
SUBSTITUTE HOUSE BILL 1094

State of Washington

64th Legislature

2015 Regular Session

By House Technology & Economic Development (originally sponsored by Representative Morris)

READ FIRST TIME 02/09/15.

1 AN ACT Relating to biometric identifiers; amending RCW 19.86.080;
2 and adding a new section to chapter 19.215 RCW.

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

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

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

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

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

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

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

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

19 (ii) The biometric data is disclosed to a service provider or
20 other third party as necessary to effect, administer, enforce, or
21 complete a financial transaction that the individual requested,

1 initiated, or authorized, provided that such a service provider or
2 third party shall maintain confidentiality of the biometric data and
3 not further disclose the biometric data except as permitted under
4 this subsection (2)(a);

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

7 (iv) The disclosure is made by or to a law enforcement agency for
8 a law enforcement purpose in response to a warrant;

9 (b) Shall store, transmit, and protect from disclosure the
10 biometric identifier using reasonable care and in a manner that is
11 the same as or more protective than industry standards relating to
12 administrative, technical, and physical safeguards for digital
13 copies, biometric identifiers, and other personal identifying
14 information; and

15 (c) Must retain the biometric identifier no longer than is
16 legally permissible as required by statute, rule, or public records
17 retention schedule specified under federal, state, or local
18 authority, particularly as necessary to protect against or prevent
19 actual or potential fraud, criminal activity, claims, or liability,
20 except as provided by subsection (3) of this section.

21 (3)(a) If a biometric identifier captured for a commercial
22 purpose has been collected for contractual purposes, the purpose for
23 collecting the identifier under subsection (2)(c) of this section
24 continues until the latter of the termination of the continuous
25 contractual relationship, the time period necessary to carry out the
26 terms of the contract, or for as long as is permitted or required by
27 law.

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

32 (4) For purposes of this section, "biometric identifier" means a
33 characteristic, whether biological, behavioral, or both, that
34 uniquely identifies and enables automated recognition of an
35 individual, including but not limited to fingerprints, DNA, hand
36 geometry, palm print, and iris scan. "Biometric identifier" also
37 includes less sensitive identifiers including, but not limited to,
38 facial imaging, voice, and gait when used specifically for automated
39 identification purposes.

1 (5) The legislature finds that the practices covered by this
2 section are matters vitally affecting the public interest for the
3 purpose of applying the consumer protection act, chapter 19.86 RCW. A
4 violation of this chapter is not reasonable in relation to the
5 development and preservation of business and is an unfair or
6 deceptive act in trade or commerce and an unfair method of
7 competition for the purpose of applying the consumer protection act,
8 chapter 19.86 RCW.

9 **Sec. 2.** RCW 19.86.080 and 2007 c 66 s 1 are each amended to read
10 as follows:

11 (1)(a) The attorney general may bring an action in the name of
12 the state, or as *parens patriae* on behalf of persons residing in the
13 state, against any person to restrain and prevent the doing of any
14 act herein prohibited or declared to be unlawful; and, except as
15 provided in (b) of this subsection, the prevailing party may, in the
16 discretion of the court, recover the costs of said action including a
17 reasonable attorney's fee.

18 (b) In an action brought by the attorney general in the name of
19 the state, or as *parens patriae* on behalf of persons residing in the
20 state, to restrain and prevent a violation of section 1 of this act,
21 if the attorney general prevails, costs and reasonable attorneys'
22 fees may only be awarded to the attorney general as prevailing party,
23 and may not be awarded to the defendant.

24 (2) The court may make such additional orders or judgments as may
25 be necessary to restore to any person in interest any moneys or
26 property, real or personal, which may have been acquired by means of
27 any act herein prohibited or declared to be unlawful.

28 (3) Upon a violation of RCW 19.86.030, 19.86.040, 19.86.050, or
29 19.86.060, the court may also make such additional orders or
30 judgments as may be necessary to restore to any person in interest
31 any moneys or property, real or personal, which may have been
32 acquired, regardless of whether such person purchased or transacted
33 for goods or services directly with the defendant or indirectly
34 through resellers. The court shall exclude from the amount of
35 monetary relief awarded in an action pursuant to this subsection any
36 amount that duplicates amounts that have been awarded for the same
37 violation. The court should consider consolidation or coordination

1 with other related actions, to the extent practicable, to avoid
2 duplicate recovery.

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