
HOUSE BILL 1011

State of Washington 61st Legislature 2009 Regular Session

By Representatives Morris, Chase, Hasegawa, Kagi, Darneille,
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Technology, Energy & Communications.

1 AN ACT Relating to regulating the use of identification devices;
2 amending RCW 19.300.010; and adding new sections to chapter 19.300 RCW.

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

4 **Sec. 1.** RCW 19.300.010 and 2008 c 138 s 2 are each amended to read
5 as follows:

6 The definitions in this section apply throughout this chapter
7 unless the context clearly requires otherwise.

8 (1) "Identification device" means an item that uses radio frequency
9 identification technology or facial recognition technology.

10 (2) "Person" means a natural person who resides in Washington.

11 (3) "Personal information" has the same meaning as in RCW
12 19.255.010.

13 (4) "Data" means personal information, numerical values associated
14 with a person's facial features, or unique personal identifier numbers
15 stored on an identification device.

16 (5) "Radio frequency identification" means (~~a technology that uses~~
17 ~~radio waves to transmit data remotely to readers~~) the use of
18 electromagnetic radiating waves or reactive field coupling in the radio

1 frequency portion of the spectrum to communicate to or from a tag
2 through a variety of modulation and encoding schemes to uniquely read
3 the identity of a radio frequency tag or other data stored on it.

4 ~~(6) ("Reader" means a scanning device that is capable of using~~
5 ~~radio waves to communicate with an identification device and read the~~
6 ~~data transmitted by that identification device.~~

7 ~~(7))~~ "Remotely" means that no physical contact between the
8 identification device and the reader is necessary in order to transmit
9 data.

10 ~~((8))~~ (7) "Unique personal identifier number" means a randomly
11 assigned string of numbers or symbols that is encoded on the
12 identification device and is intended to identify the identification
13 device.

14 NEW SECTION. Sec. 2. A new section is added to chapter 19.300 RCW
15 to read as follows:

16 (1) Except as provided in subsection (2) of this section, a person,
17 governmental entity, or business entity may not intentionally scan a
18 person's identification device remotely for any purpose without
19 obtaining that person's opt-in consent. Opt-in consent may be secured
20 in writing or electronically. In obtaining a person's opt-in consent,
21 the governmental entity or business entity shall unambiguously disclose
22 to the person that by consenting, the person agrees to have the
23 governmental entity or business entity collect, use, or retain data
24 gathered from the identification device for any purpose.

25 (2) This section does not apply to the following:

26 (a) The scanning of an identification device for triage or medical
27 care during a disaster and immediate hospitalization or immediate
28 outpatient care directly relating to a disaster;

29 (b) The scanning of an identification device by an emergency
30 responder or health care professional for reasons relating to the
31 health or safety of that person;

32 (c) The scanning of a person's identification device issued to a
33 patient for emergency purposes;

34 (d) The scanning of an identification device of a person pursuant
35 to court-ordered electronic monitoring;

36 (e) The scanning of an identification device of a person who is

1 incarcerated in a correctional institution, juvenile detention
2 facility, or mental health facility;

3 (f) The scanning of an identification device by law enforcement or
4 government personnel who need to read a lost identification device when
5 the owner is unavailable for notice, knowledge, or consent, or those
6 parties specifically authorized by law enforcement or government
7 personnel for the limited purpose of reading a lost identification
8 device when the owner is unavailable for notice, knowledge, or consent;

9 (g) The scanning of an identification device by law enforcement
10 personnel who need to read a person's identification device after an
11 accident in which the person is unavailable for notice, knowledge, or
12 consent;

13 (h) The scanning of an identification device by a person or entity
14 that in the course of operating its own identification device system
15 collects data from another identification device, provided that the
16 inadvertently received data comports with all of the following:

17 (i) The data is not disclosed to any other party;

18 (ii) The data is not used for any purpose; and

19 (iii) The data is not stored or is promptly destroyed;

20 (i) The scanning of a person's identification device in the course
21 of an act of good faith security research, experimentation, or
22 scientific inquiry including, but not limited to, activities useful in
23 identifying and analyzing security flaws and vulnerabilities; and

24 (j) The scanning of an identification device by law enforcement
25 personnel who need to scan a person's identification device pursuant to
26 a search warrant.

27 (3) The legislature finds that the practices covered by this
28 section are matters vitally affecting the public interest for the
29 purpose of applying the consumer protection act, chapter 19.86 RCW. A
30 violation of this chapter is not reasonable in relation to the
31 development and preservation of business and is an unfair or deceptive
32 act in trade or commerce and an unfair method of competition for the
33 purpose of applying the consumer protection act, chapter 19.86 RCW.

34 NEW SECTION. **Sec. 3.** A new section is added to chapter 19.300 RCW
35 to read as follows:

36 (1) A governmental entity or business entity may not collect, use,
37 or store data associated with a person for purposes other than

1 completing a sales transaction or providing a service, unless the
2 governmental entity or business entity has obtained the express, opt-in
3 consent of the person associated with the data. The person's consent
4 must be obtained either in writing or electronically. In obtaining the
5 person's consent, the governmental entity or business entity shall
6 unambiguously disclose that, by consent, the person agrees to have the
7 governmental entity or business entity collect, use, or retain data
8 associated with them.

9 (2) A person who has provided their express, opt-in consent under
10 subsection (1) of this section may, at any time, opt out of the
11 collection of data. The person may opt out either in writing or
12 electronically.

13 NEW SECTION. **Sec. 4.** A new section is added to chapter 19.300 RCW
14 to read as follows:

15 The office of the attorney general shall, on an annual basis, make
16 recommendations to the legislature on other personally invasive
17 technologies that may warrant further legislative action.

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