

Washington

Cedar Park Assembly of God v. Kreidler Case No. 3:19-cv-05181-BHS (9th Cir., March 6, 2025). The Ninth Circuit Court of Appeals ruled that Cedar Park Assembly of God of Kirkland cannot sue the state over Washington’s Reproductive Parity Act, which requires that employer-sponsored healthcare plans provide abortion access to members, under the Free Exercise Clause of the First Amendment. This ruling reverses a previous ruling the Ninth Circuit Court made in 2021, which found that the church did have standing.

Washington v. United States FDA, No. 1:23-CV-3026-TOR, 2023 U.S. Dist. LEXIS 61776 (E.D. Wash. Apr. 7, 2023) 17 states (Washington, Oregon, Arizona, Colorado, Connecticut, Delaware, Illinois, Michigan, Nevada, New Mexico, Rhode Island, Vermont, Hawaii, Maine, Maryland, Minnesota, Pennsylvania and District of Columbia) file Motion for Preliminary Injunction requesting the Court to affirm “...FDA’s original conclusion that mifepristone is safe and effective...”, prevent FDA’s removal of mifepristone from the market and enjoin FDA’s “unnecessary and burdensome” January 2023 REMS restrictions (plaintiffs argument is to prevent the application of any REMS to mifepristone). Plaintiffs motion is granted in part. Defendants are enjoined from changing the status quo and making mifepristone unavailable under the current January 2023 REMS. The ruling applies to plaintiffs’ jurisdictions and not nationwide.

DIRECTIVE OF THE GOVERNOR

25-01

DATE: January 10, 2025

TO: Department of Health

FROM: Governor Jay Inslee

SUBJECT: Adopting an emergency rule regarding emergency abortion care in Washington state

In the wake of the United States Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization* terminating the half-century-old constitutional right to abortion, Washington state took strong legislative, regulatory, and budgetary action to safeguard and enhance reproductive rights in our state. This action included the issuance of Directive 24-12, whereby I instructed the Department of Health to issue a policy statement reaffirming existing state legal requirements for hospitals to provide emergency abortion care and to enforce those requirements when unmet. Subsequent events call for further strengthening the bulwark guarding reproductive freedom and pregnant people’s right to receive treatment in a medical emergency in our state. Codifying clear legal requirements to provide emergency abortion care according to the standard of care and the informed consent of pregnant persons will promote patients’ access to needed care and health care providers’ ability to serve their patients in a manner consistent with their sound professional judgment. To that end, I hereby direct the Department of Health to adopt a rule requiring hospitals that provide emergency services to offer and provide treatment, including abortion where warranted, to a pregnant person with an emergency medical condition according to the standard of care or to make a legally authorized transfer. The rule must prohibit hospitals from withholding care because a person is pregnant, and from prioritizing the continuation of a pregnancy or the health of an embryo or fetus over the health or safety of the pregnant person without their informed consent. I direct the Department to adopt this rule on an emergency basis because, given the likelihood of imminent changes to federal abortion policy that would interfere with access to emergency abortion care and imperil the health of pregnant persons in Washington state, immediate adoption is necessary for the preservation of the public health, safety, and general welfare.

SENATE BILL 5093
PREGNANCY LOSS- VARIOUS PROVISIONS

Effective July 27, 2025 – Except for section 3, which takes effect July 1, 2027

Sec. 1.

NEW SECTION. The legislature finds that every Washingtonian should be treated with respect and dignity after a pregnancy loss and should be able to seek medical assistance without fear of civil or criminal liability. The threat of criminal prosecution of pregnancy outcomes is partly traceable to out-of-date provisions in state law that allow investigations of certain abortions and pregnancy losses. The legislature further finds that removal of these provisions changes neither requirements to report births or deaths, including fetal deaths, or prepare and publish vital statistics under chapter 70.58A RCW, nor the ability of coroners to investigate deaths, including fetal deaths, that may have been caused by unlawful or suspicious circumstances, including violence against the pregnant person, provided such investigations are not used to criminalize the pregnant person who experienced the pregnancy loss or had an abortion. SSB 5093.SL 1

Sec. 2.

RCW 68.50.010 and 2021 c 127 s 7 are each amended to read as follows:

The jurisdiction of bodies of all deceased persons who come to their death suddenly when in apparent good health without medical attendance within the ~~((thirty-six))~~ 36 hours preceding death; or where the circumstances of death indicate death was caused by unnatural or unlawful means; or where death occurs under suspicious circumstances; or where a coroner's autopsy or postmortem or coroner's inquest is to be held; or where death results from unknown or obscure causes, or where death occurs within one year following an accident; or where the death is caused by any violence whatsoever, ~~((or where death results from a known or suspected abortion;))~~ whether self-induced or otherwise; where death apparently results from drowning, hanging, burns, electrocution, gunshot wounds, stabs or cuts, lightning, starvation, radiation, exposure, alcoholism, narcotics or other addictions, tetanus, strangulations, suffocation or smothering; ~~((or where death is due to premature birth or still birth;))~~ or where death is due to a violent contagious disease or suspected contagious disease which may be a public health hazard; or where death results from alleged rape, carnal knowledge or sodomy, where death occurs in a jail or prison; where a body is found dead or is not claimed by relatives or friends, is hereby vested in the county coroner or medical examiner, which bodies may be removed and placed in the morgue under such rules as are adopted by the coroner or medical examiner with the approval of the county commissioners, having jurisdiction, providing therein how the bodies shall be brought to and cared for at the morgue and held for the proper identification where necessary.

Sec. 3.

NEW SECTION. A new section is added to chapter 43.70 RCW to read as follows:

(1) Correctional institutions and private detention facilities shall report annually to the department of health on the aggregate number of people who experience miscarriage, stillbirth, or perinatal loss while confined or incarcerated in such facilities.

(2) The department of health shall deliver an annual statewide report to the legislature that details the aggregate number of people who experience miscarriage, stillbirth, or perinatal loss while confined or incarcerated in correctional institutions and private detention facilities. The first report shall be delivered by June 30, 2029. The report may not include personal identifying information concerning the individuals who experience miscarriage, stillbirth, or perinatal loss.

