

Commerce 2/11

Senate File 1114  
Commerce  
Rodgers, Chairperson  
Gallagher  
Briles

FILED FEB 10 1976

SENATE FILE 1114

By DODERER

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to ownership of materials developed in a  
2 relationship with a professional and providing a penalty.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. DEFINITIONS. As used in this  
2 Act:

3 1. "Material" means any files, documents, papers, wills,  
4 records, reports, charts, exhibits, photographs, negatives,  
5 X-rays, drawings, etchings, casts, impressions, prosthetic  
6 devices, or other tangibles developed by a professional on  
7 behalf of a client. However, "material" does not mean:

8 a. The personal and informal work product notes of the  
9 professional which are not of use or value to the client.

10 b. The books of account of the professional which per-  
11 tain to compensation and payment for services and which are  
12 customarily kept for business purposes.

13 2. "Professional" means a person licensed in this state  
14 as defined in section one hundred forty-seven point one (147.1)  
15 of the Code, licensed as an attorney, hospital and health  
16 care facility, or practicing as a photographer.

17 3. "Client" means a patient, customer, or patron of a  
18 professional who engages the professional by an implied or  
19 express agreement to perform professional services for compen-  
20 sation on the client's behalf.

21 4. "Representative" means the spouse, parent, guardian,  
22 conservator, guardian ad litem, attorney, or other legally-  
23 designated representative of a client.

24 Sec. 2. NEW SECTION. OWNERSHIP OF MATERIAL. Subject  
25 only to a possessory lien by the professional for any reason-  
26 able compensation which has not been duly paid by the client,  
27 the client owns all material with right of possession upon  
28 demand. The lien attaches only to material which is directly  
29 related to the unpaid compensation.

30 Sec. 3. NEW SECTION. DESTRUCTION OF MATERIAL.

31 1. A professional shall not destroy possessed material  
32 until:

33 a. Five years have passed since it was developed;

34 b. The professional has offered in writing to the client  
35 or representative to deliver possession of the material; or,

1 c. The client or representative has consented in writing  
2 to destruction.

3 2. If a professional destroys material under paragraph  
4 b or c of subsection one (1) of this section, the professional  
5 shall maintain either:

6 a. A verified affidavit that:

7 (1) Was executed within thirty days of the day the writ-  
8 ten offer to deliver possession was mailed; and,

9 (2) Shows a copy of this written offer and that it was  
10 mailed by restricted certified mail within twenty-eight days  
11 before the material was destroyed; and,

12 (3) Includes the certified mail receipt signed by the  
13 client or representative or refused; and,

14 (4) Swears that either no answer or unpaid compensation  
15 was received; or,

16 b. A written consent to destroy signed by the client or  
17 representative.

18 Sec. 4. NEW SECTION. REASONABLE COMPENSATION. A pro-  
19 fessional may include in any reasonable compensation charged  
20 a charge for delivery of material to a client. However, this  
21 charge shall inhere in the initial billing or statement for  
22 all services rendered by the professional, whether or not  
23 this billing or statement contains any language to the  
24 contrary.

25 Sec. 5. NEW SECTION. RESPONSIBILITY ABSOLVED. A re-  
26 ceipt showing actual delivery of specified materials which  
27 is signed by the client or representative shall absolve the  
28 professional from any other or further responsibility for  
29 these materials.

30 Sec. 6. NEW SECTION. COPIES OF MATERIAL. This Act shall  
31 not be construed to prohibit a professional from making and  
32 keeping copies of material. Copies made for the client may  
33 be at the client's expense and copies kept by the profes-  
34 sional shall be at the professional's expense. A charge for  
35 the client's copies shall not include a charge for other

1 service or advice.

2 Sec. 7. NEW SECTION. PENALTY. A professional who will-  
3 fully refuses to deliver or destroys material in violation  
4 of the provisions of this Act shall be, upon conviction,  
5 imprisoned for up to two years in the penitentiary, fined  
6 not to exceed five thousand dollars, or both so imprisoned  
7 and fined.

8 EXPLANATION

9 Medical, legal and other professional records, X-rays and  
10 materials enumerated in this bill are made the property of  
11 the patient, client, customer, or patron (owner) if he pays  
12 in full for all services rendered him. See s610.18, Code of  
13 Iowa, 1975. The doctor or other professional may not destroy  
14 such materials for five years without offering possession  
15 to the owner in writing or obtaining written consent to destroy  
16 same.

17 But unless such property has been lawfully destroyed, the  
18 doctor or other professional must, upon receiving any balance  
19 of reasonable compensation due, and cost of delivery, deliver  
20 such property to the owner upon demand or he is guilty of  
21 embezzlement. The professional may make and save copies.

22 This bill will allow the owner to accumulate and keep his  
23 own medical and legal records, X-rays, photographic negatives,  
24 etc., for future reference or use in the event he moves or  
25 his professional consultant moves, dies or disorganizes.  
26 Today, many doctors and hospitals refuse to deliver X-rays  
27 to their patients, although they have been fully compensated,  
28 contending either that they are the property of the doctor  
29 or hospital and the patient pays only for the opinion thereon,  
30 or that the patient is not to be trusted with them.  
31 Photographers often contend that their customers pay only  
32 for the finished portrait, not the negative, and the customer  
33 is prevented from getting additional copies less expensively  
34 reproduced by another. Dental patients seeking estimates  
35 for expensive dental work are now required to pay each dentist

1 for X-rays needed to make an estimate, whereas one set might  
2 do.

3     Conceivably, an old X-ray, not available under existing  
4 practice, showing an old pneumonia scar, could save a patient  
5 an incorrect diagnosis, more extensive examination, and even  
6 an operation if a doctor thought the scar tissue likely to  
7 be a malignant tumor.

8     Materials of this kind are of little or no use to profes-  
9 sionals, except as they relate to the owners who pay for them  
10 and whom they may never see again. Accordingly, they should  
11 be treated as the real owner's property rather than that of  
12 the professional.

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SENATE FILE 1114

S-5151

- 1 Amend Senate file 1114 as follows:
- 2 1. Page 3, by striking lines 5, 6 and 7 and
- 3 inserting in lieu thereof the following: "fined
- 4 not to exceed one thousand dollars."

S-5151 FILED  
FEBRUARY 16, 1976

BY MINNETTE DODERER

S-5297

- 1 Amend Senate File 1114 as follows:
- 2 1. Page 1, by striking lines 17 through 20, and
- 3 inserting in lieu thereof the words: "3. "Client"
- 4 includes a patient, customer and patron of a
- 5 professional who engages, utilizes or receives
- 6 the services of the professional."
- 7 2. Page 1, line 26, by inserting after the word
- 8 "by" the words "or on behalf of".

S-5297 FILED  
MARCH 8, 1976

BY MINNETTE DODERER