
SUBSTITUTE HOUSE BILL 2366

State of Washington

66th Legislature

2020 Regular Session

By House State Government & Tribal Relations (originally sponsored by Representatives Smith, Hudgins, and Young)

READ FIRST TIME 01/30/20.

1 AN ACT Relating to making the chief privacy officer an elected
2 position; amending RCW 43.105.369, 43.01.010, 29A.04.110, 29A.24.070,
3 29A.32.031, 29A.36.121, 29A.52.112, 29A.52.231, and 43.03.010; adding
4 a new section to chapter 29A.04 RCW; adding a new section to chapter
5 42.17A RCW; creating a new section; providing an effective date; and
6 providing an expiration date.

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

8 NEW SECTION. **Sec. 1.** (1) The legislature finds that unrelenting
9 advances in information technology are raising new and complex issues
10 of critical concern to the public nearly every day. Many of these
11 issues relate to personal data and its security. Data privacy and
12 security issues implicate core democratic values and first amendment
13 freedoms, such as the compiling of data about who we associate with
14 and what our political or religious preferences may be.

15 (2) The legislature statutorily established the position of chief
16 privacy officer within the office of privacy and data protection in
17 2016, shortly after the governor created the office through executive
18 order 16-01. The legislature continues to find that a full-time data
19 privacy officer fulfills many valuable roles and functions, including
20 educating consumers, researching best practices, providing privacy

1 training for state agencies, and consulting with stakeholders to help
2 shape policy regarding data privacy and security.

3 (3) The legislature finds that while the state has statutorily
4 defined the role of the chief privacy officer position since 2016,
5 experience has shown that there needs to be improvements to how that
6 position is structured. The position can be filled only by the
7 governor or the state's chief information officer, without the advice
8 and consent of lawmakers. It is filled without the privacy officer's
9 views about privacy and how to balance consumer protection and
10 commercial freedom being subject to public scrutiny and debate. In
11 2019 the position was vacant for prolonged periods during which
12 momentous data privacy legislation was under development by
13 stakeholders and lawmakers. As the public sector does not compensate
14 for information technology jobs at the level of the private sector,
15 vacancies can be anticipated to occur in the future during times that
16 important events impacting public policy choices are unfolding.

17 (4) The legislature finds that the public should have a say in
18 the quality and style of advocacy of its chief data privacy officer.
19 The public should also have the opportunity to elect someone who best
20 articulates, prioritizes, and promotes his or her vision of the
21 future of privacy and data security. Requiring the chief privacy
22 officer to stand for nonpartisan election and make a public case for
23 certain priorities and principles will give additional weight to the
24 officer's policy guidance to lawmakers and state agency officials.
25 Therefore, the legislature intends to make the state's chief privacy
26 officer a nonpartisan statewide elected official. The legislature
27 intends the chief privacy officer to continue to be the director of
28 the existing office of privacy and data protection, having the same
29 duties. The legislature intends the chief privacy officer and office
30 of privacy and data protection to be housed within the office of the
31 chief information officer, but not subject to its supervision, for
32 administrative simplicity and cost efficiency.

33 **Sec. 2.** RCW 43.105.369 and 2016 c 195 s 2 are each amended to
34 read as follows:

35 (1) The office of privacy and data protection is created within
36 the office of the state chief information officer. The purpose of the
37 office of privacy and data protection is to serve as a central point
38 of contact for state agencies on policy matters involving data
39 privacy and data protection.

1 (2) The (~~director shall appoint the~~) chief privacy officer(~~(7~~
2 ~~who~~) is the director of the office of privacy and data protection.
3 The office of the chief privacy officer is a nonpartisan state office
4 elected in accordance with Title 29A RCW.

5 (3) The primary duties of the office of privacy and data
6 protection with respect to state agencies are:

7 (a) To conduct an annual privacy review;

8 (b) To conduct an annual privacy training for state agencies and
9 employees;

10 (c) To articulate privacy principles and best practices;

11 (d) To coordinate data protection in cooperation with the agency;
12 and

13 (e) To participate with the office of the state chief information
14 officer in the review of major state agency projects involving
15 personally identifiable information.