(3) For purposes of this section:

(a) "Correctional institutions" has the same meaning as "correctional institution" as defined in RCW 9.94.049, including any juvenile correctional facility under alternative administration operated by a consortium of counties under RCW **13.04.035**.

(b) "Private detention facilities" has the same meaning as defined in RCW 70.395.020.

Sec. 4. RCW 9.02.050 (Concealing birth) and 1909 c 249 s 200 are repealed.

RCW 9.02.100 Reproductive Privacy—Public Policy.

The sovereign people hereby declare that every individual possesses a fundamental right of privacy with respect to personal reproductive decisions.

Accordingly, it is the public policy of the state of Washington that:

- (1) Every individual has the fundamental right to choose or refuse birth control;
- (2) Every pregnant individual has the fundamental right to choose or refuse to have an abortion, except as specifically limited by RCW **9.02.100** through **9.02.170** and **9.02.900** through **9.02.902**;
- (3) Except as specifically permitted by RCW **9.02.100** through **9.02.170** and **9.02.900** through **9.02.902**, the state shall not deny or interfere with a pregnant individual's fundamental right to choose or refuse to have an abortion; and
- (4) The state shall not discriminate against the exercise of these rights in the regulation or provision of benefits, facilities, services, or information.
[**2022 c 65 s 2**; **1992 c 1 s 1** (Initiative Measure No. 120, approved November 5, 1991).]

RCW § 9.02.110. Right to have and provide.

The state may not deny or interfere with a pregnant individual's right to choose to have an abortion prior to viability of the fetus, or to protect the pregnant individual's life or health.

A physician, physician assistant, advanced registered nurse practitioner, or other health care provider acting within the provider's scope of practice may terminate and a health care provider may assist a physician, physician assistant, advanced registered nurse practitioner, or other health care provider acting within the provider's scope of practice in terminating a pregnancy as permitted by this section.

RCW § 9.02.120. Unauthorized abortions — Penalty.

Unless authorized by [RCW 9.02.110](#), any person who performs an abortion on another person shall be guilty of a class C felony punishable under chapter 9A.20 RCW. The state shall not penalize, prosecute, or otherwise take adverse action against an individual based on their actual, potential, perceived, or alleged pregnancy outcomes. Nor shall the state penalize, prosecute, or otherwise take adverse action against someone for aiding or assisting a pregnant individual in exercising their right to reproductive freedom with their voluntary consent.

RCW § 9.02.130. Defenses to prosecution.

The good faith judgment of a physician, physician assistant, advanced registered nurse practitioner, or other health care provider acting within the provider's scope of practice as to viability of the fetus or as to the risk to life or health of a pregnant individual and the good faith judgment of a health care provider as to the duration of pregnancy shall be a defense in any proceeding in which a violation of this chapter is an issue.

RCW 9.02.140
State regulation.

Any regulation promulgated by the state relating to abortion shall be valid only if:

- (1) The regulation is medically necessary to protect the life or health of the pregnant individual who is terminating the pregnancy,
- (2) The regulation is consistent with established medical practice, and
- (3) Of the available alternatives, the regulation imposes the least restrictions on the pregnant individual's right to have an abortion as defined by RCW 9.02.100 through 9.02.170 and 9.02.900 through 9.02.902.

[2022 c 65 s 5; 1992 c 1 s 5 (Initiative Measure No. 120, approved November 5, 1991).]

RCW 18.71.240 Abortion

Right to medical treatment of infant born alive. The right of medical treatment of an infant born alive in the course of an abortion procedure shall be the same as the right of an infant born prematurely of equal gestational age. [1981 c 328 s 1.]

RCW 9.73.040:

- (1) An ex parte order for the interception of any communication or conversation listed in RCW 9.73.030 may be issued by any superior court judge in the state upon verified application of either the state attorney general or any county prosecuting attorney setting forth fully facts and circumstances upon which the application is based and stating that:
 - (a) There are reasonable grounds to believe that national security is endangered, that a human life is in danger, that arson is about to be committed, or that a riot is about to be committed, and
 - (b) There are reasonable grounds to believe that evidence will be obtained essential to the protection of national security, the preservation of human life, or the prevention of arson or a riot, and
 - (c) There are no other means readily available for obtaining such information.
- (2) Any application pursuant to this section that seeks communications or conversations related to an investigation that alleges criminal liability for the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services as defined in section 2 of this act that are lawful in the state of Washington shall include an attestation, made under penalty of perjury, stating that the application seeks information related to the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services as defined in section 2 of this act that are lawful in the state of Washington.
- (3) Where statements are solely upon the information and belief of the applicant, the grounds for the belief must be given.
- (4) The applicant must state whether any prior application has been made to obtain such communications on the same instrument or for the same person and if such prior application exists the applicant shall disclose the current status thereof.

(5) The application and any order issued under RCW 25 9.73.030 through 9.73.080 shall identify as fully as possible the 26 particular equipment, lines or location from which the information is to be obtained and the purpose thereof.

(6) The court may examine upon oath or affirmation the 29 applicant and any witness the applicant desires to produce or the court requires to be produced.

(7) Orders issued under this section shall be effective 32 for fifteen days, after which period the court which issued the order 33 may upon application of the officer who secured the original order 34 renew or continue the order for an additional period not to exceed fifteen days.

(8) No order issued under this section shall authorize or 37 purport to authorize any activity which would violate any laws of the United States.

(9) The court shall not issue an order for the interception of 40 any communication or conversation for the purpose of investigating or p. 5 ESHB 1469.PL 1 recovering evidence that relates to an investigation that alleges 2 criminal liability for the provision, receipt, attempted provision or 3 receipt, assistance in the provision or receipt, or attempted 4 assistance in the provision or receipt of protected health care 5 services as defined in section 2 of this act that are lawful in the state of Washington.

