
SUBSTITUTE SENATE BILL 5295

State of Washington

61st Legislature

2009 Regular Session

By Senate Government Operations & Elections (originally sponsored by Senators Kline, Oemig, Rockefeller, Holmquist, King, Hatfield, and Hobbs)

READ FIRST TIME 02/23/09.

1 AN ACT Relating to the unanimous recommendations of the public
2 records exemptions accountability committee; amending RCW 70.05.170,
3 42.56.380, 41.04.362, 28C.18.020, 79A.25.150, 42.56.330, and 42.56.250;
4 reenacting and amending RCW 42.56.360; adding a new section to chapter
5 42.56 RCW; and repealing RCW 41.04.364.

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

7 **Sec. 1.** RCW 70.05.170 and 1993 c 41 s 1 are each amended to read
8 as follows:

9 (1)(a) The legislature finds that the mortality rate in Washington
10 state among infants and children less than eighteen years of age is
11 unacceptably high, and that such mortality may be preventable. The
12 legislature further finds that, through the performance of child
13 mortality reviews, preventable causes of child mortality can be
14 identified and addressed, thereby reducing the infant and child
15 mortality in Washington state.

16 (b) It is the intent of the legislature to encourage the
17 performance of child death reviews by local health departments by
18 providing necessary legal protections to the families of children whose

1 deaths are studied, local health department officials and employees,
2 and health care professionals participating in child mortality review
3 committee activities.

4 (2) As used in this section, "child mortality review" means a
5 process authorized by a local health department as such department is
6 defined in RCW 70.05.010 for examining factors that contribute to
7 deaths of children less than eighteen years of age. The process may
8 include a systematic review of medical, clinical, and hospital records;
9 home interviews of parents and caretakers of children who have died;
10 analysis of individual case information; and review of this information
11 by a team of professionals in order to identify modifiable medical,
12 socioeconomic, public health, behavioral, administrative, educational,
13 and environmental factors associated with each death.

14 (3) Local health departments are authorized to conduct child
15 mortality reviews. In conducting such reviews, the following
16 provisions shall apply:

17 ~~(a) ((All medical records, reports, and statements procured by,
18 furnished to, or maintained by a local health department pursuant to
19 chapter 70.02 RCW for purposes of a child mortality review are
20 confidential insofar as the identity of an individual child and his or
21 her adoptive or natural parents is concerned. Such records may be used
22 solely by local health departments for the purposes of the review.
23 This section does not prevent a local health department from publishing
24 statistical compilations and reports related to the child mortality
25 review, if such compilations and reports do not identify individual
26 cases and sources of information.~~

27 ~~(b) Any records or documents supplied or maintained for the
28 purposes of a child mortality review are not subject to discovery or
29 subpoena in any administrative, civil, or criminal proceeding related
30 to the death of a child reviewed. This provision shall not restrict or
31 limit the discovery or subpoena from a health care provider of records
32 or documents maintained by such health care provider in the ordinary
33 course of business, whether or not such records or documents may have
34 been supplied to a local health department pursuant to this section.~~

35 ~~(c) Any summaries or analyses of records, documents, or records of
36 interviews prepared exclusively for purposes of a child mortality
37 review are not subject to discovery, subpoena, or introduction into
38 evidence in any administrative, civil, or criminal proceeding related~~

1 ~~to the death of a child reviewed.))~~ All health care information
2 collected as part of a child mortality review is confidential, subject
3 to the restrictions on disclosure provided for in chapter 70.02 RCW.
4 When documents are collected as part of a child mortality review, the
5 records may be used solely by local health departments for the purposes
6 of the review;

7 (b) No identifying information related to the deceased child, the
8 child's guardians, or anyone interviewed as part of the child mortality
9 review may be disclosed. Any such information shall be redacted from
10 any records produced as part of the review;