16 (4) The office of privacy and data protection must serve as a
17 resource to local governments and the public on data privacy and
18 protection concerns by:

19 (a) Developing and promoting the dissemination of best practices
20 for the collection and storage of personally identifiable
21 information, including establishing and conducting a training program
22 or programs for local governments; and

23 (b) Educating consumers about the use of personally identifiable
24 information on mobile and digital networks and measures that can help
25 protect this information.

26 (5) By December 1, 2016, and every four years thereafter, the
27 office of privacy and data protection must prepare and submit to the
28 legislature a report evaluating its performance. The office of
29 privacy and data protection must establish performance measures in
30 its 2016 report to the legislature and, in each report thereafter,
31 demonstrate the extent to which performance results have been
32 achieved. These performance measures must include, but are not
33 limited to, the following:

34 (a) The number of state agencies and employees who have
35 participated in the annual privacy training;

36 (b) A report on the extent of the office of privacy and data
37 protection's coordination with international and national experts in
38 the fields of data privacy, data protection, and access equity;

1 (c) A report on the implementation of data protection measures by
2 state agencies attributable in whole or in part to the office of
3 privacy and data protection's coordination of efforts; and

4 (d) A report on consumer education efforts, including but not
5 limited to the number of consumers educated through public outreach
6 efforts, as indicated by how frequently educational documents were
7 accessed, the office of privacy and data protection's participation
8 in outreach events, and inquiries received back from consumers via
9 telephone or other media.

10 (6) Within one year of June 9, 2016, the office of privacy and
11 data protection must submit to the joint legislative audit and review
12 committee for review and comment the performance measures developed
13 under subsection (5) of this section and a data collection plan.

14 (7) The office of privacy and data protection shall submit a
15 report to the legislature on the: (a) Extent to which
16 telecommunications providers in the state are deploying advanced
17 telecommunications capability; and (b) existence of any inequality in
18 access to advanced telecommunications infrastructure experienced by
19 residents of tribal lands, rural areas, and economically distressed
20 communities. The report may be submitted at a time within the
21 discretion of the office of privacy and data protection, at least
22 once every four years, and only to the extent the office of privacy
23 and data protection is able to gather and present the information
24 within existing resources.

25 **Sec. 3.** RCW 43.01.010 and 1965 c 8 s 43.01.010 are each amended
26 to read as follows:

27 The governor, lieutenant governor, secretary of state, treasurer,
28 auditor, attorney general, superintendent of public instruction,
29 commissioner of public lands, ~~((and))~~ insurance commissioner, and
30 chief privacy officer, shall hold office for the term of four years,
31 and until their successors are elected and qualified; and the term
32 shall commence on the Wednesday after the second Monday of January
33 following their election.

34 NEW SECTION. **Sec. 4.** A new section is added to chapter 29A.04
35 RCW to read as follows:

36 (1) The first election for the chief privacy officer shall be
37 held at the general election in November 2024.

1 (2) The office of chief privacy officer shall be considered a
2 nonpartisan state office for purposes of this title.

3 (3) The election shall be conducted in accordance with this
4 title.

5 (4) Candidates for the first general election for the chief
6 privacy officer shall file for office as provided in chapter 29A.24
7 RCW during the filing period in 2024, and a primary election shall be
8 held as provided in chapter 29A.52 RCW.

9 (5) This section expires February 1, 2025.

10 **Sec. 5.** RCW 29A.04.110 and 2005 c 2 s 4 are each amended to read
11 as follows:

12 "Partisan office" means a public office for which a candidate may
13 indicate a political party preference on his or her declaration of
14 candidacy and have that preference appear on the primary and general
15 election ballot in conjunction with his or her name. The following
16 are partisan offices:

17 (1) United States senator and United States representative;

18 (2) All state offices, including legislative, except (a) judicial
19 offices ~~((and))~~, (b) the office of superintendent of public
20 instruction, and (c) the chief privacy officer;

21 (3) All county offices except (a) judicial offices and (b) those
22 offices for which a county home rule charter provides otherwise.