RCW 9.73.260 (7)(a)

(7)(a) If an application for the installation and use of a pen register, trap and trace device, or cell site simulator device is for the purpose of investigating or recovering evidence that relates to an investigation that alleges criminal liability for the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services as defined in section 2 of this act that are lawful in the state of Washington, the applicant shall include an attestation, made under penalty of perjury, stating that the application seeks information related to the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services as defined in section 2 of this act that are lawful in the state of Washington.

(b) The court shall not issue an order for the installation and use of pen registers, trap and trace devices, and cell site simulator devices for the purpose of investigating or recovering evidence that relates to an investigation that alleges criminal liability for the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services as defined in section 2 of this act that are lawful in the state of Washington.

RCW 10.88.250 (2)

(2) The governor of this state shall not surrender any person described in subsection (1) of this section where the charge against the person is based on the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services as defined in section 2 of this act that are lawful in the state of Washington.

RCW 10.88.320 (2)-(3)

(2) Any person making such charge or complaint and affidavit under this section with information that the charge for the commission of the crime in another state is related to criminal liability that is based on the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services as

defined in section 2 of this act that are lawful in the state of Washington has an affirmative duty to disclose to the judge or magistrate that the charge for the commission of the crime in another state is related to criminal liability that is based on the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services as defined in section 2 of this act that are lawful in the state of Washington and shall provide an attestation stating whether such charge or complaint relates to criminal liability that is based on such protected health care services. Any false attestation submitted under this subsection is subject to a statutory penalty of \$10,000 per violation. Submission of such attestation subjects the attester to the jurisdiction of the courts of Washington state for any suit, penalty, or damages arising out of a false attestation under this section.

(3) Except in cases arising under RCW 10.88.220, the issuance of a warrant is prohibited for a charge or complaint that is related to criminal liability that is based on the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services as defined in section 2 of this act that are lawful in the state of Washington.

RCW 10.88.330 (c)- (3)

(c) The regional commissioner of customs certifies to the state of Washington that the customs officer has received proper training within the agency to enable that officer to enforce or administer this subsection.

(3) The arrest of a person is prohibited if the arrest is related to criminal liability that is based on the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services as defined in section 2 of this act that are lawful in the state of Washington.

RCW 10.96.040:

(1) A Washington recipient, when served with process that was issued by or in another state that on its face purports to be valid criminal process, shall comply with that process as if that process had been issued by a Washington court if the criminal process includes an attestation, made under penalty of perjury, stating that such process does not relate to criminal liability that is based on the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services as defined in section 2 of this act that are lawful in the state of Washington. Any false attestation submitted under this section is subject to a statutory penalty of \$10,000 per violation. Submission of such attestation subjects the attester to the jurisdiction of the courts of Washington state for any suit, penalty, or damages arising out of a false attestation under this section.

(2) A Washington recipient shall not be required to comply with a criminal process issued by or in another state that is related to criminal liability that is based on the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services as defined in section 2 of this act that are lawful in the state of Washington.

RCW 9A.50.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter. (1) "Health care facility" means a facility that provides health care services directly to patients, including but not limited to, a hospital, clinic, health care provider's office, health maintenance organization, diagnostic or treatment center, neuropsychiatric or mental health facility, hospice, or nursing home. (2) "Health care provider" has the same meaning as defined in RCW 7.70.020 (1) and (2), and also means an officer, director, employee, or agent of a health care facility who sues or testifies regarding matters within the scope

of his or her employment. (3) "Aggrieved" means: (a) A person, physically present at the health care facility when the prohibited actions occur, whose access is or is about to be obstructed or impeded; (b) A person, physically present at the health care facility when the prohibited actions occur, whose care is or is about to be disrupted; (c) The health care facility, its employees, or agents; (d) The owner of the health care facility or the building or property upon which the health care facility is located. [1993 c 128 s 2.]

RCW 9A.50.020 Interference with health care facility.

It is unlawful for a person except as otherwise protected by state or federal law, alone or in concert with others, to willfully or recklessly interfere with access to or from a health care facility or willfully or recklessly disrupt the normal functioning of such facility by: (1) Physically obstructing or impeding the free passage of a person seeking to enter or depart from the facility or from the common areas of the real property upon which the facility is located; (2) Making noise that unreasonably disturbs the peace within the facility; (3) Trespassing on the facility or the common areas of the real property upon which the facility is located; (4) Telephoning the facility repeatedly, or knowingly permitting any telephone under his or her control to be used for such purpose; or (5) Threatening to inflict injury on the owners, agents, patients, employees, or property of the facility or knowingly permitting any telephone under his or her control to be used for such purpose. [1993 c 128 s 3.]

RCW 9A.50.030 Penalty.

(1) A violation of RCW 9A.50.020 is a gross misdemeanor. A person convicted of violating RCW 9A.50.020 shall be punished as follows:

(a) For a first offense, a fine of not less than two hundred fifty dollars and a jail term of not less than twenty-four consecutive hours;

(b) For a second offense, a fine of not less than five hundred dollars and a jail term of not less than seven consecutive days; and

(c) For a third or subsequent offense, a fine of not less than one thousand dollars and a jail term of not less than thirty consecutive days.

(2) The fines imposed by this section apply to adult offenders only.

[2015 c 265 s 17; 1993 c 128 s 4.]

RCW 9A.50.040 Civil remedies.

(1) A person or health care facility aggrieved by the actions prohibited by RCW 9A.50.020 may seek civil damages from those who committed the prohibited acts and those acting in concert with them. A plaintiff in an action brought under this chapter shall not recover more than his or her actual damages and additional sums authorized in RCW 9A.50.050. Once a plaintiff recovers his or her actual damages and any additional sums authorized under this chapter, additional damages shall not be recovered. A person does not have to be criminally convicted of violating RCW 9A.50.020 to be held civilly liable under this section. It is not necessary to prove actual damages to recover the additional sums authorized under RCW 9A.50.050, costs, and attorneys' fees. The prevailing party is entitled to recover costs and attorneys' fees. (2) The superior courts of this state shall have authority to grant temporary, preliminary, and permanent injunctive relief to enjoin violations of this chapter. In appropriate circumstances, any superior court having personal jurisdiction over one or more defendants may issue injunctive relief that shall have binding effect on the original defendants and persons acting in concert with the original defendants, in any county in the state. Due to the nature of the harm involved, injunctive relief may be issued without

bond in the discretion of the court, notwithstanding any other requirement imposed by statute. The state and its political subdivisions shall cooperate in the enforcement of court injunctions that seek to protect against acts prohibited by this chapter. [1993 c 128 s 6.]