11 (c) Any witness statements or documents collected from witnesses,
12 or summaries or analyses of those statements or records prepared
13 exclusively for purposes of a child mortality review, are not subject
14 to public disclosure, discovery, subpoena, or introduction into
15 evidence in any administrative, civil, or criminal proceeding related
16 to the death of a child reviewed. This provision does not restrict or
17 limit the discovery or subpoena from a health care provider of records
18 or documents maintained by such health care provider in the ordinary
19 course of business, whether or not such records or documents may have
20 been supplied to a local health department pursuant to this section.
21 This provision shall not restrict or limit the discovery or subpoena of
22 documents from such witnesses simply because a copy of a document was
23 collected as part of a child mortality review;

24 (d) No local health department official or employee, and no members
25 of technical committees established to perform case reviews of selected
26 child deaths may be examined in any administrative, civil, or criminal
27 proceeding as to the existence or contents of documents assembled,
28 prepared, or maintained for purposes of a child mortality review.

29 ~~((+e))~~ (4) This section shall not be construed to prohibit or
30 restrict any person from reporting suspected child abuse or neglect
31 under chapter 26.44 RCW nor to limit access to or use of any records,
32 documents, information, or testimony in any civil or criminal action
33 arising out of any report made pursuant to chapter 26.44 RCW.

34 (5) This section does not prevent a local health department from
35 publishing statistical compilations and reports related to the child
36 mortality review. Any portions of such compilations and reports that
37 identify individual cases and sources of information must be redacted.

1 **Sec. 2.** RCW 42.56.380 and 2007 c 177 s 1 are each amended to read
2 as follows:

3 The following information relating to agriculture and livestock is
4 exempt from disclosure under this chapter:

5 (1) Business-related information under RCW 15.86.110;

6 (2) Information provided under RCW 15.54.362;

7 (3) Production or sales records required to determine assessment
8 levels and actual assessment payments to commodity boards and
9 commissions formed under chapters 15.24, 15.26, 15.28, 15.44, 15.65,
10 15.66, 15.74, 15.88, 15.100, 15.89, and 16.67 RCW or required by the
11 department of agriculture to administer these chapters or the
12 department's programs;

13 (4) Consignment information contained on phytosanitary certificates
14 issued by the department of agriculture under chapters 15.13, 15.49,
15 and 15.17 RCW or federal phytosanitary certificates issued under 7
16 C.F.R. 353 through cooperative agreements with the animal and plant
17 health inspection service, United States department of agriculture, or
18 on applications for phytosanitary certification required by the
19 department of agriculture;

20 (5) Financial and commercial information and records supplied by
21 persons (a) to the department of agriculture for the purpose of
22 conducting a referendum for the potential establishment of a commodity
23 board or commission; or (b) to the department of agriculture or
24 commodity boards or commissions formed under chapter 15.24, 15.28,
25 15.44, 15.65, 15.66, 15.74, 15.88, 15.100, 15.89, or 16.67 RCW with
26 respect to domestic or export marketing activities or individual
27 producer's production information;

28 ~~(6) ((Except under RCW 15.19.080, information obtained regarding~~
29 ~~the purchases, sales, or production of an individual American ginseng~~
30 ~~grower or dealer;~~

31 ~~(7) Information that can be identified to a particular business and~~
32 ~~that is collected under RCW 15.17.140(2) and 15.17.143 for certificates~~
33 ~~of compliance;~~

34 ~~(8) Financial statements provided under RCW 16.65.030(1)(d);~~)
35 Information obtained regarding the purchases, sales, or production of
36 an individual American ginseng grower or dealer, except for providing
37 reports to the United States fish and wildlife service under RCW
38 15.19.080;

1 (7) Information collected regarding packers and shippers of fruits
2 and vegetables for the issuance of certificates of compliance under RCW
3 15.17.140(2) and 15.17.143;

4 (8) Financial statements obtained under RCW 16.65.030(1)(d) for the
5 purposes of determining whether or not the applicant meets the minimum
6 net worth requirements to construct or operate a public livestock
7 market;

8 (9) Information submitted by an individual or business for the
9 purpose of participating in a state or national animal identification
10 system. Disclosure to local, state, and federal officials is not
11 public disclosure. This exemption does not affect the disclosure of
12 information used in reportable animal health investigations under
13 chapter 16.36 RCW once they are complete; and

14 (10) Results of testing for animal diseases not required to be
15 reported under chapter 16.36 RCW that is done at the request of the
16 animal owner or his or her designee that can be identified to a
17 particular business or individual.

