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HOUSE BILL 2795

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State of Washington

57th Legislature

2002 Regular Session

By Representatives Miloscia, McMorris and Lisk; by request of Washington State Patrol

Read first time 01/28/2002. Referred to Committee on State Government.

1 AN ACT Relating to confidentiality of drug and alcohol tests by the  
2 state toxicologist; and reenacting and amending RCW 42.17.310.

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

4 **Sec. 1.** RCW 42.17.310 and 2001 c 278 s 1, 2001 c 98 s 2, and 2001  
5 c 70 s 1 are each reenacted and amended to read as follows:

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

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

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

13 (c) Information required of any taxpayer in connection with the  
14 assessment or collection of any tax if the disclosure of the  
15 information to other persons would (i) be prohibited to such persons by  
16 RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the  
17 taxpayer's right to privacy or result in unfair competitive  
18 disadvantage to the taxpayer.

1 (d) Specific intelligence information and specific investigative  
2 records compiled by investigative, law enforcement, and penology  
3 agencies, and state agencies vested with the responsibility to  
4 discipline members of any profession, the nondisclosure of which is  
5 essential to effective law enforcement or for the protection of any  
6 person's right to privacy.

7 (e) Information revealing the identity of persons who are witnesses  
8 to or victims of crime or who file complaints with investigative, law  
9 enforcement, or penology agencies, other than the public disclosure  
10 commission, if disclosure would endanger any person's life, physical  
11 safety, or property. If at the time a complaint is filed the  
12 complainant, victim or witness indicates a desire for disclosure or  
13 nondisclosure, such desire shall govern. However, all complaints filed  
14 with the public disclosure commission about any elected official or  
15 candidate for public office must be made in writing and signed by the  
16 complainant under oath.

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

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

26 (h) Valuable formulae, designs, drawings, computer source code or  
27 object code, and research data obtained by any agency within five years  
28 of the request for disclosure when disclosure would produce private  
29 gain and public loss.

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

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

1 (k) Records, maps, or other information identifying the location of  
2 archaeological sites in order to avoid the looting or depredation of  
3 such sites.

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

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

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

16 (o) Financial and commercial information and records supplied by  
17 private persons pertaining to export services provided pursuant to  
18 chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to  
19 export projects pursuant to RCW 43.23.035.

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

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

25 (r) Financial and commercial information and records supplied by  
26 businesses or individuals during application for loans or program  
27 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,  
28 or during application for economic development loans or program  
29 services provided by any local agency.

30 (s) Membership lists or lists of members or owners of interests of  
31 units in timeshare projects, subdivisions, camping resorts,  
32 condominiums, land developments, or common-interest communities  
33 affiliated with such projects, regulated by the department of  
34 licensing, in the files or possession of the department.

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

38 (u) The residential addresses or residential telephone numbers of  
39 employees or volunteers of a public agency which are held by any public

1 agency in personnel records, public employment related records, or  
2 volunteer rosters, or are included in any mailing list of employees or  
3 volunteers of any public agency.

4 (v) The residential addresses and residential telephone numbers of  
5 the customers of a public utility contained in the records or lists  
6 held by the public utility of which they are customers, except that  
7 this information may be released to the division of child support or  
8 the agency or firm providing child support enforcement for another  
9 state under Title IV-D of the federal social security act, for the  
10 establishment, enforcement, or modification of a support order.

11 (w)(i) The federal social security number of individuals governed  
12 under chapter 18.130 RCW maintained in the files of the department of  
13 health, except this exemption does not apply to requests made directly  
14 to the department from federal, state, and local agencies of  
15 government, and national and state licensing, credentialing,  
16 investigatory, disciplinary, and examination organizations; (ii) the  
17 current residential address and current residential telephone number of  
18 a health care provider governed under chapter 18.130 RCW maintained in  
19 the files of the department, if the provider requests that this  
20 information be withheld from public inspection and copying, and  
21 provides to the department an accurate alternate or business address  
22 and business telephone number. On or after January 1, 1995, the  
23 current residential address and residential telephone number of a  
24 health care provider governed under RCW 18.130.040 maintained in the  
25 files of the department shall automatically be withheld from public  
26 inspection and copying unless the provider specifically requests the  
27 information be released, and except as provided for under RCW  
28 42.17.260(9).

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

31 (y) Information obtained by the board of pharmacy or the department  
32 of health and its representatives as provided in RCW 69.41.044,  
33 69.41.280, and 18.64.420.

34 (z) Financial information, business plans, examination reports, and  
35 any information produced or obtained in evaluating or examining a  
36 business and industrial development corporation organized or seeking  
37 certification under chapter 31.24 RCW.

38 (aa) Financial and commercial information supplied to the state  
39 investment board by any person when the information relates to the

1 investment of public trust or retirement funds and when disclosure  
2 would result in loss to such funds or in private loss to the providers  
3 of this information.

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

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

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

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

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

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

24 (hh) Information and documents created specifically for, and  
25 collected and maintained by a quality improvement committee pursuant to  
26 RCW 43.70.510 or 70.41.200, or by a peer review committee under RCW  
27 4.24.250, regardless of which agency is in possession of the  
28 information and documents.

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

31 (jj) Financial and commercial information requested by the public  
32 stadium authority from any person or organization that leases or uses  
33 the stadium and exhibition center as defined in RCW 36.102.010.

34 (kk) Names of individuals residing in emergency or transitional  
35 housing that are furnished to the department of revenue or a county  
36 assessor in order to substantiate a claim for property tax exemption  
37 under RCW 84.36.043.

38 (ll) The names, residential addresses, residential telephone  
39 numbers, and other individually identifiable records held by an agency

1 in relation to a vanpool, carpool, or other ride-sharing program or  
2 service. However, these records may be disclosed to other persons who  
3 apply for ride-matching services and who need that information in order  
4 to identify potential riders or drivers with whom to share rides.