RCW 9A.50.050 Civil damages.

In a civil action brought under this chapter, an individual plaintiff aggrieved by the actions prohibited by RCW 9A.50.020 may be entitled to recover up to five hundred dollars for each day that the actions occurred, or up to five thousand dollars for each day that the actions occurred if the plaintiff aggrieved by the actions prohibited under RCW 9A.50.020 is a health care facility. [1993 c 128 s 7.]

RCW 9A.50.070

Protection of health care patients and providers. A court having jurisdiction over a criminal or civil proceeding under this chapter shall take all steps reasonably necessary to safeguard the individual privacy and prevent harassment of a health care patient or health care provider who is a party or witness in a proceeding, including granting protective orders and orders in limine. [1993 c 128 s 9.]

RCW 9A.50.900 Construction.

Nothing in this chapter shall be construed to limit the right to seek other available criminal or civil remedies. The remedies provided in this chapter are cumulative, not exclusive. [1993 c 128 s 11.]

RCW § 19.373.005 Finding—Intent—2023 c 191.

(1) The legislature finds that the people of Washington regard their privacy as a fundamental right and an essential element of their individual freedom. Washington's Constitution explicitly provides the right to privacy. Fundamental privacy rights have long been and continue to be integral to protecting Washingtonians and to safeguarding our democratic republic.

(2) Information related to an individual's health conditions or attempts to obtain health care services is among the most personal and sensitive categories of data collected. Washingtonians expect that their health data is protected under laws like the health information portability and accountability act (HIPAA). However, HIPAA only covers health data collected by specific health care entities, including most health care providers. Health data collected by noncovered entities, including certain apps and websites, are not afforded the same protections. Chapter 191, Laws of 2023 works to close the gap between consumer knowledge and industry practice by providing stronger privacy protections for all Washington consumers' health data.

(3) With chapter 191, Laws of 2023, the legislature intends to provide heightened protections for Washingtonian's health data by: Requiring additional disclosures and consumer consent regarding the collection, sharing, and use of such information; empowering consumers with the right to have their health data deleted; prohibiting the selling of consumer health data without valid authorization signed by the consumer; and making it unlawful to utilize a geofence around a facility that provides health care services.

RCW § 19.373.010 Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "**Abortion**" means the termination of a pregnancy for purposes other than producing a live birth.

(2) **"Affiliate"** means a legal entity that shares common branding with another legal entity and controls, is controlled by, or is under common control with another legal entity. For the purposes of this definition, "control" or "controlled" means:

- (a) Ownership of, or the power to vote, more than 50 percent of the outstanding shares of any class of voting security of a company;
- (b) Control in any manner over the election of a majority of the directors or of individuals exercising similar functions; or
- (c) The power to exercise controlling influence over the management of a company.

(3) **"Authenticate"** means to use reasonable means to determine that a request to exercise any of the rights afforded in this chapter is being made by, or on behalf of, the consumer who is entitled to exercise such consumer rights with respect to the consumer health data at issue.

(4) **"Biometric data"** means data that is generated from the measurement or technological processing of an individual's physiological, biological, or behavioral characteristics and that identifies a consumer, whether individually or in combination with other data. Biometric data includes, but is not limited to:

- (a) Imagery of the iris, retina, fingerprint, face, hand, palm, vein patterns, and voice recordings, from which an identifier template can be extracted; or
- (b) Keystroke patterns or rhythms and gait patterns or rhythms that contain identifying information.

(5) **"Collect"** means to buy, rent, access, retain, receive, acquire, infer, derive, or otherwise process consumer health data in any manner.

(6)

(a) **"Consent"** means a clear affirmative act that signifies a consumer's freely given, specific, informed, opt-in, voluntary, and unambiguous agreement, which may include written consent provided by electronic means.

(b) **"Consent"** may not be obtained by:

- (i) A consumer's acceptance of a general or broad terms of use agreement or a similar document that contains descriptions of personal data processing along with other unrelated information;
- (ii) A consumer hovering over, muting, pausing, or closing a given piece of content; or
- (iii) A consumer's agreement obtained through the use of deceptive designs.

(7) **"Consumer"** means **(a) a natural person who is a Washington resident; or (b) a natural person whose consumer health data is collected in Washington. "Consumer" means a natural person who acts only in an individual or household context, however identified, including by any unique identifier. "Consumer" does not include an individual acting in an employment context.**

(8)

(a) **"Consumer health data"** means personal information that is linked or reasonably linkable to a consumer and that identifies the consumer's past, present, or future physical or mental health status.

(b) For the purposes of this definition, physical or mental health status includes, but is not limited to:

- (i) Individual health conditions, treatment, diseases, or diagnosis;
- (ii) Social, psychological, behavioral, and medical interventions;
- (iii) Health-related surgeries or procedures;
- (iv) Use or purchase of prescribed medication;
- (v) Bodily functions, vital signs, symptoms, or measurements of the information described in this subsection (8)(b);
- (vi) Diagnoses or diagnostic testing, treatment, or medication;
- (vii) Gender-affirming care information;

- (viii) Reproductive or sexual health information;
- (ix) Biometric data;
- (x) Genetic data;
- (xi) Precise location information that could reasonably indicate a consumer's attempt to acquire or receive health services or supplies;
- (xii) Data that identifies a consumer seeking health care services; or
- (xiii) Any information that a regulated entity or a small business, or their respective processor, processes to associate or identify a consumer with the data described in (b)(i) through (xii) of this subsection that is derived or extrapolated from nonhealth information (such as proxy, derivative, inferred, or emergent data by any means, including algorithms or machine learning).