23 **Sec. 6.** RCW 29A.24.070 and 2009 c 106 s 1 are each amended to
24 read as follows:

25 Declarations of candidacy shall be filed with the following
26 filing officers:

27 (1) The secretary of state for declarations of candidacy for
28 statewide offices, United States senate, and United States house of
29 representatives;

30 (2) The secretary of state for declarations of candidacy for the
31 state legislature, the court of appeals, and the superior court when
32 the candidate is seeking office in a district comprised of voters
33 from two or more counties;

34 (3) The county auditor for all other offices. For any nonpartisan
35 office, other than nonpartisan statewide offices, judicial offices,
36 and school director in joint districts, where voters from a district
37 comprising more than one county vote upon the candidates, a
38 declaration of candidacy shall be filed with the county auditor of

1 the county in which a majority of the registered voters of the
2 district reside. For school directors in joint school districts, the
3 declaration of candidacy shall be filed with the county auditor of
4 the county designated by the superintendent of public instruction as
5 the county to which the joint school district is considered as
6 belonging under RCW 28A.323.040.

7 Each official with whom declarations of candidacy are filed under
8 this section, within one business day following the closing of the
9 applicable filing period, shall transmit to the public disclosure
10 commission the information required in RCW 29A.24.031 (1) through (4)
11 for each declaration of candidacy filed in his or her office during
12 such filing period or a list containing the name of each candidate
13 who files such a declaration in his or her office during such filing
14 period together with a precise identification of the position sought
15 by each such candidate and the date on which each such declaration
16 was filed. Such official, within three days following his or her
17 receipt of any letter withdrawing a person's name as a candidate,
18 shall also forward a copy of such withdrawal letter to the public
19 disclosure commission.

20 **Sec. 7.** RCW 29A.32.031 and 2013 c 283 s 2 are each amended to
21 read as follows:

22 The voters' pamphlet published or distributed under RCW
23 29A.32.010 must contain:

24 (1) Information about each measure for an advisory vote of the
25 people and each ballot measure initiated by or referred to the voters
26 for their approval or rejection as required by RCW 29A.32.070;

27 (2) In even-numbered years, statements, if submitted, from
28 candidates for the office of president and vice president of the
29 United States, United States senator, United States representative,
30 governor, lieutenant governor, secretary of state, state treasurer,
31 state auditor, attorney general, commissioner of public lands,
32 superintendent of public instruction, insurance commissioner, chief
33 privacy officer, state senator, state representative, justice of the
34 supreme court, judge of the court of appeals, or judge of the
35 superior court. Candidates may also submit campaign contact
36 information and a photograph not more than five years old in a format
37 that the secretary of state determines to be suitable for
38 reproduction in the voters' pamphlet;

1 (3) In odd-numbered years, if any office voted upon statewide
2 appears on the ballot due to a vacancy, then statements and
3 photographs for candidates for any vacant office listed in subsection
4 (2) of this section must appear;

5 (4) Contact information for the public disclosure commission
6 established under RCW 42.17A.100, including the following statement:
7 "For a list of the people and organizations that donated to state and
8 local candidates and ballot measure campaigns, visit www.pdc.wa.gov."
9 The statement must be placed in a prominent position, such as on the
10 cover or on the first two pages of the voters' pamphlet. The
11 secretary of state may substitute such language as is necessary for
12 accuracy and clarity and consistent with the intent of this section;

13 (5) Contact information for major political parties;

14 (6) A brief statement explaining the deletion and addition of
15 language for proposed measures under RCW 29A.32.080; and

16 (7) Any additional information pertaining to elections as may be
17 required by law or in the judgment of the secretary of state is
18 deemed informative to the voters.

