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**SUBSTITUTE SENATE BILL 6395**

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**State of Washington**

**56th Legislature**

**2000 Regular Session**

**By** Senate Committee on Human Services & Corrections (originally sponsored by Senators Franklin, Hochstatter, Fairley, Swecker and Winsley)

Read first time 02/03/2000.

1 AN ACT Relating to the use of DNA; amending RCW 49.60.030; adding  
2 a new section to chapter 48.01 RCW; adding new sections to chapter  
3 43.131 RCW; adding a new chapter to Title 7 RCW; and creating new  
4 sections.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that:

7 (1) The technology of deoxyribonucleic acid (DNA) identification is  
8 of great potential benefit to the citizens of this state in many  
9 fields, including human services and health care, scientific research,  
10 criminal justice, and corrections;

11 (2) Technology is changing and improving at an ever-increasing  
12 rate;

13 (3) DNA technology is particularly important in assisting law  
14 enforcement in identifying and apprehending repeat criminal offenders  
15 as well as exonerating those people convicted and incarcerated for a  
16 crime they did not commit;

17 (4) There are legitimate concerns for privacy rights in the  
18 creation, collection, maintenance, disclosure, identification, and use  
19 of DNA;

1 (5) Protections of citizens' civil rights and individual privileges  
2 necessitate policy development of protections preventing the  
3 unauthorized use of DNA and the use of DNA for discriminatory purposes;  
4 and

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

8 NEW SECTION. **Sec. 2.** A DNA commission is established to consist  
9 of twenty-four members selected as follows:

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

12 (b) Two members of the house of representatives, appointed by the  
13 co-speakers of the house of representatives, one from each of the two  
14 largest caucuses;

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

16 (a) Two members representing local public health;

17 (b) One member representing genetic counselors;

18 (c) One member representing clinical research;

19 (d) One member representing epidemiological research;

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

21 (f) One member representing genetic ethics;

22 (g) One member representing institutional review boards;

23 (h) Two members representing geneticists, one clinical and one  
24 research;

25 (i) One member representing research institutions;

26 (j) One member representing civil rights advocates;

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

28 (l) Two members representing privacy advocates;

29 (m) One member representing citizens who have undergone genetic  
30 testing;

31 (n) One member representing hospitals;

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

33 and

34 (p) One member representing biotechnologists.

35 The commission shall be appointed within forty-five days from the  
36 effective date of this act. Staffing shall be provided by the  
37 legislature. Members shall serve without remuneration, except costs

1 may be provided according to the provisions of RCW 43.03.050 and  
2 43.03.060.

3 NEW SECTION. **Sec. 3.** The DNA commission shall:

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

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

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

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

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

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

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

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

19 (9) An initial report of its findings and recommendations shall be  
20 provided to the appropriate committees of the legislature by July 1,  
21 2001.

22 NEW SECTION. **Sec. 4.** A new section is added to chapter 48.01 RCW  
23 to read as follows:

24 A person's deoxyribonucleic acid shall not be screened in any  
25 insurance transaction. For purposes of this section, "screened" means  
26 obtaining a person's deoxyribonucleic acid and identifying the sequence  
27 of chemical base pairs. This section must not be interpreted to deny  
28 third-party payment of claims.

29 **Sec. 5.** RCW 49.60.030 and 1997 c 271 s 2 are each amended to read  
30 as follows:

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

1 (a) The right to obtain and hold employment without discrimination,  
2 including the right to prohibit an employer from screening a person's  
3 deoxyribonucleic acid. For purposes of this subsection, "screening"  
4 means obtaining a person's deoxyribonucleic acid and identifying a  
5 sequence of chemical base pairs;

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

9 (c) The right to engage in real estate transactions without  
10 discrimination, including discrimination against families with  
11 children;

12 (d) The right to engage in credit transactions without  
13 discrimination;

14 (e) The right to engage in insurance transactions or transactions  
15 with health maintenance organizations without discrimination:  
16 PROVIDED, That a practice which is not unlawful under RCW 48.30.300,  
17 48.44.220, or 48.46.370 does not constitute an unfair practice for the  
18 purposes of this subparagraph; and

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

35 (2) Any person deeming himself or herself injured by any act in  
36 violation of this chapter shall have a civil action in a court of  
37 competent jurisdiction to enjoin further violations, or to recover the  
38 actual damages sustained by the person, or both, together with the cost  
39 of suit including reasonable attorneys' fees or any other appropriate

1 remedy authorized by this chapter or the United States Civil Rights Act  
2 of 1964 as amended, or the Federal Fair Housing Amendments Act of 1988  
3 (42 U.S.C. Sec. 3601 et seq.).

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

14 NEW SECTION. **Sec. 6.** (1) Any entity, including any person,  
15 isolating a person's deoxyribonucleic acid in a form that identifies an  
16 individual person for purposes of genetic testing must have the  
17 person's informed consent.

18 (2) Informed consent requires:

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

23 (b) Identification of the entity obtaining the deoxyribonucleic  
24 acid and individual sequence;

25 (c) Disclosure of any entity with whom the deoxyribonucleic acid  
26 and individual sequence may be shared, including disclosure that the  
27 deoxyribonucleic acid or individual sequence may be shared in the  
28 future with an unknown entity;

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

31 (e) A description of reasonably foreseeable risks or harm  
32 associated with providing the deoxyribonucleic acid and individual  
33 sequence;

34 (f) An explanation of how the deoxyribonucleic acid will be  
35 maintained, whether the physical sample will be destroyed or stored,  
36 including how and where it will be stored, and how the individual  
37 sequence information will be destroyed or stored, including how and  
38 where it will be stored;

1 (g) A statement describing any reasonably expected benefits or  
2 advantages associated with providing the deoxyribonucleic acid and  
3 individual sequence;

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

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

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

12 (k) The exclusion of any exculpatory provisions from liability  
13 against the entity obtaining the deoxyribonucleic acid and individual  
14 sequence;

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

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

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

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

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

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

35 (d) In situations where the individual is deceased and the entity  
36 requesting the deoxyribonucleic acid establishes in a court of law that  
37 obtaining individually identifiable deoxyribonucleic acid for genetic  
38 testing purposes benefits public health, safety, and welfare, and  
39 outweighs the harm to individual privacy interests, or the person

1 requesting the deoxyribonucleic acid is a next of kin requesting the  
2 deoxyribonucleic acid for purposes of health care or other purpose that  
3 outweighs the harm to the individual's privacy interests, or the entity  
4 requesting the deoxyribonucleic acid has been authorized by an  
5 institutional review board to use the deoxyribonucleic acid pursuant to  
6 an approved protocol;

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

11 (f) Pursuant to provisions of this section, if the entity or person  
12 obtains an individual's deoxyribonucleic acid, or computerized  
13 information that provides the sequence of that individual's  
14 deoxyribonucleic acid, in a form that does not identify that  
15 individual; and

16 (g) Pursuant to provisions of this section, if the entity or person  
17 who obtains deoxyribonucleic acid, or computerized information that  
18 provides the sequence of that deoxyribonucleic acid, is acting  
19 according to the provisions of an institutional review board  
20 established under federal law.

21 NEW SECTION. **Sec. 7.** Section 6 of this act constitutes a new  
22 chapter in Title 7 RCW.

23 NEW SECTION. **Sec. 8.** A new section is added to chapter 43.131 RCW  
24 to read as follows:

25 The DNA commission and its powers and duties shall be terminated on  
26 June 30, 2005, as provided in section 9 of this act.

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

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

31 (1) Section 1 of this act;

32 (2) Section 2 of this act; and

33 (3) Section 3 of this act.

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