(c) "**Consumer health data**" does not include personal information that is used to engage in public or peer-reviewed scientific, historical, or statistical research in the public interest that adheres to all other applicable ethics and privacy laws and is approved, monitored, and governed by an institutional review board, human subjects research ethics review board, or a similar independent oversight entity that determines that the regulated entity or the small business has implemented reasonable safeguards to mitigate privacy risks associated with research, including any risks associated with reidentification.

(9) "**Deceptive design**" means a user interface designed or manipulated with the effect of subverting or impairing user autonomy, decision making, or choice.

(10) "Deidentified data" means data that cannot reasonably be used to infer information about, or otherwise be linked to, an identified or identifiable consumer, or a device linked to such consumer, if the regulated entity or the small business that possesses such data (a) takes reasonable measures to ensure that such data cannot be associated with a consumer; (b) publicly commits to process such data only in a deidentified fashion and not attempt to reidentify such data; and (c) contractually obligates any recipients of such data to satisfy the criteria set forth in this subsection (10).

(11) "**Gender-affirming care information**" means personal information relating to seeking or obtaining past, present, or future gender-affirming care services. "Gender-affirming care information" includes, but is not limited to:

- (a) Precise location information that could reasonably indicate a consumer's attempt to acquire or receive gender-affirming care services;
- (b) Efforts to research or obtain gender-affirming care services; or
- (c) Any gender-affirming care information that is derived, extrapolated, or inferred, including from nonhealth information, such as proxy, derivative, inferred, emergent, or algorithmic data.

(12) "**Gender-affirming care services**" means health services or products that support and affirm an individual's gender identity including, but not limited to, social, psychological, behavioral, cosmetic, medical, or surgical interventions. "Gender-affirming care services" includes, but is not limited to, treatments for gender dysphoria, gender-affirming hormone therapy, and gender-affirming surgical procedures.

(13) "Genetic data" means any data, regardless of its format, that concerns a consumer's genetic characteristics. "Genetic data" includes, but is not limited to:

- (a) Raw sequence data that result from the sequencing of a consumer's complete extracted deoxyribonucleic acid (DNA) or a portion of the extracted DNA;
- (b) Genotypic and phenotypic information that results from analyzing the raw sequence data; and
- (c) Self-reported health data that a consumer submits to a regulated entity or a small business and that is analyzed in connection with consumer's raw sequence data.

(14) "**Geofence**" means technology that uses global positioning coordinates, cell tower connectivity, cellular data, radio frequency identification, Wifi data, and/or any other form of

spatial or location detection to establish a virtual boundary around a specific physical location, or to locate a consumer within a virtual boundary. For purposes of this definition, "geofence" means a virtual boundary that is 2,000 feet or less from the perimeter of the physical location.

(15) "Health care services" means any service provided to a person to assess, measure, improve, or learn about a person's mental or physical health, including but not limited to:

- (a) Individual health conditions, status, diseases, or diagnoses;
- (b) Social, psychological, behavioral, and medical interventions;
- (c) Health-related surgeries or procedures;
- (d) Use or purchase of medication;
- (e) Bodily functions, vital signs, symptoms, or measurements of the information described in this subsection;
- (f) Diagnoses or diagnostic testing, treatment, or medication;
- (g) Reproductive health care services; or
- (h) Gender-affirming care services.

(16) "Homepage" means the introductory page of an internet website and any internet webpage where personal information is collected. In the case of an online service, such as a mobile application, homepage means the application's platform page or download page, and a link within the application, such as from the application configuration, "about," "information," or settings page.

(17) "Person" means, where applicable, natural persons, corporations, trusts, unincorporated associations, and partnerships. "Person" does not include government agencies, tribal nations, or contracted service providers when processing consumer health data on behalf of a government agency.

(18)

(a) "Personal information" means information that identifies or is reasonably capable of being associated or linked, directly or indirectly, with a particular consumer. "Personal information" includes, but is not limited to, data associated with a persistent unique identifier, such as a cookie ID, an IP address, a device identifier, or any other form of persistent unique identifier.

(b) "Personal information" does not include publicly available information.

(c) "Personal information" does not include deidentified data.

(19) "Precise location information" means information derived from technology including, but not limited to, global positioning system level latitude and longitude coordinates or other mechanisms, that directly identifies the specific location of an individual with precision and accuracy within a radius of 1,750 feet. "Precise location information" does not include the content of communications, or any data generated by or connected to advanced utility metering infrastructure systems or equipment for use by a utility.

(20) "Process" or "processing" means any operation or set of operations performed on consumer health data.

(21) "Processor" means a person that processes consumer health data on behalf of a regulated entity or a small business.

(22) "Publicly available information" means information that (a) is lawfully made available through federal, state, or municipal government records or widely distributed media, and (b) a regulated entity or a small business has a reasonable basis to believe a consumer has lawfully made available to the general public. "Publicly available information" does not include any biometric data collected about a consumer by a business without the consumer's consent.

(23) "Regulated entity" means any legal entity that: (a) Conducts business in Washington, or produces or provides products or services that are targeted to consumers in Washington; and (b) alone or jointly with others, determines the purpose and means of collecting, processing, sharing, or selling of consumer health data. "Regulated entity" does not mean government **agencies, tribal**

nations, or contracted service providers when processing consumer health data on behalf of the government agency.

(24) "Reproductive or sexual health information" means personal information relating to seeking or obtaining past, present, or future reproductive or sexual health services. "Reproductive or sexual health information" includes, but is not limited to:

- (a) Precise location information that could reasonably indicate a consumer's attempt to acquire or receive reproductive or sexual health services;
- (b) Efforts to research or obtain reproductive or sexual health services; or
- (c) Any reproductive or sexual health information that is derived, extrapolated, or inferred, including from nonhealth information (such as proxy, derivative, inferred, emergent, or algorithmic data).

(25) "Reproductive or sexual health services" means health services or products that support or relate to a consumer's reproductive system or sexual well-being, including but not limited to:

- (a) Individual health conditions, status, diseases, or diagnoses;
- (b) Social, psychological, behavioral, and medical interventions;
- (c) Health-related surgeries or procedures including, but not limited to, abortions;
- (d) Use or purchase of medication including, but not limited to, medications for the purposes of abortion;
- (e) Bodily functions, vital signs, symptoms, or measurements of the information described in this subsection;
- (f) Diagnoses or diagnostic testing, treatment, or medication; and
- (g) Medical or nonmedical services related to and provided in conjunction with an abortion, including but not limited to associated diagnostics, counseling, supplies, and follow-up services.