18 NEW SECTION. Sec. 3. A new section is added to chapter 42.56 RCW
19 to read as follows:

20 If the textual description of an exemption under this chapter
21 conflicts with the statute that it references, the statute that it
22 references controls.

23 **Sec. 4.** RCW 42.56.360 and 2009 c 1 s 24 (Initiative Measure No.
24 1000) and 2008 c 136 s 5 are each reenacted and amended to read as
25 follows:

26 (1) The following health care information is exempt from disclosure
27 under this chapter:

28 (a) Information obtained by the board of pharmacy as provided in
29 RCW 69.45.090;

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

33 (c) Information and documents created specifically for, and
34 collected and maintained by a quality improvement committee under RCW
35 43.70.510, 70.230.080, or 70.41.200, or by a peer review committee
36 under RCW 4.24.250, or by a quality assurance committee pursuant to RCW

1 74.42.640 or 18.20.390, or by a hospital, as defined in RCW 43.70.056,
2 for reporting of health care-associated infections under RCW 43.70.056,
3 a notification of an incident under RCW 70.56.040(5), and reports
4 regarding adverse events under RCW 70.56.020(2)(b), regardless of which
5 agency is in possession of the information and documents;

6 (d)(i) Proprietary financial and commercial information that the
7 submitting entity, with review by the department of health,
8 specifically identifies at the time it is submitted and that is
9 provided to or obtained by the department of health in connection with
10 an application for, or the supervision of, an antitrust exemption
11 sought by the submitting entity under RCW 43.72.310;

12 (ii) If a request for such information is received, the submitting
13 entity must be notified of the request. Within ten business days of
14 receipt of the notice, the submitting entity shall provide a written
15 statement of the continuing need for confidentiality, which shall be
16 provided to the requester. Upon receipt of such notice, the department
17 of health shall continue to treat information designated under this
18 subsection (1)(d) as exempt from disclosure;

19 (iii) If the requester initiates an action to compel disclosure
20 under this chapter, the submitting entity must be joined as a party to
21 demonstrate the continuing need for confidentiality;

22 (e) Records of the entity obtained in an action under RCW 18.71.300
23 through 18.71.340;

24 ~~(f) ((Except for published statistical compilations and reports
25 relating to the infant mortality review studies that do not identify
26 individual cases and sources of information, any records or documents
27 obtained, prepared, or maintained by the local health department for
28 the purposes of an infant mortality review conducted by the department
29 of health under RCW 70.05.170;~~

30 ~~(g))~~ Complaints filed under chapter 18.130 RCW after July 27,
31 1997, to the extent provided in RCW 18.130.095(1);

32 ~~((h))~~ (g) Information obtained by the department of health under
33 chapter 70.225 RCW; ~~((and~~

34 ~~(i))~~ (h) Information collected by the department of health under
35 chapter 70.245 RCW except as provided in RCW 70.245.150; and

36 (i) All documents, including completed forms, received pursuant to
37 a wellness program under RCW 41.04.362, but not statistical reports
38 that do not identify an individual.

1 (2) Chapter 70.02 RCW applies to public inspection and copying of
2 health care information of patients.

3 (3)(a) Documents related to infant mortality reviews conducted
4 pursuant to RCW 70.05.170 are exempt from disclosure as provided for in
5 RCW 70.05.170(3).

6 (b)(i) If an agency provides copies of public records to another
7 agency that are exempt from public disclosure under this subsection
8 (3), those records remain exempt to the same extent the records were
9 exempt in the possession of the originating entity.

10 (ii) For notice purposes only, agencies providing exempt records
11 under this subsection (3) to other agencies may mark any exempt records
12 as "exempt" so that the receiving agency is aware of the exemption,
13 however whether or not a record is marked exempt does not affect
14 whether the record is actually exempt from disclosure.

