
HOUSE BILL 1031

State of Washington 60th Legislature 2007 Regular Session

By Representatives Morris, Hudgins, Moeller, Linville, B. Sullivan
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Committee on Technology, Energy & Communications.

1 AN ACT Relating to electronic communication devices; adding new
2 sections to chapter 9.73 RCW; creating a new section; 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 well-
11 being of its citizens.

12 The legislature recognizes that inclusion of technologies like
13 radio frequency identification or other electronic communication
14 devices that broadcast data or enable data or information to be
15 collected or scanned secretly and/or remotely will greatly magnify the
16 potential risk to individual privacy, safety, and economic well-being
17 that can occur from unauthorized interception and use of personal
18 information. The legislature further recognizes that inclusion of

1 those devices will also make it possible for a person or entity with
2 access to a reader or other scanning device to engage in the tracking
3 of the citizens of Washington state without their knowledge or consent.

4 Therefore, it is the intent of the legislature to establish
5 individual privacy rights in an era of innovation of new technologies.
6 It is further the intent of the legislature to establish such rights so
7 that manufacturers and sellers of new, innovative technologies have a
8 predictable set of known, individual rights to be aware of before
9 offering their technology for sale or use in the state of Washington.

10 NEW SECTION. **Sec. 2.** All consumers shall have the following
11 fundamental rights with respect to electronic privacy:

12 (1) The right to receive notice of an entity's information
13 practices before any personal information is collected about them;

14 (2) The right to receive choices as to how any personal information
15 collected from an individual may be used;

16 (3) The right to access one's personal information and to contest
17 the accuracy of such information;

18 (4) The right to expect that collectors of data will implement
19 security measures to ensure that their data is accurate and secure; and

20 (5) The right to seek private remedies if an entity fails to comply
21 with any of the principles outlined in subsections (1) through (4) of
22 this section.

23 NEW SECTION. **Sec. 3.** The definitions in this section apply
24 throughout sections 2 through 9 of this act unless the context clearly
25 requires otherwise.

26 (1) "Consumer" means a person who uses or purchases items for use
27 or resale within the state of Washington.

28 (2) "Electronic communication device" means any device that can
29 transfer signs, signals, writing, images, sounds, data, or intelligence
30 of any nature in whole or in part by a wire, radio, electromagnetic,
31 photoelectronic, or photo-optical system, but does not include:

32 (a) Any written or oral communication;

33 (b) Any communication made through a tone-only paging device; or

34 (c) Any communication from a tracking device.

35 (3) "Item" means an individual unit that can be scanned. For

1 purposes of this chapter, "item" may refer to government-issued
2 identification documents or swipe cards, or credit cards, as well as
3 merchandise offered for sale or resale.

4 (4) "Person" means an individual, corporation, business trust,
5 estate, trust, partnership, limited liability company, association,
6 joint venture, government, government subdivision, agency or
7 instrumentality, public corporation, or any other legal or commercial
8 entity.

9 (5) "Personal information" includes any of the following
10 information associated with an individual: (a) Social security number;
11 (b) driver's license number; (c) bank account number; (d) credit or
12 debit card number; (e) personal identification number; (f) automated or
13 electronic signature; (g) unique biometric data; (h) account passwords;
14 (i) telephone number; (j) address; (k) e-mail address; (l) date of
15 birth; or (m) any other piece of information that can be used to access
16 an individual's financial accounts or to obtain goods or services, or
17 offer goods or services based on that information without an
18 individual's consent.

19 (6) "Unique identifier number" means a number associated with an
20 identification document or item, but not otherwise related to the
21 individual that the document or item identifies. A unique identifier
22 number may not be based on the individual's social security number or
23 any other personal identifier associated with the individual.