(26)

(a) "Sell" or "sale" means the exchange of consumer health data for monetary or other valuable consideration.

(b) "Sell" or "sale" does not include the exchange of consumer health data for monetary or other valuable consideration:

- (i) To a third party as an asset that is part of a merger, acquisition, bankruptcy, or other transaction in which the third party assumes control of all or part of the regulated entity's or the small business's assets that complies with the requirements and obligations in this chapter; or
- (ii) By a regulated entity or a small business to a processor when such exchange is consistent with the purpose for which the consumer health data was collected and disclosed to the consumer.

(27)

(a) "Share" or "sharing" means to release, disclose, disseminate, divulge, make available, provide access to, license, or otherwise communicate orally, in writing, or by electronic or other means, consumer health data by a regulated entity or a small business to a third party or affiliate.

(b) The term "share" or "sharing" does not include:

- (i) The disclosure of consumer health data by a regulated entity or a small business to a processor when such sharing is to provide goods or services in a manner consistent with the purpose for which the consumer health data was collected and disclosed to the consumer;
- (ii) The disclosure of consumer health data to a third party with whom the consumer has a direct relationship when: (A) The disclosure is for purposes of providing a product or service requested by the consumer; (B) the regulated entity or the small business maintains control and ownership of the data; and (C) the third party uses the consumer health data only at **direction from**

the regulated entity or the small business and consistent with the purpose for which it was collected and consented to by the consumer; or
(iii) The disclosure or transfer of personal data to a third party as an asset that is part of a merger, acquisition, bankruptcy, or other transaction in which the third party assumes control of all or part of the regulated entity's or the small business's assets and complies with the requirements and obligations in this chapter.

(28) "Small business" means a regulated entity that satisfies one or both of the following thresholds:

- (a) Collects, processes, sells, or shares consumer health data of fewer than 100,000 consumers during a calendar year; or
- (b) Derives less than 50 percent of gross revenue from the collection, processing, selling, or sharing of consumer health data, and controls, processes, sells, or shares consumer health data of fewer than 25,000 consumers.

(29) "Third party" means an entity other than a consumer, regulated entity, processor, small business, or affiliate of the regulated entity or the small business.

RCW § 19.373.020 Consumer health data privacy policy.

(1)

(a) Except as provided in subsection (2) of this section, beginning March 31, 2024, a regulated entity and a small business shall maintain a consumer health data privacy policy that clearly and conspicuously discloses:

- (i) The categories of consumer health data collected and the purpose for which the data is collected, including how the data will be used;
- (ii) The categories of sources from which the consumer health data is collected;
- (iii) The categories of consumer health data that is shared;
- (iv) A list of the categories of third parties and specific affiliates with whom the regulated entity or the small business shares the consumer health data; and
- (v) How a consumer can exercise the rights provided in RCW [19.373.040](#).

(b) A regulated entity and a small business shall prominently publish a link to its consumer health data privacy policy on its homepage.

(c) A regulated entity or a small business may not collect, use, or share additional categories of consumer health data not disclosed in the consumer health data privacy policy without first disclosing the additional categories and obtaining the consumer's affirmative consent prior to the collection, use, or sharing of such consumer health data.

(d) A regulated entity or a small business may not collect, use, or share consumer health data for additional purposes not disclosed in the consumer health data privacy policy without first disclosing the additional purposes and obtaining the consumer's affirmative consent prior to the collection, use, or sharing of such consumer health data.

(e) It is a violation of this chapter for a regulated entity or a small business to contract with a processor to process consumer health data in a manner that is inconsistent with the regulated entity's or the small business's consumer health data privacy policy.

(2) A small business must comply with this section beginning June 30, 2024.

RCW § 19.373.030 Collection or sharing of consumer health data.

(1)

(a) Except as provided in subsection (2) of this section, beginning March 31, 2024, a regulated entity or a small business may not collect any consumer health data except:

- (i) With consent from the consumer for such collection for a specified purpose; or
- (ii) To the extent necessary to provide a product or service that the consumer to whom such consumer health data relates has requested from such regulated entity or small business.

(b) A regulated entity or a small business may not share any consumer health data except:

- (i) With consent from the consumer for such sharing that is separate and distinct from the consent obtained to collect consumer health data; or
- (ii) To the extent necessary to provide a product or service that the consumer to whom such consumer health data relates has requested from such regulated entity or small business.

(c) Consent required under this section must be obtained prior to the collection or sharing, as applicable, of any consumer health data, and the request for consent must clearly and conspicuously disclose: (i) The categories of consumer health data collected or shared; (ii) the purpose of the collection or sharing of the consumer health data, including the specific ways in which it will be used; (iii) the categories of entities with whom the consumer health data is shared; and (iv) how the consumer can withdraw consent from future collection or sharing of the consumer's health data.

(d) A regulated entity or a small business may not unlawfully discriminate against a consumer for exercising any rights included in this chapter.

(2) A small business must comply with this section beginning June 30, 2024.

RCW § 19.373.040 Consumer rights and requests—Refusal—Appeal.

(1)

(a) Except as provided in subsection (2) of this section, beginning March 31, 2024, a consumer has the right to confirm whether a regulated entity or a small business is collecting, sharing, or selling consumer health data concerning the consumer and to access such data, including a list of all third parties and affiliates with whom the regulated entity or the small business has shared or sold the consumer health data and an active email address or other online mechanism that the consumer may use to contact these third parties.

(b) A consumer has the right to withdraw consent from the regulated entity's or the small business's collection and sharing of consumer health data concerning the consumer.

(c) A consumer has the right to have consumer health data concerning the consumer deleted and may exercise that right by informing the regulated entity or the small business of the consumer's request for deletion.

