

COMMITTEE ON HEALTH AND HUMAN SERVICES

SENATE AMENDMENTS TO S.B. 1078

(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 12-2292, Arizona Revised Statutes, is amended to
3 read:

4 12-2292. Confidentiality of medical records and payment
5 records; definition

6 A. Unless otherwise provided by law, all medical records and payment
7 records, and the information contained in medical records and payment
8 records, are privileged and confidential. A health care provider may only
9 disclose that part or all of a patient's medical records and payment
10 records as authorized by state or federal law or written authorization
11 signed by the patient or the patient's health care decision maker.

12 B. This article does not limit the effect of any other federal or
13 state law governing the confidentiality of medical records and payment
14 records TO THE EXTENT THAT THE OTHER FEDERAL OR STATE LAW PROVIDES FOR
15 CONFIDENTIALITY PROTECTIONS THAT ARE GREATER THAN THE PROTECTIONS PROVIDED
16 FOR IN THIS ARTICLE.

17 C. FOR THE PURPOSES OF THIS SECTION, "INFORMATION CONTAINED IN
18 MEDICAL RECORDS" INCLUDES ANY INFORMATION THAT IS RELATED IN ANY WAY TO AN
19 INDIVIDUAL'S VACCINATION OR VACCINATION EXEMPTION STATUS, INCLUDING WHETHER
20 AN INDIVIDUAL HAS RECEIVED A VACCINATION OR APPLIED FOR OR HAS BEEN GRANTED
21 AN EXEMPTION TO VACCINATION BY ANY GOVERNMENT BODY OR EMPLOYER.

1 Sec. 2. Section 12-2294, Arizona Revised Statutes, is amended to
2 read:

3 12-2294. Release of medical records and payment records to
4 third parties; employer requirements; civil action;
5 damages; definition

6 A. A health care provider shall disclose medical records or payment
7 records, or the information contained in medical records or payment
8 records, without the patient's written authorization as otherwise required
9 by law or when ordered by a court or tribunal of competent jurisdiction.

10 B. A health care provider may disclose medical records or payment
11 records, or the information contained in medical records or payment
12 records, pursuant to written authorization signed by the patient or the
13 patient's health care decision maker.

14 C. A health care provider may disclose medical records or payment
15 records or the information contained in medical records or payment records
16 and a clinical laboratory may disclose clinical laboratory results without
17 the written authorization of the patient or the patient's health care
18 decision maker as otherwise authorized by state or federal law, including
19 the health insurance portability and accountability act privacy standards
20 (45 Code of Federal Regulations part 160 and part 164, subpart E), or as
21 follows:

22 1. To health care providers who are currently providing health care
23 to the patient for the purpose of diagnosis or treatment of the patient.

24 2. To health care providers who have previously provided treatment
25 to the patient, to the extent that the records pertain to the provided
26 treatment.

27 3. To ambulance attendants as defined in section 36-2201 for the
28 purpose of providing care to or transferring the patient whose records are
29 requested.

30 4. To a private agency that accredits health care providers and with
31 whom the health care provider has an agreement requiring the agency to
32 protect the confidentiality of patient information.

1 5. To a health profession regulatory board as defined in section
2 32-3201.

3 6. To health care providers for the purpose of conducting
4 utilization review, peer review and quality assurance pursuant to section
5 36-441, 36-445, 36-2402 or 36-2917.

6 7. To a person or entity that provides services to the patient's
7 health care providers or clinical laboratories and with whom the health
8 care provider or clinical laboratory has an agreement requiring the person
9 or entity to protect the confidentiality of patient information and as
10 required by the health insurance portability and accountability act privacy
11 standards, 45 Code of Federal Regulations part 164, subpart E.

12 8. To the legal representative of a health care provider in
13 possession of the medical records or payment records for the purpose of
14 securing legal advice.

15 9. To the patient's third party payor or the payor's contractor.

16 10. To the industrial commission of Arizona or parties to an
17 industrial commission claim pursuant to title 23, chapter 6.