15 **Sec. 5.** RCW 41.04.362 and 1987 c 248 s 2 are each amended to read
16 as follows:

17 (1) ~~((The))~~ Directors of ~~((the department of personnel))~~ state and
18 local entities, in consultation with applicable state agencies and
19 employee organizations, may develop and administer a voluntary state
20 employee wellness program.

21 (2) ~~((The))~~ A director may:

22 (a) Develop and implement state employee wellness policies,
23 procedures, and activities;

24 (b) Disseminate wellness educational materials to ~~((state))~~
25 agencies and employees;

26 (c) Encourage the establishment of wellness activities in ~~((state))~~
27 agencies;

28 (d) Provide technical assistance and training to agencies
29 conducting wellness activities for their employees;

30 (e) Develop standards by which agencies sponsoring specific
31 wellness activities may impose a fee to participating employees to help
32 defray the cost of those activities;

33 (f) Monitor and evaluate the effectiveness of this program,
34 including the collection, analysis, and publication of relevant
35 statistical information; and

36 (g) Perform other duties and responsibilities as necessary to carry
37 out the purpose of this section.

1 (3) No wellness program or activity that involves or requires
2 organized or systematic physical exercise may be implemented or
3 conducted during normal working hours.

4 NEW SECTION. **Sec. 6.** RCW 41.04.364 (State employee wellness
5 program--Confidentiality of individually identifiable information) and
6 1987 c 248 s 3 are each repealed.

7 **Sec. 7.** RCW 28C.18.020 and 1991 c 238 s 3 are each amended to read
8 as follows:

9 (1) There is hereby created the workforce training and education
10 coordinating board as a state agency and as the successor agency to the
11 state board for vocational education. Once the coordinating board has
12 convened, all references to the state board for vocational education in
13 the Revised Code of Washington shall be construed to mean the workforce
14 training and education coordinating board, except that reference to the
15 state board for vocational education in RCW 49.04.030 shall mean the
16 state board for community and technical colleges.

17 (2)(a) The board shall consist of nine voting members appointed by
18 the governor with the consent of the senate, as follows: Three
19 representatives of business, three representatives of labor, and,
20 serving as ex officio members, the superintendent of public
21 instruction, the executive director of the state board for community
22 and technical colleges, and the commissioner of the employment security
23 department. The chair of the board shall be a nonvoting member
24 selected by the governor with the consent of the senate, and shall
25 serve at the pleasure of the governor. In selecting the chair, the
26 governor shall seek a person who understands the future economic needs
27 of the state and nation and the role that the state's training system
28 has in meeting those needs. Each voting member of the board may
29 appoint a designee to function in his or her place with the right to
30 vote. In making appointments to the board, the governor shall seek to
31 ensure geographic, ethnic, and gender diversity and balance. The
32 governor shall also seek to ensure diversity and balance by the
33 appointment of persons with disabilities.

34 (b) The business representatives shall be selected from among
35 nominations provided by a statewide business organization representing
36 a cross-section of industries. However, the governor may request, and

1 the organization shall provide, an additional list or lists from which
2 the governor shall select the business representatives. The
3 nominations and selections shall reflect the cultural diversity of the
4 state, including women, people with disabilities, and racial and ethnic
5 minorities, and diversity in sizes of businesses.

6 (c) The labor representatives shall be selected from among
7 nominations provided by statewide labor organizations. However, the
8 governor may request, and the organizations shall provide, an
9 additional list or lists from which the governor shall select the labor
10 representatives. The nominations and selections shall reflect the
11 cultural diversity of the state, including women, people with
12 disabilities, and racial and ethnic minorities.

13 (d) Each business member may cast a proxy vote or votes for any
14 business member who is not present and who authorizes in writing the
15 present member to cast such vote.

16 (e) Each labor member may cast a proxy vote for any labor member
17 who is not present and who authorizes in writing the present member to
18 cast such vote.

19 (f) The chair shall appoint to the board one nonvoting member to
20 represent racial and ethnic minorities, women, and people with
21 disabilities. The nonvoting member appointed by the chair shall serve
22 for a term of four years with the term expiring on June 30th of the
23 fourth year of the term.