(i) A regulated entity or a small business that receives a consumer's request to delete any consumer health data concerning the consumer shall:

(A) Delete the consumer health data from its records, including from all parts of the regulated entity's or the small business's network, including archived or backup systems pursuant to (c)(iii) of this subsection; and

(B) Notify all affiliates, processors, contractors, and other third parties with whom the regulated entity or the small business has shared consumer health data of the deletion request.

(ii) All affiliates, processors, contractors, and other third parties that receive notice of a consumer's deletion request shall honor the consumer's deletion request and delete the consumer health data from its records, subject to the same requirements of this chapter.

(iii) If consumer health data that a consumer requests to be deleted is stored on archived or backup systems, then the request for deletion may be delayed to enable restoration of the archived or backup systems and such delay may not exceed six months from authenticating the deletion request.

(d) A consumer may exercise the rights set forth in this chapter by submitting a request, at any time, to a regulated entity or a small business. Such a request may be made by a secure and reliable means established by the regulated entity or the small business and described in its consumer health data privacy policy. The method must **take into account the ways in**

which consumers normally interact with the regulated entity or the small business, the need for secure and reliable communication of such requests, and the ability of the regulated entity or the small business to authenticate the identity of the consumer making the request. A regulated entity or a small business may not require a consumer to create a new account in order to exercise consumer rights pursuant to this chapter but may require a consumer to use an existing account.

(e) If a regulated entity or a small business is unable to authenticate the request using commercially reasonable efforts, the regulated entity or the small business is not required to comply with a request to initiate an action under this section and may request that the consumer provide additional information reasonably necessary to authenticate the consumer and the consumer's request.

(f) Information provided in response to a consumer request must be provided by a regulated entity and a small business free of charge, up to twice annually per consumer. If requests from a consumer are manifestly unfounded, excessive, or repetitive, the regulated entity or the small business may charge the consumer a reasonable fee to cover the administrative costs of complying with the request or decline to act on the request. The regulated entity and the small business bear the burden of demonstrating the manifestly unfounded, excessive, or repetitive nature of the request.

(g) A regulated entity and a small business shall comply with the consumer's requests under subsection (1)(a) through (c) of this section [(a) through (c) of this subsection] without undue delay, but in all cases within 45 days of receipt of the request submitted pursuant to the methods described in this section. A regulated entity and a small business must promptly take steps to authenticate a consumer request but this does not extend the regulated entity's and the small business's duty to comply with the consumer's request within 45 days of receipt of the consumer's request. The response period may be extended once by 45 additional days when reasonably necessary, taking into account the complexity and number of the consumer's requests, so long as the regulated entity or the small business informs the consumer of any such extension within the initial 45-day response period, together with the reason for the extension.

(h) A regulated entity and a small business shall establish a process for a consumer to appeal the regulated entity's or the small business's refusal to take action on a request within a reasonable period of time after the consumer's receipt of the decision. The appeal process must be conspicuously available and similar to the process for submitting requests to initiate action pursuant to this section. Within 45 days of receipt of an appeal, a regulated entity or a small business shall inform the consumer in writing of any action taken or not taken in response to the appeal, including a written explanation of the reasons for the decisions. If the appeal is denied, the regulated entity or the small business shall also provide the consumer with an online **mechanism, if available, or other method through** which the consumer may contact the attorney general to submit a complaint.

(2) A small business must comply with this section beginning June 30, 2024.

RCW § 19.373.050 Data security practices.

(1) Except as provided in subsection (2) of this section, beginning March 31, 2024, a regulated entity and a small business shall:

(a) Restrict access to consumer health data by the employees, processors, and contractors of such regulated entity or small business to only those employees, processors, and contractors for which access is necessary to further the purposes for which the consumer provided consent or where necessary to provide a product or service that the consumer to whom such consumer health data relates has requested from such regulated entity or small business; and

(b) Establish, implement, and maintain administrative, technical, and physical data security practices that, at a minimum, satisfy reasonable standard of care within the regulated entity's or the small business's industry to protect the confidentiality, integrity, and accessibility of consumer health data appropriate to the volume and nature of the consumer health data at issue.

(2) A small business must comply with this section beginning June 30, 2024.

RCW § 19.373.060 Processors.

(1)

(a)

(i) Except as provided in subsection (2) of this section, beginning March 31, 2024, a processor may process consumer health data only pursuant to a binding contract between the processor and the regulated entity or the small business that sets forth the processing instructions and limit the actions the processor may take with respect to the consumer health data it processes on behalf of the regulated entity or the small business.

(ii) A processor may process consumer health data only in a manner that is consistent with the binding instructions set forth in the contract with the regulated entity or the small business.

(b) A processor shall assist the regulated entity or the small business by appropriate technical and organizational measures, insofar as this is possible, in fulfilling the regulated entity's and the small business's obligations under this chapter.

(c) If a processor fails to adhere to the regulated entity's or the small business's instructions or processes consumer health data in a manner that is outside the scope of the processor's contract with the regulated entity or the small business, the processor is considered a regulated entity or a small business with regard to such data and is subject to all the requirements of this chapter with regard to such data.

(2) A small business must comply with this section beginning June 30, 2024.

RCW § 19.373.070 Valid authorization to sell—Defects—Provision to consumer.

(1) Except as provided in subsection (6) of this section, beginning March 31, 2024, it is unlawful for any person to sell or offer to sell consumer health data concerning a consumer without first obtaining valid authorization from the consumer. The sale of consumer health data must be consistent with the valid authorization signed by the consumer. This authorization must be separate and distinct from the consent obtained to collect or share consumer health data, as required under [RCW 19.373.030](#).