18 D. A health care provider may disclose a deceased patient's medical
19 records or payment records or the information contained in medical records
20 or payment records to the patient's health care decision maker at the time
21 of the patient's death. A health care provider also may disclose a
22 deceased patient's medical records or payment records or the information
23 contained in medical records or payment records to the personal
24 representative or administrator of the estate of a deceased patient, or if
25 a personal representative or administrator has not been appointed, to the
26 following persons in the following order of priority, unless the deceased
27 patient during the deceased patient's lifetime or a person in a higher
28 order of priority has notified the health care provider in writing that the
29 deceased patient opposed the release of the medical records or payment
30 records:

31 1. The deceased patient's spouse, unless the patient and the
32 patient's spouse were legally separated at the time of the patient's death.

1 2. The acting trustee of a trust created by the deceased patient
2 either alone or with the deceased patient's spouse if the trust was a
3 revocable inter vivos trust during the deceased patient's lifetime and the
4 deceased patient was a beneficiary of the trust during the deceased
5 patient's lifetime.

6 3. An adult child of the deceased patient.

7 4. A parent of the deceased patient.

8 5. An adult brother or sister of the deceased patient.

9 6. A guardian or conservator of the deceased patient at the time of
10 the patient's death.

11 E. A person who receives medical records or payment records pursuant
12 to this section shall not disclose those records without the written
13 authorization of the patient or the patient's health care decision maker,
14 unless otherwise authorized by law.

15 F. AN EMPLOYER MAY NOT DISCLOSE ANY INFORMATION CONTAINED WITHIN AN
16 EMPLOYEE'S OR PROSPECTIVE EMPLOYEE'S MEDICAL RECORDS TO ANY PERSON,
17 INCLUDING OTHER EMPLOYEES. THIS SUBSECTION APPLIES TO ALL INFORMATION THAT
18 IS OBTAINED BY THE EMPLOYER IN ANY WAY DURING THE EMPLOYEE'S HIRING PROCESS
19 OR IN THE COURSE OF EMPLOYMENT. THE PRESUMPTION PRESCRIBED IN SECTION
20 12-2296 DOES NOT APPLY TO AN EMPLOYER WHO DISCLOSES INFORMATION IN
21 VIOLATION OF THIS SUBSECTION.

22 G. SUBSECTION F OF THIS SECTION DOES NOT APPLY TO AN EMPLOYER WHO
23 DISCLOSES AN EMPLOYEE'S OR PROSPECTIVE EMPLOYEE'S MEDICAL RECORDS FOR ANY
24 OF THE FOLLOWING PURPOSES:

25 1. TO A SUPERVISOR OR MANAGER TO BE INFORMED ABOUT AN EMPLOYEE'S
26 NECESSARY WORK AND DUTY RESTRICTIONS AND FOR MAKING NECESSARY
27 ACCOMMODATIONS.

28 2. TO FIRST AID AND SAFETY PERSONNEL IF THE EMPLOYEE OR PROSPECTIVE
29 EMPLOYEE REQUIRES EMERGENCY TREATMENT.

30 3. IF REQUESTED, TO A GOVERNMENT OFFICIAL WHO IS INVESTIGATING AN
31 EMPLOYER'S COMPLIANCE WITH THIS SUBSECTION.

1 H. A PERSON WHO OBTAINS INFORMATION THAT IS CONTAINED WITHIN AN
2 EMPLOYEE'S OR PROSPECTIVE EMPLOYEE'S MEDICAL RECORDS PURSUANT TO SUBSECTION
3 G OF THIS SECTION SHALL KEEP THE INFORMATION CONFIDENTIAL. A STATE
4 GOVERNMENT OFFICIAL WHO OBTAINS THE INFORMATION UNDER SUBSECTION G,
5 PARAGRAPH 3 OF THIS SECTION MAY NOT DISCLOSE THE INFORMATION TO ANY OTHER
6 PERSON, INCLUDING ANY OTHER ENTITY IN STATE GOVERNMENT, BEYOND WHAT IS
7 STRICTLY NECESSARY TO CARRY OUT THE INVESTIGATION. IN ANY JUDICIAL OR
8 ADMINISTRATIVE PROCEEDING THAT ARISES OUT OF AN INVESTIGATION, THE COURT OR
9 ADMINISTRATIVE BODY SHALL RECEIVE THE INFORMATION IN A CONFIDENTIAL
10 FASHION.