19 **Sec. 8.** RCW 29A.36.121 and 2013 c 11 s 42 are each amended to
20 read as follows:

21 (1) The positions or offices on a primary consolidated ballot
22 shall be arranged in substantially the following order: United States
23 senator; United States representative; governor; lieutenant governor;
24 secretary of state; state treasurer; state auditor; attorney general;
25 commissioner of public lands; superintendent of public instruction;
26 insurance commissioner; chief privacy officer; state senator; state
27 representative; county officers; justices of the supreme court;
28 judges of the court of appeals; judges of the superior court; and
29 judges of the district court. For all other jurisdictions on the
30 primary ballot, the offices in each jurisdiction shall be grouped
31 together and be in the order of the position numbers assigned to
32 those offices, if any.

33 (2) The order of the positions or offices on a general election
34 ballot shall be substantially the same as on a primary ballot except
35 that state ballot issues must be placed before all offices. The
36 offices of president and vice president of the United States shall
37 precede all other offices on a presidential election ballot. The
38 positions on a ballot to be assigned to ballot measures regarding

1 local units of government shall be established by the secretary of
2 state by rule.

3 **Sec. 9.** RCW 29A.52.112 and 2014 c 7 s 1 are each amended to read
4 as follows:

5 (1) A primary is a first stage in the public process by which
6 voters elect candidates to public office.

7 (2) Whenever candidates for a partisan office or a statewide
8 nonpartisan office are to be elected, the general election must be
9 preceded by a primary conducted under this chapter. Based upon votes
10 cast at the primary, the top two candidates will be certified as
11 qualified to appear on the general election ballot (~~(, unless only one~~
12 ~~candidate qualifies as provided in RCW 29A.36.170)~~).

13 (3) No primary may be held for any single county partisan office
14 to fill an unexpired term if, after the last day allowed for
15 candidates to withdraw, only one candidate has filed for the
16 position.

17 (4) For partisan office, if a candidate has expressed a party
18 preference on the declaration of candidacy, then that preference will
19 be shown after the name of the candidate on the primary and general
20 election ballots as set forth in rules of the secretary of state. A
21 candidate may choose to express no party preference. Any party
22 preferences are shown for the information of voters only and may in
23 no way limit the options available to voters.

24 **Sec. 10.** RCW 29A.52.231 and 2004 c 271 s 174 are each amended to
25 read as follows:

26 The offices of superintendent of public instruction, chief
27 privacy officer, justice of the supreme court, judge of the court of
28 appeals, judge of the superior court, and judge of the district court
29 shall be nonpartisan and the candidates therefor shall be nominated
30 and elected as such.

31 All city, town, and special purpose district elective offices
32 shall be nonpartisan and the candidates therefor shall be nominated
33 and elected as such.

34 NEW SECTION. **Sec. 11.** A new section is added to chapter 42.17A
35 RCW to read as follows:

36 The office of the chief privacy officer is a "state office" as
37 that term is used in this chapter.

1 **Sec. 12.** RCW 43.03.010 and 1989 c 10 s 8 are each amended to
2 read as follows:

3 The annual salaries of the following named state elected
4 officials shall be prescribed by the Washington citizens' commission
5 on salaries for elected officials: Governor; lieutenant governor:
6 PROVIDED, That in arriving at the annual salary of the lieutenant
7 governor the commission shall prescribe a fixed amount plus a sum
8 equal to 1/260th of the difference between the annual salary of the
9 lieutenant governor and the annual salary of the governor for each
10 day that the lieutenant governor is called upon to perform the duties
11 of the governor by reason of the absence from the state, removal,
12 resignation, death, or disability of the governor; secretary of
13 state; state treasurer; state auditor; attorney general;
14 superintendent of public instruction; commissioner of public lands;
15 (~~and~~) state insurance commissioner; and chief privacy officer.
16 Members of the legislature shall receive for their service per annum
17 the amount prescribed by the Washington citizens' commission on
18 salaries for elected officials; and in addition, reimbursement for
19 mileage for travel to and from legislative sessions as provided in
20 RCW 43.03.060.

21 NEW SECTION. **Sec. 13.** Sections 2 and 3 of this act take effect
22 January 15, 2025.

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