

PROPOSED  
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

NANCY BARTO

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