
HOUSE BILL 1493

State of Washington 65th Legislature 2017 Regular Session

By Representatives Morris, Harmsworth, Smith, Tarleton, and Stanford

Read first time 01/20/17. Referred to Committee on Technology & Economic Development.

1 AN ACT Relating to biometric identifiers; adding a new chapter to
2 Title 19 RCW; and creating a new section.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The legislature finds that citizens of
5 Washington are increasingly asked to disclose sensitive biological
6 information that uniquely identifies them for commerce, security, and
7 convenience. The collection and marketing of biometric information
8 about individuals, without consent or knowledge of the individual
9 whose data is collected, is of increasing concern. The legislature
10 intends to require a business that collects and can attribute
11 biometric data to a specific uniquely identified individual to
12 provide notice and obtain consent from an individual before enrolling
13 or changing the use of an individual's biometric identifiers in a
14 database.

15 NEW SECTION. **Sec. 2.** (1) A person may not enroll a biometric
16 identifier in a database to create identification of an individual,
17 or change the use of such an enrolled biometric identifier, without
18 first providing clear and conspicuous notice and obtaining the
19 individual's consent.

1 (2) Clear and conspicuous notice is notice that is given through
2 a procedure reasonably designed to be prominent, timely, relevant,
3 and easily accessible. The exact notice required to achieve this
4 standard is context-dependent.

5 (3) A person who has enrolled an individual's biometric
6 identifier may not sell, lease, or otherwise disclose the biometric
7 identifier to another person for a commercial purpose unless the
8 disclosure:

9 (a) Is consistent with subsections (1), (2), and (4) of this
10 section;

11 (b) Is necessary to provide a product or service requested by the
12 individual;

13 (c) Is necessary to effect, administer, enforce, or complete a
14 financial transaction that the individual requested, initiated, or
15 authorized, and the third party to whom the biometric identifier is
16 disclosed maintains confidentiality of the biometric identifier and
17 does not further disclose the biometric identifier except as
18 otherwise permitted under this subsection (3);

19 (d) Is required or expressly authorized by a federal or state
20 statute, administrative code, or court order;

21 (e) Is made in good faith in response to a request from a law
22 enforcement officer that has represented to the person that such
23 disclosure is necessary to facilitate law enforcement's response to
24 an ongoing incident in which there is an imminent threat of danger or
25 harm to an individual;

26 (f) Is made to a third party who contractually promises that the
27 biometric identifier will not be further disclosed and will not be
28 enrolled in a database for a commercial purpose inconsistent with the
29 notice and consent described in this subsection and subsections (1)
30 and (2) of this section; or

31 (g) Is made to prepare for litigation or to respond to or
32 participate in judicial process.

33 (4) A person who possesses a biometric identifier of an
34 individual that has been enrolled for a commercial purpose:

35 (a) Must take reasonable care to guard against unauthorized
36 access to biometric identifiers that are in the possession or under
37 the control of the person; and

38 (b) May retain the biometric identifier no longer than is
39 reasonably necessary to:

40 (i) Comply with a court order, statute, or administrative rule;

1 (ii) Protect against or prevent actual or potential fraud,
2 criminal activity, claims, security threats, or liability; or

3 (iii) Effectuate the purposes for which an individual has
4 provided consent to the capture, enrollment, and disclosure of the
5 biometric identifier, including with existing third parties
6 identified in the original consent obtained from the individual.

7 (5) A person who enrolls a biometric identifier of an individual
8 pursuant to this section may not use or disclose it in a manner that
9 is materially inconsistent with the terms under which the biometric
10 identifier was originally provided without obtaining consent for the
11 new terms of use or disclosure.

12 (6) The limitations on disclosure and retention of biometric
13 identifiers provided in this section do not apply to disclosure or
14 retention of biometric identifiers that have been anonymized so as to
15 prevent the possibility of ascertaining the identity of a unique
16 individual.

17 NEW SECTION. **Sec. 3.** The definitions in this section apply
18 throughout this chapter unless the context clearly requires
19 otherwise.

20 (1) "Biometric identifier" means data generated by automatic
21 measurements of an individual's biological characteristics, such as a
22 fingerprint, voiceprint, eye retinas or irises, or other unique
23 biological characteristic, which are used by the person or licensee
24 to uniquely authenticate an individual's identity when the individual
25 accesses a system or account.

26 (2) "Biometric system" means an automated system capable of
27 capturing a biometric sample from an individual, extracting and
28 processing biometric data from that sample, storing the extracted
29 information in a database, comparing the biometric data with data
30 contained in one or more references, determining whether the
31 biometric data matches the reference, and indicating whether or not
32 an identification has been achieved.

33 (3) "Capture" means the process of using a sensor to collect a
34 biometric sample and related contextual data from a scene or an
35 individual, or both, with or without the individual's knowledge.

36 (4) "Commercial purpose" means a purpose in furtherance of the
37 sale or disclosure of a biometric identifier for the purpose of
38 marketing of goods or services when such goods or services are
39 unrelated to the initial commercial transaction in which a person

1 first gains possession of an individual's biometric identifier.
2 "Commercial purpose" does not include a security purpose.

3 (5) "Enroll" means to collect a biometric identifier of an
4 individual, convert it into a reference template, and store it in the
5 biometric system's database for later comparison. Biometric samples
6 converted in a reference template format cannot be reconstructed into
7 the original output image.

8 (6) "Federal peace officer" has the meaning in RCW 10.93.020.

9 (7) "Identification" is the task by which a biometric system
10 searches a database for a reference matching a biometric sample and,
11 if found, returns a corresponding identity.

12 (8) "Law enforcement officer" means a law enforcement officer as
13 defined in RCW 9.41.010 or a federal peace officer.

14 (9) "Person" means an individual, partnership, corporation,
15 limited liability company, organization, association, or any other
16 legal or commercial entity, but does not include a government agency.

17 (10) "Security purpose" means the purpose of preventing
18 shoplifting, fraud, or any other misappropriation or theft of a thing
19 of value, including tangible and intangible goods and services.

20 NEW SECTION. **Sec. 4.** The legislature finds that the practices
21 covered by this section are matters vitally affecting the public
22 interest for the purpose of applying the consumer protection act,
23 chapter 19.86 RCW. A material violation of this chapter is not
24 reasonable in relation to the development and preservation of
25 business, or is an unfair or deceptive act in trade or commerce and
26 an unfair method of competition.

27 NEW SECTION. **Sec. 5.** (1) Nothing in this act applies in any
28 manner to a financial institution or an affiliate of a financial
29 institution that is subject to Title V of the federal Gramm-Leach-
30 Bliley Act of 1999 and the rules promulgated thereunder.

31 (2) Nothing in this act expands or limits the authority of a law
32 enforcement officer acting within the scope of his or her authority
33 including, but not limited to, the authority of a state law
34 enforcement officer in executing lawful searches and seizures.

1 NEW SECTION. **Sec. 6.** Sections 2 through 5 of this act
2 constitute a new chapter in Title 19 RCW.

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