

ESHB 1493 - S AMD 242
By Senator Pedersen

NOT ADOPTED 04/11/2017

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

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

14 NEW SECTION. **Sec. 2.** (1) A person may not enroll a biometric
15 identifier in a database for a commercial purpose, without first
16 providing notice, obtaining consent, or providing a mechanism to
17 prevent the subsequent use of a biometric identifier for a commercial
18 purpose.

19 (2) The exact notice and type of consent required to achieve
20 compliance with subsection (1) of this section is context-dependent.

21 (3) Unless consent has been obtained from the individual, a
22 person who has enrolled an individual's biometric identifier may not
23 sell, lease, or otherwise disclose the biometric identifier to
24 another person for a commercial purpose unless the disclosure:

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

27 (b) Is necessary to provide a product or service subscribed to,
28 requested, or expressly authorized by the individual;

29 (c) Is necessary to effect, administer, enforce, or complete a
30 financial transaction that the individual requested, initiated, or
31 authorized, and the third party to whom the biometric identifier is

1 disclosed maintains confidentiality of the biometric identifier and
2 does not further disclose the biometric identifier except as
3 otherwise permitted under this subsection (3);

4 (d) Is required or expressly authorized by a federal or state
5 statute, or court order;

6 (e) Is made to a third party who contractually promises that the
7 biometric identifier will not be further disclosed and will not be
8 enrolled in a database for a commercial purpose inconsistent with the
9 notice and consent described in this subsection (3) and subsections
10 (1) and (2) of this section; or

11 (f) Is made to prepare for litigation or to respond to or
12 participate in judicial process.

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

15 (a) Must take reasonable care to guard against unauthorized
16 access to and acquisition of biometric identifiers that are in the
17 possession or under the control of the person; and

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

20 (i) Comply with a court order, statute, or public records
21 retention schedule specified under federal, state, or local law;

22 (ii) Protect against or prevent actual or potential fraud,
23 criminal activity, claims, security threats, or liability; and

24 (iii) Provide the services for which the biometric identifier is
25 retained.

26 (5) A person who enrolls a biometric identifier of an individual
27 for a commercial purpose or obtains a biometric identifier of an
28 individual from a third party for a commercial purpose pursuant to
29 this section may not use or disclose it in a manner that is
30 materially inconsistent with the terms under which the biometric
31 identifier was originally provided without obtaining consent for the
32 new terms of use or disclosure.

33 (6) The limitations on disclosure and retention of biometric
34 identifiers provided in this section do not apply to disclosure or
35 retention of biometric identifiers that have been unenrolled.

36 (7) Nothing in this section requires an entity to provide notice
37 and obtain consent to collect, capture, or enroll a biometric
38 identifier and store it in a biometric system, or otherwise, in
39 furtherance of a security purpose.

1 NEW SECTION. **Sec. 3.** The definitions in this section apply
2 throughout this chapter, unless the context clearly requires
3 otherwise.

4 (1) "Biometric identifier" means data generated by automatic
5 measurements of an individual's fingerprint, voiceprint, eye retinas,
6 or irises, that is used to identify a specific individual. "Biometric
7 identifier" does not include a physical or digital photograph, video
8 or audio recording, or data generated therefrom, or information
9 collected, used, or stored for health care treatment, payment, or
10 operations under the federal health insurance portability and
11 accountability act of 1996.

12 (2) "Biometric system" means an automated identification system
13 capable of capturing, processing, and storing a biometric identifier,
14 comparing the biometric identifier to one or more references, and
15 matching the biometric identifier to a specific individual.

16 (3) "Capture" means the process of collecting a biometric
17 identifier from an individual in person.

18 (4) "Commercial purpose" means a purpose in furtherance of the
19 sale or disclosure to a third party of a biometric identifier for the
20 purpose of marketing of goods or services when such goods or services
21 are unrelated to the initial transaction in which a person first
22 gains possession of an individual's biometric identifier. "Commercial
23 purpose" does not include a security or law enforcement purpose.

24 (5) "Enroll" means to capture a biometric identifier of an
25 individual, convert it into a reference template that cannot be
26 reconstructed into the original output image, and store it in a
27 database that matches the biometric identifier to a specific
28 individual.

29 (6) "Law enforcement officer" means a law enforcement officer as
30 defined in RCW 9.41.010 or a federal peace officer as defined in RCW
31 10.93.020.

32 (7) "Notice" means a disclosure that is given through a procedure
33 reasonably designed to be readily available to affected individuals.

34 (8) "Person" means an individual, partnership, corporation,
35 limited liability company, organization, association, or any other
36 legal or commercial entity, but does not include a government agency.

37 (9) "Security purpose" means the purpose of preventing
38 shoplifting, fraud, or any other misappropriation or theft of a thing
39 of value, including tangible and intangible goods, services, and

1 other purposes in furtherance of protecting the security or integrity
2 of software, accounts, applications, online services, or any person.

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

11 (2) This chapter may be enforced solely by the attorney general
12 under the consumer protection act, chapter 19.86 RCW.

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

17 (2) Nothing in this act applies to activities subject to Title V
18 of the federal health insurance privacy and portability act of 1996
19 and the rules promulgated thereunder.

20 (3) Nothing in this act expands or limits the authority of a law
21 enforcement officer acting within the scope of his or her authority
22 including, but not limited to, the authority of a state law
23 enforcement officer in executing lawful searches and seizures.

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

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26 On page 1, line 1 of the title, after "identifiers;" strike the
27 remainder of the title and insert "adding a new chapter to Title 19
28 RCW; and creating a new section."

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