

FIRST REGULAR SESSION

# HOUSE BILL NO. 536

## 92ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES BISHOP, LeVOTA, ZWEIFEL, JONES, CARNAHAN, WILSON (42), FRASER, SAGER, WILLOUGHBY, SANDERS BROOKS, DOUGHERTY, JOLLY (Co-sponsors), YAEGER, YOUNG, SCHLOTTACH, MEINERS, CORCORAN, DAVIS (122), MUCKLER, KUESSNER, HAYWOOD, DARROUGH, BARNITZ, MERIDETH, WILDBERGER, HOSKINS, DONNELLY, SALVA, HILGEMANN, ADAMS, CURLS, HARRIS (110), HENKE, WALKER, VOGT, SPRENG, PAGE, BURNETT, CAMPBELL, ABEL, RANSBALL, KRATKY, RIBACK WILSON (25), DAUS, EL-AMIN, LIESE, McKENNA, SKAGGS, LOWE, SCHOEMEHL, HUBBARD, KELLY (36), WILSON (119), GEORGE, SEIGFREID, BRINGER AND WITTE.

Read 1<sup>st</sup> time February 20, 2003, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1789L.011

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### AN ACT

To amend chapter 191, RSMo, by adding thereto one new section relating to nonpublic personal health information.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 191, RSMo, is amended by adding thereto one new section, to be known as section 191.890, to read as follows:

**191.890. 1. For purposes of this section, the following terms mean:**

(1) "Disclose", to release, transfer, provide access to, or divulge in any other manner information outside the entity holding the information; except that disclosure shall not include any information divulged directly to the individual to whom such information pertains;

(2) "Federal privacy rules", the federal Health Insurance Portability and Accountability Act privacy rules promulgated by the United States Department of Health and Human Services, 45 CFR Parts 160 to 164;

(3) "Health information", any information or data except age or gender, whether oral or recorded in any form or medium, created by or derived from a health care provider or an individual that relates to;

(a) The past, present, or future physical, mental, or behavioral health or condition of an individual;

(b) The provision of health care to an individual; or

- 15           (c) Payment for the provision of health care to an individual;
- 16           (4) "Licensee", all licensed insurers, producers, and other persons licensed or  
17 required to be licensed, or authorized or required to be authorized, or registered or  
18 required to be registered pursuant to chapter 375, RSMo, a health maintenance  
19 organization holding or required to hold a certificate of authority pursuant to chapter 354,  
20 RSMo, or any other entity or person subject to the supervision and regulation of the  
21 department of insurance;
- 22           (5) "Nonpublic personal health information", health information:
- 23           (a) That identifies an individual who is the subject of the information; or
- 24           (b) With respect to which there is a reasonable basis to believe that the information  
25 could be used to identify an individual;
- 26           (6) "Person", without limitation, an individual, a foreign or domestic corporation  
27 whether for profit or not-for-profit, a partnership, a limited liability company, an  
28 unincorporated society or association, two or more persons having a joint or common  
29 interest, a governmental agency or any other entity.
- 30           2. Any person who in the ordinary course of business, practice of a profession, or  
31 rendering of a service creates, stores, receives, or furnishes nonpublic personal health  
32 information shall not disclose by any means of communication such nonpublic personal  
33 health information except pursuant to a prior written authorization, valid for one year, of  
34 the person to whom such information pertains or such person's authorized representative,  
35 if:
- 36           (1) The nonpublic personal health information is disclosed in exchange for  
37 consideration to an affiliate or other third party; or
- 38           (2) The purpose of the disclosure is:
- 39           (a) For the marketing of services or goods for personal, family, or household  
40 purposes;
- 41           (b) To facilitate an employer's employment-related decisions regarding hiring,  
42 termination, and the establishment of any other conditions of employment, except as  
43 necessary to provide health or other benefits to an existing employee;
- 44           (c) For use in connection with the evaluation of an existing or requested extension  
45 of credit for personal, family, or household purposes; or
- 46           (d) To deliberately or maliciously cause harm to the person to whom the nonpublic  
47 personal health information pertains or to a person who creates, stores, or receives the  
48 nonpublic personal health information, except as necessary to conduct the business,  
49 practice, or service offered by the disclosing person or entity.
- 50           3. Nothing in this section shall be deemed to prohibit any disclosure of nonpublic

51 personal health information as is necessary to comply with any other state or federal law,  
52 or a court order.