24 NEW SECTION. **Sec. 4.** (1) Any person that sells, issues, or
25 distributes items containing an electronic communication device shall
26 post a notice informing a consumer of the use of such technology. The
27 notice shall be posted in a form that can be reasonably read by the
28 consumer. The notice shall disclose the following:

29 (a) The item contains or may contain an electronic communication
30 device;

31 (b) The consumer has the right under Washington state law to
32 request that an item containing an electronic communication device be
33 removed or deactivated before the item leaves the premises; and

34 (c) The consumer has the right to request, in writing, a copy of
35 all personal information collected about himself or herself through an
36 electronic communication device, including the identity of any person
37 who has had access to the requester's personal information.

1 (2) A person shall not sell, use, or distribute an item that
2 contains an electronic communication device without labeling such item
3 with a notice stating that such item contains an electronic device
4 capable of engaging in electronic communication and that the device can
5 transmit personal information to an independent reader or scanner both
6 before and after purchase or issuance.

7 (3) Upon written request by a consumer, any person who has gathered
8 personal information about a consumer shall release to the consumer all
9 of the stored personal information pertaining to the requester,
10 including the identity of any individual or entity, external or
11 internal, who has had access to the requester's personal information.

12 (4) After reviewing his or her personal information, the consumer
13 must be given the opportunity to:

14 (a) Contest the accuracy, completeness, timeliness, relevance, or
15 dissemination of his or her personal data;

16 (b) Correct or amend the data; and

17 (c) Request that the information be removed or destroyed from the
18 database, unless removal or destruction of the information would be
19 contrary to applicable state or federal law.

20 (5) Upon request by a consumer, a person who sells, issues, or
21 distributes an item containing an electronic communication device must
22 remove or deactivate the device before the consumer leaves the
23 premises. Any costs associated with removal or deactivation of the
24 device shall not be borne by the consumer.

25 (6) A consumer shall not be coerced into keeping an electronic
26 communication device active on an item in order for the consumer to be
27 able to exchange, return, repair, or service the item, or as a
28 condition of employment. Once an electronic communication device in an
29 item has been deactivated, it shall not be reactivated without the
30 express, written consent of the consumer associated with the item.

31 NEW SECTION. **Sec. 5.** No person shall combine or link a consumer's
32 personal information with information gathered by, or contained within,
33 a device capable of engaging in electronic communication.

34 NEW SECTION. **Sec. 6.** Any person who sells or utilizes an
35 electronic communication device must implement adequate security
36 measures to ensure that information is secure from unauthorized access,

1 loss, or tampering. These security measures should be consistent with
2 industry standards that are commensurate with the amount and
3 sensitivity of the information being stored on the system.

4 NEW SECTION. **Sec. 7.** It is a violation of sections 2 through 9 of
5 this act for a person to engage in any of the following activities:

6 (1) Use an electronic communication device to remotely scan or
7 attempt to scan an item associated with a consumer without that
8 consumer's knowledge;

9 (2) Disclose, either directly or through an affiliate, a consumer's
10 personal information associated with information gathered by, or
11 contained within, a device capable of engaging in electronic
12 communication; or

13 (3) Use, either directly or through an affiliate or nonaffiliated
14 third party, information gathered by, or contained within, a device
15 capable of engaging in electronic communication in order to identify a
16 consumer.

17 NEW SECTION. **Sec. 8.** (1) A person who is injured under sections
18 2 through 9 of this act may bring a civil action in district or
19 superior court to enjoin further violations, and to seek up to five
20 hundred dollars per violation, or actual damages, whichever is greater.

21 (2) In any action under this section, a court may increase the
22 damages up to three times the damages allowed under subsection (1) of
23 this section if the defendant has engaged in a pattern and practice of
24 violating sections 2 through 9 of this act. The court may award costs
25 and reasonable attorneys' fees to a prevailing party.

26 NEW SECTION. **Sec. 9.** (1) A person who willfully violates any of
27 the provisions of sections 2 through 9 of this act is guilty of a gross
28 misdemeanor.

29 (2) A person who willfully violates any of the provisions of
30 sections 2 through 9 of this act in conjunction with the commission of
31 another unlawful act is guilty of a class B felony.

32 NEW SECTION. **Sec. 10.** Sections 2 through 9 of this act are each

1 added to chapter 9.73 RCW.

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