11 I. A PERSON WHO SUBSTANTIALLY PREVAILS AGAINST AN EMPLOYER IN A
12 CIVIL ACTION THAT ARISES OUT OF A VIOLATION OF SUBSECTION F OF THIS SECTION
13 IS ENTITLED TO RECOVER STATUTORY DAMAGES IN THE AMOUNT OF \$20,000,
14 REASONABLE ATTORNEY FEES AND COSTS. TO PREVAIL IN THE CIVIL ACTION, A
15 PLAINTIFF MUST DEMONSTRATE THAT THE EMPLOYER VIOLATED SUBSECTION F OF THIS
16 SECTION AND THE VIOLATION WAS THE RESULT OF THE EMPLOYER'S NEGLIGENCE. AN
17 EMPLOYEE IS NOT REQUIRED TO ENGAGE IN ANY ADMINISTRATIVE PROCESS BEFORE
18 BRINGING OR MAINTAINING THE CIVIL ACTION. THIS SUBSECTION DOES NOT AND IS
19 NOT INTENDED TO ABROGATE ANY EXISTING CAUSE OF ACTION UNDER FEDERAL OR
20 STATE LAW, INCLUDING FOR COMMON-LAW NEGLIGENCE, OR LIMIT THE DAMAGES
21 RECOVERABLE UNDER SUCH CAUSES OF ACTION.

22 J. NOTWITHSTANDING ANY OTHER LAW, A VIOLATION OF SUBSECTION F OF
23 THIS SECTION IS NOT CONSIDERED OTHERWISE PROVIDED, AUTHORIZED OR REQUIRED
24 BY LAW BY VIRTUE OF BEING REQUIRED BY THE TERMS OF AN EMPLOYER'S CONTRACT
25 WITH ANY PORTION OF THE GOVERNMENT OR A GOVERNMENT CONTRACTOR, INCLUDING
26 THE FEDERAL GOVERNMENT OR A FEDERAL GOVERNMENT CONTRACTOR, OR BEING
27 AUTHORIZED OR REQUIRED BY ANY FEDERAL LAW OR FEDERAL AGENCY RULE. IT IS
28 THE PUBLIC POLICY OF THIS STATE THAT THE RIGHT TO PROTECT THE
29 CONFIDENTIALITY OF THE INFORMATION CONTAINED WITHIN PATIENTS AND EMPLOYEES'
30 MEDICAL RECORDS IS BOTH PART OF THE POLICE POWER VESTED IN THE STATES AND A
31 LEGITIMATE AND DESIRABLE EXERCISE OF THAT POWER.

1 K. A PERSON WHO BRINGS OR DEFENDS A CIVIL ACTION FOR A VIOLATION OF
2 THIS SECTION HAS THE RIGHT TO HAVE THE CASE TRIED TO A JURY.

3 L. NOTWITHSTANDING ANY OTHER LAW, THE RIGHTS PRESCRIBED IN
4 SUBSECTIONS F, G, H, I, J AND K OF THIS SECTION AND ALL CAUSES OF ACTION
5 THAT ARISE OUT OF A VIOLATION OF A RIGHT, AS WELL AS THE RIGHT TO A JURY
6 TRIAL, MAY NOT BE WAIVED.

7 ~~F.~~ M. If a health care provider releases a patient's medical
8 records or payment records to a contractor for the purpose of duplicating
9 or disclosing the records on behalf of the health care provider, the
10 contractor shall not disclose any part or all of a patient's medical
11 records or payment records in its custody except as provided in this
12 article. After duplicating or disclosing a patient's medical records or
13 payment records on behalf of a health care provider, a contractor must
14 return the records to the health care provider who released the medical
15 records or payment records to the contractor.

