

2SHB 1127 - S AMD 637

By Senator Ericksen

OUT OF ORDER 04/10/2021

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) No person may disclose COVID-19
4 health data unless the person first obtains affirmative express
5 consent from each individual who is linked to, or associated with,
6 the COVID-19 health data.

7 (2) For the purposes of this section:

8 (a) (i) "Affirmative express consent" means an affirmative act by
9 an individual that clearly and conspicuously communicates the
10 individual's authorization of an act or practice and is:

11 (A) Made in the absence of any mechanism that has the purpose or
12 substantial effect of obscuring, subverting, or impairing decision
13 making or choice to obtain consent; and

14 (B) Taken after the individual has been presented with a clear
15 and conspicuous disclosure that is separate from other options or
16 acceptance of general terms and that includes a concise and easy to
17 understand description of each act or practice for which the
18 individual's consent is sought.

19 (ii) For the purposes of this subsection (2)(a), affirmative
20 express consent may not be inferred from the inaction of an
21 individual or the individual's continued use of a service or product.

22 (iii) Affirmative express consent must be freely given and
23 nonconditioned.

24 (b) "COVID-19 health data" means data that is collected or used
25 in connection with COVID-19 or the related public health response and
26 that is linked to an individual or device.

27 (c) "Disclose" means the releasing, transferring, selling,
28 providing access to, licensing, or divulging in any manner of
29 COVID-19 health data.

30 (d) "Person" means a natural or legal person, or any legal,
31 commercial, or governmental entity of any kind or nature.

1 **Sec. 2.** RCW 42.56.360 and 2020 c 323 s 2 are each amended to
2 read as follows:

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

5 (a) Information obtained by the pharmacy quality assurance
6 commission as provided in RCW 69.45.090;

7 (b) Information obtained by the pharmacy quality assurance
8 commission or the department of health and its representatives as
9 provided in RCW 69.41.044, 69.41.280, and 18.64.420;

10 (c) Information and documents created specifically for, and
11 collected and maintained by a quality improvement committee under RCW
12 43.70.510, 70.230.080, or 70.41.200, or by a peer review committee
13 under RCW 4.24.250, or by a quality assurance committee pursuant to
14 RCW 74.42.640 or 18.20.390, or by a hospital, as defined in RCW
15 43.70.056, for reporting of health care-associated infections under
16 RCW 43.70.056, a notification of an incident under RCW 70.56.040(5),
17 and reports regarding adverse events under RCW 70.56.020(2)(b),
18 regardless of which agency is in possession of the information and
19 documents;

20 (d)(i) Proprietary financial and commercial information that the
21 submitting entity, with review by the department of health,
22 specifically identifies at the time it is submitted and that is
23 provided to or obtained by the department of health in connection
24 with an application for, or the supervision of, an antitrust
25 exemption sought by the submitting entity under RCW 43.72.310;

26 (ii) If a request for such information is received, the
27 submitting entity must be notified of the request. Within ten
28 business days of receipt of the notice, the submitting entity shall
29 provide a written statement of the continuing need for
30 confidentiality, which shall be provided to the requester. Upon
31 receipt of such notice, the department of health shall continue to
32 treat information designated under this subsection (1)(d) as exempt
33 from disclosure;

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

37 (e) Records of the entity obtained in an action under RCW
38 18.71.300 through 18.71.340;

39 (f) Complaints filed under chapter 18.130 RCW after July 27,
40 1997, to the extent provided in RCW 18.130.095(1);

1 (g) Information obtained by the department of health under
2 chapter 70.225 RCW;

3 (h) Information collected by the department of health under
4 chapter 70.245 RCW except as provided in RCW 70.245.150;

5 (i) Cardiac and stroke system performance data submitted to
6 national, state, or local data collection systems under RCW
7 70.168.150(2)(b);

8 (j) All documents, including completed forms, received pursuant
9 to a wellness program under RCW 41.04.362, but not statistical
10 reports that do not identify an individual;

11 (k) Data and information exempt from disclosure under RCW
12 43.371.040; and

13 (l) Medical information contained in files and records of members
14 of retirement plans administered by the department of retirement
15 systems or the law enforcement officers' and firefighters' plan 2
16 retirement board, as provided to the department of retirement systems
17 under RCW 41.04.830.

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

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

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

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

32 (4) Information and documents related to maternal mortality
33 reviews conducted pursuant to RCW 70.54.450 are confidential and
34 exempt from public inspection and copying.

35 (5) COVID-19 health data, as defined in section 1 of this act, is
36 exempt from disclosure under this chapter.

37 NEW SECTION. Sec. 3. Section 1 of this act constitutes a new
38 chapter in Title 70 RCW.

1 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of
3 the state government and its existing public institutions, and takes
4 effect immediately."

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By Senator Ericksen

OUT OF ORDER 04/10/2021

5 On page 1, line 2 of the title, after "data" strike the remainder
6 of the title and insert "; amending RCW 42.56.360; adding a new
7 chapter to Title 70 RCW; and declaring an emergency."

EFFECT: Removes all provisions of the underlying bill. Prohibits a person from disclosing COVID-19 health data unless the person first obtains affirmative express consent from the individual who is linked to, or associated with, such data. Provides that COVID-19 health data is exempt from public disclosure. Provides that the act takes effect immediately. Amends the title.

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