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ENGROSSED SUBSTITUTE HOUSE BILL 1031

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State of Washington

60th Legislature

2008 Regular Session

By House Committee on Technology, Energy & Communications  
(originally sponsored by Representatives Morris, Hudgins, Moeller,  
Linville, B. Sullivan and Chase)

READ FIRST TIME 02/26/07.

1 AN ACT Relating to electronic communication devices; adding a new  
2 chapter to Title 19 RCW; creating new sections; and prescribing  
3 penalties.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that Washington state,  
6 from its inception, has recognized the importance of maintaining  
7 individual privacy. The legislature further finds that protecting the  
8 confidentiality and privacy of an individual's personal information,  
9 especially when collected from the individual without his or her  
10 knowledge or consent, is critical to maintaining the safety and  
11 well-being of its citizens. The legislature recognizes that inclusion  
12 of identification devices that broadcast data or enable data or  
13 information to be collected or scanned either secretly or remotely, or  
14 both, will greatly magnify the potential risk to individual privacy,  
15 safety, and economic well-being that can occur from unauthorized  
16 interception and use of personal information. The legislature further  
17 recognizes that these types of technologies, whether offered by the  
18 private sector or issued by the government, can be pervasive.

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

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

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

6        (3) "Personal information" has the same meaning as in RCW  
7 19.255.010.

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

11       (5) "Radio frequency identification" means a technology that uses  
12 radio waves to transmit data remotely to readers.

13       (6) "Facial recognition" means a technology that attaches numerical  
14 values to a person's different facial features, creating a unique  
15 faceprint, which can be checked against a database of existing persons'  
16 faceprints.

17       (7) "Reader" means a scanning device that is capable of using radio  
18 waves to communicate with an identification device and read the data  
19 transmitted by that identification device.

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

23       (9) "Unique personal identifier number" means a randomly assigned  
24 string of numbers or symbols that is encoded on the identification  
25 device and is intended to identify the identification device.

26       NEW SECTION.    **Sec. 3.** Except as provided in section 5 of this act,  
27 a person that intentionally scans another person's identification  
28 device remotely, without that person's prior knowledge and prior  
29 consent, for the purpose of fraud, identity theft, or for any other  
30 illegal purpose, shall be guilty of a class C felony.

31       NEW SECTION.    **Sec. 4.** (1) Except as provided in section 5 of this  
32 act, a person, governmental or business entity may not intentionally  
33 scan a person's identification device remotely for any purpose without  
34 that person's prior knowledge and consent.

35       (2) The legislature finds that the practices covered by this  
36 section are matters vitally affecting the public interest for the

1 purpose of applying the consumer protection act, chapter 19.86 RCW. A  
2 violation of this chapter is not reasonable in relation to the  
3 development and preservation of business and is an unfair or deceptive  
4 act in trade or commerce and an unfair method of competition for the  
5 purpose of applying the consumer protection act, chapter 19.86 RCW.

6 NEW SECTION. **Sec. 5.** Sections 3 and 4 of this act shall not apply  
7 to the following:

8 (1) The scanning of an identification device for triage or medical  
9 care during a disaster and immediate hospitalization or immediate  
10 outpatient care directly relating to a disaster;

11 (2) The scanning of an identification device by an emergency  
12 responder or health care professional for reasons relating to the  
13 health or safety of that person;

14 (3) The scanning of a person's identification device issued to a  
15 patient for emergency purposes;

16 (4) The scanning of an identification device of a person pursuant  
17 to court-ordered electronic monitoring;

18 (5) The scanning of an identification device of a person who is  
19 incarcerated in a correctional institution, juvenile detention  
20 facility, or mental health facility;

21 (6) The scanning of an identification device by law enforcement or  
22 government personnel who need to read a lost identification device when  
23 the owner is unavailable for notice, knowledge, or consent, or those  
24 parties specifically authorized by law enforcement or government  
25 personnel for the limited purpose of reading a lost identification  
26 device when the owner is unavailable for notice, knowledge, or consent;

27 (7) The scanning of an identification device by law enforcement  
28 personnel who need to read a person's identification device after an  
29 accident in which the person is unavailable for notice, knowledge, or  
30 consent;

31 (8) The scanning of an identification device by a person or entity  
32 that in the course of operating its own identification device system  
33 collects data from another identification device, provided that the  
34 inadvertently received data comports with all of the following:

35 (a) The data is not disclosed to any other party;

36 (b) The data is not used for any purpose; and

37 (c) The data is not stored or is promptly destroyed;

1 (9) The scanning of a person's identification device in the course  
2 of an act of good faith security research, experimentation, or  
3 scientific inquiry, including, but not limited to, activities useful in  
4 identifying and analyzing security flaws and vulnerabilities; and

5 (10) The scanning of an identification device by law enforcement  
6 personnel who need to scan a person's identification device pursuant to  
7 a search warrant.

8 NEW SECTION. **Sec. 6.** (1) A governmental or business entity may  
9 collect, use, and store data associated with a person for the purposes  
10 of completing a sales transaction or providing a service.

11 (2) If a governmental or business entity intends to collect, use,  
12 or retain the data associated with a person after a sales transaction  
13 or service has been completed, the governmental or business entity  
14 first must obtain express, opt-in consent from the person associated  
15 with the data. The person's consent must be obtained either in writing  
16 or electronically. In obtaining the person's consent, the governmental  
17 or business entity shall unambiguously disclose that, by consenting,  
18 the person agrees to have the governmental or business entity collect,  
19 use, or retain data associated with them.

20 (3) A person may, at any time, opt out of the collection of data  
21 through either written or electronic means.

22 NEW SECTION. **Sec. 7.** Sections 3, 4, and 6 of this act do not  
23 apply if a governmental or business entity issuing an identification  
24 device to a person obtains that person's express, opt-in consent in  
25 writing or electronically. In obtaining consent, the governmental or  
26 business entity shall unambiguously disclose that, by consenting, that  
27 person agrees to have the governmental or business entity collect, use,  
28 or retain data gathered from the identification device.

29 NEW SECTION. **Sec. 8.** The office of the attorney general shall, on  
30 an annual basis, make recommendations to the legislature on other  
31 personally invasive technologies that may warrant further legislative  
32 action.

33 NEW SECTION. **Sec. 9.** If any provision of this act is found to be  
34 in conflict with federal law or regulations, the conflicting provision

1 of this act is declared to be inoperative solely to the extent of the  
2 conflict, and that finding or determination shall not affect the  
3 operation of the remainder of this act.

4 NEW SECTION. **Sec. 10.** Sections 2 through 8 of this act constitute  
5 a new chapter in Title 19 RCW.

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