
SENATE BILL 5295

State of Washington

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By Senators Kline, Oemig, Rockefeller, Holmquist, King, Hatfield, and Hobbs

Read first time 01/20/09. Referred to Committee on Government Operations & Elections.

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, 42.56.360, 41.04.362, 28C.18.020, 79A.25.150, 42.56.330, and
4 42.56.250; adding a new section to chapter 42.56 RCW; and repealing RCW
5 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
2 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; and

18 (11) Criminal history records checks for finalist candidates for
19 the state investment board under RCW 43.33A.025.

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

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

25 **Sec. 4.** RCW 42.56.360 and 2008 c 136 s 5 are each amended to read
26 as follows:

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

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

31 (b) 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 (c) Information and documents created specifically for, and
35 collected and maintained by a quality improvement committee under RCW
36 43.70.510, 70.230.080, or 70.41.200, or by a peer review committee

1 under RCW 4.24.250, or by a quality assurance committee pursuant to RCW
2 74.42.640 or 18.20.390, or by a hospital, as defined in RCW 43.70.056,
3 for reporting of health care-associated infections under RCW 43.70.056,
4 a notification of an incident under RCW 70.56.040(5), and reports
5 regarding adverse events under RCW 70.56.020(2)(b), regardless of which
6 agency is in possession of the information and documents;

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

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

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

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

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

31 ~~(g))~~ Complaints filed under chapter 18.130 RCW after July 27,
32 1997, to the extent provided in RCW 18.130.095(1); ~~((and~~

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

35 (h) All documents, including completed forms, received pursuant to
36 a wellness program under RCW 41.04.362, but not statistical reports
37 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) 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 **Sec. 5.** RCW 41.04.362 and 1987 c 248 s 2 are each amended to read
7 as follows:

8 (1) ~~((The))~~ Directors of ~~((the department of personnel))~~ state and
9 local entities, in consultation with applicable state agencies and
10 employee organizations, may develop and administer a voluntary state
11 employee wellness program.

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

13 (a) Develop and implement state employee wellness policies,
14 procedures, and activities;

15 (b) Disseminate wellness educational materials to ~~((state))~~
16 agencies and employees;

17 (c) Encourage the establishment of wellness activities in ~~((state))~~
18 agencies;

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

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

24 (f) Monitor and evaluate the effectiveness of this program,
25 including the collection, analysis, and publication of relevant
26 statistical information; and

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

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

32 NEW SECTION. **Sec. 6.** RCW 41.04.364 (State employee wellness
33 program--Confidentiality of individually identifiable information) and
34 1987 c 248 s 3 are each repealed.

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

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

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

28 (b) The business representatives shall be selected from among
29 nominations provided by a statewide business organization representing
30 a cross-section of industries. However, the governor may request, and
31 the organization shall provide, an additional list or lists from which
32 the governor shall select the business representatives. The
33 nominations and selections shall reflect the cultural diversity of the
34 state, including women, people with disabilities, and racial and ethnic
35 minorities, and diversity in sizes of businesses.

36 (c) The labor representatives shall be selected from among
37 nominations provided by statewide labor organizations. However, the
38 governor may request, and the organizations shall provide, an

1 additional list or lists from which the governor shall select the labor
2 representatives. The nominations and selections shall reflect the
3 cultural diversity of the state, including women, people with
4 disabilities, and racial and ethnic minorities.

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

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

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

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

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

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

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

31 (k) Members of the board shall be compensated in accordance with
32 RCW 43.03.040 and shall receive travel expenses in accordance with RCW
33 43.03.050 and 43.03.060.

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

36 (m) The director of the board shall be appointed by the governor
37 from a list of three names submitted by a committee made up of the
38 business and labor members of the board. However, the governor may

1 request, and the committee shall provide, an additional list or lists
2 from which the governor shall select the director. (~~The lists~~
3 ~~compiled by the committee shall not be subject to public disclosure.~~)
4 The governor may dismiss the director only with the approval of a
5 majority vote of the board. The board, by a majority vote, may dismiss
6 the director with the approval of the governor.

7 (3) The state board for vocational education is hereby abolished
8 and its powers, duties, and functions are hereby transferred to the
9 workforce training and education coordinating board. All references to
10 the director or the state board for vocational education in the Revised
11 Code of Washington shall be construed to mean the director or the
12 workforce training and education coordinating board.

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

15 When requested by the board, members employed by the state shall
16 furnish assistance to the board from their departments for the analysis
17 and review of proposed plans and projects, and such assistance shall be
18 a proper charge against the appropriations to the several agencies
19 represented on the board. Assistance may be in the form of money,
20 personnel, or equipment and supplies, whichever is most suitable to the
21 needs of the board.

22 The director of the recreation and conservation office shall be
23 appointed by, and serve at the pleasure of, the governor. The governor
24 shall select the director from a list of three candidates submitted by
25 the board. However, the governor may request and the board shall
26 provide an additional list or lists from which the governor may select
27 the director. (~~The lists compiled by the board shall not be subject~~
28 ~~to public disclosure.~~) The director shall have background and
29 experience in the areas of recreation and conservation management and
30 policy. The director shall be paid a salary to be fixed by the
31 governor in accordance with the provisions of RCW 43.03.040. The
32 director shall appoint such personnel as may be necessary to carry out
33 the duties of the office. Not more than three employees appointed by
34 the director shall be exempt from the provisions of chapter 41.06 RCW.

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

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

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

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

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

19 (4) The personally identifying information of current or former
20 participants or applicants in a paratransit or other transit service
21 operated for the benefit of persons with disabilities or elderly
22 persons;

23 (5) The personally identifying information of persons who acquire
24 and use transit passes and other fare payment media including, but not
25 limited to, stored value smart cards and magnetic strip cards, except
26 that an agency may disclose this information to a person, employer,
27 educational institution, or other entity that is responsible, in whole
28 or in part, for payment of the cost of acquiring or using a transit
29 pass or other fare payment media(~~(, or to the news media when reporting~~
30 ~~on public transportation or public safety. This information may also~~
31 ~~be disclosed at the agency's discretion to governmental agencies or~~
32 ~~groups concerned with public transportation or public safety)) for the
33 purpose of preventing fraud.~~

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

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

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

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

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

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

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

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

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

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

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

20 (5) Investigative records compiled by an employing agency
21 conducting (~~(a current)~~) an active and ongoing investigation of a
22 possible unfair practice under chapter 49.60 RCW or of a possible
23 violation of other federal, state, or local laws prohibiting
24 discrimination in employment; (~~and~~)

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

29 (7) Except as provided in RCW 47.64.220, salary and benefit
30 information for maritime employees collected from private employers
31 under RCW 47.64.220(1) and described in RCW 47.64.220(2).

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