member representing genetic counselors;

14 (c) One member representing clinical research;

15 (d) One member representing epidemiological research;

16 (e) One member representing the Human Genome project;

17 (f) One member representing genetic ethics;

18 (g) One member representing institutional review boards;

19 (h) Two members representing geneticists, one clinical and one
20 research;

21 (i) One member representing research institutions;

22 (j) One member representing civil rights advocates;

23 (k) Two members representing criminal justice and corrections;

24 (l) Two members representing privacy advocates;

25 (m) One member representing citizens who have undergone genetic
26 testing;

27 (n) One member representing hospitals;

28 (o) One member representing pathologists or laboratory medicine;

29 and

30 (p) One member representing biotechnologists.

31 The commission shall be appointed within forty-five days from the
32 effective date of this act. Staffing shall be provided by the
33 legislature. Members shall serve without remuneration, except costs
34 may be provided according to the provisions of RCW 43.03.050 and
35 43.03.060.

36 NEW SECTION. **Sec. 8.** The DNA commission shall:

1 (1) Develop a state-wide strategy for evaluating and recommending
2 public policies relating to the use of DNA;

3 (2) Conduct a survey and produce a resource guide for citizens
4 relating to the use of DNA;

5 (3) Evaluate methods for protecting an individual's privacy
6 interests in his or her DNA;

7 (4) Analyze the incidence of discriminatory actions state-wide
8 based upon genetic information;

9 (5) Develop recommendations relative to civil rights' protections
10 as they relate to genetic information;

11 (6) Analyze available remedies to compensate individuals for the
12 inappropriate use of their genetic information;

13 (7) Identify appropriate disincentives to improper use of DNA;

14 (8) Identify incentives for further research and development in the
15 area of DNA that promotes public health, safety, and welfare; and

16 (9) An initial report of its findings and recommendations shall be
17 provided to the appropriate committees of the legislature by July 1,
18 2001.

19 NEW SECTION. **Sec. 9.** A new section is added to chapter 43.131 RCW
20 to read as follows:

21 The DNA commission and its powers and duties shall be terminated on
22 June 30, 2005, as provided in section 10 of this act.

23 NEW SECTION. **Sec. 10.** A new section is added to chapter 43.131
24 RCW to read as follows:

25 The following acts or parts of acts, as now existing or hereafter
26 amended, are each repealed, effective June 30, 2006.

27 (1) Section 6 of this act;

28 (2) Section 7 of this act; and

29 (3) Section 8 of this act.

30 **Sec. 11.** RCW 70.24.084 and 1999 c 391 s 4 are each amended to read
31 as follows:

32 (1) Any person aggrieved by a violation of this chapter shall have
33 a right of action in superior court and may recover for each violation:

34 (a) Against any person who negligently violates a provision of this
35 chapter, one thousand dollars, or actual damages, whichever is greater,
36 for each violation.

1 (b) Against any person who intentionally or recklessly violates a
2 provision of this chapter, ten thousand dollars, or actual damages,
3 whichever is greater, for each violation.

4 (c) Reasonable attorneys' fees and costs.

5 (d) Such other relief, including an injunction, as the court may
6 deem appropriate.

7 (2) Any action under this chapter is barred unless the action is
8 commenced within three years after the cause of action accrues.

9 (3) Nothing in this chapter limits the rights of the subject of a
10 test for a sexually transmitted disease to recover damages or other
11 relief under any other applicable law.

12 (4) Nothing in this chapter may be construed to impose civil
13 liability or criminal sanction for disclosure of a test result for a
14 sexually transmitted disease in accordance with any reporting
15 requirement for a diagnosed case of sexually transmitted disease by the
16 department or the centers for disease control of the United States
17 public health service.

18 (5) It is a negligent violation of this chapter to cause an
19 unauthorized communication of confidential sexually transmitted disease
20 information by facsimile transmission or otherwise communicating the
21 information to an unauthorized recipient when the sender knew or had
22 reason to know the facsimile transmission telephone number or other
23 transmittal information was incorrect or outdated.

24 **Sec. 12.** RCW 70.02.150 and 1991 c 335 s 701 are each amended to
25 read as follows:

26 A health care provider shall effect reasonable safeguards for the
27 security of all health care information it maintains.

28 Reasonable safeguards shall include affirmative action to delete
29 outdated and incorrect facsimile transmission or other telephone
30 transmittal numbers from computer, facsimile, or other data bases."

31 **HB 2861** - S COMM AMD (S4976.2 AMD BY S5041.1)
32 By Committee on Human Services & Corrections

33 ADOPTED AS AMENDED

34 On page 1, line 1 of the title, after "information;" strike the
35 remainder of the title and insert "amending RCW 70.02.010, 49.60.030,
36 70.83.050, 70.24.084, and 70.02.150; adding a new section to chapter

1 70.02 RCW; adding a new section to chapter 48.01 RCW; adding new
2 sections to chapter 43.131 RCW; and creating new sections."

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