

ESHB 1094 - S COMM AMD

By Committee on Law & Justice

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 19.215
4 RCW to read as follows:

5 (1) A person may not capture a biometric identifier of an
6 individual for a commercial purpose unless the person:

7 (a) Informs the individual before capturing the biometric
8 identifier; and

9 (b) Receives the individual's consent to capture the biometric
10 identifier.

11 (2) A person who legally possesses a biometric identifier of an
12 individual that is captured for a commercial purpose:

13 (a) May not sell, lease, or otherwise disclose the biometric
14 identifier to another person unless:

15 (i) The individual consents to the disclosure for identification
16 purposes in the event of the individual's disappearance or death or
17 otherwise consents to the disclosure to third parties;

18 (ii) The biometric data is disclosed to a service provider or
19 other third party as necessary to effect, administer, enforce, or
20 complete a financial transaction that the individual requested,
21 initiated, or authorized, provided that such a service provider or
22 third party shall maintain confidentiality of the biometric data and
23 not further disclose the biometric data except as permitted under
24 this subsection (2)(a);

25 (iii) The disclosure is required or expressly permitted by a
26 federal statute or by a state statute; or

27 (iv) The disclosure is made to a law enforcement agency for a law
28 enforcement purpose in response to a warrant;

29 (b) Shall store, transmit, and protect from disclosure the
30 biometric identifier using reasonable care and in a manner that is
31 the same as or more protective than industry standards relating to
32 administrative, technical, and physical safeguards for digital
33 copies, biometric identifiers, and other personal identifying
34 information; and

1 (c) Must retain the biometric identifier no longer than is
2 legally permissible by statute, rule, or public records retention
3 schedule specified under federal, state, or local authority, as
4 necessary to protect against or prevent actual or potential fraud,
5 criminal activity, claims, or liability, except as provided by
6 subsection (3) of this section.

7 (3)(a) If a biometric identifier captured for a commercial
8 purpose has been collected for contractual purposes, the purpose for
9 collecting the identifier under subsection (2)(c) of this section
10 continues until the latter of the termination of the continuous
11 contractual relationship, the time period necessary to carry out the
12 terms of the contract, or for as long as is permitted or required by
13 law.

14 (b) If a biometric identifier captured for a commercial purpose
15 has been collected for security purposes by an employer, the purpose
16 for collecting the identifier under subsection (2)(c) of this section
17 is presumed to expire on termination of the employment relationship.

18 (4) If a biometric identifier was initially captured for any
19 purpose other than a commercial purpose, it is a violation of this
20 act to use the biometric identifier at a later time for a commercial
21 purpose without an individual's consent.

22 (5) For the purpose of subsection (4) of this section, consent
23 means that an individual must actively opt-in to the use of the
24 biometric identifier. An active opt-in by an individual provides
25 consent for the use of the biometric identifier for no longer than
26 twenty-four hours.

27 (6) For purposes of this section, the following definitions apply
28 unless the context clearly requires otherwise:

29 (a) "Biometric identifier" means a retina or iris scan,
30 fingerprint, voiceprint, or record of hand or face geometry.

31 (b) "Consent" means an authorization by an individual, given
32 after the individual has received clear and conspicuous notice in
33 writing of the purposes for which the biometric identifier may be
34 disclosed. When an individual consents to disclose his or her
35 biometric identifier to law enforcement without a warrant, consent
36 must be made separate from any other consent provided.

37 (7) The legislature finds that the practices covered by this
38 section are matters vitally affecting the public interest for the
39 purpose of applying the consumer protection act, chapter 19.86 RCW. A
40 violation of this chapter is not reasonable in relation to the

1 development and preservation of business and is an unfair or
2 deceptive act in trade or commerce and an unfair method of
3 competition for the purpose of applying the consumer protection act,
4 chapter 19.86 RCW.

5 (8) Nothing in this act shall be construed to expand or limit the
6 authority of a Washington state law enforcement officer acting within
7 the scope of his or her authority, including, but not limited to,
8 executing lawful searches and seizures."

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9 On page 1, line 1 of the title, after "identifiers;" strike the
10 remainder of the title and insert "and adding a new section to
11 chapter 19.215 RCW."

EFFECT: Modifies the definition of "biometric identifier" to mean
a retina or iris scan, fingerprint, voiceprint, or record of hand or
face geometry.

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