24 (g) The business members of the board shall serve for terms of four
25 years, the terms expiring on June 30th of the fourth year of the term
26 except that in the case of initial members, one shall be appointed to
27 a two-year term and one appointed to a three-year term.

28 (h) The labor members of the board shall serve for terms of four
29 years, the terms expiring on June 30th of the fourth year of the term
30 except that in the case of initial members, one shall be appointed to
31 a two-year term and one appointed to a three-year term.

32 (i) Any vacancies among board members representing business or
33 labor shall be filled by the governor with nominations provided by
34 statewide organizations representing business or labor, respectively.

35 (j) The board shall adopt bylaws and shall meet at least bimonthly
36 and at such other times as determined by the chair who shall give
37 reasonable prior notice to the members or at the request of a majority
38 of the voting members.

1 (k) Members of the board shall be compensated in accordance with
2 RCW 43.03.040 and shall receive travel expenses in accordance with RCW
3 43.03.050 and 43.03.060.

4 (l) The board shall be formed and ready to assume its
5 responsibilities under this chapter by October 1, 1991.

6 (m) The director of the board shall be appointed by the governor
7 from a list of three names submitted by a committee made up of the
8 business and labor members of the board. However, the governor may
9 request, and the committee shall provide, an additional list or lists
10 from which the governor shall select the director. ~~((The lists
11 compiled by the committee shall not be subject to public disclosure.))~~
12 The governor may dismiss the director only with the approval of a
13 majority vote of the board. The board, by a majority vote, may dismiss
14 the director with the approval of the governor.

15 (3) The state board for vocational education is hereby abolished
16 and its powers, duties, and functions are hereby transferred to the
17 workforce training and education coordinating board. All references to
18 the director or the state board for vocational education in the Revised
19 Code of Washington shall be construed to mean the director or the
20 workforce training and education coordinating board.

21 **Sec. 8.** RCW 79A.25.150 and 2007 c 241 s 51 are each amended to
22 read as follows:

23 When requested by the board, members employed by the state shall
24 furnish assistance to the board from their departments for the analysis
25 and review of proposed plans and projects, and such assistance shall be
26 a proper charge against the appropriations to the several agencies
27 represented on the board. Assistance may be in the form of money,
28 personnel, or equipment and supplies, whichever is most suitable to the
29 needs of the board.

30 The director of the recreation and conservation office shall be
31 appointed by, and serve at the pleasure of, the governor. The governor
32 shall select the director from a list of three candidates submitted by
33 the board. However, the governor may request and the board shall
34 provide an additional list or lists from which the governor may select
35 the director. ~~((The lists compiled by the board shall not be subject
36 to public disclosure.))~~ The director shall have background and
37 experience in the areas of recreation and conservation management and

1 policy. The director shall be paid a salary to be fixed by the
2 governor in accordance with the provisions of RCW 43.03.040. The
3 director shall appoint such personnel as may be necessary to carry out
4 the duties of the office. Not more than three employees appointed by
5 the director shall be exempt from the provisions of chapter 41.06 RCW.

6 **Sec. 9.** RCW 42.56.330 and 2008 c 200 s 6 are each amended to read
7 as follows:

8 The following information relating to public utilities and
9 transportation is exempt from disclosure under this chapter:

10 (1) Records filed with the utilities and transportation commission
11 or attorney general under RCW 80.04.095 that a court has determined are
12 confidential under RCW 80.04.095;

13 (2) The residential addresses and residential telephone numbers of
14 the customers of a public utility contained in the records or lists
15 held by the public utility of which they are customers, except that
16 this information may be released to the division of child support or
17 the agency or firm providing child support enforcement for another
18 state under Title IV-D of the federal social security act, for the
19 establishment, enforcement, or modification of a support order;

20 (3) The names, residential addresses, residential telephone
21 numbers, and other individually identifiable records held by an agency
22 in relation to a vanpool, carpool, or other ride-sharing program or
23 service; however, these records may be disclosed to other persons who
24 apply for ride-matching services and who need that information in order
25 to identify potential riders or drivers with whom to share rides;

26 (4) The personally identifying information of current or former
27 participants or applicants in a paratransit or other transit service
28 operated for the benefit of persons with disabilities or elderly
29 persons;