53       4. Any person other than a licensee who knowingly violates the provisions of this  
54 section shall be assessed an administrative penalty of not more than five hundred dollars  
55 for each violation of this section. An administrative penalty pursuant to this section may  
56 be assessed by a state agency with primary regulatory authority over a person, by the  
57 attorney general upon referral by a state agency with primary regulatory authority over  
58 a person, or by the attorney general if no state agency has primary regulatory authority  
59 over the person. A state agency has primary regulatory authority over a person if the state  
60 agency licenses, certifies or examines the business, profession or services of the person. No  
61 person shall be subject to administrative penalties pursuant to this subsection from more  
62 than one state agency with respect to the same violation. Any administrative penalty  
63 imposed pursuant to this subsection shall be paid into the school fund as provided by law  
64 for other fines and penalties.

65       5. To the extent a person other than a licensee is subject to and complies with the  
66 federal Health Insurance Portability and Accountability Act privacy rules promulgated by  
67 the United States Department of Health and Human Services, 45 CFR Parts 160 to 164 (the  
68 federal privacy rules), such person shall be deemed to be in compliance with this section.  
69 Until April 14, 2003, a person other than a licensee that is subject to the federal privacy  
70 rules shall be deemed to be in compliance with this section upon demonstration of a good  
71 faith effort to comply with the requirements of the federal privacy rules.

72       6. Irrespective of whether a licensee is subject to the federal privacy rules, if a  
73 licensee complies with all requirements of the federal privacy rules except for the effective  
74 date provision, the licensee shall be deemed to be in compliance with this section. Until  
75 April 14, 2003, a licensee shall be deemed to be in compliance with this section upon  
76 demonstration of a good faith effort to comply with the requirements of the federal privacy  
77 rules.

78       7. If a licensee complies with the model regulation adopted on September 26, 2000,  
79 by the National Association of Insurance Commissioners entitled "Privacy of Consumer  
80 Financial and Health Information Regulation", the licensee shall be deemed to be in  
81 compliance with this section.

82       8. Notwithstanding the provisions of subsections 5 and 6 of this section, no person  
83 or licensee may disclose nonpublic personal health information for marketing purposes  
84 contrary to paragraph (a) of subdivision (2) of subsection 2 of this section.

85       9. The provisions of this section do not apply to information from or to consumer  
86 reporting agencies as defined by the federal Fair Credit Reporting Act, 15 U.S.C. Section

87 1681 et seq., or debt collectors as defined by the federal Fair Debt Collection Practices Act,  
88 15 U.S.C. Section 1692 et seq. to the extent such entities are engaged in activities regulated  
89 by these federal acts.

90 10. The provisions of this section do not apply to information disclosed in  
91 connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion  
92 of a business or operating unit, including but not limited to the sale of a portfolio of loans,  
93 if the disclosure of nonpublic personal health information concerns solely consumers of the  
94 business or unit and the disclosure of the nonpublic personal health information is not the  
95 primary reason for the sale, merger, transfer, or exchange.

96 11. The director of the department of insurance shall have the sole authority to  
97 enforce this section with respect to licensees including, without limitation, treating  
98 violations of this section by licensees as an unfair trade practice pursuant to sections  
99 375.936 to 375.948, RSMo. Licensees shall be entitled to all the protections of law  
100 contained therein.

101 12. Nothing in this section shall be construed to prohibit disclosure by any person  
102 for purposes other than those specifically listed in subsection 2 of this section. If an agent  
103 discloses information to a principal for purposes that do not violate subsection 2 of this  
104 section, the agent shall not be deemed liable for any disclosure by the principal.

105 13. This section does not apply to the disclosure of nonpublic personal health  
106 information which was originally collected for marketing purposes, provided that:

107 (1) The information is disclosed solely for the purposes of marketing products  
108 directly to the individual to whom such information pertains;

109 (2) The individual to whom such information pertains voluntarily reports the  
110 information; and

111 (3) At the time the information is collected, the individual to whom the information  
112 pertains receives clear and conspicuous notice stating that the information will be disclosed  
113 to third parties for the purposes of marketing products or services to the individual.

114 14. Notwithstanding any other provision of law, this section shall not apply to the  
115 conduct of medical research, as defined in 45 CFR part 46.