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HOUSE BILL 2213

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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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