

CERTIFICATION OF ENROLLMENT

HOUSE BILL 2213

65th Legislature
2017 2nd Special Session

Passed by the House May 25, 2017
Yeas 94 Nays 0

Speaker of the House of Representatives

Passed by the Senate June 13, 2017
Yeas 47 Nays 1

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 2213** as passed by House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

HOUSE BILL 2213

Passed Legislature - 2017 2nd Special Session

State of Washington 65th Legislature 2017 1st Special Session

By Representatives Smith, Haler, and Morris

Read first time 05/12/17. Referred to Committee on Rules.

1 AN ACT Relating to state agency collection, use, and retention of
2 biometric identifiers; amending RCW 40.---.---; providing a contingent
3 effective date; and declaring an emergency.

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

5 **Sec. 1.** RCW 40.---.--- and 2017 1st sp.s. c ... (SHB 1717) s 2
6 are each amended to read as follows:

7 (1) Unless authorized by law, an agency may not collect, capture,
8 purchase, or otherwise obtain a biometric identifier without first
9 providing notice and obtaining the individual's consent, as follows:

10 (a) The notice provided must clearly specify the purpose and use
11 of the biometric identifier; and

12 (b) The consent obtained must be specific to the terms of the
13 notice, and must be recorded and maintained by the agency for the
14 duration of the retention of the biometric identifier.

15 (2) Any biometric identifier obtained by an agency:

16 (a) May not be sold;

17 (b) May only be used consistent with the terms of the notice and
18 consent obtained under subsection (1) of this section, or as
19 authorized by law; and

20 (c) May be shared, including with other state agencies or local
21 governments, only:

1 (i) As needed to execute the purposes of the collection,
2 consistent with the notice and consent obtained under subsection (1)
3 of this section, or as authorized by law; or

4 (ii) If such sharing is specified within the original consent.

5 (3) An agency that collects, purchases, or otherwise obtains
6 biometric identifiers must:

7 (a) Establish security policies that ensure the integrity and
8 appropriate confidentiality of the biometric identifiers;

9 (b) Address biometric identifiers in the agency's privacy
10 policies;

11 (c) Only retain biometric identifiers necessary to fulfill the
12 original purpose and use, as specified in the notice and consent
13 obtained under subsection (1) of this section, or as authorized by
14 law;

15 (d) Set record retention schedules tailored to the original
16 purpose of the collection of biometric identifiers;

17 (e) Otherwise minimize the review and retention of the biometric
18 identifiers, consistent with state record retention requirements; and

19 (f) Design a biometric policy to ensure that the agency is
20 minimizing the collection of biometric identifiers to the fewest
21 number necessary to accomplish the agency mission.

22 (4) The use and storage of biometric identifiers obtained by an
23 agency must comply with all other applicable state and federal laws
24 and regulations, including the health insurance portability and
25 accountability act (HIPAA), the family educational rights and privacy
26 act (FERPA), regulations regarding data breach notifications and
27 individual privacy protections, and any policies or standards
28 published by the office of the chief information officer.

29 (5) Biometric identifiers (~~((used or retained by an agency or a~~
30 ~~general authority Washington law enforcement agency))~~) may not be
31 disclosed under the public records act, chapter 42.56 RCW.

32 (6) Agency policies, regulations, guidance, and retention
33 schedules regarding biometric identifiers must be reviewed annually
34 to incorporate any new technology, as appropriate, and respond to
35 citizen complaints.

36 (7) (~~The following definitions apply for purposes of this~~
37 ~~section:~~) The definitions in this subsection apply throughout this
38 section unless the context requires otherwise.

39 (a) "Agency" means every state office, department, division,
40 bureau, board, commission, or other state agency(~~(, except that it~~

1 ~~does not include a general authority Washington law enforcement~~
2 ~~agency)).~~

3 (b) "Biometric identifier" means any information, regardless of
4 how it is captured, converted, stored, or shared, based on an
5 individual's retina or iris scan, fingerprint, voiceprint, DNA, or
6 scan of hand or face geometry, except when such information is
7 derived from:

8 (i) Writing samples, written signatures, photographs, human
9 biological samples used for valid scientific testing or screening,
10 demographic data, tattoo descriptions, or physical descriptions such
11 as height, weight, hair color, or eye color;

12 (ii) Donated organ tissues or parts, or blood or serum stored on
13 behalf of recipients or potential recipients of living or cadaveric
14 transplants and obtained or stored by a federally designated organ
15 procurement agency;

16 (iii) Information captured from a patient in a health care
17 setting or information collected, used, or stored for health care
18 treatment, payment, or operations under the federal health insurance
19 portability and accountability act of 1996; or

20 (iv) X-ray, roentgen process, computed tomography, magnetic
21 resonance imaging (MRI), positron emission tomography (PET) scan,
22 mammography, or other image or film of the human anatomy used to
23 diagnose, (~~prognose~~) develop a prognosis for, or treat an illness
24 or other medical condition or to further validate scientific testing
25 or screening.

26 (~~(c) "General authority Washington law enforcement agency" has~~
27 ~~the definition given in RCW 10.93.020.~~)

28 (8) Subsection (1) of this section does not apply to general
29 authority Washington law enforcement agencies, as defined under RCW
30 10.93.020.

31 (9)(a) For purposes of the restrictions and obligations in
32 subsection (1) of this section, "biometric identifier" does not
33 include fingerprints or DNA for the following:

34 (i) Limited authority Washington law enforcement agencies, as
35 defined under RCW 10.93.020;

36 (ii) Agencies authorized by statute to confine a person
37 involuntarily, or to petition for such confinement; and

38 (iii) The attorney general's office when obtaining or using
39 biometric identifiers is necessary for law enforcement, legal advice,
40 or legal representation.

1 (b) When an agency listed under (a) of this subsection has a need
2 to collect, capture, purchase, or otherwise obtain a biometric
3 identifier other than a fingerprint or DNA to fulfill a purpose
4 authorized by law, for either an individual circumstance or a
5 categorical circumstance, the requirements of subsection (1) of this
6 section are waived upon such agency providing prompt written notice
7 to the state's chief privacy officer and to the appropriate
8 committees of the legislature, stating the type of biometric
9 identifier at issue and the general circumstances requiring the
10 waiver.

11 NEW SECTION. **Sec. 2.** This act is necessary for the immediate
12 preservation of the public peace, health, or safety, or support of
13 the state government and its existing public institutions, and takes
14 effect on the date that Substitute House Bill No. 1717 takes effect.

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