

NEW SECTION. Sec. 13. There is added to chapter 36, Laws of 1969 ex. sess. and to chapter 28B.16 RCW a new section to read as follows:

After consultation with institution heads, employee organizations, and other interested parties, the board shall develop standardized employee performance evaluation procedures and forms which shall be used by institutions of higher learning for the appraisal of employee job performance at least annually. These procedures shall include means whereby individual institutions may supplement the standardized evaluation process with special performance factors peculiar to specific organizational needs. This evaluation procedure shall place primary emphasis on recording how well the employee has contributed to efficiency, effectiveness, and economy in fulfilling institution and job objectives. A standardized performance evaluation procedure shall be instituted not later than July 1, 1978, for all employees.

NEW SECTION. Sec. 14. If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

***\*NEW SECTION. Sec. 15. This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.***

**\*Sec. 15. was vetoed, see message at end of chapter.**

Passed the Senate May 26, 1977.

Passed the House May 20, 1977.

Approved by the Governor June 3, 1977, with the exception of section 15 which is vetoed.

Filed in Office of Secretary of State June 3, 1977.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith without my approval as to one section Substitute Senate Bill No. 2383 entitled:

"An Act Relating to public employment; providing salary surveys; providing for local administration and management by institutions of higher education and related boards; mandating the higher education personnel board to adopt rules for training programs and regular increment pay increases."

Section 15 of the bill declares an emergency and provides for the act to take effect immediately. Under the Constitution, Article II, Sections 1(b) and 41, the use of an emergency clause does two things. First, it alters the time when a particular piece of legislation becomes effective, thereby eliminating what may be a desirable adjustment period for affected persons. Second, it excepts the legislation from the important referendum right reserved by the people. Because of these effects, the use of the clause should be restricted to those instances where the use is clearly warranted due to the urgency of the situation.

With the exception of Section 15, which I have vetoed, the remainder of Substitute Senate Bill No. 2383 is approved."

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## CHAPTER 153

[Reengrossed Senate Bill No. 2426]

### EMPLOYMENT SECURITY RECORDS—PRIVACY AND CONFIDENTIALITY

AN ACT Relating to employment security records; adding a new chapter to Title 50 RCW to be designated as chapter 50.13 RCW; repealing section 50, chapter 35, Laws of 1945, section 3, chapter 215, Laws of 1951, section 1, chapter 255, Laws of 1971 ex. sess. and RCW 50.12.110; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Section 1. This chapter is intended to reconcile the free access to public records granted by the open government act and the discovery rights of judicial and administrative systems with the historical confidentiality of certain records of the department of employment security and the individual's right of privacy as acknowledged by the open government act.

The legislature recognizes that records and information held by the department of employment security could be misused. Therefore, this chapter defines a right of privacy and confidentiality as regards individual and employing unit records maintained by the department of employment security. The legislature further recognizes that there are situations where this right of privacy and confidentiality is outweighed by other considerations. Therefore, this chapter also defines certain exceptions to the right of privacy and confidentiality.

NEW SECTION. Sec. 2. Any information or records concerning an individual or employing unit obtained by the department of employment security pursuant to the administration of this title or other programs for which the department has responsibility shall be private and confidential, except as otherwise provided in this chapter. This chapter does not create a rule of evidence. The information or records may be released by the department of employment security when the release is required by the federal government in connection with a program being administered by the department for the federal government.

NEW SECTION. Sec. 3. The commissioner of the department of employment security shall have the authority to adopt, amend, or rescind rules interpreting and implementing the provisions of this chapter. In particular, these rules shall specify the procedure to be followed to obtain information or records to which the public has access under this chapter or chapter 42.17 RCW.

NEW SECTION. Sec. 4. An individual shall have access to all records and information concerning that individual held by the department of employment security, unless the information is exempt from disclosure under RCW 42.17.310. An employing unit shall have access to its own records and to any records and information relating to a benefit claim by an individual if the employing unit is either the individual's last employer or is the individual's base year employer. An employing unit shall have access to general summaries of benefit claims by individuals whose benefits are chargeable to the employing unit's experience rating or reimbursement account.

NEW SECTION. Sec. 5. (1) Any interested party, as defined by rule, in a proceeding before the appeal tribunal or commissioner shall have access to any information or records deemed private and confidential under this chapter if the information or records are material to the issues in that proceeding.

(2) No decisions by the commissioner or the appeals tribunal shall be deemed private and confidential under this chapter unless the decisions are based on information obtained in a closed hearing.

NEW SECTION. Sec. 6. (1) Governmental agencies, including law enforcement agencies, prosecuting agencies, and the executive branch, whether state, local,

or federal shall have access to information or records deemed private and confidential under this chapter if the information or records are needed by the agency for official purposes and:

(a) The agency submits an application in writing to the employment security department for the records or information containing a statement of the official purposes for which the information or records are needed and specific identification of the records or information sought from the department; and

(b) The director, commissioner, chief executive, or other official of the agency has verified the need for the specific information in writing either on the application or on a separate document; and

(c) The agency requesting access has served a copy of the application for records or information on the individual or employing unit whose records or information are sought and has provided the department with proof of service. Service shall be made in a manner which conforms to the civil rules for superior court. The requesting agency shall include with the copy of the application a statement to the effect that the individual or employing unit may contact the public records officer of the employment security department to state any objections to the release of the records or information. The employment security department shall not act upon the application of the requesting agency until at least five days after service on the concerned individual or employing unit. The employment security department shall consider any objections raised by the concerned individual or employing unit in deciding whether the requesting agency needs the information or records for official purposes.