16 N. FOR THE PURPOSES OF THIS SECTION, "EMPLOYER" INCLUDES AN
17 INDEPENDENT CONTRACTOR.

18 Sec. 3. Section 41-1464, Arizona Revised Statutes, is amended to
19 read:

20 41-1464. Other unlawful employment practices; opposition to
21 unlawful practices; filing of charges;
22 participation in proceedings; notices and
23 advertisements for employment

24 A. It is an unlawful employment practice for an employer to
25 discriminate against any of the employer's employees or applicants for
26 employment, for an employment agency or joint labor-management committee
27 controlling apprenticeship or other training or retraining programs,
28 including on-the-job training programs, to discriminate against any
29 individual or for a labor organization to discriminate against any member
30 or applicant for membership because the employee, the member, the applicant
31 or the individual in an apprenticeship or other training or retraining
32 program has opposed any practice that is an unlawful employment practice

1 under this article or has made a charge, testified, assisted or
2 participated in any manner in an investigation, proceeding or hearing under
3 article 6 of this chapter.

4 B. It is an unlawful employment practice for an employer, labor
5 organization, employment agency or joint labor-management committee
6 controlling apprenticeship or other training or retraining programs,
7 including on-the-job training programs, to print or publish or cause to be
8 printed or published any notice or advertisement relating to employment by
9 an employer or membership in or any classification or referral for
10 employment by a labor organization or relating to any classification or
11 referral for employment by an employment agency or relating to admission or
12 to employment in any program established to provide apprenticeship or other
13 training by a joint labor-management committee indicating any preference,
14 limitation, specification or discrimination based on race, color, religion,
15 sex or national origin, except that a notice or advertisement may indicate
16 a preference, limitation, specification or discrimination based on
17 religion, sex or national origin when religion, sex or national origin is a
18 bona fide occupational qualification for employment.

19 C. It is unlawful for an employer, labor organization or employment
20 agency to print or publish or cause to be printed or published any notice
21 or advertisement relating to employment by an employer or membership in or
22 any classification or referral for employment by a labor organization or
23 relating to any classification or referral for employment by an employment
24 agency, indicating any preference, limitation, specification or
25 discrimination based on age, except that the notice or advertisement may
26 indicate a preference, limitation, specification or discrimination based on
27 age when age is a bona fide occupational qualification for employment.

28 D. IT IS AN UNLAWFUL EMPLOYMENT PRACTICE FOR AN EMPLOYER TO VIOLATE
29 SECTION 12-2294, SUBSECTION F. THE REMEDIES FOR AN UNLAWFUL EMPLOYMENT
30 PRACTICE UNDER THIS TITLE ARE IN ADDITION TO, AND NOT EXCLUSIVE OF, THE
31 REMEDIES PROVIDED IN TITLE 12 AND ANY OTHER FEDERAL AND STATE LAW,
32 INCLUDING COMMON LAW REMEDIES.

1 Sec. 4. Legislative Intent

2 A. The legislature intends that section 12-2292, subsection C,
3 Arizona Revised Statutes, as added by this act, and section 12-2294,
4 subsection F, Arizona Revised Statutes, as added by this act, clarify
5 existing law.

6 B. The legislature intends with respect to section 12-2294,
7 subsection J, Arizona Revised Statutes, as added by this act, that this
8 power be exercised to the fullest extent allowed under the United States
9 and Arizona Constitutions and the Arizona Revised Statutes to safeguard the
10 confidentiality, notwithstanding a conflict with any act of the federal
11 government, except to the extent, if any, that the United States
12 Constitution expressly requires a contrary result.

13 C. The legislature intends that even though section 12-2294,
14 subsection K, Arizona Revised Statutes, as added by this act, specifically
15 recognizes the right to a jury trial, it is not meant to express a
16 legislative intent that a statute must specifically provide for the right
17 to a jury trial in order for a case to be so triable. The Arizona
18 Constitution provides that the right to a jury trial is "inviolable" and the
19 public policy of this state is that jury trials are favored means of
20 resolving disputes."

21 Amend title to conform

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