30 (5) The personally identifying information of persons who acquire
31 and use transit passes and other fare payment media including, but not
32 limited to, stored value smart cards and magnetic strip cards, except
33 that an agency may disclose this information to a person, employer,
34 educational institution, or other entity that is responsible, in whole
35 or in part, for payment of the cost of acquiring or using a transit
36 pass or other fare payment media(~~(, or to the news media when reporting~~
37 ~~on public transportation or public safety. This information may also~~

1 ~~be disclosed at the agency's discretion to governmental agencies or~~
2 ~~groups concerned with public transportation or public safety)) for the~~
3 ~~purpose of preventing fraud.~~

4 (a) This information may be disclosed in aggregate form if the data
5 does not contain any personally identifying information.

6 (b) Personally identifying information may be released to law
7 enforcement agencies if the request is accompanied by a court order;

8 (6) Any information obtained by governmental agencies that is
9 collected by the use of a motor carrier intelligent transportation
10 system or any comparable information equipment attached to a truck,
11 tractor, or trailer; however, the information may be given to other
12 governmental agencies or the owners of the truck, tractor, or trailer
13 from which the information is obtained. As used in this subsection,
14 "motor carrier" has the same definition as provided in RCW 81.80.010;

15 (7) The personally identifying information of persons who acquire
16 and use transponders or other technology to facilitate payment of
17 tolls. This information may be disclosed in aggregate form as long as
18 the data does not contain any personally identifying information. For
19 these purposes aggregate data may include the census tract of the
20 account holder as long as any individual personally identifying
21 information is not released. Personally identifying information may be
22 released to law enforcement agencies only for toll enforcement
23 purposes. Personally identifying information may be released to law
24 enforcement agencies for other purposes only if the request is
25 accompanied by a court order; and

26 (8) The personally identifying information of persons who acquire
27 and use a driver's license or identicard that includes a radio
28 frequency identification chip or similar technology to facilitate
29 border crossing. This information may be disclosed in aggregate form
30 as long as the data does not contain any personally identifying
31 information. Personally identifying information may be released to law
32 enforcement agencies only for United States customs and border
33 protection enforcement purposes. Personally identifying information
34 may be released to law enforcement agencies for other purposes only if
35 the request is accompanied by a court order.

36 **Sec. 10.** RCW 42.56.250 and 2006 c 209 s 6 are each amended to read
37 as follows:

1 The following employment and licensing information is exempt from
2 public inspection and copying under this chapter:

3 (1) Test questions, scoring keys, and other examination data used
4 to administer a license, employment, or academic examination;

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

8 (3) The residential addresses, residential telephone numbers,
9 personal wireless telephone numbers, personal electronic mail
10 addresses, social security numbers, and emergency contact information
11 of employees or volunteers of a public agency, and the names, dates of
12 birth, residential addresses, residential telephone numbers, personal
13 wireless telephone numbers, personal electronic mail addresses, social
14 security numbers, and emergency contact information of dependents of
15 employees or volunteers of a public agency that are held by any public
16 agency in personnel records, public employment related records, or
17 volunteer rosters, or are included in any mailing list of employees or
18 volunteers of any public agency. For purposes of this subsection,
19 "employees" includes independent provider home care workers as defined
20 in RCW 74.39A.240;

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

27 (5) Investigative records compiled by an employing agency
28 conducting ~~((a current))~~ an active and ongoing investigation of a
29 possible unfair practice under chapter 49.60 RCW or of a possible
30 violation of other federal, state, or local laws prohibiting
31 discrimination in employment; ~~((and))~~

32 (6) ~~((Except as provided in RCW 47.64.220, salary and employee
33 benefit information collected under RCW 47.64.220(1) and described in
34 RCW 47.64.220(2).))~~ Criminal history records checks for board staff
35 finalist candidates conducted pursuant to RCW 43.33A.025; and

36 (7) Except as provided in RCW 47.64.220, salary and benefit

1 information for maritime employees collected from private employers
2 under RCW 47.64.220(1) and described in RCW 47.64.220(2).

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