(2) A valid authorization to sell consumer health data is a document consistent with this section and must be written in plain language. The valid authorization to sell consumer health data must contain the following:

(a) The specific consumer health data concerning the consumer that the person intends to sell;

(b) The name and contact information of the person collecting and selling the consumer health data;

(c) The name and contact information of the person purchasing the consumer health data from the seller identified in (b) of this subsection;

(d) A description of the purpose for the sale, including how the consumer health data will be gathered and how it will be used by the purchaser identified in (c) of this subsection when sold;

(e) A statement that the provision of goods or services may not be conditioned on the consumer signing the valid authorization;

(f) A statement that the consumer has a right to revoke the valid authorization at any time and a description on how to submit a revocation of the valid authorization;

- (g) A statement that the consumer health data sold pursuant to the valid authorization may be subject to redisclosure by the purchaser and may no longer be protected by this section;
 - (h) An expiration date for the valid authorization that expires one year from when the consumer signs the valid authorization; and
 - (i) The signature of the consumer and date.
- (3) An authorization is not valid if the document has any of the following defects:
- (a) The expiration date has passed;
 - (b) The authorization does not contain all the information required under this section;
 - (c) The authorization has been revoked by the consumer;
 - (d) The authorization has been combined with other documents to create a compound authorization; or
 - (e) The provision of goods or services is conditioned on the consumer signing the authorization.
- (4) A copy of the signed valid authorization must be provided to the consumer.
- (5) The seller and purchaser of consumer health data must retain a copy of all valid authorizations for sale of consumer health data for six years from the date of its signature or the date when it was last in effect, whichever is later.
- (6) A small business must comply with this section beginning June 30, 2024.

RCW § 19.373.080 Geofence restrictions.

It is unlawful for any person to implement a geofence around an entity that provides in-person health care services where such geofence is used to: (1) Identify or track consumers seeking health care services; (2) collect consumer health data from consumers; or (3) send notifications, messages, or advertisements to consumers related to their consumer health data or health care services.

RCW § 19.373.090 Application of consumer protection act.

The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter [19.86](#) RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business, and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter [19.86](#) RCW.

RCW § 19.373.100 Exemptions.

- (1) This chapter does not apply to:
- (a) Information that meets the definition of:
 - (i) Protected health information for purposes of the federal health insurance portability and accountability act of 1996 and related regulations;
 - (ii) Health care information collected, used, or disclosed in accordance with chapter [70.02](#) RCW;
 - (iii) Patient identifying information collected, used, or disclosed in accordance with 42 C.F.R. Part 2, established pursuant to 42 U.S.C. Sec. 290dd-2;
 - (iv) Identifiable private information for purposes of the federal policy for the protection of human subjects, 45 C.F.R. Part 46; identifiable private information that is otherwise information collected as part of human subjects research pursuant to the good clinical practice guidelines issued by the international council for harmonization; the protection of human subjects under 21 C.F.R. Parts 50 and 56; or personal data used or shared in research conducted in accordance with one or more of the requirements set forth in this subsection;
 - (v) Information and documents created specifically for, and collected and maintained by:

- (A) A quality improvement committee for purposes of RCW [43.70.510](#), [70.230.080](#), or [70.41.200](#);
- (B) A peer review committee for purposes of RCW [4.24.250](#);
- (C) A quality assurance committee for purposes of RCW [74.42.640](#) or [18.20.390](#);
- (D) A hospital, as defined in RCW [43.70.056](#), for reporting of health care-associated infections for purposes of RCW [43.70.056](#), a notification of an incident for purposes of RCW [70.56.040](#)(5), or reports regarding adverse events for purposes of RCW [70.56.020](#)(2)(b); or
- (E) A manufacturer, as defined in 21 C.F.R. Sec. 820.3(o), when collected, used, or disclosed for purposes specified in chapter [70.02](#) RCW;

(vi) Information and documents created for purposes of the federal health care quality improvement act of 1986, and related regulations;

(vii) Patient safety work product for purposes of 42 C.F.R. Part 3, established pursuant to 42 U.S.C. Sec. 299b-21 through 299b-26;

(viii) Information that is (A) deidentified in accordance with the requirements for deidentification set forth in 45 C.F.R. Part 164, and

(B) derived from any of the health care-related information listed in this subsection (1)(a)(viii);

(b) Information originating from, and intermingled to be indistinguishable with, information under (a) of this subsection that is maintained by:

(i) A covered entity or business associate as defined by the health insurance portability and accountability act of 1996 and related regulations;

(ii) A health care facility or health care provider as defined in RCW [70.02.010](#); or

(iii) A program or a qualified service organization as defined by 42 C.F.R. Part 2, established pursuant to 42 U.S.C. Sec. 290dd-2;

(c) Information used only for public health activities and purposes as described in 45 C.F.R. Sec. 164.512 or that is part of a limited data set, as defined, and is used, disclosed, and maintained in the manner required, by 45 C.F.R. Sec. 164.514; or

(d) Identifiable data collected, used, or disclosed in accordance with chapter [43.371](#) RCW or RCW [69.43.165](#).

(2) Personal information that is governed by and collected, used, or disclosed pursuant to the following regulations, parts, titles, or acts, is exempt from this chapter: (a) The Gramm-Leach-Bliley act (15 U.S.C. 6801 et seq.) and implementing regulations; (b) part C of Title XI of the social security act (42 U.S.C. 1320d et seq.); (c) the fair credit reporting act (15 U.S.C. 1681 et seq.); (d) the family educational rights and privacy act (20 U.S.C. 1232g; Part 99 of Title 34, C.F.R.); (e) the Washington health benefit exchange and applicable statutes and regulations, including 45 C.F.R. Sec. 155.260 and chapter [43.71](#) RCW; or (f) privacy rules adopted by the office of the insurance commissioner pursuant to chapter [48.02](#) or [48.43](#) RCW.

(3) The obligations imposed on regulated entities, small businesses, and processors under this chapter does not restrict a regulated entity's, small business's, or processor's ability for collection, use, or disclosure of consumer health data to prevent, detect, protect against, or respond to security incidents, identity theft, fraud, harassment, malicious or deceptive activities, or any activity that is illegal under Washington state law or federal law; preserve the integrity or security of systems; or investigate, report, or prosecute those responsible for any such action that is illegal under Washington state law or federal law.

(4) If a regulated entity, small business, or processor processes consumer health data pursuant to subsection (3) of this section, such entity bears the burden of demonstrating that **such processing** qualifies for the exemption and complies with the requirements of this section.

RCW § 19.373.900 Short title.

Chapter 191, Laws of 2023 may be known and cited as the Washington my health my data act.