(2) The requirements of subsections (1) and (7) of this section shall not apply to the state legislative branch. The state legislature shall have access to information or records deemed private and confidential under this chapter, if the legislature or a legislative committee finds that the information or records are necessary and for official purposes. If the employment security department does not make information or records available as provided in this subsection, the legislature may exercise its authority granted by chapter 44.16 RCW.

(3) In cases of emergency the governmental agency requesting access shall not be required to formally comply with the provisions of subsection (1) of this section at the time of the request if the procedures required by subsection (1) of this section are complied with by the requesting agency following the receipt of any records or information deemed private and confidential under this chapter. An emergency is defined as a situation in which irreparable harm or damage could occur if records or information are not released immediately.

(4) The requirements of subsection (1)(c) of this section shall not apply to governmental agencies where the procedures would frustrate the investigation of possible violations of criminal laws.

(5) Governmental agencies may have access to certain records or information, strictly limited to such items as names, addresses, social security numbers, and general information about benefit entitlement, for comparison purposes with records or information possessed by the requesting agency to detect improper or fraudulent claims. In those cases the governmental agency shall not be required to comply with subsection (1)(c) of this section, but the remainder of that section must be satisfied.

(6) Disclosure to governmental agencies of information or records obtained by the employment security department from the federal government shall be governed by any applicable federal law or any agreement between the federal government and the employment security department where so required by federal law. When federal law does not apply to the records or information state law shall control.

(7) The disclosure of any records or information by a governmental agency which has obtained the records or information under this section is prohibited unless the disclosure is directly connected to the official purpose for which the records or information were obtained.

NEW SECTION. Sec. 7. Information or records deemed private and confidential under this chapter shall be available to parties to judicial or formal administrative proceedings only upon a finding by the presiding officer that the need for the information or records in the proceeding outweighs any reasons for the privacy and confidentiality of the information or records. Information or records deemed private and confidential under this chapter shall not be available in discovery proceedings unless the court in which the action has been filed has made the finding specified above. A judicial or administrative subpoena directed to the employment security department must contain this finding. A subpoena for records or information held by the department may be directed to and served upon any employee of the department, but the department may specify by rule which employee shall produce the records or information in compliance with the subpoena.

NEW SECTION. Sec. 8. The employment security department shall have the right to disclose information or records deemed private and confidential under this chapter to any private person or organization when such disclosure is necessary to permit private contracting parties to assist in the operation and management of the department in instances where certain departmental functions may be delegated to private parties to increase the department's efficiency or quality of service to the public. The private persons or organizations shall use the information or records solely for the purpose for which the information was disclosed and shall be bound by the same rules of privacy and confidentiality as employment security department employees. Nothing in this section shall be construed as limiting or restricting the effect of RCW 42.17.260(5). The misuse or unauthorized release of records or information deemed private and confidential under this chapter by any private person or organization to which access is permitted by this section shall subject the person or organization to a civil penalty of five hundred dollars. Suit to enforce this section shall be brought by the attorney general and the amount of any penalties collected shall be paid into the employment security department administrative contingency fund. The attorney general may recover reasonable attorneys' fees for any action brought to enforce this section.

NEW SECTION. Sec. 9. Where the employment security department contracts to provide services to other governmental or private organizations, the department may disclose to those organizations information or records deemed private and confidential which have been acquired in the performance of the department's obligations under the contracts.

NEW SECTION. Sec. 10. Nothing in this chapter shall prevent the disclosure of information or records deemed private and confidential under this chapter if all details identifying an individual or employing unit are deleted or the individual or employing unit consents to the disclosure.

NEW SECTION. Sec. 11. Any ambiguities in this chapter shall be construed in a manner consistent with federal laws applying to the employment security department. If any provision of this chapter or the application thereof is held invalid by a final decision of any court or declared by the secretary of the department of labor of the United States to be inconsistent with federal laws upon which funding of the employment security department is contingent, the invalid or inconsistent provision shall be ineffective only to the extent necessary to insure compliance with the court decision or federal determination and the remainder of the chapter shall be given full effect.

NEW SECTION. Sec. 12. Section 50, chapter 35, Laws of 1945, section 3, chapter 215, Laws of 1951, section 1, chapter 255, Laws of 1971 ex. sess. and RCW 50.12.110 are each repealed.

NEW SECTION. Sec. 13. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 14. Sections 1 through 11 of this act shall constitute a new chapter in Title 50 RCW and shall be designated as chapter 50.13 RCW.

Passed the Senate May 26, 1977.

Passed the House May 20, 1977.

Approved by the Governor June 3, 1977.

Filed in Office of Secretary of State June 3, 1977.

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## CHAPTER 154

[Senate Bill No 2061]

### HOSPITALS, PROPRIETARY PROFIT-MAKING—RATES, BASIS

AN ACT Relating to hospitals; and amending section 16, chapter 5, Laws of 1973 1st ex. sess. and RCW 70.39.150.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 16, chapter 5, Laws of 1973 1st ex. sess. and RCW 70.39-.150 are each amended to read as follows:

To properly carry out its authority the commission shall:

(1) (~~Immediately upon July 16, 1973 begin to~~) Compile all relevant financial and accounting data in order to have available the statistical information necessary to properly conduct rate review and approval. Such data shall include necessary operating expenses, appropriate expenses incurred for rendering services to patients who cannot or do not pay, all properly incurred interest charges, and reasonable depreciation expenses based on the expected useful life of the property and equipment involved. The commission shall define and prescribe by rule and regulation the types and classes of charges which cannot be changed except as provided by the procedure contained in RCW 70.39.160 and it shall also obtain from each such