5 (mm) The personally identifying information of current or former  
6 participants or applicants in a paratransit or other transit service  
7 operated for the benefit of persons with disabilities or elderly  
8 persons.

9 (nn) The personally identifying information of persons who acquire  
10 and use transit passes and other fare payment media including, but not  
11 limited to, stored value smart cards and magnetic strip cards, except  
12 that an agency may disclose this information to a person, employer,  
13 educational institution, or other entity that is responsible, in whole  
14 or in part, for payment of the cost of acquiring or using a transit  
15 pass or other fare payment media, or to the news media when reporting  
16 on public transportation or public safety. This information may also  
17 be disclosed at the agency's discretion to governmental agencies or  
18 groups concerned with public transportation or public safety.

19 (oo) Proprietary financial and commercial information that the  
20 submitting entity, with review by the department of health,  
21 specifically identifies at the time it is submitted and that is  
22 provided to or obtained by the department of health in connection with  
23 an application for, or the supervision of, an antitrust exemption  
24 sought by the submitting entity under RCW 43.72.310. If a request for  
25 such information is received, the submitting entity must be notified of  
26 the request. Within ten business days of receipt of the notice, the  
27 submitting entity shall provide a written statement of the continuing  
28 need for confidentiality, which shall be provided to the requester.  
29 Upon receipt of such notice, the department of health shall continue to  
30 treat information designated under this section as exempt from  
31 disclosure. If the requester initiates an action to compel disclosure  
32 under this chapter, the submitting entity must be joined as a party to  
33 demonstrate the continuing need for confidentiality.

34 (pp) Records maintained by the board of industrial insurance  
35 appeals that are related to appeals of crime victims' compensation  
36 claims filed with the board under RCW 7.68.110.

37 (qq) Financial and commercial information supplied by or on behalf  
38 of a person, firm, corporation, or entity under chapter 28B.95 RCW

1 relating to the purchase or sale of tuition units and contracts for the  
2 purchase of multiple tuition units.

3 (rr) Any records of investigative reports prepared by any state,  
4 county, municipal, or other law enforcement agency pertaining to sex  
5 offenses contained in chapter 9A.44 RCW or sexually violent offenses as  
6 defined in RCW 71.09.020, which have been transferred to the Washington  
7 association of sheriffs and police chiefs for permanent electronic  
8 retention and retrieval pursuant to RCW 40.14.070(2)(b).

9 (ss) Credit card numbers, debit card numbers, electronic check  
10 numbers, card expiration dates, or bank or other financial account  
11 numbers supplied to an agency for the purpose of electronic transfer of  
12 funds, except when disclosure is expressly required by law.

13 (tt) Financial information, including but not limited to account  
14 numbers and values, and other identification numbers supplied by or on  
15 behalf of a person, firm, corporation, limited liability company,  
16 partnership, or other entity related to an application for a liquor  
17 license, gambling license, or lottery retail license.

18 (uu) Records maintained by the employment security department and  
19 subject to chapter 50.13 RCW if provided to another individual or  
20 organization for operational, research, or evaluation purposes.

21 (vv) Individually identifiable information received by the work  
22 force training and education coordinating board for research or  
23 evaluation purposes.

24 (ww) Those portions of records containing specific and unique  
25 vulnerability assessments or specific and unique response plans, either  
26 of which is intended to prevent or mitigate criminal terrorist acts as  
27 defined in RCW 70.74.285, the public disclosure of which would have a  
28 substantial likelihood of threatening public safety.

29 (xx) Commercial fishing catch data from logbooks required to be  
30 provided to the department of fish and wildlife under RCW 77.12.047,  
31 when the data identifies specific catch location, timing, or  
32 methodology and the release of which would result in unfair competitive  
33 disadvantage to the commercial fisher providing the catch data.  
34 However, this information may be released to government agencies  
35 concerned with the management of fish and wildlife resources.

36 (yy) Sensitive wildlife data obtained by the department of fish and  
37 wildlife. However, sensitive wildlife data may be released to  
38 government agencies concerned with the management of fish and wildlife  
39 resources. Sensitive wildlife data includes:

1 (i) The nesting sites or specific locations of endangered species  
2 designated under RCW 77.12.020, or threatened or sensitive species  
3 classified by rule of the department of fish and wildlife;

4 (ii) Radio frequencies used in, or locational data generated by,  
5 telemetry studies; or

6 (iii) Other location data that could compromise the viability of a  
7 specific fish or wildlife population, and where at least one of the  
8 following criteria are met:

9 (A) The species has a known commercial or black market value;

10 (B) There is a history of malicious take of that species; or

11 (C) There is a known demand to visit, take, or disturb, and the  
12 species behavior or ecology renders it especially vulnerable or the  
13 species has an extremely limited distribution and concentration.

14 (zz) The personally identifying information of persons who acquire  
15 recreational licenses under RCW 77.32.010 or commercial licenses under  
16 chapter 77.65 or 77.70 RCW, except name, address of contact used by the  
17 department, and type of license, endorsement, or tag. However, the  
18 department of fish and wildlife may disclose personally identifying  
19 information to:

20 (i) Government agencies concerned with the management of fish and  
21 wildlife resources;

22 (ii) The department of social and health services, child support  
23 division, and to the department of licensing in order to implement RCW  
24 77.32.014 and 46.20.291; and

25 (iii) Law enforcement agencies for the purpose of firearm  
26 possession enforcement under RCW 9.41.040.

27 (aaa) Records maintained by the state toxicology laboratory  
28 relating to results of drug and alcohol testing performed on deceased  
29 individuals in death investigation cases and living suspects in  
30 impaired driving cases.

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



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

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

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